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“A functionary, when he really is nothing more than a functionary, is really a very dangerous gentleman.” - Hannah Arendt, 1964

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Dear Dean Trevor Morrison and President John Sexton,

We, the undersigned students, organizations and concerned members of the NYU and global community, condemn NYU Law’s hiring of Harold H. Koh for the 2014-2015 academic year. NYU Law brands itself as “a private university in the public service”[1] and prides itself on its commitment to civil liberties, human rights and international law. Yet, its decision to honor Mr. Koh as a “distinguished scholar in residence”[2] calls these commitments into question given Mr. Koh’s role as a key legal architect of the Obama Administration’s extrajudicial killing program during his time as State Department Legal Adviser (2009-2013) [3].

From his position of authority within the Obama Administration, Mr. Koh has publicly argued[4] for the U.S. drone program’s legality and has stated[5] that “U.S. targeting practices, including lethal operations conducted with the use of unmanned aerial vehicles, comply with all applicable law, including the laws of war.” This is despite compelling evidence to the contrary, including evidence produced by NYU Law scholars.

In 2010, for example, the U.N. Special Rapporteur on extrajudicial, summary, or arbitrary executions, Philip Alston, issued a report[6] that outlined why the U.S. drone program violates applicable international humanitarian and human rights laws.[7] Moreover, in 2012, Stanford Law School’s International Human Rights and Conflict Resolution Clinic, in partnership with NYU Law’s Global Justice Clinic, co-authored a report[8] that documented the devastation and the profound human costs that the U.S. drone program has exacted on civilians living in Pakistan. Among the report’s findings were: evidence that U.S. drone strikes have killed and injured substantial numbers of civilians[9]; U.S. drone policies have inflicted profound physical and psychological harm on civilians[10]; the percentage of high-level targets killed by drone strikes are estimated at just 2% of those killed by drone strikes overall[11]; and, finally, the report found that “current US targeted killings and drone strike practices undermine respect for the rule of law and international legal protections and may set dangerous precedents.”[12]

In addition to publicly defending the U.S. drone program's legality, and thereby facilitating what Professor Alston has called<sup>[13]</sup> "a burgeoning program of international killing" that does not comply with international law, Mr. Koh also directly facilitated the extrajudicial, unconstitutional killing<sup>[14]</sup> of Anwar al-Aulaqi, an American citizen killed by a drone strike in Yemen in 2011.

Investigative reporter Jeremy Scahill documents Mr. Koh's particular role in Mr. al-Aulaqi's assassination in his book, *Dirty Wars: The World is a Battlefield*. He reports that as legal adviser, "Harold Koh, wanted to lay out the case publicly before Aulaqi was killed," in an effort to preempt critiques of the administration's decision to target and kill a U.S. citizen in secret and without a trial.<sup>[15]</sup> According to Mr. Scahill:

"In advance of his public speech, the CIA and military gave Koh access to their intel on Aulaqi. Koh settled in for a long day of reading in the Secured Classified Intelligence Facility. According to [Daniel] Klaidman, whose book [Kill or Capture] was based almost entirely on leaks from administration officials, Koh 'had set his own legal standard to justify the targeted killing of a US citizen: evil, with iron-clad intelligence to prove it.'"<sup>[16]</sup>

Mr. Koh's "stamp of approval" for Mr. al-Aulaqi's killing was particularly useful to the Obama Administration, Mr. Scahill reports, because his prior reputation as "a liberal, pro-human rights, pro-civil liberties lawyer" was "a strong preemptive strike against the critics."<sup>[17]</sup> In essence, Mr. Koh leveraged his human rights record to strengthen his otherwise specious arguments that the U.S. government was not violating either the human or constitutional rights of one of its own citizens. We find Mr. Koh's conduct in this regard to be unethical and highly unprincipled.

While we believe that NYU Law should remain committed to academic freedom, we take issue not with Mr. Koh's opinions but rather with his actions—that is, his direct facilitation of the U.S. government's extrajudicial imposition of death sentences on U.S. citizens along with civilians of other nationalities. By hiring Mr. Koh to teach International Human Rights Law, NYU Law places its imprimatur not on what Mr. Koh thinks, but rather on what he did.

Given Mr. Koh's role in crafting and defending what objectively amounts to an illegal and inhumane program of extrajudicial assassinations and potential war crimes, we find his presence at NYU Law and, in particular, as a professor of International Human Rights Law, to be unacceptable.

Sincerely,

The Undersigned

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[1] N.Y.U. Law Public Interest Law Center, <http://www.law.nyu.edu/publicinterestlawcenter>

[2] N.Y.U. Law, "Harold Koh will visit NYU Law in 2014-15 academic year," <http://www.law.nyu.edu/news/Harold-Koh-Distinguished-Scholar-in-Residence>

[3] Id.

[4] Lawfare, "The Obama Administration and International Law, Speech by Harold Hongju Koh, Legal Adviser, U.S. Department of State," Mar. 25, 2010,

<http://www.lawfareblog.com/wp-content/uploads/2013/01/Speech-by-Harold-Hongju-Koh-State-Department-Legal-Adviser-at-the-Annual-Meeting-of-the-American-Society-of-International-Law-Mar-25-2010.pdf>

[5] Conor Friedersdorf, Harold Koh's Slippery, Inadequate Criticism of the Drone War, *The Atlantic*, May 9, 2013,

<http://www.theatlantic.com/politics/archive/2013/05/harold-kohs-slippery-inadequate-criticism-of-the-drone-war/275692/>

[6] Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, Human Rights Council, U.N. Doc. A/HRC/14/24/Add. 6 (May 28, 2010), available at

<http://www2.ohchr.org/english/bodies/hrcouncil/docs/14session/A.HRC.14.24.Add6.pdf>

[7] For instance, the Special Rapporteur noted that the United States government's failure to provide transparency and accountability concerning those it targets and kills is a violation of the United States' obligations under international human rights and humanitarian law. Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, ¶ 87, Human Rights Council, U.N. Doc. A/HRC/14/24/Add. 6 (May 28, 2010) ("The refusal by States who conduct targeted killings to provide transparency about their policies violates the international legal framework that limits the unlawful use of lethal force against individuals.").

[8] International Human Rights and Conflict Resolution Clinic at Stanford Law School and Global Justice Clinic at NYU School of Law, *Living Under Drones: Death, Injury, and Trauma to Civilians from US Drone Practices in Pakistan* (2010), available at

<http://www.livingunderdrones.org/wp-content/uploads/2013/10/Stanford-NYU-Living-Under-Drones.pdf>

[9] The report notes that The Bureau of Investigative Journalism (TBIJ) has reported that, "from June 2004 through mid-September 2012, available data indicate that drone strikes killed 2,562-3,325 people in Pakistan, of whom 474-881 were civilians, including 176 children. TBIJ reports that these strikes also injured an additional 1,228-1,362 individuals." *Id.* at vi.

[10] *Id.* at vii.

[11] *Id.*

[12] *Id.* at viii.

[13] Philip Alston, *The CIA and Targeted Killings Beyond Borders*, 2. *Harv. Nat'l Sec. J.* 283 (2011) (abstract available at [http://papers.ssrn.com/sol3/papers.cfm%3Fabstract\\_id=1928963](http://papers.ssrn.com/sol3/papers.cfm%3Fabstract_id=1928963)).

[14] *Al-Aulaqi v. Obama* Complaint for Declaratory and Injunctive Relief (violation of constitutional rights and international law -- targeted killing), available at

[https://www.aclu.org/files/assets/alaulaqi\\_v\\_obama\\_complaint\\_0.pdf](https://www.aclu.org/files/assets/alaulaqi_v_obama_complaint_0.pdf)

[15] Jeremy Scahill, *Dirty Wars: The World is a Battlefield* 371 (2013).

[16] *Id.*

[17] *Id.*