

Dear President Obama:

On the eve of your upcoming trip to Latin America, we write to raise an urgent concern for the people of El Salvador and the United States. El Salvador is currently facing two investor-state arbitration suits filed under the provisions of the Dominican Republic-Central America-United States Free Trade Agreement (DR-CAFTA) for its decision not to grant permits for metallic mining. The United States should applaud El Salvador's commitment to promoting the health and wellbeing of its citizens and the protection of the environment. Instead, our current trade policy—specifically, the investor-state provisions of DR-CAFTA—enables North American mining companies to sue the Salvadoran government for upholding its legitimate right to protect its air, water, and soil.

We view it as especially egregious that one of the companies seeking compensation from El Salvador, the Pacific Rim Mining Corp., is not even based in a DR-CAFTA-signatory country, but rather in Canada. That Pacific Rim was able to file a DR-CAFTA investor-state arbitration case against El Salvador simply by transferring a subsidiary to Nevada sets a dangerous precedent for the environment, public health, and labor rights in all DR-CAFTA signatory countries.

Indeed, we are concerned that the sweeping investor rights provisions in DR-CAFTA's Chapter 10, which are based on the North American Free Trade Agreement's (NAFTA) controversial Chapter 11, have similarly opened the door for foreign companies to challenge our own federal, state, and local laws and regulations by setting up subsidiaries in Central America and filing investor-state disputes against the U.S. government.

We also wish to express our concern for on-going human rights violations in the region where Pacific Rim mining had proposed to operate. The pending DR-CAFTA arbitration case has provided a pretext for the company's continued presence in the Cabañas region, where a well-documented wave of violence, death threats and kidnappings is occurring, including three assassinations of community leaders who opposed metallic mining.

The investor rights provisions that allow for such lawsuits are among the reasons why there was such strong opposition to DR-CAFTA in 2005, and why so many of us continue to call for a new, fair model of U.S. trade policy. We fully support your 2008 statement on investor rights provisions and ask that these sentiments guide future trade agreements: "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." We agree that failure to curtail the sweeping foreign investor protections chapters in our current and future trade policies will keep the door open for future investor-state lawsuits and continue to limit countries' ability to meet the needs of their citizens.

Mr. President, during your upcoming trip to El Salvador, you have an important opportunity to offer concrete support to President Funes and to the people of El Salvador. We call on you to:

- 1) Instruct the U.S. State Department to take all appropriate action to support the government of El Salvador in the case brought against it by Pac Rim Cayman, LLC, under Chapter 10 of the Central American Free Trade Agreement (CAFTA).
- 2) Publically condemn the human rights violations linked to community disputes around the mining activities and support the efforts of President Funes and the National Civilian Police to fully investigate

the 2009 murders of Marcelo Rivera, and Ramiro Rivera, and Dora Sorto, and to end the violence, death threats and kidnappings against journalists, community organizers and religious leaders that continue today in Cabañas, El Salvador.

3) Eliminate rights for foreign investors to sue sovereign governments via CAFTA and replace the investor-state provisions with democratic, transparent and strictly-limited mechanisms that will protect environmental and human rights.

4) Commit to replacing private dispute resolution mechanisms in the pending free trade agreements with Korea, Panama and Colombia, as well as in the Trans-Pacific Partnership, which is currently under negotiation, with a more democratic mechanism. One blueprint for fair investment rules worth exploring is proposed in the TRADE Act (H.R. 3012 in the 111<sup>th</sup> Congress).

We hope that you will take advantage of your upcoming visit to El Salvador to offer concrete support for El Salvador's legitimate right to develop domestic policy that will protect environmental and human rights. We look forward to working with you and thank you for considering our views on this issue.

Sincerely,

Cc: Secretary of State Hillary Clinton  
Ambassador Ron Kirk, Office of the United States Trade Representative