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U.S. Violates International Law by Denying Latin American Temporary Workers Access to Labor Rights Lawyers

Workers Urge Mexico to Demand Change in US Policy

Mexico City, Mexico - Sixteen men brought from Mexico, Guatemala and Panama to the United States as temporary workers by United States-based companies filed a complaint today under the labor side agreement to the North American Free Trade Agreement (NAFTA) seeking enforcement of their rights under the treaty. The men suffered brutal physical injury, stolen wages, unsafe housing, and other dangerous employment conditions, and were denied access to the federally-funded legal aid they needed to seek redress.

The 16 workers bringing the complaint have substantial support in the U.S. and Mexico. Four U.S. organizations have joined their complaint: Idaho Migrant Council, which provides employment training and support services to migrant workers; National Immigration Law Center, a national law center that advocates on behalf of low-income immigrants and their families; Oregon Law Center, which provides free civil legal services to low income people; and Pineros y Campesinos del Noroeste, a union of farm and forestry workers in the northwest United States. Five Mexican organizations have joined as well: Centro de Investigación Laboral y Asesoría Sindical, A.C., which provides legal assistance to workers and unions in Mexico; Frente Autentico del Trabajo, an organization of independent Mexican labor unions; National Union of Workers (UNT), representing over two hundred Mexican unions; Red Mexicana de Acción Frente al Libre Comercio, a coalition of organizations concerned with the adverse effects of free trade; and Sin Fronteras, I.A.P, which provides legal support, social services and advocacy for immigrant workers in Mexico and elsewhere.

The workers' stories are troubling. Dan Morales was ordered to operate a forklift without training or prior experience and lost his right leg in a resulting accident. A legal aid lawyer could have helped him obtain much-needed compensation to pay for medical treatment and a prosthesis. Maria Andrade, of the Andrade Law Office in Boise, Idaho, explains: "Instead, Morales, in desperation, let his employer off the hook in exchange for a small sum of cash. Like others who are denied legal aid, he was at the mercy of fly-by-night characters and an employer with no incentive to accept responsibility."

Candelario Perez and five other men were brought to the U.S. to slash and burn vegetation, clear trails and plant trees in Idaho. In flagrant violation of U.S. law, they were paid as little as \$1.00 per hour for some of their work. Even when nighttime temperatures approached freezing, their employer left them to sleep outside in primitive conditions in the mountains, without sleeping bags or even safe drinking water.

Manuel Camero-Torres, another temporary worker who encountered similar conditions, says, "I came here expecting to work hard and make money to support my family. What I didn't expect was

to risk my life, be cheated out of my earnings, and then learn that the legal aid lawyers who U.S. citizens rely on in such cases couldn't help me.”

One particularly disturbing aspect of these workers' stories is their inability to get the legal counsel they needed to enforce their rights. Low-income U.S. workers qualify for assistance from legal aid organizations to vindicate their rights under the auspices of the nation's Legal Services Corporation (LSC), but the 16 men who filed the complaint did not qualify for such aid because they – like more than 60,000 other workers – were brought into the U.S. by their employers on H-2B non-agricultural guestwork visas. Workers denominated “agricultural” guestworkers under H-2A visas are eligible, but workers in meat processing, tree-planting, hotels and restaurants and other similar industries are not.

“This artificial distinction leaves a significant number of workers doing some of the most dangerous work in the United States easy prey for unscrupulous companies seeking profit at the expense of the most vulnerable in our society,” says Michael Dale, Executive Director of the Northwest Workers' Justice Project. “These workers pay U.S. taxes just like anyone else, and they are here legally at the invitation of the United States. Yet legal services programs that get any federal money from the LSC can't help them—even with non-federal funds. In many parts of the country there is no other legal resource.”

The complaint was filed in Mexico City because the formal process set up by the NAFTA labor side agreement, called the North American Agreement on Labor Cooperation (NAALC), requires those alleging violations to petition one of NAFTA's signatory countries to take up their complaint. The Mexican government will consider the matter this spring. The workers, who are hoping for a less chilly reception to their plight than they have received in the U.S., are asking the Fox Administration to hold hearings.

The legal papers explain that the NAALC guarantees migrant workers who are in the U.S. legally the ability to enforce their labor rights, access to courts, and fair enforcement proceedings. As part of a reciprocal agreement with Mexico and Canada, the U.S. is supposed to provide migrant workers with the same workplace protections as native-born workers.

“We expect that the Mexican government will seek to protect the rights of its nationals and hope it will take the necessary steps to remind the United States of the obligations that all participating countries embraced when they signed NAALC,” says Laura Abel, Associate Counsel at the Brennan Center for Justice at NYU School of Law, one of the lawyers representing the 16 workers.

Marielena Hincapie, director of programs at the National Immigration Law Center, expresses hope that the U.S. will take the abuses that Mr. Morales, Mr. Perez and other H-2B workers suffer into account in designing any new temporary worker program. “Any new temporary worker program must provide for equal labor rights for the temporary workers, and for legal representation enabling the workers to enforce their rights,” she says.

Representing the 16 workers and all of the supporting organizations are Laura Abel and Emily Chiang, Associate Counsels at the Brennan Center for Justice at NYU School of Law; Michael Dale, Executive Director of the Northwest Workers' Justice Project in Portland, Oregon; and Maria Andrade of the Andrade Law Office of Boise, Idaho.

Additional materials regarding the workers' complaints, as well as the actual complaint, will be available on April 13, 2005 at: <http://www.brennancenter.org>