

COMMITTEE ON APPROPRIATIONS

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Subcommittee on Energy and Water
Development and Related Agencies

Subcommittee on Defense

Subcommittee on Commerce, Justice,
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MARCY KAPTUR
9TH DISTRICT, OHIO

April 10, 2019

Dear Democratic Colleague,

Let me draw your attention to a key issue before our body, the North America Free Trade Agreement's (NAFTA) renegotiation. I sincerely thank Speaker Nancy Pelosi and Ways & Means Chairman Richard Neal for their advocacy for a thorough analysis of NAFTA 2.0 (the United States- Mexico- Canada Agreement) to seek true progress on rule of law and labor rights enforcement from all signatory parties before any renegotiated agreement is considered.

NAFTA's renegotiation is vitally important to our continent and presents an opportunity for Congress to repair the original deal's economic damage. Any new deal must include significant progress on rule of law and labor rights enforcement in all signatory parties. To set the mark on what this should look like, I am drafting a bill, **The Independent Labor Secretariat for Fair Trade Deals Act** (fact sheet attached), based on the AFL-CIO's proposal.

Attached, I also share what I understand to be a heartbreaking example of NAFTA's impact on the tragic death of a Mexican labor unionist - the story of Santiago Cruz. Mr. Cruz was a 27-year old Mexican farmworker, trained in my district as a labor liaison to inform his countrymen how to work in the U.S. legally. He taught them they did not have to pay bribes to traffickers. He was murdered in 2007 in the Farm Labor Organizing Committee's office in Monterrey, Mexico.

Despite repeated attempts, there has been no justice and no prosecution to date - only impunity. If brought to public attention, the truth could reveal the vast, sickening epidemic of Mexican-U.S. labor trafficking, coyote corruption, and continental worker exploitation that undergirds competition in the Americas today, anchored by NAFTA. North America needs a trade agreement that enforces a rule of law, enforces labor rights, raises the standard of living, and provides adjustment for workers and farmers who become the victims of economic competition.

The damage anticipated from NAFTA has come true. Think of the hollowed-out towns and communities across this great nation-- massive numbers of jobs were outsourced, leading to lower wages and lost benefits, and broken lives. The economic model, profits above all else, undermined the rule of law with a continental race to the bottom. Trade is not just about goods. It is about people. It is about communities. Thus, I advocate "free trade among free people."

For more information on the **Independent Labor Secretariat for Fair Trade Deals Act**, please contact Jenny Perrino on my staff at 5-4146.

Sincerely,

Handwritten signature of Marcy Kaptur in blue ink.
Marcy Kaptur
Member of Congress



The Independent Labor Secretariat for Fair Trade Deals Act

Endorsed by AFL-CIO

The bill will amend the Trade Promotion Authority to require that any trade agreement eligible for expedited consideration by Congress include enforceable labor standards and protections. Further, the President may only enter trade agreements which satisfy the labor enforcement objectives set forth by the bill.

Labor Enforcement Trade Negotiating Objectives- principal objectives of the United States will apply to all workers regardless of immigration status, enshrined in the 8 International Labour Organization's Core Conventions, agree all workers should receive sufficient wages to afford a decent standard of living, all jobs are deemed trade related, agree not to reduce labor standards or fail to enforce such standards, that threats or acts of intimidations shall be a violation of the underlying right of freedom to exercise, agree that forced or child labor is banned outright, among others.

Establishment of an Independent Labor Secretariat- The Independent Labor Secretariat will address transnational labor issues, monitor and enforce labor related provisions, and provide research on best practices that enhance lives and livelihoods of working people, among other things. The Secretariat shall freely travel and monitor workplaces within signatory nations, interview workers, and observe and assist relevant government offices tasked with securing labor rights under the agreement. Personnel can give on the spot recommendations or issue reports on compliance or noncompliance.

The Secretariat will be responsible for providing regular, independent and public reports on compliance with the labor chapter of trade agreement. Wage violations shall be immediately referred to the Expert Wage Panel.

Non-compliance- the Secretariat shall provide technical assistance to effectuate recommendations and return entities to compliance. If compliance is not achieved, goods shall be affixed with a label specifying production in a facility providing sub-decent wages. Duties will be charged for non-compliance beyond a year.

Labor Dispute Settlement- labor disputes shall be subject to the trade agreement's Enforcement Chapter.

- Arbitrators will have expertise in international labor or human rights, and base decisions on ILO guidance
- A panel may authorize sanctions in the form of suspension of benefits
- *Right of action-* interested parties (includes workers and unions) may pursue remedies in the domestic court of any party when any party declines to suspend benefits

Establishment of a Wages & Standards Working Group with Expert Wages Panel- shall study the impact of trade agreements on wages, benefits, labor rights, working conditions, inequality and related issues. Additionally, the Working Group shall monitor the work of the Secretariat.

Composition will include representatives from each member party to include individuals from trade unions, employers' organizations, civil society groups, academia, and government.

The Expert Wage Panel- shall publish biennial reports with advice to amend national wage laws and rates to improve standards of living in the trade agreement region. It will be composed of individuals who possess appropriate academic credentials.

Recruitment of Foreign Labor- all migrant workers, regardless of immigration status, shall be afforded the same rights and remedies available to nationals of signatory parties. Each recruited worker must be informed (in their native language) of their rights and other relevant information.

- Under no circumstances may a worker's passport, visa, or other travel document be taken

Collective Bargaining- standards of employment relations across borders within the trade agreement territory shall be established.

FLOC's Fight for Justice in the Assassination of Santiago Rafael Cruz

- I. The Farm Labor Organizing Committee (FLOC) is a labor union representing approximately 10,000 agricultural workers in the US, the majority of whom are Mexican citizens that work in North Carolina under an H2A guestworker visa. In 2004, FLOC signed the first union agreement in the H2A program with the NC Growers Association (NCGA).
- II. The H2A program has long been infamous as the predecessor to the abusive Bracero Program, which allows employers to control access to a work visa creating an environment that encourages labor violations.
- III. FLOC seeks to end these abuses through empowering workers to negotiate conditions collectively and resolve disputes, avoiding slow litigation or reliance on under-resourced government agencies.
- IV. In 2005, FLOC opened an office in Monterrey, Nuevo Leon, Mexico to support and train members before they travel to the US. FLOC specifically worked on fighting against the problem of extortion of bribes from workers by labor recruiters involved in the H2A program in multiple states in both Mexico and the US.
- V. Immediately upon beginning this work, FLOC faced several attacks, including newspaper articles accusing the union of labor trafficking, detention of members and organizers by local authorities on false charges, the attempted deportation of a FLOC organizer, and break-ins and harassment of the office.
- VI. In February of 2007, Santiago Rafael Cruz joined the FLOC staff in the Monterrey office, with the assignment of training and supporting members, as well as documenting labor abuses at the hands of labor recruiters.
- VII. On April 9, 2007, Santiago was brutally beaten to death in the FLOC office in Monterrey, NL.
- VIII. FLOC and Santiago Rafael Cruz's family hired an attorney to represent them in a parallel investigation allowed by the Mexican constitution, investigating and turning over key information to the state attorney.
- IX. The Interamerican Commission on Human Rights issued a protective order for FLOC staff, requiring the Mexican government to implement protections for the Monterrey office and investigate the crime thoroughly.
- X. In May 2007, the Monterrey Police detained Jaime Martinez Amador and he confessed to being one of three men and one woman responsible. He named the other three murderers.
- XI. Instead of arresting the other three suspects after receiving their names and addresses, inexplicably, the Attorney General of Nuevo Leon held a press conference where he announced that the murder had been solved and that the criminal had confessed that the cause of the murder was that Santiago was involved in trafficking migrant workers into the US. When FLOC's attorney reviewed the written declaration of Jaime Martinez Amador, there was no mention of any such statement.
- XII. From 2007 through 2013, FLOC's attorney has submitted incontrovertible evidence that the three people mentioned in Martinez-Amador's confession participated in the murder and where they could be found.
- XIII. In this same time frame, FLOC has asked the state attorney to request support from other state, INTERPOL, and US officials, as well as to arrest the remaining suspects. To date, the state attorney has refused.
- XIV. In September, 2011, FLOC issued a formal request to then President Felipe Calderon to have federal authorities take over the case from the state government of Nuevo Leon. This call was signed by 70 labor leaders from eighteen countries on six continents. President Calderon did not respond.
- XV. In March of 2012, FLOC President and the Vice-Consul of the US met with the Attorney General of Nuevo Leon where they were told that advances were being made in the investigation, though in June of that same year, FLOC's attorney reviewed the files and found no new information. There has since been no new information provided to FLOC about any new actions or progress in the case.
- XVI. In 2019, FLOC members are seeking to engage the Mexican government to end the rampant corruption and extortion of bribes by non-union-recruiters in the H2A program and by Mexican officials that shake down buses of H2A workers returning from the US. This new campaign presents additional security risks making the upcoming 12th anniversary of Santiago's assassination a key moment in FLOC's fight.

FLOC, family seek justice in 2007 death

CLAUDIA BOYD-BARRETT

The Blade

September 8, 2011

Epifania Cruz still remembers the joy she felt when her son Santiago Rafael Cruz returned to his native Mexico after years away in Toledo.

It was 2007, and the 29-year-old Mr. Cruz, who had worked as a union organizer for the Farm Labor Organizing Committee in northwest Ohio, scored a position at the organization's Monterrey office in northern Mexico.

His job was to organize and educate migrant farm workers heading to the United States, and the new location meant he could more frequently see his mother at her home in the country's rural southwest.

"He was very happy. He said: 'Now I'm close. If you're sick or if something happens, now I can get in touch with you more easily and I can come visit you more easily,'" Ms. Cruz recalled. "He was very happy to be back in his country. What he wanted was to be close to me and I was happy."

But that happiness was short-lived.

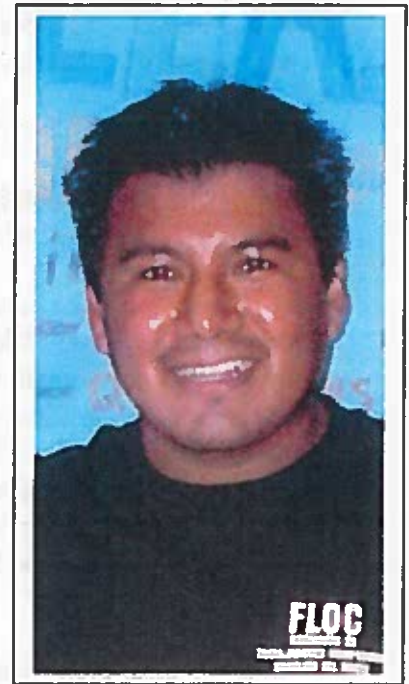
Less than two months after returning to Mexico, Mr. Cruz was found dead at FLOC's Monterrey office, the victim of a gruesome murder. His hands and feet had been were bound and he had been beaten to death, leaving blood spattered across the walls and floor.

For union officials, the motive was obvious: Mr. Cruz and FLOC had been successfully working to protect Mexican migrant laborers from extortion by corrupt recruiters south of the border, and in doing so had stepped on the wrong toes. Mr. Cruz's murder was meant to intimidate organizers into stopping their work, union officials maintain.

Now, more than four years after Mr. Cruz's death, his mother and FLOC members are still waiting for justice. Mexican authorities in the state of Nuevo Leon, of which Monterrey is the capital, have jailed one man in relation to the incident. But Baldemar Velasquez, FLOC's president, said three other suspects are still at large.

Frustrated by the lack of progress, Mr. Velasquez, FLOC'S attorney, Leonel Rivero Rodriguez, and Ms. Cruz plan to deliver a letter Thursday to the official residence of Mexican president Felipe Calderon in Mexico City, urging the federal government to step in and fully investigate the crime. The appeal is signed by the leaders of 71 unions from 18 countries.

"The investigation's been led for over three years now by the state government of Nuevo Leon. I can't describe it as more than foot dragging," Mr. Velasquez said shortly after arriving in Mexico City from Toledo Wednesday.



"We feel a circle of people are involved in this and it really merits the federal government taking it over, and that's what we're asking President Calderon to do."

Attempts to reach a Mexican government spokesman Wednesday were unsuccessful.

Police in Monterrey initially said Mr. Cruz was killed in a dispute over a woman and later that his death was the result of a "drunken fight," Mr. Rodriguez said.

Most recently, the authorities have said Mr. Cruz was involved in human trafficking. But Mr. Rodriguez, a renowned Mexican human rights lawyer, dismissed those claims, arguing that the murder was well planned and preceded by numerous threats against FLOC organizers. He said he conducted his own investigation, supplying addresses and photos of the alleged killers to Mexican authorities, but they deliberately ignored the information. The one man in jail, Jaime Martinez Amador, identified three other suspects in the death, Mr. Rodriguez said, but the state has done nothing to apprehend them. One of those suspects was detained by the U.S. border patrol and handed over to Mexican police, but they released him before he could be prosecuted, the attorney indicated.

"I think if the investigation deepened they were evidently going to touch sensitive issues within the government," Mr. Rodriguez speculated. "They were more interested in just capturing one suspect and stopping the investigation there because it was convenient to them."

Nik Steinberg, a researcher for Human Rights Watch, said it's not unusual for killings and other crimes to go unpunished in Mexico, particularly in the state of Nuevo Leon which has been wracked by drug-related violence in recent years. Activists such as Mr. Cruz are particularly at risk in this kind of environment, he said.

"In Nuevo Leon, as in Mexico on the whole, levels of impunity for crimes are at historic levels. It's very rare that state or federal prosecutors adequately carry out the most basic investigative steps to get to the bottom of killings and other crimes," Mr. Steinberg said. "Despite increasing threats and attacks against human rights defenders, labor activists, and other civil society leaders, the government has done little to protect them, or to adequately investigate the crimes committed against them."

But Mr. Velasquez said FLOC is not going to give up until all those who participated in Mr. Cruz' killing are brought to justice. Mr. Rodriguez said he also plans to sue the Mexican government before the Inter-American Court of Human Rights if no action is taken soon.

Meanwhile, Mr. Cruz's mother struggles daily to come to terms with what happened to her youngest child. Ms. Cruz, 67, said her son was a happy, lovable man who believed passionately in his work defending Mexico's impoverished migrant farmworkers.

"This has hurt me so much, because he was young and had his whole life ahead of him," Ms. Cruz said tearfully in an interview from Mexico City. "It's been four years and nothing. It's as though he were just a small animal that died. Our authorities don't care about us if we're humble and from a poor family. What I want is justice."