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Child Labor in US Agriculture

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 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 guys 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.

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. Im not like some people who came to college because their parents made them or to party, she explained. With me, my parents didnt force me to come to school. They didnt 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 Im 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 wont help, so I think working in the fields had a big impact on me.

I really didnt have a childhood and I dont want [my own children] to go through what I did, 17-year-old Marcos S. told Human Rights Watch. Youre 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:

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, theyd 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 didnt always feel safe. My uncle cut his leg using a chainsaw. Sometimes if you dont do it right, it can bounce backit 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 its cold, it rains. We still have to work.

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 dont cut all the trees, theyre mixed in. Theyre marked with a red ribbon, the ones they want you to cut. So the ones they dont, they spray. Youre 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 dont say anything. They just want you to get it done. The guys that spray, they dont 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, Theres 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 theyre going to pay me. . . . You pretty much have to choose work or school. Theyre not part-time jobs. . . . So sometimes I have to choose work. . . . But in school theres 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.

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 fieldspoverty 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 dont 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 ifs, ands, or buts.

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 daughters 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 parents permission. Children ages 12 and up may work for hire on any farm with their parents 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 Americas 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 dont remember the last time I got to school registered on time. . . . Im afraid its going to hold me back on my education. . . . I got out of math because I was a disaster. I would tell the teacher, I dont even know how to divide and Im going to be a sophomore. Im going from place to place. It scrambles things in my head and I cant 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 couldnt concentrate on both. I didnt know how to do both.

Agriculture is the most dangerous industry for young workers, according to the Centers for Disease Controls National Institute for Occupational Safety and Health (NIOSH). Working with sharp tools and heavy machinery, exposed to chemicals, climbing up tall ladders, lugging 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 production²⁷ 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 cant even take a step. When youre surrounded by corn, theres 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 2009 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.

The US Congress should:

The US Department of Labor should:

The Environmental Protection Agency should:

All states should:

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

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 and Prevention, the 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 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 interviewees' 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.

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 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 childrens 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: 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]

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 parents 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:

In interviews with Human Rights Watch, most children said that no one asked them their age or for proof of it. Age doesnt 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 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 wasnt that good. It was too hard with the sun. It was boring. Its 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. Ive 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]

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 \$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 ifs, ands, or buts.[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]

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.

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

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 was 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 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.

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:

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 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 parents 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 arent 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.

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.

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 dont 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 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 couldnt 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 didnt have gloves. Then my boss gave me one but took it out of my check. They dont give you nothin.^[70] US law prohibits crediting against minimum wage obligations items furnished primarily for the employers 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, theres no paycheck left, explained Josie Ellis, the director of Vecinos Inc. Farmworker Health Program.^[73]

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 dont go to the top, you have to go back. You dont make much. Two buckets is \$5. Its 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 cant do it.^[75]

From an employers 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 wed 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 parents

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 person but I dont knowthey 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 dont 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 peopleparents plus three kids.[82]

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.

Several factors explain this. Migrant children often end their school year earlyin April or Mayand return weeks or even months after school has already started. Fifteen-year-old Ana Z. said: I dont 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 dont even know how to divide and Im going to be a sophomore. Im going from place to place. It scrambles things in my head and I cant 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:

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 thats a lot. . . . Ill do senior year but dont 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 schools migrant advocate that she was able to recover from missing the first month of school each year: We get graded on things we werent there to learn. . . . Im 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 Watchs interviews. Some studies report children moving through as many as 10 different school districts in a single year.[91]

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 dont go in Michigan because school starts late there. I would only go for a day. Id rather go and help my dad find pickles there. . . . You get behind a lot. Your grades go down. You dont really learn much. She said that when she started the 10th grade late, I thought, Oh my God Im 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, Im out of here. He added, Some parents put them in school up north or dont because they dont know how long theyre staying. Those kids when they come in October, November dont get credit because theyre 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 couldnt concentrate on both. I didnt 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]

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 didnt 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 dont know if I will finish school because its 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 dont 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 theyve 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, Im 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 dont have time. If I had the chance to work and study I would study.[\[102\]](#)

The US Department of Educations Office of Migrant Education runs several programs to support migrant childrens 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 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.[\[104\]](#)

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 Controls 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 production²⁷ 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.[\[108\]](#)

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 childrens 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.[\[114\]](#)

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.

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 dont 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 youre getting to the wagon so you dont 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 childrens work-related deaths include:

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. Youre 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 youre going really fast and you dont 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 got four stitches. It happened about 9 or 10 a.m. I finished at the hospital about 11. I was making boxes but I couldnt 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. . . . Its not always safe because if youre 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.[\[131\]](#)

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 its pretty wet and the ladder gets wet. If you take a wrong step, youre down from the ladder. Theyre 13-foot ladders so theyre pretty high.[\[133\]](#) A boy who had picked oranges in Florida told us: Its really high. When we didnt 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.[\[135\]](#)

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, its 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 dont 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.[\[138\]](#)

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.[\[139\]](#)

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 dont 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. Its hard on your back, but I didnt 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 didnt 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.[\[147\]](#)

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 cant get sick because then we cant 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 dont hurry, Im 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 dont get fired. The whole time youre living in fear that youre 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. Its because of the sun. When Im

picking I feel sick. . . . If my dad sees Im really sick he makes me come home and rest. But then he gets really behind because were a lot of help to him. So if I leave its 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. Its an unexplainable feeling. You have to try not to miss any day.[\[153\]](#)

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.

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 farms 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 were passing by and theyll 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 dont leave. . . . People say, We can leave but we dont want to because were afraid the *patron* [boss] will fire us. They stay there because theyre afraid of their patron.[\[161\]](#)

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 Andrs F. in North Carolina. My head hurt. I could smell it, it blew. We kept working. Many people say this can, can hurt you. Im a little, a little worried about it. Sometimes I put on gloves. When I dont use gloves, it feels irritated.[\[162\]](#)

Noemi J. in North Carolina told us she did not like working tobacco because of pesticides: Sometimes youre in one field and you see people in the next field spraying. It gives me headaches. Im 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 weve been in the fields when theyre still wet [with pesticides]. Also, the boss says take the day off because its 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.[\[168\]](#)

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, 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, wed go and wash our feet with our hands [in the canals] and then in the afternoon Id get the rash. . . . I would get a lot of itchiness. My feet would get red, rashy. At that time I didnt know about types of chemicalsno 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 didnt know and that so many people dont know that if they take off a glove that could expose them to pesticides and theyll have so many problems, like cancer, she told us. I think about this, that I [got exposed and my mom did] and Im so afraid that one day shes going to get sick or something will happen to her from pesticides.[\[180\]](#)

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. Id still be out there all sick because I had to help my mom because we didnt have that much money.[\[181\]](#)

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 dont 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 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 didnt know if it was poisonous or not.[\[188\]](#) Alejandro P. told us, I dont 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:

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 its 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 its 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, Its dumb, they make us see it but they dont enforce it. Like restrooms. We have portables but not the water it takes to wash, soap, 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 dont 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. Youll work, youll work.[\[197\]](#)

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 its really cold, said James A., who works in Michigan in the summer. The plants hurt your hands because its 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 hes working: I think of the sun, why its so hot. How I want to go home from this field. [I]ts the hot air and the sun is beating you up. . . . [Bad days are the] real hot ones, the field is full of weeds, you cant even take a step. When youre surrounded by corn, theres no air.[\[200\]](#) Elisabeth S., who worked in Washington as a teenager, told us: It was so hot that I didnt 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. Its 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 youll 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 its not true. . . . Ive seen women, guys get dehydrated quick. Faint. Theyll 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 Jimnez. On May 13, 2008, 17-year-old Jimnez 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 Jimnez's supervisor were charged with involuntary manslaughter for failing to provide Jimnez with reasonable access to potable water, shade, heat illness training, and prompt medical attention.[\[207\]](#)

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 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 90F.[\[209\]](#) 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 dont 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.[\[212\]](#)

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] didnt 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 were taught that whatever the authority says, goes. If theres no water, well, they know, so were not going to say anything.[\[214\]](#)

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 Lowes beside the house.[\[216\]](#)

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. Theres 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 sanitation facilities, such as field toilets and washing stations, workers do not use them, and that they consider this requirement to be burdensome.[\[220\]](#)

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.[\[225\]](#)

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.

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 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.

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:

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 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.[\[251\]](#) Mnica Ramirez, 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 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-somethings 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, Ramirez 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 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]

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 youths 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 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, 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 wont 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 peoples 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 peoples 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 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, theres 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 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 cant talk about health if youre worried about getting paid. If you cant afford to buy food.[\[279\]](#)

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.

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:

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.[\[287\]](#)

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.

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 FLSAs 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 Divisions 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 investigationseven those made under laws other than the FLSAinclude 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 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 Divisions 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 divisions 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 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]

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.

Several sets of laws address hazards for children in agricultural work. First are the Department of Labors 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 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.

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 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 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 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.

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.

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) 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 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 equipment (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 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 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.[\[339\]](#)

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.

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.[\[342\]](#)

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 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 ILOs Committee of Experts in 2010 strongly criticized childrens 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 NIOSHs 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 monitoring mechanisms are in place so that all farms are inspected and monitored, regardless of the number of persons they employ.^[350]

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 treatys 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 particularly 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]

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, 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.

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]

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

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

[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 Administrations New Immigrant Guestworker Proposal: Immigrant Labor Issues*, *Denver Journal of 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.

[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/naaws.cfm> (accessed April 27, 2010).

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

[7] Ibid.

[8] US Department of Labor, *The National Agricultural Workers Survey: Public Access Data*, <http://www.doleta.gov/agworker/naaws.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 workplanting, 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 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).

[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-0>, 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.

[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.

[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.

[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.

[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.

[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.

[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, Sa, 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.

[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.

29 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.

[53] Human Rights Watch interview with farm operator, Michigan, August 28, 2009.

[54] 29 U.S.C. sec. 213(b)(12).

[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.

[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 its 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.doleta.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.

[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 Watchs 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.

[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.

[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.

[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 its 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.
- [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 Nationals 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.
- [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.
- [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.
- [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.
- [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/cftb0239.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/cftb0230.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/cftb0221.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/cftb0212.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).

[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.

[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.

[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/04ia017.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.

[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 Andrs F. (not his real name), age 17, Benson, North Carolina, August 5, 2009.

[135] 29 C.F.R. sec. 570.71(a)(3).

[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.

[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.
- [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.
- [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.
- [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.
- [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.
- [162] Human Rights Watch interview with Andrs 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.
- [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.
- [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.
- [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.
- [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.
- [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.
- [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.
- [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. Bytowski 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 Rodriguez, Seeking Protection, *Vida En Valle*, August 5, 2009; Jennie Rodriguez, 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.doleta.gov/agworker/naws.cfm> (accessed April 27, 2010).
- [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.
- [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).
- [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.

[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 Americas 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.fwjjustice.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).

[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).

[237] Human Rights Watch telephone interview with Mnica Ramrez, 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.

[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 Clarren, 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>.
- [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 Mnica Ramrez, 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.
- [252] Human Rights Watch telephone interview with Ramrez, 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 Ramrez, Southern Poverty Law Center, December 30, 2009.
- [255] Human Rights Watch telephone interview with Tamayo, EEOC, San Francisco, California, July 31, 2009.
- [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.
- [260] US Department of Labor, The National Agricultural Workers Survey: Public Access Documentation, <http://www.doleta.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.
- [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. Lornet 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/worksite.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.
- [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/0-0-0-1/0-0-0-53663/0-0-0-61045/0-0-0-61070.html#0-0-0-31745> (accessed April 22, 2010).
- [269] Human Rights Watch telephone interview with Ramrez, 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 Ramrez, 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.

[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 courts decision that the Fair Labor Standards Acts 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 (IACHR) 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 IACHR 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.

[278] Human Rights Watch interview with Phillis 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.

[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.

[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).

[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.

[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. Kerschner, 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.

[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 Divisions 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.

[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 Divisions 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.

[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.

[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_rec_to_dol_050302.pdf (accessed April 5, 2010).

[314] Ibid., pp. 67-98.

[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).

[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 Pesticides 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).

[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] OSHAs 1987 Field Sanitation Standard, which is enforced by DOLs Wage and Hour Division, requires agricultural employers to provide workers with:

- (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 OSHAs 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 OSHAs 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.fwjjustice.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, storage 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 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/nsb010509_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 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).

[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.

[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.

[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).

[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 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).

[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.

End Legal Double-Standard That Fails to Protect Children Working in Agriculture

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