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Esther Kia'aina
Assistant Secretary of Insular Affairs at the Department of Interior
Email: esther_kiaaina@ios.doi.gov

Re: Request for Evidential Basis that Hawai'i's Sovereignty was Extinguished

Dear Madame Assistant Secretary:

On August 2, 2014, you were one of four individuals honored by the Prince Kuhio Hawaiian Civic Club at the Waikiki Beach Marriott Hotel. The event was well organized and attended. You also sat on the Department of Interior (DOI) panel that recently held fifteen community meetings throughout the Islands on a proposed rule making that would provide federal recognition to Native Hawaiians as a domestic tribe.

I was present at the function and during your acceptance speech you provided commentary on the recent DOI hearings. You stated that the people who said "no" to the proposed rule making were very disrespectful to the process and you then followed with disparaging remarks. I heard you also state that Hawai'i's sovereignty was lost in 1893 and that as a self-declared pragmatist you would seek federal recognition. What I found troubling, was your cavalier attitude of unbridled bias when you're supposed to be a federal government official that should at least appear neutral. This was reminiscent of statements you made last year on PBS Hawai'i television show "[Insights: Native Hawaiian Sovereignty](#)," when you served as a State of Hawai'i government official. You stated,

"I would advocate that rather than using a legal basis for the pursuit of justice, that we take the other route which would be based on policy reasons, and the reasons for that is I believe it's a very complicated question with regard to claims arising out of the overthrow. I acknowledge illegality, but the remedy must be done within the confines of modern domestic and international law. And as far as I'm concerned, unless the Admissions Act and the Annexation Act has been repealed, or ruled invalid in a U.S. court of law, its hard for me to be in pursuit of an alternative form other than subtle recognition."

As a political scientist, I understand the mechanics of government, especially, in this case, the executive branch. When you made those statements in 2013, you did so as Deputy Director of the State of Hawai'i Department of Land and Natural Resources, and when you made those recent statements at the Waikiki Marriott Hotel, you did so as an official of the DOI. Since you were not a politician running for office, I could take your statement in Waikiki to be considered current policy and a position statement by the Federal

government's executive branch regarding the sovereignty of Hawai'i. As a political appointee, you are supposed to work with the Secretary of the Interior to implement policies approved by the President as the chief executive. It is in your capacity as a government official that I write this letter.

Since the Hawaiian Kingdom was an independent and sovereign State in the nineteenth century, international law provides for the *presumption* of its continued existence unless the United States can provide rebuttable evidence under international law that Hawai'i's sovereignty was extinguished. The sources of international law are treaties or agreements "between" the United States and Hawai'i, and not the domestic laws that are limited "within" the territory of the United States. The difference between an *assumption* and a *presumption* is that the former is a conclusion without facts, and the latter is a conclusion based on facts. A *presumption*, however, is only rebuttable with "legally relevant facts" that would terminate the continuity of the Hawaiian Kingdom under international law.

In 1988, a [legal opinion](#) (12 Op. Off. Legal Counsel 238), from the Department of Justice's Office of Legal Counsel (OLC) could not explain how a joint resolution of Congress could have annexed the Hawaiian Islands in 1898, because Congressional laws have no force and effect beyond the borders of the United States. The OLC cited Congressman Thomas Ball (D-Texas) who characterized the annexation of Hawai'i by joint resolution as "a deliberate attempt to do unlawfully that which can not be lawfully done." In the Senate, Augustus Bacon (D-Georgia) stated, "the annexation of foreign territory was necessarily and essentially the subject-matter of a treaty, and that it could not be accomplished legally and constitutionally by a statute or joint resolution." In [The Apollon](#) 22 U.S. 362, 370 (1824), the U.S. Supreme Court also concluded, "The laws of no nation can justly extend beyond its own territories. ...They can have no force to control the sovereignty...of any other nation." This prompted the OLC to conclude, "it is therefore unclear which constitutional power Congress exercised when it acquired Hawaii by joint resolution. Accordingly, it is doubtful that the acquisition of Hawaii can serve as an appropriate precedent for a congressional assertion of sovereignty over an extended territorial sea."

The 1988 OLC opinion clearly undermines the United States' claim of sovereignty over Hawai'i. What followed the joint resolution were other Congressional Acts establishing the Territory of Hawai'i in 1900 and the State of Hawai'i in 1959. Because the OLC were unclear regarding the joint resolution, it would be equally unclear as to how the Congress created the Territorial and State of Hawai'i governments in a foreign country. Without a treaty, sovereignty remains with the Hawaiian Kingdom and not the United States, which is why Hawai'i has been under an illegal and prolonged occupation since the Spanish-American War in 1898.

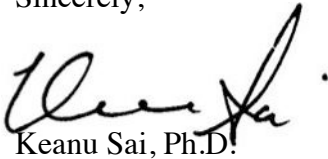
There clearly appears to be a conflict between the current policy of the Obama administration and the law regarding Hawai'i's sovereignty from the 1988 OLC opinion. Since the Obama administration is a government of [transparency and openness](#), I am respectfully calling upon you, as Assistant Secretary of Insular Affairs, to immediately submit a formal request to have the OLC provide an exhaustive legal analysis within the

framework of international law that shows the Hawaiian Kingdom was extinguished. To not do so is to admit to the United States' illegal occupation of Hawai'i. Until then, please refrain from reciting Congressional Acts as if it extinguished the Hawaiian Kingdom.

I also request that you provide to the OLC copies of my [doctoral dissertation](#), [brief](#), and [law article](#) that addresses the continuity of the Hawaiian Kingdom, and the OLC 1988 opinion.

I look forward to your prompt response.

Sincerely,



Keanu Sai, Ph.D.

Hotlinks to documents embedded in letter

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