

UCLA

Chicanx-Latinx Law Review

Title

"El Oro No Se Toma, El Agua, Si:" Environmental Defense and the Task of Transnational Solidarity Among the Salvadoran Diaspora

Permalink

<https://escholarship.org/uc/item/5q43k0hp>

Journal

Chicanx-Latinx Law Review, 41(1)

ISSN

1061-8899

Authors

Borja, Yvette
Cuéllar, Jorge E.

Publication Date

2025-12-10

DOI

10.5070/C7.63895

Peer reviewed

“EL ORO NO SE TOMA, EL AGUA, SÍ”

Environmental Defense and the Task of Transnational Solidarity Among the Salvadoran Diaspora

YVETTE BORJA, UCLA SCHOOL OF LAW
JORGE E. CUÉLLAR, DARTMOUTH COLLEGE

Nayib Bukele, the self-proclaimed “coolest dictator in the world” took to the X platform on November 27, 2024, to tweet an ominous promise to overturn El Salvador’s historic 2017 metals mining ban, claiming, “God has placed an enormous treasure beneath our feet.”¹ The day before Noche Buena, his legislature did just that, backtracking on years of environmental activism that made the country the first in the world to pass a blanket ban on metals mining.² Much like the rest of Bukele’s policies that have since impacted the economy and state institutions, the reality is far more complex than his evangelizing lets on.³

Despite Bukele’s claims of dense gold deposits, El Salvador’s gold is incredibly fine and would require immense amounts of water and energy

¹ Mat Youkee, *Nayib Bukele Calls Himself the ‘World’s Coolest Dictator’ – but is he Joking?*, GUARDIAN (Sept. 26, 2021, 5:00 AM), <https://www.theguardian.com/world/2021/sep/26/nayib-bukele-el-salvador-president-coolest-dictator> [<https://perma.cc/9STR-7XXS>]; Nayib Bukele (@nayibbukele), X, (Nov. 27, 2024, 1:17 PM), <https://x.com/nayibbukele/status/1861882140453171700> [<https://perma.cc/96YR-NJZB>] (translated from Spanish).

² Michael Dougherty, *El Salvador Makes History*, NACLA (Apr. 12, 2017), <https://nacla.org/news/2017/04/19/el-salvador-makes-history> [<https://perma.cc/5S6R-TJWZ>]; Jessica Corbett, ‘A Death Sentence’: Legislature Overturns El Salvador’s Metal Mining Ban, COMMON DREAMS (Dec. 23, 2024), <https://www.commondreams.org/news/el-salvador-mining-ban> [<https://perma.cc/F6SS-532U>].

³ See e.g. *El Salvador’s Wild Crypto Experiment Ends in Failure*, ECONOMIST (Mar. 2, 2025), <https://www.economist.com/finance-and-economics/2025/03/02/el-salvadors-wild-crypto-experiment-ends-in-failure> (noting that “crypto has brought El Salvador more costs than benefits.”); Camilo Freedman, ‘They Turned Our Home Into A Cemetery’: The High Price of El Salvador’s Bitcoin City Dream, GUARDIAN (Mar. 12, 2025), <https://www.theguardian.com/global-development/2025/mar/12/el-salvador-bitcoin-city-mangroves-president-nayib-bukele> (discussing that “the rising costs of land near the airport has made it almost impossible for small businesses and vendors to establish themselves in the new economy”); David Gerard, Bitcoin Failed in El Salvador The President Says the Answer is More Bitcoin, FOREIGN POLICY (Dec. 6, 2021), <https://foreignpolicy.com/2021/12/06/bitcoin-city-el-salvador-nayib-bukele/>.

to separate it from the rocks in which it is embedded.⁴ Allowing mining to occur would irreparably contaminate and pollute the country's sole freshwater source, the Lempa River.⁵ This would offer little benefit to most Salvadorans, given that most mined gold ends up in central bank reserves, in electronics manufacturing, or in costly jewelry.⁶ This might explain why a poll commissioned by the University of Central America revealed that four out of five Salvadorans living in areas previously affected by mining oppose allowing the mining of gold in the country.⁷

The unpopularity of gold mining amongst the Salvadoran citizenry has not dissuaded Bukele, who has long set his sights on letting mining companies run rampant.⁸ For over two years, his Attorney General, tasked with investigating war crimes has—rather than prosecute the military's multiple civil war-era massacres that claimed thousands of lives,⁹ or focus on providing fair proceedings for the nearly 80,000 individuals arbitrarily detained in his “state of exception,”—instead devoted resources to wrongfully target five environmental defenders for the alleged disappearance of one woman in the 1980s.¹⁰ The five men, Teodoro Antonio Pacheco, Saúl Agustín Rivas Ortega, Miguel Ángel Gámez, Alejandro Láinez García, and Pedro Antonio Rivas Láinez, known as the #SantaMarta5, are longtime community activists, local leaders, and members of the Social Development Association known as ADES, an organization dedicated to the social and economic empowerment of the rural community of Santa Marta.¹¹ In a previous lifetime,

⁴ Robin Broad, John Cavanagh, Jan Morrill & Manuel Pérez-Rocha, *Water Over Gold: 15 Reasons Why El Salvador Should Again Reject Gold Mining*, EL FARO (Dec. 23, 2024), <https://elfaro.net/en/202412/opinion/27691/water-over-gold-15-reasons-why-el-salvador-should-again-reject-gold-mining> [https://perma.cc/C2Z9-8CYT].

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ José Simeón Cañas, *La Población Salvadoreña Opina Sobre la Minería Metálica*, INSTITUTO UNIVERSITARIO DE OPINIÓN PÚBLICA (Dec. 23, 2024); Danielle Mackey, *The True Cost of El Salvador's New Gold Rush*, *The Guardian* (Apr. 4, 2024) (discussing signs of Bukele's interest in mining including that “in 2021, the administration created a special public entity to oversee extractive operations, and joined an international forum that advises countries on mining.”).

⁹ *El Salvador*, CTR. FOR JUST. & ACCOUNTABILITY, <https://cja.org/where-we-work/el-salvador/> [https://perma.cc/25F8-KZZW].

¹⁰ Jorge E. Cuéllar, *Beyond the Iron Fist: Mining the New El Salvador*, *REVISTA: HARV. REV. OF LAT. AM.* (Feb. 19, 2025) <https://revista.drclas.harvard.edu/beyond-the-iron-fist-mining-the-new-el-salvador/> [https://perma.cc/33CR-QVXN].

¹¹ The ADES official site describes them as a “social organization...foster[ing] community

they were combatants for the Farabundo Martí National Liberation Front (FMLN), the leftist guerilla force that fought the U.S.-backed authoritarian government as part of the Salvadoran internal armed conflict from 1980 to 1992.¹² Much more recently, they were instrumental in the passage of the 2017 metals mining ban and continue to play critical leadership roles in Santa Marta, across the country, and are recognized internationally.¹³

The Bukele administration disrupted the lives of the Santa Marta 5 and their families when, without warning, in January of 2023, it arrested Pacheco, Ortega, Gámez, García, and Laínez, and charged them with a murder dating back to the country's civil war in the 1980s. The government held them incommunicado for over 8 months. Finally, in September of 2023, the Court of Sensuntepeque ordered that the 5 be placed on house arrest in anticipation of their trial the following year.¹⁴ In October of 2024, as part of an international observation delegation of academics from the U.S., Mexico, and Canada, we witnessed the trial of the Santa Marta 5 and saw firsthand how the Bukele administration is utilizing the courts to discredit and intimidate historic social justice movements and fragment communities who stand in resistance to life-threatening extractive operations. We observed the 5, always held in chains in the back corner of the tiny, crowded courtroom patiently sit through a multi-day trial with only circumstantial evidence presented by prosecutors with quiet strength.

But stronger still was the commitment of the Santa Marta 5's supporters, the majority of whom were their neighbors and environmental justice colleagues, who attended every day of trial for hours at a time in the hot sun. Their chants of "compañeros aquí estamos; sin ustedes no nos vamos" could be heard within the courtroom and had to have strengthened the resolve of the accused. Alternating between observing the trial and spending time outside with supporters of the Santa Marta 5,

development and the reclaiming of human rights in Cabañas, El Salvador." *About Us*, ADES SANTA MARTA, <https://www.adessantamarta.sv/en-us/> [<https://perma.cc/UU9C-2M96>].

¹² ELISABETH WOOD, *INSURGENT COLLECTIVE ACTION AND CIVIL WAR IN EL SALVADOR* (2003); see also MARK DANNER, *THE MASSACRE AT EL MOZOTE* (1994).

¹³ ROBIN BROAD AND JOHN CAVANAGH, *THE WATER DEFENDERS: HOW ORDINARY PEOPLE SAVED A COUNTRY FROM CORPORATE GREED* (2021).

¹⁴ *International Allies against Mining in El Salvador Applauds Judicial Ruling That Finds All Five Water Defenders Innocent of All Charges* (Sep. 24, 2025) <https://ips-dc.org/international-allies-against-mining-in-el-salvador-applauds-judicial-ruling-that-finds-all-five-water-defenders-innocent-of-all-charges/> [<https://perma.cc/3XEB-HANK>].

we saw how people gathered to sing, dance, meditate, sew, and be in community together. It was a showcase of the durable social bonds within a wider Cabañas political resistance that, despite corporate aggression, remains firm in its rejection of the disastrous coupling of mining and state violence. Amidst yellow handkerchiefs with solidarity text “Libertad Para Los Líderes Comunitarios” and “#SantaMartaNoEstaSola” and the image of the 5 who have become iconic of this struggle, we observed care and solidarity in action. We witnessed a re-ordering of social life where the usual constraints of capitalism were suspended and people fed one another, checked in on each other, and eldercare and childcare existed in abundance. This kind of mutual support was an expression of the long history of resistance that continues to prove threatening to the reactivation of mining, where community cohesion stands as a roadblock to the extractive bonanza pursued by the Bukele administration.

We met many Santa Marta community members and others from neighboring hamlets, who shared that, in their view, an attack against anyone from their zone is an act of aggression against all. In a clear act of participatory defense, people showed up for the accused, who have, for generations, stood in defense of life and in support of collective well-being.¹⁵ This show of community love was impressive, a series of perceptibly warm and joyful actions put together by a tight-knit community, whose intergenerational links were forged through grassroots organization and the shared experience of displacement and repopulation through which Santa Marta was founded. For the Santa Marta community and other supporters of the accused, the proceedings taking place some meters from their gathering was understood to be a witch hunt against ADES leaders and the Santa Marta resistance itself that represented one of the strongest oppositional fronts against metallic mining and who were instrumental in the massive, globally resonant victory against OceanaGold in 2017.

Transitioning from the joyous *communitas* outside of the courtroom to the dreary banality of the legal violence of the proceedings against the Santa Marta 5 felt like a regression. Life sentences were on the table for

¹⁵ Participatory defense is a grassroots response that infuses community organizing into legal defense and rebalances the status quo of race and class power disparities that benefit the carceral state. See, e.g., Raj Jayadev & Janet Moore, *Participatory Defense as an Abolitionist Strategy*, in TRANSFORMING CRIMINAL JUSTICE: AN EVIDENCE-BASED AGENDA FOR REFORM 72 (Jon B. Gould & Pamela R. Metzger eds., 2022).

the 5. But the modest, all-beige 24-seat courtroom barely had enough room for a witness stand and two desks for the prosecution and defense. It felt more appropriate for deciding traffic tickets than deciding the fate of these aging revolutionaries turned environmental activists. The decades between the alleged crime, a murder of María Inés Alvarenga, a local Santa Marta woman, and the present day was evident in the worn bodies of the Santa Marta 5, multiple of whom suffer from chronic illnesses like hypertension and diabetes. That gap was present as many witnesses struggled to recall details from so many years ago, during a much different lifetime, a different historical moment. The prosecution relied on the eyewitness testimony of Maria Ines' primary school age children, now adults still living in Santa Marta with children of their own, and a shadowy unnamed and unrevealed protected witness who contradicted themselves. It had all the trappings of a sham trial where facts remained unimportant, and the Attorney General proceeded with mere insinuations of wrongdoing.

The Attorney General's narration of the alleged crime ignored big factual details that were clearly exculpatory and read like an underprepared research paper that got some things about the FMLN right, but many others entirely wrong. According to the Attorney General, the 5 were all part of an FMLN guerilla squad, with a leader that gave orders, including to kidnap and kill. This is what they claimed happened to María Inés, who was targeted by the 5 because the FMLN believed that she was a government informant. The problem is that the Santa Marta 5 were elsewhere during the timeframe that María Inés disappeared. They were in the mountains of Chalatenango, hundreds of kilometers from Santa Marta, training for the FMLN's largest offensive across El Salvador's principal cities that would occur in November 1989. Multiple witnesses who were former FMLN combatants testified to this.

The independence of the judiciary, whether it was operating as an autonomous body that could rule against Bukele's wishes, was also on trial. Bukele secured his unconstitutional second term by ousting top judges and packing the judiciary with loyalists.¹⁶ Many wondered if a fair trial was at all possible for the Santa Marta 5 in this context. For a short time, however, hope was restored in the judiciary's neutrality as they exonerated the Santa Marta 5. The three-person tribunal not only found

¹⁶ Vera Bergengruen, *How Nayib Bukele's 'Iron Fist' Has Transformed El Salvador*, Time, (Aug. 29, 2024 8:00 AM), <https://time.com/7015598/nayib-bukeles-iron-fist-el-salvador/>.

the Santa Marta 5 innocent, but they also ruled that the prosecution had not established the very fact that a crime occurred.

Still, no one walked away satisfied. The innocent verdict did not erase the fact that Antonio, Sául, Miguel, Alejandro, and Pedro had spent months detained incommunicado and then over a year under house arrest, which created much hardship for their families who relied on them as breadwinners. María Inés' children, like so many other family members of the disappeared, are no closer to uncovering what really happened to their mother. For us, it is clear that there remains much work to be done in historical clarification and reconciliation. Yet, this form of judicial irregularity and lawfare does little but retraumatize the accused and the aggrieved by producing new hurt, exposing that the point of these proceedings was not to deliver justice for the María Inés' family, but instead to use their pain to discredit the Santa Marta 5 and the popular movement for environmental justice.¹⁷

This temporary trust in the judiciary eroded when the Attorney General successfully appealed to a criminal court of appeals for a rehearing scheduled in February of 2025. The court permitted the appeal even though no new evidence would be presented and absent any indication that the lower court erred in its judgment. The Attorney General's unwillingness to be deterred by the tribunal's findings reflects, again, the political nature of the prosecution, which regardless of the final verdict, serves to harass, delegitimize, and stigmatize these environmental defenders, and dissuade anyone else from joining the vital struggle against mining.

The Santa Marta 5 exercised their right to not show up to the criminal court of appeals trial under Salvadoran law, which allows for appeals trials to proceed without the presence of defendants. On the morning of the February 2025 trial, an academic from the University of El Salvador read a message that the 5 had penned, letting the public know that they had decided not to attend the trial to prevent "further manipulation of the case" on the part of the government as there was "no guarantee of a fair and lawful trial" and attendance would mean exposing themselves to political decision-making that would put their lives at risk.¹⁸ Instead

¹⁷ See generally Valeria Vegh Weis, *What Does Lawfare Mean in Latin America? A New Framework for Understanding the Criminalization of Progressive Political Leaders*, 25 PUNISHMENT & SOC'Y 909 (2023).

¹⁸ SANTA MARTA 5, AN OPEN LETTER TO ENVIRONMENTAL ORGANIZATIONS, THE SALVADORAN

of allowing the 5 to vindicate their rights, the court of appeals ordered them to show cause for their absence within a week or risk warrants being issued for their re-arrest. Because the 5 did not do so, there are outstanding warrants for their arrest and the court re-scheduled their hearing for April 2025. Their whereabouts are unknown.

Since then, the government has postponed the trial two more times. Most recently, Santa Marta community members have decried one of the assigned judges for the retrial, Hugo Banzer Flores Alas, who was a former National Guard member during the Civil War.¹⁹ The Chapultepec Peace Accords, which ended the civil war, also led to the disbanding of the National Guard, the armed forces that held an eighty-year reign of terror during which it earned a reputation as a systematic violator of human rights.²⁰ The supporters of the Santa Marta 5 note that Alas being allowed to preside over the trial “constitutes a serious ethical violation and a conflict of interest to judge ex-combatants who were his adversaries in the war.”²¹ All of this does little to assuage fears of a captured judiciary.

Still, Bukele enjoys an overwhelming amount of support from the Salvadoran diaspora in the United States and beyond, with many celebrating him as the messiah that saved the country from gang violence.²² However, there are seeds of dissent growing within segments of the U.S.-based Salvadoran diaspora, with people activated around environmental defense issues and excesses of executive power. This reactivation is part of the next generation of international solidarity organizing and transnational activism that organizations like the Committee In Defense of the People of El Salvador (CISPES) began during the 1980s and that

SOCIAL MOVEMENT, CHURCHES, UNIVERSITIES, ACADEMICS, AND SOCIETY IN GENERAL (Feb. 3, 2025) (available at https://cispes.org/sites/default/files/an_open_letter_to_environmental_organizations_the_salvadoran_social_movement_churches_universities_academics_and_society_in_general.pdf).

¹⁹ *Santa Marta 5 Trial Delayed Amidst Judge's Conflict of Interest*, CISPES (Apr. 23, 2025), <https://cispes.org/article/santa-marta-5-trial-delayed-amidst-judge%E2%80%99s-conflict-interest>.

²⁰ *RIC Query- El Salvador* (29 August 2001), USCIS, <https://www.uscis.gov/archive/ric-query-el-salvador-29-august-2001>.

²¹ *Id.*

²² Yolanda Magaña & Megan Janetsky, *Votes by El Salvador's Diaspora Surge, Likely Boosting President Bukele in Elections*, AP (Jan. 9, 2024), <https://apnews.com/article/el-salvador-election-bukele-overseas-voting-54e0898ea2837a309fd2767356ad320a> [https://perma.cc/6U29-36C4].

continues today with the International Allies Against Mining in El Salvador continues today.

Many Salvadoran-Americans support Bukele because he has provided psychological security for those who want to experience the country as a United Statesian tourist. But his latest actions, all summed up as an invitation to mining companies to destroy the Lempa River, should force the diaspora to reconsider what safety and security means to us. There will not be a country to return to if Bukele allows mining companies to pillage and destroy the nation's principal waterway. The fleeting victory of the Santa Marta 5 before the Sensuntepeque court reminds us that anti-mining and other environmental justice fights are protracted struggles fought and won across many years and generations. It is this kind of organizing that led to the world historic mining ban of 2017 that caused many in the environmental justice movement to celebrate and help defend this hard-earned victory.

Thus, solidarity with environmental and water defenders in El Salvador today will require vigilance and commitment, to resist the aggressive push of mining companies who prey on the country's weak governmental institutions to advance projects against community desire and well-being. We implore members of the diaspora and environmental justice allies to continue the transnational solidarity born from El Salvador's popular struggle for self-determination by showing up for the everyday Salvadorans whose lives are under threat and whose futures are being sold to economic elites and the international mining consortium who cares solely about profit to the detriment of environment and people.