

CULTIVATING INJUSTICE IN THE RICHEST FIELDS: HOW U.S. LABOR LAW LEAVES MIGRANT CHILD WORKERS UNPROTECTED ON THE AMERICAN FARM

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Every time we sit at a table at night or in the morning to enjoy the fruits and grain and vegetables from our good earth, remember that they come from the work of men and women and children who have been exploited for generations

- César Chavez

I. INTRODUCTION

The Fair Labor Standards Act of 1938 (FLSA) ushered in significant reforms for the American workforce, most notably introducing protections for a vulnerable group: child laborers.¹ Since its inception, however, the FLSA has permitted children who labor on U.S. farms to do so under safety standards disparate to those that protect child laborers in other industries.² With only negligible improvements

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1. Cesar Chavez, *Quotes from Cesar Chavez*, NAT’L FARM WORKER MINISTRY (Apr. 26, 2009), <https://perma.cc/8J35-AYEU>.

2. See Fair Labor Standards Act of 1938, 29 U.S.C. §§ 201-219 (2012).

3. See HUMAN RIGHTS WATCH, *FIELDS OF PERIL: CHILD LABOR IN US AGRICULTURE* 10

in the nearly eighty years since its passage, this Note proposes that this double standard for child farmworkers has survived through subsequent revisions of the Act due to zealous opposition from agriculturalists.⁴

The collective myth advanced by the agriculture lobby in support of maintaining the status quo for child farmworkers is what this Note will refer to as the “farm kid narrative”—something quintessentially American, rural, and increasingly antiquated. Advances in agricultural technology (agritech) and agribusiness mean fewer youth are working on farms within their local communities, and yet, dangers persist for these children.⁵ Later sections will explain how the enduring farm kid narrative has nonetheless carried the disparities in child labor protections between agricultural youth laborers and non-agricultural youth laborers into the twenty-first century. While protections for child laborers in non-agricultural settings continue to expand, those for agricultural youth seem to have stagnated despite burgeoning innovations in agritech. Those agricultural exceptions advocated for in the FLSA, and maintained through its subsequent revisions, concern a dwindling number of local community farm children. Nevertheless, the farm kid narrative persists in administrative and legislative lobbying efforts. When these longstanding exceptions in agricultural child labor intersect U.S. immigration policies, however, an entire population of the American workforce is placed precariously out in the field, unprotected, and with the FLSA unable to protect migrant child laborers. While there have been promising strides made in protections for many of these workers, a renewed era of strong anti-immigration policy stands poised to push many migrant families back into the shadows and away from essential resources.

After surveying the gaps in protections provided to children on farms generally and child migrant workers specifically, this Note recounts the United States’ commitment through the UN Convention on the Rights of the Child and the “Roadmap for Achieving the Elimination of the Worst Forms of Child Labour by 2016” (agreed to at the Hague Global Child Labour Conference in 2010).⁶ This Note concludes by examining domestic barriers against enforcing existing protections and improving labor conditions for migrant children farmworkers.

(2009), https://www.hrw.org/sites/default/files/reports/crd0510_brochure_low_1.pdf.

4. See 29 U.S.C. §§ 201-219 (2012).

5. See PHILLIP MARTIN & DOUGLAS JACKSON-SMITH, NAT’L AGRIC. & RURAL DEV. POLICY CTR., IMMIGRATION AND FARM LABOR IN THE U.S. 1 (MAY 2013), http://www.nardep.info/uploads/Brief_FarmWorker.pdf.

6. See generally Int’l Labour Org. [ILO], *Roadmap for Achieving the Elimination of the Worst Forms of Child Labour by 2016*, Hague Global Child Labour Conference 2010, Outcome Document (2010) [hereinafter ILO: *Roadmap*], <http://www.ilo.org/ipecinfo/product/viewProduct.do?productId=13453>.

II. FAMILY FARMS AND U.S. AGRICULTURAL IDENTITY

Agriculture has long been a vessel through which the U.S. economy has grown and prospered, with the family farm as its masthead. In 1869, farming-related activities accounted for nearly 37.5% of the U.S. Gross Domestic Product (GDP).⁷ While agriculture's share in the GDP decreased to 0.8% by 2006, this was due not to a shrinking agricultural sector, but rather to substantial growth in other sectors; indeed, the agricultural sector grew six-fold in that time period.⁸ Small, midsize, and large-scale family farms comprise 99% of the total number of farms in the U.S. and account for 90% of all production.⁹ Of all farms, 89% were small family farms, with "small" defined as a gross cash farm income of less than \$350,000.¹⁰ Clearly, the family farm remains foundational in this large agricultural sector. Yet, changes on the U.S. farm signal an ongoing transformation of the agricultural labor force.

In the broadest sense, labor on U.S. farms consists of three types of workers: the farm operator, unpaid family workers, and hired workers.¹¹ Historically, family farms have relied heavily on the labor contributions of family members for the prosperity of the farm.¹² However, hired workers now provide for nearly 60% of the work on farms, and that percentage continues to increase.¹³

When those farmworkers are hired as child workers, the experiences of "farm work" for local, community farm kids depart sharply from those of migrant child laborers. When local community farm kids talk about farm labor, it is in a tenor of measured appreciation, part family duty and a hint of nostalgia. It is often considered a perceived necessity for a traditional American way, one distinguished by character, hard work, strong work ethic, and integrity.

By retaining family workers, and specifically the farm operator's children, the farmer creates benefits to both the farm children workers who work on the farm, as well as the parents who employ them:

7. JULIAN M. ALSTON ET AL., PERSISTENCE PAYS: U.S. AGRICULTURAL PRODUCTIVITY GROWTH AND THE BENEFITS FROM PUBLIC R&D SPENDING 9-10 (David Zilberman et al. eds., 2010).

8. *Id.* at 10 ("Over the period 1929-2006, U.S. farm value-added grew nearly six fold, from \$17 billion to \$98 billion (2000 prices), while U.S. GDP increased thirteen fold, from \$866 billion to \$11.3 trillion.").

9. U.S. DEP'T OF AGRIC., AMERICA'S DIVERSE FAMILY FARMS 4 (Dec. 2016), <https://www.ers.usda.gov/webdocs/publications/81408/eib-164.pdf?v=42709>.

10. *Id.* at 3.

11. MARTIN & JACKSON-SMITH, *supra* note 5, at 1.

12. *Id.*

13. *Id.*

When parents and children talk about the virtues of living on a farm, they invariably mention basic values of this lifestyle—those of hard work or industry, self-reliance and a sense of responsibility, a commitment to family life, social trust and a value system that is not devoted to money and consumerism. . . . The work ethic of farm life is valued for the confidence it provides young people who are thinking about themselves and the future, and what they can do with their lives.¹⁴

Farming parents point to tangible skills instilled in farm children, such as learning to drive at an early age, fixing a flat tire, or changing the oil on a tractor.¹⁵ They also cite intangible characteristics farm life instills in children, such as patience and learning where one's food comes from.¹⁶ Children and adolescents themselves point to similar lessons from their involvement with agriculture. As one youth reported to the House Subcommittee on Biotechnology, Horticulture, and Research during the 114th Congress, "I have learned that it doesn't matter how you feel, or what the weather is like, the animals still need to be fed, watered, and cared for."¹⁷ Youth farm labor is more than character building, however. For many families, it means economic survival.

Indeed, one of the most notable rationales for employing one's own child in the family farm business is tied inextricably to the financial sustainability of a family farm business. On one hand, by pulling the child into the family's unified financial prosperity, the child learns to develop her own role in the family and their individual future. On the other, a farm operator who employs the services and work of his children saves on the labor costs of having to hire an adult counterpart to perform the work. The impact of family labor costs on the bottom line for family farms is not slight. Any legislation which results in higher costs for family farms is explicably met with strong opposition, and thus, the opposition to enhancing child labor protections in agriculture is rooted as much in economics as it is in culture and history. Nonetheless, farmers must weigh the economic incentive of youth labor with the realities of its dangers on the farm.

14. GLEN H. ELDER JR. ET AL., CHILDREN OF THE LAND: ADVERSITY AND SUCCESS IN RURAL AMERICA 52 (2000).

15. See, e.g., *Ten Things You Learn Growing Up a Farm Kid*, FASTLINE PUBLICATION (Aug. 13, 2014), <https://perma.cc/2HHZ-M6NJ>.

16. *Id.*

17. *A Presentation by National 4-H Conference Participants Concerning the Future of Agriculture in the United States: Hearing Before the Subcomm. on Biotechnology, Horticulture, & Research of the H. Comm. on Agric.*, 114th Cong. 14 (2015) (statement of Danielle Brazeau, Storrs, Connecticut).

III. CHILD LABOR IN AGRICULTURE—HISTORY, HAZARDS, AND INJURIES

Farm work can be dangerous for children, regardless of whether they are local, community children, or migrant workers. In 2014, approximately 454,000 youth were performing work on farms run by their families.¹⁸ From 2001 to 2006, more than 500 children died in agriculture nationally.¹⁹ An estimated 33,000 children have farm-related injuries each year in the U.S. Further, more than 100 of these children die as a result of their injuries.²⁰ Of the leading causes of fatal injuries to youth on U.S. farms, 23% involved machinery (including tractors), 19% involved motor vehicles (including ATVs) and 16% due to drowning.²¹ The cost of nonfatal injuries to youth in agriculture has been estimated at \$1 billion annually.²² Youth agricultural “injuries tend to be more severe and more costly than nonagricultural ones.”²³ “Only 1.4% of injured youth in the United States were hospitalized in 2000, but 14% of youth injured in agriculture were hospitalized in 2001–2006.”²⁴ Labor can be dangerous across sectors and regardless of age. As labor protections have grown over the past several decades, not all sectors or ages have grown similarly in their protections.

The years following the Civil War saw great changes to the labor market for both urban and rural areas.²⁵ Children were employed in “mines, glass factories, textiles, agriculture, canneries, home industries, and as newsboys, messengers, bootblacks, and peddlers.”²⁶ These children were often subjected to dangerous working conditions involving fast-moving machinery, unhealthy toxins, or extreme heat or cold.²⁷ Although child laborers were contributors to the family income, there were no mechanisms in place to assist a family if a child became injured or died as a result of this dangerous work.²⁸ During the beginning of the 1900s, reform movements grew to address the plight of the working poor and child labor.²⁹

18. Ctr. for Disease Control & Prevention, *Agricultural Safety*, NAT'L INST. FOR OCCUPATIONAL SAFETY & HEALTH, <https://perma.cc/R3C5-C5QT> (archived Oct. 10, 2017).

19. *Id.*

20. *Id.*

21. *Id.*

22. Eduard Zaloshnja et al., *Incidence and Cost of Injury Among Youth in Agricultural Settings, United States, 2001-2006*, 129 PEDIATRICS 728, 728 (2012).

23. *Id.* at 734.

24. *Id.* at 728.

25. Univ. of Iowa, *Child Labor in U.S. History*, CHILD L. PUB. EDUC. PROJECT, <https://perma.cc/A2YW-XPBM> (archived Oct. 10, 2017).

26. Exploiting the Child: 1934, VCU LIBRARIES, <https://perma.cc/5XCP-LND6> (archived Jan. 3, 2018) [hereinafter VCU LIBRARIES].

27. Univ. of Iowa, *supra* note 25.

28. VCU LIBRARIES, *supra* note 26.

29. Univ. of Iowa, *supra* note 25.

Multiple groups, such as the National Consumers' League and the National Child Labor Committee, were intertwined with efforts to provide compulsory education for all children.³⁰ These efforts culminated in the passage of the Fair Labor Standards Act of 1938 (FLSA).³¹ In its original 1938 version, FLSA created separate requirements for those children working in agriculture from those working in any other industry.³² These differences existed in regard to the allowable wage of the child laborer, maximum hours a child could be employed, and non-hazardous categorizations of many agricultural activities.³³ In its subsequent amendments, FLSA continued to hone child labor requirements for non-agricultural settings, while also allowing agriculture to remain more or less unrestricted.³⁴

IV. REGULATING CHILD LABOR: AGRICULTURAL AND NON-AGRICULTURAL

Slowly, the landscape for child labor in agricultural settings began to change. However, the first federal restrictions on child labor in agriculture did not occur until 1949 when Congress amended FLSA to restrict children under the age of sixteen from working in agriculture during school hours.³⁵ Because of a decline in child labor in certain industries resulting from mechanization, a renewed interest in migrant workers, and the unionization of agricultural workers through the work of Cesar Chavez and Delores Huerta, Congress again amended FLSA in 1966 to prohibit children under the age of sixteen from engaging in hazardous agricultural work.³⁶ However, the rate at which the laws changed in this sector was drastically different from the rate at which child labor changed in other sectors.³⁷ The law as currently enacted provides a standard for children engaged in agricultural work and a separate standard for those children engaged in work in any other sector. A brief comparison of these differences can be summarized as follows:

TABLE 1. Child labor standards

30. *Id.*

31. *See* 29 U.S.C. §§ 201-262 (2012).

32. *See* 29 U.S.C. § 213(a)(6) (2012).

33. *See id.*

34. *See* 29 U.S.C. §§ 212, 213(c) (2012).

35. Mary Lyons-Barret, *Child Labor in Commercialized Agriculture, 1890-1966*, in *THE WORLD OF CHILD LABOR: AN HISTORICAL AND REGIONAL SURVEY* 477, 480 (Hugh D. Hindman ed., 2009).

36. *Id.*

37. *Id.*

<p><i>Children under 14 years of age in non-agricultural occupations</i>³⁸</p>	<p><i>Children under 14 years of age in agricultural occupations</i>³⁹</p>
<ul style="list-style-type: none"> • Deliver newspapers to customers • Babysit on a casual basis • Work as an actor or performer in movies, TV, radio, or theatre • Work as a homemaker gathering evergreens and making evergreen wreathes • Work for a business owned entirely by the child’s parents as long as it is not in one of the 17 hazardous occupations 	<ul style="list-style-type: none"> • No hours-restrictions • A child can work anytime outside of school hours • Youth of any age may work at any time in any job on a farm owned or operated by their parent or person standing in place of their parent • If under age 12, a child may work outside of school hours in any non-hazardous job on a farm that is exempt from the federal minimum wage provisions so long as you have parental consent • At age 12 or 13, a child may work outside of school hours in a non-hazardous job on a farm where your parent(s) work or with written parental consent
<p><i>For children 14-15 years of age in non-agricultural sectors</i>⁴⁰</p>	<p><i>For children 14-15 years of age in agricultural sectors</i>⁴¹</p>
<ul style="list-style-type: none"> • Retail occupations • Intellectual or creative work such as computer programming, teaching, tutoring, singing, acting, or playing an instrument • Errands or delivery work by foot, bicycle and public transportation 	<ul style="list-style-type: none"> • No hours-restrictions • A child can work anytime outside of school hours • Youth of any age may work at any time in any job on a farm owned or operated by their parent or person standing in place of their parent⁴² • If under age 12, a child may

38. See 29 U.S.C. §§ 201-262 (2012).

39. See 29 U.S.C. § 213(c) (2012).

40. See 29 C.F.R. § 570.34 (2017).

41. See 29 U.S.C. § 213(c) (2012).

42. See 29 U.S.C. § 213 (2012).

<ul style="list-style-type: none"> • Clean-up and yard work which does not include using power-driven mowers, cutters, trimmers, edgers, or similar equipment • Work in connection with cars and trucks, such as dispensing gasoline or oil and washing or hand polishing • Some kitchen and food service work including reheating food, washing dishes, cleaning equipment, and limited cooking • Cleaning vegetables and fruits; wrapping, sealing, labeling, weighing, pricing, and stocking of items when performed in an area separate from a freezer or meat cooler • Loading or unloading objects for use at a worksite including racks 	<p>work outside of school hours in any non-hazardous job on a small farm that is exempt from the federal minimum wage provisions so long as you have parental consent</p>
<p><i>Hour restrictions for 14-15 year olds in non-agricultural work⁴³</i></p>	<p><i>Hour restrictions for 14-15 year olds in agricultural work⁴⁴</i></p>
<p>All hours of work must be performed outside of school hours and these children may not work:</p> <ul style="list-style-type: none"> • more than three hours on a school day, • more than 18 hours per week when school is in session, • more than 8 hours per day when school is not in session, • more than 40 hours per week when school is not in session, 	<ul style="list-style-type: none"> • At ages 14 or 15, a child can work outside of school hours in any non-hazardous agricultural job.

43. See 29 C.F.R. §§ 570.34, 570.35 (2017).

44. See 29 U.S.C. § 213(c) (2012).

<p>and</p> <ul style="list-style-type: none"> • before 7 AM or after 7 PM on any day, except from June 1st through Labor Day, when nighttime work hours are extended to 9 PM. <p>Additionally, Children ages 14 and 15 years old who meet certain requirements can perform limited tasks in sawmills and woodshops, and 15 year olds who meet certain requirements can lifeguard at traditional swimming pools and water amusement parks.</p>	
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TABLE 2. Labor for children 16 years of age

<i>For children over 16 years of age in non-agricultural sectors</i> ⁴⁵	<i>For children over 16 years of age in agricultural sectors</i> ⁴⁶
<ul style="list-style-type: none"> • The FLSA outlaws “oppressive child labor,” which is defined as labor done by a child between the ages of 16 and 18 that the Secretary of Labor has found to be particularly hazardous.⁴⁷ • The same wage restrictions apply as for a 14 and 15 year old.⁴⁸ After 18, the only restriction on employment is that until 20—the “youth wage” of the first 90 days remains in place. 	<ul style="list-style-type: none"> • Additionally, once a child turns 16, they can work on “any farm at any time.”

Regarding compensation, a child laborer must generally be paid \$7.25 per

45. 29 U.S.C. § 203(6) (2012).
 46. See 29 U.S.C. § 213(c) (2012).
 47. 29 U.S.C. §§ 203(l), 212(c) (2012).
 48. 29 U.S.C. § 203(g) (2012).

hour.⁴⁹ For a child younger than twenty and eligible for the minimum wage, an employer may pay as little as \$4.25 for the first ninety consecutive calendar days of an individual's employment.⁵⁰

TABLE 3. Hazardous occupations

<i>Hazardous Occupations for non-agricultural child laborers</i>	<i>Hazardous Occupations for agricultural child laborers⁵¹</i>
Manufacturing or storing of explosives; driving a motor vehicle or working as an outside helper on motor vehicles; coal mining; forest fire fighting and forest fire prevention, timer tract, forestry service, and occupations in logging and sawmilling; using power-driven woodworking machines; exposure to radioactive substances and ionizing radiation; using power-driven hoisting apparatus; using power-driven metal forming, punching, and shearing machines; mining, other than coal; using power-driven meat-processing machines, slaughtering, meat and poultry packing, processing, or rendering; using power-driven bakery machines; using balers, compactors, or power-driven paper-products machines; manufacturing brick, tile, and related products; using power-driven circular saws, band saws, guillotine shears, chain saws, reciprocating saws, wood chippers, and abrasive cutting disks; working in wrecking, demolition, and ship-breaking operations; roofing and work performed on or about a roof; trenching or excavating. ⁵²	Operating a tractor over 20 PTO horsepower or connecting or disconnecting its implements; operating or assisting to operate a corn picker, cotton picker, grain combine, hay mower, forage harvester, hay baler, potato digger, mobile pea viner, feed grinder, crop dryer, forage blower, auger conveyor, unloading mechanism of a non-gravity type self-unloading wagon or trailer, power post-hole digger, power post driver, or non-walking type rotary tiller; operating or working with a trencher or earthmoving equipment, fork lift, potato combine, or power-driven circular, band, or chain saw; working a yard, pen, or stall occupied by a bull, board, or stud horse maintained for breeding purposes; a sow with suckling pigs; a cow with a newborn calf (with umbilical cord present); felling, bucking, skidding, loading, or unloading timber with a butt diameter of more than 6 inches; working from a ladder or scaffold at a height of over 20 feet; driving a bus, truck or automobile to transport passengers, or riding on a tractor as a passenger or helper;

49. 29 U.S.C. § 206(a) (2012).

50. 29 U.S.C. § 206(g) (2012).

51. 29 C.F.R. § 570.71 (2017).

52. 29 C.F.R. § 570.33 (2017); 29 C.F.R. §§ 570.51-570.68 (2017).

	working inside a fruit, forage, or grain storage designed to retain an oxygen-deficient or toxic atmosphere; an upright silo within 2 weeks after silage has been added or when a top unloading device is in operating position; a manure pit; or a horizontal silo while operating a tractor for packing purposes; handling or applying toxic agricultural chemicals; handling or using explosives; and transporting, transferring, or applying anhydrous ammonia.
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V. THE DOUBLE STANDARD

Critics of FLSA point to a double standard in the country's decision to protect similarly hazardous jobs differently, based solely on whether the job is part of a farm.⁵³ Advocates for changes to child labor in agriculture cite the hazardous nature of this line of work and related injuries.⁵⁴ On some level, there is presumption of more direct parental oversight in agricultural settings; that is, the parents are more closely involved with the nature of the farm and the hazardous act and can therefore sign off on its acceptance for their child.⁵⁵ While the right of the parent to determine the appropriateness of education and other activities for their children is yet another cornerstone of American public policy, the disparities in child labor restrictions might leave one wondering if an agricultural parent's ability to assess safety in a child's occupation is somehow more astute than a parent not involved in the profession. This is particularly so given the statutory ability to give permission for their children to engage in activities that would, in other contexts, be deemed impermissible.⁵⁶

The state's long-acknowledged responsibility of *parens patriae* has consistently been recognized as a duty to protect the interests of children.⁵⁷ *Parens patriae*

53. Marsha Mercer, *Children as Young as 10 Can Do Farm Work in Some States*, PEW CHARITABLE TR. (Aug. 30, 2013), <https://perma.cc/ANH9-KG6H> ("Somehow people have developed this cultural myth that the work ethic has to be developed early and we should put children at risk[.]").

54. *Id.*

55. *Id.*

56. *Id.*

57. See, e.g., *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944).

is Latin for “parent of his or her country” and describes “the state in its capacity as provider of protection to those unable to care for themselves.”⁵⁸ The United States Supreme Court has upheld state child labor law and recognized the *parens patriae* power when it stated that although “the custody, care and nurture of the child reside first in the parents, . . . the state as *parens patriae* may restrict the parent’s control by requiring school attendance, regulating or *prohibiting the child’s labor*, and in many other ways.”⁵⁹ Yet, the government has not employed this power evenhandedly, instead restricting some parent’s control, but not others.

The parents of migrant child workers are afforded far less control in the conditions their families toil under as farmworkers. According to the International Labor Organization, “child migrants often experience maltreatment—including suffering from isolation, violence, sub-standard working conditions, non-payment of wages, and the threat of being reported to the authorities.”⁶⁰ “[A]mongst child labourers it is migrant children who receive less pay, work longer hours, less often attend school, and face higher death rates at work in comparison to local children.”⁶¹

“Hired workers . . . do an estimated 60 percent of the work performed on U.S. farms. Most hired farm workers were born abroad, usually in Mexico, and most are believed not to be authorized to work in the U.S.”⁶² Additionally, “the top 5 percent of U.S. farms generate 74 percent of total farm sales and are responsible for nearly 80 percent of total farm labor expenses.”⁶³ “Since farm work is more physically demanding” than other similarly skilled work, but less well compensated, attracting domestic workers for these jobs has been difficult.⁶⁴ At the time of World War II, the United States sought additional human resources to help in the agriculture sector while so many resources were dedicated to the war effort. As a result, the U.S. entered into an agreement with Mexico whereby authorized workers would be permitted to enter, work, and earn a set wage in the United States and in return would be protected from discrimination and provided basic human rights such as adequate shelter, food, and sanitation.⁶⁵ The U.S. officially participated in this agreement, called the Bracero program, from 1942 through 1964, although the

58. *Parens patriae*, BLACK’S LAW DICTIONARY (10th ed. 2014).

59. *Prince*, 321 U.S. at 166 (emphasis added).

60. Int’l Labour Org., *Migration and Child Labour*, IPEC, <https://perma.cc/Q4CG-XQKX> (archived Oct. 10, 2017).

61. *Id.*

62. MARTIN & JACKSON-SMITH, *supra* note 5, at 1.

63. *Id.*

64. *Id.* at 1-2.

65. See generally Andrew Scott Kosegi, Note, *The H-2A Program: How the Weight of Agricultural Employer Subsidies is Breaking the Backs of Domestic Migrant Farm Workers*, 35 IND. L. REV. 269 (2001).

practice existed before the 1900s and arguably continues through avenues such as the H-2A temporary worker program.⁶⁶

As immigration policy began to change and adapt, both as a result of social changes and as a result of agricultural market necessity, so too did child labor laws in light of the growing children's rights movement and its close ties to the organized labor movement. Here, the U.S.' interests in secure borders, protection of its domestic labor population, and maintenance of a sufficient agricultural labor force intersect with the rights of children to create a particular shadow under the law in which a class of worker operates: migrant children—either employed as agricultural workers or as a child of a parent that is employed as an agricultural worker.

An estimated six million people comprise the national agricultural workforce.⁶⁷ There is a distinction under federal law between migrant workers and seasonal agricultural workers. A migrant worker is “an individual who is employed in agricultural employment of a seasonal or other temporary nature, and who is required to be absent overnight from his permanent place of residence.”⁶⁸ A seasonal agricultural worker, on the other hand, is:

an individual who is employed in agricultural employment of a seasonal or temporary nature and is not required to be absent overnight from his permanent place of residence—(i) when employed on a farm or ranch performing field work related to planting, cultivating, or harvesting operations; or (ii) when employed in canning, packing, ginning, seed conditioning or related research, or processing operations, and transported, or caused to be transported, to or from the place of employment by means of a day-haul operation.⁶⁹

Additional concerns with current agricultural protections include independent contractors or operators, as they often are a way to circumvent OSHA regulations.⁷⁰

Migrant children whose parents are employed as migrant farmworkers can face unique struggles related to their education, development, health, and safety. Many children are not able to participate fully in their schooling due to the frequent school changes, change in curriculums across states, and access to quality teachers

66. For a review of the agriculturally-motivated immigration policies and practices from the pre-Bracero era through the H-2A program, see generally Kosegi, *supra* note 65.

67. Jeanne M. Glader, Note, *A Harvest of Shame: The Imposition of Independent Contractor Status on Migrant Farmworkers and Its Ramifications for Migrant Children*, 42 HASTINGS L.J. 1455, 1458 (1991).

68. 29 U.S.C. § 1802(8)(A) (2012).

69. 29 U.S.C. § 1802(10)(A) (2012).

70. See generally Occupational Safety & Health Act, 29 U.S.C. § 651 (2012).

of English.⁷¹ Migrant children, as a class of students, has one of the highest high school dropout rates due to the combination of deficiencies in educational consistency or due to work in support of their family.⁷² Other factors include the lack of adequate housing to support their educational needs.⁷³ Additionally, because of growing seasons, many children might leave school a few weeks or months before school is completed in order to relocate to find work.⁷⁴ Similarly, they might return to school a few weeks or months after school has started in the fall—again, due to the work of the growing seasons.⁷⁵ Children report either dropping out of school or being increasingly behind their peers as a result of their limited time devoted to their education.⁷⁶

Health and safety is of another concern for migrant workers. Migrant working children report exposure to extreme temperatures—both hot and cold—due to their work.⁷⁷ Thousands of youth working in agriculture experience work-related injuries each year.⁷⁸ While FLSA prohibits certain hazardous activities in farm work for youth under the age of sixteen, there is no such prohibition on work that is not hazardous but is nonetheless detrimental to the development of the child. For instance, one example may be prolonged and repetitive motions while stooped or protracted. In general, migrant workers and their children might have insufficient sanitary facilities—which promotes illness and disease. Additionally, due to inconsistent enforcement, the exposure to chemicals and pesticides also creates concern: pesticides are often sprayed on crops while workers are in the field or while workers are returning to the field while the pesticides are still wet on the crops around them.⁷⁹ For migrant workers, there is extreme concern for pesticide poisoning, and they experience disproportionate rates of preventable diseases such as the flu and pneumonia.⁸⁰ The U.S. Environmental Protection Agency (EPA) sets both restrictions on the use of pesticides in the field when unprotected workers are present and restricted-entry intervals during which time workers must not be in treated

71. See generally Giselle Lundy-Ponce, *Migrant Students: What We Need to Know to Help Them Succeed*, ¡COLORÍN COLORADO! (2010), <https://perma.cc/7WWC-8P2P>.

72. *Id.*

73. *Id.*

74. *Id.*

75. *Id.*

76. *Id.*

77. See HUMAN RIGHTS WATCH, *supra* note 3, at 12.

78. CTR. FOR DISEASE CONTROL & PREVENTION, INJURIES TO YOUTH ON FARMS AND SAFETY RECOMMENDATIONS, U.S. 2006, at 1 (2009), <https://www.cdc.gov/niosh/docs/2009-117/pdfs/2009-117.pdf>.

79. See HUMAN RIGHTS WATCH, *supra* note 3, at 12.

80. Glader, *supra* note 67, at 1458.

areas.⁸¹ All workers must be trained on at least a basic level of pesticide safety.⁸² The Human Rights Watch conducted dozens of interviews with child farmworkers across the country and found regular breaches in the regulatory and statutory protections for children.⁸³

For younger children, issues of child care can also be detrimental for child migrants. When a child is too young to go to school, the parents are left with an impossible choice of attempting to obtain child care or having their child in the fields with them. Finding a child care provider which is affordable, able to accommodate the workday schedule, and which is within a reasonable distance can be a difficult, if not an insurmountable hurdle for migrant parents. As a result of a child not being in a learning rich environment in their tender years, they are already at a disadvantage when they go to school as they get older. For parents, work that is not being readily subject to government inspection opens the option of allowing older children to work instead of paying for childcare, a valid, albeit devastating, alternative.⁸⁴ As one federal court noted, their employment in agriculture results in high dropout rates or gaps in their education.⁸⁵ U.S. law provides no minimum age for children working on small farms so long as they have their parent's permission and are over twelve years of age.⁸⁶ Often, underage farmworkers are present but concealed on farms—working to the greatest extent possible without detection.⁸⁷ Some informal studies indicate close to 10% of U.S. migrant farmworkers are under the age of fourteen.⁸⁸ Due to infrequent inspection and oversight⁸⁹ and threat of deportation, exploitation regularly occurs related to appropriate wages. Child laborers readily report wages below that mandatory under FLSA.⁹⁰ Moreover, families are often required to pay for protective equipment and supplies that should legally be provided by the employer.⁹¹

81. See HUMAN RIGHTS WATCH, *supra* note 3, at 12.

82. See *id.*

83. See *id.* at 4.

84. See *id.*

85. *Zavala v. Contreras*, 581 F. Supp. 701, 703 (S.D. Tex. 1984).

86. See 29 U.S.C. § 213 (2012).

87. Anthony Schick, *Child Farm Labor in Oregon and the U.S.: Big Dangers, Little Change*, OREGONIAN (Sept. 29, 2012, 9:00 AM), <https://perma.cc/26FF-PP2T>.

88. *Id.*

89. Alana Semuels, *How Common is Child Labor in the U.S.?*, ATLANTIC (Dec. 15, 2014), <https://perma.cc/G9U2-428P> (“The Occupational Health and Safety Administration, or OSHA, had fewer health and safety inspectors in 2011 than in 1981, even though there are now twice as many workplaces.”).

90. HUMAN RIGHTS WATCH, *supra* note 3, at 6.

91. *Id.*

VI. CHILD LABOR: AN INTERNATIONAL HUMAN RIGHTS CONCERN

Child labor is an international human rights concern. Internationally, the largest sector for child labor remains agriculture, where the majority of children work as unpaid family members.⁹² The concern differs depending on the status of the country's development, however, the commitment remains the same. In 2010, a number of countries through the UN entered into an agreement to accelerate their work on the reduction of child labor with a number of 2016 goals related to the use and regulation of child labor.⁹³ Among the agreements set forth in the 2010 acceleration report was a commitment to enact national policies in line with the *Declaration on Fundamental Principles and Rights at Work and its Follow-Up*, adopted by the ILO in 1998.⁹⁴ Section 2(c) of that agreement calls for, "the effective abolition of child labour."⁹⁵ In accelerating the objectives articulated in the 1998 *Fundamental Principles and Rights to Work*, the 2010 agreement also called for "adopting and enforcing national legislation against child labour and its worst forms in particular, ensuring that these rights are respected for all children without exception."⁹⁶ The agreement also included an inspection and sanction section 8.1.6: "Enforcing appropriate sanctions against perpetrators of the worst forms of child labour, strengthening the inspection and monitoring machinery that bring these to light, and documenting court cases. Particular emphasis should be given to strengthening labour inspection, including on occupational health and safety."⁹⁷

An examination of the progress made by the United States as a party to the agreement reveals tepid improvements. The nation has implemented a number of projects and initiatives to end child labor abroad, while simultaneously appearing to almost endorse the practice domestically, especially when it relates to agriculture.

VII. A THWARTED ATTEMPT TO PROTECT CHILDREN

For the first time in decades, the federal government attempted to improve the safety and restriction on youth working in agricultural settings in 2011, placing them on par with the restrictions and limitations placed on other sectors of youth

92. Int'l Labour Off. [ILO], *Accelerating Action Against Child Labour*, Int'l Labour Conference, Ninety-Ninth Session, at xiv, REPORT I(B) (2010), <http://www.ilo.org/ipe-cinfo/product/download.do?type=document&id=13853>.

93. See generally ILO, *Roadmap*, *supra* note 6.

94. Int'l Labour Org. [ILO], *Declaration on Fundamental Principles and Rights at Work and Its Follow-Up*, Int'l Labour Conference, Eighty-Sixth Session, at 4, (June 15, 2010), http://www.ilo.org/declaration/info/publications/WCMS_467653/lang-en/index.htm.

95. *Id.* at 7.

96. ILO: *Roadmap*, *supra* note 6, at 3.

97. *Id.*

employment.⁹⁸ Then-Secretary of Labor Hilda Solis proposed these standards that would regulate labor for children younger than sixteen years of age.⁹⁹ These changes sought to bring parity between agricultural sectors and all other sectors regulated under the Department of Labor.¹⁰⁰ Specifically, these changes sought to:

Strengthen[] current child labor prohibitions regarding agricultural work with animals in timber operations, manure pits, storage bins and pesticide handling. Prohibit[] hired farm workers under the age of 16 from employment in the cultivation, harvesting and curing of tobacco. Prohibit[] youth in both agricultural and nonagricultural employment from using electronic devices, including communication devices, while operating power-driven equipment. Prohibit[] hired farm workers under the age of 16 from operating almost all power-driven equipment. . . . A limited exemption would permit some student-learners to operate certain farm implements and tractors (when equipped with proper rollover protection structures and seat belts) under specified conditions. Prevent[] children under 18 years of age from being employed in the storing, marketing and transporting of farm-product raw materials. Prohibited places of employment would include country grain elevators, grain bins, silos, feed lots, stockyards, livestock exchanges and livestock auctions.¹⁰¹

These proposed regulations would not bring complete parity, however, as a number of exemptions remain for agricultural sectors. Under the proposed regulations, children younger than eighteen would be prohibited from engaging in occupations designated as hazardous in all other non-agricultural contexts; once children turn sixteen in agricultural settings, they would continue to be beyond the jurisdiction of the child labor provisions of the Department of Labor.¹⁰² The Department further sought restrictions preventing children younger than sixteen from operating farm machinery unless certain safety requirements were met (e.g., roll-over prevention and seat-belts).¹⁰³ Additionally, in updating these standards with the changing technological landscape, the changes would have prevented all children younger than eighteen from using cell phones or similar devices while operating

98. Press Release, U.S. Dep't of Labor, US Labor Department Proposes Updates to Child Labor Regulations (Aug. 31, 2011) [hereinafter Press Release, U.S. Dep't of Labor] (on file with author) ("The agricultural hazardous occupations orders under the Fair Labor Standards Act that bar young workers from certain tasks have not been updated since they were promulgated in 1970.").

99. Christina Traina, *Obama, Strengthen Rules on Child Farm Labor*, CNN (Jan. 17, 2013, 7:06 PM), <https://perma.cc/3YK5-4HB4>.

100. Press Release, U.S. Dep't of Labor, *supra* note 98.

101. *Notice of Proposed Rulemaking to Amend the Child Labor in Agriculture Regulations*, U.S. DEP'T LAB., <https://perma.cc/94HD-RDCM> (archived Oct. 10, 2017).

102. Press Release, U.S. Dep't of Labor, *supra* note 98.

103. *Id.*

vehicles and machinery.¹⁰⁴

Most importantly, the proposed regulations kept intact the “parent exception” to agricultural child laborers. Under the proposed regulations, as was previously permitted under FLSA as originally passed, the Department would not regulate the labor of children when working on their own family farm under their parents.¹⁰⁵ The parental exception allows children of any age who are employed by their parents or legal guardian to perform virtually any job related to farm work.¹⁰⁶ These important distinctions notwithstanding, the Department of Labor received forceful and vehement opposition from farm youth, farmers, and lobbies such as the Farm Bureau.¹⁰⁷ As a result of such pressure, less than eight months later, the Department withdrew these proposed regulations from consideration, vowing to not revisit them for the duration of President Obama’s term.¹⁰⁸

VIII. CHANGE IN IMMIGRATION POLICY

With the change in administration in 2017, the impact was also felt in the migrant and immigrant communities. Indeed, prior to the new stricter policies, it was already difficult to ensure proper counting and access to legal and social services for migrant workers. For example, estimates in the 1990s were imprecise for various reasons including undocumented employees and their employers who, fearing discovery by immigration and law enforcement officials, hid employees during census enumeration periods.¹⁰⁹ Their need for access to protections and resources is clear, as they are among the most impoverished in the nation.¹¹⁰ Additionally, “guest workers are entirely excluded from the Migrant and Seasonal Worker Protection Act safeguards.”¹¹¹ The authority to protect guest workers is

104. *Id.*

105. *Id.*

106. *Id.*

107. *Id.*

108. Press Release, U.S. Dep’t of Labor, Labor Department Statement on Withdrawal of Proposed Rule Dealing with Children Who Work in Agricultural Vocations (Apr. 26, 2012) [hereinafter Press Release, U.S. Dep’t of Labor] (on file with author) (“To be clear, this regulation will not be pursued for the duration of the Obama administration.”).

109. ROBERT C. SMITH, BUREAU OF THE CENSUS, COUNTING MIGRANT FARM WORKERS: CAUSES OF UNDERCOUNT OF FARMWORKERS IN NORTHEASTERN UNITED STATES IN THE 1990 CENSUS AND STRATEGIES TO INCREASE COVERAGE FOR CENSUS IN 2000, at 2 (Mar. 1995), <http://www.census.gov/srd/papers/pdf/ex95-22.pdf>.

110. See BETHANY C. BOGGESS & HILDA OCHOA BOGUE, NAT’L CTR. FOR FARMWORKER HEALTH, A PROFILE OF MIGRANT HEALTH: AN ANALYSIS OF THE UNIFORM DATA SYSTEM, 2010, at 13 (2014).

111. Teresa Hendricks-Pitsch, *Slighting the Hands that Feed Us: How Labor Laws Leave Farmworkers in Left Field*, 95 MICH. B.J. 26, 29 (2016).

maintained by the U.S. Department of Labor, but worker abuse is widespread nonetheless.¹¹²

Prior to recent administration and policy changes, employers had been replacing their longtime U.S.-based farmworkers with more exploitable foreign guest workers holding temporary H-2A visas.¹¹³ Immigration enforcement agents note their renewed focus is to examine all who are not on solid footing regarding their legal status here, whereas previous executive orders prioritized immigration enforcement resources based upon other factors, such as those committing violent crimes.¹¹⁴ Under a 2017 executive order, “ICE will not exempt classes or categories of removal aliens from potential enforcement. All of those in violation of the immigration laws may be subject to immigration arrest, detention, and if found removable by final order, removal from the United States.”¹¹⁵ Indeed, “a newfound fear of the future has already cast a pall over the tomato farms and strawberry fields in the largely undocumented migrant communities”¹¹⁶ Migrant parents, subject to sub-standard wages, dangerous living quarters, unhealthy working conditions, or a lack of access to appropriate medical care for their children, are faced with an impossible choice in the face of these galvanized immigration policies.¹¹⁷ Thus, the narrative of the migrant child farmworker, regardless of citizenship, is far from symphonic with the local youth farmworker. Although the experiences of the former is increasing in regularity in regard to modern, large agricultural operations, it continues to be those of the latter that family farms and Big Ag alike use to advance as rationale for the continued disparity in child labor protections in agriculture.

IX. THE “FARM KID” WORK ETHIC

In its rationale for the proposed 2011 revisions, the Department of Labor noted how much time had elapsed since the rules were updated, the regulatory

112. *Id.*

113. ETHAN NEWMAN ET AL., FARMWORKER JUSTICE, NO WAY TO TREAT A GUEST 21 (2011), <https://www.farmworkerjustice.org/sites/default/files/documents/7.2.a.6%20fwj.pdf>.

114. Nicholas Kulish et al., *Immigration Agents Discover New Freedom to Deport Under Trump*, N.Y. TIMES (Feb. 2, 2017), https://www.nytimes.com/2017/02/25/us/ice-immigrant-deportations-trump.html?_r=0.

115. Q&A: DHS Implementation of the Executive Order on Enhancing Public Safety in the Interior of the United States, U.S. DEP’T HOMELAND SECURITY (Feb. 21, 2017), <https://perma.cc/W9YJ-SPTS>.

116. Robert Samuels, *After Trump’s Immigration Order, Anxiety Grows in Florida’s Farm Fields*, WASH. POST (Feb. 25, 2017), <https://perma.cc/MFR7-ZEHM>.

117. Brian Barth, *The High Cost of Cheap Labor*, MOD. FARMER (Feb. 21, 2017), <https://perma.cc/YX2R-TV7> (“It can be dismal, but we don’t complain, because we always have in the back of our minds that at any moment, we could face deportation.”).

differences between agricultural and nonagricultural settings, and its strong interest in protecting “[c]hildren employed in agriculture [who] are some of the most vulnerable workers in America.”¹¹⁸ Some of the nation’s small family farmers, however, responded to these proposed regulations by objecting to the proposed regulations.¹¹⁹ For one commenter, the proposed regulation seemed to attack beloved agricultural youth programs.¹²⁰ Some expressed concern that,

[t]he family farm would no longer be, 4-H clubs could just as well fold up, State Fairs would be hit hard, FFA programs would be nonexistent. Many of our young people would never get the experience of farm life. Many of our youngsters now handle livestock with more patience than some adults. Rural America would be devastated by some foolish laws.¹²¹

Others pointed to the economics of employing child laborers, which are concerns not dissimilar to businesses in other sectors of labor.¹²² Interestingly, farmers predicted that improving safety standards for child laborers in agriculture would necessitate the employ of migrant and immigrant workers.¹²³ Perhaps most salient in

118. Press Release, U.S. Dep’t of Labor, *supra* note 98.

119. Kathleen Theel, Comment on the Wage and Hour Division Proposed Rule: Child Labor Regulations, Orders and Statements of Interpretation: Violations-Civil Money Penalties (Dec. 6, 2011) [hereinafter Theel, Comment], <https://www.regulations.gov/document?D=WHD-2011-0001-10310>.

120. *See, e.g.*, Marsha Valance, Comment on the Wage and Hour Division Proposed Rule: Child Labor Regulations, Orders and Statements of Interpretation: Violations-Civil Money Penalties (Nov. 28, 2011), <https://www.regulations.gov/document?D=WHD-2011-0001-3743> (“Are you insane? What about FFA? What about 4H? What about helping grandparents, relatives, neighbors? Do you THINK before proposing such a rule?”).

121. Marvin Bohnstengel, Comment Letter on the Wage and Hour Division Proposed Rule: Child Labor Regulations, Orders and Statements of Interpretation: Violations-Civil Money Penalties (Nov. 23, 2011), <https://www.regulations.gov/document?D=WHD-2011-0001-10335>.

122. *See, e.g.*, Lennon Brandt, Comment on the Wage and Hour Division Proposed Rule: Child Labor Regulations, Orders and Statements of Interpretation: Violations-Civil Money Penalties (Nov. 21, 2011) [hereinafter Brandt, Comment], <https://www.regulations.gov/document?D=WHD-2011-0001-2636> (“The new rules by the Dept. of Labor to limit kids from working on farms will have a very negative financial impact on my farm and all types of farms. There are many tasks that require some extra help but do not justify the cost of full time help.”); Henry Hemminghaus, Comment on the Wage and Hour Division Proposed Rule: Child Labor Regulations, Orders and Statements of Interpretation: Violations-Civil Money Penalties (Nov. 30, 2011) [hereinafter Hemminghaus, Comment], <https://www.regulations.gov/document?D=WHD-2011-0001-6186> (“I am a detasseling contractor in [IL], IA, and IN. I hire 2000 local kids to detassel every summer. Eliminating 70% of my work force will potentially kill my business.”).

123. *See, e.g.*, Hemminghaus, Comment, *supra* note 122 (“The main replacement for these jobs would in most cases be migrant workers. I thought we were interested in keeping jobs for

the comments to these proposed rules was the value to the youth by way of work ethic, job skills, and saving money for their future.¹²⁴ Overall, while stakeholders saw creating regulations as a positive step, some expressed concern over the loss of jobs and laborers¹²⁵ and a belief that farm children are properly safeguarded by a parent's oversight.¹²⁶

Individual farmers were not the only source of rebuke for the proposed changes. Some news sources even claimed that larger forces in the form of agricultural associations pushed back against the proposed changes as well.¹²⁷ Opponents of the regulation believed that the Department of Labor was attacking the small family farm, and specifically, reaching into farmers' families.¹²⁸ However, the following section proposes the interest of these groups in lobbying the Department, while aligned on its face, were motivated by different concerns other than those of the average, small family farmer.

Americans, not in effect shipping them to other countries"); Larry Lauer & Kristina Joseph, Comment on the Wage and Hour Division Proposed Rule: Child Labor Regulations, Orders and Statements of Interpretation: Violations-Civil Money Penalties (Nov. 25, 2011), <https://www.regulations.gov/document?D=WHD-2011-0001-10334> ("If this law goes through, we will have more illegal immigrants coming here to work and [that's] not a good thing.").

124. See, e.g., Brandt, Comment, *supra* note 122 ("This work is also important for the kids to learn works ethics, self-esteem and earn some money. It is also a valuable experience for the kids to learn about agriculture and what futures it may hold for them."); Hemminghaus, Comment, *supra* note 122 ("Did those making these rule changes even know what detasseling is and how important is it to our rural communities and the revenue and work experience it brings to our kids?"); Paul Conner, *Labor Dept. Withdraws Farm Child Labor Rule After Daily Caller Report Goes Viral*, DAILY CALLER (Apr. 26, 2012, 8:57 PM), <https://perma.cc/NRJ3-X3CA>; Patrick Richardson, *Rural Kids, Parents Angry About Labor Dept. Rule Banning Farm Chores*, DAILY CALLER (Apr. 25, 2012, 1:31 AM), <https://perma.cc/U4ZA-UNU3> ("The main concern I have is that it would prevent kids from doing 4-H and FFA projects if they're not at their parents' house . . . I learned a lot of responsibility being a farm kid.").

125. See, e.g., Hemminghaus, Comment, *supra* note 122 ("Keeping kids of any age from the effects of heat and pesticides is a concern for all in the detasseling industry. Yes it could be improved and enforced more, but getting rid of the kids is just dumb.").

126. See, e.g., Theel, Comment, *supra* note 119 ("It is the responsibility of the parent to determine where their children should work. There are rules already in place if this is unsatisfactory or harmful for their children; there is no purpose in changing anything.").

127. See Lee Fang, *The Turkey Lobby Helped Block Child Labor Regulations*, NATION (Nov. 28, 2013), <https://perma.cc/ZKS2-J4A6>.

128. Richardson, *supra* note 124 ("What would be more of a blow,' [said a Kansas county Farm Bureau president] 'is not teaching our kids the values of working on a farm.'").

X. SMALL FAMILY FARM IMAGE, BIG AGRI-MONEY

The American Farm Bureau Federation (Farm Bureau) presents itself as the mouthpiece of the family farmer: “If you know agriculture in this country, it is dominated by family farms, and those are the people who come to our meetings, those are the people who set our policies.”¹²⁹ In the pushback against the 2011-2012 regulation proposals, the Farm Bureau and other large agriculture associations joined together in a fight against government interference on the family farm and loss of jobs and skills for young farmers.¹³⁰ The role of groups such as 4-H and the FFA are so engrained in the rural experience, that the passions of the regulation opponents were further inflamed when the Department sought to “revoke the government’s approval of safety training and certification taught by independent groups like 4-H and FFA, replacing them instead with a ninety-hour federal government training course.”¹³¹ Opponent, Rep. Kristi Noem, Republican from South Dakota, “agree[d] that safety on farms and ranches is imperative,” but continued to express concern regarding government over-reach and parents’ desire to create a work ethic developed through hard work on the farm.¹³² When the Department withdrew the proposed regulations, it promised to consult with “rural stakeholders—such as the American Farm Bureau Federation, the National Farmers Union, the Future Farmers of America, and 4-H—to develop an educational program to reduce accidents to young workers and promote safer agricultural working practices.”¹³³

The culture of agrarian, rural America as developed through toiling in the field or in the barn from a young age is a uniting experience for many across the United States, but the nature of agriculture is changing. The image of the American farmer and the American farm kid propels the lobbying efforts against child labor standards for farm children; however, there is an ever-increasing distinction between the small American family farm and the industrial, agricultural context.¹³⁴ This distinction means that the interests of Big Ag are not always aligned with those of the small family farm. That said, not all family farmers participate in this Big Ag movement. Family farmers recognizing Big Ag’s influence in the market

129. Ian T. Shearn, *Whose Side is the American Farm Bureau On?*, NATION (July 16, 2012), <https://perma.cc/G389-2YCW> (quoting Mark Maslyn, Executive Director of the American Farm Bureau Federation’s public policy department).

130. Traina, *supra* note 99.

131. Richardson, *supra* note 124.

132. Conner, *supra* note 124 (quoting Rep. Kristi Noem (R-SD), “[T]elling kids they can’t do 4-H or farm-related chores is not the answer.”).

133. Press Release, U.S. Dep’t of Labor, *supra* note 108.

134. James M. MacDonald & Robert Hoppe, *Large Family Farms Continue to Dominate U.S. Agricultural Production*, USDA (Mar. 6, 2017), <https://perma.cc/2AXT-LYHS>.

note that “[i]ndustrial agriculture does not serve family farmers, our economies or public well-being.”¹³⁵ They see “unchecked market power” as a cause of the loss of family farms.¹³⁶ Further, these voices call out the large industrial powers and blame them for “pushing down the prices paid to family farmers and driving them out of business.”¹³⁷

XI. CONCLUSION

In order to protect the migrant child on the American farm, the country must recognize the need for parity between agricultural and non-agricultural sectors. While the country’s collective history is sordid, to say the least, with regard to its treatment of and protections for people of color,¹³⁸ the lack of protections for migrant child farmworkers remains a piece of that enduring legacy. Small family farms no longer dominate food production across the nation:¹³⁹ Migrant child workers have replaced them. Failure to recognize this shift disproportionately impacts thousands of migrant children engaged in farm work who sacrifice their health, education, and childhood in support of their family’s financial survival. These young people deserve protection and access to resources in line with their peers in non-agricultural settings. The 2011 proposed changes were not perfect, but they offered great strides for an industrialized country that prides itself in its agriculture as well as its presence on the international stage. Citizens in agricultural and non-agricultural settings alike must be resolute in joining our international partners in ensuring these rights are respected for all children without exception.

135. Farm Aid, *A Failing System*, INDUS. AGRIC., <https://www.farmaid.org/issues/industrial-agriculture/> (last visited Jan. 3, 2018).

136. *Id.*

137. Farm Aid, *Reclaiming People Power*, CORP. POWER, <https://perma.cc/52HY-V6QG> (archived Oct. 10, 2017).

138. See generally, e.g., Laurence E. Norton II & Marc Linder, *Down and out in Weslaco, Texas and Washington, D.C.: Race-Based Discrimination Against Farm Workers Under Federal Employment Insurance*, 29 U. MICH. J.L. REFORM 177, (1996) (delineating a history of discriminatory treatment and impact for people of color in government programs related to agriculture).

139. See CAROLYN DIMITRI ET AL., U.S. DEP’T OF AGRIC., *THE 20TH CENTURY TRANSFORMATION OF U.S. AGRICULTURE AND FARM POLICY 2* (June 2005).