

Congress of the United States
House of Representatives
Washington, DC 20515

May 18, 2011

Sent via Email
The Honorable Ronald Kirk
Ambassador
Office of the United States Trade Representative
600 17th Street, NW
Washington, DC 20508

Dear Ambassador Kirk:

On May 13, 2011, armed men on motorcycles fired five bullets into labor rights lawyer Hernán Darío in the heart of downtown Cali, Colombia, according to Maestra Vida, a human rights group based in Cali. Mr. Darío is the lead attorney on a high-profile case defending the leaders of a group of sugarcane workers, who led a labor strike in 2008, from criminal charges. While no one has taken responsibility for this shooting, informed sources in Colombia, including Senator Lopez Maya and his staff, believe it is connected with the sugar strike and Mr. Darío's defense of the sugar workers.

This letter requests that your office (1) make an inquiry to President Santos to assess the adequacy of the steps being taken to identify both the perpetrators and the intellectual authors of this crime, and advise Congress of your findings; and (2) re-assess whether, in light of the entrenched violence, it is appropriate to postpone moving the Colombia Free Trade Agreement (FTA) to Congress until there is tangible evidence on the ground that there has been a meaningful reduction in violence; demonstrable evidence that workers can effectively exercise their rights to form unions and collectively bargain; concrete progress investigating and prosecuting the backlog of cases or murders, as well as new cases, like Mr. Darío's; and an enforcement mechanism to assure continuing implementation of the Action Plan after the FTA has been approved. At least seven trade unionists have been murdered so far this year, and the status of their cases does not indicate a concentrated effort to vigorously investigate, pursue and arrest alleged perpetrators.

The sugarcane industry in Colombia has been the site of serious, ongoing labor conflicts. Sugarcane workers, like workers in many other labor-intensive sectors of the Colombian economy, are generally hired by subcontractors, called Associative Labor Cooperatives (CTAs). CTAs are used by employers to undermine workers' rights by hiring through an intermediary organization. We note that the USTR recognizes the perilous situation of sugarcane workers, inasmuch as "sugar" is one of just five sectors singled out in the U.S.-Colombia Labor Action Plan as priority sectors for labor inspections. While inspections are valuable in their own right if coupled with a rigorous and new enforcement regimen, they are not enough.

In 2008, 18,000 sugarcane workers protested deplorable working conditions in Valle del Cauca and Cauca. The protesters demanded direct contracts with refineries and other basic labor rights such as the right to unionize, job stability, and social security. The 2008 protest was met with resistance from the government and regional elites. Efforts to delegitimize the strike resulted in legal charges against the aforementioned strike leaders and key supporters in September 2008. Mr. Darío, who remains in critical

The Honorable Ronald Kirk
May 18, 2011
Page 2

condition, has paid a very heavy price for defending these workers against false charges concerning their efforts to seek justice and proper labor conditions. This chilling effect cannot go unnoticed.

This shooting comes only five weeks after the Colombian government agreed to implement the U.S.-Colombia Labor Action Plan. In a May 11th letter from you, this Action Plan is cited as a basis for addressing concerns about labor and human rights, and has been a keystone in providing a basis for the Administration to advance the U.S.-Colombia FTA. The Plan calls for expanding protection mechanisms to non-union labor activists and designates 100 labor inspectors to address abuses in CTAs.

The shooting of Mr. Darío reminds us that the Plan remains insufficient in rectifying the labor rights problems in Colombia. During President Santos' time in office, 133 Colombian trade unionists have been the target of death threats, and 23 have been assassinated. This shooting, along with the murders of other trade union activists this year, calls into question whether there has been sufficient progress on the labor rights situation in Colombia to advance this agreement in Congress. Without demonstrable reductions in the level of violence, threats and murders, and clear cut evidence that workers can effectively exercise their rights, the Action Plan represents a set of administrative actions and paper rights. Indeed, there are no benchmarks in the Action plan to gauge its effectiveness on the ground. Beyond post-approval consultations, there is nothing in this Action Plan which is legally binding after the FTA is approved.

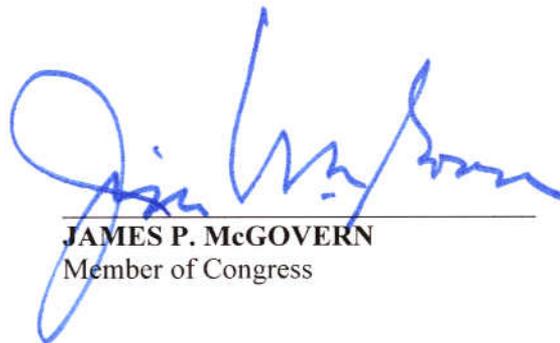
Violence and intimidation are utilized to silence labor rights defenders in Colombia. When high-profile figures like Mr. Darío are attacked, it becomes evident that there are no guarantees for workers that peacefully and legitimately defend basic labor rights. Their vulnerability is symptomatic of a labor environment where the rights of workers do not matter.

We welcome your inquiry in the Darío assassination attempt, and look forward to hearing back from you. Further, given the ongoing pattern of violence, it is our view that it is premature to move forward with a U.S.-Colombia FTA until there is tangible progress on the ground. In addition, there is a need for a post-approval enforcement mechanism to ensure the Action Plan is fully implemented down the road. Moving forward at this point is fundamentally at odds with our core values and interests, including effectively protecting workers' rights, and enabling American workers and businesses to compete on a level playing field.

Sincerely,



GEORGE MILLER
Member of Congress



JAMES P. McGOVERN
Member of Congress