



UNITED STATES

Fields of Peril

Child Labor in US Agriculture

HUMAN
RIGHTS
WATCH



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Maria M.

“Every teenager should do at least a day and see how it is to work a real job. You sweat. You walk until your feet hurt, you have blisters, and until you have cuts all over your hands,” said Maria M., reflecting on her childhood working in the fields.¹

Growing up in a farmworker family in rural Idaho, Maria said she was “always surrounded” by work in the fields. She started working at age 11 in order to help her parents. “I worked picking onions after school in about 6th grade,” she told Human Rights Watch. “I didn’t mind working in the fields. I just saw it as something we did, something my family had always done.”

According to Maria, her young age was nothing unusual: “I worked with a lot of older people and younger. The ages were always varied, 11 and 12 year olds, even 10 year olds. They didn’t get paid on check [on the books], they’d just go and help their parents on the side. The growers know that. They see that—they would pass by when they drop off water. No one was going to say anything.”

Maria said she worked 10 and sometimes 13 hours a day, earning less than the minimum wage. “The pay was terrible.”

As she got older, Maria said, she mostly “was hoeing onions in the back country . . . sugar beets, zucchini, *espiga* [detasseling corn]. . . . When I worked in *espiga*, the growers would water We would walk down the rows getting really wet. The mud goes in your tennis shoes and you get blisters. You’re in them all day.”

Maria said everyone felt pressure to work fast. “The crew leader would egg the workers on and intimidate the workers who were slow. It almost became a tradition in the field, the person who was the fastest was the best worker. . . . [It’s] something that has been instilled in us to work hard. Prove yourself, be a good worker.”

One summer vacation in high school she harvested zucchini, bending down all day to pick the vegetables. “You had to go really fast,” she explained. “You had to bend down for hours until your next break. . . . A lot of people who did zucchini before have back problems. I was young and I know how much my back hurt after one season. . . . I don’t know if I blame the

¹ Human Rights Watch telephone interview with Maria M. (not a pseudonym), age 19, Idaho, September 13, 2009.

field, but ever since I worked in zucchini, I have had a lot of back problems. I don't know if it was zucchini or if it was just working for years in the field."

Maria was the only member of her family picking zucchini and one of only three girls in the field. "The first time we got there," she said, "the guys were just joking around and said this was a guy's job, it was no place for girls, that we should just go home." She added, "it wasn't an easy job. . . . Sometimes it was very frustrating because guys would tell you stuff." Because Maria's father was known in the community, she said, she was spared more serious harassment, but the men were verbally abusive to one of her co-workers.

At the time, Maria said, she did not know anything about pesticides but has since learned. "Now that I know about pesticides," she told us, "I'm pretty sure we entered many fields" with recently applied pesticides.

There was always white residue in the fields, especially zucchini always had residue on them. . . . [T]here were people who got sick but probably thought it was the heat. They never told us they were spraying, they would just say "watering."

One summer . . . me and my older sister were working . . . We were told when we saw the plane we had to get out. But they didn't say when, just "look for the plane." They were spraying things we didn't know what they were. We heard it was chemicals so [the plants] could grow, but we didn't know what they were. So we didn't think about that when we saw a plane. We were in the next field and you see it all the time in the country. It's always the next field but it drifts.

Maria is one of the rare farmworker children who has made it to college, where she says her experiences in the field continue to motivate her. "I'm not like some people who came to college because their parents made them or to party," she explained. "With me, my parents didn't force me to come to school. They didn't want me to put pressure on myself. In the long run when I finish school, I will help my parents. When there is an exam coming or I just want to go home because my parents need help financially, I think how much I'm going to help them when I get out. Some days I just want to go home and help them, but I think in the long run this won't help, so I think working in the fields had a big impact on me."

Marcos S.

“I really didn’t have a childhood and I don’t want [my own children] to go through what I did,” 17-year-old Marcos S. told Human Rights Watch. “You’re a kid only once. Once you get old you have to work.”²

Marcos, who lives in North Carolina, said he started working in agriculture full time when he was 12 years old. Among other things, from late November to late December, he cuts Christmas trees. Marcos explained what his work was like when he was 12 years old. He said:

I did two things. One, I used a machine. It didn’t cut the trees but it dug them out with the roots so we could take them somewhere else. These were heavy because of the trees and the soil. I had to hold the tree when they were digging. Then you carry it on your shoulder to the truck. It was so heavy you couldn’t carry it by yourself so you had to do it in pairs.

Second, I cut the tree three to four inches from the ground. I put it in the machine to tie it. I put it on my shoulder and carried it to the trucks. . . .

When I was 12, the first day it was so heavy. The next day I didn’t even want to get up because my body hurt so bad but I knew I had to because I needed the money. I said “never again” but I had to because that was the only job.

Marcos told us that the first year he “used a chainsaw a couple of times but that was it. If someone was doing something else, they’d say, ‘Cut there.’” But when he returned to the same farm the next year at age 13, he used a chainsaw like everyone else. When asked if he was taught how to use it, he replied: “You just have to start it, that was the most important thing.” Marcos admitted that he didn’t always feel safe. “My uncle cut his leg using a chainsaw. Sometimes if you don’t do it right, it can bounce back—it can happen in a flash. My uncle, it was bad.”

While working, he said, he wore “just regular clothes, no gloves, masks, no protection. Regular shoes. . . . I never had any protective gear. . . . And it’s cold, it rains. We still have to work.”

² Human Rights Watch interview Marcos S. (not his real name), age 17, Jackson County, North Carolina, August 4, 2009.

Marcos said that pesticides were sprayed around him. “They spray to kill the insects that damage the trees. They do that for the trees that are still growing. . . . You don’t cut all the trees, they’re mixed in. They’re marked with a red ribbon, the ones they want you to cut. So the ones they don’t, they spray. You’re right there. . . . A big tank on their back and they go around. They did it when I was working. It smells so bad.”

He had never received any training on pesticides, he said. “They don’t say anything. They just want you to get it done. The guys that spray, they don’t even wear masks.”

Marcos said no one ever asked him how old he was, “You just come if you can work.” Still, he assumed his employers knew his age: “You can tell when someone is a kid, I mean, 12.” And, he noted, “There’s a lot of young kids working out there. . . . Last year [when I was 16] there were kids younger than me. When I was 13 . . . there were other kids. My cousin is the same age as me. He worked Christmas trees for other people.”

Marcos said he normally works weekends and school vacations, on different crops throughout the year. But the Christmas tree harvest is during the school year, and “sometimes they say, ‘We need you to come Monday.’ So I say, ‘I have school,’ but they’re going to pay me. . . . You pretty much have to choose work or school. They’re not part-time jobs. . . . So sometimes I have to choose work. . . . But in school there’s a limited number of times you can be absent. . . . Then I have homework to catch up on. I go to work, I come home. I stay up late to get it done.”

Marcos said that no one in his family had made it past the tenth grade, and his two older sisters had already dropped out to work. “My mom tells me, ‘You might want to get out of school and help me.’ I listen to her and respect her but I want to choose my future. I want to go as far as I can go.”

I. Summary and Key Recommendations

Hundreds of thousands of children under age 18 are working in agriculture in the United States. But under a double standard in US federal law, children can toil in the fields at far younger ages, for far longer hours, and under far more hazardous conditions than all other working children. For too many of these children, farmwork means an early end to childhood, long hours at exploitative wages, and risk to their health and sometimes their lives.

Although their families' financial need helps push children into the fields—poverty among farmworkers is more than double that of all wage and salary employees—the long hours and demands of farmwork result in high drop-out rates from school. Without a diploma, child workers are left with few options besides a lifetime of farmwork and the poverty that accompanies it.

In 2000, Human Rights Watch published the report “Fingers to the Bone: United States Failure to Protect Child Farmworkers.” This study documented the exploitative, dangerous conditions under which children worked in agriculture and the damage inflicted upon their health and education. Highlighting weak protections in US law, it found that even these provisions were rarely enforced. Nearly 10 years later, Human Rights Watch returned to the fields to assess conditions for working children. We conducted research in the states of Florida, Michigan, North Carolina and Texas, interviewing dozens of child farmworkers who had altogether worked in 14 states across the country. Shockingly, we found that conditions for child farmworkers in the United States remain virtually as they were a decade ago. This report details those conditions and the failure of the US government to take effective steps needed to remedy them. Most notably, the government has failed to address the unequal treatment of working children in the Fair Labor Standards Act (FLSA), which provides fewer protections to children working in agriculture compared with all other working children.

In agriculture, children typically start working adult hours during the summers, weekends, or after school at age 11 or 12. Many children work part time much earlier, and Human Rights Watch interviewed child farmworkers as young as seven. Seventeen-year-old Jose M., who described the shock he felt going to work at age 11, said that when he looks around the field and sees 12-year-olds, “I know how they feel. I used to feel like that. They have a face that says they don’t want to be here.” He added, “Teachers at school know when kids turn 12. They see the cuts on their hands. They know a child at 12 goes to work. No if’s, and’s, or but’s.”

Parents told us they took their children to work because they did not have childcare and because they needed the money to meet basic expenses and buy school supplies. The fact that the work is legal also presents it as a legitimate choice for parents, children, and employers. But several mothers later expressed regret over the choices they had made. One mother in Texas said she believed she had already stolen her 11-year-old daughter's childhood. Another said when she saw what work did to her two oldest children, she decided not to take her two youngest children to work.

Current US law provides no minimum age for children working on small farms so long as they have their parent's permission. Children ages 12 and up may work for hire on any farm with their parent's consent, or if they work with their parents on the same farm. Once children reach age 14, they can work on any farm even without their parents' permission. Outside of agriculture, children must be at least 16 years old to work, with a few exceptions: 14- and 15-year-olds can work in specified jobs such as cashiers, grocery baggers, and car washers, subject to very restricted conditions.

Children often work 10 or more hours a day: at the peak of the harvest they may work daylight to dusk, with few breaks. Children described working five to seven days a week, weather permitting. For example, 14-year-old Olivia A. said she worked from 6 a.m. to 6 or 7 p.m. picking blueberries in Michigan, seven days a week. Felix D., age 15, said he worked the same hours deflowering tobacco in North Carolina, six days a week.

For school children, work is often confined to weekends and summers, and before and after school. Children who have dropped out of school, including "unaccompanied children" who have come without their families from Mexico and Central America, work these hours whenever work is available. Under US law, there are no limits on the hours children can work in agriculture outside of school hours. In non-agricultural settings, 14- and 15-year-olds cannot work more than three hours on a school day and eight hours on a non-school day.

Children working in agriculture typically make less than the minimum wage. Their pay is often further cut because employers underreport hours, and they are forced to spend their own money on tools, gloves, and drinking water that their employers should provide by law. For example, in the Texas panhandle region, children told us they made \$45 to \$50 a day for 10 or more hours of hoeing cotton, or at best \$4.50 to \$5.00 an hour, compared with the federal hourly minimum wage of \$7.25. Where the pay is based on a piece rate, meaning workers are paid by the quantity they pick, it is usually much worse. Antonio M., age 12, said that picking blueberries on piece rate in North Carolina, he made at most \$3.60 an hour.

With some notable exceptions, farmworkers are legally entitled to minimum wage but not overtime, and rarely receive job-related benefits that much of the rest of America's workforce takes for granted. They receive no paid sick days, no health insurance, no paid vacation leave, and have no job security. They only get paid for the hours they work. Laws that deny farmworkers overtime, and in some instances minimum wage, combined with poor enforcement of existing wage laws, contribute to farmworkers' poverty and financial desperation that compel children to work and make farmworkers even more vulnerable to exploitation.

Farmworker youth drop out from school at four times the national drop-out rate, according to government estimates. Human Rights Watch interviewed many children who had been forced to repeat a grade one or more times and who had never had anyone in their families graduate from high school. Several factors explain this. Around 40 percent of hired crop workers migrate each year to or within the United States for work. Children whose families migrate within the United States often leave school early—in April or May—and return weeks or even months after school has already started. Fifteen-year-old Ana Z. in Texas said: “I don’t remember the last time I got to school registered on time. . . . I’m afraid it’s going to hold me back on my education. . . . I got out of math because I was a disaster. I would tell the teacher, ‘I don’t even know how to divide and I’m going to be a sophomore.’ I’m going from place to place. It scrambles things in my head and I can’t keep up.”

Children who try to combine working and going to school often find that school pays the price, in part because there are no limits on how many hours children can work in agriculture outside of school hours. Jaime D., who told us he dropped out of school at age 16 after he started picking tomatoes, explained, “I wanted to work and still go to school, but I couldn’t concentrate on both. I didn’t know how to do both.”

Agriculture is the most dangerous industry for young workers, according to the Centers for Disease Control's National Institute for Occupational Safety and Health (NIOSH). Working with sharp tools and heavy machinery, exposed to chemicals, climbing up tall ladders, lugger heavy buckets and sacks, children get hurt and sometimes they die. From 2005 to 2008, at least 43 children under age 18 died from work-related injuries in crop production—27 percent of all children who were fatally injured at work. The risk of fatal injuries for agricultural workers ages 15 to 17 is more than 4 times that of other young workers.

Under current US law, children can do agricultural work that the US Department of Labor deems “particularly hazardous” for children at age 16 (and at any age on farms owned or operated by their parents). In non-agricultural sectors, no one under age 18 can do such jobs.

Incongruously, some of the same jobs that are considered too dangerous for teenagers in non-agricultural settings are perfectly legal in agriculture: a 16-year-old who is barred from driving a forklift in a store warehouse, for example, may do so without restriction on a farm.

Children routinely described small injuries, and some more serious in interviews with Human Rights Watch. Rarely did they say they sought medical care. Jose M. said he was 12 when “they gave me my first knife. Week after week I was cutting myself. Every week I had a new scar. My hands have a lot of stories. There are scars all over.” Another boy described being hurt when the truck carrying him out to the field rear-ended another. Nevertheless, he said, he and his family returned to work the next day: working sick, injured, and without taking breaks was a common theme among our interviewees who needed the money and were afraid of getting fired if they missed a day.

Human Rights Watch saw children working without gloves and even barefoot. Most said no one required them to wear protective gear; if anyone, it was their parents who urged them to wear it, not their employers.

Children often work performing the same motions—kneeling, stooping, or raising their arms for hours a day. Youth described pain in their backs, knees, hands, and feet, even at very young ages. Children whose bodies are still developing are especially vulnerable to repetitive-motion injury.

Children work in extreme temperatures, heat and cold, from over 110 degrees in the Texas summer to snow in Michigan. In some climates the day starts cold and wet, then turns unbearably hot. Elias N., age 16, said the bad days for him were the “real hot ones, the field is full of weeds, you can’t even take a step. When you’re surrounded by corn, there’s no air.” Working long hours in high temperatures places children at risk of heat stroke and dehydration, particularly if there is not enough drinking water. Heat illnesses can lead to brain damage and death, and children are significantly more susceptible to heat stress than adults. A 17-year-old girl in California died in May 2008 after working nine hours pruning grape vines. Her supervisor delayed her seeking medical care, and when she finally reached the hospital she had a core body temperature of 108 degrees.

Many children said that their employers did not provide drinking water, handwashing facilities, or toilets. Children described bringing their own water and sometimes running out. In some places workers said they had to buy water with their meager wages because the quality of the water in migrant housing was too poor to drink. The federal Occupational Safety and Health Administration (OSHA) requires agricultural employers to provide drinking

water, water for hand washing, and toilet facilities. Congress, however, exempts farms with fewer than 11 employees from these regulations, essentially exempting them from having to protect their workers' dignity and most basic health requirements.

Children are exposed to pesticides. Some children told Human Rights Watch they were sprayed directly; many more said that the fields next to them were sprayed while they were working, and they smelled and had reactions to the drift. "Here there are a lot of chemicals in the field," said 18-year-old Hector H., who worked alongside children. "You can smell them. [Recently] the plane sprayed, sprayed the cotton. . . . I felt dizzy. I covered my face and kept working. No one told us to get out of the field." Many children described seeing residue on the plants or even going back into fields wet with spray. Almost none of the children we spoke with had received training on pesticide safety.

Exposure to pesticides is a hazard for all farmworkers but may be especially dangerous for children whose bodies are still developing. Children are uniquely vulnerable to chemicals and may absorb pesticides more easily than adults. Children working in agriculture have far greater incidence rates of acute occupational pesticide-related illnesses than children working in other jobs. Exposures to pesticides can produce rash, dizziness, nausea and vomiting, headaches, and burning eyes, as well as brain damage and death. Long-term pesticide exposure in adults is associated with chronic health problems such as cancer, neurologic problems, and reproductive problems.

US Environmental Protection Agency (EPA) regulations prohibit the spraying of pesticides when any unprotected worker is in the field or may be exposed through drift. The agency sets restricted-entry intervals (REIs) specifying the amount of time after pesticide application workers should not be in treated areas and requires basic pesticide safety training for all workers. However, EPA regulations make no special consideration for children. They do not prohibit children mixing, handling, or applying pesticides (although regulations on hazardous work prohibit children under age 16 from using the most dangerous categories of pesticides). Pesticide risk assessments do not take children's special vulnerabilities into account. REIs are set using a 154-pound adult male as a model—they are not adapted for children, pregnant women, or others who differ from this model.

Farmworker women and girls are exceptionally vulnerable to sexual abuse, ranging from inappropriate or threatening comments to groping, sexual assault, and rape. Geographic isolation, language barriers, fear of deportation, and the desperate need for work make it very difficult for farmworkers to report abuse, much less get help. Girls may be especially

targeted because they are young and because of a greater power imbalance that makes it even less likely they will complain.

Despite these risks to children's health and safety, even the weak protections in US law are rarely enforced. Indeed, in the 10 years following the publication of our first report, enforcement of child labor laws overall by the Department of Labor's Wage and Hour division declined dramatically. In 2009 the division found only 36 cases of child labor violations in agriculture, constituting only 4 percent of all child labor violations, compared with 104 cases in 1998. In 2008 Congress raised the maximum civil money penalties for violations of child labor provisions resulting in death or serious injury, and in the Department of Labor added several hundred new labor inspectors and promised more robust enforcement of labor laws. It remained to be seen at the time of writing whether these efforts would result in better protection for child farmworkers.

Although each has recently undertaken positive steps in this direction, neither the US Department of Labor nor the EPA has made regulatory changes to better protect child farmworkers from dangerous work and pesticides. Many of the regulations specifying "particularly hazardous" jobs are out of date and fail to address the serious safety and health hazards that children face in the workplace. In 2002 NIOSH recommended in a lengthy report that the Department of Labor update many of the so-called "hazardous order" regulations. By early 2010, the department had taken steps towards updating some of the regulations for non-agricultural jobs but had not placed amending the list for agriculture on its published regulatory agenda, despite the particularly dangerous nature of agricultural labor and younger age at which children are permitted to do hazardous jobs. Nor has the Wage and Hour Division enforced existing prohibitions on hazardous work: in 2009 it cited only two violations of agricultural hazardous orders in two cases, or 0.14 percent of the 1,432 hazardous order violations it found that year.

In December 2009, the EPA announced plans to strengthen its assessment of pesticide health risks for children, farmworkers and others, with a strong emphasis on risks for children in the fields. A process to amend the Worker Protection Standard, which regulates practices related to workers' exposure to pesticides, has been ongoing for more than a decade.

Lax enforcement of labor laws and health and safety standards is exacerbated by workers' fears of reporting violations to authorities because they fear deportation for themselves or for their family members. While many child farmworkers are US citizens, the entire family may fear deportation if the parents are undocumented or hold short-term agricultural visas.

Labor standards and their enforcement apply to all workers, irrespective of their immigration status. However, enforcement of workplace protection laws often relies upon workers to self-report abuse. They are very unlikely to do so when their employers can threaten to call the US Immigration and Customs Enforcement agency (ICE). Workers are also unlikely to report abuses to local police or law enforcement, since these agencies are increasingly involved in enforcing immigration laws.

The United States spent over \$26 million in 2009 to eliminate child labor around the world—more than all other countries combined—yet the country's law and practice concerning child farmworkers are in violation of or are inconsistent with international conventions on the rights of children. International Labor Organization Convention No. 182 on the Worst Forms of Child Labor, ratified by the United States in 1999, prohibits children from engaging in dangerous or harmful work. The Convention on the Rights of the Child, to which the United States is a signatory but not a party, seeks to protect children from economic exploitation, and also from work that is hazardous or otherwise harmful. Additionally, because farmworker children are overwhelmingly ethnically Hispanic, the disparity in legal protections provided to agricultural workers compared to other workers in the United States has a disparate impact that is discriminatory under international law. The failure of the United States to enforce existing laws and regulations that purport to protect children working in agriculture further violate the United States' international legal obligations.

For the last decade, members of Congress have repeatedly introduced draft legislation into both the Senate and House of Representatives that would eliminate the double-standard in US child labor laws, and apply the same age and hour restrictions to children working in agriculture that already apply to other industries. However, none of the bills have ever reached a vote. As this report goes to press, a House bill, co-sponsored by over 80 members of Congress, is pending.

Key Recommendations

The US Congress should:

- Amend the Fair Labor Standards Act (FLSA) to apply the same age and hour requirements to children working for hire in agriculture as already apply to all other working children. Congress should also raise the minimum age for particularly hazardous work in agriculture to 18, in line with existing standards in all other industries.
- Halt its yearly approval of a rider exempting almost all farms with 10 or fewer employees from the jurisdiction of the Occupational Safety and Health Administration (OSHA).
- Provide sufficient support to programs, such as those administered by the Department of Education's Office of Migrant Education, to remove barriers to the school enrollment, attendance, and achievement of child farmworkers and ensure that child farmworkers have access to and benefit from the same appropriate public education, including public preschool education, provided to other children.

The US Department of Labor should:

- Dramatically increase agricultural workplace inspections targeting child labor and minimum wage violations through its Wage and Hour Division. Significantly increase civil money and criminal penalties within the limits allowed by law to improve compliance with the law.
- Propose and press for much-needed amendments to the list of jobs in agriculture that deemed to be “particularly hazardous” for children, as recommended by the Centers for Disease Control’s National Institute for Occupational Safety and Health (NIOSH) in 2002.

The Environmental Protection Agency should:

- Amend the Worker Protection Standard to impose a minimum age of 18 for all pesticide handlers.
- Revise the restricted-entry intervals (REIs), which prohibit entry into an area treated by pesticides for a specified period of time following the application of the chemicals, to distinguish between adults and children and impose more stringent REIs for children. Incorporate an additional safety margin on top of what is determined necessary to ensure short and long-term safety, and take into account the combined effect of both occupational and non-occupational exposures.

- Monitor states' enforcement of the Worker Protection Standard and related pesticide regulations to ensure that such enforcement is vigorous and meaningful.

All states should:

- Set or raise the minimum age for agricultural work to at least 14, with the exception of children working on farms owned and operated by their parents.

Detailed recommendations may be found at the end of this report.

II. Methodology

This report is based on Human Rights Watch's field research in 2009 and early 2010 and a review of secondary sources. We interviewed 59 children under age 18 who had altogether worked as farmworkers in 14 states in different regions of the United States: California, Florida, Georgia, Idaho, Michigan, New Jersey, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Texas, Virginia, and Washington State. We also interviewed 11 young people ages 18-20 who had worked on farms as children. We spoke with parents, legal services providers, nurses, doctors, social workers, education officials, farmers, and farm operators. We also spoke to officials of the US Department of Labor's Wage and Hour Division and Occupational Safety and Health Administration, the Centers for Disease Control's National Institute for Occupational Safety and Health, the Environmental Protection Agency (EPA), and the US Department of Agriculture. Some interviews were conducted by telephone. In total we interviewed more than 140 people.

For this report Human Rights Watch visited Florida, Michigan, North Carolina, and Texas. We chose these states because they allowed us to interview both seasonal and migrant farmworkers, including migrants who were at home and on the road, as well as children working in diverse crops. Their labor included detasseling corn and sorghum; hoeing sugar beets, cotton, and pumpkins; and harvesting asparagus, cucumbers, Christmas trees, tomatoes, oranges, apples, blueberries, peaches, tobacco, and cherries. Florida and Texas are base states for migrant workers; North Carolina, Michigan, and northern Texas are destinations. Although agriculture includes both crop and livestock workers, our interviews focused on crop workers only.

Interviewees were identified largely with the assistance of a variety of organizations providing legal, health, and social services to farmworkers. These workers may have been less vulnerable than those without contact with any such organizations. Some farmworkers approached declined to be interviewed.

Human Rights Watch interviewed several agricultural guest workers, who are lawfully present in the United States on a short-term basis under the H-2A guest worker program but highly vulnerable to abuse.³ However, children under age 18 are not eligible for the program and

³ For more information about abuses suffered by guest workers, see Southern Poverty Law Center, "Close to Slavery: Guestworker Programs in the United States," March 2007, http://www.splcenter.org/sites/default/files/downloads/Close_to_Slavery.pdf (accessed April 7, 2010); and Patricia Medige, "Perspectives on the Bush Administration's New Immigrant Guestworker Proposal: Immigrant Labor Issues," Denver Journal of

even those interviewed who appeared underage maintained that they were not. Accordingly, their accounts are not used in this report.

Interviews were conducted in English or Spanish or a combination of the two, at the interviewee's preference. Some persons interviewed in Spanish were native speakers of other languages indigenous to Mexico. Most interviews were conducted privately and individually, away from the worksite; where interviewees preferred to have another person present, this is indicated in the notes. All participants were informed of the purpose of the interview, its voluntary nature, and the ways in which the information would be collected and used, and orally consented to be interviewed. Most interviews ranged from 10 to 90 minutes in length. No one was provided with any compensation in exchange for an interview.

The statistics cited about the farmworker population are the most recent available at the time of writing. It is notable that there is relatively little recent nationwide data on farmworkers.

In this report "child" and "children" are used to refer to anyone under the age of 18, consistent with usage under international law. Except where otherwise indicated, the names of all children have been replaced with pseudonyms to protect their privacy and to preclude any potential retaliation. In addition, some service providers requested anonymity out of concerns about jeopardizing their access to farmworkers living on farms.

The term "migrant worker" can have various meanings and, as noted below, many farmworkers were, at least at some point in their lives, international migrants. In this report the term "migrant" is used for workers who travel for seasonal agricultural work, as distinguished from settled workers based on one place.

This report draws on survey data that use the terms "Hispanic" and "Latino" to refer to ethnicity. Where used in this report, these terms reflect those used in the survey referenced.

International Law and Policy, vol. 32 (2004), p. 739. Less than 5 percent of all hired farmworkers are hired through the program. William Kandel, US Department of Agriculture (USDA) Economic Research Service, "Profile of Hired Farmworkers, A 2008 Update," July 2008, <http://www.ers.usda.gov/Publications/ERR60/ERR60.pdf> (accessed April 8, 2010), p. 14.

III. Child Farmworkers in the United States

No one knows exactly how many children under the age of 18 are working in US agriculture.⁴ Counting farmworkers is difficult: the work changes with the growing season, children and adults move in and out of the workforce, and migrants work outside their hometowns and countries. Many lack telephones and mailing addresses that are essential for most surveys conducted by the government. Roughly half of farmworkers lack work authorization and growers employ others off the books, giving incentives to both parties for workers not to be counted. Data about child agricultural workers are at best several years old and not comprehensive. Even where adults are working legally, children may not be officially employed but their work counted towards their parents' pay instead. Despite grueling hours and difficult and dangerous tasks, even their parents may consider them "helpers," not workers. And teenagers under age 18 may not be visibly distinguishable from young adults.

Despite the scarcity of data, conservative estimates make clear that hundreds of thousands of children are working as hired laborers in agriculture, making up a significant proportion of the country's estimated 2.3 million employed workers who are below age 18.

Farm operators reported hiring 2,636,509 farmworkers in 2007, directly hiring 211,588 children under age 18 in 2006.⁵ Adjusting for differences in dates and other factors, researchers from the National Institute for Occupational Safety and Health (NIOSH) estimate that about 9 percent of directly hired farmworkers were under age 18 in 2006.⁶ These data exclude children working on their own families' farms, for labor contractors, or off the books and thus not reported by farm operators.⁷ Given that farmers rely on labor contractors to hire

⁴ The government estimates that approximately 2.3 million adolescents ages 15 to 17 worked in all kinds of jobs (including agriculture) in the U.S. in 2008, but this estimate excludes children under age 14 who can work only in agriculture. National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control, "Young Worker Safety and Health," January 13, 2010, <http://www.cdc.gov/niosh/topics/youth/> (accessed April 3, 2010).

⁵ Emails from John Myers, Health Statistician, NIOSH, to Human Rights Watch, April 5 and 7, 2010 (citing 2007 Census of Agriculture for total agricultural workers and NIOSH 2006 research on children directly hired by farm operators). These numbers, which are based on telephone reports from the farmers themselves, include adults and children working in both crops and livestock. See US Department of Agriculture, "2007 Census of Agriculture," 2009, table 7, p. 336, and appendix B, p. B-13. By comparison, the US Department of Labor's National Agricultural Workers Survey (NAWS), which does not count working children under age 14, found that 3 percent of hired crop workers were ages 14-17 in 2005-2006. US Department of Labor, "The National Agricultural Workers Survey: Public Access Data," <http://www.doleta.gov/agworker/naws.cfm> (accessed April 27, 2010).

⁶ Emails from Myers, April 5 and 7, 2010.

⁷ Ibid.

15 percent or more of their crop workers,⁸ and that about 497,000 children under age 18 worked on the farms on which they resided in 2006,⁹ these figures represent significantly fewer than all children working in US agriculture.

Farmworkers under age 18 can be found working all across the country. Particularly large populations of farmworkers live and work in California, Florida, North Carolina, Texas, Oregon, and Washington State.¹⁰ Virtually no state is without child labor in agriculture, and certainly no state fails to benefit from children's farmwork, as the produce that is harvested and packed by youngsters' hands may travel thousands of miles to grocery store shelves.

A sizeable minority—somewhat less than 40 percent—of hired farmworkers are mobile, meaning that they move for work. Most of these travel between their homes and a single location; only about 10 percent “follow the crops,” traveling to multiple locations as the season progresses.¹¹ Migrants travel north each year through three rough “streams” in the eastern, mid-western, and western regions of the country.

Farmworkers are overwhelmingly poor: poverty among farmworkers is more than double that of all wage and salary employees in the United States.¹² The average individual annual income of crop workers was between \$12,500 and \$14,999 in 2005-2006, the most recent year for which data are available. Total family income averaged between \$15,000 and \$17,499 annually.¹³ Non-supervisory crop workers are the poorest of all agricultural workers:

⁸ US Department of Labor, “The National Agricultural Workers Survey: Public Access Data,” <http://www.doleta.gov/agworker/naws.cfm> (accessed April 27, 2010) (data from 2005-2006). Farm labor contractors are central to the structure of agricultural production in the United States. Farm labor contractors range in size from single individuals to large corporations. Under contract to a grower or farmer, a farm labor contractor typically is responsible for hiring and overseeing the workers and ensuring that the work—planting, pruning, weeding, harvesting—is completed satisfactorily. Farm labor contractors usually are paid a lump sum by the growers, which they then use to secure labor as needed and in turn charge hired farmworkers in exchange for arranging employment, further reducing their pay. Kandel, “Profile of Hired Farmworkers, A 2008 Update,” p. 22 (see also p. 25). Where a farm labor contractor is used, the grower may have no direct contact with the workers. Either the employer or the farm labor contractor might set the rate at which wages will be paid, but it is the farm labor contractor who recruits and contracts with the workers, pays the wages, makes payroll deductions, and often transports the workers to the work site each day (often for a fee).

⁹ Email from Kitty J. Hendricks, Division of Safety Research, NIOSH, to Human Rights Watch, April 12, 2010.

¹⁰ According to data from the US Census Bureau Current Population Survey, almost half of all hired farmworkers live in just five states: California, Texas, North Carolina, Washington, and Oregon. USDA Economic Research Service, “Rural Labor and Education: Farm Labor,” March 31, 2008, <http://www.ers.usda.gov/Briefing/LaborAndEducation/FarmLabor.htm> (accessed April 3, 2010).

¹¹ Ibid. (citing data from NAWS through 2006). “Migrating hired farmworkers exhibit different demographic and employment profiles from settled farmworkers: they are younger, more likely to be male, and more often Hispanic.” Ibid.

¹² Kandel, “Profile of Hired Farmworkers, A 2008 Update,” p. iv.

¹³ US Department of Labor, “The National Agricultural Workers Survey: Public Access Data,” <http://www.doleta.gov/agworker/naws.cfm> (accessed April 27, 2010). Twenty-eight percent said that they or someone in their household had used at least one type of public assistance program in the previous two years (most commonly Medicaid (23

in 2006 their median weekly earnings were less than that of livestock farmworkers, janitors, and maids.¹⁴ “In migrant camps as soon as you are old enough you have to go to work to earn for your family,” the director of a program providing social services for migrants explained. “Typical families we work with [in Florida] earn \$7,000 to \$10,000 a year. Per family.”¹⁵

The national impact of the recent US financial crisis on farmworkers has not been documented. Human Rights Watch received reports in some places of persons returning to farmwork after having lost preferable jobs, and reports elsewhere that such a shift had not occurred as anticipated since many people are simply unwilling to do such hard and low paying work. We heard reports in Florida, where some workers had been able to stop migrating to other states by finding construction and other work during the off season, of workers returning to Mexico and remaining there rather than resuming migration. Elsewhere service providers said that workers they had expected to return to Mexico instead remained in the United States, in part because crossing the border (in either direction) had become even more expensive and dangerous.¹⁶

percent), Women Infants and Children (13 percent) and food stamps (6 percent)) but less than 1 percent reported that they or someone in their family had received general assistance welfare or temporary assistance to needy families (TANF). *Ibid.*

¹⁴ Kandel, “Profile of Hired Farmworkers, A 2008 Update,” pp. 20-21. Median weekly earnings for crop farmworkers in 2006 were \$350/week, compared with \$425/week for livestock farmworkers, \$420/week for janitors, and \$360/week for maids. *Ibid.*

¹⁵ Human Rights Watch interview with program director, Bradenton, Florida, March 20, 2009.

¹⁶ The numbers of new arrivals to the US from Mexico dropped from 653,000 between March 2004 and March 2005 to just 175,000 between March 2008 and March 2009, the lowest total in the decade. Migration Policy Institute, “Migration and the Global Recession: A Report Commissioned by the BBC World Service,” September 2009, <http://www.migrationpolicy.org/pubs/MPI-BBCReport-Sept09.pdf> (accessed April 14, 2010) p. 19 (citing US population survey data). However, according to the Migration Policy Institute, “the recent steep slowdown in the flows from Mexico is largely driven by unauthorized Mexican migrants staying home, primarily in response to limited economic prospects in the United States . . . [and] the flow of *legal*/immigrants from Mexico has not changed.” *Ibid.* (emphasis in original).

IV. The Youngest Workers

I've been working since 11. The age to start working at this ranch is usually 12 but I started at 11. My parents said we needed to earn as much as possible because we had a lot of debt. Everything [I earn] goes to my parents because they know what to do with it.

My sister said all day, "Hurry up!" I was a little kid. It was hard at first to carry boxes, count 24, and pack boxes. I used to do stuff I couldn't even imagine. "Pick up this," can I do it? . . . I was a kid. I was used to playing with toys. They took me to their fields and I was like, "Where am I?" They gave me basic instructions, pick greens, cut them, package them, weed the fields. . . . You can't imagine how hard it can be to start a year younger than you're legally qualified to work. I had to learn things fast and learn the ways of the field. . . .

Growing up has been hard. . . . When I'm in the fields working and I wait for people to fill the boxes, I look around and I see 12 year olds working around. I know how they feel. I used to feel like that. They have a face that says they don't want to be here. They start getting used to the fact that they have to work. Putting in more effort. Experiencing more. They learn if they work faster they earn more and there will be less debt.

—Jose M., age 17, Saline, Michigan, August 24, 2009

I don't know about it [child labor]. I don't look for it but I don't see it.
—Farm operator, Michigan, August 28, 2009

Children typically described going to work full-time outside of school at age 11 or 12. Even very young workers, ages 7, 8, 9, are not difficult to find working in the fields, however. Human Rights Watch interviewed children who said they picked strawberries at ages seven and eight in Florida, picked blueberries at age seven in Michigan, picked and shucked green peas in Virginia at age eight, and hoed cotton at ages seven, eight, and nine in Texas. “When I was seven I worked in the field next to our house because they needed help with strawberries,” 14-year-old Olivia A. told Human Rights Watch. “We would turn in some card things and they would give us money and we would give it to my mom. I gave it to her to buy

food.”¹⁷ Her older brother James A. also said he started working that year, at age eight.¹⁸ Children this young typically work only part of the day and attend school, at least when their families are at home and are not migrating to work elsewhere.

The concept of “underage” labor in US law is not as clear in agriculture as it is in all other labor sectors. Under the law, on small farms with parental permission, outside of school hours, there is no minimum age for workers. Children ages 12 and 13 can work for any size farm with their parent’s consent outside of school hours; children 14 and 15 can work on any size farm without parental consent outside of school hours; there are no restrictions on employing children ages 16 and older, including in hazardous agricultural occupations. By comparison, in nonagricultural settings, employment of children under age 14 is prohibited, and children ages 14 and 15 may work only in certain jobs designated by the Secretary of Labor and for only limited hours outside of school. Children ages 16 to 18 can work in nonagricultural occupations but cannot do hazardous work.¹⁹

Despite these weak laws for agriculture, some growers and farm labor contractors still violate the standards in their hiring practices, including:

- hiring children under age 16 to work during school hours or in hazardous work;
- hiring children under 14 to work without their parent’s consent; and
- hiring children under 12 to work on farms that are not “small,” meaning farms that have about 7 or more employees.²⁰

In interviews with Human Rights Watch, most children said that no one asked them their age or for proof of it. “Age doesn’t matter,” said Marta V., age 13, who had hoed cotton since age seven in Texas.²¹ A young woman who worked in California starting at age 12 said that no one asked her age or for any papers.²² At one farm in Michigan and one in Texas, children

¹⁷ Human Rights Watch interview with Olivia A. (not her real name), age 14, Plant City, Florida, March 21, 2009.

¹⁸ Human Rights Watch interview with James A. (not his real name), age 15, Plant City, Florida, March 21, 2009.

¹⁹ 29 U.S.C. sec. 213.

²⁰ A “small farm” is one which did not employ more than 500 man-days of agricultural labor during any calendar quarter of the preceding year. 29 U.S.C. sec. 213(a). Five hundred man-days would typically be reached by seven employees working six days a week during a calendar quarter. Human Rights Watch, *Fingers to the Bone* (New York: Human Rights Watch, June 2000), <http://www.hrw.org/en/reports/2000/06/02/fingers-bone-o>, p. 38 note 113.

²¹ Human Rights Watch interview with Marta V. (not her real name), age 13, Plainview, Texas, July 21, 2009.

²² Human Rights Watch interview with Julia N. (not her real name), age 18, Benson, North Carolina, August 5, 2009. Unlike federal law, California state law sets 12 as the minimum age to work and requires employers to obtain work permits before employing minors under age 18.

alternately told us they had to be 11 or 12 to work: “Only the little ones they ask their age but 11 and up is ok.”²³

Most children said they started working full time at age 11 or 12. Human Rights Watch interviewed boys and girls who at those ages were working adult shifts picking oranges and cucumbers, pulling asparagus, cutting greens and Christmas trees, hoeing cotton and cucumbers, and weeding by hand.

Children described how they felt when they first worked. A girl who started cutting greens and pulling green onions and radishes full time at age 12 said, “At first I thought it was cool but then when I worked actually it was miserable. I cried every day.”²⁴

Other children emphasized the physical hardships. A 12-year-old boy said on his first day hoeing at age 11 he got very tired: “I felt weak. My back hurt. I got blisters on my hands and on my feet when I took off my shoes.”²⁵ Another boy described his first day of hoeing cucumbers at age 12: “The first day I was exhausted. It was my first job.”²⁶

Older teens and young adults often described how their initial enthusiasm to contribute to the family later evolved to despair in the face of such tedious, grueling, and poorly paid work. The account of Hector H. from Idaho was typical of those who started working at young ages: “At first I liked it, but then I realized it wasn’t that good. It was too hard with the sun. It was boring. It’s a long day to be working. At [age] eight or nine I was hoeing cotton. There were big weeds, three or four feet tall. . . . It gets harder by the year, doing the same thing every year. You get tired of it. I’ve pretty much done the same thing since I was eight years old.”²⁷ Mauricio V. told us: “I thought it would be heroic and honorable. I couldn’t wait until when I turned 12 and they let me work in the summer. . . . I definitely feel different about it now. . . . I was trying to find something to be proud of, an honorable thing to be. Like ‘yes, I do support my family by working.’”²⁸

²³ Human Rights Watch interview with Martin P. (not his real name), age 12, Plainview, Texas, July 21, 2009.

²⁴ Human Rights Watch interview with Andrea C. (not her real name), age 17, Saline, Michigan, August 24, 2009.

²⁵ Human Rights Watch interview with Martin P., age 12, Plainview, Texas, July 21, 2009.

²⁶ Human Rights Watch interview with Lucas F. (not his real name), age 17, Walkerville, Michigan, August 26, 2009.

²⁷ Human Rights Watch interview with Hector H. (not his real name), age 18, Plainview, Texas, July 20, 2009.

²⁸ Human Rights Watch interview with Mauricio V. (not his real name), age 19, Chapel Hill, North Carolina, August 6, 2009.

Why Children Work

We can hire as many adult workers as we need. We don't need to hire children.

—Tony Marr, general manager for Adkin Blue Ribbon Packing Company, assessed child labor penalties in 2009 after a US Department of Labor investigation found children as young as six years old picking in its fields²⁹

Children told Human Rights Watch that they worked to help their families buy food, to repair the family's truck, to pay the phone bill, and to buy school clothes and supplies. For example, Luz A., who said she started working at age nine, told Human Rights Watch: “I really didn't decide to work. I had to because my mom was having difficulty raising us and providing us with everything we needed. It was ok with me even though it was hard work because I was helping out. It paid for food for our family to eat and school, the things [for school] they were always asking for us to bring.”³⁰ Andrea C. said: “I feel pressure to work sometimes. When we get all filled up with bills, we need the money. The car bill, the phone bill, the insurance. I have two older brothers but they got married so I'm the only one who helps my parents. And they're getting kind of old.”³¹

Financial need and a sense of family responsibility can push children to prioritize work above their own education and health. Ana Z., who was hoeing cotton with a fever, told us: “I have to, I have to help my mom. . . . So at least me, I do my 10 hours. We don't miss out. We go every day, even sick. We're just trying to make a living.”³²

When asked, parents gave a variety of reasons for sending their children to work. Some described a financial crisis or the need to meet basic expenses. Some said that they had to bring their children to the fields anyway, that they could not afford childcare, and wanted to keep their families together, especially when migrating. In the fields even young children who are not working are exposed to pesticides, heavy machinery, and other hazards. “I bring the kids here because I can't pay a babysitter,” said a woman caring for her four-, six-, and seven-year-old grandchildren. “It's dangerous. They could get bitten by an animal. Run over by a machine.” Childcare would cost her \$15 per child per day, she said, but she earns only

²⁹ Bob Luder, “Department of Labor Levies Fines for Child Labor Violations,” *The Packer*, October 30, 2009, <http://thepacker.com/Department-of-Labor-levies-fines-for-child-labor-violations/Article.aspx?oid=930942&aid=342&fid=PACKER-TOP-STORIES> (accessed April 22, 2010).

³⁰ Human Rights Watch interview with Luz A. (not her real name), age 18, Plant City, Florida, March 21, 2009.

³¹ Human Rights Watch interview with Andrea C., age 17, Saline, Michigan, August 24, 2009.

³² Human Rights Watch interview with Ana Z. (not her real name), age 15, Plainview, Texas, July 21, 2009.

\$45 to \$50 a day hoeing cotton.³³ Human Rights Watch also visited labor camps where teenage girls and women rotated to provide child care in the camps during the workday because farm operators had prohibited very young children from being in the fields.

Some children described waiting to work until they turned 12, suggesting that the law influenced their families' decisions to send their children to work. "Teachers at school know when kids turn 12," Jose M. told us. "They see the cuts on their hands. They know a child at 12 goes to work. No if's, and's, or but's."³⁴ Others described a family and community tradition that made it normal to work and employers who were willing to hire them.

Several parents expressed regret over having sent their children to work and over the long-term effects it had.³⁵ One woman, who said her perspective changed after enrolling in a high school equivalency (GED) program, told Human Rights Watch: "When you hear the children talk, you feel bad because you've taken a whole childhood away and you don't realize it because you're thinking about trying to make payments. . . . For my kids summer was not summer. They had to work. It makes me feel guilty."³⁶ One mother whose 11-year-old daughter worked hoeing cotton and caring for her younger brothers said, "I tell my daughter, 'I'm so sorry I stole your childhood from you.'"³⁷

³³ Human Rights Watch interview with Rosa M. (not her real name), Plainview, Texas, July 21, 2009.

³⁴ Human Rights Watch interview with Jose M., age 17, Saline, Michigan, August 24, 2009.

³⁵ For example, Human Rights Watch interview with mother and health outreach worker, Jackson County, North Carolina, August 4, 2009.

³⁶ Human Rights Watch interview with mother and former child farmworker, Bradenton, Florida, March 20, 2009.

³⁷ Human Rights Watch group interview with mother, 10-year-old son, and 11-year-old daughter, Plainview, Texas, July 20, 2009.

V. Exploitation: Wages and Hours

Children typically work for long hours and poor pay. Many described workdays as long as fourteen hours, seven days a week at the peak of the harvest. Most children Human Rights Watch interviewed said they earned less than the federal minimum wage.

Excessive Working Hours

“You’re put to work every day, you hardly get a break unless it’s raining. Kids get so happy [when it starts to rain] that they’re screaming.”

—James A., age 15, Plant City, Florida, March 21, 2009

“My son, he needs his play time. He can’t work 30 hours a week. He can work three to four hours a few times a week. . . . As an employer you can’t say “I’ll hire 13-, 14- year olds.” No! I don’t support that.”

—Farm operator whose 12-year-old son works on his farm, Michigan, August 28, 2009.

Children described the long hours they worked, over which they typically had no control:

- James A., age 15, who worked in a blueberry packing plant in Michigan the previous summer, said that sometimes he worked as long as from 7 a.m. to 2:30 a.m. the following morning: “When I got home I didn’t even have time to take a shower. During the breaks I’d need to get a little bit of sleep. Lunch was only 30 minutes. I don’t know if painkillers would have helped out. Sometimes I took coffee. I worked seven days a week and we would go beyond 40 hours. Twice I got to 80 hours.”³⁸
- Olivia A., age 14, described picking blueberries in Michigan: “I would wake up at 5 and start working at 6 [a.m.]. We’d come out at 6 or 7 [p.m.], depending on if it rained and how quick we worked. We worked seven days, all day, except the days it rained. That was the only time we got a break. I felt happy we could go home. We didn’t have to be in the sun no more.”³⁹
- Sam B., age 17, who said he sometimes hoed cotton in Texas for up to 14 hours a day, told us: “We have to work 10 hours for sure but if they want us to work more, we work

³⁸ Human Rights Watch interview with James A., age 15, Plant City, Florida, March 21, 2009.

³⁹ Human Rights Watch interview with Olivia A., age 14, Plant City, Florida, March 21, 2009.

12-13 hours. It depends on whatever they what. You have to put in at least 10 hours, you can't just go home.”⁴⁰

- Felipe D., age 15, said he worked from 6 a.m. to 6 or 7 p.m. deflowering tobacco in North Carolina. “At 12 [noon] we get an hour break,” he said. “The rest is just hot sun and working.”⁴¹
- Luz A., age 18 and from Florida, explained that the previous summer: “In the morning we’d start around 7 [a.m.] and end at about 8 [p.m.]. We’d work a long time. There really ain’t no hours. It depends on how fast everyone finishes the section. No one can leave. They block the exits and say everyone has to help out. In a day you do two sections, sometime they put their cars there so we couldn’t drive out. . . . If you left early they’d end up kicking you out.”⁴²

By the end of the day, children said, they were exhausted. “You change out of your clothes if you can make it and pass out,” said Elisabeth S, about working when she was in high school. “Taking a shower, it doesn’t happen. If you had the energy you would eat, but you would usually sleep, wake up, then shower and eat. . . . “I hated to sleep because sometimes all you dreamed of what working, thinking, ‘I need to be working.’ It’s so tiresome. And then you get up and think, ‘I have to go to work?’”⁴³ Thirteen-year-old Marta V. told us: “Really, I don’t have a good day when I work. It’s just so tiring. After 12 [noon] you just want the time to go by quick, to come home and rest.”⁴⁴ Even older teens described the toll of having no days off. “Every day it gets harder with no rest,” 15-year-old James A. explained.⁴⁵

US federal law permits children to work in agriculture for unlimited hours, outside of school hours. In non-agricultural jobs 14- and 15-year-olds cannot work before 7 a.m. or after 7 p.m., except during the summer when they can work until 9 p.m. They may not work more than 3 hours on a school day, 18 hours in a school week, 8 hours on a non-school day, and 40 hours in non-school week.⁴⁶

Workers’ powerlessness to control their hours combined with the unpredictability of agricultural work leave them in a constant bind: some days they may work past the point of

⁴⁰ Human Rights Watch interview with Sam B. (not his real name), age 17, Plainview, Texas, July 21, 2009.

⁴¹ Human Rights Watch interview with Felipe D. (not his real name), age 15, Goldsboro, North Carolina, August 6, 2009.

⁴² Human Rights Watch interview with Luz A., age 18, Plant City, Florida, March 21, 2009.

⁴³ Human Rights Watch interview with Elisabeth S. (not her real name), age 19, Durham, North Carolina, August 3, 2009.

⁴⁴ Human Rights Watch interview with Marta V., age 13, Plainview, Texas, July 21, 2009.

⁴⁵ Human Rights Watch interview with James A., age 15, Plant City, Florida, March 21, 2009.

⁴⁶ 29 C.F.R. sec. 570.35.

endurance; other days the weather, slow demand for a crop, or a poor harvest leave them without enough work to meet their most basic needs.

Earning Less than the Minimum Wage

They don't pay us enough for the hours we work. I would like them to pay us enough and give us some benefits. We're out there, a whole bunch of young people. . . . It's hard but since you need the money you don't have a choice. It doesn't matter if they pay us a little because you need the money. That's why I'm working. . . . I make \$300/week. \$200/week if it rains.

—Sam B., age 17, who said he typically works at least 55 hours, 5 and a half days a week when not in school⁴⁷

Like adults, many children in farmwork earn less than federal minimum wage, which was \$7.25 an hour as of July 24, 2009, up from \$6.55 the 12 months prior to that. Most children Human Rights Watch interviewed said they were paid less than the minimum wage—many earned far less. For example:

- Antonio M., age 12, in North Carolina said he picked blueberries from 6 a.m. to 11 a.m. or 12 noon. He could fill five or six boxes in a day, at \$3.00 a box.⁴⁸ At best, therefore, he made \$18 for five to six hours' work, or \$3.00 to \$3.60 an hour. For five hours of work at the federal minimum wage, Antonio should have earned \$36.25, more than twice what he was paid.
- In Texas, children and adults consistently reported making \$45 to \$50 a day for 10 hours or more of hoeing cotton, or at best \$4.50 to \$5.00 an hour. At federal minimum wage at the time Human Rights Watch visited, they should have earned \$65.50 for 10 hours' work.
- Olivia A., age 14, said she made \$300 to \$350 a week the previous summer picking blueberries in Michigan from 6 a.m. to 6 or 7 p.m., seven days a week except when it rained.⁴⁹ Her brother said he made about \$200 a week.⁵⁰ At best they were earning

⁴⁷ Human Rights Watch interview with Sam B., age 17, Plainview, Texas, July 21, 2009. A wage of \$300 for 55 hours a week would constitute \$5.45 an hour; \$200 for 55 hours would be \$3.64 an hour. Compared with the federal minimum wage at the time of \$6.55 an hour, Sam, earned \$60.50 to \$160.05 a week less than he should have for those hours of work.

⁴⁸ Human Rights Watch interview with Antonio M. (not his real name), age 12, and his mother, Goldsboro, North Carolina, August 6, 2009.

⁴⁹ Human Rights Watch interview with Olivia A., age 14, Plant City, Florida, March 21, 2009.

⁵⁰ Human Rights Watch interview with James A., age 15, Plant City, Florida, March 21, 2009.

\$4.16 and \$2.38 an hour, respectively. At federal minimum wage at the time, for 84 hours of work a week, they should have earned \$550.20 a week.

In one part of North Carolina, we heard reports of some employers paying children a lower hourly wage than adults. A migrant health outreach worker whose own child worked told us: “Sometimes they just pay part for children, \$2-3. Or they don’t pay. *Patrones* [bosses] talk with parents and say, ‘I’ll let your kid enter but I’ll pay half of what you earn.’ But they have to work the same as an adult or they don’t let them enter.”⁵¹

With some exceptions, agricultural workers are entitled to minimum wage. These exceptions include workers on small farms and some piece rate workers, including certain local hand harvest laborers and non-local children ages 16 and under who are working alongside their parents.⁵² Where workers are entitled to minimum wage, agricultural employers may pay either an hourly rate or a piece-rate, but those who pay on piece-rate must by law ensure that the earnings for all hours worked in a week are sufficient to bring the average hourly wage up to minimum wage, unless they fall under one of the previously mentioned exceptions. “They have to make at least minimum wage,” a cucumber farm operator in Michigan explained. His workers do, he said “if pickles are going well. If not, I have to kick in.”⁵³

All agricultural workers are deprived of overtime pay protections as a result of a special provision in the Fair Labor Standards Act (FLSA). Most other workers, by contrast, are required to be paid one and a half times their regular rate of pay for each hour worked in excess of 40 hours per week.⁵⁴ Agricultural workers are also excluded from the protections of the National Labor Relations Act and do not have the right to organize and collectively

⁵¹ Human Rights Watch interview with mother and health outreach worker, Jackson County, North Carolina, August 4, 2009.

⁵² Employers are exempt from minimum wage requirements if they did not utilize more than 500 “man days” of agricultural labor in any calendar quarter of the preceding calendar year, with a “man day” defined as any day during which an employee performs agricultural work for at least one hour. Employees are not entitled to minimum wage if:

- they are immediate family members of their employer;
- they are principally engaged in the production of livestock;
- they are local hand harvest laborers who commute daily from their permanent residence, are paid on a piece rate basis in traditionally piece-rated occupations, and worked in agriculture less than 13 weeks during the preceding calendar year; or
- they are non-local children 16 years or younger who are hand harvesters, paid on a piece rate in traditionally piece-rated occupations, employed on the same farm as their parent, and are paid the same piece rate as those over 16.

⁵³ C.F.R. sec. 780.300.

In addition, employers may pay youth under age 20 a lower minimum wage during the first 90 consecutive calendar days after their initial employment.

⁵⁴ Human Rights Watch interview with farm operator, Michigan, August 28, 2009.

⁵⁵ 29 U.S.C. sec. 213(b)(12).

bargain with their employers, except in the handful of states such as California in which state laws protect their right to organize.⁵⁵

Laws that deny farmworkers protections enjoyed by other workers, combined with poor enforcement of existing laws, contribute to farmworkers' poverty and financial desperation that compels children to work and makes farmworkers even more vulnerable to exploitation.⁵⁶

Although government data suggest that crop workers on average make slightly above minimum wage, these figures are likely inflated.⁵⁷ There are several reasons for this, discussed in more detail below. First, in situations where workers are paid a piece rate, children often work with a parent in the fields, but only the parent is listed on the payroll. The parent is shown as earning more than the minimum wage, because the children make the parent's productivity look higher. Second, employers often falsify payroll records to show fewer hours than the employee actually worked.⁵⁸ Third, many employers make illegal deductions from their employees' wages which reduce their gross below the minimum wage, forcing the workers to pay for goods and services that benefit their employer. "Most farmworkers in Florida are not making minimum wage," explained Gregory Schell, of Florida Legal Services Migrant Farmworker Justice Project. "Kids aren't different and in fact, there probably is a higher percentage of the underage workers earning below the minimum wage than among the general farmworker population."⁵⁹ Several factors make children easier to exploit than adults: children may be more credulous, less experienced, and less likely to question authority. They also may have even fewer options to change jobs, since their employment in other labor sectors may be illegal.

⁵⁵ 29 U.S.C. sec. 152. As a result, agricultural workers can be fired for joining a labor union or engaging in collective action against an employer, and have no way of joining together to compel an employer to negotiate wages paid, hours worked, and other conditions of employment.

⁵⁶ The connection between the failure to enforce minimum wage laws for adults and child labor was highlighted by attorneys who advocate on behalf of farmworkers. See, for example, Human Rights Watch telephone interview with Thomas Thornburg, managing attorney, and staff of Farmworker Legal Services of Michigan, Bangor, Michigan, July 20, 2009.

⁵⁷ According to NAWS, crop workers were paid an average of \$8.09 an hour in 2005-2006. US Department of Labor, "The National Agricultural Workers Survey: Public Access Data," <http://www.doleta.gov/agworker/naws.cfm> (accessed April 27, 2010). The US Department of Agriculture reported that the median wage for nonsupervisory hired farm labor in 2006 was \$6.75 per hour, "among the lowest wages paid for a typical unskilled occupation." USDA Economic Research Service, "Rural Labor and Education: Farm Labor" (using information from the USDA, the National Agricultural Statistics Service, and the Farm Labor Survey).

⁵⁸ For example, if a harvester is shown as having worked only 40 hours with a gross wage of \$290 in the week, that indicates an hourly wage of \$7.25, the current minimum wage. But if the harvester actually worked 60 hours a week, he was paid only \$4.83 an hour, far below the minimum wage.

⁵⁹ Human Rights Watch telephone interview with Gregory Schell, managing attorney, Florida Legal Services Migrant Farmworker Justice Project, Florida, February 2, 2009.

Even when farmworkers are paid minimum wage, the unpredictability of the work and no guarantee of minimum hours drive down their income. Farmworkers only get paid for the hours they work. They typically receive no paid sick days, no health insurance, no paid vacation leave, and have no job security. Among other things, average minimum wage data do not take into account unpaid hours, days, and weeks waiting out weather or traveling to remote fields.⁶⁰ Families may use their last dollars to migrate only to find there is no work when they arrive. Those who do find work may find themselves without income when it rains and between harvests.⁶¹ Some workers in Florida said their employers required, as a condition of providing housing, that they remain permanently available and not seek work with others, even when the employer did not have work for them.

Unscrupulous practices and wage fraud

Some children described unscrupulous practices and outright fraud by labor contractors and growers that further reduced their pay. For example, Walter R. and his parents said that their employer had required them to sign a document promising to return \$30 a week so that their wages would appear higher than they actually were. The teenager told us that a “government inspector,” whom they could not identify, had recently come to their worksite and questioned him and his family—“we said we work for \$7.25.”⁶² His mother explained, “My husband was afraid to denounce because he said we would get fired.”⁶³ Marcos S., whose account is given above, said that he was not paid for cutting Christmas trees after 5 p.m.: “If they need you, they hold you late. But when it comes to [pay]check time they say 8 to 5. They say they don’t remember holding you later. But if you get off earlier, they remember.”⁶⁴ A paralegal in Florida described cases he had worked on in which employers or contractors required workers to under-report their hours or clock in only after, for example, picking the

⁶⁰ Farmworkers in the fields many have to interrupt their work because of rain or a cold snap, but if they are required to wait in the fields until the weather improves, this time is ordinarily considered to be compensable, because the employer, as courts have ruled, has “usurped” the workers’ time. Adding this forced downtime to other hours of productive work can result in minimum wage violations if the employer fails to pay for it. A similar unpaid time situation can occur when workers are required to be in the fields at a specific time, only to be told that the temperature, humidity, and other factors are not yet right for harvesting crops. For example, 16-year-old Diana G. described a recent experience of getting up at 3 a.m., traveling an hour and a half to the fields, and upon arrival being told to wait 30 minutes to start working. In fact, she was not allowed to start working until much later, at 10 a.m., and at 3 p.m., she said “they said we had to go because it’s too hot and will make the blueberries soggy.” She was not paid for the time she spent waiting to work although she was obligated to be there. Human Rights Watch interview with Diana G. (not her real name), age 16, Goldsboro, North Carolina, August 6, 2009.

⁶¹ Crop workers were employed on US farms in 2005-2006 an average of 34.5 weeks (65 percent of the year) and in non-farm activities for a little more than 3 weeks (6 percent of the year); 12 percent of hired crop workers also held a non-farm job at some point during the year. US Department of Labor, “The National Agricultural Workers Survey: Public Access Data,” <http://www.dol.gov/agworker/naws.cfm> (accessed April 27, 2010).

⁶² Human Rights Watch interview with Walter R. (not his real name), age 17, and his parents, Goldsboro, North Carolina, August 6, 2009.

⁶³ *Ibid.*

⁶⁴ Human Rights Watch interview Marcos S., age 17, Jackson County, North Carolina, August 4, 2009.

first flat of strawberries.⁶⁵ The practice of withholding but not reporting social security money from workers' paychecks is particularly widespread when the labor contractor is responsible for paying taxes.⁶⁶ In a survey by the Southern Poverty Law Center of some 500 Latino immigrants in five states, 41 percent said they had experienced wage theft in which they had not been paid for work performed.⁶⁷

Deductions for transport were commonly described by children working in tobacco in North Carolina, who said that their employers charged them \$10 to \$30 a week to take them to the fields.⁶⁸ Children told us they were required to purchase their own basic safety equipment and tools such as gloves, hoes, and knives.⁶⁹ For example, Elisabeth S. said that when she first started working in Washington State: "I couldn't afford a new hoe so I was using a half hoe for two days. My sister would switch with me for 15 minutes. It was old and would give you splinters if you didn't have gloves. Then my boss gave me one but took it out of my check. They don't give you nothin'."⁷⁰ US law prohibits crediting against minimum wage obligations items furnished primarily for the employer's benefit—these include tools of the trade.⁷¹ Daily transport to and from work may generally be credited but typically not transport from the point of hire to a distant jobsite.⁷²

Employers or contractors may also cut wages by deducting rent or running a "company store." "By the time they get done, there's no paycheck left," explained Josie Ellis, the director of Vecinos Inc. Farmworker Health Program.⁷³

⁶⁵ Human Rights Watch interview with paralegal, Immokalee, Florida, March 24, 2009.

⁶⁶ Email from Schell, Florida Legal Services Migrant Farmworker Justice Project, April 7, 2010.

⁶⁷ Southern Poverty Law Center, "Under Siege: Life for Low-Income Latinos in the South," April 2009, www.splcenter.org/undersiege (accessed March 20, 2010), p. 6. The workers surveyed were employed in agriculture and other sectors. As noted above, in this report, the terms "Hispanic" and "Latino" are used according to the term employed in the survey referenced.

⁶⁸ See, for example, Human Rights Watch interviews with Felipe D., age 15, with Walter R. and his parents, and with Diana G., age 16, Goldsboro, North Carolina, August 6, 2009.

⁶⁹ In contrast with Human Rights Watch's interviews, NAWS reported that most employers covered the cost of using tools or equipment in 2005-2006. US Department of Labor, "The National Agricultural Workers Survey: Public Access Documentation," <http://www.doleta.gov/agworker/naws.cfm> (accessed April 27, 2010).

⁷⁰ Human Rights Watch interview with Elisabeth S., age 19, Durham, North Carolina, August 3, 2009.

⁷¹ See 29 C.F.R. sec. 531.3 (d)(1), (2).

⁷² See *Arriaga v. Florida-Pacific Farms*, 305 F.3d 1228 (11th Cir. 2002); and *Rivera v. Brickman Group*, 2008 WL 81570 (E.D. Pa. 2008).

⁷³ Human Rights Watch telephone interview with Josie Ellis, registered nurse and director of Vecinos Inc. Farmworker Health Program, Sylva, North Carolina, July 27, 2009.

Piece rate and child labor

Workers who harvest fresh fruits and vegetables are often paid on a piece-rate basis (such as a flat rate for each box of fruit or bag of apples they pick) rather than an hourly rate. Diana G., age 16, explained how the piece rate system worked for blueberries in North Carolina. “You fill liter buckets to the top,” she said. “If you don’t go to the top, you have to go back. You don’t make much. Two buckets is \$5. It’s really hard because blueberries are really tiring. It takes 30 to 45 minutes to fill one bucket. Later on when the blueberries get bigger it gets faster. You get a token when you turn in the bucket. If you have leaves or sticks in it, you get a yellow ticket—\$1 taken off.”⁷⁴ At this rate, Diana was earning \$3.33 to \$5.00 an hour.

A paralegal working with farmworkers in Florida, himself a former farmworker, explained that it is very difficult for workers to consistently pick enough on piece rate to earn minimum wage. “I rarely find a worker who can constantly pick a certain number of tubs in one year,” he told us. “You can’t do it.”⁷⁵

From an employer’s perspective, piece rate incentivizes productivity. But for workers, piece rate adds additional pressure to work as quickly as possible and avoid taking breaks, sometimes even at the expense of drinking water or cooling down when overheated.⁷⁶ Luz A., who had worked since age nine, said that when picking blueberries on piece rate she does not stop and rest: “We keep on going because if we were to sit down and take a break we’d make even less.”⁷⁷

None of the children Human Rights Watch interviewed reported that their employers had made up the difference between the piece rate they received and minimum wage. Moreover, when children work off the books and what they harvest is counted towards their parent’s check, this creates the appearance on paper that the adult has earned a higher wage. For example, although a farm operator in Michigan said that his employee tracked the hours the farmworkers worked, when Human Rights Watch reviewed records of the amount picked and payment, these were recorded as if only one person, rather than a family group, had picked the cucumbers. When Human Rights Watch noted that families with children 12 and younger were working together to pick the vegetables, an office employee said: “It should be one

⁷⁴ Human Rights Watch interview with Diana G., age 16, Goldsboro, North Carolina, August 6, 2009.

⁷⁵ Human Rights Watch interview with paralegal, Immokalee, Florida, March 24, 2009.

⁷⁶ See, for example, John J. May, “Occupational Injury and Illness in Farmworkers in the Eastern United States,” *Latino Farmworkers in the Eastern United States: Health, Safety, and Justice*, Thomas A. Arcury and Sara A. Quandt, eds. (New York: Springer, 2009), p. 72.

⁷⁷ Human Rights Watch interview with Luz A., age 18, Plant City, Florida, March 21, 2009.

person but I don't know—they can pick it any way they want. They can get others or do it themselves.”⁷⁸

Others described similar arrangements. A man who had three children and his wife working with him harvesting onions in Texas told us that with five people working on piece rate, “We made \$80 on the first day. There are days where we can do \$200. But sometimes we don’t work all week.”⁷⁹ At these rates, each family member earned, on average, \$16 to \$40 a day.

Child labor in these instances, regardless of whether the children themselves are exploited, facilitates wage exploitation of adults by potentially preventing the adult from receiving the legal minimum wage. Attorney Gregory Schell explained: “Most farmworkers are unaware that the federal minimum wage applies to piece-work tasks. Therefore, so long as workers are paid the promised piece-rate for the buckets/tubs/units they pick, they (mistakenly) believe they have been properly paid.”⁸⁰

Where employers fail to ensure that piece rate workers make at least minimum wage, a piece rate system creates incentives for employers to allow young children to work and for families to send their children to work, even if they earn very little.⁸¹ For example, a young woman from California said she started working at age 14 after her mother could only find work in the fields: “We realized the more she [my mother] picked the more she earned. We all would help on weekends . . . My mom was the only one registered so the check went to her. . . . On the weekends we were five people—parents plus three kids.”⁸²

⁷⁸ Human Rights Watch interview with farm office manager, Michigan, August 27, 2009.

⁷⁹ Human Rights Watch interview with father of working children, Plainview, Texas, July 20, 2009.

⁸⁰ Email from Schell, Florida Legal Services Migrant Farmworker Justice Project, April 7, 2010.

⁸¹ In 2005-2006, 84 percent of crop workers reported being paid by the hour, 9 percent by the piece, 2 percent by a combination of hourly and piece rate pay, and 2 percent by salary. US Department of Labor, “The National Agricultural Workers Survey: Public Access Documentation,” <http://www.doleta.gov/agworker/naws.cfm> (accessed April 27, 2010).

⁸² Human Rights Watch interview with Julia N., age 18, Benson, North Carolina, August 5, 2009.

VI. Education and Farmwork

We miss about 2-3 weeks of school. It starts, then we go back. To me it's normal because I don't remember starting on the first day of school.

—Elias N., who subsequently dropped out of school, age 16, Plainview, Texas,
July 21, 2009

Schools are turning a blind eye. We know that farmworker kids are not getting enrolled or not getting enrolled in the right places.

—Casey Trupin, staff attorney, Columbia Legal Services, Seattle Washington,
August 18, 2010

Children who try to work and go to school at the same time, or who migrate and miss school, find that their education often suffers. A third of child crop workers drop out before graduating from high school, and without a diploma are left with few options besides a lifetime of farmwork and the poverty that accompanies it.

Thirty-three percent of US-born farmworkers had dropped out of school in 2005-2006, the most recent year for which data are available; among all farmworkers the median highest grade completed was 8th.⁸³ By comparison, the national dropout rate was 8 percent in 2008 (18.3 percent for Hispanics).⁸⁴ The rate for migrant children may be considerably higher. In California, the state with the largest migrant student population in the country, a 2007 study estimated that drop-out rates among migrant children were well over 50 percent.⁸⁵ Human Rights Watch interviewed farmworker children who had been held back in school one or more times, children who had never had anyone in their families graduate from high school, and youths who had dropped out.

⁸³ US Department of Labor, “The National Agricultural Workers Survey: Public Access Documentation,” <http://www.doleta.gov/agworker/naws.cfm> (accessed April 27, 2010).

⁸⁴ Thomas D. Snyder, National Center for Education Statistics, Institute of Education Sciences, US Department of Education, “Mini-Digest of Education Statistics 2009,” April 2010, <http://nces.ed.gov/pubs2010/2010014.pdf> (accessed April 27, 2010), p. 35.

⁸⁵ California Department of Education, “California Migrant Education Program: Comprehensive Needs Assessment, Initial Report of Findings,” 2007, <http://www.cde.ca.gov/sp/me/mt/documents/cnareport.pdf> (accessed April 8, 2010), p. 2. Anecdotally, a migrant education staff member at Immokalee High School, where many students are from farmworker families, told us that 400 to 450 students enter the eighth grade every year and “by the time they graduate it’s 200 to 250. So about half drop out or move out of the area.” Human Rights Watch interview with migrant education staff member, Immokalee, Florida, March 25, 2009.

Several factors explain this. Migrant children often end their school year early—in April or May—and return weeks or even months after school has already started. Fifteen-year-old Ana Z. said: “I don’t remember the last time I got to school registered on time. . . . I got out of math because I was a disaster. I would tell the teacher, ‘I don’t even know how to divide and I’m going to be a sophomore.’ I’m going from place to place. It scrambles things in my head and I can’t keep up.”⁸⁶ Fourteen-year-old Olivia A. said that she returns from Michigan to school in Florida late every year. On her first day at school:

I felt kind of scared because I didn’t know what to expect because people look at you as kind of dumb. You have to catch up with what other people already know. Every class starts out knowing this stuff. At the end you have exams but you weren’t there. . . . Hopefully it won’t get worse once I’m going into high school. My sister and brother dropped out. They migrated and went to school. My brother dropped out the month we came back. The first time we [migrated]. No one in my family has graduated. My sister barely did grade 8.⁸⁷

Jose M., who said he starts school when his family goes back to Texas in November and leaves school early in May to migrate to Michigan, said: “I miss about three months and that’s a lot. . . . I’ll do senior year but don’t know if will graduate because I will miss a lot of class.”⁸⁸ And Luz A. told us that it was only through the help of her school’s migrant advocate that she was able to recover from missing the first month of school each year: “We get graded on things we weren’t there to learn. . . . I’m finally back on track [at the end of March].”⁸⁹

Migrant farmworker children, on average, change schools three times a year, according to earlier studies,⁹⁰ a figure that is consistent with Human Rights Watch’s interviews. Some studies report children moving through as many as 10 different school districts in a single year.⁹¹

⁸⁶ Human Rights Watch interview with Ana Z., age 15, Plainview, Texas, July 21, 2009.

⁸⁷ Human Rights Watch interview with Olivia A., age 14, Plant City, Florida, March 21, 2009.

⁸⁸ Human Rights Watch interview with Jose M., age 17, Saline, Michigan, August 24, 2009.

⁸⁹ Human Rights Watch interview with Luz A., age 18, Plant City, Florida, March 21, 2009.

⁹⁰ David Bell, “The National’s Invisible Families: Living in the Stream,” *Rural Educator*, vol. 15, no. 3 (Spring 1994), pp. 27-30.

⁹¹ Michael Romanowski, “Meeting the Unique Needs of the Children of Migrant Workers,” *The Clearing House: A Journal of Educational Strategies, Issues and Ideas*, v. 77, no. 1 (October 2003), pp. 27-22.

Beyond the sheer challenge of transferring schools, the differences between states in start dates, curriculum, and credits also make it harder for migrant children keep up. For example, when Human Rights Watch interviewed working children in Michigan, school had already started in Florida and Texas but not in Michigan. Emily D. explained: “We don’t go in Michigan because school starts late there. I would only go for a day. I’d rather go and help my dad find pickles there. . . . You get behind a lot. Your grades go down. You don’t really learn much.” She said that when she started the 10th grade late, “I thought, ‘Oh my God I’m so behind.’”⁹²

A migrant education professional at Immokalee High School in Florida, explained that schools in different states have different criteria for graduation and not all classes transfer. “This frustrates a lot of kids that not every state is on the same channel. This contributes to some kids saying, ‘Screw it, I’m out of here.’” He added, “Some parents put them in school up north or don’t because they don’t know how long they’re staying. Those kids when they come in October, November don’t get credit because they’re not in school so when they finish the semester they have a big fat F. That messes up their GPA [grade point average].”⁹³ “When they start teaching here [in Michigan], then we go down there [to Texas], they have already moved on,” said Andrea C. “It sucks. I wish I were there.”⁹⁴

Children who try to combine long work hours and school, such as Marcos S., whose experience cutting Christmas trees is described above, often find that their schoolwork suffers. Jaime D. explained how he ended up dropping out of school after he started picking tomatoes at age 16 in central Florida: “I wanted to work and still go to school but I couldn’t concentrate on both. I didn’t know how to do both.”⁹⁵ His younger brother also dropped out of high school to pick tomatoes, he said. A study of migrant farmworker students in south Texas found that migrant students were more likely than non-migrants to miss and arrive late to school, sleep in class, and study fewer hours weekly. Migrant students also reported fewer hours of nightly sleep, fewer hours spent with their friends, and more minor illnesses than non-migrant youth.⁹⁶

⁹² Human Rights Watch interview with Emily D. (not her real name), age 16, central Florida, March 22, 2009.

⁹³ Human Rights Watch interview with migrant education staff member, Immokalee, Florida, March 25, 2009.

⁹⁴ Human Rights Watch interview with Andrea C., age 17, Saline, Michigan, August 24, 2009.

⁹⁵ Human Rights Watch interview with Jaime D. (not his real name), age 20, Bradenton, Florida, March 20, 2009.

⁹⁶ Cooper et al, “Comparative Description of Migrant Farmworkers Versus Other Students Attending Rural South Texas Schools: Demographic, Academic, and Health Characteristics,” *Texas Medicine*, vol. 101 (2005), pp. 58-62; Cooper et al, “Comparative Description of Migrant Farmworkers Versus Other Students Attending Rural South Texas Schools: Substance Use, Work, and Injuries,” *Journal of Rural Health*, vol. 21 (2005), pp. 361-366.

Migration and afterschool work also prevent children from engaging in the extra-curricular activities that help keep teens in school. Youth described not being able to play soccer or football or join the dance team, and missing prom and homecoming. A 14-year-old girl in Texas explained: “The 8th graders went to Washington this year but I didn’t get to go because it cost \$800. Then it got cancelled because of the ‘flu so they went in the summer but I was here.”⁹⁷

Many children described an environment in which they fall behind at young ages and graduating from high school is rare. We spoke with a nine-year-old girl going into the 3rd grade who said she had flunked the 2nd grade and been held back a year. She said she works in the fields when not attending summer school.⁹⁸ “I don’t know if I will finish school because it’s very difficult but hopefully I will,” said 15-year-old Elena R. who works periodically in the fields after school. “None of my brothers and sisters finished school.”⁹⁹ “Most people I know don’t want to go through being behind so they drop out of high school,” said 18-year-old Luz A. “Most of my friends have dropped out. Little by little they’ve been dropping out.”¹⁰⁰ And a 14-year-old girl who said that no one in her family had graduated told us: “If I finish school, I’m going to shine like a peacock.”¹⁰¹

Children who have recently entered the United States from other countries may not know how to access the US education system or may be unable to afford the lost wages. A boy who came to the United States alone at age 15 after his parents died said: “I want to go to school but I have to work. I don’t have time. If I had the chance to work and study I would study.”¹⁰²

The US Department of Education’s Office of Migrant Education runs several programs to support migrant children’s access to education. These include the Migrant Education Program, which identifies migrant children and provides education and support services, such as remedial instruction, school record exchanges, and counseling and assessment services; the High School Equivalency Program (HEP), which helps farmworkers and their children who are 16 or older to achieve a General Education Development (GED) certificate

⁹⁷ Human Rights Watch group interview with 12- and 14-year-old girls, Plainview, Texas, July 20, 2009.

⁹⁸ Human Rights Watch group interview with 15-year-old girl, 10-year old boy, and 9-year-old girl, central Florida, March 22, 2009.

⁹⁹ Human Rights Watch interview with Elena R., age 15, central Florida, March 22, 2009.

¹⁰⁰ Human Rights Watch interview with Luz A., age 18, Plant City, Florida, March 21, 2009.

¹⁰¹ Human Rights Watch group interview with Blanca S. (not her real name), age 14, and her two friends, Immokalee, Florida, March 25, 2009.

¹⁰² Human Rights Watch interview with Walter R., age 17, Goldsboro, North Carolina, August 6, 2009.

and gain subsequent employment; and the Migrant Education Even Start (MEES), which focused on improving literacy among farmworker families. The Office of Migrant Education also provides \$3 million per year in grants to individual states that cooperate with other states to provide direct education and support services to migrant children whose education has been interrupted.¹⁰³

During the 2003-2004 school year, the Office of Migrant Education served more than 488,000 children, but these represented only 54 percent of children eligible for its programs.¹⁰⁴

¹⁰³ Department of Education Office of Migrant Education website, undated, <http://www2.ed.gov/about/offices/list/oese/ome/programs.html> (accessed April 7, 2010).

¹⁰⁴ Association of Farmworker Opportunity Programs, "Children in the Fields: An American Problem," May 2007, <http://www.afop.org/CIF%20Report.pdf> (accessed April 14, 2010) (citing information provided to AFOP by the US Department of Education, Office of Migrant Education, February 2007), p. 19, note 76.

VII. Health and Safety

It's not the same as someone who works in McDonald's for minimum wage because this kind of work wears your system out. You're exposed to harsh nature, pesticides, all other kinds of chemicals, herbicides, fungicides. Farmworkers are the first line of contact.

—Josie Ellis, registered nurse and director of Vecinos Inc. Farmworker Health Program, Sylva, North Carolina, August 4, 2009

Working with sharp tools and heavy machinery, exposed to chemicals and extreme temperatures, climbing tall ladders, lugging heavy buckets and sacks, children get hurt and sometimes they die. Agriculture is the most dangerous industry open to young workers, according to the Centers for Disease Control's National Institute for Occupational Safety and Health (NIOSH),¹⁰⁵ and the rate of occupational fatality for all workers in crop production was almost nine times the national average in 2008.¹⁰⁶ From 2005 to 2008, 43 children under age 18 died from occupational injuries in crop production—27 percent of all children who were fatally injured at work during this period.¹⁰⁷ In 2000, the most recent year for which data are available, the risk of fatal injuries for all agricultural workers ages 15 to 17 was 4.4 times that of young workers in other workplaces.¹⁰⁸

¹⁰⁵ NIOSH bases this statement on the fatality rate of workers between 1992 and 2000. NIOSH, "NIOSH Alert: Preventing Deaths, Injuries and Illnesses of Young Workers," no. 2003-128, July 2003, p. 4.

¹⁰⁶ Bureau of Labor Statistics, US Department of Labor, "Fatal occupational injuries, total hours worked, and rates of fatal occupational injuries by selected worker characteristics, occupations, and industries, civilian workers, 2008," http://www.bls.gov/iif/oshwc/cfoi/cfoi_rates_2008hb.pdf (accessed April 4, 2010). The fatality rate for all civilian workers in 2008 was 3.7; for "crop production" it was 32.5.

¹⁰⁷ Email from Sean Smith, Bureau of Labor Statistics, US Department of Labor, to Human Rights Watch, March 31, 2010 (citing preliminary data); Bureau of Labor Statistics, US Department of Labor, "2008 National Census of Fatal Occupational Injuries Preliminary Data," <http://www.bls.gov/iif/oshwc/cfoi/cftbo239.pdf> (accessed April 21, 2010); Bureau of Labor Statistics, US Department of Labor, "2007 National Census of Fatal Occupational Injuries Preliminary Data," <http://www.bls.gov/iif/oshwc/cfoi/cftbo230.pdf> (accessed April 21, 2010); Bureau of Labor Statistics, US Department of Labor, "2006 National Census of Fatal Occupational Injuries Preliminary Data," <http://www.bls.gov/iif/oshwc/cfoi/cftbo221.pdf> (accessed April 21, 2010); Bureau of Labor Statistics, US Department of Labor, "2005 National Census of Fatal Occupational Injuries Preliminary Data," <http://www.bls.gov/iif/oshwc/cfoi/cftbo212.pdf> (accessed April 21, 2010). In total, 304 children and adults died from work-related injuries in crop production, and 34 children under age 18 died from injuries related to work in all sectors in 2008. Email from Sean Smith, Bureau of Labor Statistics, US Department of Labor, to Human Rights Watch, March 31, 2010 (citing preliminary data). Although Human Rights Watch could not obtain information about how many of the children who died in crop production during this time period were under age 14, by comparison, from 1998 to 2002, 9 of the 65 children under 18 died while working in crop production were under age 14. Notably, agriculture is the only sector in which work-related deaths were recorded for children under age 14 during this time period. Janice Windau and Samuel Meyer, Bureau of Labor Statistics, US Department of Labor, "Occupational injuries among young workers," *Monthly Labor Review*, October 2005, p. 17, <http://www.bls.gov/opub/mlr/2005/10/art2full.pdf> (accessed April 4, 2010).

¹⁰⁸ US Department of Labor, Bureau of Labor Statistics, "Report on the youth labor force," November 2000, p. 58, <http://www.bls.gov/opub/rylf/pdf/rylf2000.pdf> (accessed April 4, 2010).

Other common health hazards of agricultural work include fungal infections, contact dermatitis from plants and chemicals applied to them, hearing loss from proximity to loud agricultural machinery, eye injuries and irritations, and transportation injuries while traveling to and from work and between fields.¹⁰⁹

In interviews with Human Rights Watch, children routinely described small accidents, and some more serious. Rarely did they say they sought medical care. Underreporting of injuries is, in fact, substantial, and it is argued that traditional sources of data are not reliable.¹¹⁰ “I see a lot of them get hurt,” a community health worker in Florida told us.”¹¹¹

According to NIOSH, young workers’ “biologic, social, and economic characteristics” cause them “unique and substantial risks for work-related injuries and illnesses.”¹¹² These characteristics include rapidly growing “organ and musculoskeletal systems, which may make them more likely to be harmed by exposure to hazardous substances or to develop cumulative trauma disorders”; and less experience, training, and knowledge about how to work safely, what their rights are, and what they are not legally allowed to do.”¹¹³

In addition to injuries actually suffered on the job, farmworker children’s health is also affected by substandard farmworker housing, low incomes that result in poor diet, pregnant farmworkers’ exposure to pesticides and lack of access to adequate prenatal health care, and mental health problems related to poverty, migration, and drug and alcohol abuse in farmworker camps.¹¹⁴

Work with Dangerous Machinery, Equipment, and Tools

Children described working with heavy machinery, using knives and chainsaws, and climbing tall ladders to pick fruit. As noted throughout this report, US law allows children to do hazardous work in agriculture at age 16, compared with an age limit of 18 for all other hazardous jobs.

¹⁰⁹ May, “Occupational Injury and Illness in Farmworkers in the Eastern United States,” *Latino Farmworkers in the Eastern United States*, Arcury and Quandt, eds., pp. 80-87.

¹¹⁰ Ibid., pp. 71-72.

¹¹¹ Human Rights Watch interview with a community health worker, central Florida, March 23, 2009.

¹¹² NIOSH, “Young Worker Safety and Health.”

¹¹³ NIOSH, “NIOSH Alert: Preventing Deaths, Injuries and Illnesses of Young Workers,” pp. 1-2.

¹¹⁴ See, for example, Sara A. Quandt, “Health of Children and Women in the Farmworker Community in the Eastern United States,” *Latino Farmworkers in the Eastern United States*, Arcury and Quandt, eds., pp. 173-200.

Tractors, trucks, and other heavy machinery

Children may legally drive tractors of over 20 horsepower take-off at age 16, and at age 14 if trained and certified.¹¹⁵ Tractor overturns were the leading cause of death for all farmers and farmworkers who died from work-related injuries between 1992 and 2007.¹¹⁶ As discussed below, roll-over protective structures greatly improve tractor safety but were missing from 41 percent of tractors in 2006.

Human Rights Watch interviewed several boys ages 16 and older who said they drove tractors.¹¹⁷ Jose M. described his work, which also involved hitching a wagon to the trailer, an activity that is recognized as carrying additional risks: “I hook up the trailer wagon and go to the field,” he explained. “I organize the boxes in the wagon so they don’t fall off on the way to the barn. I do the hitching. You could easily break your arm hitching. You have to know how close you’re getting to the wagon so you don’t hit it.”¹¹⁸

Children are also at risk of getting struck by, run over, or entangled in other machinery. Jose M. described being in an accident when the trucks transporting the workers to an onion field collided: “The back window of the truck broke on our heads. I fell off the truck. My mom hurt her knee. My aunt and uncle got hurt. . . . I had lots of cuts on my head from the broken glass. I got stitches.”¹¹⁹

Other reports of children’s work-related deaths include:

- In December 2007, 17-year-old Edilberto Cardenas died on his first day on the job picking oranges in Florida. According to the sheriff’s department, he climbed off a ladder to empty a bag of oranges in a loading basket and a truck backed into him.¹²⁰
- In December 2006, a 10-year-old boy accidentally ran over his 2-year-old brother while driving a pickup truck pulling a trailer that his parents were filling with oranges in a Florida grove.¹²¹
- In early summer 2004, a 12-year-old boy working for hire in Iowa was crushed between a hay wagon and a truck bed as he was hitching the wagon to the truck.¹²²

¹¹⁵ 29 C.F.R. sec. 570.72.

¹¹⁶ NIOSH, “Agricultural Safety,” January 5, 2010, <http://www.cdc.gov/niosh/topics/aginjury/> (accessed January 27, 2010).

¹¹⁷ Human Rights Watch interview with Mike V. (not his real name), age 16, Plainview, Texas, July 20, 2009.

¹¹⁸ Human Rights Watch interview with Jose M., age 17, Saline, Michigan, August 24, 2009.

¹¹⁹ Ibid.

¹²⁰ “Teen grove worker hit by truck dies,” *Orlando Sentinel*, December 30, 2007, p. B3.

¹²¹ Rick Rousos, “Citrus Grove Accident Torments Family,” *The Ledger*, January 12, 2007, p. A1.

- On August 15, 2002, a 14-year-old farmworker in Ohio died after falling into a cattle feed grinder/mixer. The boy was using a handheld hay hook to drop hay bales into the operating grinder from the top of a stack of hay bales. He apparently lost his footing, slipped, and fell into the grinder.¹²³ Children under the age of 16 may not legally operate or help operate a feed grinder.¹²⁴

Knives, chainsaws, and other sharp tools

[When I was 12] they gave me my first knife. Week after week I was cutting myself. Every week I had a new scar. My hands have a lot of stories. There are scars all over.

—Jose M., age 17, Saline, Michigan, August 24, 2009

Children regularly work with sharp tools, from hoes and kitchen knives to chainsaws. Sometimes they cut themselves. Children under the age of 16 may not legally operate a power-driven circular, band, or chain saw.¹²⁵

Children cutting kale and collard greens in southeastern Michigan showed us fresh cuts they got through their gloves. Robert L., whose hands were laced with scars, said he had been cut “so many times” cutting greens. He worked with a 6-inch knife. “You’re bound to get sliced,” he said.¹²⁶ Andrea C. showed us two fresh punctures and said, “I poke myself. A bunch of blood comes out. . . . My brothers when they were still here, one got cut bad. A lot of people get cut. Sometimes you get so close to chopping your finger off! Sometimes you’re going really fast and you don’t notice and ah!”¹²⁷

Hector H. in Texas showed us an inch-long scar on his knuckle that he said he got working in Ohio the year before while making boxes to pack corn: “There was a thin string, I put my hand under a box. . . . I went to the hospital the same day and then came back and worked. I

¹²² “12-Year-Old Farm Boy Dies While Hitching Up Hay Wagon,” NIOSH Fatality Assessment and Control Evaluation (FACE) Program, Iowa FACE, no. 04IA017, June 19, 2005, <http://www.cdc.gov/niosh/face/stateface/ia/04iao17.html> (accessed March 28, 2010). The investigative report noted that a “less experienced 12-year-old boy” might not have known techniques that “[e]xperienced farmers in this situation” might have employed to prevent the accident. Ibid.

¹²³ “Youth Farm Worker Dies After Falling Into Operating Feed Grinder/Mixer – Ohio,” NIOSH Fatality Assessment and Control Evaluation (FACE) Program, NIOSH In-house FACE Report 2002-10, November 20, 2003, <http://www.cdc.gov/niosh/face/In-house/full200210.html> (accessed March 28, 2010).

¹²⁴ 29 C.F.R. sec. 570.71(a)(3).

¹²⁵ 29 C.F.R. sec. 570.71(a)(3).

¹²⁶ Human Rights Watch interview with Robert L. (not his real name), age 16, Saline, Michigan, August 24, 2009.

¹²⁷ Human Rights Watch interview with Andrea C., age 17, Saline, Michigan, August 24, 2009.

got four stitches. It happened about 9 or 10 a.m. I finished at the hospital about 11. I was making boxes but I couldn't move my thumb . . . but the guy told me to go to work.”¹²⁸

Lucas F. said he cut his finger in a Michigan packing house: “When the beans come out on the shaker, they shoot into the machine that cuts the beans. Sometimes the machine gets stuck and you have to pull it back. A bunch of people cut themselves.”¹²⁹ Maria M. from Idaho described using a small knife while weeding sugar beets. “If you wanted to work fast you would use a knife. . . . It’s not always safe because if you’re kneeling down you have to be careful not to cut yourself. I wrapped it with a sock.”¹³⁰

In North Carolina, Marcos S., quoted above, said he first cut Christmas trees with a chainsaw at age 12, and used one regularly from age 13.¹³¹

Ladders

Children described climbing tall ladders carrying heavy containers to pick fruit. In the mornings, trees and ground are often wet with dew. Workers often place one foot on a branch or use the top two steps of the ladder to extend their reach, and pick with one or both arms over their head reaching for fruit.¹³² A young man who picked cherries, pears, and apples around Yakima, Washington, as a teenager said: “You carry 20-30 pounds in your bag. . . . In the morning it’s pretty wet and the ladder gets wet. If you take a wrong step, you’re down from the ladder. They’re 13-foot ladders so they’re pretty high.”¹³³ A boy who had picked oranges in Florida told us: “It’s really high. When we didn’t have ladders, I had to climb the trees. Twice I fell from the top of a ladder. I grabbed a branch and broke my fall.”¹³⁴ Children under the age of 16 may not legally work from a ladder at a height of more than 20 feet.¹³⁵

¹²⁸ Human Rights Watch interview with Hector H., age 18, Plainview, Texas, July 20, 2009.

¹²⁹ Human Rights Watch interview with Lucas F., age 17, Walkerville, Michigan, August 26, 2009.

¹³⁰ Human Rights Watch telephone interview with Maria M., age 19, Idaho, September 13, 2009.

¹³¹ Human Rights Watch interview Marcos S., age 17, Jackson County, North Carolina, August 4, 2009.

¹³² May, “Occupational Injury and Illness in Farmworkers in the Eastern United States,” *Latino Farmworkers in the Eastern United States*, Arcury and Quandt, eds., pp. 88-89.

¹³³ Human Rights Watch interview with Tony P. (not his real name), age 19, Durham, North Carolina, August 6, 2009.

¹³⁴ Human Rights Watch interview with Andrés F. (not his real name), age 17, Benson, North Carolina, August 5, 2009.

¹³⁵ 29 C.F.R. sec. 570.71(a)(3).

Failure to use protective gear

Human Rights Watch researchers saw many children working without gloves and some, including a 10- and a 12-year-old, working barefoot. Most said no one required them to wear protective gear; if anyone, it was their parents, not their employers.

Some children told us that gloves were uncomfortable, cumbersome, or bruised the fruit. Raul L. explained why he did not wear gloves while picking mint as a teenager in Idaho: “Sometimes it hurts your hands, but gloves are really uncomfortable and the plant is very slippery. Especially early in the morning, it’s hard to get the plant out. But at the end of the day my hands really hurt from pulling those weeds out all day long.”¹³⁶ Julia N., who worked as a teenager in California, said: “I used gloves but cut the fingers off because otherwise you bruise the fruit and they don’t pay you. There are kinds without spines and others with strong ones and they stick you. Your fingerprints have a lot of little cuts from the spines. And if you forget your gloves then your arms get really scratched.”¹³⁷ Even with gloves, children cutting greens in Michigan said they still cut themselves, as recounted above.

Many children said their parents made them wear long pants and long sleeves but some did not. Pedro E. described working in Georgia in 2008: “The first day I was burned. I was in short sleeves and shorts. I thought, ‘Thank God I got through it.’”¹³⁸

Repetitive Motion Injuries

When I did strawberry roots, you have to bend down all day. It would kill your back.

— Marcos S., age 17, Sylva, North Carolina, August 4, 2009.

Children described working bent over at the waist, on their knees, with their arms up in the air, or otherwise holding awkward positions, all day long, five to seven days a week. They often perform prolonged repetitive motions and lift heavy weights. They told us about pain in their backs, knees, hands, and feet, even at very young ages. Children whose bodies are still developing are especially vulnerable to repetitive motion injuries.¹³⁹

¹³⁶ Human Rights Watch interview with Raul L. (not his real name), age 21, Durham, North Carolina, August 6, 2009.

¹³⁷ Human Rights Watch interview with Julia N., age 18, Benson, North Carolina, August 5, 2009.

¹³⁸ Human Rights Watch interview with Pedro E. (not his real name), age 15, Immokalee, Florida, March 25, 2009.

¹³⁹ NIOSH, “NIOSH Alert: Preventing Deaths, Injuries and Illnesses of Young Workers,” pp. 1-2.

Luz A. said that when she picked strawberries in Florida at age nine: “It was hard—you have to be bent over and afterwards your back hurts. You don’t feel the pain at work but afterwards your back hurts.¹⁴⁰ Lucas F., who first worked pulling asparagus at age 12, described the work as “backbreaking,” sitting on a “rider” with his feet on two bars, leaning over to pick asparagus between his legs.¹⁴¹

Raul L. remembered weeding in Idaho: “You kneel down. It was really painful sometimes. It’s hard on your back, but I didn’t feel I needed to go to the doctor because of the pain—it would go away someday. Sometimes I had a lot of pain in my hands, back, feet. Sometimes you would get all wet from your waist to your feet. It was really tough on my feet because I didn’t change socks, and at night sometimes it was hard to sleep because of the pain in my feet.”¹⁴²

Musculoskeletal disorders are usually caused by “an accumulation of microtrauma” without sufficient time to recover.¹⁴³ These disorders constitute nearly half of all agricultural occupational illness and injuries in the United States.¹⁴⁴ A study of farmworkers in the eastern United States found that farmworkers were most affected in the neck, shoulders, and upper extremities.¹⁴⁵ A doctor who cares for farmworkers told us that he was treating 29- and 30-year-olds for knee pain that he attributed to their starting farmwork at young ages.¹⁴⁶ Although treating repetitive motion injuries typically requires rest, as well as anti-inflammatories, splinting, physical therapy, and rehabilitation, farmworkers are under pressure to keep working at the same rate and, as noted below, often lack access to medical care.¹⁴⁷

¹⁴⁰ Human Rights Watch interview with Luz A., age 18, Plant City, Florida, March 21, 2009.

¹⁴¹ Human Rights Watch interview with Lucas F., age 17, Walkerville, Michigan, August 26, 2009.

¹⁴² Human Rights Watch interview with Raul L., age 21, Durham, North Carolina, August 6, 2009.

¹⁴³ May, “Occupational Injury and Illness in Farmworkers in the Eastern United States,” *Latino Farmworkers in the Eastern United States*, Arcury and Quandt, eds., p. 78.

¹⁴⁴ Bureau of Labor Statistics, US Department of Labor, “TABLE R1. Number of nonfatal occupational injuries and illnesses involving days away from work(1) by industry and selected natures of injury or illness, 2006,” November 8, 2007, <http://stats.bls.gov/iif/oshwc/osh/case/ostb1793.txt> (accessed April 15, 2010).

¹⁴⁵ May, “Occupational Injury and Illness in Farmworkers in the Eastern United States,” *Latino Farmworkers in the Eastern United States*, Arcury and Quandt, eds., pp. 78.

¹⁴⁶ Human Rights Watch interview with Matthew T. Standridge, family medicine physician and medical director of Vecinos Inc. Farmworker Health Program, Sylva, North Carolina, August 4, 2009.

¹⁴⁷ May, “Occupational Injury and Illness in Farmworkers in the Eastern United States,” *Latino Farmworkers in the Eastern United States*, Arcury and Quandt, eds., p. 78.

Pressure to Work Fast, Sick, and Injured

I can't afford to miss any day. Half of my family depends on the money I earn. My money counts.

—Jose M., age 17, Saline, Michigan, August 24, 2009

It's hard to say what hurts the worst," "My legs hurt, my head hurts from the sun. [Today] I've had 3 bloody noses. I feel dizzy and then my nose is bleeding.

—Walter R., age 17, who had spent the day working in tobacco, Goldsboro, North Carolina, August 6, 2009

Children routinely told us they felt pressure to work as fast as possible, with few breaks, and to keep working even when injured or when sickened by pesticides, heat, tobacco, colds, flu, or other illnesses. “We can't get sick because then we can't work,” said 15-year-old Mary J.¹⁴⁸ When paid on piece rate, the faster they work, the more workers get paid.”¹⁴⁹ When paid by the hour, children said they were afraid of falling behind and getting fired. The pressure children feel to work quickly combined with simply less work experience can increase the risk of accidents.

“I have to be fast,” explained a 17-year-old tractor driver. “Bring [the load] all the way to the barn and then get [more]. There is pressure there that makes you go faster. If I don't hurry, I'm losing boxes.”¹⁵⁰ And Elisabeth S. said of working during her high school years: “The main thing is not being left behind because the boss pays attention to you. You help your friends so they don't get fired. The whole time you're living in fear that you're going to get fired. . . . It was like a race all the time.”¹⁵¹

A 15-year-old girl told us: “I get sick and throw up a lot in Michigan. My stomach and my head hurt. It's because of the sun. When I'm picking I feel sick. . . . If my dad sees I'm really sick he makes me come home and rest. But then he gets really behind because we're a lot of

¹⁴⁸ Human Rights Watch interview with Mary J., age 15, Goldsboro, North Carolina, August 6, 2009.

¹⁴⁹ “The use of piece-rate pay strategies encourages inappropriate haste and shortcuts and may well heighten injury risk.” Ibid., p. 90.

¹⁵⁰ Human Rights Watch interview with Jose M., age 17, Saline, Michigan, August 24, 2009.

¹⁵¹ Human Rights Watch interview with Elisabeth S., age 19, Durham, North Carolina, August 3, 2009.

help to him. So if I leave it's a lot of work. I feel down because I know my dad is going to have to work even harder.”¹⁵²

Jose M., whose accident while being transported to the fields is described above, told us that he and his injured family members nevertheless returned to work the following day: “The next day we were out in the field. It's an unexplainable feeling. You have to try not to miss any day.”¹⁵³

Pesticide Exposure

Here there are a lot of chemicals in the field. . . . You can smell them.

[Recently] the plane sprayed, sprayed the cotton. . . . I felt dizzy. I covered my face and kept working. No one told us to get out of the field.

—18-year-old Hector H., who worked from age 8 or 9 and works alongside children, Plainview, Texas, July 20, 2009

Pesticides are poisons. If you're sprayed, it's always bad.

—Dr. Thomas A. Arcury, Director, Center for Worker Health, Wake Forest University School of Medicine, October 19, 2009

Exposure to pesticides is a serious risk for all farmworkers and even more so for children. Most children we interviewed said they had had contact with pesticides, many through pesticides being sprayed in fields next to them and blown by the wind, and through contact with residue, sometimes still wet. Some children reported being sprayed directly. Almost none of the children said they had received training on pesticide safety.

As discussed in more detail below, children under age 16 are not legally allowed to handle or apply pesticides classified as category I or II of toxicity but may handle less toxic pesticides. Regulations prohibit the spraying of pesticides when any unprotected worker is in the field or may be exposed through drift, and require workers to be trained in pesticide safety but make no special consideration for children.

¹⁵² Human Rights Watch group interview with 15-year-old girl, 10-year old boy, and 9-year-old girl, central Florida, March 22, 2009.

¹⁵³ Human Rights Watch interview with Jose M., age 17, Saline, Michigan, August 24, 2009.

Children's exposure to pesticides

Pesticides widely used in agriculture include insecticides, herbicides, fungicides, fumigants, nematicides, rodenticides, and plant growth indicators.¹⁵⁴ The most widely used insecticides are neurotoxins.¹⁵⁵ Pesticides vary in toxicity and enter the body primarily through absorption through the skin, although they can also be ingested or inhaled.¹⁵⁶

Although everyone who works on a nonorganic farm is exposed to pesticides, the degree of exposure depends on the farm's safety and hygiene practices: exposure includes both the amount of pesticides with which farmworkers come into contact as well as the dose that actually enters their bodies, which is affected by the use of protective equipment and clothing, washing, and other factors.¹⁵⁷ Relatively little research on farmworkers' pesticide exposure has been conducted anywhere in the United States and even less so on working children.¹⁵⁸

Andrea C. in Michigan said that on the farm where she works, pesticides are sprayed from a tractor: "Sometimes we're passing by and they'll spray anyways."¹⁵⁹ Sam B. in Texas told us he was sprayed from an airplane the previous year.¹⁶⁰ A former child farmworker in North Carolina who now educates workers about pesticides told us that she had personally seen tobacco workers being sprayed with pesticides: "People don't leave. . . . People say, 'We can leave but we don't want to because we're afraid the *patron* [boss] will fire us.' They stay there because they're afraid of their patron."¹⁶¹

¹⁵⁴ Thomas A. Arcury and Sara A. Quandt, "Pesticide Exposure Among Farmworkers and Their Families," *Latino Farmworkers in the Eastern United States*, Arcury and Quandt, eds., p. 104.

¹⁵⁵ These include organophosphorus and organochlorine pesticides. Most workers now are exposed to nonpersistent pesticides, which are metabolized in the body within a few days, compared with older pesticides which remain in the body and environment for a long time. *Ibid.*, pp. 104, 122.

¹⁵⁶ *Ibid.*, p. 104.

¹⁵⁷ *Ibid.*, pp. 104-106. Farmworkers and their family members, including children, are also exposed in their homes, which may be contaminated through years of drift, accumulated pesticides brought in through contaminated clothing and containers, and application in the homes, particularly in dilapidated, pest-infested housing. *Ibid.*, and see, for example, Quirina M. Vallejos, Sara A. Quandt, and Thomas A. Arcury, "The Condition of Farmworker Housing in the Eastern United States," *Latino Farmworkers in the Eastern United States*, Arcury and Quandt, eds.

¹⁵⁸ Arcury and Quandt, "Pesticide Exposure Among Farmworkers and Their Families," *Latino Farmworkers in the Eastern United States*, Arcury and Quandt, eds., p. 120. For more information about existing research, see *ibid.*, pp. 121-122; Thomas A. Arcury et al., "Seasonal Variation in the Measurement of Urinary Pesticide Metabolites among Latino Farmworkers in Eastern North Carolina," *International Journal of Occupational and Environmental Health*, vol. 15 (2009), pp. 339-350; and Thomas A. Arcury et al., "Variation Across the Agricultural Season in Organophosphorus Pesticide Urinary Metabolite Levels for Latino Farmworkers in Eastern North Carolina: Project Design and Descriptive Results," *American Journal of Industrial Medicine*, vol. 52 (2009), pp. 539-550.

¹⁵⁹ Human Rights Watch interview with Andrea C., age 17, Saline, Michigan, August 24, 2009.

¹⁶⁰ Human Rights Watch interview with Sam B., age 17, Plainview, Texas, July 21, 2009.

¹⁶¹ Human Rights Watch interview with Julia N., age 18, Benson, North Carolina, August 5, 2009.

More common than direct spraying was exposure when the wind or run-off spread pesticides to nearby areas, known as “drift.” “They sprayed the field next to us yesterday,” said Andrés F. in North Carolina. “My head hurt. I could smell it, it blew. We kept working. Many people say this can, can hurt you. I’m a little, a little worried about it. Sometimes I put on gloves. When I don’t use gloves, it feels irritated.”¹⁶²

Noemi J. in North Carolina told us she did not like working tobacco because of pesticides: “Sometimes you’re in one field and you see people in the next field spraying. It gives me headaches. I’m allergic. I think, ‘You could have at least waited until we left!’”¹⁶³ And Elias N. in Texas said: “A few days ago they sprayed the fields in the front. [The plane] passed by and we were starting to get out, but it just passed one time so we kept on. I got a headache. I could hardly hit the weeds but I kept on. It was about a quarter mile away. The wind was going to us and I could smell it and got a headache. It was in the wind.”¹⁶⁴

Most children described seeing residue on plants while working in the field. Some children described being kept out of the fields after pesticide application; others said they worked while the fields were still wet with chemicals. The account of a boy in Michigan is typical: “Countless times we’ve been in the fields when they’re still wet [with pesticides]. Also, the boss says take the day off because it’s too wet.”¹⁶⁵ Even if workers are kept out of the area for the legally required time period, known as the restricted-entry interval (REI), pesticides are still present in the fields at lower levels.¹⁶⁶

Children of farmworkers, in addition to any occupational exposure, are also exposed to pesticides brought home on parents’ bodies, that drift during and after nearby applications, in farmworker housing, prenatally, and through breastfeeding.¹⁶⁷ For example, Human Rights Watch interviewed a 17-year-old girl five months pregnant who was alternating daily between working in tomato fields and taking care of children.¹⁶⁸

¹⁶² Human Rights Watch interview with Andrés F., age 17, Benson, North Carolina, August 5, 2009.

¹⁶³ Human Rights Watch interview with Noemi J. (not her real name), age 16, Goldsboro, North Carolina, August 6, 2009.

¹⁶⁴ Human Rights Watch interview with Elias N. (not his real name), age 16, Plainview, Texas, July 21, 2009.

¹⁶⁵ Human Rights Watch interview with Jose M., age 17, Saline, Michigan, August 24, 2009.

¹⁶⁶ Arcury and Quandt, “Pesticide Exposure Among Farmworkers and Their Families,” *Latino Farmworkers in the Eastern United States*, Arcury and Quandt, eds., p. 108.

¹⁶⁷ Email from Carol Dansereau, Farm Worker Pesticide Project, to Human Rights Watch, July 17, 2009.

¹⁶⁸ Human Rights Watch interview with Marisol G. (not her real name), age 17, Jackson County, North Carolina, August 4, 2009.

The impact of pesticide exposure on children

Children are uniquely vulnerable to chemicals and may absorb pesticides more easily than adults because they have a higher skin surface area to weight ratio, faster metabolisms, and ongoing development.¹⁶⁹ Direct spraying is not necessary to poison a child; contact with treated surfaces can provide enough exposure.¹⁷⁰

Exposure to pesticides has both immediate and long-term effects. Small doses can produce rash, dizziness, nausea and vomiting, headaches, muscle aches, and burning eyes.¹⁷¹ Large doses can cause loss of consciousness, coma, and death; exposure can also cause spontaneous abortion and birth deformities.¹⁷² The Environmental Protection Agency estimates that 10,000-20,000 *physician-diagnosed* pesticide poisonings occur each year among US agricultural workers.¹⁷³ This number represents only a small fraction of actual pesticide poisonings as many cases are never reported.¹⁷⁴ Although exact numbers of poisoned children are not available, research indicates that children working in agriculture have far greater incidence rates of acute occupational pesticide-related illnesses than children working in other jobs.¹⁷⁵

The long-term effect of pesticide exposure is not well documented, particularly at low levels. However, it is associated with chronic health problems such as cancer, neurologic problems,

¹⁶⁹ Geoffrey M. Calvert et al, “Acute Pesticide-Related Illnesses Among Working Youths, 1988–1999,” *American Journal of Public Health*, vol. 93, no. 4 (April 2003), p. 609 (citing W.R. Snodgrass, “Physiological and biochemical differences between children and adults as determinants of toxic response to environmental pollutants,” P.S. Guzelian, C.J. Henry, S.S. Olin, eds. *Similarities and Differences Between Children and Adults: Implications for Risk Assessment*, (Washington, DC: International Life Sciences Institute Press, 1992), pp. 35-42); and International Labor Organization, *Tackling Hazardous Child Labour in Agriculture: Guidance on Policy and Practice, User Guide*, 2006, box 5, p. 10.

¹⁷⁰ A study of children under age 18 with acute occupational pesticide-related poisoning from a one-year period found that 47 percent (33 of 70) of ill children in agriculture were exposed through “contact with treated surfaces, most commonly by entering farm fields recently sprayed by pesticides.” Calvert et al, “Acute Pesticide-Related Illnesses Among Working Youths, 1988–1999,” *American Journal of Public Health*, p. 608.

¹⁷¹ Walter A. Alarcon et al, “Acute Illnesses Associated with Pesticide Exposures at Schools,” *Journal of the American Medical Association*, vol. 294, no. 4 (July 27, 2005), pp. 455-465; Center for Worker Health, Wake Forest University School of Medicine, “Policy Brief: Biomarkers of Farmworker Pesticide Exposure in North Carolina,” undated (reporting research results from 2007).

¹⁷² Arcury and Quandt, “Pesticide Exposure Among Farmworkers and Their Families,” *Latino Farmworkers in the Eastern United States*, Arcury and Quandt, eds., p. 106.

¹⁷³ NIOSH, “Pesticide Illness & Injury Surveillance,” April 24, 2009, <http://www.cdc.gov/niosh/topics/pesticides/> (accessed January 27, 2010).

¹⁷⁴ Officials in the EPA’s Office of Pesticide Programs told Human Rights Watch that they were unable to estimate farmworkers’ overall pesticide exposure. Human Rights Watch interview with Kevin Keaney and staff of the Office of Pesticide Programs, Environmental Protection Agency, Washington, DC, February 23, 2010. In addition to the barriers farmworkers face in accessing any kind of medical care, poisoned workers who do find care may not be correctly diagnosed, and diagnosed cases may not be reported to surveillance systems. Calvert et al, “Acute Pesticide-Related Illnesses Among Working Youths, 1988–1999,” *American Journal of Public Health*, p. 609.

¹⁷⁵ Calvert et al, “Acute Pesticide-Related Illnesses Among Working Youths, 1988–1999,” *American Journal of Public Health*, p. 609.

hormonal and reproductive health problems, and infertility.¹⁷⁶ According to Dr. Thomas Arcury, director of the Center for Worker Health at Wake Forest University School of Medicine, “The accumulated knowledge from animal studies and ecological studies all indicate that long-term low level exposure is a problem and that we need to do a better job of protecting people from pesticides.”¹⁷⁷ Subclinical long-term health effects that may not be readily diagnosed include memory loss and, in children, retarded neurobehavioral development.¹⁷⁸

Many children we spoke with described symptoms consistent with pesticide poisoning, although some did not realize it at the time. Raul L., who worked as a child in Idaho, told us: “They have the canal with water at the end of the field and they put the chemicals in the water and they get these pipes and pipe water into the fields for corn, sugar beets. . . . Our feet would get all big with mud. So when we would go to eat, we’d go and wash our feet with our hands [in the canals] and then in the afternoon I’d get the rash. . . . I would get a lot of itchiness. My feet would get red, rashy. At that time I didn’t know about types of chemicals—no one told us.”¹⁷⁹

Julia N., who later trained farmworkers on pesticide safety, described her experience working as a child in California: “One time I took off my bandana and gloves and experienced the symptoms of pesticides. . . I had an itchy face, blurry eyes, I got very dizzy.” Julia said that she did not associate her symptoms with pesticide exposure until she was trained for her current job. “I feel so bad that I didn’t know and that so many people don’t know that if they take off a glove that could expose them to pesticides and they’ll have so many problems, like cancer,” she told us. “I think about this, that I [got exposed and my mom did] and I’m so afraid that one day she’s going to get sick or something will happen to her from pesticides.”¹⁸⁰

¹⁷⁶ Michael C.R. Alavanja, Jane A. Hoppin, and Freya Kamel, “Health Effects of Chronic Pesticide Exposure: Cancer and Neurotoxicity,” *Annual Review of Public Health*, vol. 25 (2004), pp. 155-197; Ana M. Garcia, “Pesticide exposure and women’s health,” *American Journal of Industrial Medicine*, vol. 44 (2003), pp. 584-594; Arcury and Quandt, “Pesticide Exposure Among Farmworkers and Their Families,” *Latino Farmworkers in the Eastern United States*, Arcury and Quandt, eds., p. 106; and Human Rights Watch telephone interview with Dr. Thomas A. Arcury, Director, Center for Worker Health, Wake Forest University School of Medicine, October 19, 2009.

¹⁷⁷ Human Rights Watch telephone interview with Arcury, Center for Worker Health, Wake Forest University School of Medicine, October 19, 2009.

¹⁷⁸ Alavanja, Hoppin, and Kamel, “Health Effects of Chronic Pesticide Exposure: Cancer and Neurotoxicity,” *Annual Review of Public Health*, pp. 155-197; Garcia, “Pesticide exposure and women’s health, *American Journal of Industrial Medicine*, pp. 584-594.

¹⁷⁹ Human Rights Watch interview with Raul L., age 21, Durham, North Carolina, August 6, 2009.

¹⁸⁰ Human Rights Watch interview with Julia N., age 18, Benson, North Carolina, August 5, 2009.

Luz A. told us that when she picked blueberries every year in Michigan: “I got sick because when I was in the fields, I took in the chemicals they put on the plants. . . . My stomach was always heaving. Every single day. I was really sick. . . . I think [what made me sick] was the pesticides they put on the plants. The smell of it, and on the blueberries you could see that they have something on them. You could see it all around, and you were breathing it. I’d still be out there all sick because I had to help my mom because we didn’t have that much money.”¹⁸¹

Pesticide training and protective gear

[Pesticides] are there but I don’t know about them.

— Nelson I., age 17, Plainview, Texas, July 20, 2009

They don’t tell us anything.

— Noemi J., age 16, responding to a question about pesticide training,
Goldsboro, North Carolina, August 6, 2009

Most children Human Rights Watch interviewed said they had never received training on pesticide safety and took few precautions.¹⁸² Some children who said they had not received formal training still described good practices such as washing their work clothes daily, showering right after work, and wearing long pants and sleeves.

For example, 14-year-old Alejandro P. said he worked in “short sleeves, jeans, sneakers and gloves so my hands don’t get dirty.”¹⁸³ As noted above, Human Rights Watch saw children working barefoot and without gloves, and a health outreach worker said, “We talk with people who go to work barefoot or with no shirt.”¹⁸⁴ According to experts on farmworkers and pesticides: “In most fieldwork situations, the appropriate pesticide PPE [personal protective equipment] for farmworkers is work clothing that covers the head, body, arms, legs, and feet; that is a hat, a long-sleeve shirt that is closed around the neck, long pants, socks, and

¹⁸¹ Human Rights Watch interview with Luz A., age 18, Plant City, Florida, March 21, 2009.

¹⁸² Human Rights Watch’s interviews are consistent with research in North Carolina finding that “farmworkers generally lack knowledge of the pesticides applied where they work: what is applied, where it is applied, and when it is applied.” Arcury and Quandt, “Pesticide Exposure Among Farmworkers and Their Families,” *Latino Farmworkers in the Eastern United States*, Arcury and Quandt, eds., p. 116.

¹⁸³ Human Rights Watch interview with Alejandro P. (not his real name), age 14, accompanied by his uncle, Benson, North Carolina, August 5, 2009.

¹⁸⁴ Human Rights Watch interview with Julia N., age 18, Benson, North Carolina, August 5, 2009.

closed shoes.”¹⁸⁵ A 2003 study found that of the studied cases of pesticide-related illness in which relevant information was available, only 19 percent of children who were employed in agriculture had used protective equipment (9 of 48) and only 25 percent of children who had directly handled pesticides had used personal protective equipment.¹⁸⁶

Research in several states, including North Carolina and Texas, has found that from about one-quarter to one-half of workers surveyed have received no pesticide safety training.¹⁸⁷ Sam B., who said he trained other workers, was unaware that regulations prohibit any unprotected worker from being in a field when pesticides are applied: “Sometimes the airplane will be spraying pesticides around. We have to ask the crew leader if they are poisonous or not. One time last year an airplane passed over and sprayed us, and we didn’t know if it was poisonous or not.”¹⁸⁸ Alejandro P. told us, “I don’t know if there are pesticides or not.”¹⁸⁹

In contrast, children in several areas of Michigan said their employers had shown them a pesticide training video, and a farm operator pointed out the video in Spanish and in English on pesticide training that he said he shows to his workers. Mauricio V. said that the second year he worked in Idaho his crew leader showed a pesticide video after nearby workers were poisoned:

An onion field was sprayed with a certain pesticide. It was still visible and smelled and the workers were told to go back to work, and they didn’t want to because they could see the plants were white. Some didn’t, others did because they needed to work. Within an hour some were coughing up blood. . . .

After that the crew leader showed us a pesticide video but before that none of us had ever seen one. It was basic safety: don’t get the pesticides on you,

¹⁸⁵ Arcury and Quandt, “Pesticide Exposure Among Farmworkers and Their Families,” *Latino Farmworkers in the Eastern United States*, Arcury and Quandt, eds., p. 119. Gloves made of cloth and leather hold the pesticides to the skin and are also a safety problem. Email from Dr. Thomas A. Arcury, Director, Center for Worker Health, Wake Forest University School of Medicine, to Human Rights Watch, April 8, 2010.

¹⁸⁶ Calvert et al, “Acute Pesticide-Related Illnesses Among Working Youths, 1988–1999,” *American Journal of Public Health*, p. 608.

¹⁸⁷ For a discussion of this research, see Arcury and Quandt, “Pesticide Exposure Among Farmworkers and Their Families,” *Latino Farmworkers in the Eastern United States*, Arcury and Quandt, eds., p. 113.

¹⁸⁸ Human Rights Watch interview with Sam B., age 17, Plainview, Texas, July 21, 2009.

¹⁸⁹ Human Rights Watch interview with Alejandro P., age 14, accompanied by his uncle, Benson, North Carolina, August 5, 2009.

don't get water from irrigation canals. . . . It was actually pretty good. It's just a kind of evil that the reason we were watching it was because that already happened.¹⁹⁰

Pesticide training for child workers is especially important because, as one study stated, “Young people are generally less experienced and assertive than adults, and thus they may not question assignments that place them at risk for pesticide exposure.”¹⁹¹

Several agencies are working to improve pesticide safety training for farmworkers. For example, the US Environmental Protection Agency (EPA) has developed extensive training for state pesticide safety inspectors and for workers, including in multiple languages and in pictorial guides. But “[w]hether or not it's being used as it should be is a different question,” staff acknowledged.¹⁹² The Association of Farmworker Opportunities Programs (AFOP) also conducts pesticide safety programs for farmworkers under grants from the EPA and AmeriCorps in 24 states.¹⁹³

Training alone, however, will not address the many factors outside of workers’ control, such as growers who force workers into fields with fresh residue or who fail to provide sanitation equipment that can decrease the dose absorbed. “What does it matter if they wear long sleeves, bandanas if they have to go back into the field right after it's been sprayed?” noted a North Carolina health outreach worker.¹⁹⁴ Similarly, Carol Dansereau, of the Seattle-based Farm Worker Pesticide Project, stated: “a lot of attention has gone into ‘educating’ farm worker families about ‘hygiene’ to reduce exposures. While it certainly is important to let people know about things one can do to try to reduce exposures, it is appalling that this is the emphasis, to the exclusion of ending the source of the problem . . . nearby applications of highly toxic chemicals.”¹⁹⁵ Seventeen-year-old Andrea C. also pointed out that while she “learned a lot of things” from the video, “It's dumb, they make us see it but they don't enforce it. Like restrooms. We have portables but not the water it takes to wash, soap,

¹⁹⁰ Human Rights Watch interview with Mauricio V., age 19, Chapel Hill, North Carolina, August 6, 2009.

¹⁹¹ Calvert et al, “Acute Pesticide-Related Illnesses Among Working Youths, 1988–1999,” *American Journal of Public Health*, p. 608.

¹⁹² Officials in the EPA’s Office of Pesticide Programs could not estimate how many workers were untrained because current regulations do not require recordkeeping, but acknowledged “many gaps.” Officials also told us that some workers who had been trained would not necessarily report that they had. Human Rights Watch interview with Keaney and staff of the Office of Pesticide Programs, Environmental Protection Agency, February 23, 2010.

¹⁹³ Email from David Strauss, director, Association of Farmworker Opportunity Programs (AFOP), to Human Rights Watch, April 2, 2010.

¹⁹⁴ Human Rights Watch interview with health outreach worker, Benson, North Carolina, August 5, 2009.

¹⁹⁵ Email from Dansereau, Farm Worker Pesticide Project, July 17, 2009.

towels. The first day they did the soap and filled the towels. Now we want soap and towels. You tell them and they say, ‘So?’ They don’t care.”¹⁹⁶ As noted above, Andrea also told us that she had been sprayed with pesticides from a passing tractor. Mauricio V., a former child worker, commented on the power imbalance that resulted in some workers returning to the Idaho field when ordered to do so: “It was so terrible to hear about it because when it comes down to it you really need to work. You’ll work, you’ll work.”¹⁹⁷

Extreme Temperatures: Heat and Cold

Children work in extreme heat and extreme cold. In some climates the day starts cold and wet, then turns unbearably hot. “When you wake up it’s really cold,” said James A., who works in Michigan in the summer. “The plants hurt your hands because it’s so cold. Your hands get numb.”¹⁹⁸ One mother with working children described picking apples in Michigan in waist-high snow.¹⁹⁹

In contrast, temperatures in the Texas panhandle can reach well over 100 degrees Fahrenheit in the summer, and children spoke of longing for jobs in air conditioning. Elias N. said that when he’s working: “I think of the sun, why it’s so hot. How I want to go home from this field.... [I]t’s the hot air and the sun is beating you up.... [Bad days are the] real hot ones, the field is full of weeds, you can’t even take a step. When you’re surrounded by corn, there’s no air.”²⁰⁰ Elisabeth S., who worked in Washington as a teenager, told us: “It was so hot that I didn’t want to touch my clothes.”²⁰¹

Working long hours in high temperatures places children at risk of heat stroke and dehydration, particularly if there is not enough drinking water and they are wearing extra clothes to protect them from sunburn and pesticide exposure. “It’s just really hot and the water gets hot. You get really, really thirsty,” Marta V., age 13, said.²⁰² Sam B. told us: “The first year I worked, the second week, I got dehydrated. My dad had to bring me water. Sometimes you feel dizzy but you’ll come back.... You get all dehydrated and you want to faint but you need the money. Sometimes I think, why am I here? I can get a better job. But

¹⁹⁶ Human Rights Watch interview with Andrea C., age 17, Saline, Michigan, August 24, 2009.

¹⁹⁷ Human Rights Watch interview with Mauricio V., age 19, Chapel Hill, North Carolina, August 6, 2009.

¹⁹⁸ Human Rights Watch interview with James A., age 15, Plant City, Florida, March 21, 2009.

¹⁹⁹ Human Rights Watch interview with mother, Bear Lake, Michigan, August 27, 2009.

²⁰⁰ Human Rights Watch interview with Elias N., age 16, Plainview, Texas, July 21, 2009.

²⁰¹ Human Rights Watch interview with Elisabeth S., age 19, Durham, North Carolina, August 3, 2009.

²⁰² Human Rights Watch interview with Marta V., age 13, Plainview, Texas, July 21, 2009.

it's not true. . . . I've seen women, guys get dehydrated quick. Faint. They'll just give up like that.”²⁰³

Heat illnesses can lead to brain damage and death. From 1992 to 2006, 68 crop workers were formally recorded as having died from exposure to environmental heat, a rate 20 times that of all US civilian workers.²⁰⁴ Children are significantly more susceptible to heat stress than adults.²⁰⁵

The deadliness of heat illness and the difficulty in treating a worker once the illness has progressed to a critical stage is well demonstrated by the death of Maria Isabel Jiménez. On May 13, 2008, 17-year-old Jiménez collapsed after working for nine hours straight in the heat. By the time she reached the hospital, her core body temperature exceeded 108 degrees and she died two days later.²⁰⁶ The autopsy report gave “Heat Stroke/Sun Stroke due to Occupational Environmental Exposure” as the cause of death. The state of California fined the labor contractor more than \$250,000 and revoked her license; in 2009, the contractor and Jiménez’s supervisor were charged with involuntary manslaughter for failing to provide Jiménez with reasonable access to potable water, shade, heat illness training, and prompt medical attention.²⁰⁷

Sanitation

Many children said that their employers did not provide drinking water, handwashing facilities, or toilets.²⁰⁸ As noted below, the Occupational Safety and Health Act requires that

²⁰³ Human Rights Watch interview with Sam B., age 17, Plainview, Texas, July 21, 2009.

²⁰⁴ Centers for Disease Control and Prevention, “Heat-Related Deaths Among Crop Workers—United States, 1992-2006,” *Morbidity and Mortality Weekly Report*, no. 57(24), June 20, 2008, pp. 649-653, <http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5724a1.htm> (accessed January 25, 2010). The editors note that heat-related deaths were likely underreported.

²⁰⁵ Valentina Forastieri, *Children at Work: Health and Safety Risks* (Geneva: ILO, 2002), p. 74; Jeffrey R. Bytomski and Deborah L. Squire, “Heat Illness in Children,” *Current Sports Medicine Reports*, vol. 2(6) (2007), p. 320 (noting that children are more susceptible than adults to heat illness because of “greater surface area to body mass ratio, lower rate of sweating, and slower rate of acclimatization”).

²⁰⁶ United Farm Workers Union, *Deadly Harvest: Heat related deaths of Californian farm workers*, (Kreen: United Farm Workers Union, 2009), p. 8.

²⁰⁷ Jennie Rodríguez, “Seeking Protection,” *Vida En Valle*, August 5, 2009; Jennie Rodríguez, “Teen Farmworker’s Death Brings Involuntary Manslaughter Charges,” *Vida En Valle*, May 12, 2009; “Statement from Action Labor and Workforce Development Agency Secretary on Criminal, Civil Charges Filed in Case of Deceased Farm Worker from San Joaquin County,” US Fed News, April 25, 2009.

²⁰⁸ In contrast, according to the National Agricultural Workers Survey, in 2005-2005, crop workers reported that their employer did not provide, on a daily basis, both drinking water and cups (14 percent), water for washing (3 percent), and a toilet (4 percent). US Department of Labor, “The National Agricultural Workers Survey: Public Access Documentation,” <http://www.dolleta.gov/agworker/naws.cfm> (accessed April 27, 2010).

agricultural employers with more than 10 employees provide drinking water and toilet and handwashing facilities for farmworkers while they are working.

Access to drinking water is critical to preventing heat injury: workers may need one half to one quart of water per hour as the temperature increases from 80 to 90°F.²⁰⁹ Girls and women may also be at risk of urinary tract infections.²¹⁰ Strikingly, the mother of two teenage children hoeing cotton with no toilets or provided drinking water told us, “We don’t go to the bathroom because we sweat.”²¹¹ Frequent handwashing, especially before eating and using the toilet, is critical for reducing the dose of pesticides entering the body following exposure. The absence of field toilets may also increase the risk of gastrointestinal disorders.²¹²

Drinking water

I have never worked where we had water. In my time we’ve always had to carry our own.

—Mother of 10- and 11-year-old working children, Plainview, Texas, July 20, 2009

Many children said they had to bring their own drinking water, buy it in the fields, or do without. A 15-year-old girl told us that in Michigan: “You take your own water. If you run out they allow you to go home and get some.” In Florida, she said, they “sell it to you. Water is \$1.”²¹³ Elisabeth S., who worked with a team of teenagers in Washington State, explained: “If we ran out [of water] we ran out. They [employers] didn’t fill it up. Occasionally if people complained they would fill it, but because we were all kids we would just stay quiet. In Spanish culture we’re taught that whatever the authority says, goes. If there’s no water, well, they know, so we’re not going to say anything.”²¹⁴

²⁰⁹ May, “Occupational Injury and Illness in Farmworkers in the Eastern United States,” *Latino Farmworkers in the Eastern United States*, Arcury and Quandt, eds., p. 77.

²¹⁰ See, for example, Maria L. Ontiveros, “Lessons From the Fields: Female Farmworkers and the Law,” *Maine Law Review*, vol. 55 (2003), p. 170.

²¹¹ Human Rights Watch interview with Rosa M., mother of two teenage children working in the fields, Plainview, Texas, July 21, 2009.

²¹² Arcury and Quandt, “Pesticide Exposure Among Farmworkers and Their Families,” *Latino Farmworkers in the Eastern United States*, Arcury and Quandt, eds., p. 115.

²¹³ Human Rights Watch group interview with 15-year-old girl, 10-year old boy, and 9-year-old girl, central Florida, March 22, 2009.

²¹⁴ Human Rights Watch interview with Elisabeth S., age 19, Durham, North Carolina, August 3, 2009.

Some children in Texas and Michigan said that they not only had to bring their own water, the tap water in the camps or their communities was so poor they had to buy the water they brought. For example, a 14-year-old girl living in migrant housing in Texas told us: “We bring our own water. We buy our own water and fill it [the cooler] up.”²¹⁵ A 10-year-old boy said that early each morning before work, his chore is to buy water “from the machine at Lowe’s beside the house.”²¹⁶

Toilets and handwashing facilities

You don't wash your hands to eat. You just take off your gloves. They had a weird smell. . . . I don't know anyone who washed their hands. There was no place to.

— Elisabeth S., age 19, who worked in Washington State while in high school,
August 3, 2009

Many workers we spoke with said there were no toilets or handwashing facilities in the fields, although this varied by location and crop. For example, children hoeing cotton in the Texas panhandle said they almost never had these facilities provided. “There’s no place to wash hands,” a 14-year-old hoeing cotton in Texas said. “We bring tap water and wash our hands.” When asked if there were portable toilets, she responded, “No, only during pumpkin season in October.”²¹⁷ A mother who took her children to hoe cotton said she wished for portable toilets. Her 10-year-old son, she said, “had diarrhea one day behind the wheel [of the car] and we forgot toilet paper. He was trying to hide behind the wheel of the car.”²¹⁸

In contrast some children in Michigan said they had toilets, and Human Rights Watch saw some in the fields, although not necessarily at the distances or conditions required by regulation.²¹⁹ In some studies farmers have reported it “difficult to move toilet and washing facilities to all of the fields where they employ workers,” that “when they do provide

²¹⁵ Human Rights Watch group interview with 12- and 14-year-old girls, Plainview, Texas, July 20, 2009.

²¹⁶ Human Rights Watch group interview with mother, 10 year-old son, and 11-year-old daughter, Plainview, Texas, July 20, 2009.

²¹⁷ Human Rights Watch group interview with 12- and 14-year-old girls, Plainview, Texas, July 20, 2009.

²¹⁸ Human Rights Watch group interview with mother, 10 year-old son, and 11-year-old daughter, Plainview, Texas, July 20, 2009.

²¹⁹ Toilets and handwashing facilities must be “provided for each (20) employees or fraction thereof,” “adequately ventilated, appropriately screened, have self-closing doors that can be closed and latched from the inside and shall be constructed to insure privacy,” “be located within a one-quarter-mile walk of each hand laborer’s place of work in the field.” 29 C.F.R. sec. 1928.110(c)(v).

sanitation facilities, such as field toilets and washing stations, workers do not use them,” and that they “consider this requirement to be burdensome.”²²⁰

Green Tobacco Sickness

Acute tobacco poisoning, known as “green tobacco sickness,” is an additional risk to working in tobacco, and children are especially vulnerable. The poisoning occurs when workers absorb tobacco through the skin as they come into contact with the leaves; wet leaves increase the risk of poisoning as nicotine dissolves in the water on the leaf’s surface. Physical exercise and high ambient temperatures can increase absorption of nicotine as blood is shunted to the skin to help lower body temperature.²²¹ Symptoms include nausea, vomiting, headaches, muscle weakness, dizziness, abdominal pain, and diarrhea, as well as shortness of breath, and occasional fluctuations in blood pressure or heart rate.²²² According to a recent study, “on a humid day, especially after a recent rain, the average field worker may be exposed to as much as 600 mL of dew,” which would contain roughly the nicotine of 36 average cigarettes.²²³

“Topping” and harvesting, two types of tobacco work the children Human Rights Watch interviewed conducted, place workers in constant contact with tobacco leaves and at particular risk of green tobacco sickness.²²⁴ Human Rights Watch interviewed 12 children working in tobacco in eastern North Carolina.

Children are especially vulnerable to green tobacco sickness compared with adults. Their bodies are smaller in size relative to the dose of nicotine they absorb, they typically lack tolerance to nicotine, and may be less well-informed about the risks, especially from rain or dew, because the danger is from the plant itself, not an obvious external substance.²²⁵

²²⁰ Arcury and Quandt, “Pesticide Exposure Among Farmworkers and Their Families,” *Latino Farmworkers in the Eastern United States*, Arcury and Quandt, eds., p. 115 (citing 2001 study).

²²¹ Robert H. McKnight and Henry A. Spiller, “Green Tobacco Sickness in Children and Adolescents,” *Public Health Reports*, vol. 120 (November-December 2005), <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1497768/?tool=pubmed> www.pubmedcentral.nih.gov (accessed January 25, 2010), p. 603.

²²² Ibid.; and Jeffrey S. McBride et al, “Green Tobacco Sickness,” *Tobacco Control*, vol. 7, (1998), p. 295.

²²³ McKnight and Spiller, “Green Tobacco Sickness in Children and Adolescents,” *Public Health Reports*, p. 603.

²²⁴ Ibid. When “topping,” workers walk through the rows, snapping off the flower from the plant. Harvesting occurs in one of two ways. For flue-cured tobacco, workers snap off individual leaves as they ripen, typically grasping the picked leaves between their arm and chest until they cannot hold anymore. To harvest burley tobacco, workers grasp the stalk of the plant, cut the base, and impale them on a spear to dry in the field, moving them inside only if rains. Ibid.

²²⁵ Ibid. See also Sara A. Quandt et al, “Environmental and Behavioral Predictors of Salivary Cotinine in Latino Tobacco Workers,” *Journal of Occupational and Environmental Medicine*, vol. 43, no. 10 (2001), pp. 844-52.

Protective clothing such as rain gear and water-tight gloves can protect workers from exposure but also increase the risk of heat exhaustion and dehydration;²²⁶ none of the children Human Rights Watch interviewed mentioned wearing protective clothing.

Access to Health Care

Farmworkers generally have poor access to health care, and only 20 percent of migrant and seasonal farmworkers reported in 2000 using any healthcare services in the preceding two years.²²⁷ A study of migrant families in eastern North Carolina, published in 2004, found that for over half of the children sampled, the child's caretaker reported a time in the past year when the caretaker felt the child needed medical care but the child did not receive it.²²⁸

Cost is a significant problem. Farmworkers' incomes place them near or below poverty, many are not eligible for Medicaid, and few have health insurance: 85 percent of migrant and seasonal farmworkers, and nine out of ten children in farmworker families, were uninsured in 2000.²²⁹ Some simply cannot afford the lost wages of hours spent waiting for care or to apply for benefits; some may lose their jobs if they miss a day of work. Farmworkers are also not covered by workers' compensation laws in many states.²³⁰

There are approximately 160 federally funded migrant health clinics as well as community clinics that receive federal funding to care for uninsured and under-insured migrant farmworkers and their families.²³¹ While many of these provide excellent care, they are not sufficient to cover all farmworkers' needs. Language and distance from medical facilities are

²²⁶ Ibid. See also Natalie M. Schmitt et al, "Health Risks in Tobacco Farm Workers—A Review of the Literature," *Journal of Public Health*, vol. 15 (2007), p. 263.

²²⁷ Sara Rosenbaum and Peter Shin, Center For Health Services Research and Policy, George Washington University, "Migrant and Seasonal Farmworkers: Health Insurance Coverage and Access to Care," Kaiser Commission on Medicaid and the Uninsured, April 2005, p. 3; and US Department of Labor, "National Agriculture Workers Survey (Release 3.0)," 2000.

²²⁸ Quandt, "Health of Children and Women in the Farmworker Community in the Eastern United States," *Latino Farmworkers in the Eastern United States*, Arcury and Quandt, eds., p. 177 (citing Weathers et al. 2004).

²²⁹ Thomas A. Arcury and Sara A. Quandt, "The Health and Safety of Farmworkers in the Eastern United States: A Need to Focus on Social Justice," *Latino Farmworkers in the Eastern United States*, Arcury and Quandt, eds., p. 2; and Rosenbaum and Shin, "Migrant and Seasonal Farmworkers: Health Insurance Coverage and Access to Care," pp. 1, 3-4; US Department of Labor, "National Agriculture Workers Survey (Release 3.0)." See also National Center for Farmworker Health, Inc. "About America's Farmworkers: Farmworker Health," undated, <http://www.ncfh.org/?pid=4&page=7> (accessed January 25, 2010).

²³⁰ See Farmworker Justice, "State Workers' Compensation for Agricultural Workers," 2009, <http://www.fwjustice.org/HealthResources/State%20Workers%20Comp%20Information%20for%20Health%20Centers.pdf> (accessed April 15, 2010).

²³¹ Human Rights Watch telephone interview with Amy Lieberman, Migrant Clinicians Network, March 6, 2009; National Center for Farmworker Health, Inc., "About Community and Migrant Health Centers," undated, <http://www.ncfh.org/?pid=6> (accessed April 27, 2010).

also significant barriers.²³² Where workers do receive care, health providers may have limited training in diagnosing occupational health problems, including pesticide exposure, and may face cultural barriers in providing treatment.²³³ The Migrant Clinicians Network has programs to promote the integration of occupational and environmental medicine into primary care.²³⁴

Some children told us their employers had paid for their emergency care for a minor workplace injury but strictly on an ad hoc basis. More common were descriptions of problems persisting for years without formal medical treatment. “When they’re really sick, unless they’re in pain,” they are not going to go to the doctor, a health worker told us.²³⁵

The new health care reform law recently enacted by the US Congress excludes undocumented workers from coverage. As noted earlier, it is estimated that about half of all farmworkers are undocumented.

Sexual Harassment and Violence

From California, where the fields were called “field de calzon” (or “field of panties”) because so many supervisors raped women there, to Florida, where female farm workers call them “The Green Motel,” and throughout the country, we have found women working in agriculture are often particularly vulnerable to sexual harassment.

—William R. Tamayo, EEOC regional attorney, San Francisco district office, June 18, 2009²³⁶

All forms of workplace exploitation take their toll on victims, whether it is economic or sexual. One major difference that I have seen is that when you are raped at work it is not the same as not being paid; you are not just going to get another job and move on with your life like when you’re not paid. When you’re raped, it impacts the rest of your life. . . .

²³² Rosenbaum and Shin, “Migrant and Seasonal Farmworkers: Health Insurance Coverage and Access to Care.”

²³³ May, “Occupational Injury and Illness in Farmworkers in the Eastern United States,” *Latino Farmworkers in the Eastern United States*, Arcury and Quandt, eds., p. 75.

²³⁴ Migrant Clinicians Network, *A Migrant Farmworker Occupational Health Reference Manual*, 2006, www.migrantclinician.org/service.dl.php?fid=2121 (accessed April 8, 2010)

²³⁵ Human Rights Watch interview with health worker, central Florida, March 23, 2009.

²³⁶ “Willamette Tree Wholesale Sued by EEOC for Severe Sexual Harassment, Retaliation,” US Equal Employment Opportunity Commission press release, June 18, 2009, <http://www.eeoc.gov/eeoc/newsroom/release/6-18-09a.cfm> (accessed March 19, 2010).

Farmworker victims are getting pregnant, they are getting STIs [sexually transmitted infections] from perpetrators, and they are suffering trauma from rape. It affects them and their families. Some victims I've represented have said they could no longer interact with their family in the same way afterward because they felt ashamed and embarrassed. The harm caused by sexual violence goes to the core of the person's being. It's a health issue, a safety issue, a civil rights issue.

—Mónica Ramírez, Esperanza: The Immigrant Women's Legal Initiative of the Southern Poverty Law Center, December 30, 2009²³⁷

Farmworker women and girls are exceptionally vulnerable to sexual exploitation and violence by co-workers, crew leaders, labor contractors, and growers. This violence ranges from inappropriate or threatening comments to groping, sexual assault, and rape. In a recent survey of Latino immigrants in five states, 77 percent of women said that sexual harassment was a major workplace problem.²³⁸ Similarly, farmworkers and advocates in Fresno, California, told EEOC staff “that hundreds, if not thousands, of women had to have sex with supervisors to get or keep jobs and/or put up with a constant barrage of grabbing and touching and propositions for sex by supervisors.”²³⁹

Maria M. from Idaho, whose story is recounted above, described her experience of being almost the only girl harvesting zucchini when she was in high school:

It was difficult . . . when I was placed next to men. I wore really loose clothing. I never wore tight clothing because that would be a big mistake. There were times when you were working down the row and there's a guy next to you asking your name. They never ask how old you are because they don't want to know that. . . . You had to be rude to a guy even though they're just asking your name because it could turn into something worse. . . . You had to strategize how you were going to answer questions to prevent them from talking to you.

²³⁷ Human Rights Watch telephone interview with Mónica Ramírez, Southern Poverty Law Center, Atlanta, Georgia, December 30, 2009.

²³⁸ Southern Poverty Law Center, “Under Siege: Life for Low-Income Latinos in the South,” p. 28.

²³⁹ William R. Tamayo, “The Role of the EEOC in Protecting the Civil Rights of Farm Workers,” *UC Davis Law Review*, vol. 22 (Summer, 2000), p. 1080.

I remember one crew leader, he would stand behind girls and look at them. It wasn't ok for him to do that, but other guys laughed because he was a crew leader. He was the worst crew leader ever. . . .

Women know you don't wear a t-shirt to work. . . . When you're working in the fields you can't avoid being harassed by guys because of what you're wearing.²⁴⁰

Another young woman said that when she worked when she was 15 and 16 years old in Washington State, girls tried to stay together in groups to avoid harassment, especially after the lunch break when men would get high on drugs.²⁴¹

In 2005, Olivia Tamayo became the first female farmworker to successfully challenge her employer in federal court for sexual harassment.²⁴² Tamayo testified that her supervisor, who carried a gun and a knife, raped her and threatened to kill her and her husband if she told anyone.²⁴³ She reported the assault and threats to her employer in 1999, and a deputy sheriff interviewed her but did not find her allegations credible.²⁴⁴ The EEOC sued on Tamayo's behalf and charged that Harris Farms allowed her to work isolated in the fields and to endure co-worker harassment until, in March 2001, she felt compelled to quit her job, her primary employment for more than 15 years. The jury found Harris Farms liable for sexual harassment, retaliation, and the constructive termination of Tamayo.²⁴⁵ In January 2005, a jury awarded Tamayo a nearly \$1 million verdict against Harris Farms, one of California's largest agricultural businesses.²⁴⁶

The prevalence of sexual violence is always difficult to measure accurately; the isolation and other vulnerabilities of farmworker girls and women make it more so in this context. According to William Tamayo, an EEOC regional attorney whose office has brought numerous

²⁴⁰ Human Rights Watch telephone interview with Maria M., age 19, Idaho, September 13, 2009.

²⁴¹ Human Rights Watch interview with Elisabeth S., age 19, Durham, North Carolina, August 3, 2009.

²⁴² *EEOC v. Harris Farms*, January 2005, (E.D. Cal.) Civil Action, No. F-02-6199 AWI

²⁴³ Miriam Jordan, "Farmworker Gets Rare Win Against Grower," *The Wall Street Journal*, January 24, 2005; and Rebecca Claren, "The Green Motel," *Ms. Magazine*, Summer 2005.

²⁴⁴ Jordan, "Farmworker Gets Rare Win Against Grower," *The Wall Street Journal*; Juliana Barbassa, "Sexually harassed farmworkers often unaware of rights," Associated Press, October 26, 2005.

²⁴⁵ Ibid., and "Jury Orders Harris Farms to Pay \$994,000 in Sexual Harassment Suit by EEOC," EEOC press release, January 21, 2005, <http://www.eeoc.gov/eeoc/newsroom/release/1-21-05.cfm> (accessed March 22, 2010).

²⁴⁶ Jordan, "Farmworker Gets Rare Win Against Grower," *The Wall Street Journal*. Harris Farms appealed, and the Ninth Circuit affirmed the verdict in 2008. "Sexual Harassment Verdict Upheld in Favor of EEOC Against AG Industry Giant Harris Farms," EEOC press release, April 25, 2008, <http://www.eeoc.gov/press/4-25-08.html> .

sexual harassment cases (and no relation to Olivia Tamayo): “This happens behind closed doors. There are probably scores of women and girls who are being raped in the fields every day but don’t come forward. They’re scared. . . . My view is that we’re just scratching the surface here.”²⁴⁷

Geographic, linguistic, and cultural isolation combined with poverty and a desperate need for work, poor housing, vulnerability to deportation if undocumented, and the inability to seek protection create a perfect climate for sexual harassment and violence to flourish on farms. Farmworkers typically work in less populated, more isolated rural areas; the majority of workers, supervisors, and employers are male. Victims may not speak English or know the abuse is illegal; they simply endure sexual harassment as part of the job. “People don’t know their rights. Predators are rarely punished,” said EEOC attorney Tamayo.²⁴⁸

The power differential between growers, contractors, supervisors, and workers is enormous. Workers may fear that they and their family members will be fired or face violence if they do report abuse. Maria M. told us: “it’s something that girls have to live with. I’m sure a lot of people wonder why a girl would go into the field in that situation, but you have to accept it’s going to happen and work is work.”²⁴⁹ If the employer provides housing, being fired may mean becoming homeless. In addition, being fired could cause the victim or her family members to be blacklisted from agricultural employment in the area where the incident occurred or elsewhere because the worker is coined a trouble maker. As a result, the victim and even her family members can be denied future employment opportunities.²⁵⁰

Girls may be especially targeted and may be less likely to challenge their abusers than adults. “I never saw [sexual harassment] as an issue because I was used to it,” the young woman from Idaho explained. “Sometimes I would get frustrated, but it was something I knew was going to happen so I didn’t think it was a big deal until I learned it shouldn’t happen.”²⁵¹ Mónica Ramírez, founder and director of Esperanza: The Immigrant Women’s Legal Initiative of the Southern Poverty Law Center, who represents farmworker women and girls in cases involving sexual violence, said: “Children are always more vulnerable because they don’t know they have protections or how to protect themselves. Perpetrators take

²⁴⁷ Human Rights Watch telephone interview with William R. Tamayo, EEOC regional attorney, San Francisco, California, July 31, 2009.

²⁴⁸ Ibid.

²⁴⁹ Human Rights Watch telephone interview with Maria. M., age 19, Idaho, September 13, 2009.

²⁵⁰ Email from Mónica Ramírez, Southern Poverty Law Center, to Human Rights Watch April 2, 2010.

²⁵¹ Human Rights Watch telephone interview with Maria M., age 19, Idaho, September 13, 2009.

advantage of their youth, inexperience as employees, and lack of knowledge about their rights. Sometimes they make threats against the victims' parents or other family members. Unaccompanied minors are also especially vulnerable.”²⁵² According to EEOC attorney Tamayo: “The imbalance of power is so great—kids don’t know their rights and they’re really scared. It’s usually 30- to 40-something’s who are propositioning or grabbing them—16-year-old girls.”²⁵³

Employers may ignore harassment or may themselves engage in abuse. “In cases I’ve handled,” Ramírez said, “it’s been supervisors and company owners who have committed the harassment. I am aware that some growers and supervisors say that they are aware of the problem but that it is not happening on their farm. They can’t say it’s not happening on their watch. It’s people in power who are perpetrating this violence.”²⁵⁴ In other instances, the employer turns a blind eye or never receives the complaint. William Tamayo explained: “English-speaking owners are very dependent on labor contractors or foremen who speak Spanish. . . . Predators have so much power. They are the link to the employer. They are the lifeline. They are insulated. The employers are so dependent on these guys and so when problems are raised they don’t want to hear about it. They may think that the chances are rare that they will ever be prosecuted.”²⁵⁵

Women and girls have limited or no recourse for abuse. Local law enforcement may be unavailable or unreceptive to farmworker women’s and girls’ complaints. Where local and state police have signed so-called 287(g) agreements with Immigration and Customs Enforcement (ICE) allowing them to enforce federal immigration law, undocumented victims may, in effect, have no legal protection from crime because they fear complaining to the police will lead to their deportation (see below).

Aside from lacking information about their rights, farmworker victims often do not know about the community resources available to help them in the face of sexual harassment or violence. Social service providers may be far away from where the farmworker community members live or work. Such services may also only be available in English. Victims may fear that their partners and families will blame them for provoking abuse or for being perceived as causing problems. Thus, these victims may not tell even those closest to them. A paralegal who works with farmworkers said: “The women don’t want to talk about it. They

²⁵² Human Rights Watch telephone interview with Ramírez, Southern Poverty Law Center, December 30, 2009.

²⁵³ Human Rights Watch telephone interview with Tamayo, EEOC, July 31, 2009.

²⁵⁴ Human Rights Watch telephone interview with Ramírez, Southern Poverty Law Center, December 30, 2009.

²⁵⁵ Human Rights Watch telephone interview with Tamayo, EEOC, San Francisco, California, July 31, 2009.

don't even tell their husbands. Because their husbands are going to blame them. So the woman says, 'I don't want anyone to know.'"²⁵⁶

One government agency that has specifically targeted this issue is the US Equal Employment Opportunity Commission (EEOC), which since 1996 has filed more than 20 cases of sexual harassment, retaliation, and sex-based discrimination on behalf of women agricultural workers, mostly out of its San Francisco office.²⁵⁷ At the time of writing, only the Harris Farms case, described above, had resulted in a jury verdict, but at least 18 have resulted in settlements or consent decrees.

As an example of a recent case involving a teenager, in a lawsuit filed in January 2010 against Giumarra Vineyards, the EEOC alleged that a male co-worker subjected a teenage farmworker to "sexual advances, sexually inappropriate touching, and abusive and offensive sexual comments about the male sex organ," that farmworkers who witnessed the harassment complained to Giumarra Vineyards, and that one day after the complaint, Giumarra Vineyards summarily discharged the girl and the farmworkers who complained in retaliation.²⁵⁸ This case and others were still pending at the time of writing.

Several non-governmental organizations have also taken up the issue of sexual harassment and violence against farmworkers. These include Esperanza: The Immigrant Women's Legal Initiative of the Southern Poverty Law Center (SPLC), the Agricultural Worker Health Project in conjunction with California Rural Legal Assistance Foundation and California Rural Legal Assistance, Inc., and the non-profit organization Lideres Campesinas. In addition, many organizations throughout the United States and abroad have partnered with SPLC on its Bandana Project Campaign.²⁵⁹

²⁵⁶ Human Rights Watch interview with paralegal and former farmworker, Immokalee, Florida, March 24, 2009.

²⁵⁷ Sexual harassment and retaliation for complaining about it violate Title VII of Civil Rights Act of 1964. 29 C.F.R. sec. 1604.11.

²⁵⁸ "Giumarra Vineyards Sued by EEOC for Sexual Harassment and Retaliation Against Farm Workers," EEOC press release, January 13, 2010, <http://www.eeoc.gov/eeoc/newsroom/release/1-13-10.cfm> (accessed March 19, 2010) (citing *EEOC v. Giumarra Vineyards Corporation et al*, January 13, 2010, Civ. No. 5:09-CV-04646-PVT).

²⁵⁹ The Bandana Project was launched in June 2007 to raise awareness about workplace sexual violence against farmworker women. More than 2,000 white bandanas have been decorated and displayed as a show of solidarity to end this violence.

VIII. Vulnerability of Child Workers Due to Immigration Status

Labor and workplace violations—including wage exploitation, pressure to do dangerous work, and sexual abuse—are risks for all child farmworkers. However, for undocumented immigrant child farmworkers (who lack permission to work) and lawfully present or US citizen children with undocumented parents, the threat of deportation by US Immigration and Customs and Enforcement (ICE) exacerbates an already exploitative and degrading workplace.

Over half—53 percent—of all (adult and child) crop workers lacked work authorization in 2005-2006, according to the National Agricultural Workers Survey (NAWS).²⁶⁰ By comparison, 2006 data from the US Census Bureau indicate that only about 40 percent of all farmworkers (crops and livestock) were foreign born and lack US citizenship, and do not indicate how many farmworkers without citizenship were still working lawfully.²⁶¹ Based on these numbers, Human Rights Watch estimates that it is likely that the majority of child farmworkers are documented, given that many farmworker parents without US citizenship would have had children born in the US, making them US citizens.²⁶²

In some states visited by Human Rights Watch, service providers perceived a trend towards employing undocumented youth—some even as young as 12—who were not accompanied by family members. Gregory Schell, a public interest lawyer, said that in Florida, “Most of the underage workers we see are unaccompanied, and tend to be older—15 or more.”²⁶³ Advocates working directly with farmworkers also described the growing presence of indigenous children from Mexico and Central America for whom Spanish was not a native language. “We’ve seen more and more younger farmworkers,” said Carol Brooke, migrant worker attorney with the North Carolina Justice Center. “Sixteen, seventeen years old. Typically in male crews, maybe with a relative. Mostly undocumented, often speaking indigenous languages, although they also speak Spanish.”²⁶⁴ For this report, Human Rights

²⁶⁰ US Department of Labor, “The National Agricultural Workers Survey: Public Access Documentation,” <http://www.dolleta.gov/agworker/naws.cfm> (accessed April 27, 2010).

²⁶¹ USDA Economic Research Service, “Rural Labor and Education: Farm Labor.”

²⁶² See US Constitution, amendment 14 (1) (“All persons born ... in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.”)

²⁶³ Email from Schell, Florida Legal Services Migrant Farmworker Justice Project, April 7, 2010.

²⁶⁴ Human Rights Watch telephone interview with Carol Brooke, North Carolina Justice Center, Raleigh, North Carolina, February 3, 2009.

Watch interviewed child farmworkers who were US citizens, who were green card holders with permission to work in the US, and who were undocumented.

While this report's main focus is on improving child labor protections and health and safety protections for all child farmworkers, the ways in which immigration law—most tangibly felt as the threat of deportation—exacerbate problems for children in agriculture cannot be ignored. The vulnerability of immigrant workers to exploitation creates dangerous and unfair work conditions for all workers. Some employers' willingness to take advantage of immigrants who are too afraid to complain hurts all workers in the fields, including the hundreds of thousands of US citizens who work alongside immigrant workers.

Undocumented child farmworkers, or children who are working together with undocumented parents, live in fear of at least two scenarios. One is that their employers will turn them or their parents over to immigration authorities, and that they or their parents will be deported. This means that children are terrified of complaining about abusive conditions in the fields, and any steps they might take towards vindicating their rights can be thwarted by an employer who threatens to call ICE. The second scenario that children fear is that their employers will be subject to a raid by immigration authorities.²⁶⁵

Recognizing that employers have an almost unfettered ability to exploit undocumented workers, ICE (and its predecessor agency, INS) and the US Department of Labor (DOL) have entered into a Memorandum of Understanding (MOU) to try to de-link immigration and labor law enforcement.²⁶⁶ First established in 1998, this DOL MOU states that the two agencies must avoid situations where their co-involvement in a particular labor setting will have the purpose or effect of placing raids on undocumented workers above labor law enforcement, because the Department of Labor has recognized that immigrant workers will be reluctant to bring complaints if employers are able to call in ICE under any circumstance.²⁶⁷ Since 1996,

²⁶⁵ From 2006 to 2008, workplace immigration raids were on the rise. The Obama administration has distanced itself from such raids, suggesting that the focus should be on employers who hire undocumented workers, and not solely on deporting workers. Loret Turnbull, "Napolitano demands review of ICE raid at Bellingham plant," *Seattle Times*, February 26, 2009. Nevertheless, ICE made 6,287 arrests for immigration offenses at workplaces in 2008; only 135 were owners, managers, supervisors, or human resources employees charged with harboring or knowingly hiring undocumented workers—the remainder were the workers themselves. US Immigration and Customs Enforcement, "Worksite Enforcement," April 30 2009, <http://www.ice.gov/pi/news/factsheets/worksites.htm> (accessed April 22, 2010). Such raids chill workers' willingness to come forward about wage or conditions violations in the workplace. That chilling effect is only heightened by the fact that some such enforcement actions have come even in the midst of actions by workers to exercise their labor rights.

²⁶⁶ "Memorandum of Understanding Between the Immigration and Naturalization Service Department of Justice and the Employment Standards Administration Department of Labor," November 23, 1998, <http://www.dol.gov/esa/whd/whatsnew/mou/nov98mou.htm> (accessed April 22, 2010).

²⁶⁷ Government Accountability Office, "Better Use of Available Resources and Consistent Reporting Could Improve Compliance," no. GAO-08-962T, July 15, 2008.

the INS (now ICE) has had in place internal guidance to its staff on how to avoid immigration enforcement involvement in labor disputes.²⁶⁸ Despite the existence of these tools, perhaps partly because they are not consistently followed by ICE, undocumented workers continue to live in fear of exercising their rights as workers. As one service provider said, “Undocumented victims or victims whose family members or other people in their social network are undocumented won’t report because they are afraid that they or someone they love will be deported.”²⁶⁹

Undocumented farmworkers live in fear not only of ICE, but increasingly of their local police officers as well. This is due to so-called “287(g) agreements” under which local or state police enter into an agreement with ICE to enforce federal immigration law.²⁷⁰ As of April 2010, ICE reported having enrolled 71 agencies in 26 states and trained 1,120 officers under the program.²⁷¹ In the course of our research for this report, Human Rights Watch heard from service providers about local police in North Carolina setting up roadblocks to check people’s immigration status, including near a Spanish-language day care.

The involvement of local police in enforcing federal immigration laws, which often is accompanied by intense racial profiling, has a chilling effect on all immigrant farmworkers’ willingness to report workplace abuses.²⁷² “The 287(g) agreements definitely affect people’s willingness to report sexual violence,” one service provider told Human Rights Watch. “In some cases when people do file a report, law enforcement officials question the credibility of victims because of their immigration status, language, and nationality.”²⁷³ According to

²⁶⁸ This guidance, which appears as an ICE “Operating Instruction” on labor disputes, provides that ICE agents should consider whether tips about alleged employment of undocumented workers are being provided to the agency in order to interfere with labor rights. ICE Operating Instruction 287.3(a), <http://www.uscis.gov/ilink/docView/SLB/HTML/SLB/o-o-o-1/o-o-o-53663/o-o-o-61045/o-o-o-61070.html#o-o-o-31745> (accessed April 22, 2010).

²⁶⁹ Human Rights Watch telephone interview with Ramírez, Southern Poverty Law Center, December 30, 2009.

²⁷⁰ Section 287(g) of the Immigration and Nationality Act “authorizes the secretary of the U.S. Department of Homeland Security (DHS) to enter into agreements with state and local law enforcement agencies, permitting designated officers to perform immigration law enforcement functions, pursuant to a Memorandum of Agreement (MOA), provided that the local law enforcement officers receive appropriate training and function under the supervision of sworn U.S. Immigration and Customs Enforcement (ICE) officers.” Delegation of Immigration Authority Section 287(g): Immigration and Nationality Act, *Immigration and Customs Enforcement*, 1996, http://www.ice.gov/partners/287g/Section287_g.htm, 287(g).

²⁷¹ US Immigration and Customs Enforcement, “Updated Facts on ICE’s 287(g) Program,” April 12, 2010, http://www.ice.gov/pi/news/factsheets/section287_g-reform.htm (accessed April 22, 2010).

²⁷² Southern Poverty Law Center, “Racial Profiling by Law Enforcement is Constant Threat,” April 2009, <http://www.splcenter.org/publications/under-siege-life-low-income-latinos-south/2-racial-profiling> (accessed April 7, 2010); see also Southern Poverty Law Center, “Close to Slavery: Guestworker Programs in the United States,” pp. 1-2.

²⁷³ Human Rights Watch telephone interview with Ramírez, Southern Poverty Law Center, December 30, 2009. In areas with 287(g) agreements, “both documented and undocumented immigrants as well as Latino US citizens told surveyors that the program made them fearful of the police and reluctant to call the police if victimized.” Southern Poverty Law Center, “Under Siege: Life for Low-Income Latinos in the South,” p. 27.

the Southern Poverty Law Center, there are several cases in which police have turned female victims of crimes over to ICE and they have been deported.²⁷⁴

Even though undocumented workers have violated US immigration law, the fact of their employment in the United States means that they are protected by, and their employers must follow, minimum wage, child labor, and health and safety rules.²⁷⁵ In addition, human rights law is clear that both undocumented and documented workers must benefit from protection of their basic rights as workers.²⁷⁶

Despite these protections in US and human rights law, the reality of immigration law enforcement in the United States and workers' unwillingness to draw attention to themselves mean that the fear of deportation often trumps all else. "You can seize on child labor or alleged slavery but these things only exist as extreme examples of th[e] type of extreme lawlessness [that all farmworkers live under] In a world where everyone is in a precarious employment situation and the system relies on employee testimony, there's not good enforcement," explained Gregory Schell of Florida Legal Services Migrant Farmworker Justice Project.²⁷⁷ A migrant health project director in Michigan told Human Rights Watch: "Even people who are documented have family members who are undocumented so they are

²⁷⁴ Southern Poverty Law Center, "Under Siege: Life for Low-Income Latinos in the South," p. 31. For example, the organization describes contacting a local prosecutor about the sexual assault of a 13-year-old Latino girl and the prosecutor saying that if the girl came forward and he discovered she was undocumented, he would contact ICE. The family decided not to report the case and the rapist went unpunished. *Ibid.*, p. 27.

²⁷⁵ For US law indicating that core labor standards apply to all workers, regardless of immigration status, see *Sure-Tan, Inc. v. NLRB*, 467 U.S. 883, 892 (1984) (undocumented immigrants are "employees" under the National Labor Relations Act); *Patel v. Quality Inn South*, 846 F.2d 700 (1988), cert denied, 489 U.S. 1011 (1989) (declining to review lower court's decision that the Fair Labor Standards Act's coverage of undocumented aliens is fully consistent with US immigration law); and *EEOC v. Hacienda Hotel*, 881 F.2d 1504 (9th Cir. 1989) (nondiscrimination laws apply to undocumented workers).

²⁷⁶ Regarding international law that protects the rights of all workers, irrespective of immigration status, see International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Migrant Workers Convention), adopted December 18, 1990, G.A. Res. 45/158, annex, 45 U.N. GAOR Supp. (No. 49A) at 262, U.N. Doc. A/45/49 (1990), entered into force July 1, 2003, art. 25; ILO Convention No. 97 concerning Migration for Employment Convention (Revised), adopted July 1, 1949, entered into force January 22, 1952, art. 6. The Inter-American Court of Human Rights (IACtHR) said that despite their irregular status, "If undocumented workers are contracted to work, they immediately are entitled to the same rights as all workers This is of maximum importance, since one of the major problems that comes from lack of immigration status is that workers without work permits are hired in unfavorable conditions, compared to other workers." See Inter-American Court of Human Rights, "Legal Condition and Rights of Undocumented Migrant Workers," Consultative Opinion OC-18/03 (September 17, 2003). The IACtHR specifically mentioned several workplace rights that it held must be guaranteed to migrant workers, regardless of their immigration status:

In the case of migrant workers, there are certain rights that assume a fundamental importance and that nevertheless are frequently violated, including: the prohibition against forced labor, the prohibition and abolition of child labor, special attentions for women who work, rights that correspond to association and union freedom, collective bargaining, a just salary for work performed, social security, administrative and judicial guarantees, a reasonable workday length and in adequate labor conditions (safety and hygiene), rest, and back pay.

²⁷⁷ Human Rights Watch telephone interview with Schell, managing attorney, Florida Legal Services Migrant Farmworker Justice Project, February 2, 2009.

afraid to speak up.”²⁷⁸ Similarly, a nurse at a rural health clinic said: “We hear over and over again from our patients that they are willing to put up with a lot because they are undocumented and afraid. One really can’t talk about health if you’re worried about getting paid. If you can’t afford to buy food.”²⁷⁹

²⁷⁸ Human Rights Watch interview with Phyllis Engelbert, Migrant Health Promotion, Saline, Michigan, August 24, 2009.

²⁷⁹ Human Rights Watch interview with Josie Ellis, registered nurse and director of Vecinos Inc. Farmworker Health Program, Sylva, North Carolina, August 4, 2009.

IX. The United States Government's Failure to Protect Farmworker Children

Protecting child farmworkers from dangerous and exploitative work is the responsibility of lawmakers as well as the agencies that implement the law, including the US Department of Labor and the Environmental Protection Agency (EPA). By providing children working in agriculture less protection than all other working children, and by poorly enforcing what protections they do have, the government is failing in its responsibility to safeguard the health, education and safety of farmworker children.

Fair Labor Standards Act

Child labor is first and foremost regulated by the Fair Labor Standards Act (FLSA), the federal law that sets minimum ages for work, maximum work-hours per day and week, and minimum hourly wages. The FLSA dates back to 1938 and reflects a radically different era in the United States, a time when “agriculture” was synonymous with “family farm,” and a quarter of all Americans still lived and worked on farms. Initially, farmworkers were excluded entirely from the law's protection, and the minimal restrictions on child labor in agriculture were not added until 1974.

The most glaring deficiency of the FLSA is its disparate treatment of farmworker and non-farmworker children. Children working in agricultural occupations receive much less protection than children working in all other jobs. As put by the General Accounting Office, “children can legally work in agriculture under conditions that would be illegal in other work settings.”²⁸⁰ For example:

- Outside of agriculture, the employment of children younger than 14 is prohibited.²⁸¹ In agriculture, there is no minimum age at which employers may hire children to work unlimited hours outside of school, day or night, provided the work takes place on a small farm with written parental consent.²⁸²

²⁸⁰ US General Accounting Office, “Child Labor in Agriculture: Characteristics and Legality of Work,” no. GAO/HEHS-98-112R, 1998, p. 2.

²⁸¹ The FLSA allows for very limited exceptions to this, including work delivering newspapers, acting, and making evergreen wreaths.

²⁸² 29 U.S.C. sec. 213(c)(1)(A). A “small farm” is one which did not employ more than 500 man-days of agricultural labor (or about 7 workers) during any calendar quarter of the preceding year.

- Outside of agriculture, employment of children ages 12 and 13 is forbidden. In agriculture, any employer, regardless of size, may hire children ages 12 and 13 to work unlimited hours outside of school, provided they have written parental consent or work on a farm where a parent is employed.²⁸³
- Outside of agriculture, the standard minimum age for work is 16. Children ages 14 and 15 can work in certain limited jobs, such as cashiers, stocking shelves, or washing cars, in retail or food service stores, and in gas stations but only for limited hours: up to 40 hours in a nonschool week; up to 18 hours in a school week; up to 8 hours on a nonschool day; and up to 3 hours on a school day. In addition, outside of agriculture, 14- and 15-year olds may not work before 7:00 a.m. or after 7:00 p.m. (9 p.m. in the summer). There are no similar restrictions protecting children working in agriculture. In agriculture, employers may hire children ages 14 and 15 to work unlimited hours outside of school. There is no parental consent requirement.²⁸⁴
- In nonagricultural occupations, the minimum age for particularly hazardous work is 18, including for children working in a parent's business. In agriculture, employers may require or allow 16 and 17-year olds to work in particularly hazardous occupations.²⁸⁵ Children who work on a farm owned or operated by their parents can do particularly hazardous work at any age, no matter how young. For example, using a power-driven circular saw or band saw is allowed for children starting at age 16 in agriculture, whereas in other industries the minimum age for using such saws is 18 years.²⁸⁶ This disparate treatment is particularly troublesome given agriculture's position as the most dangerous occupation for working children in the United States.

States have the power to provide stronger protections for farmworker children than federal law, but most state child labor laws are no more protective than federal law. Seventeen states do not cover agricultural employment in their child labor laws at all.²⁸⁷

²⁸³ 29 U.S.C. sec. 213(c)(1)(B).

²⁸⁴ 29 U.S.C. sec. 213(c)(1)(C).

²⁸⁵ 29 U.S.C. sec. 213(c)(2).

²⁸⁶ Compare 29 C.F.R. 570.71(a)(3)(iv) (power saws in agriculture) with 570.65(a)(i) (power saws in all other industries).

²⁸⁷ The 17 states not listing agricultural employment among sectors covered by their child labor laws are: Alabama, Delaware (non-hazardous employment), Georgia, Kansas, Kentucky, Louisiana, Maryland (non-hazardous employment), Mississippi, Montana, Nebraska (covers only work in detasseling and beet fields), North Carolina, Oklahoma, Rhode Island, Tennessee, Texas, West Virginia (non-hazardous employment), and Wyoming. Wage and Hour Division, "State Child Labor Laws Applicable to Agricultural Employment January 1, 2010," <http://www.dol.gov/whd/state/agriemp2.htm> (accessed January 29, 2010).

Children's Act for Responsible Employment (CARE): Closing the Legal Loophole

For the last decade, members of the US Congress have repeatedly introduced draft legislation into both the Senate and House of Representatives that would eliminate the double-standard in US child labor laws and apply the same age and hour restrictions to children working in agriculture that already apply to other industries. However, to date, none of the bills have ever reached a vote.

As this report goes to press, legislation is still pending. In September 2009, Representative Lucille Roybal-Allard of California introduced legislation that would amend the Fair Labor Standards Act and apply the same age and hour requirements to children working in agriculture as for children working in other occupations (except for the existing family-farm provision that excuses from all child labor requirements parents whose children work on a farm that the parents own or operate). The Roybal-Allard bill, the Children's Act for Responsible Employment (CARE) (HR 3564), has three key provisions. First, it would prohibit the employment of children ages 13 and younger in agriculture, except for those working on farms owned and operated by their parents. It would allow 14- and 15-year-olds to work only for limited hours, outside of school hours. Second, it would raise the minimum age for particularly hazardous jobs in agriculture from 16 to 18. Third, it would increase the maximum amount of civil money penalties from \$11,000 to \$15,000, and would for the first time require a minimum penalty of \$500 for each violation. In the case of a violation that causes serious injury, serious illness, or death, there would be a minimum penalty of \$15,000 and a maximum penalty of \$50,000, which maximum could be doubled where the violation is repeated or willful.²⁸⁸

As of April 2010, the bill had more than 80 Congressional co-sponsors, but no formal action had been taken.

Failure to Ensure Adequate Minimum Age, Maximum Hour, and Minimum Wage Protections: the US Department of Labor

I'm a bit tired of seeing all my pediatric patients out there working against the law.

—Josie Ellis, registered nurse and director of Vecinos Inc. Farmworker Health Program, Sylva, North Carolina, July 28, 2009

²⁸⁸ The child labor amendments in the 2008 Genetic Information Non-discrimination Act (“GINA”) do not impose any minimum penalty and apply only to major injuries and death, not to major illnesses.

The US Department of Labor is responsible for enforcing the FLSA, which it does through its Wage and Hour Division. The secretary of labor can seek redress for child labor violations through injunctive relief, civil money penalties, and criminal sanction. (Only the secretary of labor—not individual employees or their parents—can sue an employer for violations of the FLSA’s child labor provisions.) Many of the employers of children profiled in this report would not be subject to sanction for child labor because the children are working legally under US federal law as it applies to agricultural employment. However, far too many agricultural employers violate the law without penalty.

The Wage and Hour Division’s enforcement of child labor laws in agriculture has been extremely weak. In 2009 it found only 36 cases of child labor violations involving 109 children in agriculture, constituting only 4 percent of all child labor cases that year.²⁸⁹ This number is not only astonishingly low, but also reflects a dramatic decline in overall enforcement of child labor laws from 2001.²⁹⁰ By comparison, in 1998, the Department of Labor found 104 cases of child labor violations in agriculture.²⁹¹

The Wage and Hour Division suffers from too few investigators, too little attention devoted to child labor, and, of those resources devoted to child labor, too little focus on agriculture. As a result, growers have no reason to fear using children illegally.

The division does not dedicate staff to inspect for child labor exclusively, but instead maintains that all full investigations—even those made under laws other than the FLSA—include a child labor component.²⁹² Thus, according to Arthur M. Kershner, Jr., youth employment branch chief, inspectors conducting an investigation of an agricultural employer will always look for child labor violations, even if the investigation has been

²⁸⁹ Email from Michael Kravitz, deputy director, Division of Performance, Budget, and Departmental Liaison, Wage and Hour Division, US Department of Labor, to Human Rights Watch, April 9, 2010. Regarding all child labor cases, the Wage and Hour Division found 887 cases involving 3,448 children in 2009.

²⁹⁰ US Department of Labor, “2008 Statistics Fact Sheet,” <http://www.dol.gov/whd/statistics/2008FiscalYear.htm> (accessed April 22, 2010). The annual number of child labor cases in agriculture in the three-year period from 2007 to 2009 remained stable—35 cases in 2007, 34 in 2008, and 36 in 2009—indicating that 2009 was not an aberration in recent enforcement numbers. US Department of Labor, “Report for the period of September 1, 2007 to August 30, 2009, made by the Government of the United States of America, in accordance with Article 22 of the Constitution of the International Labor Organization, on the measures taken to give effect to the provisions of the Worst Forms of Child Labor Convention, 1999 (No. 182),” undated, p. 9.

²⁹¹ US Department of Labor, “Compliance Highlights: 1998 Agricultural Activity Report, Wage and Hour Division,” March 1999, p. 2.

²⁹² Human Rights Watch interview with Nancy Leppink, deputy administrator; Arthur M. Kershner, Jr., youth employment branch chief, Division of Enforcement Policy; and Michael Kravitz, deputy director, Division of Performance, Budget, and Departmental Liaison, Wage and Hour Division, US Department of Labor, Washington, DC, February 17, 2010.

triggered by complaints of other violations.²⁹³ Yet the low numbers of child labor cases that result from these investigations call this into question: in 2009, the Wage and Hour Division made 1,379 full investigations in agriculture but found only child labor violations in less than 3 percent of those investigations (36 cases, as noted above).²⁹⁴ One possible reason the Wage and Hour Division finds so few child labor violations is that it conducts very few investigations in agriculture that start out as child labor investigations. In 2007 over 98 percent of investigations of agricultural employers were started for reasons unrelated to child labor.²⁹⁵

Until recently the Wage and Hour Division has not tailored its investigative techniques to fit the particular work environment and characteristics of children working in the fields. Many agricultural workers move from farm to farm and do not stay long in one place; they often work irregular hours, including very early in the morning and on weekends; they are frequently unfamiliar with their rights; they often do not speak English (or even Spanish in the case of indigenous language speakers from Mexico and Central America); and those who are undocumented tend to be wary of any government investigators.

These factors highlight how critical it is that the Department of Labor develop better methods for determining where child labor violations are likely to occur and investigate child labor proactively without waiting for workers to make complaints. Unlike issues such as non-payment of wages, working children or their parents are not going to report child labor.

The Wage and Hour Division's failure to adequately enforce child labor laws in agriculture is compounded by its overall failure to address wage violations against adult workers that contribute to farmworker poverty and push children to work to contribute to family income. For example, the US Government Accountability Office (GAO) found in 2009 that the Wage and Hour Division responds inadequately to complaints of wage fraud and non-payment of wages, leaving low wage workers vulnerable to wage theft.²⁹⁶ The GAO concluded that the division's system actively discouraged complaints, for example by directing most calls to voicemail but requiring an investigator speak with the employee before an investigation can be initiated, by not returning phone calls, by providing conflicting or misleading information

²⁹³ Ibid.

²⁹⁴ Email from Kravitz, Wage and Hour Division, US Department of Labor, April 9, 2010.

²⁹⁵ US Department of Labor data on file with Human Rights Watch.

²⁹⁶ US Government Accountability Office, "Department of Labor Wage and Hour Division's Complaint Intake and Investigative Processes Leave Low Wage Workers Vulnerable to Wage Theft," Testimony Before the Committee on Education and Labor, House of Representatives, March 25, 2009.

about how to file a complaint, and by accepting only written complaints at some offices.²⁹⁷ Activists and service providers whom Human Rights Watch interviewed in North Carolina, for example, told us that both state and federal department of labor offices are difficult for workers to access, even more so for children. In a survey by the Southern Poverty Law Center of some 500 Latino immigrants in five states, published in 2009, about 80 percent said they had no idea how to contact government enforcement agencies such as the Department of Labor.²⁹⁸

Even when violations are found, sanctions generally are weak and ineffective.²⁹⁹ The Wage and Hour Division can assess civil money penalties for child labor violations. The maximum civil money penalty available for a nonwillful child labor violation is \$11,000 for each employee who experiences a violation, and \$50,000 for each violation that causes death or serious injury of a child, which may be doubled for repeated or willful violations.³⁰⁰ The amount of the penalty must be based on the size of the business and the gravity of the violation.³⁰¹ The amount of civil money penalties ordered for child labor violations is far too low. For example, in 2008, the average penalty was only \$890 per child illegally employed, which is only 8 percent of the maximum penalty of \$11,000 then in effect.³⁰² As another example, according to news reports, in 2009 the division assessed two blueberry growers only \$2,584 for child labor violations after it found children as young as six years old picking in the growers' fields.³⁰³ Moreover, these penalty amounts do not represent penalties actually paid because assessed penalties may be negotiated downwards in order to resolve cases and avoid litigation.³⁰⁴

²⁹⁷ Ibid., p. 18.

²⁹⁸ Southern Poverty Law Center, "Under Siege: Life for Low-Income Latinos in the South," p. 6.

²⁹⁹ The Government Accountability Office also found that where the Wage and Hour Division made phone calls to the employer (known as "conciliations") "where the employer refuses to pay, their offices lack the resources to investigate further or compel payment. . . [I]n some conciliations, the employer is able to avoid paying back wages simply by refusing." US Government Accountability Office, "Department of Labor Wage and Hour Division's Complaint Intake and Investigative Processes Leave Low Wage Workers Vulnerable to Wage Theft," Testimony Before the Committee on Education and Labor, House of Representatives, p. 119.

³⁰⁰ Genetic Information Non-discrimination Act (GINA), sec. 302 (amending sec. 16(3) of the Fair Labor Standards Act).

³⁰¹ Fair Labor Standards Act, sec. 16(e).

³⁰² According to data from the Department of Labor, it concluded 1,129 cases of child labor violations in 2008 involving 4,737 children, and assessed \$4,218,088 in child labor civil monetary penalties. US Department of Labor, "Report for the period of September 1, 2007 to August 30, 2009, made by the Government of the United States of America, in accordance with Article 22 of the Constitution of the International Labor Organization, on the measures taken to give effect to the provisions of the Worst Forms of Child Labor Convention, 1999 (No. 182)," sec. II. The Wage and Hour Division was not able to make information on penalties assessed in 2009 available at the time of writing.

³⁰³ Luder, "Department of Labor Levies Fines for Child Labor Violations," *The Packer*.

³⁰⁴ Human Rights Watch interview with Leppink, Kerschner, and Kravitz, Wage and Hour Division, US Department of Labor, February 17, 2010.

The “hot goods” provision is another enforcement tool. The provision prohibits the shipment in interstate commerce of any goods produced in violation of minimum wage, overtime, or child labor requirements.³⁰⁵ It can be extremely effective, particularly in agriculture, in that it allows the Wage and Hour Division to seek temporary restraining orders preventing the movement of tainted goods. This creates great incentives for companies, growers, and other affected businesses to cooperate with the division. Such cooperation has included future compliance agreements and arrangements for ongoing monitoring. Use of the “hot goods” provision is still an exceptional law enforcement tool: the division invoked the provision only once in 2008 and once in 2009.³⁰⁶

The Wage and Hour Division has recently taken steps to address some of its basic shortcomings and improve the quality of the information it collects to litigate cases.³⁰⁷ In 2009 the division hired several hundred new inspectors, who were still being trained at the time of writing, bringing the total number of inspectors to 894 in April 2010.³⁰⁸ The division is also providing inspectors with basic technology such as cell phones, jump drives, and digital video and audio equipment; paying overtime so that inspectors can work weekends and early mornings; and adding bilingual staff.³⁰⁹ The division says it has begun tracking harvests and plans to strengthen relations with community organizations so that its inspectors will have information about where farmworkers are likely to be.³¹⁰ It remained to be seen at the time of writing whether these efforts would result in overall more vigorous enforcement of protections for child farmworkers.

Failure to Protect Children’s Health and Safety

Several sets of laws address hazards for children in agricultural work. First are the Department of Labor’s hazardous orders, which apply specifically to children. Second is the federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), enforced by the US Environmental Protection Agency. Third is the Occupational Safety and Health Act, enforced

³⁰⁵ The hot good provision came into use by the Wage and Hour Division in 1998, although it has been part of the FLSA since its origination in 1938. The provision as it pertains to child labor reads in part: “No producer, manufacturer, or dealer shall ship or deliver for shipment in commerce any goods produced in an establishment situated in the United States in or about which within thirty days prior to the removal of such goods there from any oppressive child labor has been employed.” 29 U.S.C. sec. 212(a).

³⁰⁶ Email from Kravitz, Wage and Hour Division, US Department of Labor, April 9, 2010.

³⁰⁷ Human Rights Watch interview with Leppink, Kerschner, and Kravitz, Wage and Hour Division, US Department of Labor, February 17, 2010.

³⁰⁸ Email from Kravitz, Wage and Hour Division, US Department of Labor, April 9, 2010.

³⁰⁹ Human Rights Watch interview with Leppink, Kerschner, and Kravitz, Wage and Hour Division, US Department of Labor, February 17, 2010.

³¹⁰ Ibid.

by the Occupational Safety and Health Administration (OSHA) in the Department of Labor. These latter two laws (and their implementing regulations) affect workers of all ages.

The Department of Labor's hazardous orders

Under the FLSA, the Department of Labor is responsible for determining what jobs are hazardous and therefore prohibited for children under age 16 working on farms that are not owned or operated by their parents (or for some tasks, children ages 14 and older who have received special training). The Department of Labor also determines what jobs are hazardous and thus prohibited for children under age 18 in all non-agricultural industries. For agriculture, occupations deemed particularly hazardous for children include operating equipment such as tractors of over 20 horsepower take-off, corn and cotton pickers, grain combines, and hay mowers; working in yards, pens, or stalls occupied by a bull, boar, or stud horse; working from a ladder at a height of over 20 feet; working inside fruit, forage, or grain storage containers; and handling or applying agricultural chemicals classified as Category I or II of toxicity.³¹¹ Children under age 16 may still handle pesticides of lower toxicity, and children ages 16 and older may work in agriculture without any age-related restrictions. Notably, a 2003 study of children under age 18 with acute occupational pesticide-related illnesses found that only a few appeared to be working in violation of these regulations.³¹²

In 2002 NIOSH, in a report to the Department of Labor, recommended amending the hazardous orders for both agricultural and non-agricultural jobs.³¹³ In agriculture, NIOSH recommended, among other things, revising the tractor exemption for certified 14- and 15-year olds to require rollover protective structures and seatbelts; lowering the height restrictions on ladders from 20 to 6 feet; and expanding the prohibition on handling certain agricultural chemicals to “[p]erforming any tasks that would fall under the EPA definition of ‘pesticide handler.’”³¹⁴ To date, none of the recommendations have been implemented. Although the Department of Labor has taken steps to implement some of NIOSH’s recommendations for *non*agricultural hazardous orders, initiating changes to agricultural

³¹¹ 29 C.F.R. sec. 570.71.

³¹² Three of the ninety-nine children for whom such information was available. Calvert et al, “Acute Pesticide-Related Illnesses Among Working Youths, 1988–1999,” *American Journal of Public Health*, p. 609. However, working in violation of the law may discourage reporting.

³¹³ NIOSH, “National Institute for Occupational Safety and Health (NIOSH) Recommendations to the U.S. Department of Labor for Changes to Hazardous Orders,” May 3, 2002, http://youthrules.dol.gov/niosh_recs_to_dol_050302.pdf (accessed April 5, 2010).

³¹⁴ *Ibid.*, pp. 67–98.

hazardous orders was not on the department's regulatory agenda at the time of writing,³¹⁵ despite the younger ages for hazardous work in agriculture and high rates of injuries and fatalities compared with other sectors.

Even existing hazardous orders are almost never enforced for agriculture. In 2009 the Wage and Hour Division cited only two violations of agricultural hazardous orders in two cases, or 0.14 percent of the 1,432 hazardous occupation violations it found that year.³¹⁶

The Environmental Protection Agency (EPA)

The US Environmental Protection Agency oversees the registration, distribution, sale, and use of pesticides. The EPA's Worker Protection Standard is a federal regulation intended to "reduce the risks of illness or injury resulting from . . . occupational exposures to pesticides."³¹⁷ The Worker Protection Standard forbids employers from requiring or allowing workers, other than trained pesticide handlers, to enter or remain in areas being treated with pesticides. It requires employers to notify workers when areas have been treated by pesticides, either orally, by means of prominently posted "Danger" signs, or both, depending on the pesticide's labeling statement. The Worker Protection Standard further requires that workers be trained in a language they understand on 13 specific items regarding pesticide safety, pesticide-related illnesses, and emergency responses to pesticide exposure. The Worker Protection Standard sets no minimum age for mixing or applying pesticides (although, as noted above, regulations set by the Department of Labor under the FLSA prohibit children under 16 from handling category I and II pesticides).

The same regulations that establish the Worker Protection Standard also set restricted-entry intervals (REIs), the period of time after a pesticide's application during which workers should not be in the treated areas without protective equipment.³¹⁸ The REI is listed on the label for each pesticide and, generally ranges from about 12 to 72 hours.³¹⁹ Dry conditions may necessitate a longer REI, particularly among toxicity category I pesticides, which are the most toxic.³²⁰ The regulations also restrict the application of pesticides under certain conditions, such as strong winds.

³¹⁵ Email from Nancy Leppink, deputy administrator, Wage and Hour Division, US Department of Labor, to Human Rights Watch, April 17, 2010.

³¹⁶ Email from Kravitz, Wage and Hour Division, US Department of Labor, April 9, 2010.

³¹⁷ 40 C.F.R. sec. 170.1. See 40 C.F.R. sec. 170 and following sections for the entire Worker Protection Standard.

³¹⁸ See "Restricted-entry statements," 40 C.F.R. sec. 156.208.

³¹⁹ 40 C.F.R. sec.156.208(c)(2)(i)-(iii).

³²⁰ Ibid., sec. 156.208(c)(2)(i).

Despite the greater vulnerability of children to pesticides, there is no special consideration for them in EPA regulations at all. The Worker Protection Standard and the REI regulations are formulated with adults—and only adults—in mind. In the Worker Protection Standard there is no prohibition on children mixing, handling, or applying pesticides. Restricted-entry intervals are set using a 154-pound adult male as a model—they are not adapted for children, pregnant women, or others who differ from this model. A 2003 study of children with acute occupational pesticide-related poisoning found that 26 percent of ill children in agriculture were exposed despite compliance with restricted-entry interval requirements, suggesting, according to the authors, “that longer intervals may be required to protect youths.”³²¹ A process to revise the Worker Protection Standard has been going on for more than a decade. Although it is possible that revisions may include, for example, age limits on applying the most toxic pesticides, they will be reopened for public comment and are, at best, several years from being put into place.

Notably, in December 2009, the EPA announced plans to strengthen its assessment of pesticide health risks for children—farmworkers and others—with a strong emphasis on risks for children in the fields.³²² The proposed risk assessment techniques would include “using an additional safety/uncertainty factor to protect children, considering aggregate exposures to pesticides from multiple sources, considering cumulative effects that may occur from exposure to multiple pesticides with a common mechanism of toxicity, and reporting potential risks for individuals who had not been explicitly considered, specifically workers age 12-17 and children taken into agricultural fields while their parents work.”³²³ The period for public comments on the policy paper outlining the EPA’s plans closed in April 2010 and at the time of writing the EPA was reviewing the comments received. The worker advocates who submitted comments, such as the California Rural Legal Assistance Foundation, the Farmworker Pesticide Project, and the Pesticide Action Network, urged the EPA to set forth an explicit timeline for the development and application of these more protective policies, including reliance upon a scientific advisory panel review and public input. The outcome of the proposed changes remains to be seen.

³²¹ Calvert et al, “Acute Pesticide-Related Illnesses Among Working Youths, 1988–1999,” *American Journal of Public Health*, p. 609.

³²² EPA, “EPA to Strengthen Oversight of Pesticide’s Impact on Children and Farmworkers,” EPA news release, December 8, 2009. The Office of Pesticide Programs December 2009 policy paper “Revised Risk Assessment Methods for Workers, Children of Workers in Agricultural Fields, and Pesticides with No Food Uses” can be found on the following webpage: <http://www.epa.gov/pesticides/health/worker-rsk-assmnt.html> (accessed April 5, 2010).

³²³ EPA, “Worker Risk Assessment,” February 2010, <http://www.epa.gov/pesticides/health/worker-rsk-assmnt.html> (accessed April 5, 2010).

The Worker Protection Standard and REI regulations are enforced by the individual states, which often do so poorly.³²⁴ As noted above, children described to Human Rights Watch being exposed to pesticides through spraying and drift in violation of the regulations, re-entering fields before the pesticides had even dried on the plants, and not being trained on pesticide safety. In western Michigan a farm operator told us that he posted information about spraying at the farm headquarters.³²⁵ However, the headquarters were located in a completely different location from the fields, and workers did not go there on a daily basis. In eastern Michigan a girl told us: “The signs [in the fields] say pesticides only when the inspector comes. When he’s not here we don’t know. I’ve only seen these signs once. The inspector rarely comes.”³²⁶

The EPA’s Office of Pesticide Programs has a grant relationship with states to implement pesticide programs and could use the program to push for better enforcement by states. EPA officials in the Office of Pesticides Programs also told us that they have now clearly defined what an inspection should include to be meaningful.³²⁷ Some states, such as California and Washington, have more extensive pesticide safety programs applicable to farmworkers.

The Occupational Safety and Health Administration (OSHA)

The Occupational Safety and Health Administration (OSHA) within the US Department of Labor is the federal agency with primary responsibility for setting and enforcing standards to promote safe and healthy working conditions for all workers. OSHA has the power to issue safety and health regulations, impose civil monetary penalties, and pursue criminal penalties against employers who have violated the Occupational Safety and Health (OSH) Act or its regulations. Potentially protective to children working in agriculture are the agency’s Field Sanitation Standard, which requires agricultural employers to provide drinking water, handwashing facilities, and toilets;³²⁸ its regulations on tractors; and its

³²⁴ “Other regulations for pesticide safety and field sanitation, such as central posting of pesticide application information in a language that workers can understand and posting the restricted entry intervals for fields on which pesticides have been applied, are often not enforced in farmworker settings.” Arcury and Quandt, “Pesticide Exposure Among Farmworkers and Their Families,” *Latino Farmworkers in the Eastern United States*, Arcury and Quandt, eds., p. 107.

³²⁵ Human Rights Watch interview with farm operator, Michigan, August 28, 2009.

³²⁶ Human Rights Watch interview with Andrea C., age 17, Saline, Michigan, August 24, 2009. Research in North Carolina found that: “Fewer than half of farmworkers interviewed indicated that they are told about pesticides that have been applied where they are working, that information on pesticides that have been applied is posted in an accessible location, or that warning signs are posted around fields to which pesticides have been applied.” Arcury and Quandt, “Pesticide Exposure Among Farmworkers and Their Families,” *Latino Farmworkers in the Eastern United States*, Arcury and Quandt, eds., p. 113.

³²⁷ Human Rights Watch interview with Kevin Keaney and staff of the Office of Pesticide Programs, US Environmental Protection Agency, Washington, DC, February 23, 2010.

³²⁸ OSHA’s 1987 Field Sanitation Standard, which is enforced by DOL’s Wage and Hour Division, requires agricultural employers to provide workers with:

power to inspect and penalize employers for workplace hazards. However, each of these measures is limited in its application to farmworkers.³²⁹

Aside from enforcement problems, several legal restrictions prevent OSHA from protecting many farmworkers. Congress annually limits the application of the OSH Act by exempting from all enforcement activity any farm that employs 10 or fewer employees and has not had an active temporary labor camp within the last 12 months.³³⁰ Not only are these small farms not required to provide drinking water and sanitation facilities, the limit of OSHA jurisdiction to farms with 11 or more workers applies even to cases where workers face imminent danger or where an accident or death has occurred. Whatever happens on a farm with 10 or fewer employees that has no active temporary labor camp, OSHA may not investigate.

Even on farms with more than 10 employees, many of OSHA's "general industry standards" that could protect farmworkers, including children, do not apply to agriculture.³³¹ Among those that do not are those regulating work at heights (such as work on ladders), the use of personal protective requirement (including reinforced shoes and gloves), and the availability of medical services and first aid.³³² And OSHA has no standard at all relating to musculo-skeletal injuries, which are among the most common injuries for children (as well as adults) working in agriculture.

OSHA officials state that OSHA can rely on its so-called general duty clause where standards for agriculture are insufficient.³³³ This is a requirement in the OSH Act itself that each

(1) Cool and potable drinking water in sufficient amounts, dispensed by single-use drinking cups or by fountains and readily accessible to all; and

(2) One toilet and a handwashing facility for each twenty employees, located within a quarter-mile walk.

OSHA Field Sanitation Standard (1987), 52 Fed. Reg. 16050 (May 1, 1987), 29 C.F.R. sec. 1928.110. For many years, OSHA refused to issue any regulation on this subject, but it was finally forced to do so by order of a federal court, which excoriated OSHA's 14 years of "intractable . . . resistance" as a "disgraceful chapter of legal neglect." *Farmworker Justice Fund, Inc. v. Brock*, 811 F.2d 613, 614 (D.C.Cir. 1987). After issuing the standard, OSHA predicted that its implementation would reduce by hundreds of thousands the annual incidence of farmworker illnesses, injuries, and deaths, including heat-related deaths and injuries, parasitic intestinal illnesses, pesticide-related illnesses, and urinary tract infections. US Department of Labor, Occupational Safety and Health Administration, "OSHA's Field Sanitation Standard," Fact Sheet No. OSHA 92-25, p. 2.

³²⁹ The analysis of OSHA's limitations draws in part on: Shelly Davis and James B. Leonard, "The Ones the Law Forgot: Children Working in Agriculture," 2000, available at: <http://www.fwjustice.org/Health&Safety/CHILD%20LABOR%20REPORT%20-%20FINAL.pdf> (accessed April 8, 2010).

³³⁰ Congress exempts small farms from enforcement of OSHA standards by attaching riders to annual appropriation bills.

³³¹ The seven OSHA safety and health regulations that do apply to agriculture govern temporary labor camps, story and handling of anhydrous ammonia, logging operations, slow-moving vehicles, hazard communication, cadmium, and the retention of US Department of Transportation markings, placards, and labels. 29 C.F.R. sec. 1928.21(a).

³³² As noted in the previous footnote, only those OSHA safety and health regulations listed there apply in agriculture.

³³³ Human Rights Watch interview with Deborah Berkowitz, chief of staff; Richard E. Fairfax, director, Enforcement Programs; and Thomas M. Galassi, deputy director, enforcement programs, OSHA, US Department of Labor, Washington, DC, February 17, 2010. "General duty clause" refers to section 5(a)(1) of the Occupational Safety and Health Act, which requires employers to

employer must provide each employee a job and a place to work “free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees.” But because this language is much more general than requirements in OSHA regulations, it is more difficult to prove a violation of this general duty clause. Moreover, it is not clear that OSHA has invoked this clause to any significant degree to protect farmworkers.

OSHA officials also told Human Rights Watch that OSHA does not conduct targeted investigations on farms but instead only responds to written complaints, including of worker deaths or situations of imminent danger.³³⁴

Even OSHA regulations that do apply in agriculture are often not protective enough. One example relates to tractors, where the standard does not cover many older tractors. As noted above, tractor roll-overs are a leading cause of death for farmworkers, including children. Serious injuries from tractors can be prevented by roll-over bars or similar devices.³³⁵ Yet OSHA standards requiring roll-over protective structures cover only about 8 percent of all US farms due to a variety of exemptions,³³⁶ and in 2006, only 59 percent of tractors used on farms in the US were equipped with them.³³⁷

Finally, individual states may develop and operate their own occupational safety and health programs. These programs, called State Plans, must be approved and monitored by federal OSHA. Once in place, they supplant (with limited exceptions) direct federal OSHA enforcement in that state. Twenty-five states and two territories at the time of writing had approved State Plans.³³⁸ OSHA previously did little monitoring of state plans, but officials

“furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees.”

³³⁴ Human Rights Watch interview with Berkowitz, Fairfax, and Galassi, OSHA, US Department of Labor, February 17, 2010.

³³⁵ NIOSH estimates that fatality rates due to tractor overturns could be reduced by a minimum of 71 percent if all tractors in the US were equipped with roll-over protective structures. John Meyers, NIOSH Division of Safety Research, “Preventing Death and Injury in Tractor Overturns with Roll-Over Protective Structures,” NIOSH Science Blog, January 5, 2009, http://www.cdc.gov/niosh/blog/nsbo10509_rops.html (accessed April 4, 2010). For additional information, see Davis and Leonard, “The Ones the Law Forgot: Children Working in Agriculture.”

³³⁶ In 1976, OSHA required all agricultural employers to equip all employee-operated tractors manufactured after October 25, 1976, with roll-over protective structures and safety belts, but family members are exempted and the standard is not enforced on farms with fewer than 11 full-time employees in 47 states. Since 1986, nearly all new agricultural tractors sold in the United States have been equipped with roll-over protective structures and seatbelts as standard equipment, but tractors manufactured before this date remain in use, despite the modest expense of updating the equipment compared with that of injuries and deaths from rollovers. Meyers, NIOSH Division of Safety Research, “Preventing Death and Injury in Tractor Overturns with Roll-Over Protective Structures,” NIOSH Science Blog. See 29 C.F.R. sec. 1928.52.

³³⁷ NIOSH, “Agricultural Safety.”

³³⁸ OSHA, US Department of Labor, “Agricultural Operations: Standards,” undated <http://www.osha.gov/SLTC/agriculturaloperations/standards.html> (accessed March 17, 2010). Three states—California, Oregon, and Washington—have so-called OSHA state plans, under which a state agency administers the OSH Act. These three

told Human Rights Watch that they were initiating a review of every state plan following serious deficiencies in enforcement discovered in a review of Nevada's state plan.³³⁹

states have state regulations that apply to farms with fewer than 11 employees, but these states must use state funds to enforce this part of their state regulations.

³³⁹ Human Rights Watch interview with Berkowitz, Fairfax, and Galassi, OSHA, US Department of Labor, February 17, 2010. See OSHA, "Review of the Nevada Occupational Safety and Health Program," October 20, 2009, <http://www.osha.gov/dcsp/final-nevada-report.html> (accessed April 5, 2010).

X. International Legal Obligations

United States law and practice concerning farmworker children are in violation of or are inconsistent with international conventions on the rights of children. International Labor Organization Convention No. 182 on the Worst Forms of Child Labor, ratified by the United States in 1999, prohibits children from engaging in dangerous or harmful work. The Convention on the Rights of the Child, to which the United States is a signatory but not a party, seeks to protect children from economic exploitation, and also from work that is hazardous or otherwise harmful. The failure of the United States to enforce existing laws and regulations that purport to protect children working in agriculture further violate the international legal obligations of the United States.

ILO Convention on Worst Forms of Child Labor

In 1999, the International Labor Organization (ILO) adopted Convention No. 182 Concerning the Prohibition and Immediate Elimination of the Worst Forms of Child Labor (Worst Forms of Child Labor Convention). It obliges all ratifying states “to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency.”³⁴⁰ The United States on December 2, 1999, became one of the first states to ratify this convention. Since then, it has become one of the most widely ratified labor conventions, with 171 states parties.

Prior to adoption of the convention, the US government spoke strongly in its favor, urging ILO member states to “join together and to say there are some things we cannot and will not tolerate.”³⁴¹ In November 2009 the Obama administration affirmed that “The US Government remains committed to ensuring full US compliance with ILO Convention No. 182.”³⁴²

Under the convention, “the worst forms of child labour” include “work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of

³⁴⁰ International Labor Organization Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor (Worst Forms of Child Labor Convention), adopted June 17, 1999, 38 ILM 1207 (entered into force November 19, 2000), art. 1.

³⁴¹ Office of the Press Secretary, The White House, “Remarks by the President to the International Labor Organization Conference,” June 16, 1999.

³⁴² US Department of Labor, “Report for the period of September 1, 2007 to August 30, 2009, made by the Government of the United States of America, in accordance with Article 22 of the Constitution of the International Labor Organization, on the measures taken to give effect to the provisions of the Worst Forms of Child Labor Convention, 1999 (No. 182) ratification of which was registered on December 2, 1999,” sec. III.

children.”³⁴³ Exactly what constitutes such types of work is left to be determined by states parties, in consultation with employer and worker organizations and in consideration of international standards, particularly the ILO Worst Forms of Child Labor Recommendation.³⁴⁴ This Recommendation, adopted in 1999 in conjunction with the convention of the same name, states that in defining the “worst forms of child labour” and in identifying where they exist, consideration should be given, as a minimum, to:

- (a) work which exposes children to physical, emotional or sexual abuse;
- (b) work underground, under water, at dangerous heights or in confined spaces;
- (c) work with dangerous machinery, equipment and tools, or which involves the manual handling or transport of heavy loads;
- (d) work in an unhealthy environment which may, for example, expose children to hazardous substances, agents or processes, or to temperatures, noise levels, or vibrations damaging to their health;
- (e) work under particularly difficult conditions such as work for long hours or during the night or work which does not allow for the possibility of returning home each day.³⁴⁵

The findings of this report show that children working in agriculture in the United States—who number in the hundreds of thousands—face the risks outlined in subparagraphs (c) through (e). They work with dangerous machinery, equipment, and tools; work in an unhealthy environment, including exposure to hazardous substances, notably pesticides; and work for long hours, during the night, or without the possibility of returning home each day. In addition, the nature of farmwork places female farmworkers at an added risk of the dangers set out in subparagraph (a), exposure to sexual abuse.

Accordingly, farmwork in the United States can run a high risk of harming the health and safety of children, and appears in many cases to meet the definitional requirements of the “worst forms of child labor.” As a state party to the Worst Forms of Child Labor Convention, the United States is obligated to take immediate and effective steps to ascertain what forms

³⁴³ Worst Forms of Child Labor Convention, art. 3(d).

³⁴⁴ Ibid., art. 4.

³⁴⁵ International Labor Organization Recommendation Concerning the Prohibition and Immediate Elimination of the Worst Forms of Child Labor, para. 3.

and conditions of child labor in agriculture violate the convention and then eliminate them.³⁴⁶

The convention further calls on member states to: prevent children from engaging in the worst forms of child labor; provide direct assistance for the removal of children already engaged in the worst forms of child labor; identify and reach out to children at risk; and take account of the special situation of girls.³⁴⁷

Far from acknowledging the danger of farmwork to children and taking these appropriate steps, the United States by law permits children to engage in agricultural labor with fewer restrictions than children working in other areas. This includes permitting children to engage in hazardous agricultural work.

The US government, in response to the ILO Committee of Experts 2008 observations on the Application of Conventions and Recommendations, acknowledged in 2009 that the FLSA allows children ages 16 and 17 “to perform all work,” and that it excludes certain farmworker children from minimum age provisions and hours of work limitations.³⁴⁸ The government noted that “[t]here are currently no separate health and safety standards under federal law for child farm workers ages 16 or 17 engaging in hazardous work,” and that it “has no special training or instructional requirements at the federal level specifically for 16- and 17-year-old agricultural workers engaged in hazardous labor.”

The ILO’s Committee of Experts in 2010 strongly criticized children’s involvement in hazardous agricultural work. It urged the US government “to take immediate and effective measures to comply” with the convention “to prohibit children under 18 years of age from engaging in hazardous and dangerous work in agriculture.”³⁴⁹ The Committee of Experts requested the government to follow-up on NIOSH’s recommendations for changing the existing hazardous orders and adopt those amendments. Commenting on exemptions for farms with 10 or fewer employees, it urged the government “to ensure that the necessary

³⁴⁶ Worst Forms of Child Labor Convention, arts. 1, 4, 6, and 7.

³⁴⁷ Ibid., art. 7.

³⁴⁸ US Department of Labor, “Report for the period of September 1, 2007 to August 30, 2009, made by the Government of the United States of America, in accordance with Article 22 of the Constitution of the International Labor Organization, on the measures taken to give effect to the provisions of the Worst Forms of Child Labor Convention, 1999 (No. 182) ratification of which was registered on December 2, 1999,” sec. III.

³⁴⁹ International Labor Office, “Report of the Committee of Experts on the Application of Conventions and Recommendations,” International Labour Conference, 99th Sess., no. III (1A), 2010, p. 386, http://www.ilo.org/wcmsp5/groups/public/-ed_norm/-relconf/documents/meetingdocument/wcms_123424.pdf (accessed April 15, 2010).

monitoring mechanisms are in place so that all farms are inspected and monitored, regardless of the number of persons they employ.”³⁵⁰

Convention on the Rights of the Child

The United States has signed but not ratified the Convention on the Rights of the Child (CRC).³⁵¹ As a signatory to the CRC, the United States is obliged to refrain from acts that would defeat the treaty’s object and purpose.³⁵² The CRC sets out the minimum protections to which children—defined as persons under age 18—are entitled.

In addition to CRC protections relating to health and education, article 32 of the CRC is of particular relevance to farmworker children. It provides specifically that children have a right “to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral or social development.” The article requires governments to take appropriate legislative, administrative, social and educational measures in this regard, and especially to provide for a minimum age of employment, appropriate regulation of work hours and conditions of employment, and appropriate sanctions to ensure enforcement of the article.³⁵³

Convention on the Elimination of Racial Discrimination

The burden of weaker labor law protections for agricultural workers compared to non-agricultural workers in the United States falls overwhelming on Hispanic American citizens and immigrants, and amounts to discrimination under international law.

Most hired crop workers in the United States are Hispanic: 83 percent of hired crop workers identified themselves as members of a Hispanic group in 2001-2002, the most recent year for which data are available.³⁵⁴ When all employed “miscellaneous agricultural workers,”

³⁵⁰ Ibid., p. 387.

³⁵¹ Convention on the Rights of the Child (CRC), G.A. res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), entered into force Sept. 2, 1990.

³⁵² See Vienna Convention on the Law of Treaties, concluded May 23, 1969, 1155 U.N.T.S. 331, entered into force January 27, 1980, art. 18.

³⁵³ CRC, art. 32.

³⁵⁴ US Department of Labor, “Findings from the National Agricultural Workers Survey (NAWS) 2001-2002,” Research Report no. 9, March 2005, <http://www.doleta.gov/agworker/report9/chapter1.cfm#ethnicity> (accessed November 20, 2009). NAWS, which is performed under contract with the US Department of Labor, is the only national level source of information on the employment, demographic, and health characteristics of hired crop farm workers, but does not count working children under

including livestock workers, are considered, 45 percent identify as Hispanic.³⁵⁵ By comparison, 14 percent of all US civilian workers described themselves as Hispanic in 2008.³⁵⁶

The term “Hispanic” generally refers to ethnicity; persons who identify as Hispanic may also identify themselves as “white,” “black,” “indigenous,” or another race. No data is available on the ethnicity of child workers compared with adults; indeed, the data exclude younger workers: NAWS does not count child workers under age 14; the Bureau of Labor Statistics does not count child workers under 16.

International law binding on the United States, notably the International Covenant on Civil and Political Rights (ICCPR) and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), affirms the equality of all persons before the law and prohibits governments from discriminating in policy or practice on ethnic grounds.³⁵⁷ Not all distinctions made by governments, however, constitute impermissible discrimination. The Human Rights Committee, which monitors compliance with the ICCPR, has observed that differentiation in treatment will not constitute discrimination if the criteria for such differentiation “are reasonable and objective and if the aim is to achieve a purpose” that is legitimate under the ICCPR.³⁵⁸

While US constitutional prohibitions focus on discriminatory intent,³⁵⁹ the ICERD defines prohibited discrimination as any race-based distinction, exclusion, restriction or preference that has “the purpose or effect” of curtailing human rights and fundamental freedoms.³⁶⁰ The specific reference to “purpose or effect” makes clear that discrimination can exist in the absence of an intent to harm members of a particular race or ethnicity.

age 14. The information is collected in face-to-face interviews with farmworkers in three cycles throughout the year to reflect the seasonality of agricultural work and employment.

³⁵⁵ Bureau of Labor Statistics, US Department of Labor, “Labor Force Statistics from the Current Population Survey, Labor Force Characteristics By Race and Ethnicity 2008, Table 6. Employed persons by detailed occupation, race, and Hispanic or Latino ethnicity, 2008 annual averages,” http://www.bls.gov/cps/race_ethnicity_2008_6.htm (accessed April 22, 2010)..

³⁵⁶ Ibid.

³⁵⁷ International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, art. 26 (prohibiting discrimination on “any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”); International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), 660 U.N.T.S. 195, entered into force Jan. 4, 1969 (prohibiting unlawful discrimination “based on race, colour, descent, or national or ethnic origin”), art. 1. The US ratified the ICCPR in June 1992 and ICERD in October 1994.

³⁵⁸ Human Rights Committee, General Comment No. 18, “Nondiscrimination,” 37th Sess., 1989, para. 13.

³⁵⁹ See, for example, Amelia Parker, *Racial Disparities in U.S. Public Education and International Human Rights Standards: Holding the U.S. Accountable to CERD*, Human Rights Brief, vol. 14, p. 27 (2007).

³⁶⁰ ICERD, art. 1(1).

The Committee on the Elimination of Racial Discrimination (the “Committee”), which monitors state compliance with the ICERD, has interpreted the convention to prohibit laws or policies that have “an unjustifiable disparate impact” on racial and ethnic minorities.³⁶¹ It has called on states to eliminate laws or practices that may be race-neutral on their face, but that unjustifiably have significant racial disparities in their impact even in the absence of racial animus.³⁶² Labor laws and policies that have a racially disparate impact and are not reasonably designed to achieve a legitimate state purpose violate the international human right to be free from discrimination.

The Committee has twice informed the United States that ICERD prohibits discrimination in all its forms, including practices with unintentional discriminatory effect. In 2001, the Committee recommended that the United States take appropriate measures to review legislation and policies to “ensure effective protections against any form of racial discrimination and any unjustifiably disparate impact.”³⁶³ In 2008, the Committee again concluded that the United States should ensure that racial discrimination is prohibited in all its forms, including laws and practices “that may not be discriminatory in purpose, but in effect.” It stated that “indirect—or de facto—discrimination occurs where an apparently neutral provision, criterion or practice would put persons of a particular racial, ethnic or national origin at a disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.” The committee called on the government “to take all appropriate measures” to review existing laws policies to “ensure the effective protection against any form of racial discrimination and any unjustifiable disparate impact.”³⁶⁴

³⁶¹ Committee on the Elimination of Racial Discrimination, General Comment No. 14, para. 2. In its concluding observations on the implementation of the ICERD in the US in 2001, the Committee stated:

While noting the numerous laws, institutions and measures designed to eradicate racial discrimination affecting the equal enjoyment of economic, social and cultural rights, the Committee is concerned about persistent [racial and ethnic] disparities in the enjoyment of, in particular, the right to adequate housing, equal opportunities for education and employment, and access to public and private health care.

A/56/18/380-407, August 14, 2001, 398.

³⁶² See Committee on the Elimination of Racial Discrimination, General Recommendation XIV(42), on art. 1, para. 1 of the Convention, U.N. GAOR, 48th Sess., Supp. No. 18, at 176, U.N. Doc. A/48/18 (1993). See also, Theodor Meron, “The Meaning and Reach of the International Convention on the Elimination of All Forms of Racial Discrimination,” *American Journal of International Law*, vol. 79, 1985, pp. 287-88.

³⁶³ Committee on the Elimination of Racial Discrimination, “Concluding Observation of the Committee on the Elimination of Racial Discrimination: United States of America,” CERD/C/Misc. /56/18, paras. 380-407, August 2001, para. 14. The Committee made the observations after considering the initial, second and third periodic reports of the US, which were combined into one report.

³⁶⁴ Committee on the Elimination of Racial Discrimination, Consideration of Reports Submitted by State Parties under Article 9 of the Convention: Concluding Observations, United States of America, CERD/C/USA/CO/6, 2 para. 10.

XI. Detailed Recommendations

To the United States Congress

- Amend the Fair Labor Standards Act (FLSA) to:
 - apply the same age and hour requirements to children working for hire in agriculture as already apply to all other working children: prohibit the employment of children age 13 and younger; limit the number of hours that children ages 14 and 15 can legally work to 3 hours a day on a school day and 18 hours a week during a school week; 8 hours a day on a nonschool day and 40 hours a week when school is not in session; and prohibit before-school work by children age 15 and younger;
 - raise the minimum age for particularly hazardous work in agriculture to 18, in line with existing standards in all other industries;
 - increase civil money and criminal penalties to improve compliance with the child labor provisions;
 - incorporate the Environmental Protection Agency's Worker Protection Standard, 40 C.F.R. Part 170, into the child labor regulations, thereby protecting children working in agriculture not only from pesticides with acute effects (such as nausea, skin rashes, and dizziness), but also from those with chronic or long-term effects (such as cancer and interference with sexual reproduction);
 - require agricultural employers to report work-related deaths, serious injuries, and serious illnesses to the US Department of Labor in order to collect and publish better statistics than are currently available about such incidents; and
 - require the US Department of Labor to submit to Congress an annual report on work-related deaths, injuries, and illnesses of children working in agriculture, including an evaluation of the data that highlights, among other things, safety and health hazards and the extent and nature of child labor violations.
- Halt the yearly approval of a special provision in the Department of Labor appropriations act that exempts almost all farms with 10 or fewer employees from the jurisdiction of the Occupational Safety and Health Administration (OSHA).
- Provide sufficient support to programs, such as those administered by the Department of Education's Office of Migrant Education, to remove barriers to the school enrollment, attendance, and achievement of child farmworkers and ensure that child farmworkers have access to and benefit from the same appropriate public education, including public preschool education, provided to other children.

- Require the Department of Education’s Office of Migrant Education to collect and analyze state data on school completion rates for all child farmworkers and to report national and state results annually.
- Repeal programs that require local police to enforce immigration laws so that undocumented children are able to report abuse without fear of deportation for themselves or their family members.

To the United States Department of Labor

- Dramatically increase, through the Wage and Hour Division, the number of child labor and minimum wage investigations in agriculture, the most dangerous industry in which children are allowed to work.
- Improve compliance with existing labor law by seeking higher civil money and criminal penalties in accordance with the law. In particular, amend the civil penalty regulations to reflect amendments made by a rider to the Genetic Information Non-discrimination Act (“GINA”) in 2008 that raise the \$11,000 maximum penalty to \$50,000 where the violation of a child labor provision results in death or serious injury, and where the higher penalty is doubled to \$100,000 in the case of a repeat or willful violation. Make the department’s civil money penalty regulations (29 C.F.R. Part 579) more precise in order to assure that it imposes higher penalties, and that these higher penalties are upheld in litigation.
- Appropriately use the Fair Labor Standards Act’s “hot goods” provision, which prohibits the interstate movement of goods produced in violation of child labor or minimum wage laws, where the traditional course of citations and relatively insignificant civil money penalties would have little deterrent effect.
- Propose and press for much-needed amendments to the list of jobs in agriculture that deemed to be “particularly hazardous” for children, as recommended by the Centers for Disease Control’s National Institute for Occupational Safety and Health (NIOSH) in 2002.
- Vigorously enforce OSHA Field Sanitation Standard, which require employers to provide workers with drinking water, toilets, and handwashing facilities
- Request the National Agricultural Workers Survey (NAWS) to expand its surveys to collect information about child workers under, as well as over, age 14. Explore methods of counting working children that do not rely on reports from growers and adult farmworkers who may underreport the numbers of working children.

To Occupational Safety and Health Administration (OSHA)

- Conduct targeted investigations in agriculture rather than responding only to written complaints.
- Continue and accelerate monitoring of “state plans” and require that all states enforcing OSHA-approved plans do so effectively, including frequent unannounced inspections.

To the Environmental Protection Agency (EPA)

- Amend the Worker Protection Standard to impose a minimum age of 18 for all pesticide handlers.
- Revise the restricted-entry intervals (REIs), which prohibit entry into an area treated by pesticides for a specified period of time following the application of the chemicals. Distinguish between adults and children, and impose more stringent REIs for children. Incorporate an additional safety margin on top of what is determined necessary to ensure short and long-term safety, and take into account the combined effect of both occupational and non-occupational exposures.
- Closely monitor states' enforcement of the Worker Protection Standard and related pesticide regulations to ensure that such enforcement is vigorous and meaningful.
- Further expand the program to educate workers regarding the Worker Protection Standard, and ensure that materials used are culturally, age, and language appropriate.
- Ensure that state agencies responsible for enforcement of EPA regulations are staffed by a sufficient number of trained, bilingual (Spanish and English) compliance officers.

To the United States Department of Education

- Conduct a study, with leadership from the Office on Migrant Education, to establish accurate data on school drop-out rates for all child farmworkers.

To All States

- Ensure that state child labor laws are at least as protective as federal standards.
- Set or raise the minimum age for agricultural work to at least 14, with the exception of children working on farms owned and operated by their parents.

- Amend workers' compensation laws to ensure coverage for farmworkers equal to that of other workers.
- Provide training and a strong mandate to law enforcement to better respond to cases of sexual violence against farmworker girls and women.

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Fields of Peril

Child Labor in US Agriculture

Hundreds of thousands of children under age 18 are working in agriculture in the United States. Under a double standard in US federal law, children can toil in the fields at far younger ages, for far longer hours, and under far more hazardous conditions than all other working children. Worse, even the weak protections in US law are rarely enforced.

Fields of Peril is based on more than 140 interviews, including 70 current and former child workers who worked in 14 states across the United States.

For too many children, farmwork means an early end to childhood, long hours at exploitative wages, and risks to their health and sometimes their lives. Agriculture is one of the most dangerous occupations in the United States; child farmworkers suffer work-related fatalities at over four times the rate of other young workers. Yet children can do hazardous work in agriculture from which they would be banned in any other industry. The long hours and demands of farmwork result in shocking drop-out rates from school. Without a diploma, child workers are left with few options besides a lifetime of farmwork and the poverty that accompanies it.

Human Rights Watch calls on the US Congress to amend the Fair Labor Standards Act to apply the same protections for children working in agriculture as already apply to all other working children.

A young worker holds an orange in a migrant worker camp in Florida.

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