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The Chief Justice
Associate Justices
The United States Supreme Court
Washington, DC 20543

Re: State of Hawaii, et al. v. Office of Hawaiian Affairs, et al., No. 07-1372

This letter is sent to place this Honorable Court on notice that the Temple of Lono, an ancient Hawaiian religion, is an essential party in the above referenced case and unrepresented before the court. No party in this case can legally represent the Temple. Nor can the Temple be compelled to enter this case. Under these circumstances, the appropriate response is to dismiss this case for lack of jurisdiction.

A detailed presentation of the context, the substance, and the implications of the Temple's claim is presented in the attached document.

The Temple's religion and spiritual practices elevate the staff of life as the central focus and the preservation of that staff of life for seven generations as the primary kuleana (obligation).

For thousands of years, the Kahunas of Hawai'i have prayed for the success of the trust placed in the Hawaiian people to take care of (malama) the 'āina – the land, the sea, the air, and all the creatures therein. In these perilous times, the Kahuna rises each day to greet the Sun with prayers for abundance and protection for the life of the land. The concern runs deep.

Those who have usurped that trust function are unconscious and treat the Earth as a resource base and a trash can. The damage inflicted is immense and has placed the Natural World in a state of severe imbalance. The same pattern can be seen worldwide.

The Hawaiian people simply want restoration of their trust responsibility for these islands, so that they may use their powers and wisdom to restore and rejuvenate the Natural World and provide sustenance for the Humans living here.

The Temple of Lono asks this Court to acknowledge the existence of the Temple, the authority and role of the Temple within the original Hawaiian civilization (sovereignty), and the legal rights that emanate from that existence and historical kuleana (responsibility). The Temple further asks this Honorable Court to recognize that the Temple's rights and interests are not represented in this case and cannot be represented by the existing parties. Finally, the Temple asks this Honorable Court to recognize that,

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in the context of Hawaiian history, the Temple, as a sovereign institution, is not under the jurisdiction of the United States. The Temple cannot be a party to this case unless the Temple explicitly waives its sovereign immunity, which it does not.

The acknowledgement of the Temple of Lono in no way negates any other religion or spiritual practice. All religions are welcome to participate within the Pu'uhonua, once the Temple of Lono spiritual land base is restored, as long as they follow the practices meant to preserve the people for seven generations into the future.

If this Honorable Court does not acknowledge our religion and spiritual practices, then this Court will follow in the footsteps of those who have suppressed our religion for more than one hundred years.

By copy of this letter, the Temple is providing notice of the jurisdictional issue to the parties in this case. It remains to be seen whether any of those parties will bring this matter before the court. If they do not, the Temple urges this Honorable Court to exercise its inherent authority to examine whether it appropriately has jurisdiction in this case.

Aloha,

Frank Kamealoha Anuumealani Nobriga
Kahuna, Temple of Lono

c.c. Counsel of Record
Trustees, Office of Hawaiian Affairs
Governor Linda Lingle
Attorney General Mark Bennett
Hawai'i Supreme Court
President Barack Obama

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The Temple of Lono Claim and Its Implications

The True Question Presented

The real question is whether this Honorable Court will get involved in legitimizing the illegal seizure of the national lands belonging to the Kingdom of Hawai'i and in extinguishing any claims the Hawaiian civilization, religion, and political system may have to those lands or whether this Honorable Court will let stand a unanimous Hawai'i Supreme Court opinion that these lands are held in trust until there is reconciliation between the Hawaiian civilization and the United States civilization.

As concerns the Temple of Lono, the question is whether this Honorable Court will acknowledge the status, rights, and interests of the Temple or cooperate in extinguishing the religion by removing the spiritual land base.

The Temple of Lono Claim

The State of Hawaii, et al. v. Office of Hawaiian Affairs, et al., No. 07-1372, otherwise known as the Ceded Lands Case¹, may determine whether the State of Hawaii has legitimate title to the lands seized from the Crown and Kingdom of Hawai'i Government at the time agents of the United States Government facilitated the illegal overthrow of the Kingdom Government.

One party with an interest in the outcome of this case is not represented – the Temple of Lono. The Temple of Lono has a claim that is qualitatively different from that of any other party to the case.

The key characteristics that differentiate the claim are the context within which the claim arises and the nature of the claim.

The Apology Resolution addresses “Native Hawaiians.” While that term is not a term the Hawaiian people would necessarily embrace, the resolution clearly intends the apology to be directed to the original Hawaiian people, i.e. those who lived in the islands prior to the arrival of Captain Cook. The appropriate term would be Kanaka Maoli.²

The apology is also for the illegal overthrow of the Kingdom of Hawai'i government. The audience for that apology is not identical to the Kanaka Maoli. The Kingdom had subjects who were not of Hawaiian descent. They also lost their national identity, yet have not received an apology from the United States.

¹ The term “ceded lands” is inappropriate because the Kingdom never ceded its lands to the Provisional Government; the lands were taken without permission or compensation.

² There are those within the Hawaiian community who find even that term inappropriate. For purposes of this letter, Kanaka Maoli will be used to mean the Hawaiian people present when Cook arrived.

The conflation of the Kanaka Maoli with Kingdom subjects masks a key point of divergence. The Kanaka Maoli had a civilization unique to their islands. The attack upon that civilization began long before the overthrow of the Kingdom government. In fact, the creation of the Kingdom government was a part of the attack, displacing traditional spiritual practitioners as the highest authority over lands managed communally with a constitutional monarchy form of government eventually eliminating traditional practitioners from holding any authority and implementing private/public land ownership.

Separating the interests of the Kanaka Maoli from the interest of the Kingdom's subjects illuminates the difference in those interests and the difference in the context out of which the legal interests in this case arise.

Civilization and Sovereignty

True communication in the Hawaiian language comes in an oral tradition that requires a face to face exchange between those communicating. Body posture, hand position, facial expression, and intonation transmit the intended meanings of words in a language developed over tens of thousands of years.

This Honorable Court is based in a written tradition in which words are defined in dictionaries with the expectation that the written word will be similarly understood by each party to the communication.

Two key words in this letter are civilization and sovereignty.

The word civilization is used in this communication to encompass all aspects of an identifiable group within the Human Family. Religion, culture, customs, practices, political system, economic system, and language are all aspects of a civilization.

In this case, the two civilizations present are the Polynesian/Hawaiian civilization and the European/USA civilization.

The word sovereignty can have different meanings, depending on the nature of the civilization.

In the Hawaiian civilization, the concept of sovereignty implicated aspects of both religious worship and political power.

Hawaiians are a people of a land-based faith. Their traditional religious practices were based on the foundation of the four Gods. With that foundation, the individual was sovereign to choose the specific nature of spiritual practice. Individual practice revolved around the temples and the altars in each home.

The kahunas held the sovereignty linking the Gods to the people through the land. The Temple of Lono is dedicated to the God Lono, about which much more will be presented

below. The fundamental seat of sovereignty was the Pu'uhonua presided over by the kahuna, which will also be discussed in detail below.

Sovereignty in the Hawaiian context can best be understood through the concept of kuleana. The word kuleana translates as responsibility. Each sector of the civilization – kahuna, chiefs, and people – had a kuleana. The fulfillment of those distinct kuleanas maintained the life of the civilization and preserved the viability of the civilization for seven generations into the future. Within each kuleana, people were trained to carry out the responsibilities unique to that kuleana. In many cases, particular families carried out a kuleana passed from generation to generation. Each of the kuleanas represented a different aspect of the sovereignty residing in the civilization as a whole.

In the European/USA civilization, the word sovereignty is most commonly used only in the political context. Sovereignty in that context is both the independent and absolute power by which an independent state is governed and, in democratic political systems, the source of that sovereignty lodged in the people forming the state. In pre-contact Hawai'i, the European concept of sovereignty does not fit.

To truly address the issues raised in this case, this Honorable Court must recognize the differences in the use of the term and the implications of those differences for the proper resolution of the land issue before the court.

In this letter, the Temple of Lono is asserting its particular sovereignty, both to illuminate the absence of an essential party to this litigation and the inability of this Honorable Court to compel the Temple's presence in the case. The absent essential party argument is presented in detail below.

Frank Nobriga is an active force behind the Temple of Lono movement which began in 1971. **Their purpose is to maintain a spiritual land bank**, with temples throughout the islands. The first temple was established on Kahoolawe in 1976, having been conceived as a result of the involvement of Hawaiians in recapturing that island for civilian purposes. ... The Temple of Lono is rediscovering the elements of ancient Hawaiian religion, including a four-god concept.

Honorable Samuel P. King, United States District Court, "Hawaiian Sovereignty," Hawaii Bar Journal, July 1999, <http://wetserver.net/hawaiimatters/old/king.pdf>. (emphasis added).³

The context for the Temple of Lono claim is pre-contact Hawai'i. In that civilization, there was no land ownership. All the lands belonged to the Gods. Ku (saltwater), Kaneloa (sun), Lono (land), Kane (freshwater). The four Gods formed the Pa halau otea atua (the foundation of the four Gods). The Temple of Lono's kuleana (responsibility) is

³ The temple at Kaho'olawe preexisted the arrival of Captain Cook and was restored, not established, in 1976 by Temuela Hoopi Otarani Otamatahiti Tahuna Pari Tu Po Paki/Loon, hereafter referred to as Kahuna Sam Lono.

the Pu'uhonua, the staff of life and management of the lands with the well being of seven generations into the future as the guideline. This guideline is the Kanawai, the ecological legal system based on natural law and pertaining to both land and water usage. The kahunas of Lono were the law givers. The kahunas set forth the rules for the use of the lands and water. The chiefs enforced those rules, with the high chief being the only person having the power to take a human life. The people put those rules into practice. This system provided a self-sustaining economy that supported hundreds of thousands of people.

The knowledge of the staff of life (which is part of this covenant), Pa Halau otea atua (the foundation of the four Gods), Maiola (healing light – the knowledge of the temple), Aumakua [Huna mana (ancestral worship) – the source of the knowledge] are the origin of Hawaiian faith and religious spiritualism, based on the Pu'uhonua and its sovereignty.

The sovereignty of the Pu'uhonua Lehua at Kualoa on Oahu, Mano Kalani Po on Kauai, Pi'ilani on Maui and Hale O Keawe on Hawaii is based on their traditional importance in Hawaiian Religion, Hawaiian Culture and political history. The lands of the Pu'uhonua Hale O Keawe runs from Honaunau to the Temple of Ku at Honokohau Harbor and that Pu'uhonua is where Kamehameha the First established the Temple of Lono at Ahuena and the seat of the Kingdom of Hawaii at Kailua, Kona.

Illustrative of the meaning of sovereignty in the Hawaiian context is the oral history of the succession of Kahahana to the position of High Chief on Oahu and the attempt by High Chief Kahekili of Maui to claim the lands of Pu'uhonua Kualoa on Oahu and the Palaoa-pae (whale ivory washed up along the Oahu coastline).

Shortly after his installation, Kahahana called a great council of the Oahu chiefs and the high priest⁴ of Kaopulupulu, and laid before them the demands of Kahekili regarding the land of Kualoa and the "Palaoa-pae." At first the council was divided, and some thought it was but a fair return for the kindness and protection shown Kahahana from his youth by Kahekili, but the high priest was strongly opposed to such a measure and argued that it was a virtual surrender of the sovereignty and independence of Oahu. Kualoa being one of the most sacred places on the island, where stood the sacred drums of Kapahuula and Kaahu-ulapunawai, and also the sacred hill of Kauakahi-a-Kahoowaha; and the surrender of the "Palaoa-pae" would be a disrespect to the gods; in fact, if Kahekili's demands were complied with, the power of war or sacrifice would rest with the Maui king and not with Kahahana. He represented strongly moreover, that if Kahahana had obtained the kingdom by conquest, he might do as he like, but having been chosen by the Oahu chiefs, it would be wrong in him to cede to another the national emblems of sovereignty and independence. Kahahana and all the chiefs admitted the force of Kaopulupulu's arguments, and submitted to this advice not to comply with the demands of Kahekili.

⁴ The word kahuna is more appropriate than priest. The word kahuna means priest, teacher, or doctor.

Forander, 1969, Volume II; page 218 *cited in* the Temple of Lono, "The Innermost Knowledge of Lono" (unpublished) at 5.⁵

This history provides a window into the complexities of the sovereignty concept within the Hawaiian civilization. The most relevant historical aspect here is that the chiefs accepted the Kahuna's position that the independent political status of Oahu revolved around the sovereignty over Pu'uhonua Lehua at Kualoa. The Pu'uhonua was the seat of sovereignty. The kuleana for that Pu'uhonua rested in the hands of the kahunas.

Based on the Kanawai maintained by the kahunas, the people performed the daily work of sustaining the population. Part of the sovereignty rested in the people who implemented the laws on land and ocean.

The Makahiki season, when Captain Cook arrived, is a special time of year for the Hawaiian people. Traditionally, the season is three months in length. During that season, protocols related to status are modified or removed. The chiefs and their subordinates mix freely with the people. There are fewer kapus (prohibitions) in place regarding those contacts and fewer protocols to be enforced. The celebration reminds the people that they are all one 'ohana (community).

The God honored during the Makahiki season is Lono, the god of the land that provides the staff of life for man, whose magnetic force draws the water of life from the clouds down to earth creating an abundance of food for all living things. "Oh Lono of the air you speak in many ways, soft or wild you sound through birds and trees. Your revered music rings through waterfalls. Let us see you and let us hear you so that our source is as real as ourselves. Warm and brown and filled with seeds awaiting, may the sacred soil bring forth sweet fruit foods to strengthen and sustain us as we work. Oh Lono your face is seen in earth and rock." We reverence the land as a natural force that can give life and take life. HE RONO, HE RONO, HE ULU TA MEA AI I TA POE HONUA. The kahunas of Lono presided over the Makahiki celebration.

The Pu'uhonua was the heart of the Lono kuleana. The Pu'uhonua was essentially the back up for the entire civilization.

The Pu'uhonua was a large land area. The kahunas of Lono and Ku managed the area. The primary task was the cultivation of crops. Healing based on thousands of years of knowledge about plants, spiritual ceremonies directly connecting practitioners with the Gods and the elements of Earth, academies to teach practical skills, and other activities also took place within the Pu'uhonua.

When wars broke out and people left their homes, they would often return to find that their crops had failed. The people would go to the Pu'uhonua for replacements.

⁵ While Forander used the term "king," that term did not become a part of the political process until the introduction of non-Hawaiian political structures; the appropriate term would be high chief (Ali'i Nui).

Acknowledging the importance of the sovereignty of the Pu'uhonua to everyone, no wars were ever fought within the Pu'uhonua.

The Pu'uhonua is a sanctuary of peace where the healer and the warrior in Hawaiian thinking coexist in harmony for perpetuation of the race via the knowledge of staff of life that our four Gods provide – the Hawaiian people's covenant.

During the Makahiki season, the kahunas of Lono travelled from one land sector to the next. The residents of the land sector bring offerings of fruits, vegetables, crafts, and other products to the Lono temples. The function of the Kahuna was to evaluate the health of the people and the land.

Overall, the kahunas operating from their base in the Pu'uhonua constantly monitored and evaluated the civilization to know what measures were necessary to sustain the civilization and maintain the peace. All the functions noted above constituted the sovereignty of the traditional religious practitioners.

Captain Cook arrived during the Makahiki season and encountered this incredibly sophisticated system developed over 25,000 years in Polynesia. Unfortunately, all the Europeans perceived were uncivilized, half-clothed savages.

What followed was the systematic destruction of the Hawaiian civilization in a process that can justifiably be characterized as genocide.

The new civilization was based on a belief that a new born was tainted by some original sin, that material wealth measured merit, that pursuit of conquest and exploitation were legitimate means of accumulating wealth, and that the individual mattered more than the community.

Greed would replace sharing; private claims would prevail over the general welfare of the community and the protection of future generations; and the 'aina (life of the land) and the kai (life of the ocean) would be reduced to no more than a resource base and a trashcan.

True freedom of religion, based on a common honoring of the earth and expressed by each individual and family in their own way in their own home, would be replaced by competing religions claiming superiority and preaching exclusivity, united only in their common goal of destroying the traditional practices.

All the civilized values of the Hawaiian way of life would be supplanted by the barbaric practices of the immature civilization. Those practices amounted to a campaign of genocide against the Hawaiian civilization.

The first act of genocide was the introduction of devastating diseases. Knowing that the sailors and immigrants would expose the indigenous people to diseases for which the indigenous people had no immunity, the foreigners made no attempt to limit contacts or

otherwise protect the indigenous people. The result was a major reduction in the indigenous population that served the purposes of imperial expansion.

The Europeans provided Kamehameha I guns to unite all the islands under one "King." That set the stage for the later seizure of the entire nation by the act of seizing the monarch.

When, through conquest, Kamehameha became high chief over all the islands, he also became the protector of the traditional religion of the Hawaiian people and established his Temple of Lono at Ahuena as the seat of governance and religious sovereignty.

The merchant/missionary group, through the American Board of Commissioners for Foreign Missions, set about to convert the Hawaiian political leadership to Christianity and destroy the sovereignty of the traditional practitioners, acknowledged by Kamehameha I when he established the Temple of Lono at Ahuena within the Pu'uhonua Honaunau.

After Kamehameha I's death, the missionaries converted the Hawaiian chiefly group to Christianity and taught the new converts that the traditional practitioners were agents of the Devil. Incited by the missionaries, the Hawaiian Christians hunted down and killed the Kahunas, who carried the traditional wisdom. This internal war led to a holocaust at Kaloko. Queen Ka'ahumanu sent her Christian Hawaiian army into battle against Hawaiian traditionalists. Tens of thousands of people died. The Christian Hawaiian army prevailed.

At that point, the traditional practitioners completely withdrew from society and took their practice into the privacy of their homes. When they went out into the world, they did so as fishermen and farmers. The Temple of Lono spiritual practices survived by being passed from Kea Kea to Mahealani to Sam Lono to Kamealoha Anuumealani Nobriga.

The history of religious persecution and suppression is quite extensive. That persecution destroyed the foundation of the Hawaiian civilization and has denied the Hawaiian people the true history of their religious practice.

The missionary descendants insinuated themselves into positions of influence within the Hawaiian government, feigning friendship to the indigenous leadership while they conspired to dispossess that leadership of their national identity and lands. The concept of property ownership was introduced in order to lay the foundation for ultimately stealing the property.

During the period of the Temple's absence, the genocide continued.

The destruction of the traditional land management system, including the Pu'uhonua, opened the way for introduction of public and private land ownership.

The missionaries convinced the Hawaiian Christians to pass laws making illegal many of the religious, social, and cultural practices at the heart of the Hawaiian civilization. Ancestral worship, the hanai system in which children were often given from one family to another to be raised, and other key elements of the religious and social structure were forbidden. The hula was outlawed. Speaking Hawaiian was forbidden in the schools.

This systematic suppression of the Hawaiian civilization continues today with developments being built on burial sites, destruction of sacred sites, desecration of the 'aina (the land), and other acts of deliberate disrespect directed at the vestiges of Hawaiian civilization. At this time, the Temple of Lono at Ahuena is being assigned to a non-profit organization, which has no connection to the Temple of Lono, in order to convert Ahuena into a historical site, not a living religious institution.

This case brings that genocide to its pinnacle. Taking away the lands of Hawai'i and giving them to the State of Hawaii will destroy the physical foundation of the Hawaiian civilization and break the religious tie of the people to the 'aina. The maintenance of that connection is the essential kuleana of the Temple of Lono and the essence of the Temple of Lono religious practice.

If the Temple of Lono were present in the case at issue, the Temple would argue the following:

- The essence of the Temple's religious practice is to connect the four Gods (Pa Halau O Tea Atua) to the people through the land; Hawaiians believe that with out these four elements, there is no life.
- In that practice, the management of the Pu'uohonua lands is a religious custom that requires jurisdiction over these lands.
- The management of the lands was stolen through a policy of genocide in which one policy component was directed at Kamehameha the I and the Hawaiian Religion and entailed the destruction of the role of traditional religious customs and practitioners in public life.
- The destruction of the traditional role of religious practitioners paved the way for the introduction of the property ownership concept; after the death of Kamehameha I, the first thing Reverend Thurston did was destroy the Temple of Ku and Temple of Lono at Ahuena and built his homes on these sacred sites.
- The persecution of traditional religious practitioners, the destruction of the traditional religious practitioner role in the society, and the replacement of the traditional non-ownership of land with ownership, led the Hawaiian political leadership to embrace the foreign economic practices, including those related to land ownership.
- The genocidal policy then implemented the overthrow of the Hawaiian political leadership, specifically with a goal of annexing the islands to the United States and carried out with the complicity of United States officials and military personnel.
- The genocidal policy now seeks to extinguish all land claims by the Hawaiian people by declaring the "ceded lands" as belonging to the State of Hawaii.

- The United States government will not recognize the Kingdom of Hawaii government as still existing and, therefore, will not let the Kingdom of Hawaii come before the United States Supreme Court to argue for title to the lands; the interests of the Crown and Kingdom Government are not represented in this case.⁶
- The abolition of the Crown and Kingdom Government abolished the institutions through which foreigners had implemented their property ownership system.
- The acknowledgment that the overthrow was illegal and the argument now that the stolen lands can legitimately be taken anyway destroys the essential legal basis for all property ownership claims; legitimizing land ownership achieved through theft removes the legal foundation from the ownership system.
- OHA claims to be representing the Hawaiian people and makes its claim based on the limited nature of the Apology Resolution interpretation by the Hawaii Supreme Court.
- That limited interpretation only found that the Hawaiian people have a *potential* interest in the lands at issue, which should be resolved within the reconciliation process called for by the Apology Resolution.
- OHA cannot represent the religious interest in the land asserted by the Temple of Lono; the Temple of Lono practitioners are not cultural specialists; they are religious practitioners; OHA cannot speak for the Kahuna because OHA lacks the authority from the Kahuna to do so and because OHA is an agency of the government foreclosed by the First Amendment from representing a single religious entity.
- Specifically, the Temple of Lono would argue that the United States government, by cooperating with and facilitating the overthrow of the Kingdom government and subsequently granting recognition to the provisional government, extinguished the rights of the Kingdom of Hawai'i within the United States legal system, creating a vacuum in land management.
- The provisional government and all subsequent claimants to the lands at issue base their claim on the original unlawful overthrow and, therefore, none of those claims are legitimate.
- The Temple of Lono is the only traditional religious practice that has emerged from the darkness of oppression.
- The Temple of Lono has a claim to all the Pu'u honua lands as part of the Temple's religious and customary practices.

⁶ The Temple is aware that international lawyer Francis Boyle once brought a case to this Court on behalf of the Kingdom. Mr. Boyle filed his papers and paid the filing fee.

The Clerk of the Court returned the papers and the fee.

As the Temple understands, the Court contacted the United States Department of State to inquire whether the United States recognized the Kingdom of Hawai'i. The State Department replied that the United States did not recognize the Kingdom. As a court within the United States system, this Court could not acknowledge a government that the United States refused to recognize. The Court, therefore, ordered the return of the papers and the fee.

Denying access to United States courts for a government illegally destroyed by the United States because that government is not recognized by the United States is certainly an irony that is not lost on this Court. When the bar to participation forecloses the Kingdom from challenging an attempt to take away the land basis for Kingdom sovereignty, the irony becomes tragedy. Nevertheless, the Temple understands that the United States legal system allows for such an illogical and immoral position to prevail.

- The Temple's claim falls under the first Amendment to the United States Constitution.
- Restoring the lands to the administrative jurisdiction of the Temple of Lono is the only resolution of the land question that is untainted by the genocidal policies and truly provides a foundation for restoration of the nation.

As the Apology Resolution and the Hawai'i Supreme Court recognized, the land is the spiritual, cultural, and economic foundation of the Hawaiian civilization. Removing that foundation destroys the civilization.

The United States military; the transnational corporations, who treat self sustaining communities as the enemy; the land speculators; and the political servants of empire exploit Hawai'i for their agendas.

However uncivilized the new comers, the hope always existed that the haoles (foreigners) would some day learn the true meaning of the heiau temples. The sheer patience of the Hawaiian people is the most remarkable element in this entire story. That patience is founded in their continuing belief that the temple is the only pono (proper, righteous, aligned) path for Human interrelationships with the land.

The lands of Hawai'i are the unique location for the expression of the original Hawaiian civilization. Just as the Jews maintained their claim to certain sacred lands while exiled for 5,000 years, the Hawaiian people live as internal exiles with the spiritual foundation of their civilization still suppressed and their sacred lands still occupied by a truly foreign civilization. While the occupiers have abolished the foreign model of government imposed on the Hawaiian people (the constitutional Kingdom of Hawai'i), the legitimate expression of that original civilization still exists in the Temple of Lono and the traditional structure (Kahuna, Chiefs, People) can be restored on that foundation.

The interests of the Temple of Lono are not represented in this case.

OHA, as an institution of the State government, cannot represent the interests of the Temple of Lono because the Temple's interests are founded in religious practice. OHA has placed all religious temples under "historical preservation." This religion is still alive.

Nor can any other party to the case legitimately represent the Temple's interests because none are authorized to do so by the Temple.

As an institution representing the sovereignty of the pre-contact Hawaiian civilization, the Temple of Lono is outside the jurisdiction of this Court and cannot be compelled to participate in this case.

In these circumstances, an essential party is not present and the case should be dismissed for lack of jurisdiction.

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Legal Analysis: The Impact of the Apology Resolution

The strategic significance attached to Pearl Harbor is particularly inconsistent with the notion that the Congress thought it was acquiring imperfect title [to the lands of the Kingdom of Hawai'i]. The possibility that the United States military might one day lose access to Pearl Harbor (which the monarchy had granted on an exclusive but revocable basis, see Supplemental Convention, Dec. 6, 1884, U.S.-Haw., art. II, 25 Stat. 1400) was a primary motivation for annexing Hawaii. See H.R. Rep No. 1355, 55th Cong., 2d Sess. 4 (1898) (endorsing annexation as a means to obtain "full power of ownership"); see also id. At 101, 103, 105.

Gregory G. Garre, Solicitor General, before the Supreme Court of the United States, Brief for the United States as Amicus Curiae Supporting Petitioners, at 15, State of Hawaii, et al. v. Office of Hawaiian Affairs, et al., No. 07-1372.

The Solicitor General's openly imperialistic rationale for destruction of the Hawaiian nation illuminates the true nature of the question before the United States Supreme Court in the ceded lands case. Will the United States Supreme Court once and for all extinguish the possible claims of the Hawaiian people to restoration of their nation and the spiritual land base of the traditional Hawaiian religion thereby validating that the law followed by the United States is "might makes right?"

When the State of Hawai'i argues that the Apology Resolution is merely symbolic, the underlying argument is "might makes right."

The historical context for this question is a clash of civilizations. The clash is between an indigenous civilization, developed over 25,000 years, living in a part of Polynesia known as Hawai'i and a foreign civilization rooted in Europe and finding its most relevant expression here in the United States of America (USA).

As set forth above, the European/USA civilization deliberately and systematically destroyed the Polynesian/Hawaiian civilization in order to seize the lands comprising the Hawaiian Islands.

An initial question in this case is whether the highest court of the prevailing civilization is capable of rendering a fair and just decision when addressing the rights of the civilization destroyed by the clash. There will inevitably be a bias towards ratifying the actions of the prevailing civilization and denying the legitimacy of any arguments to the contrary.

The initial step towards a just and fair resolution of the conflict is a willingness on the part of the prevailing civilization to acknowledge the arguments to the contrary and those who can legitimately make those arguments. The Apology Resolution, Pub. L. No. 103-150, 107 Stat. 1510, revisited the history of the conflict and repudiated the actions taken against the Kingdom of Hawai'i by agents of the USA.

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Specifically, in the Apology Resolution, Congress found that without the active support and intervention by the United States diplomatic and military representatives, the insurrection against the Government of Queen Liliuokalani would have failed for lack of popular support and insufficient arms.

Congress noted that in a message to Congress on December 18, 1893, President Grover Cleveland reported fully and accurately on the illegal acts of the conspirators, described such acts as an “act of war, committed with the participation of a diplomatic representative of the United States and without authority of Congress” and acknowledged that by such acts the government of a peaceful and friendly people was overthrown.

Congress also noted that President Cleveland further concluded that a “substantial wrong has thus been done which a due regard for our national character as well as the rights of the injured people requires we should endeavor to repair” and called for restoration of the Hawaiian monarchy.

The Solicitor General’s cavalier assertion that the United States Government as a whole sought to destroy the Kingdom in order to permanently seize Pearl Harbor ignores the initial events in which the President of the United States sought to reverse the illegal and unauthorized actions of United States agents.

At the same time, the Solicitor General does illuminate the true motivations for the initial overthrow and the subsequent efforts to achieve annexation. The actions taken against the Queen were not an insurrection. Those seizing the Kingdom Government did not do so with the intent of replacing that national government with a better or different national government; their intent, and that of their foreign allies, was to dissolve the national government and the nation itself through a policy of seeking annexation.

The provisional government and the subsequent Republic of Hawai'i were essentially creations of the annexation forces both within and outside the United States Government. The transfer of the ceded lands from the Republic to the United States was simply a part of the ongoing conspiracy to destroy the Hawaiian nation; the Republic and the United States were essentially the same party engaging in self dealing to transfer stolen property.

A more accurate historical perception is that the United States Government oscillated between endeavoring to undo the unauthorized actions of its agents and seizing the benefits of those actions.

President Cleveland would have restored Queen Liliu'okalani and the Kingdom Government.

Congress failed to muster the two-thirds vote needed to ratify a treaty of annexation, reflecting a significant sentiment that the entire episode lacked legitimacy.

Annexationists, unable to ratify the treaty, then relied upon a resolution to achieve annexation by majority vote.

In the Apology Resolution, justice again trumped imperialism. Congress returned to characterizing the actions of United States agents involved in the overthrow as unauthorized and illegal. Congress further made specific findings that
the indigenous Hawaiian people never directly relinquished their claims to their inherent sovereignty as a people or over their national lands to the United States, either through their monarchy or through a plebiscite or referendum.

The Apology Resolution acknowledged the ramifications of the illegal overthrow. That acknowledgement serves as a basis for pursuing reconciliation between the United States and the original Hawaiian people. Among the ramifications acknowledged is that the lands in question in this case were taken “without the consent or of compensation to the Native Hawaiian people of Hawaii or their sovereign government.”

The clauses in the Resolution that set the groundwork for the reconciliation process obviously opened the door for a possible negotiated restoration of the Hawaiian nation and the national lands.

The Apology Resolution did not directly repeal acts of Congress passed at the time of annexation that claimed that the Republic of Hawaii legitimately owned the Kingdom’s national lands and could pass clear title to the United States. For the resolution to have any meaning, however, the resolution must have reopened the question of land title. The resolution of that question was left to a reconciliation process.

The Hawai’i Supreme Court recognized that intent on the part of Congress and found that the lands should be held in trust until such time as the reconciliation process could determine appropriate disposition of the lands.

What the State of Hawaii seeks now is a ruling by this Court that ratifies land claims that are based on the overthrow of the Kingdom Government, an act repudiated by the Apology Resolution, and resolves those claims in favor of the State of Hawaii before any reconciliation can take place. The State of Hawaii essentially seeks to extinguish the Kingdom once and for all, making reconciliation a hollow exercise.

The State of Hawaii and the Solicitor General want this court to emasculate the Apology Resolution and return the legal situation to being defined by the legislative acts the Apology Resolution repudiates.

The State of Hawaii and the United States Solicitor General argue that Congress cannot change the status of the lands as set forth in the Admissions Act and the Newlands Resolution with the Apology Resolution.

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The Apology Resolution returned to the initial event that preceded the transfer of the lands and found that initial event to have been unauthorized and illegal. That the fruit of the poisoned tree was passed from one entity to another cannot wash away the stain of illegitimacy. The Apology Resolution found that the lands never left the sovereignty of the original Hawaiian people. The Apology Resolution compels a conclusion that the Republic of Hawaii did not have proper title to transfer to the USA. The Apology Resolution, a public law, is the law today, as the Hawai'i Supreme Court correctly found.

Assuming that the highest court of the prevailing civilization is willing to consider that the intent of Congress was to change the legal landscape and open up the possibility of repairing the harm caused by prior illegal actions attributable to the United States Government, the next question that arises is whether the parties necessary to answer the questions raised by this case are represented and, if not, can be brought into the case.

As set forth above, the Temple of Lono has substantial interests at stake in this case and those interests are not represented and cannot be represented by existing parties. Because the Temple of Lono is a sovereign entity not under the jurisdiction of the United States, this Court cannot compel the Temple to enter the case. Under these circumstances, the law requires this Court to dismiss the case for lack of jurisdiction.

The Temple of Lono: An Indispensable, Absent Party

In determining whether the Temple of Lono is a necessary party to this proceeding, the Court must determine whether they are indispensable "so that 'in equity and good conscience' the suit should be dismissed." *Makah Indian Tribe v. Verity*, 910 F.2d 555, 558 (9th Cir. 1990).

It is impossible to read the history and not find the ownership of the lands in question to be a matter in which equity and good conscience are at issue.

Surely the unlawful overthrow of a nation by a foreign power is a matter that raises equitable concerns when the rights of the victims of the illegal action are being considered. Equity at a minimum requires the participation of some representative of the interests of the victims in any proceeding determining those rights. Absent such participation, the proceeding is not equitable.

In this case, there are three groups that could have represented the interests of the victims – the traditional kahunas, the Kingdom (Crown and Government), and the descendants of the original Hawaiian people as a whole.

This Court bars the Kingdom from appearing.

OHA claims to represent the descendants of the original Hawaiians and yet is a creation of the State of Hawai'i that does not promote full restoration of the illegally destroyed nation.

The only remaining institution that can represent the interests of the original civilization without question are the traditional spiritual practitioners.

The State of Hawai'i is a subdivision of a government that comes before this Honorable Court with unclean hands, as the Apology Resolution acknowledged. Good conscience requires the Court to refrain from further adding to the injuries already committed by the petitioner's government. The Apology Resolution includes a congressional finding that the lands at issue were taken without permission and compensation. Now the wrongdoer comes to this Court to legitimize the illegal seizure of these lands through judicial fiat.

"The inquiry is a practical one and fact specific. *Id.* (citation omitted). The practical effect of this Honorable Court accepting the arguments of the petitioner would be to extinguish all rights of the Hawaiian people to the lands in question. Another practical effect of such a resolution would be to preempt the reconciliation process called for by the Apology Resolution. Obviously, returning the illegally seized lands is a central issue in such a process.

The documents on file at various international bodies, prior legislation within the United States, the Apology Resolution, and the ruling of the Hawai'i Supreme Court contain the relevant facts.

The Court must determine first whether the absent parties are necessary. *Id.*

In determining necessity, the first inquiry is whether complete relief is possible among those already parties to the suit. *Id.*

The parties to the suit are (1) a subdivision of the belligerent occupying power, (2) an agency created by and under the control of that power (Office of Hawaiian Affairs), and (3) private citizens who do not have a basis for claiming to represent the traditional spiritual practitioners or the traditional religion.

Yet the issue to be resolved is the status of the lands belonging to the Kanaka Maoli. The resolution sought by the State of Hawaii is to extinguish the rights of the Hawaiian people to that land. Obviously, no complete resolution can take place among the existing parties. Resolving the issue among those already a party would violate the right of the Temple of Lono to assert that the proper resolution is reversion to the traditional system in which the Temple is the managing authority over the lands.

The second inquiry is whether the absent party has a legally protected interest in the case. *Id.*

The legally protected interest of the Temple of Lono is the Temple's First Amendment rights. Those rights exist in four forms.

First, the religious kuleana of the Temple as set forth above includes maintaining the connections between the Kanaka Maoli and the land. Without the lands, that connection

is broken and the bridge between the spiritual and the earthly rendered impossible. The Temple will be unable to engage in the free exercise of its religious practice.

Second, the earthly kuleana of the Temple, as set forth above, is to feed the people. Without the lands to grow food, the Temple is denied the essential earthly expression of its religious practice.

Third, the removal of the lands from the Hawaiian people would be a validation of the suppression of the traditional practitioners. Denying the traditional practitioners' authority in favor of a secular authority would destroy an existing religion and establish an alternative religion for the Hawaiian people – both violations of the occupying power's First Constitutional Amendment.

Fourth, the treatment of the Kingdom as non-existent and the questionable ability of OHA to represent all Kanaka Maoli leave the Kanaka Maoli without representation, absent the Temple of Lono, to argue their religious rights to the land.

OHA asserts its kuleana (responsibility) is to represent all viewpoints within the community of original Hawaiian descendants. Yet there are those within that community who support full restoration of the nation, creation of a nation within a nation, and no national restoration at all. OHA cannot represent all these divergent and contradictory viewpoints within its secular authority and certainly cannot represent the religious interests of the Temple of Lono.

Rice v. Cayetano, 528 U. S. 495 (2000) required the trustees of OHA to be elected by all registered voters in Hawai'i, not just those descended from the original Hawaiians. Just as President-elect Barack Obama represented Illinois when he was Senator from that State and now must represent all citizens of the United States as President, OHA can no longer make decisions on how to further the well being of Hawaiian descendants without taking into account voters who are not of Hawaiian descent and have no direct interest in that kuleana. A trustee's reelection may depend on not taking an action that might alienate those non-descendant voters, even if such action is favored by the descendants. OHA cannot truly represent, without conflict, the interests of the Kanaka Maoli in this case.

The Apology Resolution further supports a legal interest vested in the Temple. While there is legal debate as to the nature of that resolution, i.e. whether the resolution is simply a non-binding resolution, neither confirming nor denying any rights, or the law, as the Hawai'i Supreme Court ruled, there is no question that the Apology Resolution is an admission against interest by the United States Government. The resolution in detail describes the unfortunate events that led to the overthrow of the Kingdom Government by agents of the United States Government and the deleterious effect that action had and continues to have on the Hawaiian people. The illegal nature of that overthrow is explicitly acknowledged.

The Hawai'i Supreme Court acknowledged that admission and found that the legally protected interests of the Hawaiian people required that the lands in question be held in trust until such time as the Hawaiian people can engage in a process that corrects the wrong committed by the overthrow.

Nor does the Apology Resolution stand alone in its condemnation of the overthrow.

In 1893, the sovereign, independent, internationally recognized, and indigenous government of Hawaii, the Kingdom of Hawaii, was overthrown by a small group of non-Hawaiians, including United States citizens, who were assisted in their effort by the United States Minister, a United States naval representative, and armed naval forces of the United States. Because of the participation of United States agents and citizens in the overthrow of the Kingdom of Hawaii, in 1993, the United States apologized to Native Hawaiians for the overthrow and the deprivation of the rights of Native Hawaiians to self determination through Public Law 103-150 (107 Stat. 1510).

20 U.S.C. § 7512(5).

Congress also made findings regarding the importance of the lands in question and their appropriate treatment.

In 1959, under the Act entitled "An Act to provide for the admission of the State of Hawaii into the Union", the United States also ceded to the State of Hawaii title to the public lands formerly held by the United State, but mandated that such lands be held by the State "in public trust" and reaffirmed the special relationship that existed between the United States and the Hawaiian people by retaining the legal responsibility to enforce the public trust responsibility of the State of Hawaii for the betterment of the conditions of Native Hawaiians, as defined in section 201(a) of the Hawaiian Homes Commission Act, 1920.

Ibid. at (11).

Congress specifically acknowledged that return of their lands was essential to the restoration of the illegally destroyed nation.

Despite the consequences of over 100 years of nonindigenous influence, the Native Hawaiian people are determined to preserve, develop, and transmit to future generations their **ancestral territory** and their cultural identity, customs, practices, language, and social institutions **in accordance with their own spiritual and traditional beliefs**

Ibid. at (20). (emphasis added).

United States Courts have acknowledged the history, its impacts, and its implications as well.

In addition, Congress has expressly, and repeatedly, determined that the United States wrongfully participated in the demise of the Hawaiian Monarchy, *see e.g.* Native Hawaiian Education Act, 20 U.S.C. § 7512 (findings); Native Hawaiian Health Care Improvement, 42 U.S.C. § 11701 (findings); Apology Resolution, S. Joint Res. No. 19, Pub.L. No. 103-150, 107 Stat. 1510 (1993), the harmful consequences of which, in terms of decimation and suffering wrought on the native Hawaiian people and culture, are well documented. (citations omitted). Accordingly, Congress has asserted that the United States has a political relationship with, and a special trust obligation to, native Hawaiians as the indigenous people of Hawaii. (citations omitted).

Doe v. Kamehameha Schools/Bernice Pauhi Bishop, 416 F.3d 1025 (9th Cir. 2005).

Is there any question that allowing the State of Hawai'i to claim ownership of the Crown and Kingdom Government lands and to freely dissipate the corpus of the lands by permitting sale to private interest would be a violation of the "special trust obligation" repeatedly acknowledged by the United States?

The dispossession of the lands also destroys the spiritual land base of the Temple of Lono. The legal interest of the Temple is in preserving and perpetuating its ability to practice its land based religion.

The legally protected interest must be more than simply a financial interest. *Id.* In this case, the Apology Resolution and the Hawai'i Supreme Court ruling acknowledge that the land – the 'āina – is the foundation of Hawaiian civilization. That foundation has spiritual, cultural, political, and economic aspects. The Hawaiian civilization was an integrated civilization. The Kahunas had specialized knowledge of the Earth and its elements that provided them with extraordinary capacities and access to spiritual guidance. The high chiefs received that guidance to be implemented within the community and provided oversight to ensure proper (pono) implementation. The Konahiki served as officers of the high chiefs to supervise local implementation. The people accepted the guidance and performed the functions necessary to achieve unity (Lokahi) and the long term survival of the community. The governing principle of social relationships was aloha, an acknowledgement of the divine nature of each individual and respect for the unfolding of the divine will within individual lives. The 'aina responded to good administration by providing abundance to support the community. No one "owned" the land; the land belonged to the Gods with stewardship within the Kahuna, the chiefs, and the people. Within this system, removal of the lands from the jurisdiction of the Kahuna and vesting sole title in the State of Hawai'i would destroy the foundation of the civilization.

The petitioner understands this linkage. Under the guise of an alleged harm emanating from the Hawai'i Supreme Court ruling, petitioner actually seeks to finally extinguish the civilization upon which so much havoc has been wreaked by petitioner's government.

The legally protected interest of the Temple of Lono is the very survival of Hawaiian civilization.

At the very least, that interest is the right to preserve the potential for the reemergence of the suppressed religion on its traditional spiritual land base.

The protected interest must be “more than speculation about a future event.” *Makah, supra.* at 558. The restoration of the nation is not mere speculation about a future event. Legally, the nation never ceased to exist precisely because the overthrow of the government was an illegal act. All subsequent actions of the occupying power are merely fruit of that poisoned tree.

The very reconciliation process called for by the Apology Resolution is further evidence that restoration of the traditional civilization is not mere speculation. That the occupying power has not yet engaged in that process cannot be rewarded by characterizing that potential as mere speculation.

This Honorable Court must also determine whether the legally protected interests of the Hawaiian people will be impaired or impeded by the suit. *Id.* Obviously, a ruling by this Court that the lands in question belong to the occupying power would impair the interests of the Hawaiian people and impede the restoration of the Temple as the manager of the 'aina.

One practical effect of such a ruling is that the position of the Hawaiian people in the reconciliation process called for by the Apology Resolution would be dramatically altered. The State of Hawaii seeks to have this Honorable Court predetermine a central aspect of the reconciliation process by awarding ownership of the lands to the occupying power. The occupying government would then be in a position to claim ownership of the lands in question during reconciliation and the right to compensation when those lands are returned to the Hawaiian people. Such an outcome would simply pile injustice upon injustice.

The Court is also required to consider whether acting without the party could result in inconsistent rulings. *Id.* In this case, Petitioner is asking this Court to make a finding that would be inconsistent with the congressional findings in the Apology Resolution and the laws cited above that the lands were taken without permission or compensation and that the Hawaiian people never relinquished their sovereignty. Control over national lands is an essential element of sovereignty. To rule that the lands belong to the State of Hawaii would be inconsistent with these congressional findings.

From the analysis above, the Temple of Lono is a necessary party to this litigation.

The question still remains whether the absent parties are indispensable. *Makah, supra.* at 559.

The Court must first examine whether prejudice to any party would result from a judgment. *Ibid.* at 560.

That prejudice may be lessened, if the party is represented in the suit. *Id.* In this case, the Temple of Lono is not represented and cannot be represented by existing parties. In particular, OHA cannot represent the Temple's spiritual interest in the land. That incapacity derives from the nature of that office as a creation of the State of Hawai'i, the First Constitutional Amendment prohibition on a government agency representing a religious organization, and the lack of authority granted by the Temple for such representation to take place. Whether or not OHA chooses to recognize this limitation on its authority by bringing the lack of jurisdiction issue before this Honorable Court, this Honorable Court can take notice of the information in this letter and initiate an inquiry into its jurisdiction in this case.

Filing of an amicus brief is insufficient to mitigate prejudice. *Id.*

Clearly, the Temple of Lono would be prejudiced by a judgment reversing the Hawai'i Supreme Court and granting the relief sought by petitioner.

Shaping of relief to lessen prejudice can be considered in lieu of dismissal. *Id.* In this case, there can be no such shaping. Either the lands are held in trust for the Hawaiian people or the lands belong to the State of Hawai'i to do with as the State sees fit. There are no pieces to the pie to be divided up.

The third inquiry regarding an indispensable party is whether an adequate, if not complete, remedy can be fashioned even with the necessary party absent. In this case, there is no such partial remedy. Again, the lands are either held in trust, with all the responsibilities inherent in that designation, or they are handed to the occupying power with no fiduciary responsibility.

Finally, if no alternative forum is available to those seeking the judgment, "the court should be 'extra cautious' before dismissing the suit." *Id.* (citation omitted).

In this case, the Apology Resolution identified the alternative forum – a reconciliation process between the Hawaiian people and the United States Government. All that is necessary is for the United States Government to announce its decision to allow restoration of the Hawaiian nation and invite the Hawaiian people to join in a reconciliation process. Removing the intransigence of petitioner's government regarding sovereignty would quickly lead to the initiation of the alternative forum.

This Court cannot justly maintain jurisdiction based on the failure of the occupier to allow the reconciliation process to begin.

The ultimate question is whether the United States Government is going to continue to seek control over lands taken by imperial policy or take meaningful steps to restore the independence of the Hawaiian people. This Court should leave open the possibility that

the United States will truly implement the findings and conclusions found in the Apology Resolution and not treat the resolution as essentially hypocritical.

Conclusion

As a part of the Hawaiian community, the Hawai'i Supreme Court is intimately familiar with the history. That court's long history of addressing sovereignty issues provides a level of expertise, experience, and knowledge. Their unanimous opinion in this matter is worthy of respect and deference, even though the specific claims of the Temple of Loon were not considered.

The Hawai'i Supreme Court ruling essentially stated that the resolution of the lands question is a political question. Rather than simply dismiss the case on that basis, the Court noted that Congress had explicitly identified the political process that would resolve the question – the reconciliation process – and that such a process had not yet been consummated.

The Court then concluded that to implement the intent of the Apology Resolution, the Judicial Branch had to order the lands be kept in tact until the reconciliation process takes place. This ruling treated the public law as substantive and created a legal status for the lands that preserves the ability of the intended negotiations to implement the intent of the law.

Justice and good conscience requires this Honorable Court to (1) decline the State of Hawaii's effort to complete the genocidal process, (2) recognize the absence of the traditional practitioners as triggering dismissal for lack of jurisdiction, and (3) leave this matter to be resolved through the reconciliation process called for by the Apology Resolution.

Alternatively, the Court can dismiss the case on the basis that certiorari was improvidently granted and leave the Hawai'i Supreme Court decision in place.⁷

⁷ The Temple of Lono expresses its appreciation to Lanny Sinkin, Attorney at Law and Haumana (student) in the Temple, for his analytical and advocacy contributions.