

## Legal Child Labor in U.S. Agriculture

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United States of America

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### I. Submitted by:

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### II. SUMMARY

- An estimated 300,000 -500,000 predominately Hispanic children harvest produce in the heat, exposed to pesticides, using repetitive motions for 10-14 hours a day. The high school dropout rate for these children is 4x the national rate<sup>1</sup>. Due to exemptions to the Fair Labor Standards Act in 1938, the U.S. federal child laws are minimal for agriculture. The federal standard is 12 and younger in some cases. In many situations we have young girls working in fields with adult men where there are little regulations and reported abuse. These issues are well documented with written and video reports by numerous organizations. Despite these reports the CARE bill which seeks to equalize the child labor laws has failed to leave the Congressional House Committee on Education and the Workforce since 2001<sup>2</sup>.
- In 1999 Clinton signed the ILO Convention 182 on the worst form of child labor. ILO 182 seeks to eliminate work which by its nature or the circumstances in which it is carried out, is likely to harm the health, safety, or morals of children. The ramifications from a 75 year old exemption puts the U.S. in violation of this convention and is of concern, as noted in the 2014 Concluding Observations from the UN Committee on CERD recommended the following<sup>3</sup>:
  - “(c) Reviewing its laws and regulations in order to protect all migrant workers from exploitative and abusive working conditions, including by raising the minimum age for harvesting and hazardous work in agriculture under the Fair Labor Standards Act in line with international labour standards, and ensuring effective oversight of labour conditions; and
  - (d) Ratifying ILO Convention No.29 concerning Forced or Compulsory Labour and ILO Convention No.138 concerning Minimum Age for Admission to Employment.”
- Despite recommendations from the 2014 CERD and 2015 UPR, the U.S. failed to take any action. Further, the new administration tried to reverse the (Environmental Protection Agency) EPA’s discussions to consider children ‘handling’ pesticides. The EPA did fail to ban chlorpyrifos despite a legal suit. Additionally, the EPA will not require producers to put a cancer warning on products containing glyphosate.

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<sup>1</sup> <http://www.hrw.org/support-care>

<sup>2</sup> <http://roybal-allard.house.gov/news/documentsingle.aspx?DocumentID=130055>

<sup>3</sup> [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/SessionDetails1.aspx?SessionID=936&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/SessionDetails1.aspx?SessionID=936&Lang=en)

- The (Department of Labor) DOL under the current administration has taken steps to weaken the H-2A agricultural guest worker program. Aside from creating a steady supply of workers with no rights, it will pass more of the costs of transportation to the workers and change the wage rates. This has an indirect impact on all agricultural workers. This further adds to the financial strain which means farmworker children are more likely to be forced to work for survival of the family.

### III. SUGGESTED RECOMMENDATIONS

1. Remove the agriculture exemption in the Fair Labor Standards Act which would raise the age for harvesting and hazardous work for hired children taking care to distinguish between farm owner and farm worker children using executive powers if necessary.
2. Recognize that pesticide exposure via the harvesting working itself and pesticide drift is hazardous to children along with the heat, repetitive motions, and relative heavy produce loads and take measures to address the 75 year old exemption for child labor in agriculture.
3. Raise the minimum age to non-agriculture standards for harvesting work which involves repetitive motions, stoop work, pesticide exposure or pesticide drift, heat or other harsh conditions, taking care to distinguish between farm owner children.

### IV. Legal Highlights

- *FLSA (Fair Labor Standards Act) 1938 Exemption*<sup>4</sup>
  - The U.S. Department of Labor enforces the Fair Labor Standard Act of 1938 to ensure that when young people work, the work is safe and does not jeopardize their health, well-being or educational opportunities. Children in the U.S. are protected from work in offices and factories. However, the exemption for agriculture has created a second class childhood for 300,000 – 500,000 predominately Hispanic children. The states have the option to enact stricter regulations. However, the majority of the 50 states have a standard age of 12; with some states such as Oregon setting age 9 for berry picking and other states deferring to the federal standard which allows work under age 12 in some situations.
  - The U.S. Federal standard for youth in non-agriculture is 16 with limits until age 18 to protect their education. This includes limits on their hours and restrictions for their health. For younger children work is not allowed. This standard should apply to all children but doesn't. The elimination of the exemption for agriculture and enacting one set of laws for all children would bring the U.S. into compliance for ILO 182 and ILO 138. In all situations, an exemption is made for the children of business owners and farm owners.

### V. First UPR Cycle Recommendations

- **Recommendation 193.** Prevent slavery of agriculture workers, in particular children and women<sup>5</sup>
- **Recommendation 81:** Take the necessary measures in favor of the right to work and fair conditions of work so that workers belonging to minorities, in particular women and undocumented migrant workers, do not become victims of discriminatory treatment and abuse in the work place and enjoy the full protection of the labor legislation, regardless of their migratory status.
  - The documented cases of slavery are small and the use of such strong language detracts from the millions of workers doing honorable work but not paid a decent wage nor afforded basic labor rights. However, a child doesn't have a choice and can't go against the wishes of a desperate and vulnerable parent or guardian. Thus the need for laws which are lacking in agriculture. For the following reasons, the U.S. should find a way to remove the exemption which permits children in agriculture as a true sign of support.

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<sup>4</sup> <http://www.dol.gov/dol/topic/youthlabor/enforcement.htm>

<sup>5</sup> <http://www.state.gov/j/drl/upr/recommendations/>

While the Department of Labor's previous efforts were a sign of intent, the efforts failed. Had they succeeded, the situation for children harvesting would remain the same. They should be encouraged to find a solution for children harvesting.

- *Pesticides & Health*

- An estimated 350,000 current and historic pesticide products are registered in the U.S., a 12.5 billion dollar industry<sup>6</sup>. Research indicates that children are also less able to metabolize and excrete most toxic substances and their organ systems are more vulnerable because they are rapidly growing and developing<sup>7</sup>. A systematic review of 25 published studies showed a 60 percent increased risk for leukemia among children whose mothers were exposed to pesticides<sup>8</sup>.
- Jesus 'Chuy' M., age twelve of California, understands pesticides on a personal level given he lost his mother to lymphoma cancer June 2010. Shortly before her death, his mother shared she was certain her cancer was due to having pesticides sprayed on or near her as she worked as a child and adult. In a series of interviews Chuy shared his fear of cancer knowing he would likely return to the cherry orchards of Oregon.
- Within my own family we suffered short term from heat exhaustion, insect bites, blisters, nose bleeds, aches, cuts and bruises from the work itself, and long term from infertility, bone spurs, hair loss, chronic conditions such as arthritis, and rare skin conditions.

- *Working Conditions*

- The piece rate work is grueling and low paid. If minimum wage is paid, the workers may be obligated to a quota which requires more hours than they are paid. The fields may lack water, shade and basic sanitary features. The adults and children are stooped over and/or carrying heavy produce loads. The mornings may be wet and cold until the relentless sun beats down on them until sun down.
- Due to an exemption in the National Labor Relations Act of 1935<sup>9</sup>, adult farm workers are exempt from minimum wage, overtime pay, and the right to unionize. This is in violation of ILO Convention 98, the Right to Organize and Collective Bargaining, 1949. The U.S position in response to this issue raised in the first UPR cycle is supportive yet agricultural workers lack basic rights<sup>10</sup>.  
The farm workers often are unable to access social benefits which make them more vulnerable to poverty and exploitation. The farm workers earn an average income of \$10,000 - \$13,000<sup>11</sup>, many below the poverty wage for the U.S. Since the work is seasonal, they are often temporarily unemployed without benefits. As such, the children suffer from a cycle of generational poverty due to the work and compromised education, health and childhood. The media often says "...this is work Americans won't do." For some, there is a false perception the agricultural workers are foreign and undeserving of basic rights. Approximately half of the work force is documented and while the majority is Hispanic, they are also American. If this work is deemed so undesirable how can anyone justify this same work for children?

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<sup>6</sup> <http://www.sustainabletable.org/263/pesticides>

<sup>7</sup> [http://iicph.org/residential\\_pesticide\\_and\\_children\\_health](http://iicph.org/residential_pesticide_and_children_health)

<sup>8</sup> <http://www.ncbi.nlm.nih.gov/pubmed/20467891>

<sup>9</sup> [http://en.wikipedia.org/wiki/National\\_Labor\\_Relations\\_Act](http://en.wikipedia.org/wiki/National_Labor_Relations_Act)

<sup>10</sup> <http://www.state.gov/j/drl/upr/recommendations/>

<sup>11</sup> <http://nfwm.org/education-center/farm-worker-issues/low-wages/>

- The Center for Disease Control reported that crop workers died from heat stroke at a rate 20 times greater than all U.S. civilian workers<sup>12</sup>.
  - The work is seasonal and the workers often migrate from state to state yearly.
  - Sexual harassment has long been documented by Human Rights Watch and other media.
  - The living conditions for seasonal farm workers are substandard for the U.S. with communal bathrooms and/or overcrowded shed like housing units.
- *Workforce Description*
  - The majority of agricultural workers are impoverished Hispanics. The National Agricultural Workers Survey indicated that 80% of workers were Hispanic, the majority foreign born, and the remaining 20% were non-Hispanic White, African American and Asian American<sup>13</sup>. The status of some foreign born workers without proper documentation of U.S. citizenship status makes them more vulnerable to exploitation. However, even when the parents and children are documented citizens, the work conditions are harsh and unacceptable.
- *Education*
  - The high school dropout rate for these Hispanic children who labor in agriculture is four times the national rate<sup>14</sup>. The children sometimes work before and after school, weekends, and the entire summer season. Even if they are in school, they are moving from school to school which cause them to fall behind their peers. In interviews children reported that moving within the state still caused them to fail academically. The McKinney Vento study showed that a child takes 4-6 months to recover academically after switching schools. If any child switches during high school, they are fifty percent less likely to finish school relative to their stable counterparts<sup>15</sup>. Since the children are legally able to work the impoverished parents are more likely to move with the harvest. Some children reported moving between two to four different states and schools within one year.
  - Victor T. shared that he dropped out of high school because he was so far behind his teachers told him he may never graduate. He only moved within the state of Texas but constantly felt behind. When I asked him what would happen to his dreams he said “Dreams, I never thought I was allowed to have dreams.” Victor’s younger sister Maribel was targeted for marriage at age twelve. She was married off upon turning sixteen. A baby with a birth defect kept her out of school.
  - In my own family we moved at least 3 times yearly, working in 10 different states on 3-5 crops. As such, my family suffered a 60% high school dropout rate. I was the only one to graduate high school with honors and attend university directly. The cycle of poverty continues even for those who managed to leave the agricultural work.

## VI. Issue Reports and Video Documentation

- Human Rights Watch report: *Child Workers in Danger on Tobacco Farms*, 2014 [<http://www.hrw.org/reports/2014/05/13/tobacco-s-hidden-children>]
- PBS, Frontline: *Rape in the Fields*, 2013
- AlJazeera: *Children at Work*, 2013 [<http://www.aljazeera.com/programmes/faultlines/2013/10/america-hidden-harvest-20131029793687761.html>]

<sup>12</sup> <http://www.cdc.gov/niosh/docs/wp-solutions/2013-143/pdfs/2013-143.pdf>

<sup>13</sup> <http://www.doleta.gov/agworker/report/ch1.cfm>

<sup>14</sup> <http://www.hrw.org/support-care>

<sup>15</sup> [http://74.125.155.132/search?q=cache:diMeSgklyz8J:www.hrsa.gov/homeless/pa\\_materials/pa7/pa7\\_garriss\\_hardy\\_ppt.doc+McKenny+Vento+homeless+kids+lose+6+months+of+learning&cd=9&hl=en&ct=clnk&gl=us](http://74.125.155.132/search?q=cache:diMeSgklyz8J:www.hrsa.gov/homeless/pa_materials/pa7/pa7_garriss_hardy_ppt.doc+McKenny+Vento+homeless+kids+lose+6+months+of+learning&cd=9&hl=en&ct=clnk&gl=us)

- *The Harvest* Documentary released in 2011, trailer available [<http://theharvestfilm.com/>]
- Human Rights Watch issued an investigate report: *Fields of Peril* in 2010 [<http://www.hrw.org/reports/2010/05/05/fields-peril-0>]
- Human Rights Watch issued an investigative report: *Fingers to the Bone* in 2000 [<http://www.hrw.org/reports/2000/06/02/fingers-bone>]

## **VII. Suggested Recommendations**

1. Recognize that pesticide exposure via the harvesting working itself and pesticide drift is hazardous to children along with the heat, repetitive motions, and relative heavy produce loads and take measures to address the 75 year old exemption for child labor in agriculture using executive powers if necessary.
2. Raise the minimum age to non-agriculture standards for harvesting work which involves repetitive motions, stoop work, pesticide exposure or pesticide drift, heat or other harsh conditions, taking care to distinguish between farm owner children. Gather grower feedback on the language and ensure their support.
3. A significant number of Hispanic children are hired to work in agriculture, age twelve and younger. The predominately Hispanic children are exposed to pesticides; heat, harsh poorly regulated working conditions, and repetitive motions. This work jeopardizes their health, safety and education in violation of the ILO Convention 182 and 138. A federal change of The Fair Labor Standard Act to increase the minimum age for harvesting and for hazardous work in agriculture is required taking care to distinguish between farm owner and farm worker children. If possible, the Executive Branch should execute a change at the federal level to equalize the child labor laws since a related congressional bill has failed to leave the House Committee since 2001.