

USLEAP's Support for Guatemalan Trade Unionist José Armando Palacios

March 2010 (updated)

José Armando Palacios is a Guatemalan trade unionist who had to flee his country for his life in January 2006 after two years of violent intimidation. USLEAP began work in support of Mr. Palacios in the summer of 2005 and continued to provide support until his wife and daughter were able to join him in the U.S. in the summer of 2008. Mr. Palacios worked for INCASA, a Guatemalan company that owns two Coca-Cola bottling plants and a plant that produces Coca-Cola syrup for fast food restaurants in Guatemala. In February 2010, Mr. Palacios filed suit against Coca-Cola.^a

USLEAP Support Before Mr. Palacios Had to Flee Guatemala

USLEAP took up the case of José Armando Palacios in 2005 at the recommendation of his union federation, FESTRAS, an affiliate of the International Union of Foodworkers (IUF). USLEAP took Mr. Palacios's statements and began to document a pattern of violent intimidation against Mr. Palacios, highlighting his case in filing jointly with the Washington Office on Latin America a worker rights GSP (Generalized System of Preferences) petition with the U.S. Trade Representative [<http://usleap.org/files/GSPUSLEAPWOLApetition05.pdf>] in June 2005. Mr. Palacios and his family continued to be the victims of violent intimidation with incidents in August, September and November, prompting USLEAP at Mr. Palacios's request to intensify its efforts in support of his case (e.g. a September 2, 2005 letter to Incasa, cc'd to Coca-Cola, the IUF, and FESTRAS, multiple phone calls and emails with Coca-Cola Atlanta, getting his case included in discussions between USAS and others with Coca-Cola).

USLEAP's goal was to get Coca-Cola to intervene with INCASA to ensure no harm came to Mr. Palacios or his family and that he be reinstated to his job, as Mr. Palacios demanded. Working in coordination with the IUF and others, USLEAP helped secure Coca-Cola's intervention in the case [<http://usleap.org/files/PalaciosSumViolence.pdf>] in the fall of 2005, eventually leading to negotiations with Mr. Palacios and his union. Coca-Cola was under considerable pressure from the Killer Coke campaign and an accompanying lawsuit filed under the Alien Tort Claims Act on behalf of trade union victims of violence in Colombia, and no doubt concerned that his case could be added to the campaign.

In mid-December 2005, Coca-Cola promised USLEAP that a resolution would be achieved the following month. Instead, Mr. Palacios was, USLEAP believes, nearly murdered on January 28, 2006, and he decided he had no choice but to flee the country and give up his quest for reinstatement. USLEAP then worked closely with the AFL-CIO's Solidarity Center and with local NGOs to provide protection while he was in hiding in Guatemala until travel arrangements to the U.S. were made.^b

USLEAP Engagement with Mr. Palacios's 2006-07 Negotiations with Coca-Cola

Upon his arrival in the U.S. in early February 2006, Mr. Palacios moved to Michigan to live with a relative. Coca-Cola Atlanta quickly contacted USLEAP to express keen interest in negotiating a settlement with Mr. Palacios. Shortly after Mr. Palacios's arrival in the US, USLEAP was also contacted by one of the lawyers involved in the aforementioned lawsuit against Coca-Cola in Colombia and expressed interest in filing a lawsuit on Mr. Palacios's behalf as part of the broader campaign against Coca-Cola.

Recognizing that Mr. Palacios needed his own legal counsel, USLEAP consulted with labor attorneys, including the assistant general counsel at UNITE HERE, to identify a Michigan-based lawyer willing to provide Mr. Palacios independent legal counsel on his options, including any potential negotiations with Coca-Cola, direct or indirect through the Alien Tort Claims lawyers, and contacted Julie Hurwitz, a respected progressive attorney and outgoing head of the Sugar Law Center for Economic & Social Justice, a project of the National Lawyers Guild, in Detroit, Michigan, who agreed in late February to take his case.

So he could consider all options, about a week after he arrived in the U.S., in mid-February, USLEAP provided Mr. Palacios the contact information for one of the lawyers involved in the Colombia case. Mr. Palacios made direct contact with the lawyer later in February. In mid-March, Mr. Palacios and his lawyer, Ms. Hurwitz, conferred with two lawyers involved in the Colombia lawsuit, Dan Kovalik and Robert Kerrigan, to discuss the latter's proposal to file a lawsuit with them.

USLEAP's position was that Mr. Palacios, and his counsel, should be presented with and able to consider all his options, i.e. direct negotiations with Coca-Cola, filing an independent lawsuit, or filing a lawsuit with the lawyers involved in the Colombia lawsuit and becoming part of the campaign versus Coca-Cola. USLEAP's fundamental position was that Mr. Palacios should decide what was best for him. Ms. Hurwitz worked with Mr. Palacios to explore all options. Mr. Palacios subsequently decided to negotiate directly with Coca-Cola.

While USLEAP was not present when Mr. Palacios made his decision, Mr. Palacios had to consider several factors, perhaps most important being advice from his immigration attorney that participation in a public campaign, i.e. the Alien Tort Claims route, could harm his application asylum, which was viewed as his best chance to get his wife and daughter out of danger in Guatemala to the US, his paramount concern.

Once Ms. Hurwitz and Mr. Palacios began direct negotiations with Coca-Cola, USLEAP's contact with Mr. Palacios with respect to Coca-Cola was limited to providing documentation from Guatemala (e.g. data to substantiate claims for compensation regarding lost wages, relocation costs, etc.). USLEAP checked-in periodically with Ms. Hurwitz who was doing extensive work on the Palacios case and offered any assistance requested.^c Because these negotiations were confidential, she was unable to say much other than indicate that Coca-Cola had agreed to mediate Mr. Palacios' claim out-of-court, that extensive work was being done to compile a strong case for substantial compensation, and that negotiations with Coca-Cola were continuing.

Mr. Palacios and Coca-Cola finally reached tentative agreement in December 2007 on a sum that prompted one of the lawyers representing the lawsuit against Coca-Cola to advise Ms. Hurwitz to accept the offer on behalf of Mr. Palacios because it was highly unlikely that they would be able to get any more than what had been negotiated if they added his case to the pending lawsuit that they were attempting to negotiate with Coca Cola at the time.

Mr. Palacios would not, however, sign an agreement with Coca-Cola until his wife and daughter were safely out of the country. He believed, understandably in USLEAP's opinion, that settling with Coca-Cola before his wife and daughter were out of the country could endanger them further.

USLEAP and Mr. Palacios's Application for Asylum

During 2006, USLEAP worked closely with Ms. Hurwitz and Mr. David Koelsch, Director of the Immigration Law Clinic at the University of Detroit Mercy, who had agreed to provide legal assistance on Mr. Palacios's application for asylum for himself and his son, who was also already in the country. Among other things, USLEAP secured letters of support from Frank LaRue, head of the Guatemalan Presidential Commission on Human Rights and long-time Guatemalan labor and civil rights attorney, as well as other worker rights organizations. USLEAP Executive Director Stephen Coats testified at Mr. Palacios's immigration hearing in September 2006, and USLEAP paid for various legal documents, translations, and other expenses related to his case. (As part of the negotiation process, Mr. Palacios's counsel secured a letter from Coca-Cola acknowledging that were he to return to Guatemala he would have reason to fear for his personal safety and the safety of his family.)

In August 2007, Mr. Palacios finally received the welcome news that his request for asylum had been granted.

USLEAP and Mr. Palacios's Wife and Daughter: Security and Visas

Meanwhile, various options were considered by Mr. Palacios, his counsel, his immigration lawyer, USLEAP, and others for ensuring the security of his wife and daughter, including moving them to another country but doing so would have damaged the prospect of securing visas. After much deliberation and consulting with experts in the field, including the UN High Commission for Refugees, Mr. Palacios decided that the best option for his wife and daughter were to remain in hiding in Guatemala until he received asylum that would then open the door for his wife and daughter to apply for visas. USLEAP made clear to Coca-Cola and in direct communications to its bottler in Guatemala that they would be held accountable should any further harm come to the daughter or wife (e.g. in a June 7, 2006 letter).

After the approval of Mr. Palacios's asylum in August 2007, the visa process for Mr. Palacios's wife and daughter was able to begin, but it moved slowly. In early 2008, there was another violent attack on a Coca-Cola union family in Guatemala, resulting in the murder of the son and nephew and the gang rape of the daughter of Coca-Cola union leader José Alberto Vicente Chávez (the second case in the recently filed lawsuit against Coca-Cola). These horrible acts

were denounced by USLEAP to the Guatemalan President and gave further evidence of the need to expedite and grant the visa applications for Mr. Palacios's wife and daughter. USLEAP informed Mr. Palacios's immigration lawyer (Mr. Koelsch) and counsel (Ms. Hurwitz) about the new violence against family members of a Coca-Cola trade unionist in Guatemala and provided supporting documentation, including an April 2008 CAFTA complaint filed by the AFL-CIO with an annex that highlighted the new case.

In April 2008, USLEAP learned in a telephone conversation with Mr. Palacios that his house was still being visited and that a colleague who had helped him secure documents incriminating INCASA had been murdered. USLEAP then moved quickly to lobby the State Department (e.g. May 22, 2008 letter to the State Department) and secured support from the Teamsters, among others, to persuade Sen. Levin, D-MI, to intervene with Homeland Security to expedite visas for Mr. Palacios's wife and daughter. The visas were granted in the late summer 2008, surprising even the State Department and the AFL-CIO that the interventions had been effective so "quickly." Mr. Palacios was reunited in Michigan with his family before the end of the summer 2008.

Mr. Palacios Change of Lawyers in 2008

In late October 2008, USLEAP was informed that Mr. Palacios had switched lawyers and would now be represented by those engaged in the lawsuit against Coca-Cola in Colombia. Ms. Hurwitz subsequently confirmed to USLEAP that Mr. Terry Collingsworth had notified her that he was now Mr. Palacios's lawyer.^d In a conversation with USLEAP in November 2008, Mr. Collingsworth expressed optimism that they would reach an out-of-court settlement on Mr. Palacios relatively quickly. USLEAP offered to make available materials that might be helpful in their negotiations with Coca-Cola on behalf of Mr. Palacios, materials that had previously been made available to Mr. Palacios's initial lawyer, Ms. Hurwitz, but the materials were never requested. There were no subsequent communications with USLEAP from Mr. Palacios or his new lawyers on this case. In February 2010, Mr. Palacios filed his lawsuit against Coca-Cola.

^a USLEAP's engagement with Mr. Palacios has been mis-characterized in the lawsuit. This summary provides a fuller picture of USLEAP's extensive support for Mr. Palacios. If you have further questions, please contact USLEAP at info@usleap.org.

^b In addition to communications directly with Coca Cola Atlanta that began in fall 2005, USLEAP, and Mr. Palacios, also raised his case in mid-January 2006 with Stan Gacek, a long time USLEAP Board member and Assistant Director of the AFL-CIO's International Department who had established an independent consulting firm on international labor rights in January 2006 after his department was eliminated in 2005. Among various projects, his new firm provided consulting services to the President of the Inter-American Regional Organization of Workers (Linda Chavez-Thompson, the AFL-CIO's Vice President at the time) and also to Coca-Cola to identify labor rights compliance issues in the company's global system. In late January 2006, Mr. Gacek conveyed to Coca-Cola Mr. Palacios's demands and the need to address them. Mr. Gacek's involvement in this case ended a few weeks later, by the end of February 2006.

^c In February 2007, USLEAP's Guatemala-based staff person Bob Perillo resigned. USLEAP was unable to replace him for financial reasons and therefore lost its ability to provide support on the ground in Guatemala for Mr. Palacios's case but Mr. Perillo continued to work directly with Ms. Hurwitz and Mr. Palacios to help provide

documentation from Guatemala to support the negotiations with Coca-Cola.

^d Ms. Hurwitz and her law firm have been mis-characterized in the lawsuit and Mr. Perillo's emails, which Ms. Hurwitz and her firm have described as defamatory in a March 8, 2010 letter [<http://www.usleap.org/files/JHltrtoPerillo8Mar10.pdf>] to Mr. Perillo demanding a retraction. It should be noted that Ms. Hurwitz represented Mr. Palacios in his successful efforts to gain political asylum for himself and humanitarian visas for his wife and daughter, and negotiated a tentative agreement with Coca-Cola for substantial compensation, as described in her letter to Mr. Perillo.