February 22, 2022

President Joseph R. Biden, Jr.
The White House
1600 Pennsylvania Avenue
Washington D.C. 20050

Re: Pardon for Human Rights Attorney Steven Donziger

Dear Mr. President:

We represent U.S. human rights lawyer Steven Donziger, and we write to request that you use your presidential authority to pardon Mr. Donziger, who has been targeted, persecuted, arrested, and jailed for his human rights work on behalf of thousands of Indigenous peoples in part of the Amazon. Following his conviction on misdemeanor contempt charges in a non-jury trial prosecuted by a private law firm with deep ties to the oil and gas industry, including prior representation of Chevron, Mr. Donziger has served the longest sentence for any lawyer for any misdemeanor offense in U.S. history – a total of 928 days between federal prison, house arrest and being sent to a half-way house.

As background, Mr. Donziger in 2013 helped Indigenous peoples and rural farmers in the Ecuadorean Amazon win a historic $9.5 billion (U.S.) pollution judgment against Chevron based on incontrovertible evidence the company deliberately dumped billions of gallons of cancer-causing toxic waste onto Indigenous ancestral lands, decimating five Indigenous peoples and causing massive health and economic problems that have haunted thousands of people for decades. Mr. Donziger’s mistreatment and prolonged detention of almost three years in a misdemeanor case rejected for prosecution by the U.S. Attorney for the Southern District of New York has been condemned by the United Nations Working Group on Arbitrary Detention and has become an embarrassment for our country. We urge immediate action to pardon him, sending a signal that human rights lawyers who decide to take on uncomfortable cases against centers of power should not themselves become the target of a defamation and persecution campaign for their effective representation in seeking justice.

Background

The pollution judgment secured by Mr. Donziger and his legal team against Chevron has been affirmed by 28 appellate judges from six appellate courts, including the Supreme Courts of both Ecuador and Canada.1 In response, Chevron’s General Counsel said the company would “fight until hell freezes over and then fight it out on the ice.” In fact, the company has refused to pay the first dollar to the affected communities that it harmed. Instead, Chevron launched a “demonize Donziger” campaign involving the use of 60 law

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firms and 2,000 lawyers. The goal was to target Mr. Donziger as a vehicle to distract attention from the company’s toxic dumping and adverse court judgments, to disable the advocacy of an effective human rights lawyer, and to intimidate other lawyers and activists from challenging the company. Chevron also threatened the Indigenous peoples and farmer communities who won the judgment with a “lifetime of litigation” unless they dropped their claims. As part of its stated strategy, Chevron sued Mr. Donziger personally for $60 billion in New York federal court — the same court the company for years had claimed was an inappropriate forum to hear the underlying pollution claims. To put it another way, Chevron sued Mr. Donziger personally for six times the amount of the judgment secured against Chevron by Mr. Donziger and the Indigenous peoples of Ecuador. Chevron then steered the case to a particular judge (Lewis A. Kaplan) who had direct financial ties to Chevron and a long history of pro-corporate bias, including a years-long representation of the tobacco industry.

Judge Kaplan’s visceral disdain for Mr. Donziger and his bias in favor of Chevron was on plain display throughout the civil litigation. He denied Mr. Donziger a jury, refused to let him testify in his own defense, and refused to consider any of the voluminous environmental evidence of Chevron’s pollution in Ecuador (including 64,000 chemical sampling results) used by the courts there as the evidentiary basis to impose liability. Renowned U.S. trial lawyer John Keker, a Purple Heart recipient who represented Mr. Donziger, characterized the proceedings as “Dickensian farce” designed by Judge Kaplan to inflict maximum suffering on Mr. Donziger as retaliation for his work helping to hold a large oil company accountable to vulnerable communities in a far-off land. In ruling against Mr. Donziger, Judge Kaplan credited the false testimony of a witness paid at least $2 million by Chevron and coached for 53 days by company lawyers before he took the stand. The witness later admitted to having repeatedly lied under oath and he recanted most of his testimony.

With its star witness recanting and its “evidence” collapsing, Chevron persuaded Judge Kaplan to do something that appears unprecedented in U.S. history: order Mr. Donziger to turn over his computer and other electronic devices to Chevron (all of which contained troves of privileged communications) for inspection. This was perhaps the most brazen and comprehensive violation of privilege in the history of civil litigation. When Mr. Donziger appealed the order, citing his ethical obligations to protect attorney-client privilege, Judge Kaplan shockingly charged him with criminal contempt of court while the appeal was pending and appointed the private law firm Seward & Kissel to prosecute after the U.S. Attorney for the Southern District of New York declined to pursue the charges. The selection of Seward & Kissel was not random; the firm had (and has) a flagrant conflict of interest in that it represented Chevron and other oil and gas majors. Judge Kaplan ignored a standard rule of the Southern District of New York requiring the random assignment of criminal cases and instead personally chose his long-time colleague Loretta Preska to preside over the misdemeanor criminal contempt trial. But Preska was also conflicted: she is a major leader of the corporate-funded Federalist Society, of which Chevron is a major donor. None of these conflicts were disclosed by either judge.

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4 See *Chevron Corp. v. Donziger*, Case No. 11-CV-0691 (LAK), Dkt. 1100 at pg. 1.

For Chevron and Judge Kaplan, abusing the law to design and curate a fake criminal case riddled with conflicts of interest and prosecuted by a private firm that represented a litigant—as well as rejected by the U.S. Attorney’s office—produced the desired result. This case is sadly unique in many respects. It is the only time in American history that a lawyer has been charged with criminal contempt of court for refusal to obey a discovery order that was being appealed. It is the only time in American history a lawyer charged with misdemeanor contempt has been subjected to house arrest for even one day prior to trial; Mr. Donziger was held for 813 days. It is the only time in American history where the aggrieved judge brought the charges, picked the prosecutor, picked the judge, and also remained an unrecused judge on the criminal case. The entire case against Mr. Donziger was, and is, a product of flagrant and shocking conflicts of interest that undermine the rule of law. It has become an embarrassment for our country’s judiciary as confirmed by multiple independent jurists as outlined below.

Without the safeguards afforded by random case assignment and public prosecutors, the criminal case against Mr. Donziger quickly devolved into a farce. The private Chevron-linked prosecutor requested Mr. Donziger be held under house arrest pre-trial on the preposterous theory he was a “risk of flight” and would abandon his wife and child to avoid a misdemeanor case to live out the rest of his days as an international fugitive. Due to extensive delays as a consequence of Covid-19, Mr. Donziger spent over two years and two months confined to his small apartment in Manhattan prior to trial. He wore an ankle monitor to guarantee compliance. At trial, he was denied a jury, barred from presenting his core legal defense, and his lawyers were constantly interrupted and harangued. The result was unsurprising: Judge Preska “convicted” Mr. Donziger and sentenced him to the maximum of six months in prison even though he already had served more than four times this sentence in home confinement.6 Denied bail pending appeal, Mr. Donziger reported to FCI Danbury on October 27, 2021. He was furloughed on December 9, 2021 to serve the rest of his sentence at home. His sentence expires on April 25.

**The United Nations Working Group Decision**

Given the deep due process deficiencies in Mr. Donziger’s so-called non-jury trials and his prolonged and unprecedented detention, it is not surprising that the case has attracted international condemnation from respected legal authorities. An enforcement body of the UN Human Rights Council—the world’s highest-level human rights institution of which the United States is a member—closely examined the record of the case. The U.N. Working Group on Arbitrary Detention (“Working Group”) issued a detailed opinion stating that Mr. Donziger’s house arrest violated multiple provisions of international law based on various treaties to which the U.S. is a signatory.7 It indicated it was “appalled” by the violations of Mr. Donziger’s fair trial rights and noted a “staggering” level of judicial bias against Mr. Donziger.8 It also concluded his private corporate prosecution by the Chevron law firm was in retaliation for his legal work in helping the affected communities in Ecuador hold Chevron accountable in a case confirmed by six appellate courts, including the Supreme Courts of Ecuador and Canada.9 The U.N. Working Group

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6 Mr. Donziger was forced into prison before his appeal could be heard by the 2nd Circuit Court of Appeals in New York. Though that appeal is still pending, and use of the pardon power is often reserved until all judicial remedies have been exhausted, it has historically been used to address divisive legal and political situations that implicate the national interest, where, in the President’s view, the courts have been proven incapable, conflicted, or have otherwise rendered a “miscarriage of justice” regardless of procedural posture. Examples include President Carter’s mass pardon of objectors to the Vietnam War draft and President Obama’s commutation of the sentences of more than 1,000 drug offenders on the basis of the view that certain federal drug laws were discriminatory and carried unduly harsh penalties. There is ample precedent for issuing a presidential pardon in Mr. Donziger’s case.

7 See Working Group Opinion No. 24/2021 concerning Steven Donziger (United States of America).

8 Id. at 12.

9 Id. at 13.
concluded that Mr. Donziger was arbitrarily detained in violation of international law and must be released immediately and compensated.\textsuperscript{10} The U.S. government remains silent despite openly demanding compliance with Working Group decisions when those decisions issue against other countries.\textsuperscript{11}

The concerns expressed by the U.N. Working Group in its decision regarding the violations of Mr. Donziger’s legal rights were raised at Mr. Donziger’s sentencing before Judge Preska. Predictably, she disregarded them.\textsuperscript{12} The private prosecutor from the Chevron law firm also ignored them.\textsuperscript{13} As a member of the U.N. Human Rights Council, the United States government has a heightened obligation to enact the Working Group decision and its refusal to do so sends a troubling message to the world community that our country is not in conformity with its human rights obligations or with international law.\textsuperscript{14}

\textit{Independent Trial Monitors — The Rapp Report}

In addition to the United Nations Working Group decision, four independent jurists and trial monitors led by the former U.S. Global Ambassador on War Crimes Stephen J. Rapp and Canadian jurist Catherine Morris issued a detailed 57-page report on Mr. Donziger’s pre-trial detention and trial.\textsuperscript{15} The report corroborated the findings of the U.N. Working Group.\textsuperscript{16} It concluded that the “unequivocal assessment of the non-jury criminal contempt proceedings against Steven Donziger is that he has been subject to multiple violations of his internationally protected human rights, including his right to a fair trial by an independent and impartial tribunal and his right to the presumption of innocence.”\textsuperscript{17}

The report echoed concerns about the bias of both Judges Preska and Kaplan and called for the U.S. government to conduct an independent and impartial investigation of all proceedings against Mr. Donziger, including into the roles of Judges Kaplan and Preska.\textsuperscript{18} The report also questioned why the private prosecutor from a Chevron law firm billed taxpayers nearly $700,000 for a misdemeanor while she met for many hours with Chevron lawyers who claimed to have “donated” their time to aid the prosecution.\textsuperscript{19} The panel noted that the private prosecutor acted with the zealousness of “partisan counsel” rather than with disinterest as required by law.\textsuperscript{20}

\textit{Additional Support and the Chilling Effect on Human Rights Work}

After graduating from Harvard Law in 1991 in the same class as President Obama, Mr. Donziger has devoted his life to advancing the cause of human rights, environmental justice, and criminal justice

\textsuperscript{10} Id. at 14.
\textsuperscript{12} Tr. of sentencing hearing on Oct. 1, 2021 at pg. 5.
\textsuperscript{13} Id. at pg. 4.
\textsuperscript{14} Working Group Opinion No. 24/2021 concerning Steven Donziger (United States of America) at pg. 15.
\textsuperscript{16} Id. at 53.
\textsuperscript{17} Id. at v.
\textsuperscript{18} Id. at ix.
\textsuperscript{19} Id. at 37.
\textsuperscript{20} Id. at 38.
reform. He has received support from 68 Nobel laureates,21 hundreds of bar associations,22 thousands of lawyers, and law students23 from around the world. At least 11 members of the House of Representatives24 and two Senators25 have spoken in his defense, with several calling for Attorney General Garland to immediately release him. Several human rights groups led by Amnesty International have condemned Mr. Donziger's detention as immoral and unlawful and demanded his release.26 In addition, several major environmental groups led by Greenpeace USA, Global Witness, Rainforest Action Network, and Amazon Watch have demanded his release.

Your Administration’s silence in the face of these important entreaties is creating a chilling effect on environmental and human rights defenders around the country who are witnessing the mechanisms of our Government co-opted by an oil company to try to silence a successful human rights advocate. This is in fact the same behavior that human rights and environmental defenders the world over are facing, and why they are being persecuted and assassinated at shocking rates. In many of those instances, the United States has publicly denounced their persecution and the insecurity they generate; here, Mr. Donziger is deserving of that same indignation and attention. Indeed, the message being sent by Chevron's abuse of our justice system in this unprecedented private prosecution is very clear – hold the fossil fuel industry accountable as a human rights advocate, and you could be jailed in the United States of America for no legitimate reason while major economic power centers enjoy impunity.

Conclusion

As confirmed by the UN Working Group and observed by other highly respected jurists, the misdemeanor contempt conviction of Mr. Donziger is a flagrant and obvious miscarriage of justice. The prosecution was instigated by a federal judge with a long public record of hostility toward Mr. Donziger and other plaintiffs’ lawyers; a judge with a flagrant conflict of interest, given his financial ties to Chevron; the same judge handpicked a Chevron-linked private prosecutor to target Mr. Donziger, without disclosing her law firm's extensive ties to Chevron; and, the same judge also hand-picked a Chevron-linked colleague to preside while at the same time refusing to recuse himself. Judge Kaplan's appointed judge denied Mr. Donziger a jury and locked him up in pre-trial detention for over two years. Essentially, Judge Kaplan played prosecutor, judge, and jury in the same case in clear violation of the U.S. Constitution and international law.

The President of the United States is charged with the broad responsibility to “take care that the laws be faithfully executed.” The responsibility encompasses U.S. treaty obligations, which are constitutionally

equivalent to domestic law. These obligations include all legal obligations under the legally-binding International Covenant on Civil and Political Rights (ICCPR), which the Working Group and international trial monitors relied on to render their authoritative opinions in Mr. Donziger’s case.

Each day Mr. Donziger spends locked up in prison or on house arrest is another day in direct conflict with well-established principles of Constitutional and international law. Your Administration is in the position to immediately rectify the unjust and continued imprisonment of Mr. Donziger and it should act now. To simply allow his full sentence to lapse, at which time he will have served nearly 1000 days for a misdemeanor without due process of law, would undermine our Constitution and severely weaken the reputation of the U.S. in the areas of international human rights and environmental law.

We urge you to pardon Mr. Donziger immediately.

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