

PU‘UHONUA NOT PRISONS, A MANIFESTO

JEN JENKINS[∞]

Jen Jenkins chronicles how the Prison Industrial Complex, as a capitalist and white supremacist tool, has oppressed Native Hawaiian culture and people throughout its colonial history and into the present. Ultimately, Jenkins calls for prison abolition in Hawai‘i, and urges policy makers and community members to center the self-determination of indigenous peoples in developing non-carceral alternatives, including by creating healing spaces, or pu‘uhonua.

I. INTRODUCTION

This article is a manifesto about the Prison Industrial Complex¹ (“PIC”) in Hawai‘i and how we can dismantle it by creating pu‘uhonua (sacred protected places). The Article traces the desire to punish and criminalize in Hawai‘i from its systemic American imperialist and capitalist desires to control land and people to current reform efforts that would allow the PIC to stay intact and expand.² We must consider the interests served by maintaining the PIC and acknowledge that we have been indoctrinated with a false narrative about the PIC and its relation to safety that has almost no actual or historical data to support its continued existence. This article challenges us to recognize that legal and policy reforms that do not address and abolish the roots of the PIC will inevitably be “reformist reforms,”³ which will not allow us to move beyond the punishment-oriented hold the PIC has in Hawai‘i. This Article ultimately argues that we should create pu‘uhonua or healing spaces, practices, policies, and laws to dismantle and abolish the PIC. The following is one explanation of pu‘uhonua:

Pu‘uhonua are places that are set aside as refuges, as shelters, a place where you would be protected. Traditionally, anyone who had made some sort of transgression or who was in trouble or trying to escape oppression would be safe within the bounds of a pu‘uhonua. Two of the more well-

[∞] Jen Jenkins, J.D.’s current political home is Law for Black Lives. During and after law school, Jen successfully advocated for law and policy change in LGBTQ health and the criminal legal system. Jen grounds their work in a strong belief that laws and policies should be transformed (or abolished) to allow for the global liberation of people from oppressive systems. Jen dedicates this essay to their wife and pu‘uhonua, Shayna Lonoaea Alexander and to their comrades inside finding pu‘uhonua within each other.

¹ Simply put, the networks of prisons, police, and surveillance. See generally MARIAME KABA, WE DO THIS ‘TIL WE FREE US (2020); RUTH WILSON GILMORE, GOLDEN GULAG (Earl Lewis et al. eds., 2007); ANGELA DAVIS, ARE PRISONS OBSOLETE? (Greg Ruggiero ed., 2003).

² See MICHEL FOUCAULT, DISCIPLINE AND PUNISH THE BIRTH OF PRISON 8 (Alan Sheridan trans., Vintage Books 2d ed. 1995) (1977).

³ See generally MAYA SCHENWAR & VICTORIA LAW, PRISON BY ANY OTHER NAME: THE HARMFUL CONSEQUENCES OF POPULAR REFORMS (2021); Janaé Bonsu, *Beware of Police “Reforms” that Reinforce the Very System Killing Us*, IN THESE TIMES (June 12, 2020), <https://inthesetimes.com/article/defund-police-reforms-abolition-black-lives-matter-racism> [<https://perma.cc/SVR6-6VDB>].

known pu‘uhonua are Kualoa and Hōnaunau, which is sometimes known as the City of Refuge.

Even people could be pu‘uhonua. When Kamehameha was mō‘ī over the Hawaiian Kingdom, he declared the ali‘i wahine Ka‘ahumanu to be a pu‘uhonuaherself, meaning that those who made it into her presence had found safety.⁴

II. IN HAWAI‘I, THE PIC IS WORKING EXACTLY AS DESIGNED—TO PUNISH

The PIC, with its roots in imperialist and colonial America, is the reason prisons and police were never designed to protect racial, class, and gender minorities. The PIC is a violent solution to the economic, social, and political problems that we know today.⁵ While the primary focus of this Section is on a singular prison and how that prison became the model for modern day prisons we know today in Hawai‘i, the PIC goes far beyond any one type of structure or apparatus.

The violence of the PIC is not an aberration; it was built this way.⁶ The PIC as we know it in America and, specifically, in Hawai‘i evolved from American slavery, Black Codes, and slave catching.⁷ The PIC is a capitalist-imperialist tool of control and oppression to maintain settler-colonial control of land and its people through punishment and isolation.⁸ The illusion of “safety” that is the excuse for the PIC’s existence is, in actuality, the preservation of settler-colonial power that leads to a false sense of security for the socio-economic and political majority.⁹

⁴ Bryan Kamaoli Kuwada, *Ko Kākou Struggle: 15 Voices on Where to Go Next*, KE KA‘UPU HEHI ‘ALE (Nov. 18, 2016), <https://hehiale.com/2016/11/18/ko-kakou-struggle-15-voices-on-where-to-go-next/> [<https://perma.cc/N7FN-X5C3>]. See also MARY KAWENA PUKUI & SAMUEL H. ELBERT, HAWAIIAN DICTIONARY (1957).

⁵ See *What is the PIC? What is Abolition?*, CRITICAL RESISTANCE <http://criticalresistance.org/about/not-so-common-language/> [<https://perma.cc/GY7Q-68JJ>] (last visited Sept. 10, 2021).

⁶ See generally Dorothy Roberts, *KILLING THE BLACK BODY* (Errol McDonald ed., 1997); MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* (Dianne Wachtell ed., 2010); MARIAME KABA, *supra* note 1; see also John Duda, *Towards the Horizon of Abolition: A Conversation with Mariame Kaba*, THE NEXT SYSTEM PROJECT (Nov. 9, 2017) (“I became an abolitionist through my work in domestic violence and sexual assault organizations and in the ‘field.’ It was really seeing how so many survivors were—I don’t want to say failed, because it’s by design—targeted, not supported, and not helped through the criminal punishment system that we have.”), <https://thenextsystem.org/learn/stories/towards-horizon-abolition-conversation-mariame-kaba> [<https://perma.cc/LZU7-CZAX>].

⁷ See Bryan Stevenson, *Slavery Gave America a Fear of Black People and a Taste for Violent Punishment*, N.Y. TIMES MAG. (Aug. 14, 2019) [<https://perma.cc/A9TD-ZLUN>] <https://www.nytimes.com/interactive/2019/08/14/magazine/prison-industrial-complex-slavery-racism.html> [<https://perma.cc/5AQ2-9939>]; see also Olivia B. Waxman, *How the U.S. Got Its Police Force*, TIME (May 18, 2017) (Magazine), <https://time.com/4779112/police-history-origins/> [<https://perma.cc/Y8H2-QMPX>].

⁸ See FOUCAULT, *supra* note 2, at 86-87; Katie Thibault, *The Canadian Carceral State: Violent Colonial Logics of Indigenous Dispossession 12* (April 2016) (M.A. Thesis, Queen’s University) (on file with the Queen’s University Library) https://qspace.library.queensu.ca/bitstream/handle/1974/14203/Thibault_Katie_L_201604_MA.pdf?sequence=1 [<https://perma.cc/2HG8-SSCW>].

⁹ Juan M. Tauri & Ngati Porou, *Criminal Justice as a Colonial Project in Settler-Colonialism*, 8 AFR.

A. *The World's First Modern Prison*

Eastern State Penitentiary (“Eastern”) was the world’s first true penitentiary, and it became the model prison worldwide.¹⁰ Eastern was built in the United States on Lenape tribal land now known as Philadelphia, Pennsylvania, and was completed in 1829. While jails and other “prisons” existed before Eastern, this prison model focused on isolation and deprivation as the way to change a person for the better. Even though the first modern prison was considered a reform of the “overly harsh conditions” of jails at the time,¹¹ it never achieved its stated goal because it was built within a societal framework that is inherently white supremacist and capitalist. As such, the PIC is inescapably and historically violent against those who are considered the lowest in the American socio-political and legal hierarchy.¹² Since its inception, the PIC has consistently, disproportionately, and intentionally punished Black, brown, and Indigenous peoples.¹³

B. *The PIC in Hawai‘i*

“By eliminating and alienating indigenous peoples and their cultural practices, a settler colonial society can then claim ownership territory without engaging in actual struggles that center indigenous peoples and their needs.”¹⁴

This section will focus on the growth of the PIC in Hawai‘i. It will generally describe how stealing land and criminalizing its people allowed for the development and growth of the PIC in Hawai‘i. It will also explain how Native Hawaiians¹⁵ and their culture have been colonized and criminalized since first contact through the

J. CRIM. & JUST. STUD. 20, 32 (2014) (“Unfortunately, the criminal justice system makes a lie of claims that the settler colonial state no longer has need of structural violence to control its problematic Indigenous populations, or that settler colonialism represents a quieter (meaning less assimilatory) process of subjugation. Instead, the policies and actions of the agents and agencies of crime control demonstrate that structural violence remains a significant tool of subjugation of Indigenous peoples in contemporary settler colonialism.”); see also HAUNANI KAY TRASK, FROM A NATIVE DAUGHTER: COLONIALISM AND SOVEREIGNTY IN HAWAII‘I 16 (1993) (“Hawaiian control and Hawaiian citizenship were replaced with American control and American citizenship. We suffered a unilateral redefinition of our homeland and our people, a displacement and dispossession in our own country.”).

¹⁰ *History of Eastern State*, EASTERN STATE PENITENTIARY (last visited Sept. 10, 2021), <https://www.easternstate.org/research/history-eastern-state> [https://perma.cc/FC3Z-2UDX].

¹¹ See EASTERN STATE PENITENTIARY HISTORICAL MARKER, <https://explorepahistory.com/hmarker.php?markerId=1-A-1C> [https://perma.cc/JMV6-WTX8].

¹² See FOUCAULT, *supra* note 2, at 273-75 (1975).

¹³ The first person incarcerated at Eastern was a Black man named Charles Williams, who was convicted of burglary. The theft included one twenty-dollar watch, one three-dollar gold seal, and one gold key. At eighteen years old, Charles was sentenced to two years in confinement with labor. Chai Woodham, *Eastern State Penitentiary: A Prison with a Past*, SMITHSONIAN MAG. (Sept. 30, 2008), <https://www.smithsonianmag.com/history/eastern-state-penitentiary-a-prison-with-a-past-14274660/> [https://perma.cc/5K7Z-F2XT].

¹⁴ Kalaniopua Young, *From a Native Trans Daughter: Carceral Refusal, Settler Colonialism, Re-routing the Roots of an Indigenous Abolitionist Imaginary*, CAPTIVE GENDERS 83, 88 (2015).

¹⁵ In this article, “Native Hawaiian” and “Kanaka Maoli” are used to refer to all persons descended from the Polynesians who lived in the Hawaiian Islands when Captain Cook arrived.

overthrow of Queen Lili‘uokalani, and still today.¹⁶

To be sure, Native Hawaiian civilization began long before contact with foreigners.¹⁷ The social system that existed prior to contact “was organized around communal subsistence production in which large ‘ohana (families) engaged in cooperative work and shared the fruits of their labor.”¹⁸ But, and as it’s described in this article within the context of Hawai‘i, the PIC was founded on the all too familiar features of the West: capitalism, racism, and other forms of oppression that enable societal elite to retain power.

The majority of Hawai‘i’s first post-contact criminal laws were solely at the expense of its Native people: from the maka‘ainana (people of the land or commoners) to Kings and Queens.¹⁹ If Native Hawaiians spoke their language or danced hula, they could be incarcerated; anything that was culturally Hawaiian could be criminalized.²⁰ Notably, Hawaiian criminalization had nothing to do with the modern notion of “public safety,” which is the common excuse for criminalization today. This creation of “crime” was largely the result of missionary influence, foreigners owning Hawaiian land,²¹ and the desire for Native Hawaiians to conform and submit to ideals of whiteness and Christianity.²²

The criminalization, and continued suppression of Native Hawaiians and their culture continues today. For example, the state criminalizes Native Hawaiians for trespassing, even though they are on their own ancestral land. Native Hawaiians, who do not meet the narrow legal constraints of practicing traditional and customary rights, can be legally punished for practicing their culture on “private property” that was in reality stolen from them.²³ Further, Native Hawaiians represent a large part of the unhoused population²⁴ where they are subject to police “sweeps,” which involve

¹⁶ See OFFICE OF HAWAIIAN AFFAIRS, THE DISPARATE TREATMENT OF NATIVE HAWAIIANS IN THE CRIMINAL JUSTICE SYSTEM 9 (2010) (“Coupled with the experiences of pa‘ahao (incarcerated persons) included in the pages of this report, it is clear that Native Hawaiians are caught in a cycle of imprisonment that is perpetuated across generations.”).

¹⁷ *Kumulipo: A Hawaiian Creation Chant*, (Univ. of Chicago Press), 1951, <https://blogs.ksbe.edu/adakina/files/2008/02/kumulipo-text.pdf> [https://perma.cc/9G2A-A5UN].

¹⁸ Davianna Pōmaika‘i McGregor & Melody Kapilialoha MacKenzie, *Mo‘olelo Ea O Na Hawai‘i History of Native Hawaiian Governance in Hawai‘i*, OFFICE OF HAWAIIAN AFF., Dec. 21, 2015, at 32.

¹⁹ See FOUCAULT, *supra* note 2, at 276 (1975) (“... [I]t would be hypocritical or naive to believe that the law was made for all in the name of all; [] it would be more prudent to recognize that it was made for the few and that it was brought to bear upon others.”).

²⁰ Noenoe K. Silva, *He Kanawai E Ho‘opau I Na Hula Kuolo Hawai‘i: The Political Economy of Banning the Hula*, 34 HAW. J. OF HIST. 28, 31 (2000).

²¹ The Kuleana Act of Aug. 6, 1850, 2 REV. LAWS HAW. 2141-42 (1925).

²² See Healani Sonoda, *A Nation Incarcerated*, in ASIAN SETTLER COLONIALISM: FROM LOCAL GOVERNANCE TO THE HABITS OF EVERYDAY LIFE IN HAWAI‘I 99, 111 (Candace Fujikane & Jonathan Y. Okamura eds., 2008). Notably, Hawaiian criminalization had nothing to do with the modern notion of “public safety,” which is the common excuse for criminalization today.

²³ See, e.g., *Kalipi v. Hawaiian Trust Co.*, 656 P.2d 745 (1982) (Holding that lawful residents of an ahupua‘a may, for the purpose of practicing Native Hawaiian customs and traditions, enter undeveloped lands within that ahupua‘a to gather the items listed in H.R.S. section 7-1.); *Pele Def. Fund v. Paty*, 837 P.2d 1247, 1268 (1992), *cert. denied*, 507 U.S. 918 (1993); see also DAVID M. FORMAN & SUSAN K. SERRANO, *HO‘OHANA AKU, A HO‘OLA AKU: A LEGAL PRIMER FOR TRADITIONAL AND CUSTOMARY RIGHTS IN HAWAI‘I* 16-18 (2012).

²⁴ ANNA PRUITT & JACK BARILE, *UNSHELTERED IN HONOLULU: EXAMINING UNSHELTERED HOMELESSNESS IN HONOLULU FROM 2017-2020*, 4 (2020).

forcing unhoused people from sleeping or resting in public spaces, which is also Hawaiian land.

Perhaps the most significant demonstration of the roots of the PIC in Hawai'i was the imprisonment of Queen Lili'uokalani for Hawaiian loyalists' attempting to retake the throne of the Hawaiian Kingdom from militarized colonial Americans in 1895. The Queen was convicted, fined and sentenced to five years in prison and hard labor for her alleged complicity in the acts of the Hawaiian loyalists.²⁵ The hard-labor sentence was later reduced to imprisonment in an upstairs bedroom of the Palace for nearly eight months, until she was released on parole.²⁶ The Queen was forced to relinquish all claims to the throne of the Hawaiian Kingdom, which fundamentally secured the white American ability to control and punish in Hawai'i through military occupation and the prison industrial complex.²⁷ Within the context of the overthrow and imprisonment of Queen Lili'uokalani and the numerous laws and policies criminalizing Native Hawaiian culture and existence, it is clear that the PIC reinforces settler colonialism. The continuance of the PIC is the continuance of Native Hawaiians' dispossession from their land, their ancestor.

III. TO ABOLISH PRISONS IN HAWAI'I, ABOLITIONIST REFORMS AND POLICIES SHOULD BE ADOPTED

A. PIC Abolition Explained

Unlike the PIC's violent and exploitative nature, PIC abolition calls on us to collectively build and re-define social safety networks and systems by centering the most marginalized while dismantling the violent institutions, practices, and policies of the PIC. Where the PIC uses violence to address harm created by deep inequities rooted in American imperialism,²⁸ settler colonialism,²⁹ and capitalism,³⁰ PIC abolition asks us to creatively imagine a future without prisons and to act in the present to begin to create that world or pu'uhoonua.

The continued existence of the PIC in Hawai'i amounts to a slow genocide of its Native people and other marginalized people.³¹ To get to PIC abolition, we need to

²⁵ LILI'UOKALANI, QUEEN OF HAWAI'I, HAWAI'I'S STORY BY HAWAI'I'S QUEEN 278-279, 289 (1898).

²⁶ *Id.* at 289, 295.

²⁷ *See id.* at 273-77.

²⁸ FOUCAULT, *supra* note 2, at 86-87.

²⁹ "Settler colonialism describes the process by which settlers came, stayed, and formed new governmental structures, laws, and ideas intended to affirm their ownership of land and labor." HOKULANI K. AIKAU & VERNADETTE VICUÑA GONZALEZ, DETOURS: A DECOLONIAL GUIDE TO HAWAI'I 4 (2019).

³⁰ *See* FOUCAULT, *supra* note 2, at 86-87.

³¹ *See* Tauri & Porou, *supra* note 9, at 27 ("Arguably, the settler-colonial state has become much more subtle and maneuverable in terms of the development and employment of Colonial Projects. No longer able to maintain legitimacy by deploying racist, assimilationist strategies, such as the forced removal of our children under targeted policies, or specific legislation banning language and cultural practices, or indeed replicating the physical genocide of the Indian Wars carried out in Canada and the U.S, or the killing times in Australia . . . the neo-liberal settler state nonetheless deploys structural/epistemic violence as a colonial project against Indigenous communities") (citations omitted).

stop distinguishing between violent and non-violent “offenders,”³² stop holding people who can’t make bail; and stop punishing people for being Native Hawaiian or unhoused. We can reject the aforementioned policies because we will have intentionally created systems that breathe life into our community. What do we do until we create those systems? We must shift towards them with political priorities and money, which has never been hard to do. United States governments easily invest millions and even billions in their budgets to police despite deadly failures and questionable efficacy, while existing social programs that would reduce the likelihood of violence remain underfunded.³³

B. Hawai‘i’s Best Attempts at Reform

This Section discusses two legislative reports that focus on reforming crime and punishment in Hawai‘i.³⁴ The first of the reports offers an insight into some of Hawai‘i’s earliest legislative “criminal” reforms.³⁵ The second report shows the myopic solutions of modern reformists and their inability to imagine beyond the PIC. Both reports fail to observe and articulate that the PIC is a settler colonial tool of domination and control and therefore requires non-carceral and non-punishment-oriented alternatives to ensure that the PIC is diminished in its power.

The now-obsolete Hawai‘i Crime Commission (“Crime Commission”) drafted the first report, which demonstrates the mindset of early Hawai‘i criminal justice reformers. In its report to the Legislature, *Sentencing Practices and Alternatives to Incarceration*, the Crime Commission describes sentencing practices in Hawai‘i at the time and recommends solutions to address crime.³⁶ The Report recommended the expansion of the use of probation, community service, restitution, and “prison farms” to address crime.³⁷ It also recommended that a sentencing commission be established to set guidelines for sentencing.³⁸ Most of these recommendations never happened, with the exception of probation expansion, which has led to over 20,000 people being under state surveillance.³⁹

The modern day version of the Hawai‘i Crime Commission is called the HCR85

³² Many victims and their family members experience real harm and trauma and often seek out the PIC to bring about “justice;” however, PIC Abolition acknowledges the criminal legal system does not bring about true healing for victims and therefore pushes us to create alternative models to bring about healing such as pu‘uhonua.

³³ See Mike Creef, *Police Budgets Grew in 2021, So Did Policing Get Better?* BLACK WALL STREET TIMES (Jan. 27, 2022) <https://theblackwallstreettimes.com/2022/01/27/police-budgets-grew-in-2021-so-did-policing-get-better/> [<https://perma.cc/2HSK-X7VL>].

³⁴ See generally HOUSE CON. RES. 85 TASK FORCE ON PRISON REFORM, CREATING BETTER OUTCOMES, SAFER COMMUNITIES, 2019 Regular Sess. (2018); HAWAI‘I CRIME COMMISSION, *SENTENCING PRACTICES AND ALTERNATIVES TO INCARCERATION IN HAWAI‘I*, 1st Special Sess., at 5-6 (1981).

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.* at 141.

³⁹ *Correctional Control 2018: Incarceration and Supervision by State*, PRISON POLICY INITIATIVE, https://www.prisonpolicy.org/reports/correctionalcontrol2018_data_appendix.html [<https://perma.cc/TQQ4-XVEA>] (last visited Sept. 20, 2021).

Taskforce.⁴⁰ The HCR85 Taskforce's most recent report to the 2019 Hawai'i State Legislature made numerous well-meaning recommendations but failed to recognize the root issues of the PIC, and therefore did not make genuinely transformative changes or recommendations.

Unfortunately, the HCR85 Taskforce's report was developed and introduced on multiple mistaken premises, including the following: first, it essentially insists that prisons are an inevitable part of our future; second, that an investment in training and oversight will bring about change; third, that building smaller jails means fewer people are incarcerated; fourth, that prisons can become rehabilitative institutions; and fifth, that focusing on improving conditions rather than addressing the system's roots can solve "the correctional problem."⁴¹ There were other recommendations, but these focus on some of the core issues within the HCR85 Taskforce report that led us to accepting and expanding the PIC rather than seeking to build a society that severely eliminates the uses of the PIC until it is abolished.

Not only did the HCR85 Taskforce fail to shrink the reach of the PIC (a violent oppressor's tool) with their policy suggestions, almost none of the HCR85 Taskforce's recommendations were adopted.⁴² The state's unwillingness to implement and adopt these "soft" recommendations demonstrates an engrained resistance to the idea of bettering conditions for the incarcerated class. Reforms from the HCR85 Taskforce that would potentially make a meaningful change for the people inside prisons, who will inevitably return to the community, are often rejected because beneficiaries from the current economic and settler colonial systems (e.g., property owning, able-bodied, white, male, cisgender, heterosexual, etc.) maintain their social domination in large part, from the expansion and existence of the PIC.⁴³

C. Abolitionist Reforms for Hawai'i

The decision to implement reformist reforms, such as those in the HCR85 Taskforce Report, versus abolitionist reforms, will be the critical difference between PIC expansion and abolition. Reformist reforms, while well-meaning, often increase the reach of PIC.⁴⁴ Implementing abolitionist laws and policies, however, significantly diminishes the power of the PIC—budgets are shifted; sentencing laws are entirely repealed; and ultimately, prisons, police, and surveillance are no longer

⁴⁰ Hawai'i State Judiciary, *House Concurrent Resolution 85*, <https://www.courts.state.hi.us/house-concurrent-resolution-85> [<https://perma.cc/VG8U-H8XY>] (last visited Sept. 20, 2021). ("Through House Concurrent Resolution 85, the House of Representatives requested the establishment of a taskforce to study effective incarceration policies to improve Hawai'i's correctional system.")

⁴¹ HCR 85 TASK FORCE, *supra* note 34, at 62.

⁴² An Oversight Commission was legislated to be formed in 2019 and was only funded in 2021 after a significant push from the community. See Civil Beat Editorial Board, *Ige, Lawmakers Need to Quit Stalling When it Comes to Police and Prison Reforms*, CIVIL BEAT (Mar. 19, 2021), <https://www.civilbeat.org/2021/03/ige-lawmakers-need-to-quit-stalling-when-it-comes-to-police-and-prison-reforms/> [<https://perma.cc/U4EG-85DL>].

⁴³ See MEET THE PRISON PROFITEERS, ACLU, <https://www.aclu.org/issues/smart-justice/meet-prison-profiteers> [<https://perma.cc/83H7-GTFB>].

⁴⁴ See generally MAYA SCHENWAR AND VICTORIA LAW, PRISON BY ANY OTHER NAME THE HARMFUL CONSEQUENCES OF POPULAR REFORMS (2021).

used in the name of safety.⁴⁵ In the words of *Critical Resistance*, a PIC abolitionist organization that has existed since 1997,⁴⁶ “Both the abolitionist and reformist might be for the same change, but they consider and push for these changes in really different ways because of their different understandings and ideals.”⁴⁷ PIC abolition is inherently decolonial since, within the context of Hawai‘i, it demands an investment in Native Hawaiian sovereignty, self-determination, and Land Back.

Every change to law and policy that impacts the PIC in Hawai‘i should be guided by the following questions made by the PIC abolitionists at *Critical Resistance*, who have studied and researched and who have been subject to the PIC and its impacts on marginalized people for twenty years,⁴⁸ to ensure that the reforms are abolitionist:

1. Does the reform weaken the system’s power or means to jail, surveil, monitor, control, or otherwise punish people?
2. Does the reform challenge the size, scope, resources, or funding of the PIC?
3. Does the reform maintain protections for everyone and resist dividing people into categories of “deserving” and “undeserving”? Does the reform maintain or expand existing paths to freedom for all people?
4. Does the reform shrink parts of the PIC, industries that profit from the PIC, and/or the power of elected officials who sustain the PIC?⁴⁹

The above questions are a guide for policymakers, advocates, and organizers when drafting laws and policies that will address the roots of PIC in Hawai‘i. They should be carefully considered and followed when taking on one of the most violent and entrenched systems within the “state.”

I. Divest

The majority of criminalization in Hawai‘i occurs around property offenses,⁵⁰ which serve as indicators of systemic social and political priorities rather than reflect individual moral failure.

⁴⁵See Victoria Law, *We Don’t Need Prisons to Make us Safer, YES!* (April 19, 2021), <https://www.yesmagazine.org/social-justice/2021/04/19/prisons-dont-make-us-safe> [<https://perma.cc/E2PA-FXJ3>].

⁴⁶ *History*, CRITICAL RESISTANCE, <http://criticalresistance.org/about/history/> [<https://perma.cc/33JT-VS8U>] (last visited September 22, 2021).

⁴⁷ CRITICAL RESISTANCE, A WORLD WITHOUT WALLS: THE CR ABOLITIONIST ORGANIZING TOOLKIT 48 (2012), <http://criticalresistance.org/wp-content/uploads/2012/06/CR-Abolitionist-Toolkit-online.pdf> [<https://perma.cc/H4AF-4AHU>].

⁴⁸ *History*, CRITICAL RESISTANCE, *supra* note 46.

⁴⁹ ON THE ROAD TO FREEDOM, CRITICAL RESISTANCE 7 (2021), http://criticalresistance.org/wp-content/uploads/2021/07/OnTheRoadToFreedom_FINAL_June2021-compressed.pdf [<https://perma.cc/CC3F-LD7G>].

⁵⁰ STATE OF HAWAII DEPT OF PUBLIC SAFETY, ANNUAL REPORT FY 2020-21 (2021) (Comparing a total of 1,032 property offenses to a total of 34 major violent crimes); *see also* DAVID Y. IGE ET AL., 2020 ANNUAL STATISTICAL REPORT Table 1 (2020) <https://dps.hawaii.gov/hpa/files/2020/10/2020-Annual-Report.pdf> [<https://perma.cc/BZP9-8XCT>] (Comparing 458 people sentenced to offenses against property and to 178 offenses against persons, 36 sex offenses, 35 firearm offenses, 174 drug offenses, and 47 “other” offenses).

Higher arrest rates, conviction rates, and sentences in specific offense categories demonstrate how capitalism and private property are prioritized over providing basic needs for communities that have been displaced from their land due to imperialism.

Of course, Native Hawaiians are the most likely to be criminalized as it ensures continued displacement from their land.⁵¹ In October 2020, there were 4,293 total people incarcerated by the state of Hawai'i, of whom 1,596—or 37%—identified as Native Hawaiian. This is despite Native Hawaiians making up only approximately 20% of the state population.⁵² To address the violent and racist criminalization of Hawai'i's Native people, Hawai'i should *significantly* cut its Department of Public Safety and police budgets and prioritize reentry, housing, and education programs.⁵³ The money should and could be repurposed for safety responses that are non-violent and non-carceral and for pu'uhonua.⁵⁴ These alternatives would ensure that we are building systems of safety as we take money from the PIC.

2. Invest

“Radical new answers that holistically strive to eliminate the real reasons for and problems behind incarceration will be possible only when Hawaiian land and sovereignty are returned to Natives.”⁵⁵

Where should the money from the proposed cuts to the budget go? Hawai'i should use a portion of the state and county budget cuts to purchase homes for Native Hawaiians, fund their maintenance fees, and pay property taxes. This could be the beginning of creating pu'uhonua in Hawai'i, since every Native Hawaiian person or family would have a home.

As of June 2020, there are 23,395 statewide pending residential applications on the Department of Hawaiian Homelands list (DHHL).⁵⁶ In Honolulu, the most populated island, the DHHL residential waitlist is 11,067, while there were 14,000 empty and unused homes on the island of O'ahu, where Honolulu is located.⁵⁷ Through a process such as eminent domain or a declaration of emergency, DHHL should acquire all empty houses for the use of its beneficiaries.⁵⁸ Such an act could

⁵¹ See generally Rob Perez, *The U.S. Broke its Promise to Return Land to Hawaiians. My Family Knows Something About Land Loss*, HONOLULU STAR ADVERTISER (May 26, 2021), <https://www.propublica.org/article/the-u-s-broke-its-promise-to-return-land-to-hawaiians-my-family-knows-something-about-land-loss> [https://perma.cc/5TAV-8SX6].

⁵² See STATE OF HAWAII DEP'T OF PUBLIC SAFETY, *supra* note 50, at 127; *Update: Population*, OHA DATABOOK, http://www.ohadatabook.com/fr_updates.19.html#POP [https://perma.cc/R29S-QZKE] (last visited Mar. 23, 2022).

⁵³ See, e.g., STATE OF HAWAII DEP'T OF PUBLIC SAFETY, *supra* note 50 (the total budget for the state Department of Public Safety for FY 2020 was \$286,765,909.86).

⁵⁴ See, e.g., *One Million Experiments*, PROJECT NIA & INTERRUPTING CRIMINALIZATION <https://millionexperiments.com/> [https://perma.cc/R9CX-NEH8] (last visited Sept. 22, 2021).

⁵⁵ Healani Sonoda, *A Nation Incarcerated*, in ASIAN SETTLE COLONIALISM: FROM LOCAL GOVERNANCE TO THE HABITS OF EVERYDAY LIFE IN HAWAII 100, 111 (Candace Fukijane & Jonathan Y. Okamura eds., 2008).

⁵⁶ See DEP'T OF HAWAIIAN HOMELANDS, APPLICATION WAITLIST SUMMARY UP TO JUNE 30, 2020 1 (2020).

⁵⁷ *Id.*

⁵⁸ Eminent domain is the right of a government or its agent to expropriate private property for public use, with payment of compensation. See generally HAW. REV. STAT. §127A-14(a)-(b) (Describes the

begin the process of the state and federal governments' fulfilling their moral and legal obligations to Native Hawaiians and would also address how many Native Hawaiians are criminalized because they are unhoused and displaced in their ancestral land.⁵⁹

IV. CONCLUSION: PRISONS BUILT ON STOLEN LAND CAN AND SHOULD BE ABOLISHED; HAWAI'I IS NO EXCEPTION

It can be difficult for many in occupied Hawai'i to imagine a Hawai'i without prisons, but it has always been possible. Hawai'i has been steeped in the ideas and legal imaginations of settler colonial imperialist-capitalists. But, creating pu'uhonua, as opposed to violent structures that focus on separation and punishment, has always been a possibility when developing law and policy. PIC abolition calls on us to see beyond the current legal punishment system and the PIC to imagine and create a world built on recognizing the self-determination of indigenous peoples and the humanity of one another. Embracing PIC abolition as a policy and legal position is imperative for the decolonization of the current legal constructs responsible for upholding the violence of the PIC in Hawai'i. When confronted with a genocidal apparatus such as the PIC, we should seek to abolish it and establish pu'uhonua. In Hawai'i, there have always been resisters to the PIC and its roots. There are many PIC abolitionist solutions available and many that have yet to developed.⁶⁰ We can look to those most impacted by the PIC with a care-centered political understanding and desire to lead us to pu'uhonua not prisons.

ability of the Governor and Mayor to declare states of emergency); *See generally* STATE OF HAWAI'I HOMELESS INITIATIVE, PROCLAMATION, <https://homelessness.hawaii.gov/emergency-proclamations-and-supplementary-proclamations/> [<https://perma.cc/B4AM-U8JC>] (issuing states of emergency for the homeless crisis in the state).

⁵⁹ *See generally* G.A. RES. 61/295 (Oct. 2, 2007); Hawaiian Homes Commission Act, 42 Stat 108 § 101 (1920) ("The Congress of the United States and the State of Hawaii declare that the policy of this Act is to enable native Hawaiians to return to their lands in order to fully support self-sufficiency for native Hawaiians and the self-determination of native Hawaiians in the administration of this Act, and the preservation of the values, traditions, and culture of native Hawaiians . . ."); *see generally* Joint Resolution to Acknowledge the 100th Anniversary of the January 17, 1893 Overthrow of the Kingdom of Hawaii, Pub. L. No. 103—150, 107 Stat. 1510 §§ 1(1), 1(3) (1993) (referring to the "illegal overthrow of the Kingdom of Hawaii on January 17, 1893" and "the participation of agents and citizens of the United States."); *see generally* HAW. REV. STAT. § 10-1(b) ("It shall be the duty and responsibility of all state departments and instrumentalities of state government providing services and programs which affect native Hawaiians and Hawaiians to actively work toward the goals of this chapter and to cooperate with and assist wherever possible the office of Hawaiian affairs."); *see generally* *Fulfilling the State's Public Land Trust Revenue Obligations*, OFFICE OF HAWAIIAN AFFAIRS <https://www.oha.org/plt> [<https://perma.cc/457H-ZCHC>] (last visited Mar. 23, 2022) (Explaining the state's legal failure to pay 20 percent of Public Land Trust revenue to the Office of Hawaiian Affairs for the betterment of Native Hawaiians).

⁶⁰ *See, e.g.*, PROJECT NIA & INTERRUPTING CRIMINALIZATION, *supra* note 54.