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April 16, 2004

The Honorable Tom Ridge
Secretary
U.S. Department of Homeland Security
Washington, DC 20528

Dear Secretary Ridge:

I am writing regarding an article in the forthcoming May/June 2004 issue of *Sierra* reporting that a mining company headquartered in Colorado named Echo Bay Mines Limited, which has subsequently been acquired by Kinross Gold Corporation, knowingly provided millions of dollars to terrorist organizations in the Philippines that have links to Al Qaeda (see Attachment 1).

According to the article, the Department of Homeland Security (DHS) and Department of Justice (DOJ) were presented with information about these activities, but chose to do nothing to prosecute Echo Bay Mines. As you know, U.S. law has prohibited "material support" and "providing something of value" to terrorists since 1994, and the definition of what constitutes such support was expanded in 1996 and again in 2001 as part of the USA PATRIOT Act.

I am concerned that this particular company may have supplied funds and materiel to known terrorists associated with Al Qaeda in violation of U.S. law. I also am concerned that, despite receiving extensive documentation from an Echo Bay project manager with first-hand knowledge of these transactions, DHS and DOJ have not initiated an active, full-scale investigation. Moreover, the Echo Bay matter raises the possibility that there may be additional mining, oil, gas, and other companies operating all over the world that are knowingly or unwittingly providing material support to terrorists with impunity.

These support relationships, which often result from corporations' efforts to secure their operations in dangerous environments, may already have funded terrorist attacks against Americans. The Bush Administration must take strong and immediate steps to ensure that no corporation compromises the security and safety of the American people in order to secure its assets. Supporting terrorists must never be considered just another "cost of doing business."

As you know, the Philippines has long been a hotbed of radical Islamic terrorist activities. Jemaah Islamiyah was allegedly behind the October 12, 2002 bombing that killed 202 people at a Bali nightclub, and Abu Sayyaf has been implicated in the kidnappings and murders of several Americans. In fact, an April

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11, 2004 article in the New York Times stated that "the Bush administration has quietly warned the Philippine government that it has not been doing enough to crack down on terrorist groups in the country." The article went on to state that "the United States had given the Philippines intelligence that should have led to the arrest of suspected terrorists, including the leader of Abu Sayyaf, and the Philippine government did not act, one Western diplomat said."

On October 26, 2001, President Bush signed the USA PATRIOT Act into law. The PATRIOT Act added "providing material support to terrorists" to the list of federal crimes of terrorism. It extended the statute of limitations for such crimes from five years to eight years, or to an unlimited time if the commission of the offense created a risk of death or bodily injury. The PATRIOT Act also amended the International Emergency Economic Powers Act to allow the seizure of assets in cases of suspected material support to terrorists. For example, in November 2001, the Treasury Department froze the assets of Al-Barakat, an international money transmitting entity, thought to be funneling funds to Al Qaeda, *United States v. Abdi*, 342 F.3d 313, 315 (4th Cir. 2003). According to the *Sierra* article, 57 entities have been charged with crimes involving material support for terrorist organizations as of February 2004, and all of these entities have ideological or religious ties to other Arab organizations. However, the article also states that "no mining companies or other non-Arab-related enterprises were on the list."

The *Sierra* article reports that Echo Bay Mines Limited, a Denver-headquartered Canadian-chartered company that operated the KingKing mine on the Southern Philippine island of Mindanao, first began providing cash, supplies and weapons to Abu Sayyaf, the Moro National Liberation Front (MNLF), Moro Islamic Liberation Front (MILF), the New People's Army (NPA) and the Lost Command in 1995 in return for "good community relations". Some of these groups had been labeled by the U.S. State Department as terrorist groups in the mid-1990s; however, the article states that Echo Bay Mines Limited continued to meet with, fund and equip these groups even after this took place. The article reports that in September 1997, "security donation expenses" to insurgent groups totaled $116,914, and a whistleblower - Allen Laird, who is a former employee of Echo Bay quoted in the article - estimated that over the course of the project, Echo Bay paid more than $1.7 million to these terrorist groups.

In April 2003, Allen Laird met with Special Agent Matthew Peterson of the Department of Homeland Security. Mr. Laird provided a summary of the material aid given to terrorists by Echo Bay, and offered to provide additional information. Mr. Peterson apparently never requested the additional information. Instead, according to the article, Mr. Laird received an email from Mr. Peterson on January 8, 2004, which stated that the statute of limitations had expired and that there was "no prosecutive venue available even if the allegations were proven." It is my understanding that the decision not to prosecute came after some

months of indecision, and that U.S. Attorney Thomas O'Rourke in the Denver, CO office made the final determination.

This case, if true, represents a stunning example of a U.S.-based company that knowingly provided considerable material support to known terrorist organizations, with absolutely no consequences. In 2002, President George W. Bush said "If you harbored a terrorist, if you fed a terrorist, if you hid a terrorist, you're as guilty as a terrorist." I agree. I am concerned, however that this standard may not be applied consistently, and therefore ask for your prompt response to the following questions:

1) Why hasn't the Department taken action to fully investigate the Echo Bay Mining Company's alleged ties to terrorists in the Philippines?
2) Please describe each action the Department took in response to information provided by Mr. Laird. Please list all meetings and telephone interviews conducted, provide copies of all subpoenas for documents, documents obtained, correspondence and legal analyses undertaken. If no such meetings, telephone interviews, subpoenas, documents, correspondence and legal analyses were conducted and/or obtained; why not, and how *did* the Department respond to this information?
3) Has the Department ever obtained information regarding other cases in which an American corporation or other entity with no religious or ideological affiliation to terrorist organizations provided them with material support for business or other reasons? If so, please list all such cases, including the name of the entity, material support provided, the timeframe in which the support was provided, steps the Department took to investigate and prosecute the matter, and the resolution, if any. If the Department has not obtained such information, does the Department believe that the Echo Bay matter is an isolated incident? If yes, on what basis does the Department make this determination?
4) Numerous mining, oil and gas companies and other industries in the Philippines, Indonesia, Malaysia and other countries are owned by U.S.-based companies and are located in regions where terrorist groups with ties to Al Qaeda are known to attempt to extort funds, supplies and weapons in return for not attacking the mine and/or its employees. Is it the Department's position that corporate compliance with such extortion demands constitutes material support to terrorists? If not, why not? If so, what is the Department doing to determine whether these activities are taking place, prosecute those who are responsible, and ensure that they do not continue to occur?
5) The PATRIOT Act extended the statute of limitations for federal crimes of terrorism from five years to eight years, or to an unlimited period if the commission of the offense resulted in a risk of death or bodily injury. Since at least some of the alleged payments by Echo Bay took place less than five years before the PATRIOT Act was enacted, the statute of limitations did not expire prior to October 26, 2001 and has been extended

for at least three additional years. Why then did DHS and/or DOJ officials conclude and then inform Allen Laird that the statute of limitations had expired?

6) The PATRIOT Act amended the International Emergency Economic Powers Act to allow the seizure of assets in cases of suspected material support to terrorists. The Treasury Department may freeze these assets even before an investigation is complete if it believes they are being used to support terrorist activity. Why haven't the assets of Echo Bay and/or Kinross Gold Corporation been seized?
7) Did Echo Bay receive any benefits from the U.S. government through tax incentives, loan guarantees, or other such subsidies in support of its operations in the Philippines?

Thank you very much for your prompt attention to this important matter. Please provide your response no later that Friday May 7, 2004. If you have any questions or concerns, please have your staff contact Dr. Michal Freedhoff of my staff at 202-225-2836.

Sincerely

Ed Markey

Edward J. Markey