

October 27, 2009

Re: North American Free Trade Agreement
Public Communication Mex 2005-1

Secretary of Labor Hilda L. Solis
U.S. Department of Labor
200 Constitution Ave., NW
Washington, DC 20210

Dear Secretary Solis:

Two years ago this month, the Mexican government wrote to the Department of Labor pursuant to the North American Agreement on Labor Cooperation (“NAALC”), asking for responses to a set of questions regarding the extent to which Mexican and other foreign nationals, brought into the U.S. as temporary workers under the H-2B visa program, are able to enforce their labor and employment rights under U.S. law. These questions arose from a petition alleging that the practice of barring H-2B workers from being represented by programs funded by the Legal Services Corporation violates the obligations of the United States under the NAALC. While Secretary Chao chose not to respond to those questions during her tenure, we write now in the hope that you will do so expeditiously, given your commitment to enforcing workers’ legal rights and President Obama’s commitment to honoring the nation’s international obligations.

As you know, the NAALC is a labor side agreement to the North American Free Trade Agreement, entered into between the U.S., Mexico and Canada. By entering into the NAALC, the U.S. obligated itself to ensure that, among other things:

- 1) workers are able to enforce rights arising under U.S. laws with respect to occupational health and safety, employment standards, labor relations and migrant workers (NAALC Article 4); and
- 2) administrative, quasi-judicial and court proceedings for the enforcement of the rights listed above are “fair, equitable and transparent,” and that the parties are able “to support or defend their respective positions and to present information or evidence; and such proceedings are not unnecessarily complicated . . .” (NAALC Article 5); and
- 3) “[p]roviding migrant workers in [the United States’] territory with the same legal protection as [United States] nationals in respect of working conditions.” (NAALC Labor Principle 11).

In the NAALC, the U.S., Mexico and Canada each agreed to establish a National Administrative Office (“NAO”) within their labor departments to oversee the administration of the NAALC. Persons and organizations aggrieved by violations of the NAALC may petition any of the three NAO’s for redress.

Accordingly, in 2005 and 2006, we filed a petition and addendum with the Mexican NAO on behalf of twenty H-2B workers, and eleven non-profit organizations in the U.S. and Mexico. These documents described the bad working conditions to which H-2B workers were subjected, and the difficulties they encountered enforcing U.S. law. **Despite the fact that these workers were lawfully employed in the United States, they faced enormous obstacles in enforcing their rights because were barred from being represented by legal services programs that receive any support from the Legal Services Corporation.**

We described how the H-2B workers were recruited in their home countries; incurred substantial expenses to obtain the jobs, visas and travel here; and were brought into the country legally by their employers. The submissions then explained that, once in the U.S., the workers were denied work and pay they had been promised when they were recruited in their home countries, and were subjected to dangerous and unsanitary working and living conditions.

For example, petitioner Edgar Peña and three other workers left their homes and families in Mexico and traveled to Colorado because a corn grower promised to pay at least \$6.26 an hour for five months of work in food processing. However, once they arrived the workers were offered only sporadic employment in agricultural field work for two and a half weeks. For some of that time they earned only an average of \$2.12 per hour, far below both the wage they had been promised and the legally binding minimum wage.

Petitioner Candelario Perez was brought to this country from Panama to do intense physical labor – slashing and burning vegetation, clearing trails and planting trees – in the mountains near McCall, Idaho. His employer recruited him and five other men in their hometowns and arranged for them to get H-2B temporary worker visas. In flagrant violation of U.S. law, they were paid as little as \$1.00 per hour for some of their work. The men were housed at a primitive campsite in the mountains, without restrooms or developed campground facilities. The men slept in a lightweight tent, and in makeshift shelters made out of tarps. They did not have sleeping bags or mattresses. They were left to drink untreated drinking water from a nearby creek, which local residents know often carries giardia and e-coli bacteria. They continued sleeping in these conditions as the summer ended and nighttime temperatures approached freezing.

Neither the Department of Labor nor the Department of Homeland Security took sufficient steps to protect the workers’ statutory and contractual employment rights. And, the workers were unable to effectively enforce their own rights because they lacked access to federally funded legal aid and, in the areas where they worked, there were few or no other attorneys who represent migrant workers. Indeed, some of the workers were wrongly classified by their employers as non-agricultural workers in order to deprive them of important labor protections, including access to federally funded legal aid.

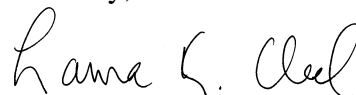
On October 12, 2007, the Mexican NAO wrote to the U.S. NAO, asking it to respond to 69 detailed questions regarding the extent to which H-2B workers have access to legal assistance, and the extent to which state and federal laws, courts and agencies protect the employment rights of H-2B workers. For example, the Mexican NAO asks how many H-2B workers have complained of violations of their labor rights, how state and federal agencies investigate those complaints, how H-2B workers are able to access free legal aid, and how the government ensures that they are not subjected to forced labor.

The Mexican NAO also invited us to submit our own responses to the questions it posed to the U.S. NAO. Accordingly, on August 13, 2008, we submitted a detailed, 58-page response to the Mexican NAO.

During your predecessor's tenure, the U.S. NAO chose not to submit its own response. Given your strong commitment to protecting workers' rights, and President Obama's strong commitment to strengthening international relations, we are confident that under your leadership the U.S. NAO will submit a response expeditiously.

We would be happy to supply any of the relevant documents mentioned in this letter upon request. Thank you for your consideration of this vitally important matter.

Sincerely,



Laura Abel
Brennan Center for Justice at NYU School
of Law
161 Avenue of the Americas, 12th Floor
New York, NY 11238

D. Michael Dale
Northwest Workers' Justice Project
917 SW Oak St. Suite 412
Portland, OR 97205

cc: President Felipe Calderon
Lic. Claudia Anel Valencia Carmona
Hon. George Miller, Chairman, House Education and Labor Committee
Hon. John Conyers, Jr., Chairman, House Judiciary Committee
Hon. Tom Harkin, Chairman, Senate Health, Education, Labor and Pensions Committee
Hon. Patrick Leahy, Chairman, Senate Judiciary Committee
Hon. Charles E. Schumer, Chairman, Senate Judiciary Subcommittee on Immigration,
Refugees, and Border Security
Hon. Zoe Lofgren, Chairwoman, House Judiciary Subcommittee on Immigration, Citizenship,
Refugees, Border Security and International Law
Congressional Hispanic Caucus