



01a 20005-3314 | TEL (202) 538-8000 FAX (202) 538-8100

WRITER'S DIRECT DIAL NO.
(202) 538-8174

WRITER'S EMAIL ADDRESS
juanmorillo@quinnemanuel.com

Secretaría de Economía
Pachuca 189, Col. Condesa
Cuauhtémoc, Ciudad de México, 06140
Estados Unidos Mexicanos

Re: Notice of Intention to File Claims under NAFTA Chapter 11 Pursuant to Annex 14-C of the USMCA

Dear Sir:

This amended notice of intention (the "Amended Notice") to submit claims against the United Mexican States ("México") to arbitration is sent on behalf of U.S. nationals Margarita Jenkins de Landa, María Elodia Jenkins de Landa, and Juan Carlos Jenkins de Landa (together, the "U.S. Investors"). It follows from the U.S. Investors' notice of July 8, 2021 (the "Original Notice"). The U.S. Investors file the Amended Notice, along with courtesy translations of the Original Notice and the Amended Notice, in order to update the facts that currently underlie the U.S. Investors' claims and to avoid any frivolous suggestion that Original Notice was ineffective as it did not make reference to the United States-México-Canada Trade Agreement (the "USMCA") (which is required in neither the NAFTA nor the USMCA).

The U.S. Investors file this Amended Notice (along with the Original Notice) pursuant to Article 1119 of the North American Free Trade Agreement ("NAFTA") and Annex 14-C of the USMCA. The U.S. Investors own and control numerous investments in México, which qualify as "legacy investments" under Article 6(a) of Annex 14-C of the USMCA. As three of the five Board Members of the Fundación Mary Street Jenkins, Institución de Beneficiencia Privada (the "Fundación"), they control the Fundación, a Mexican non-profit organization domiciled in Jalisco, México, as well as the Fundación Universidad de las Américas Puebla, Institución de Beneficiencia Privada ("FUDLAP"), a Mexican non-profit organization which owns a private university based in Puebla (i.e., UDLAP), whose campus sits on land owned by the Fundación, amongst other foundations. The Fundación, which was founded by the U.S. Investors' great-grandfather, seeks to improve the welfare of Mexican citizens, particularly those residing in the

east-central Mexican state of Puebla, through philanthropy and charitable giving. UDLAP is one of the most prestigious private universities in Latin America. The U.S. Investors, as controlling members of the Board of the Fundación, also have the right to exercise beneficial ownership directly over the Fundación's assets (and indirectly over FUDLAP's assets), as explained below. The U.S. Investors also own and control other assets in México.

The U.S. Investors, the Fundación, and FUDLAP, are the victims of a campaign of retaliation carried out by Mexican federal and state-level organs and their profiteering legal representatives. This campaign began after the Fundación discovered that a relative of the U.S. Investors, Guillermo Jenkins de Landa, had abused his position within the Fundación for his own personal benefit. He was promptly removed from the Board of the Fundación. However, since then, Guillermo Jenkins de Landa has worked relentlessly to impel Mexican state organs, instrumentalities, and officers to engage in abusive and discriminatory conduct against the U.S. Investors and the Fundación in breach of Mexican law.

As a result, the U.S. Investors, the Fundación, and FUDLAP have found themselves in the sights of Mexican federal and state-level organs intent on destroying one of the country's most prominent charitable foundations and one of its most esteemed institutions of higher education.

Recently, nearly one hundred police officers from the Mexican State of Puebla invaded the campus of UDLAP and seized the university's facilities. They did so on the basis of a local court order obtained by the state government of Puebla (through its representatives and a new sham Board of Trustees), which illegally purported to remove the U.S. Investors as FUDLAP Board members. The order is based on nothing more than the *existence* of arrest warrants, which were issued after the Fiscalía General de la República (the "FGR"), re-opened a baseless criminal investigation into the U.S. Investors and the Fundación. That investigation had concluded in 2018 with a formal decision clearing the U.S. Investors of any wrongdoing—a decision which, under Mexican law, bars any new investigation on the same facts.

Regrettably, the seizure of UDLAP and the re-investigation of the U.S. Investors are only two of the numerous breaches by Mexican federal and state-level organs for which México is fully liable. These breaches have caused the U.S. Investors great damages, for which México must now provide compensation. With their actions and omissions, México's federal and state-level organs also threaten to destroy two of México's most well-respected institutions with a combined history of nearly two centuries of public service and contribution to the public good in México. To prevent that tragedy from occurring, the U.S. Investors will seek compensation for the damages suffered by these institutions in the hopes of continuing their charitable and other works for the public benefit of the people of México (and, in particular, the people of Puebla).

While the U.S. Investors wish to resolve this dispute amicably, they are prepared to file claims under Chapter Eleven of the NAFTA against México (pursuant to Annex 14-C of the USMCA) on their own behalf under Article 1116 of the NAFTA and on behalf of the Fundación and FUDLAP under Article 1117 of the NAFTA. With this notice of intent, the U.S. Investors formally accept México's offer to arbitrate under Article 1122 of the NAFTA and Annex 14-C of the USMCA. Below, in accordance with Article 1119 of the NAFTA, the U.S. Investors (I)

identify the disputing investors, (II) the factual basis for their claims, (III) the obligations breached by México under the NAFTA, and (IV) the relief that the U.S. Investors will seek.

I. IDENTIFICATION OF THE DISPUTING INVESTORS

The U.S. Investors, Margarita Jenkins de Landa, María Elodia Jenkins de Landa, and Juan Carlos Jenkins de Landa, are nationals of the United States of America. All communications should be sent to their counsel in this matter, Quinn Emanuel Urquhart & Sullivan LLP, at the following address:

Juan P. Morillo
David M. Orta
Philippe Pinsolle
Quinn Emanuel Sullivan & Urquhart LLP
1300 I Street NW, Suite 900
Washington, D.C. 20005
juanmorillo@quinnemanuel.com
davidorta@quinnemanuel.com
philippepinsolle@quinnemanuel.com
+1 202 538 8000

The Fundación Mary Street Jenkins and the Fundación Universidad de las Américas Puebla are Mexican non-profit organizations domiciled at Paseo Royal Country #4650, Piso 6; Fraccionamiento Puerta de Hierro; Zapopan, Jalisco C.P. 45116. All communications addressed to them should also be sent to counsel.

The U.S. Investors have been Board Members of the Fundación and FUDLAP (with control of those enterprises) since 2013. Under the bylaws of the Fundación and FUDLAP, the U.S. Investors (as the majority of each entity's Board) control both the Fundación and FUDLAP. They also hold the right to a beneficial interest in the Fundación's assets as the bylaws allow them to liquidate and distribute at their discretion – including to themselves – the assets of the Fundación, which was set up by their great-grandfather, in the event that México should seek to intervene in the operation of the Fundación (as it has done now). Similarly, the U.S. Investors hold the right to a beneficial interest in FUDLAP, as a result of FUDLAP's bylaws, which provide for the liquidation of FUDLAP's assets and their transfer to the Fundación in the event that México should seek to take over its assets or replace its Board (as it has done now). The U.S. Investors have not sought to exercise those powers, but instead seek to continue the works of the Fundación and FUDLAP for the benefit of the people of México.

The U.S. Investors also control a number of other enterprises, including Fundación Colegio Americano de Puebla, Institución de Beneficiencia Privada; and Fundación Club Alpha de Puebla, Institución de Beneficiencia Privada. They reserve the right to bring claims within the arbitration proceeding contemplated by this notice on behalf of those enterprises as well should México take any prejudicial action in relation to them.

II. FACTUAL BASIS FOR THE CLAIMS

The Fundación was created in 1954 by William Oscar Jenkins, a U.S. farmer, industrialist, financier and philanthropist, in honor of his wife, Mary Street Jenkins, an avid supporter of charitable giving who had passed away a decade earlier. Upon his death in 1963, and during his lifetime, Mr. Jenkins left his fortune—over USD 60 million at the time—to the Fundación, which today is controlled by Mr. Jenkins' descendants, the U.S. Investors.

Since its inception, the Fundación has contributed to the economic development of México by *inter alia* building and equipping schools, arts and cultural centers, hospitals, museums, sports centers and other institutions and restoring churches and archeological sites, among other historical sites. In addition, it holds a number of investments from which it generates its income.

It also owns the land under Universidad de las Américas Puebla (known as UDLAP), a private university based on the state of Puebla. UDLAP was the sister campus of a college founded in the 1940s in Mexico City named Mexico City College (today, Universidad de las Américas, Ciudad de Mexico). UDLAP was founded in the 1960s by the Fundación and was funded initially by matching donations by the Fundación and the U.S. government agency, U.S. Agency for International Development (which had recently been set up by U.S. President John F. Kennedy). The Fundación provided the financial resources to build a state-of-the-art campus in Puebla and set up and fund FUDLAP as the legal entity housing UDLAP (i.e., the university). The Fundación has provided substantial support since then, including by allowing UDLAP the free and unrestricted use of the land (i.e., at no cost).

The U.S. Investors have served (and continue to serve) on the Board of Trustees of the Fundación – as well as the Board of FUDLAP (according to FUDLAP's bylaws the Board of FUDLAP must be identical to that of the Fundación and a majority of the members must be direct descendants of William Oscar Jenkins). Their brother, Guillermo Jenkins de Landa, a great-grandchild of William Oscar Jenkins, also served on the Board (including as Treasurer) until 2013. During his tenure Guillermo Jenkins de Landa engaged in a multi-year effort to misappropriate the Fundación's assets and seize control of the Fundación. When the full extent of his misconduct came to light, Guillermo Jenkins de Landa was removed by the Board and disinherited by his parents, Guillermo Jenkins Anstead and Elodia Sofía de Landa de Jenkins. Upon his removal, Guillermo Jenkins de Landa sought to retaliate against the U.S. Investors using the Mexican government and its instrumentalities as his sword.

Mexican federal and state-level organs and their profiteering legal representatives have exploited this unfortunate situation in a blatant bid to strip the Fundación and FUDLAP of their assets in México (including, by acting at the behest Guillermo Jenkins de Landa). In so doing, they have caused significant damages to the U.S. Investors, and they also threaten to destroy the Fundación and FUDLAP.

In December 2014, México's federal tax authorities revoked the Fundación's tax-exempt status without adequate basis in law or fact. Then, the President of the Junta para el Cuidado de las Instituciones de Asistencia Privada del Estado de Puebla (the "Puebla Charitable Organization Agency") (a government agency) threatened to intervene in the management of the

Fundación and appoint new members to its Board of Trustees. Finally, then-Governor of Puebla, Rafael Moreno Valle Rosas (an ally of Guillermo Jenkins de Landa), summoned members of the Fundación's Board to meetings with Puebla officials. At those meetings, the Mexican governmental officials pressed the Board members to reinstate Guillermo Jenkins de Landa to the Board and to give him valuable Fundación assets, among other things.

These abusive actions forced the Fundación to take measures aimed at limiting its exposure to México's illegal actions. Rather than dissolve the Fundación and distribute its assets (as was their right under the bylaws), the U.S. Investors sought to continue the Fundación's works for the public good. For instance, in 2014, the Fundación transferred ownership of a part of its assets to the Fundación Para el Desarrollo Latinoamericano, an affiliated foundation (the "Transfer"). The legal structure supporting the Transfer was approved by the relevant authorities. However, that unfortunately did not provide refuge from the retaliatory actions of the Mexican State.

Instead, the Transfer led to new retaliation. In 2016, México's Procuraduría General de la República (the "PGR," later known as the FGR) opened a criminal investigation into the Transfer on the basis of a complaint filed by Guillermo Jenkins de Landa and by the Puebla Charitable Organization Agency (the "Investigation"). Without any factual or legal basis, that complaint alleged that the Transfer constituted a host of crimes—fraud, theft, money-laundering, and tax evasion (among other offenses)—by the Board of the Fundación (i.e., the U.S. Investors). This, of course, was absurd, as the Transfer was notified to the relevant authorities and entirely legal in accordance with all applicable laws, including Mexican law.

The Fundación and the U.S. Investors had nothing to hide. Counsel for the Fundación fully cooperated with this Investigation. Because there was no factual or legal basis for any of the outlandish and contradictory allegations in Jenkins de Landa's complaint, the PGR declined to pursue a criminal action against the U.S. Investors. It issued a decision on May 4, 2018 (the "Decision"), which found expressly that (1) the U.S. Investors had not committed *any* crime; and (2) Guillermo Jenkins de Landa was *not* a victim of *any* crime. Furthermore, the PGR duly notified the Decision to the parties who had standing to challenge it (who did not) as well as the Puebla Charitable Organization Agency (which also did not seek to challenge the Decision). Thus, the Decision was final and irrevocable as a matter of Mexican law.

That Decision has consequences. Under Article 255 of the National Code of Criminal Procedures of México, it operates as a binding criminal adjudication and prohibits prosecution of the U.S. Investors based on the same facts.

México, however, has flouted its own laws in a naked bid to further the persecution of the U.S. Investors, the Fundación, and FUDLAP. On June 12, 2020, the FGR re-opened the Investigation with a view toward seeking the criminal prosecution of relevant individuals and entities—including the U.S. Investors—in clear breach of Mexican law (the "Re-Investigation"). Under the Mexican principle of *non bis in idem*, no criminal action can be instituted twice for the same cause of action. Additionally, under Mexico's separation of powers clause, only a court (not the FGR) may open a criminal investigation seeking to re-investigate the same facts of a prior investigation that has concluded—and only on the timely request of an alleged victim (not the

FGR). However, the FGR acted unilaterally in clear breach of Mexican law by commencing the Criminal Investigation *sua sponte*.

This abusive Re-Investigation served as a linchpin for the illegal actions of Mexican federal and state-level organs seeking to prejudice the U.S. Investors and strip the Fundación and UDLAP of their valuable assets. On February 24, 2021 a federal court issued a warrant for the arrest of the U.S. Investors (the “Federal Arrest Warrant”) on the claim—which had already been debunked in the initial Investigation—that the Transfer was tantamount to money laundering because it violated the Fundación’s bylaws (it clearly did not). In reality, this was a transparent bid to prevent the U.S. Investors from seeking recourse against México’s illegal actions, including in an arbitration under the NAFTA.

The Federal Arrest Warrant was followed by arrest warrants issued by local courts (the “Local Arrest Warrants”), which (upon information and belief) simply mirror the Federal Arrest Warrants. To date, the Claimants still have not been informed of the Local Arrest Warrants, served process, or otherwise been allowed to defend themselves against the baseless charges that local officials have made in them.

Then, on April 28, 2021, a Puebla agency issued an order purporting to remove the U.S. Investors from the Board of the Fundación and FUDLAP, but that order is the subject of constitutional challenges and injunctions lodged by the U.S. Investors’, the Fundación’s, and UDLAP’s legal counsel. In parallel, Mexican tax authorities seized on a new law prohibiting non-profit foundations from engaging in for-profit activities (for example, to fund charitable operations, as is the case of the Fundación) and sought to force FUDLAP to relinquish all of its assets. This forced FUDLAP to give up its tax-exempt status to avoid that draconian punishment.

Finally, on June 29, 2021, almost one hundred police officers from the state of Puebla under the command of its current governor Miguel Barbosa (with officers and legal representatives of Puebla state organs and agencies in tow) forcibly broke into UDLAP facilities and seized numerous buildings and other facilities on the UDLAP campus (the “UDLAP Takeover”). This followed from an order sought by a sham FUDLAP Board of Trustees, which had apparently been installed by local officials shortly before (the “Removal Order”). This consequential measure was taken *ex parte*—without informing the U.S. Investors, without serving them with the Removal Order once it had been issued, and without letting them defend themselves (in short, without any semblance of due process). Notably, the Puebla Charitable Organization Agency had sought and obtained a similar *ex parte* seizure order in or around March 2021. According to local officials, the Removal Order was justified by the mere existence of the Federal and the Local Arrest Warrants and the Re-Investigation, which according to these officials, indicated a “risk” that the Board might “affect” FUDLAP’s “operations” (ignoring that the university is one of the best run in Mexico, that the Federal and Local Arrest Warrants are based on serious procedural and substantive defects, and that, in any event, the U.S. Investors are innocent until proven guilty under Mexican law).

Of course, the Removal Order (like the Federal and Local Arrest Warrants on which it is based) is (and always had been) a mere pretext to justify the UDLAP Takeover and further takeovers of the assets of the U.S. Investors, the Fundación, and FUDLAP in the future. To no

surprise, México's prejudicial actions have continued in the short time since the UDLAP Takeover. Only a week after the illegal takeover, FUDLAP's Board—which was installed by local officials—announced that the Board had filed a criminal complaint alleging that FUDLAP's rightful Board (including the U.S. Investors) as well as the rector of UDLAP (an outspoken critic of Puebla Governor Barbosa and the UDLAP Takeover) are engaged in "organized crime" and other absurd offenses. And just days after the U.S. Investors' notice of July 8, 2021, the same Board purported to remove UDLAP's rector and impose a political ally of Puebla Governor Barbosa as a substitute or interim rector.

These are clear breaches of México's obligations under the NAFTA, which are ongoing and escalating. They must cease immediately. As a result of these breaches, the U.S. Investors, the Fundación, and FUDLAP have suffered, and will continue to suffer, significant damages for which México must pay compensation.

III. MÉXICO'S BREACHES OF ITS OBLIGATIONS UNDER THE NAFTA

México, by and through the actions of its organs, instrumentalities, and officers, has breached its obligations under Chapter Eleven of the NAFTA, including its fair and equitable treatment, full protection and security, and other obligations under Article 1105 (Minimum Standard of Treatment); its national treatment obligations under Article 1102 (National Treatment); and its expropriation obligation under Article 1110 (Expropriation and Compensation). It has pursued an opportunistic campaign of retaliation in clear breach of international law. Notably, México has opened the Re-Investigation and issued the Arrest Warrants in clear breach of its own law, has purported to seize the U.S. Investors', the Fundación's, and FUDLAP's assets, has attempted to remove the U.S. Investors from the Fundación's Board, has purported to remove the U.S. Investors from FUDLAP's Board, and has purported to seize assets, facilities and bank accounts belonging to FUDLAP.

These breaches have caused great damages to the U.S. Investors and threaten to destroy the Fundación and FUDLAP. Today, they have suffered significant losses in legal fees, reputational damages, lost investment opportunities, and seized property. Those damages will no doubt increase substantially if México should take further illegitimate actions against the U.S. Investors, the Fundación, FUDLAP, and others on the pretext of the Re-Investigation or otherwise.

IV. RELIEF REQUESTED

The U.S. Investors intend to seek full compensation for the damages they, the Fundación, and FUDLAP have suffered (and may continue to suffer in the future) at the hands of México's organs. To date, those damages are in the hundreds of millions of USD, but will no doubt increase should México take further actions.

However, the U.S. Investors reiterate their offer to resolve this dispute amicably and request settlement discussions with representatives of the Mexican State, whose liability under international law otherwise risks to be triggered by the acts of its federal and state-level organs.

The U.S. Investors reserve the right to amend this Notice and to include additional claims and additional and ancillary relief as may be warranted and permitted by the NAFTA.

Sincerely,



Juan P. Morillo
David M. Orta
Quinn Emanuel Urquhart & Sullivan LLP
1300 I Street NW
Suite 900
Washington, D.C. 20005
U.S.A.

Philippe Pinsolle
Quinn Emanuel Urquhart & Sullivan LLP
Avenue Pictet de Rochemont, 20
CH-1207 Geneva
Switzerland

