

Coming Home to Health: Addressing Housing Insecurity to Improve the Health of Native Hawaiians in Hawai'i County

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TABLE OF CONTENTS

I.	NATIVE HAWAIIANS IN HAWAI'I COUNTY EXPERIENCE HIGH RATES OF HOUSING INSTABILITY.....	27
II.	HISTORICAL AND POLICY-BASED CAUSES OF NATIVE HAWAIIAN HOUSING INSTABILITY IN HAWAI'I COUNTY.....	28
	A. <i>High Cost of Living Driven by Vacation Rentals</i>	29
	B. <i>Insufficient or Low-wage Job Opportunities in Hawai'i County</i>	29
	C. <i>Hawaii's Home Lands Remain Unassigned and Underfunded</i>	30
III.	HOUSING UNAFFORDABILITY HARMS THE HEALTH OF NATIVE HAWAIIANS	34
IV.	ADDRESSING HOUSING INSTABILITY AMONG NATIVE HAWAIIANS IN HAWAI'I COUNTY	37
	A. <i>Limit or Regulate Short-Term Rentals and Vacation Homes</i>	37
	B. <i>Improve Economic Opportunities in Hawai'i County</i>	40
	C. <i>Maintain Litigation Efforts to Ensure Fulfillment of Home Lands Obligations</i>	42
	CONCLUSION	46

Hawaii has one of the nation's largest and fastest growing unhoused populations¹ as well as one of the highest costs of living in the country.² Native Hawaiians experience housing insecurity at the highest rates among all communities within Hawaii.³ Hawai'i County, encompassing the entire

1. See U.S. Dep't of Hous. & Urb. Dev., 2016 Annual Homeless Assessment Report (2016).

2. See *Cost of Living Data Series*, MISSOURI ECONOMIC RESEARCH AND INFORMATION CENTER (2020), <https://meric.mo.gov/data/cost-living-data-series> [<https://perma.cc/GCC3-6PHV>].

3. See U.S. Dep't of Hous. & Urb. Dev., *Housing Needs of Native Hawaiians: A Report from the Assessment of American Indian, Alaskan Native, and Native Hawaiian Housing Needs 38* (2017) [hereinafter *Housing Needs of Native Hawaiians*].

Big Island of Hawaii, has the highest percentage of Native Hawaiians⁴ and demonstrates the unique housing challenges faced by rural Native Hawaiians in the rapidly modernizing and tourist-heavy state. In Hawai'i County, three factors drive Native Hawaiian housing insecurity: 1) high cost of living,⁵ 2) insufficient economic opportunities,⁶ and 3) the historical underfunding and belated assignment of home lands.⁷

This widespread housing unaffordability among Native Hawaiians in Hawai'i County has a detrimental impact on Native Hawaiian health. Native Hawaiians who face threat of eviction are more likely to experience increased depression, high blood pressure, childhood lifetime hospitalization, and poor child health.⁸ Additionally, Hawaii has the nation's highest utility costs,⁹ displacing funds from food and medical needs. When faced with housing unaffordability, many households resort to overcrowding, which Native Hawaiian families report at a higher rate.¹⁰ Overcrowding has been found to contribute to respiratory and digestive diseases.¹¹ Families faced with housing

4. See Office of Hawaiian Affairs, State of Hawaii, *An Assessment of Rental Housing Affordability and its Impact on Native Hawaiian Communities* 5 (2015) [hereinafter *Assessment of Rental Housing Affordability*].

5. See *Cost of Living Data Series*, MO. ECON. RSCH. & INFO. CTR., (2022) <https://meric.mo.gov/data/cost-living-data-series> [<https://perma.cc/TR2R-KDDB>] (Hawaii has the highest cost of living in the country); *Assessment of Rental Housing Affordability*, *supra* note 4, at 5 (Native Hawaiians have comparatively lower incomes).

6. See Hua Zan et al., *COVID-19 and Job Loss: Who are the Workers Most Affected in Hawai'i?*, UNIVERSITY OF HAWAII, CENTER ON THE FAMILY 2 (2020), https://uhfamily.hawaii.edu/sites/uhfamily.hawaii.edu/files/publications/COVID19HawaiiJobLoss_Brief_2020.pdf [hereinafter *COVID and Job Loss*] (In Hawaii, persons with lower educational attainment tend to be funneled into service sector work); *ALICE: A Study of Financial Hardship in Hawai'i*, UNITED WAYS OF HAWAII 43–44 (2017), <https://ihshawaii.org/documents/United-Way-ALICE-Report-Hawaii-2017.pdf> [hereinafter *United Way ALICE Report*]; *Housing Needs of Native Hawaiians*, *supra* note 3, at 16 (Native Hawaiians have comparatively lower educational attainment).

7. See U.S. DEP'T OF HOUS. & URB. DEV., NATIVE HAWAIIAN HOUSING BLOCK GRANT, 2016 NATIVE HAWAIIAN HOUSING PLAN 13 (2016) (reporting around 8000 Native Hawaiian households have been given home lands while over 22,000 remain on a waiting list); DEP'T OF HAWAIIAN HOME LANDS, STATE OF HAWAII, 2019 ANNUAL PERFORMANCE REPORT 12 (2019), <https://dhhl.hawaii.gov/wp-content/uploads/2019/09/NAHASDA-Draft-2019-APR.pdf>. (estimating that meeting all home lands needs would cost nearly \$11 billion); CONG. RSCH. SERV., R43307, THE NATIVE AMERICAN HOUSING ASSISTANCE AND SELF-DETERMINATION ACT OF 1996 (NAHASDA): BACKGROUND AND FUNDING 22 (2015) (reporting yearly federal funding of \$9–13 million for home lands assignment between 2002–2015).

8. See Hugo Vásquez-Vera et al., *The Threat of Home Eviction and its Effects on Health Through the Equity Lens: A Systematic Review*, 175 *SOC. SCI. & MED.* 199, 204 (2017); Megan Sandel et al., *Unstable Housing and Caregiver and Child Health in Renter Families*, 141 *PEDIATRICS* 1, 2 (2018).

9. See Sarah Cimarusti, *Utility Bills 101: Utilities Tips, Average Costs, Fees, and More*, MOVE.ORG (Feb. 2, 2023), https://www.move.org/utility-bills-101/#Average_Utility_Costs_by_State [<https://perma.cc/MDF4-R6QX>].

10. See *Housing Needs of Native Hawaiians*, *supra* note 3, at xvi (15 percent of Native Hawaiians report overcrowding, compared to 8 percent statewide).

11. WORLD HEALTH ORG., WHO HOUSING AND HEALTH GUIDELINES 22–29 (2018)

unaffordability also tend to resort to subpar living conditions, which has been connected to increased lead exposure, a health risk Hawai'i County reports at higher rates.¹² Subpar living conditions also drive environmental triggers for asthma, which impacts Native Hawaiian children at higher rates.¹³

Ameliorating the situation requires addressing each of the factors discussed above. First, Hawaii could address the high cost of living by limiting or regulating short-term rentals and vacation homes. Many other large vacation destination cities have made similar efforts which provide Hawaii a range of options to consider.¹⁴ Second, Hawaii could improve economic opportunities in Hawai'i County by restructuring the economy to include more medium and high skill jobs and specifically incentivizing Native Hawaiian educational attainment and job training. Third, legal advocates could maintain pursuit of home lands distribution through litigation. While progress has been slow and efforts may take decades, the tide of mounting legal victories is slowly shifting and recent changes mean the long-awaited watershed victory may be on a distant horizon.¹⁵

I. NATIVE HAWAIIANS IN HAWAII COUNTY EXPERIENCE HIGH RATES OF HOUSING INSTABILITY

The current housing status of Native Hawaiians is dire. Hawaii has one of the nation's fastest growing unhoused populations, increasing 30.5 percent between 2007 and 2016.¹⁶ Native Hawaiians constitute approximately 10 per-

(discussing health impacts of overcrowding).

12. See Emily Benfer, *Contaminated Childhood: The Chronic Lead Poisoning of Low-Income Children and Communities of Color in the United States*, HEALTH AFF. (Aug. 8, 2017), <https://www.healthaffairs.org/doi/10.1377/hblog20170808.061398/full> [<https://perma.cc/GU98-R6KX>] (connecting lead exposure to sub-par living conditions); Eleni Avendano, *Why So Few Kids in Hawaii Get Tested for Lead Poisoning*, HONOLULU CIV. BEAT (Feb. 20, 2020), <https://www.civilbeat.org/2020/02/why-so-few-kids-in-hawaii-get-tested-for-lead-poisoning> [<https://perma.cc/ZB42-PUVW>] (reporting higher lead poisoning rates in Hawai'i County).

13. See Patrick N. Breyse, Gregory B. Diette, Elizabeth C. Matsui, Arlene M. Butz, Nadia N. Hansel & Meredith C. McCormack, *Indoor Pollution and Asthma in Children*, 7 PROC. AM. THORACIC SOC'Y 102, 102 (2010) (connecting asthma to sub par living conditions); DMITRY KRUPITSKY ET AL., HAW. STATE DEP'T OF HEALTH, STATE OF ASTHMA, HAWAII 2009, at 7 (2009) (reporting higher asthma rates among Native Hawaiian children).

14. See Shirley Nieuwland & Rianna van Melik, *Regulating Airbnb: How Cities Deal with Perceived Negative Externalities of Short-Term Rentals*, 23 CURRENT ISSUES IN TOURISM 811, 814 (2018).

15. See *Kalima v. Hawaii (Kalima II)*, 468 P.3d 143 (Haw. 2020) (Hawaii's mismanagement of home land beneficiary administration was breach of trust); *Ching v. Case*, 449 P.3d 1146, 1174–75 (2019) (holding Hawaii's failure to monitor activities on leased home lands was a breach of trust); Press Release, U.S. Dep't of the Interior, Interior and Commerce Departments Restore Lands to the Native Hawaiian Community (June 14, 2021), <https://www.doi.gov/pressreleases/interior-and-commerce-departments-restore-lands-native-hawaiian-community> [<https://perma.cc/H63P-HLGM>] (announcing DOI would designate eighty acres of federal property for home lands).

16. See U.S. Dep't of Hous. & Urb. Dev., 2016 Annual Homeless Assessment Report, *supra* note 1.

cent of Hawaii's population but in 2015 accounted for 39 percent of people experiencing homelessness in Hawaii.¹⁷ A January 2020 point-in-time count found that 6,458 people experienced homelessness in Hawaii, of which over half identified as Native Hawaiian or Pacific Islander.¹⁸

Native Hawaiians also have higher rates of housing instability, which include inadequate or unsafe rental housing. According to a recent U.S. Department of Housing and Urban Development (HUD) report, Native Hawaiians have a higher percentage of housing problems such as overcrowding, incomplete kitchen and plumbing facilities, or unaffordability, compared to other Hawaii households.¹⁹ Among low-income Native Hawaiian households, 68 percent experience some kind of housing problem, including affordability, overcrowding, structural quality, or availability.²⁰ Among very low-income Native Hawaiian households—defined as those below 50 percent of area median income—75 percent face some kind of housing problem.²¹

Rural housing instability is especially prevalent in Hawai'i County, which is far from Honolulu's economic center and also has a much higher percentage of Native Hawaiians (28 percent compared to Honolulu's 18 percent).²² Compared to other renters eligible for Housing Choice Vouchers, or "Section 8" housing, Native Hawaiians generally prefer to live in more rural areas and have a greater need for multi-bedroom units.²³ Perhaps as a result of this preference and need, Hawai'i County has seen an increase in makeshift living arrangements, such as living on family property in tents or makeshift structures, many of which lack running water or utility access.²⁴ Thus, rural housing instability in Hawai'i County has a unique and less defined quality, which will make addressing it more complex.

II. HISTORICAL AND POLICY-BASED CAUSES OF NATIVE HAWAIIAN HOUSING INSTABILITY IN HAWAI'I COUNTY

There are three major contributing causes to Native Hawaiian housing instability in Hawai'i County—1) the high cost of living, driven by vacation rentals and resulting in low quality remaining housing stock, 2) insufficient or low-wage job opportunities in Hawai'i County, driven by educational gaps

17. *Housing Needs of Native Hawaiians*, *supra* note 3, at 38.

18. Off. of Pub. Health Studies, Univ. of Haw., Manoa, *2020 Homelessness Point in Time Count*, HAW. HEALTH DATA WAREHOUSE (Jul. 16, 2020), <http://hhdw.org/2020-homeless-point-in-time-count> [<https://perma.cc/82MM-QSHC>].

19. *See Housing Needs of Native Hawaiians*, *supra* note 3, at 24.

20. U.S. Dep't of Hous. & Urb. Dev., FY 2013 Native Hawaiian Housing Block Grants Appropriations Request 6 (2012).

21. *Id.*

22. *Assessment of Rental Housing Affordability*, *supra* note 4, at 5.

23. Jesse Navarrette & Joda Derrickson, Office of Hawaiian Affairs, State of Hawaii, *Hawai'i Renters Study 2013. Understanding the Housing Needs of Hawaiian and Non-Hawaiian Section 8 Households 4* (2014), <https://www.oha.org/wp-content/uploads/2015/01/OHA-Hawaii-Renters-Study-2013-Full-Report.pdf>.

24. *See United Way ALICE Report*, *supra* note 6, at 77.

and limited economic opportunities outside of Honolulu, and 3) underfunding and belated assignment of Native Hawaiian home lands.

A. *High Cost of Living Driven by Vacation Rentals*

Hawaii has one of the highest costs of living in the nation.²⁵ One driving factor is Hawaii's large percentage of private rentals, which puts upward pressure on rents and reduces the quality and availability of housing stock for purchase. Rentals from companies like Vrbo and Airbnb account for over 11 percent of all rental units in Hawaii.²⁶ Studies in other markets have found that an increasing concentration in short-term rentals results in excess vacant housing and rising rent.²⁷ In 2017, 47 percent of Hawaii's vacant units were vacation units for seasonal, recreational, or occasional use.²⁸ Notably, out-of-state property owners own almost two-thirds of these private rentals.²⁹ Meanwhile, from 2009 to 2015, rent in Hawai'i County increased by 22 percent.³⁰

The prevalence of vacation homes has resulted in limited, low-quality, housing stock for low-income families. A significant percentage of the state's available low-cost housing stock lacks complete plumbing or kitchen facilities.³¹ Low housing stock is especially an issue since Native Hawaiian households are more likely to be large (with five or more members) (27 percent compared to 14 percent of non-Native Hawaiian households in Hawaii), and more likely to include children.³² Because of this, housing for Native Hawaiians must accommodate more people.

B. *Insufficient or Low-wage Job Opportunities in Hawai'i County*

Native Hawaiians in Hawai'i County have lower income levels when compared to Native Hawaiians in Hawaii's urban areas, and Hawaiians in general.³³ Scholars attribute lower income levels to a challenging job market that funnels persons with low educational attainment into low-wage, service sector jobs.³⁴ Due to Hawaii's high cost of living, these low-wage jobs lead directly to housing affordability challenges.

25. See *Cost of Living Data Series*, Mo. ECON. RSCH. & INFO. CTR., (2022) <https://meric.mo.gov/data/cost-living-data-series> [<https://perma.cc/TR2R-KDDB>].

26. See *United Way ALICE Report*, *supra* note 6, at 49.

27. Kyle Barron, Edward Kung & Davide Proserpio, *The Effect of Home-Sharing on House Prices and Rents: Evidence from Airbnb*, 40 MKTG. SCI. 23, 44–45 (2021); Stephen Sheppard & Andrew Udell, *Do Airbnb Properties Affect House Prices?* 8 (Williams Coll. Dep't of Econ., Working Paper 2016–03, 2016); Roy Samaan, *Airbnb, Rising Rent, and the Housing Crisis in Los Angeles*, LAANE: A NEW ECONOMY FOR ALL 16–20 (2015).

28. *Housing Needs of Native Hawaiians*, *supra* note 3, at 26.

29. *United Way ALICE Report*, *supra* note 6, at 49.

30. *United Way ALICE Report*, *supra* note 6, at 49.

31. *United Way ALICE Report*, *supra* note 6, at 77.

32. *Housing Needs of Native Hawaiians*, *supra* note 3, at 15.

33. See *Assessment of Rental Housing Affordability*, *supra* note 4, at 5.

34. See, e.g., *COVID and Job Loss*, *supra* note 6, at 2.

Native Hawaiian educational attainment is low—44 percent of the Native Hawaiian population have not attained education beyond a high school diploma, compared to 26 percent of the overall Hawaii population.³⁵ Those with low educational attainment are more likely to be employed in the service sector and in Hawaii comprise around 50 percent of persons employed in the leisure and hospitality industry.³⁶ An analysis by the United Way found that due to the high cost of living in Hawaii, these service sector workers commonly fell short of a Household Survival Budget, especially in Hawai'i County.³⁷ COVID-related job loss, which has been worse in Hawaii than the U.S. as a whole, has further exacerbated this issue.³⁸ A recent analysis shows that low-wage tourism-based jobs were the most vulnerable industries for job loss during COVID in Hawaii.³⁹

Employment instability has directly impacted housing affordability. Between 2006 and 2010, 42 percent of all households in Hawaii were cost-burdened compared with 36 percent for the nation as a whole.⁴⁰ This leads to an average of 57 percent of renters in Hawaii spending more than 30 percent of their household income on rent and 30 percent of owners spending more than 30 percent of their household income on monthly owner costs.⁴¹ Native Hawaiians are hit the hardest, as Native Hawaiian household incomes are the lowest among the five largest race groups in Hawaii.⁴²

C. *Hawaii's Home Lands Remain Unassigned and Underfunded*

The underfunding and belated assignment of historical lands are causes of housing insecurity unique to the Native Hawaiian experience, with deep historical roots. Attempts in the 1840s and 50s to ensure land ownership for Native Hawaiians addressed reasonable concerns but had unrealistic requirements. The first formal European contact between Native Hawaiians and Europeans was led by James Cook and followed by the unification of the Hawaiian Islands under King Kamehameha. This prompted concerns about foreign interest in Hawaiian lands.⁴³ Prior to this contact, Native Hawaiians considered land to be godly and managed, not owned, by the dweller.⁴⁴

35. *Housing Needs of Native Hawaiians*, *supra* note 3, at 16.

36. *See COVID and Job Loss*, *supra* note 6, at 2, 6.

37. *United Way ALICE Report*, *supra* note 6, at 43–44.

38. *See Hawai'i Households and the COVID Crisis*, UNIVERSITY OF HAW., CENTER ON THE FAMILY (June 2020), https://uhfamily.hawaii.edu/sites/uhfamily.hawaii.edu/files/publications/HawaiiHouseholdsCOVID_June_2020.pdf (Mar. 31, 2023).

39. *COVID and Job Loss*, *supra* note 6, at 7.

40. *Housing Needs of Native Hawaiians*, *supra* note 3, at 24.

41. *United Way ALICE Report*, *supra* note 6, at 63.

42. Dep't of Bus., Econ. Dev. & Tourism, State of Haw., *Demographic, Social, Economic, and Housing Characteristics of Selected Race Groups in Hawaii ii* (2018).

43. *See generally*, JON M. VAN DYKE, *WHO OWNS THE CROWN LANDS OF HAWAII?* 372 (2007) (discussing the concerns prompting the Mahele).

44. *See* Lilikalā Kame'eiehiwa, *Native Land and Foreign Desires: Pehea Lā E Pono Ai?* 24 (1992).

In the 1840s and 1850s, King Kamehameha and the Hawaii legislature attempted to establish private land ownership to protect the land for Native Hawaiians via an official division of land known as the Mahele.⁴⁵ He retained the Crown Lands and designated common lands for Native Hawaiians.⁴⁶ However, to gain ownership of the lands on which they lived and worked, common people had to petition for title, which required knowledge of the administrative change, money for a pre-claim land survey, and two witnesses to confirm that the claimant worked the land—requirements which were challenging for Hawaiians.⁴⁷ As a result, common Hawaiians only claimed 18,000 three acre plots of the roughly 1.5 million acres designated to them, despite a total native population of 82,000.⁴⁸ Motivated by a desire for much-needed capital, the newly formed Hawaii legislature also passed a law allowing foreigners to hold title to land, resulting in a large influx of foreign buyers.⁴⁹ Between these two acts, non-Native Hawaiians acquired much of much of Hawaii's private land.

Forty years after the Mahele, the violent acquisition of Hawaii by the United States also resulted in the transfer of native lands. In 1893, a group of insurgents, supported by U.S. Marines, led a coup d'état and overthrew the Hawaiian Kingdom.⁵⁰ The insurgents soon achieved their goal, annexation of Hawaii to the United States, via the Annexation Act.⁵¹ Pursuant to that Act, the United States acquired the Crown Lands and the remaining government lands of the Kingdom of Hawai'i, noting that revenue from those lands "shall be used solely for the benefit of the inhabitants of the Hawaiian Islands."⁵² In 1900, the Organic Act established the U.S. Territory of Hawaii.⁵³ That Act retained the Annexation Act's promise and reiterated that "the laws of Hawaii relating to public lands . . . shall continue in force."⁵⁴

These promises to support Native Hawaiian land needs resulted in congressional legislation. In 1920, the Hawaiian Homes Commission Act

45. See VAN DYKE, *supra* note 43, at 44–49.

46. See VAN DYKE, *supra* note 43, at 44–49.

47. See Helen Wong & Ann Rayson, *Hawaii's Royal History* 98–99 (1987).

48. NOEL J. KENT, *HAWAII: ISLANDS UNDER THE INFLUENCE* 31–33 (University of Hawaii Press 1993) (1983); Lane Kaiwi Opulauoho, *Trust Lands for the Native Hawaiian Nation: Lessons from Federal Indian Law Precedents*, 43 AM. INDIAN L. REV. 75, 86 (2022).

49. See Sally Engle Merry, *Colonizing Hawai'i: The Cultural Power of Law* 93–95 (2000).

50. See Jennifer M.L. Chock, *One Hundred Years of Illegitimacy: International Law Analysis of the Illegal Overthrow of the Hawaiian Monarchy, Hawai'i's Annexation, and Possible Reparations*, 17 U. HAW. L. REV. 463, 465 (1995); see also Apology Resolution, Pub. L. No. 103–50 (1993) ("Whereas, in pursuance of the conspiracy to overthrow the Government of Hawaii, the United States Minister and the naval representatives of the United States caused armed naval forces of the United States to invade the sovereign Hawaiian nation on January 16, 1893, and to position themselves near the Hawaiian Government buildings and the Iolani Palace to intimidate Queen Liliuokalani and her Government.");

51. H.R. Res. 259, Joint Resolution of Annexation, 30 Stat. § 750 (1898).

52. *Id.*

53. Pub. L. No. 56–339, The Hawaiian Organic Act, 31 Stat. 141 (1900).

54. *Id.*

(HHCA) designated a small portion of the former Crown Lands for homesteading by Native Hawaiians.⁵⁵ The HHCA established “a permanent land base for the benefit and use of Native Hawaiians” through the creation of the Department of Hawaiian Home Lands (DHHL).⁵⁶ DHHL awarded land leases to persons of 50 percent or more Hawaiian ancestry to buy or build a home on the lot.⁵⁷

When Hawaii attained statehood in 1959, the United States transferred management and disposition of the Hawaiian home lands to the new State of Hawaii.⁵⁸ DHHL did not fare well under Hawaiian state management. The Hawaii Admission Act of 1959 confirmed that the formerly ceded lands had “public trust” status and the revenues from those lands should be used for public purposes, including “for the betterment of the conditions of [N]ative Hawaiians.”⁵⁹ The Act required Hawaii to incorporate the HHCA into its state constitution,⁶⁰ giving the state and its agencies trustee status.⁶¹ However, none of these acts specified how Hawaii was to fulfill its trustee obligations, specifically in regards to funding the administration of home lands. In the years that followed, the state did not provide general funding for DHHL, so DHHL had to lease portions of the trust lands to commercial entities to pay its own operating costs.⁶² As of 2020, entities including chain stores, malls, and warehouses hold long term leases to trust lands.⁶³ This pattern means less land is available for homesteading and wait times for the disposition of homelands have increased.⁶⁴

Even a state constitutional requirement could not ensure funding for Hawaii’s homelands administration. In 1978, Hawaii held a state Constitutional Convention, where a variety of Native Hawaiian-focused Amendments were adopted,⁶⁵ including requiring that the legislature fund “the administration and operating budget of [DHHL].”⁶⁶ However, the state

55. Hawaiian Homes Commission Act, 42 Stat. § 108 (1921).

56. *Id.*

57. *See id.*

58. Hawaii Admission Act of 1959, Pub. L. No. 86–3, 73 Stat. 4.

59. *Id.*

60. *Id.*; HAW. CONST. art. XII, § 4.

61. *See, e.g., Ching v. Case*, 449 P.3d 1146, 1168 (Haw. 2019); *Pele Defense Fund v. Paty*, 837 P.2d 1247, 1264 (Haw. 1992); *Ching*, 449 P.3d at 1176 (holding that this trustee responsibility applies to both Native Hawaiians and the general public).

62. *See Mahina Tuteur, A Matter of Belated Justice: A Summary of Nelson v. Hawaiian Homes Commission II*, 141 Hawai‘i 411, 412, 412 P.3d 917 (2018), KA HULI AO CTR. FOR EXCELLENCE IN NATIVE HAWAIIAN L (May 21, 2023), <https://blog.hawaii.edu/kahuliao/ka-moae/fall-2018/new-case-developments>; Troy J.H. Andrade, *Belated Justice: The Failures and Promise of the Hawaiian Homes Commission Act*, 46 AM. INDIAN L. REV. 1, 31–32 (2022).

63. STATE OF HAW. DEP’T OF HAWAIIAN HOME LANDS, ANNUAL REPORT (2020) (listing the long term leases on home lands as of 2020).

64. *Id.*

65. State of Haw. Proceedings of the Constitutional Convention of haw. of 1978, Vol. 1 (1980).

66. HAW. CONST. art. XII, § 1 (Justia through 1950 amendments).

did not appropriate funds for DHHL operations and programs until 1987, when it appropriated just under a million dollars to fund 49 staff positions.⁶⁷ Funds again decreased until 2009, when from 2009–2013, no funds were given to DHHL.⁶⁸ DHHL relied on general leases to commercial business to sustain its operating costs and the waiting list for homesteads increased 800 percent.⁶⁹ In 2016, DHHL reported that around 8,000 households resided on Native Hawaiian home lands while 22,000 remained on a waiting list.⁷⁰

National funding has also fallen short of DHHL's needs. The Native Hawaiian Housing Block Grant (NHHBG) provides some federal funding to DHHL to assist low-income households reside on the home lands, specifically by providing new construction.⁷¹ In 2019, DHHL estimated that meeting all new construction needs would cost \$10.5 billion and meeting all rehabilitation needs would cost \$450 million.⁷² Annual appropriations for the NHHBG ranged between a mere \$9 million to \$13 million from 2002–2015.⁷³ With those funds, as of 2014, DHHL had built, acquired, or substantially rehabilitated homes for 570 households and assisted about 65 families per year with building, acquiring, or substantially rehabilitating a home.⁷⁴ Nevertheless, annual federal grant funding for the DHHL continues to drop—down to \$2 million in 2019.⁷⁵ Such cuts were likely due to federal funding disputes, as reporting suggests the NHHBG funding was routinely eliminated during appropriations negotiations, despite advocacy from Hawaiian congresspeople.⁷⁶

67. STATE OF HAW. DEP'T OF HAWAIIAN HOME LANDS, ANNUAL REPORT 23 (1987).

68. See Tuteur, *supra* note 62.

69. *Id.*

70. U.S. Dep't of Hous. & Urb. Dev., Native Hawaiian Housing Block Grant, 2016 Native Hawaiian Housing Plan 13 (2016) (reporting 8,309 residential leases and 22,411 on the waitlist as of Dec. 31, 2015).

71. See American Homeownership and Economic Opportunity Act of 2000, Pub. L. No. 106–569, 114 Stat. 2944 (2000); U.S. Dep't of Hous. & Urb. Dev., Public And Indian Housing Native Hawaiian Housing Block Grants 2013 Summary Statement and Initiatives (2012) (noting that over 90 percent of DHHL's funds go to development of new housing units, including “acquisition, new construction, reconstruction, or moderate or substantial rehabilitation of affordable housing, which may include real property acquisition, site improvement, development of utilities and utility services, conversion, demolition, financing, administration and planning, and other related activities.”).

72. State of Haw., Dep't of Hawaiian Home Lands, 2019 Annual Performance Report (APR) – Native Hawaiian Housing Block Grant (2019).

73. Cong. Rsch. Serv., R43307, The Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA): Background and Funding 22 (2015).

74. See U.S. Dep't of Hous. & Urb. Dev., Public And Indian Housing Native Hawaiian Housing Block Grants 2016 Summary Statement and Initiatives (2015).

75. State of Haw, Dep't of Hawaiian Home Lands, 2019 Annual Performance Report (APR) – Native Hawaiian Housing Block Grant (2019).

76. See Chad Blair, *Hanabusa, Gabbard Split Vote on Appropriations Bill*, HONOLULU CIV. BEAT (June 10, 2014), <https://www.civilbeat.org/2014/06/hanabusa-gabbard-split-vote-appropriations-bill/>; Mark Fogarty, *Indian Housing: Obama Gives, But Congress May Take Away*, ICT (Feb. 23, 2011), <https://ictnews.org/archive/indian-housing-obama-gives-but-congress-may-take-away>.

III. HOUSING UNAFFORDABILITY HARMS THE HEALTH OF NATIVE HAWAIIANS

As laid out by Elizabeth Tobin-Tyler and Joel Teitelbaum, housing unaffordability impacts health through four main pathways: increased homelessness, increased eviction and housing instability, decreased ability to afford other needs, and increased health-harming conditions like overcrowding or unsafe housing.⁷⁷ All four pathways are evident in the housing instability Native Hawaiians experience.

As a first pathway, housing unaffordability leads to increased homelessness, often resulting in chronic health problems including higher rates of mental health disorders and substance abuse.⁷⁸ Several studies of the health status of unhoused Native Hawaiians have reported higher rates of past substance abuse as well as diabetes, asthma, and hypertension.⁷⁹ Some of these health problems can also be considered causes of homelessness themselves, as they may make employment difficult.⁸⁰ In Hawaii, unhoused persons who responded to a 2020 point-in-time study self-reported that alcohol/drug use was a primary cause of their lack of housing, along with job loss and inability to pay rent.⁸¹ Many of these health challenges make it difficult for a unhoused individual to gain or regain employment opportunities and secure stable housing.

Secondly, even when housing unaffordability does not lead to complete lack of housing, it can often lead to housing instability or threats of eviction. Housing instability includes “having difficulty paying rent, spending more than 50 percent of household income on housing, having frequent moves, living in overcrowded conditions, or doubling up with friends and relatives.”⁸² In Hawaii, a 2017 HUD report found Native Hawaiians were often not considered chronically unhoused, and often had jobs, yet could not afford housing, resulting in “doubl[ing] up or liv[ing] in tents, shelters, cars, or garages.”⁸³

77. Elizabeth Tobin-Tyler & Joel B. Teitelbaum, *Essentials of Health Justice: A Primer* 73–79 (2019).

78. Cheryl Zlotnick, Suzanne Zerger & Phyllis B. Wolfe, *Health Care for the Homeless: What We Have Learned in the Past 30 Years and What's Next*, 103 AM. J. PUB. HEALTH 199 (2013).

79. David P. Yamane, Steffen G. Oesar & Jill Omori, *Health Disparities in the Native Hawaiian Homeless*, 69 HAW. MED. J. 35–41 (2010); Andrew Subica, Daryl S. Sampaga, Jana Ortiz-Misiaszek, Tammy Martin & Scott Okamoto, *The Mental Health, Substance Use, Physical Health, and Mental Health Treatment Need of Community Individuals Experiencing Homelessness in Hawaii*, CMY. MENTAL HEALTH J. (2023).

80. See COMM. ON HEALTH CARE FOR HOMELESS PEOPLE, INST. OF MED., HOMELESSNESS, HEALTH, AND HUMAN NEEDS 139–40 (1988), <https://www.ncbi.nlm.nih.gov/books/NBK218232> [<https://perma.cc/3WWR-GM5B>].

81. Off. of Pub. Health Studies, Univ. of Haw., Manoa, *2020 Homelessness Point in Time Count*, *supra* note 18.

82. Margot Kushel et al., *Housing Instability and Food Insecurity as Barriers to Health Care Among Low-Income Americans*, 21 J. GEN. INTERNAL MED. 71, 71 (2006).

83. *Housing Needs of Native Hawaiians*, *supra* note 3, at 25.

People under the threat of eviction are more likely to experience increased depression, high-blood pressure, and alcohol dependence.⁸⁴ For families with children, studies show the threat of eviction can lead to greater maternal depressive symptoms, childhood lifetime hospitalization, and poor child health.⁸⁵ In Hawaii, Native Hawaiian households were more likely to include children than non-Native Hawaiian households, thus increasing the risk that the threat of eviction might have lasting impacts on the next generation of Native Hawaiians.⁸⁶

Housing unaffordability can sometimes mean that a household's limited funds go to housing rather than other pressing needs, which forms the third pathway. This phenomenon is known as "heat or eat" and is most acutely seen in the winter months when families across the board spend more on heating.⁸⁷ In Hawaii, costly gas and electric infrastructure drive utility prices, rather than the cold.⁸⁸ Hawaii's average electric and gas bills are the highest in the nation, resulting in a whopping average monthly utility bill of \$611.87 per Hawaiian resident.⁸⁹ This large cost is likely to displace funds that otherwise would be spent on food and other expenses impacting health.

Nationally, while higher income families may increase calorie consumption during winter months, lower income families make significant reductions in caloric intake, and exhibit worse diet quality and more vitamin deficiencies.⁹⁰ In Hawaii, Native Hawaiian residents report greater difficulty paying for utilities and food (22.8 percent and 20.4 percent) compared to other Hawaii residents (13.9 and 12.5).⁹¹ Commentors suggest the COVID-19 epidemic, which infected Native Hawaiians at higher rates than other Hawaii residents, exacerbated the financial instability of Native Hawaiian households.⁹² This financial squeeze may explain why Native Hawaiian and other Pacific Islanders are more likely to report problems paying medical bills (23 percent) compared to Asian Americans (9 percent) and whites (16%).⁹³ Even

84. See Hugo Vásquez-Vera et al., *supra* note 8, at 204.

85. See Megan Sandel et al., *supra* note 8, at 2.

86. See *Housing Needs of Native Hawaiians*, *supra* note 3, at 57.

87. Jayanta Bhattacharya, Thomas DeLeire, Steven Haider & Janet Currie, *Heat or Eat? Cold-Weather Shocks and Nutrition in Poor American Families*, 93 AM. J. PUB. HEALTH 1149, 1153 (2003).

88. See Sophie Cocke, *Living Hawaii: How Come Our Electric Bills Are Still So High?*, HONOLULU CIV. BEAT (Mar. 2, 2015), <https://www.civilbeat.org/2015/03/living-hawaii-how-come-our-electric-bills-are-still-so-high> [<https://perma.cc/K8M5-WKQG>].

89. Sarah Cimarusti, *Utility Bills 101: Utilities Tips, Average Costs, Fees, and More*, MOVE.ORG (Feb. 2, 2023), https://www.move.org/utility-bills-101/#Average_Utility_Costs_by_State [<https://perma.cc/QBQ8-S3ZW>].

90. Bhattacharya et al., *supra* note 87, at 1149.

91. Donna-Marie Palakiko, et al., *A Report on the Impact of COVID-19 Pandemic on the Health and Social Welfare of the Native Hawaiian Population in Hawaii*, 80 HAW. J. OHEALTH & SOC. WELFARE 62, 65 (2021).

92. *Id.* at 62–63, 66.

93. *Health and Health Care for Asian Americans and Native Hawaiians and Other Pacific Islanders (NHOPIs) in the United States*, KAISER FAMILY FOUND. (May 10, 2019) <https://>

when insured, Native Hawaiians report greater cost barriers (14.7 percent) compared to Asian Americans (8.1 percent).⁹⁴

Finally, housing unaffordability can cause families to resort to housing conditions that are harmful to health, from overcrowding to unsanitary or unsafe conditions. Overcrowding is defined as a mismatch between the dwelling size and the size of the household.⁹⁵ The World Health Organization has found that overcrowding contributes to mental health issues and infectious diseases, including respiratory diseases, diarrheal diseases, and stress.⁹⁶ In Hawaii, the overcrowding rate among Native Hawaiian households state-wide is 15 percent, nearly double the rate of non-Native Hawaiian households at 8 percent.⁹⁷ This may be due to the larger size of Native Hawaiian families,⁹⁸ a culture of multi-generational living,⁹⁹ or a coping strategy to lower housing costs.¹⁰⁰

Housing unaffordability may also give rise to increased childhood lead poisoning, a condition connected to socioeconomic disparities since low-income families most often find themselves in homes that are older or in disrepair.¹⁰¹ Lead poisoning in children affects cognitive development and may impact brain development.¹⁰² In Hawaii, a recently re-established lead testing program found that children in Hawai'i County, which has a much higher concentration of Native Hawaiians than other counties, tested positive for elevated blood lead levels at nearly double the rate of children in Hawaii's other counties.¹⁰³

Asthma is another harmful housing condition, as its development and severity are often linked to indoor environmental triggers, like poor ventilation, mold, and pest feces.¹⁰⁴ In Hawaii, a report by the Hawaii Asthma

www.kff.org/infographic/health-and-health-care-for-asian-americans-native-hawaiians-and-other-pacific-islanders-nhopis-in-the-united-states [https://perma.cc/CD2J-MH83].

94. Ashley K. Morisako, Maile Tauali'i, Adrian Jacques H. Ambrose & Kelley Withy, *Beyond the Ability to Pay: The Health Status of Native Hawaiians and Other Pacific Islanders in Relationship to Health Insurance*, 76 HAW. J. MED. & PUB. HEALTH, 36, 37 (2017).

95. World Health Org., WHO Housing and Health Guidelines 22–29 (2018).

96. *Id.*

97. *Housing Needs of Native Hawaiians*, *supra* note 3, at xvi.

98. *See Assessment of Rental Housing Affordability*, *supra* note 4, at 4.

99. *See* Olivia Peterkin, *Why Hawaii Trends Toward Large and Extended Families*, HONOLULU CIV. BEAT (Nov. 21, 2017), <https://www.civilbeat.org/2017/11/why-hawaii-trends-toward-large-and-extended-families> [https://perma.cc/RZK7-U654].

100. *Assessment of Rental Housing Affordability*, *supra* note 4, at 6.

101. *See* Emily Benfer, *Contaminated Childhood: The Chronic Lead Poisoning of Low-Income Children and Communities of Color in the United States*, HEALTH AFF. (Aug. 8, 2017), <https://www.healthaffairs.org/doi/10.1377/hblog20170808.061398/full>.

102. Andrew T. Marshall, Samantha Betts, Eric C. Kan, Rob McConnell, Bruce P. Lanphear & Elizabeth R. Sowell, *Association of Lead-Exposure Risk and Family Income with Childhood Brain Outcomes*, 26 NATURE MED. 91, 91 (2020).

103. *See* Eleni Avendano, *Why So Few Kids in Hawaii Get Tested for Lead Poisoning*, HONOLULU CIV. BEAT (Feb. 20, 2020), <https://www.civilbeat.org/2020/02/why-so-few-kids-in-hawaii-get-tested-for-lead-poisoning> [https://perma.cc/ZB42-PUVW].

104. Patrick N. Breyse, Gregory B. Diette, Elizabeth C. Matsui, Arlene M. Butz, Nadia

Initiative found that children and adults living below the poverty level had the highest prevalence of asthma across all income groups.¹⁰⁵ The report also found that, compared to Hawaiians at large, Native Hawaiian adults and children had significantly higher rates of asthma, emergency department visits due to asthma, and hospitalization due to asthma.¹⁰⁶ Because Native Hawaiians as well as Hawai'i County residents are more likely to live below the poverty line,¹⁰⁷ these groups may experience poorer living conditions that give rise to greater rates of asthma and lead issues.

IV. ADDRESSING HOUSING INSTABILITY AMONG NATIVE HAWAIIANS IN HAWAI'I COUNTY

Addressing Native Hawaiian housing instability in Hawai'i County is a complex task. However, some unique, tailored efforts may help address the specific issues discussed earlier. Policies to limit or regulate short-term rentals and vacation homes may help address the housing shortage, potentially freeing up affordable housing for Native Hawaiians. Improving the economy of Hawai'i County to specifically benefit Native Hawaiians may be possible by attracting remote workers, investing in local business, and educating or retraining low-wage workers for medium to high-wage jobs. Home lands restoration litigation should continue, as though victories are infrequent, the tide may be slowly turning.

A. *Limit or Regulate Short-Term Rentals and Vacation Homes*

Hawai'i County can limit or regulate short-term rentals like Vrbo and Airbnb as well as vacation homes by: imposing large taxes on rental payments, fees for non-resident rental units, and specific limits on the number of rentals in historically Native Hawaiian areas. Other states and cities have already imposed such regulations after wrestling with their status as vacation destinations alongside a limited housing supply.¹⁰⁸ Hawai'i County can look to Maine, San Francisco, and New York for possible solutions.

Hawai'i County could institute large taxes on rental payments. Cities from London to Santa Monica have levied taxes on Airbnb hosts, either as a percentage of rental income, or ingrained in yearly licensing.¹⁰⁹ This may

N. Hansel & Meredith C. McCormack, *Indoor Pollution and Asthma in Children*, 7 *PROC. AM. THORACIC SOC'Y* 102, 102 (2010).

105. Dmitry Krupitsky et al., *Haw. State Dep't of Health, State of Asthma*, Hawaii 2009, at 8 (2009).

106. *Id.* at 7.

107. *See United Way ALICE Report*, *supra* note 6, at 14 (showing Hawai'i County has the most residents below poverty line at 19 percent); DEP'T OF BUS., ECON. DEV'T AND TOURISM, STATE OF HAWAII, *DEMOGRAPHIC, SOCIAL, ECONOMIC, AND HOUSING CHARACTERISTICS FOR SELECTED RACE GROUPS IN HAWAII* 13 (2018) (showing Native Hawaiians has the highest poverty rates of the five largest race groups in Hawaii, at 12.6 percent for families and 15.5 percent for individuals).

108. *See, e.g.*, S.F. ADMIN. CODE Ch. 41A.5§ 3(B); N.Y. MULTIPLE DWELLING LAW § 4 (Consol. 2021).

109. *See Shirley Nieuwland et al.*, *supra* note 14, at 817 (examining response to Airbnb

be the regulation of least resistance for the County, as according to David Wachsmuth, assistant professor of Urban Planning at McGill, “the pattern we’ve found is that Airbnb is happy to cooperate with regulators about collecting taxes.”¹¹⁰ However Wachsmuth noted that Airbnb tends to “resist as strongly as possible any attempts to restrict how much actual activity is allowed” on its platform.¹¹¹ Given the numerous challenges reported as cities struggle to regulate Airbnb,¹¹² an income-generating strategy with which Airbnb cooperates is a good start. Hawaii can look to Denver, another popular tourist destination, which requires short-term rental hosts to have a license, pay a fee, and pay a tax on booking.¹¹³ Researchers have found that Denver’s program may not reduce or limit the stock of housing available for rent but does have a higher compliance rate compared to regulatory attempts in other cities.¹¹⁴ They attribute the compliance rate to Denver’s direct licensing of hosts rather than platforms,¹¹⁵ a move that Airbnb might potentially support.

If Hawai’i County wanted to address the volume of vacation homes, it could consider a proposed law floated recently in Maine, another location where often-empty vacation homes constitute a large percentage of housing stock. In 2021, based on concerns that a high percentage of vacation homes threaten year-round viability of communities, some Maine lawmakers proposed an increased tax assessment on wealthier property owners with vacation homes.¹¹⁶ That bill would have increased taxes for homes not occupied by a permanent resident for at least 180 days per year, with exemptions for low-to-moderate income owners.¹¹⁷ The bill’s potential to discourage vacation home purchases was seen as a drawback for Maine, but would actually be an added benefit for Hawai’i County. By increasing the tax on vacation homes, Hawai’i County could both increase revenue and discourage vacation home purchases.

In a more drastic approach, Hawai’i County could effectively ban Airbnb outright with policies like those in San Francisco limiting the number

for 11 cities, where “all studied cities have a structure to collect taxes from Airbnb hosts”).

110. Scott Zamost et al., *Unwelcome Guests: Airbnb, Cities Battle Over Illegal Short-Term Rentals*, CNBC (May 24, 2018, 7:00 AM), <https://www.cnbc.com/2018/05/23/unwelcome-guests-airbnb-cities-battle-over-illegal-short-term-rentals.html> [<https://perma.cc/42R3-6L9U>].

111. *Id.*

112. See Shirley Nieuwland et al., *supra* note 14, at 812.

113. DENVER CODE OF ORDIN. Ch. 33, Art. III Short Term Rentals; Department of Finance, City of Denver, Short Term Rental Taxation Information (2019), www.denvergov.org/files/assets/public/business-licensing/documents/shorttermrentaltaxationinformation.pdf.

114. Shirley Nieuwland et al., *supra* note 14, at 816–17, 821.

115. *Id.* at 821.

116. See Randy Billings, *Bill Would Impose New Fee on Vacation Homes, Short-Term Rentals*, PORTLAND PRESS HERALD (Apr. 12, 2021), <https://www.pressherald.com/2021/04/12/bill-would-impose-new-fees-on-vacation-homes-short-term-rentals/> [<https://perma.cc/WM6B-J4NB>].

117. H.P. 988, 130th Leg., 1st Reg. Sess. (Me. 2021).

of days per year a property can be rented out when the host is absent.¹¹⁸ Similarly, New York City restricts rentals for periods less than thirty days unless the owner is also staying there and there are no more than two renters.¹¹⁹ These policies represent some of the more drastic measures and require more oversight and enforcement than simple tax collection. Both San Francisco and New York City have devoted significant resources into investigating complaints, collecting data, and battling companies for rental data.¹²⁰ Some economic consultants have opposed these policies, suggesting that Airbnb provides support to local economies through increasing tourist numbers.¹²¹ However, other economists challenge that conclusion, finding that alternative accommodations are unlikely to impact a tourist's choice of destination or spending.¹²²

Given these challenges, a more restrictive regulation may be best limited to sections of Hawai'i County that are historically Native Hawaiian land to target areas most in need of housing reform. Currently, Hawai'i County restricts short-term vacation rentals to areas zoned for resort, commercial, residential/commercial, and multi-family residential use, with a grandfather clause for previously existing rentals outside of those areas.¹²³ The County currently defines these areas based on their ability to meet the needs of vacationers, commercial entities, and residents.¹²⁴ However, the regulations do not require that the County consider if land under zoning consideration should be protected as historical Native Hawaiian land, regardless of its potential utility to tourists. In addition to designating land for short-term rental use, Hawai'i County could define and target land for protection from short-term rental use. A targeted approach could free up housing in areas of most value to housing insecure Native Hawaiians while maintaining tourist jobs in other areas of Hawai'i County.

The County could look to Barcelona, which has required licenses for short-term rentals since 2011, but froze granting new licenses in 2014 for those in Old Town, a section of central Barcelona.¹²⁵ While Barcelona has

118. See S.F. Planning, *Become a Certified Host*, <https://sfplanning.org/str/become-certified-host> [<https://perma.cc/B8CM-VWK7>].

119. N.Y. Multiple Dwelling Law § 4 (Consol. 2021).

120. See Zamost et al., *supra* note 110.

121. NERA ECONOMIC CONSULTING, AIRBNB'S GLOBAL SUPPORT TO LOCAL ECONOMIES: OUTPUT AND EMPLOYMENT I (2017), https://www.nera.com/content/dam/nera/publications/2017/NERA_Airbnb_Report_2017_03_13_final_revised.pdf [<https://perma.cc/7G46-R6RQ>].

122. See, e.g., JOSH BIVENS, THE ECONOMIC COSTS AND BENEFITS OF AIRBNB, ECON. POL'Y INST. (2019), <https://www.epi.org/publication/the-economic-costs-and-benefits-of-airbnb-no-reason-for-local-policymakers-to-let-airbnb-bypass-tax-or-regulatory-obligations> [<https://perma.cc/FX59-D6PY>].

123. Hawai'i County, Haw., Ordinance 2018-114 (Apr. 2019) (defining the permitted zoning districts)

124. Hawai'i County Code, § 25-5-90 (resort), § 25-5-110 (general commercial), § 25-5-120 (village commercial), § 25-5-30 (multi-family residential).

125. See Paige McClanahan, *Barcelona Takes on Airbnb*, N.Y. TIMES (Sept. 22, 2021),

spent excessively to address the sheer number of illegal listings,¹²⁶ this could be attributable to the city's extreme popularity as the third-biggest European city on Airbnb.¹²⁷ In 2019, a similar regulation in New Orleans prohibited short-term rentals in the French Quarter.¹²⁸ While full prohibition of short-term rentals in the French Quarter remains elusive, the New Orleans regulation seems to have shifted short-term rental activity away from the targeted areas and into other neighborhoods.¹²⁹ These examples show that Hawai'i County could increase housing on historically Native Hawaiian land through targeted efforts to reduce Airbnb presence.

B. *Improve Economic Opportunities in Hawai'i County*

To increase housing affordability, Hawai'i County can improve economic opportunities by restructuring the economy towards more medium and high-skill jobs and increasing education opportunities for Native Hawaiians to attain those jobs. Hawai'i County is 97.9 percent rural,¹³⁰ and nationwide studies show that middle income jobs are declining in rural areas.¹³¹ Hawai'i County has the lowest average annual wage of all Hawaii counties and 70 percent of jobs located in the county require either no formal education or only a high school diploma.¹³² Revitalization requires incentives to encourage new businesses and increased funding for education and training for Native Hawaiian workers in Hawai'i County, in areas like health, technology, and remote worker support.

Many cities compete to attract new businesses, and Hawai'i County should do the same while maintaining the goal of filling the new jobs with local workers. Hawai'i County could focus on tech sector and remote

<https://www.nytimes.com/2021/09/22/travel/barcelona-airbnb.html> [https://perma.cc/VWL8-6L5X]; Feargus O'Sullivan, *Barcelona Wants to Ban Renting Private Rooms to Tourists*, BLOOMBERG (Feb 4, 2021), <https://www.bloomberg.com/news/articles/2021-02-05/barcelona-s-new-plan-to-regulate-vacation-rentals> [https://perma.cc/4B7N-4VGR].

126. See McClanahan, *supra* note 125 (noting that Barcelona spend 2 million euros per year to address illegal listings, resulting in 9,000 legal proceedings).

127. Jordan Bishop, *You'll Never Guess Which City Has the Most Airbnb Properties*, FORBES (Apr. 5, 2017), <https://www.forbes.com/sites/bishopjordan/2017/04/05/airbnb-paris-london-nyc-la-barcelona-rome-infographic/#5d0fac0d4127> [https://perma.cc/7PE7-SELC].

128. Jeff Adelson, *Stricter Limits Will Hit New Orleans Short-Term Rentals After Council Vote; Here's What to Know*, NOLA (Aug. 8, 2019), https://www.nola.com/news/stricter-limits-will-hit-new-orleans-short-term-rentals-after-council-vote-heres-what-to/article_c390da62-ba00-11e9-b876-237e289ed3ef.html [https://perma.cc/GK78-XY22].

129. Eric Joseph van Holm, *Evaluating the Impact of Short-Term Rental Regulations on Airbnb in New Orleans*, 104 CITIES 102803 (2020).

130. Urban and Rural Areas in the State of Hawaii, By County: 2010, HAWAII STATE DATA CENTER (2013)

131. *The Future of Work in Rural America*, CNTR. FOR RURAL INNOVATION & RURAL INNOVATION STRATEGIES, INC. (2021), <https://ruralinnovation.us/wp-content/uploads/2021/12/Future-of-Work-122221.pdf> [https://perma.cc/8JW4-YR4R].

132. HAWAII COUNTY WORKFORCE DEV. BD., WORKFORCE INNOVATION AND OPPORTUNITY ACT, LOCAL AREA PLAN FOR HAWAII COUNTY 18, 20 (2020), <https://labor.hawaii.gov/wdc/files/2022/04/2020-2024-Hawaii-County-Local-Area-Plan.pdf> [https://perma.cc/3WQ8-QDZY].

workers, who are more likely to locate their business in places based on an attractive lifestyle and remote worker community but will also require high-skill support.¹³³ Specific framing of Hawai'i County as supporting a diverse and well-rounded lifestyle, coupled with direct outreach to specific companies, would go a long way to attracting investment.¹³⁴

Several cities have increased new businesses by incentivizing community members to establish businesses locally and supporting growing local businesses. San Diego, for example, transformed a local shopping mall, Market Creek Plaza, by offering lower cost rent to local start-ups owned by community members and including community members in all aspects of planning to encourage development and collaboration.¹³⁵ This type of local investment would promote business based in and hiring from the community.

To ensure that Native Hawaiian workers benefit from growing local businesses, education opportunities are essential to creating a pathway to medium and high-skilled jobs. Institutions of higher education are uniquely situated to build up the local talent pool. In particular, Hawaii industry groups predict substantial growth in allied health professions like nursing, medical assistance and social work.¹³⁶ Tech industry leaders are also seeking to build “an ecosystem in Hawaii” to compete with the Bay area and are hoping that Hawaii-born tech professionals, like the founder of Tetris, want to stay local.¹³⁷ Another growing area of employment is “wealth work,” a term coined by MIT’s David Autor, which refers to catering to the whims of affluent households.¹³⁸ For Hawai'i County, positions could focus on catering to high-income remote workers could include massage therapists, chefs, and other personal care.

Hawai'i County could use its existing resources to shape the local workforce. The University of Hawaii System has three locations in Hawai'i

133. See Constance Aguilar, *5 Ways to Position Your City as the Next Startup Hotspot*, ENTREPRENEUR (Nov. 17, 2015), <https://www.entrepreneur.com/article/252596> [<https://perma.cc/5WEJ-L92L>].

134. See Bhaskar Chakravorti, *To Increase Diversity, U.S. Tech Companies Need to Follow the Talent*, HARV. BUS. REV. (Dec. 4, 2020), <https://hbr.org/2020/12/to-increase-diversity-u-s-tech-companies-need-to-follow-the-talent> [<https://perma.cc/3CHY-NFHX>]; William Kerr, *Navigating Talent Hot Spots*, HARV. BUS. REV., Sept.–Oct. 2018, <https://hbr.org/2018/09/navigating-talent-hot-spots> [<https://perma.cc/GQ3Y-UTD4>].

135. *Market Creek Plaza*, CMTY. WEALTH, <https://community-wealth.org/content/market-creek-plaza> [<https://perma.cc/4VZ2-Y93T>]; Lis Robinson, *Market Creek Plaza: Toward Resident Ownership of Neighborhood Change*, POLICYLINK 9–15 (2005), https://www.policylink.org/sites/default/files/MARKETCREEKPLAZA_FINAL_0.PDF [<https://perma.cc/4VZ2-Y93T>].

136. HEALTHCARE ASSOCIATION OF HAWAII, 2022 HEALTHCARE WORKFORCE INITIATIVE REPORT (2022), <https://www.hah.org/hwi22> [<https://perma.cc/6VSA-8B26>].

137. Christina O’Conner, *Hawaii’s Tech Talent Takes on Global Marketplace*, MANA UP HAWAII (Apr. 22, 2022, 5:55 A.M.), <https://manauphawaii.com/blogs/news/hawaiis-tech-talent-takes-on-global-marketplace> [<https://perma.cc/9SDJ-Z5G3>].

138. Mark Muro & Jacob Whiton, *Who’s Employed by the Lifestyles of the Rich and Famous*, BROOKINGS: THE AVENUE (Jul. 30, 2019), <https://www.brookings.edu/blog/the-avenue/2019/07/15/whos-employed-by-the-lifestyles-of-the-rich-and-famous> [<https://perma.cc/95QB-A4CG>].

County¹³⁹ and could support training, associate degree programs, apprenticeships, and other flexible programs outside of a traditional 4-year degree. The University has already taken some steps to support IT training in a flexible manner.¹⁴⁰ Hawai'i County could collaborate with local businesses to ensure a pipeline of Native Hawaiian former service sector workers are trained and supported in tech and wealth work roles. Specific partnerships with Native Hawaiian organizations could also help ensure that Native Hawaiians benefit from increased opportunities.

C. *Maintain Litigation Efforts to Ensure Fulfillment of Home Lands Obligations*

While change and movement through the court system may take decades, Native Hawaiian advocates can continue utilizing litigation to ensure fulfillment of the obligations both Hawaii and the federal government owe to Native Hawaiians. The long-term and long-awaited fulfillment would be a watershed victory for the home lands, and the tide of legal verdicts is slowly shifting in Native Hawaiians' favor.

Earlier litigation attempts to ensure accountability for prior promises failed. In *Hawaii v. Office of Hawaiian Affairs*,¹⁴¹ advocates attempted to hold the state accountable to acknowledgements in a 1993 congressional Apology Resolution that recognized the ramifications of U.S. support for the overthrow of Hawaii.¹⁴² In *Nelson v. Hawaiian Homes Commission*,¹⁴³ advocates also tried to hold the Hawaii state legislature to the promises in the 1978 Constitutional Convention which had required the legislature fund DHHL.¹⁴⁴ In both cases, the U.S. Supreme Court and Hawaii Supreme Court, respectively, applied textualist arguments to avoid changing the status quo.¹⁴⁵ In both cases, fulfillment of trust obligations was not upheld.

139. *About Our Ten Campuses*, UNIV. OF HAW., <https://www.hawaii.edu/#ten-campuses> [<https://perma.cc/PWF4-BD6D>]

140. *University of Hawaii, UH, Chamber of Commerce Hawaii Partner with Industry to Boost IT Workforce*, UNIV. OF HAW. (Jan. 24, 2022), <https://www.hawaii.edu/news/2022/01/24/uh-chamber-of-commerce-hawaii-boost-it-workforce> [<https://perma.cc/3L8C-HNWJ>].

141. 556 U.S. 163 (2009).

142. *Id.* at 168–71. The Apology Resolution lists ramifications including, “the suppression of the inherent sovereignty of the Native Hawaiian people,” “the deprivation of the rights of Native Hawaiians to self-determination,” “the indigenous Hawaiian people never directly relinquished their claims . . . over their national lands to the United States” and “long-range economic and social changes . . . [that] have been devastating to the population and to the health and well-being of the Hawaiian people.” Apology Resolution, Pub. L. No. 103–50 (1993).

143. 412 P.3d 917 (Haw. 2018).

144. HAW. CONST. art. XII, § 1.

145. *Hawaii*, 556 U.S. at 175 (citing *Office of Hawaiian Affairs v. Hous. and Cmty. Dev. Corp. of Haw.*, 117 P.3d 884, 900 (Haw. 2008)) (refusing to read the Apology Resolution to “change the legal landscape and restructure the rights and obligations of the State”). Of note, an earlier disposition of *Hawaii v. Office of Hawaiian Affairs* at the Supreme Court of Hawaii held that a plain reading of the Apology Resolution changed the legal relationship of the parties and enjoined development by the state on native lands.; *Nelson*, 412 P.3d

The tide has been turning in more recent years. In June 2020, in *Kalima v. State*,¹⁴⁶ the Hawaii Supreme Court upheld a prior ruling that the state breached its duties as trustee for certain home lands beneficiaries.¹⁴⁷ Those beneficiaries were meant to benefit from a Panel which the Hawaii legislature established in 1991 to review and issue advisory opinions on home lands claims that arose between August 21, 1959 and June 30, 1988.¹⁴⁸ 2,752 claimants filed timely claims before the Panel, but only 31 claimants received settlements.¹⁴⁹ A small number of claimants were adjudicated to receive no settlement (418) or did not have the administrative process completed (53).¹⁵⁰ Meanwhile, the grand majority, 2,250 claimants, did not receive any advisory opinion from the Panel.¹⁵¹ In 1999, Hawaii Governor Cayetano declined to continue funding the Panel, a move that the Hawaii Supreme Court interpreted as “essentially conclude[ing] that the administrative process was not working.”¹⁵²

In *Kalima I*, the unfulfilled claimants sued, claiming the failed administrative process constituted a breach of trust.¹⁵³ The court agreed, specifically finding that state mismanagement was responsible not only for the twenty-five year delay in adjudication, but also “for creating a situation in which it will be difficult to accurately assess damages.”¹⁵⁴ After agreeing that the state breached its trust responsibilities, the Hawaii Supreme Court held that damages should be calculated based on the fair market value of comparable land to those claimed, with the burden on the state to prove damages should be reduced for any particular claimant.¹⁵⁵ However, the trial took multiple decades and of the 2,721 litigants, nearly 400 passed away in the pendency of the trial.¹⁵⁶

Another recent case before the Hawaii Supreme Court, *Ching v. Case*, held the state, as the trustee, liable for failing to monitor the federal government’s use of certain leased home lands, a trust duty which “derived in part for the properties’ statues as ‘ceded land’” and that Hawaii must “take an active role in preserving trust property and may not passively allow it to fall into ruin.”¹⁵⁷ Those lands are currently leased to the U.S. Army until 2029.¹⁵⁸

at 918 (limiting the scope of the decision to “judicially discoverable and manageable standard[s] for determining ‘sufficient sums’”)

146. *Kalima v. State (Kalima II)*, 468 P.3d 143 (Haw. 2020).

147. *Id.* at 165.

148. 1991 Haw. Sess. Laws 990–997 (Act 323).

149. *Kalima v. State (Kalima I)*, 137 P.3d 990, 1000 n.13 (Haw. 2006)

150. *Id.*

151. *Id.*

152. *Id.* at 999.

153. *Id.* at 1000–03.

154. *Kalima II* at 161.

155. *Id.*

156. Anita Hofschneider, *Court: Hawaiians Deserve Compensation for State’s Poor Oversight of Homelands*, HONOLULU CIV. BEAT (Jul. 2, 2020), <https://www.civilbeat.org/2020/07/court-hawaiians-deserve-compensation-for-states-poor-oversight-of-homelands> [<https://perma.cc/YGZ5-QZDX>].

157. 449 P.3d 1146, 1174–75 (2019).

158. U.S. Army, “Army Training Land Retention at Pohakuloa Training Area,” (May 23, 2023) <https://home.army.mil/hawaii/index.php/ptaais/project-overview>

The state is currently negotiating renewal of those leases, a process that has also engaged Native Hawaiian community members.¹⁵⁹

Federal policy change may also impact the trust obligation. As early as 1991, the United States Commission on Civil and Human Rights recommended that Congress enact legislation ensuring that the federal government, as trustee, fulfill its HCCA obligations towards Native Hawaiian beneficiaries.¹⁶⁰ Recent Supreme Court decisions recognizing the ongoing status of the eastern portion of Oklahoma as part of the Five Civilized Tribes for Major Crimes Act purposes, demonstrate a willingness to reexamine the validity and duties of prior acts of land transfer.¹⁶¹ Additionally, Secretary of the Interior Deb Haaland is the first indigenous person in the role, with the ability to ensure the U.S. meets its trust obligations.¹⁶² Only months into her appointment, the Department of the Interior announced that it would designate eighty acres of surplus federal property for the Hawaii home lands.¹⁶³ While designation of the lands does not ensure federal funding for distribution and administration, the move may signify the Administration's commitment to meeting its trust obligations.

Advocates can maintain litigative efforts in multiple ways. First, advocates can encourage the establishment of a government-to-government relationship between Native Hawaiians and the United States. To establish such a relationship, Native Hawaiian advocates can avail themselves of the 2016 Obama administration regulation, *Procedures for Reestablishing a Formal Government-Government Relationship with the Native Hawaiian Community*.¹⁶⁴ As a sovereign nation, a Native Hawaiian Nation could conceivably serve as its own

159. *Army Fiscal Year 2024 Budget Request*, CSPAN (May 3, 2023), <https://www.c-span.org/video/?527798-1/army-fiscal-year-2024-budget-request> (At minute 31, Senator Schatz: "I want to start with the status of the lease negotiation with the state of Hawaii, 1964, the U.S. military was awarded a 65 year lease for 23,000 acres of Hawaii state lands for one dollar. We are now coming up on the potential renewal of that lease . . . Many of these leases expire in 2029 . . . Could you give me an update on the status of the negotiations?" Secretary of the Army Wormuth: "We have two environmental impact statements that are underway that are relevant to looking at the lease agreements . . . When I was in Hawaii, I met with the governor, had a discussion with him. I met with members of the Native Hawaiian community. We are trying to engage with all of the different stakeholders in Hawaii to understand what the shape of an arrangement might look like.")

160. Haw. Advisory Comm. to the U.S. Comm'n On Civ Rts, a Broken Trust, *The Hawaiian Homelands Program: Seventy Years of Failure of the Federal and State Government to Protect the Civil Rights of Native Hawaiians* 43 (1991).

161. See *McGirt v. Oklahoma*, 140 S. Ct. 2452, 2482 (2020) (holding the reservation was never disestablished by Congress as part of the Oklahoma Enabling Act); *Sharp v. Murphy*, 140 S. Ct. 2412 (2020).

162. See Robert Maxim & Randall Akee, *What Deb Haaland's Historic Nomination Means for Indigenous Peoples*, BROOKINGS: THE AVENUE (Dec. 18, 2020), <https://www.brookings.edu/blog/the-avenue/2020/12/18/what-deb-haalands-historic-nomination-as-interior-secretary-means-for-indigenous-peoples> [<https://perma.cc/DM2T-JE6D>].

163. Press Release, U.S. DEP'T OF THE INTERIOR, *Interior and Commerce Departments Restore Lands to the Native Hawaiian Community* (June 14, 2021), <https://www.doi.gov/pressreleases/interior-and-commerce-departments-restore-lands-native-hawaiian-community> [<https://perma.cc/H63P-HLGM>].

164. 43 C.F.R. §§ 50.1–.44 (2016).

trustee of the home lands and ensure distribution.¹⁶⁵ However, due to infighting and administration change, that process was never fulfilled,¹⁶⁶ but the rule remains good law and fulfillment could be submitted to Secretary Haaland.¹⁶⁷ The U.S. Interior Department, for its part, recently proposed a consultation policy and procedures to work “on a government-to-sovereign” basis to address Native Hawaiian concerns.¹⁶⁸ The proposed policy specifically notes that “It is the policy of the Department to recognize and fulfill its obligations to identify and protect Native Hawaiian Community Trust Lands.”¹⁶⁹

Second, advocates can use international law doctrines to assert a right of self-determination. The 2007 U.N. Declaration on the Rights of Indigenous Peoples requires that countries affirmatively safeguard the rights of indigenous people “to the lands, territories and resources which they have traditionally owned, occupied, or otherwise used or acquired,” which may require that states “redress, by means that can include restitution or, when this is not possible, just, fair, and equitable compensation.”¹⁷⁰ While the U.S. State Department expressed its support for the Declaration, it claimed the document was aspirational and “not legally binding or a statement of current international law.”¹⁷¹ Yet even then, the Department acknowledged the Declaration had “both moral and political force.”¹⁷² Native Hawaiian advocates can look to Canada, where in 2021, after decades of advocacy by First Nations, federal legislation was passed to implement the U.N. Declaration.¹⁷³

165. See Lane Kaiwi Opulauoho, *Trust Lands for the Native Hawaiian Nation: Lessons from Federal Indian Law Precedents*, 43 AM. INDIAN L. REV. 75, 120–23 (2022). Native nations have been increasingly regaining stewardship or serving as co-managers of their lands, particularly for environmental conservation. Jim Robbins, *How Returning Lands to Native Tribes is Helping Protect Nature*, YALE ENVIRONMENT 360 (June 3, 2021) <https://e360.yale.edu/features/how-returning-lands-to-native-tribes-is-helping-protect-nature>.

166. See Troy J. H. Andrade, *Legacy in Paradise: Analyzing the Obama Administration’s Efforts of Reconciliation with Native Hawaiians*, 22 MICH. J. RACE & L. 273, 300–05, 320–21 (2017).

167. 43 C.F.R. § 50.2 (2016) (“A Native Hawaiian government seeking to reestablish a formal government-to-government relationship with the United States under this part must submit to the Secretary [of the Interior] a request Reestablishment of a formal government-to-government relationship will occur if the Secretary [of the Interior] grants the request”).

168. Office of Native Hawaiian Relations, *DOI Consults on its Native Hawaiian Community Consultation Policy and Procedures*, U.S. DEP’T OF THE INTERIOR, (Dec. 5, 2022), <https://www.doi.gov/hawaiian/doi-consults-on-its-native-hawaiian-community-consultation-policy-and-procedures> [<https://perma.cc/X4DU-VB2Y>].

169. U.S. Dep’t of the Interior, *Department of the Interior Policy on Consultation with the Native Hawaiian Community* (2022), <https://www.doi.gov/sites/doi.gov/files/513-dm-1-oes-clean-508.pdf> [<https://perma.cc/HG9H-6QQ9>].

170. G.A. RES. 61/295, annex, ¶ 28, United Nations Declaration on the Rights of Indigenous Peoples (Sept. 13, 2007).

171. *Announcement of U.S. Support for the United Nations Declaration on the Rights of Indigenous Peoples*, U.S. DEP’T OF STATE (Jan. 12, 2011), <https://2009–2017.state.gov/documents/organization/184099.pdf> [<https://perma.cc/T87B-GL3Z>].

172. *Id.*

173. Implementation of the United Nations Declaration on the Rights of Indigenous

Similarly, the U.S. Congress could pass legislation in conformity with the U.N. Declaration, as some advocates have suggested.¹⁷⁴

Third, advocates can push for a reinterpretation of the 1991 Apology using specific canons of construction applied to Native American agreements. The Native American canons of construction were set out in a series of Court cases addressing Native American government-to-government relationships with the United States.¹⁷⁵ The canons generally hold that “treaties, agreements, statutes, and executive orders be liberally construed in favors of the Indians,” and “all ambiguities are to be resolved in their favor.”¹⁷⁶ Further, the canons guide courts to construe legal agreements “as the Indians would have understood them” and to preserve tribal property rights and sovereignty unless Congress shows clear intent otherwise.¹⁷⁷ A 2020 law review article suggested that these canons of construction, traditionally applied to mainland Native Americans, could be applied to reinterpret the 1991 Apology.¹⁷⁸ Ian Falefuafua Tapu, the author of the article, suggested that such a reinterpretation could “imbue the Apology Resolution with the legal force to give Native Hawaiians the ability to successfully enforce” federal and state trust responsibilities.¹⁷⁹ If successful, a case asserting such a claim would allow better protection of Native Hawaiian self-determination claims. Even if unsuccessful, a high-profile case could raise awareness of the home lands issue, increasing political pressure to address limited funding. While success may be distant, maintaining litigative efforts is worthwhile to ensure the tide shifts in Native Hawaiians’ favor.

CONCLUSION

Without urgent and significant changes, housing instability of Native Hawaiians will continue to grow as Hawaii’s cost of living and vacation destination status show no sign of abatement. Though the causes are complex, and the need for change is daunting, the tremendous impact of housing insecurity on the health of Native Hawaiians prompts action. Addressing the cost of living by limiting short-term and vacation rentals, encouraging growth of medium to high-wage jobs through economic investments, and maintaining litigative action on the home lands would move Native Hawaiians in Hawai’i County closer to housing stability and health equity.

Peoples Act is a Critical Priority to Improve the Well-being of First Nations and to Respect our Fundamental Rights, ASSEMBLY OF FIRST NATIONS, <https://www.afn.ca/implementin-the-united-nations-declaration-on-the-rights-of-indigenous-peoples> [<https://perma.cc/XS55-GVB9>].

174. *Implementing the United Nations Declaration on the Rights of the Indigenous People in the United States*, Conference Report, U. OF CO. 61 (2019)

175. Felix S. Cohen, Cohen’s Handbook of Federal Indian Law § 2.02 (2012 ed.)

176. *Id.*

177. *Id.*

178. Ian Falefuafua Tapu, *How to Say Sorry: Fulfilling the United States’ Trust Obligation to Native Hawaiians by Using the Canons of Construction to Interpret the Apology Resolution*, 44 N.Y.U. REV. L. & SOC. CHANGE 445, 445 (2020).

179. *Id.* at 486.