

President Barack Obama  
White House  
1600 Pennsylvania Ave.  
Washington, DC 20508  
USA

Dear President Obama:

On your upcoming trip to Latin America, we ask that you state your support for renegotiation of the Central America Free Trade Agreement (CAFTA) and for El Salvador's request to have dismissed a pending CAFTA investor-state arbitration suit challenging El Salvador's environmental and safety policies relating to metals mining concessions.

*Pacific Rim Mining Corp. and Commerce Group Corp. CAFTA cases*

As the unfortunate record of mining in Guatemala and Honduras has demonstrated, certain forms of metals mining can irreparably pollute fresh drinking water, contaminate water used for crop irrigation, and pose grave threats to fishing livelihoods, thus permanently endangering the health and well-being of generations. El Salvador, the smallest and most densely populated country in Central America, already grapples with severe shortages of clean water, as 90 percent of its surface water is contaminated.

The environmental damage caused by mining in neighboring countries largely motivated El Salvador to reform its mining laws. The failure of two companies, Pacific Rim Mining Corp. and Commerce Group Corp., to fulfill the requirements of El Salvador's mining law is at the crux of two recent CAFTA investor-state attacks. According to legal filings, Pacific Rim Mining Corp. failed to submit an adequate environmental feasibility study and thus did not obtain the environmental permit required to qualify for an exploitation concession. With respect to Commerce Group Corp., the firm's environmental permit was revoked in 2006 for failure to comply with clean-up and other obligations of the permit, according to Salvadoran court documents. While the Commerce Group Corp. claim was recently dismissed on a technicality – the company's failure to withdraw a concurrent claim from the Salvadoran judicial system – the preliminary stage of the case alone has cost El Salvador over \$800,000 in legal fees.

Rather than supporting El Salvador's commitment to protecting its citizens and environment, the United States, through its current trade policy, is allowing companies to punish the people of El Salvador for pursuing those objectives. In addition to what El Salvador has already spent defending its policies against the Commerce Group Corp. claim, Pacific Rim Mining Corp. is demanding over \$100 million dollars in compensation from the Salvadoran state – on top of legal fees the government will incur during the process. This is equivalent to approximately .46 percent of the nation's Gross Domestic Product (GDP). The U.S. equivalent, relative to GDP, is over \$67 billion. The Salvadoran government could better spend the millions of dollars at stake by investing in the infrastructure and other development programs needed to promote economic growth and improve fundamental health and education.

It is especially egregious that Pacific Rim Mining Corp. is not even based in a CAFTA-signatory country, but rather in Canada. That the firm was able to file a CAFTA investor-state arbitration case against El Salvador simply by transferring a subsidiary (Pac Rim Cayman LLC) from the Cayman Islands to Nevada sets a dangerous precedent for the environment, public health, and labor rights in all CAFTA signatory countries.

## *CAFTA undermines democracy*

The environmental regulations at stake in El Salvador are precisely the type of policies that, as a Presidential candidate, you pledged to protect in trade agreements. While campaigning, you stated, “With regards to provisions in several FTAs that give foreign investors the right to sue governments directly in foreign tribunals, I will ensure that foreign investor rights are strictly limited and will fully exempt any law or regulation written to protect public safety or promote the public interest.”<sup>1</sup>

When trade pacts grant expansive corporate rights that impede governments’ abilities to respond to the call of their people for positive environmental and economic policy, they threaten the very principle and practice of democracy and human rights. El Salvador is currently considering whether to protect its natural resources by enacting a national ban on metals mining, similar to the ban recently passed by Costa Rica. The people of El Salvador must be guaranteed the right to determine their country’s environmental policy through the democratic process without threat of retaliation by foreign investors.

Violence against anti-mining activists has been on the rise, with three community leaders who opposed mining assassinated in 2009. While some of the perpetrators of these crimes have been prosecuted, the intellectual authors and financiers of these crimes have not yet been identified. Death threats and kidnapping attempts against environmental defenders, journalists and religious leaders in El Salvador who oppose mining continue today.

*The Administration should submit an Article 10.22 submission in the Pacific Rim Mining Corp. case*

On March 2<sup>nd</sup> 2011, the communities and member organizations of the *Mesa Nacional frente a la Minería Metálica* (National Roundtable against Metals Mining), who have been organizing to defend their land and water from the threat of metals mining, presented an *amicus curiae* brief to the International Centre for Settlement of Investment Disputes tribunal hearing the Pacific Rim Mining Corp. case. As these civil society organizations explained in their brief: “at the heart of this arbitration: the attempt by Pac Rim Cayman to extract compensation as a result of its dissatisfaction with the government’s legitimate exercise on political democracy.”

We believe that the tribunal should take their amicus brief into account, and call on your Administration to similarly weigh in. The State Department’s Office of Legal Affairs has the legal right under CAFTA Chapter 10 to formally intervene and submit a brief in the case as well. We strongly encourage the Administration to file a brief in support of your stated campaign position that the investor rights in trade pacts must not be allowed to undermine public safety and the public interest.

## *Conclusion*

Mr. President, during your upcoming trip, you have an important opportunity to make good on your campaign commitments by offering concrete support to the people of El Salvador in the continued exercise of their sovereign right to develop economic, environmental and social policy that promotes sustainable development. We call on you to:

- 1) Publicly state your support for dismissal of the case brought by Pacific Rim Mining Corp. challenging El Salvador’s environmental and safety policies relating to metals mining.

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<sup>1</sup> Response to a Pennsylvania Fair Trade Coalition questionnaire, April 2, 2008

- 2) Publicly state your support for the efforts of President Funes and the National Civilian Police to fully investigate the 2009 murders of community activists Marcelo Rivera, Ramiro Rivera, and Dora Sorto, including the extent to which individuals linked to Pacific Rim Mining Corp. were involved; to bring the intellectual authors to justice; and to end the on-going human rights violations against journalists, community organizers and religious leaders in relation to the mining debate in El Salvador.
- 3) Publicly state your support for revisions to the existing CAFTA text so as to eliminate the investor-state enforcement mechanism that provides rights for foreign investors to sue sovereign governments and replace the investor-state system with a democratic, transparent, state-state enforcement mechanism that will protect environmental and human rights, rather than endanger them.
- 4) Prevent repeating mistakes by eliminating the investor-state private enforcement mechanism in pending free trade agreements with Korea, Panama and Colombia and replace it with a more democratic government- government mechanism, and commit to ensuring that any trade pact that results from Trans-Pacific Partnership Free Trade Agreement negotiations underway similarly does not include investor-state enforcement. The Korea FTA alone would empower over 2,000 cross-registered U.S. and Korean corporate affiliates to challenge U.S. and Korean state and federal environmental policies.

We urge you to act quickly and concretely to support El Salvador's position with regard to the current CAFTA arbitration and to address the underlying policy issues in CAFTA that threaten the exercise of democracy in our hemisphere.

#### **National**

Alliance for Democracy  
 Alliance for Global Justice  
 Bagong Alyansang Makabayan, BAYAN-USA  
 Campaign for Labor Rights  
 Center for Democracy in the Americas  
 Code Pink  
 Columban Center for Advocacy and Outreach  
 Committee in Solidarity with the People of El Salvador  
 Conference of Major Superiors of Men  
 Doctors for Global Health  
 Earthjustice  
 Earthworks  
 Food and Water Watch  
 Friends of the Earth  
 Global Exchange  
 Guatemala Human Rights Campaign  
 Holy Cross International Justice Office  
 Institute for Policy Studies, Global Economy Project  
 International Action Center, IAC  
 Labor/Community Strategy Center  
 Leadership Conference of Women Religious  
 Maryknoll Office for Global Concerns  
 Media Alliance  
 Missionary Oblates – USA

National Alliance of Latin American and Caribbean Communities  
 National Lawyers Guild Task Force on the Americas  
 NETWORK: A National Catholic Social Justice Lobby  
 Network in Solidarity with the People of Guatemala  
 Nicaragua Network  
 Public Citizen, Global Trade Watch  
 Rights Action  
 Salvadoran-American National Association  
 Salvadoran-American National Network  
 School of the Americas Watch  
 SHARE Foundation  
 Sierra Club  
 Sister Parish Inc./Iglesias Hermanas  
 Sisters of Mercy of the Americas, Institute Justice Team  
 STITCH  
 Unión del Barrio  
 Unitarian Universalist Association of Congregations  
 Unitarian Universalist Ministry for Earth  
 Unitarian Universalist United Nations Office  
 United Church of Christ, Justice and Witness Ministries  
 U.S. Labor Education in the Americas Project  
 U.S.-El Salvador Sister Cities  
 Witness for Peace

#### **Local**

ANSWER Coalition (Los Angeles, CA)  
 Arlington-Teosinte Sister Cities (MA)  
 Asociación de Programadores de Español de KPFK

Focus on the Food Chain (NY)  
 Friends of Chilama (Crystal Lake, IL)  
 Guatemala Education Action Project (Los Angeles, CA)  
 Hands Across Borders (Erie, PA)

(Los Angeles, CA)  
 Association of Raza Educators, ARE (Los Angeles, CA)  
 Austin-Guajoyo Sister City Project (TX)  
 Bangor-Carasque Sister City Project (ME)  
 Bend-Condega Friendship Project (OR)  
 Binghamton-El Charcón Sister City Project (NY)  
 Brandworkers International (NY)  
 Brooklyn for Peace – Latin America Committee (NY)  
 California Fair Trade Campaign  
 Cambridge-El Salvador Sister City Project (MA)  
 Caribbean and Latin America Support Project  
 (New Paltz, NY)  
 Center for Alternative Mining Development Policy  
 (LaCrosse, WI)  
 Chicago-Cinquera Sister City Project (IL)  
 Chicano/Latino Artists for Social Equality (Los Angeles)  
 Citizens for Sanity.com (Pasco County, FL)  
 Coalition for Peace and Democracy in Honduras  
 (Los Angeles, CA)  
 Community Alliance for Global Justice (Seattle, WA)  
 Community Organizing Center: Latin American Action  
 Group (Columbus, OH)  
 CounterCorp (San Francisco, CA)  
 FMLN Committee “Combatiente Anónimo”  
 (Minneapolis, MN)  
 FOCUS Central America (Wichita, KS)

### **International**

Atlantic Regional Solidarity Network (Canada)  
 Barrio Nuevo (Toronto, Ontario, Canada)  
 Canadians Against Mining in El Salvador  
 (Toronto, Ontario, Canada)  
 Cebes Mártires de El Salvador (Canada)  
 Centro de Intercambio y Solidaridad, CIS (El Salvador)  
 Centro para la Promoción para los Derechos Humanos  
 "Madeleine Lagadec" (El Salvador)  
 Comité Ambiental de Cabañas, CAC (El Salvador)  
 Committee to Support Social Development in  
 El Salvador (Vancouver, British Columbia, Canada)  
 Consejo de Investigaciones en Desarrollo (Guatemala)  
 Coordinación Ecueménica de la Iglesia de las y los Pobres  
 en El Salvador, CEIPES (El Salvador)  
 Democracy Center (Bolivia)  
 Ditsö (Costa Rica)  
 Foundation Mgr Oscar Romero (Canada)  
 Fundación de Estudios para la Aplicación del Derecho,  
 FESPAD (El Salvador)  
 Fundación REDES (El Salvador)  
 La Asociación para el Desarrollo de Chalatenango, CCR  
 (El Salvador)  
 La Asociación para el Desarrollo de El Salvador, CRIPDES  
 (El Salvador)

Jamie Moffett Media Design & Production, Inc.  
 (Philadelphia, PA)  
 Latin America Solidarity Committee (Milwaukee, WI)  
 Lawrence-El Papaturo Friendship Committee (KS)  
 Madison-Arcatao Sister City Project (WI)  
 Maine Fair Trade Campaign  
 Maine Organic Farmers & Growers Association –  
 El Salvador Committee, MOFGA-ESSC  
 Massachusetts Jobs with Justice  
 Milwaukee Clean Clothes Coalition (WI)  
 Marin Interfaith Task Force on the Americas (CA)  
 Milwaukee Fair Trade Campaign (WI)  
 Mount Mary College (Milwaukee, WI)  
 Movimiento de Acción Inspirando Servicio, MAIZ  
 (San Jose, CA)  
 Southwest Workers Union/Union de Trabajador@s  
 del Suroeste (San Antonio, TX)  
 St. Louis Inter-Faith Committee on Latin America (MO)  
 St. Sebastian Catholic Church (Milwaukee, WI)  
 The Community Church of Boston (MA)  
 United Steelworkers Local 1188  
 Washington Ethical Society, Global Connections  
 Committee (Washington, DC)  
 Watertown- El Salvador Sister City Committee (MA)  
 William C. Velasquez Institute, WCVI (Los Angeles, CA)  
 Wisconsin Network for Peace and Justice (Madison, WI)  
 Wisconsin Resources Protection Council (Tomahawk, WI)

Latin American Law Students Association in the Faculty  
 of Law, University of Ottawa (Canada)  
 Latin American-Canadian Solidarity Association  
 (London, Ontario, Canada)  
 McGill Research Group Investigating Canadian Mining  
 in Latin America (Montreal, Quebec, Canada)  
 Mining Injustice Solidarity Network (Toronto, Ontario)  
 Mining Justice Minière (Ottawa, Ontario, Canada)  
 Mining Watch Canada (Ottawa, Ontario, Canada)  
 Mirna Perla, Magistrada de la Corte Suprema de Justicia  
 (El Salvador)  
 Movimiento Unificado Francisco Sanchez-1932  
 (El Salvador)  
 Mujeres para el Diálogo (Mexico)  
 Ontario Public Interest Research Group, OPIRG  
 (Ottawa, Ontario, Canada)  
 Patria Exacta (El Salvador)  
 Radio Victoria (El Salvador)  
 RED de Mujeres Transformando la Economía Integrada  
 Latinoamericana, REMTE LA  
 Red Nacional Género y Economía (Mexico)  
 Salvadorian Canadian Association of Ottawa and  
 National Capital Region (Ottawa, Ontario, Canada)  
 Siembra, A.C. (Mexico)  
 Unidad Ecológica Salvadoreña (El Salvador)