



**Testimony of Margaret Wurth
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Before the House Committee on Education and Labor
Subcommittee on Workforce Protections
September 7, 2022**

Chair Adams and members of the committee,

Thank you for the opportunity to testify today about the urgent need for Congress and President Biden’s administration to strengthen US labor law and regulations to protect children from hazardous work in agriculture.

I am a senior researcher at Human Rights Watch, an international human rights organization working in more than 100 countries worldwide. Since 2000, Human Rights Watch has reported on the dangerous conditions children face while working in US agriculture.

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US laws and policies governing child labor in agriculture are far too weak. They are also glaringly out of step with international human rights standards. Agriculture is the most dangerous industry in the US for child workers. A 2018 Government Accountability Office study found that more than half of work-related child fatalities occurred among children working in agriculture, even though they represent just three percent of child workers.¹ Yet longstanding loopholes in US labor law and regulations allow children to work in agriculture from younger ages and for longer hours than in any other sector.

Under the Fair Labor Standards Act (FLSA), children as young as 12 can work unlimited hours on farms of any size with parental permission, as long as they do not miss school.²

¹ US Government Accountability Office, Working Children: Federal Injury Data and Compliance Strategies Could Be Strengthened, November 2018, <https://www.gao.gov/assets/gao-19-26.pdf> (accessed September 5, 2022), pp. 27-28.

² 29 U.S.C. sec. 213(c)(1)(B).

There is no minimum age for children to work on small farms or family farms.³ In all other sectors outside of agriculture, 16 is the basic minimum age for employment. The employment of children younger than 14 is prohibited, and 14- and 15-year-old children can work only limited hours in certain occupations.⁴

The FLSA also allows children working in agriculture to do work that the US Department of Labor has determined is “particularly hazardous” at younger ages than other working children.⁵ Children working in agriculture can engage in these hazardous occupations at age 16, while in all other sectors, workers must be 18 to do hazardous work.⁶ For example, workers at a deli counter cannot use a meat slicer until age 18, but in agriculture, children as young as 16 can use power-driven circular saws.⁷

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My colleagues and I have interviewed hundreds of child farmworkers and published their accounts in four detailed reports.⁸ Many of them worked 12 or 14-hour days on farms in punishing heat without sufficient breaks or hydration. Most had received no safety training or protective equipment, even though they used sharp tools and heavy machinery, and climbed to dangerous heights on ladders and in barns with nothing to protect them from falling. Many were exposed to toxic pesticides, and on tobacco farms, children faced the added risk of being exposed to nicotine, a neurotoxin.

More than two-thirds of the 133 child workers we interviewed for our 2014 report, *Tobacco’s Hidden Children*, described experiencing nausea, vomiting, headaches, and dizziness while working with tobacco plants – all symptoms of acute nicotine poisoning.⁹

³ 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 during any calendar quarter of the preceding year.

⁴ 29 U.S.C. sec. 203(l) and 29 C.F.R. sec. 570.31-570.39. Employment that is not specifically permitted is prohibited.

⁵ 29 U.S.C. sec. 213(c)(2).

⁶ 29 U.S.C. sec. 203(l) and 29 C.F.R. sec. 570.50-570.68.

⁷ 29 C.F.R. sec. 570.61(a)(4) and 570.71(a)(3)(iv).

⁸ Human Rights Watch, *Fingers to the Bone: United States Failure to Protect Child Farmworkers* (New York: Human Rights Watch, June 2000), <https://www.hrw.org/reports/2000/frmwrkr/>; *Fields of Peril: Child Labor in US Agriculture* (New York: Human Rights Watch, May 2010), https://www.hrw.org/sites/default/files/reports/crdo510webwcover_1.pdf; *Tobacco’s Hidden Children: Hazardous Child Labor in United States Tobacco Farming* (New York: Human Rights Watch, May 2014), <https://www.hrw.org/report/2014/05/13/tobaccos-hidden-children/hazardous-child-labor-united-states-tobacco-farming>; *Teens of the Tobacco Fields: Child Labor in United States Tobacco Farming* (New York: Human Rights Watch, December 2015), <https://www.hrw.org/report/2015/12/09/teens-tobacco-fields/child-labor-united-states-tobacco-farming>.

⁹ Human Rights Watch, *Tobacco’s Hidden Children: Hazardous Child Labor in United States Tobacco Farming* (New York: Human Rights Watch, May 2014), <https://www.hrw.org/report/2014/05/13/tobaccos-hidden-children/hazardous-child-labor-united-states-tobacco-farming>; Taylor J. Arnold, Thomas A. Arcury, Sara A. Quandt, et al., “Structural Vulnerability and Occupational Injury Among Latinx Child Farmworkers in North Carolina,” *New Solutions*, vol. 31, no. 2 (2021), doi:

One 12-year-old boy I interviewed said he developed a severe headache while topping tobacco in eastern North Carolina. “It was horrible,” he said. “It felt like there was something in my head trying to eat it.”¹⁰

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Despite the many dangers children face in agriculture, the US Department of Labor has not updated the list of hazardous agricultural occupations that are prohibited for children under age 16 since 1970.¹¹ For example, in agriculture, children under 16 can work at heights of up to 20 feet without any fall protection, and 16- and 17-year-olds can work at any height without protection.¹² By contrast, in the construction sector, employers must ensure fall protections for any work taking place over six feet.¹³

Twenty years ago, in a 2002 report to the Department of Labor, the National Institute for Occupational Safety and Health recommended updating the hazardous occupations orders for both agricultural and non-agricultural jobs.¹⁴ In 2011, the Department of Labor proposed amendments to child labor regulations to update the list of hazardous occupations in agriculture prohibited for children under age 16, based on NIOSH’s recommendations.¹⁵ The proposed regulations would not have applied to children working on family farms. However, the Department of Labor withdrew the proposed amendments to the rules in

10.1177/10482911211017556. See, also Thomas A. Arcury, Sara A. Quandt, and John S. Preisser, “Predictors of Incidence and Prevalence of Green Tobacco Sickness Among Latino Farmworkers in North Carolina, USA,” *Journal of Epidemiology and Community Health*, vol. 55 (2001), p. 818; Thomas A. Arcury, Sara A. Quandt, et al., “The Incidence of Green Tobacco Sickness Among Latino Farmworkers,” *Journal of Occupational and Environmental Medicine*, vol. 43, no. 7 (2001), pp. 601-602; Thomas A. Arcury, Sara A. Quandt, et al., “High levels of transdermal nicotine exposure produce green tobacco sickness in Latino farmworkers,” *Nicotine & Tobacco Research*, vol. 5 (2003), p. 315.

¹⁰ Human Rights Watch interview with Miguel T., 12, Wayne County, North Carolina, July 2, 2013.

¹¹ US Department of Labor, Wage and Hour Division, “29 CFR Parts 570 and 579: Notice of Proposed Rulemaking and Request for Comments: Child Labor Regulations, Orders and Statements of Interpretation; Child Labor Violations—Civil Money Penalties” in *Federal Register*, vol. 76, no. 171 (September 2, 2011) p. 54839, <http://www.gpo.gov/fdsys/pkg/FR-2011-09-02/pdf/2011-21924.pdf> (accessed September 5, 2022).

¹² 29 C.F.R. sec. 570.71(a)(6)

¹³ 29 C.F.R. sec. 1926.501(b)(13)

¹⁴ Centers for Disease Control and Prevention, National Institute for Occupational Safety and Health (NIOSH), *NIOSH Recommendations to the US Department of Labor for Changes to Hazardous Orders*, May 3, 2002, <https://www.cdc.gov/niosh/docs/nioshrecsdolhaz/pdfs/DOL-recomm.pdf> (accessed September 5, 2022).

¹⁵ US Department of Labor, Wage and Hour Division, “Child Labor Regulations, Orders and Statements of Interpretation; Child Labor Violations-Civil Money Penalties,” *Federal Register* vol. 76, no. 171, September 2, 2011, <https://www.federalregister.gov/documents/2011/09/02/2011-21924/child-labor-regulations-orders-and-statements-of-interpretation-child-labor-violations-civil-money> (accessed September 5, 2022).

2012 in response to opposition from some groups representing agricultural interests.¹⁶ In contrast, the list of hazardous occupations for nonagricultural work was updated in 2010.¹⁷ Several members of this committee joined a July 2022 congressional letter to US Labor Secretary Marty Walsh urging the Department of Labor to initiate a new rulemaking process to update this 50-year-old list. We strongly urge this committee to press the administration to make this an urgent priority.

Some states provide greater protection than federal standards. A 2021 report by Lawyers for Good Government and the Child Labor Coalition summarizes state policies.¹⁸ They found, for example, that 14 US states, as well as the District of Columbia and Puerto Rico, have raised the minimum age to work in agriculture to 14; and 15 states and Puerto Rico have laws limiting children’s work in agriculture to six days in a week.¹⁹

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Throughout history, the US has exploited the labor of Black, Indigenous, Latinx and other people of color, and their children, in agriculture. In May 2021, Rebecca Dixon, the executive director of the National Employment Law Project, testified before this committee on, “how systemic racism stained the original passage of the Fair Labor Standards Act” and “how it lives on in exclusions still in place today.”²⁰ She explained how Congress, at that time, “excluded whole categories of workers from vital protections in order to deny Black people the opportunity for economic and social freedom.”²¹ The Fair Labor Standards Act excluded farmworkers from any protection until 1966 and maintains harmful exemptions that deny farmworkers overtime pay and labor rights.

¹⁶ US Department of Labor, Wage and Hour Division, “Child Labor Regulations, Orders and Statements of Interpretation; Child Labor Violations-Civil Money Penalties. Withdrawal of Proposed Rule,” Federal Register vol. 77, no. 103, May 29, 2012, <https://www.federalregister.gov/documents/2012/05/29/2012-12954/child-labor-regulations-orders-and-statements-of-interpretation-child-labor-violations-civil-money> (accessed September 5, 2022).

¹⁷ US Department of Labor, Wage and Hour Division, “29 CFR Parts 570 and 579 Child Labor Regulations, Orders and Statements of Interpretation; Final Rule,” Federal Register vol. 75, no. 97, May 20, 2010, <https://www.federalregister.gov/documents/2010/05/20/2010-11434/child-labor-regulations-orders-and-statements-of-interpretation> (accessed September 5, 2022).

¹⁸ Lawyers for Good Government and Child Labor Coalition, *Child Farmworkers: Too Young, Vulnerable, and Unprotected*, October 2021, <https://www.lawyersforgoodgovernment.org/child-farmworker-report> (accessed September 5, 2022).

¹⁹ Ibid.

²⁰ Rebecca Dixon, National Employment Law Project, Testimony before the U.S. House of Representatives Education and Labor Committee, Workforce Protections Subcommittee, “From Excluded to Essential: Tracing the Racist Exclusion of Farmworkers, Domestic Workers, and Tipped Workers from the Fair Labor Standards Act,” May 3, 2021, <https://s27147.pcdn.co/wp-content/uploads/NELP-Testimony-FLSA-May-2021.pdf> (accessed September 5, 2022).

²¹ Ibid.

The child labor exemptions for agriculture that remain in US law and regulations are part of this racist legacy and continue to cause racially disproportionate harm. The weak US legal and regulatory framework disproportionately harms children of Hispanic origin in the US, who make up the vast majority of hired child farmworkers.²²

In recognition of the potential benefits of some forms of work, international law does not prohibit children from working. The Convention on the Rights of the Child, which the United States has signed but not ratified, states 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.”²³ In addition, the International Labour Organization’s (ILO) Worst Forms of Child Labor Convention, which the US has ratified, requires countries to prohibit certain types of work for children under age 18 as a matter of urgency, including work that is likely to jeopardize children’s physical or mental health, safety or morals.²⁴ The ILO’s Committee of Experts has, on multiple occasions, strongly urged the US government to take measures to protect the health and safety of children working in agriculture.²⁵

The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), ratified by the United States in 1994, 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.²⁶ The Committee on the Elimination of Racial Discrimination, which monitors state compliance with the ICERD, has interpreted

²² US Department of Labor, “Findings from the National Agricultural Workers Survey (NAWS) 2019–2020: A Demographic and Employment Profile of United States Farmworkers,” January 2022, <https://www.dol.gov/sites/dolgov/files/ETA/naws/pdfs/NAWS%20Research%20Report%2016.pdf> (accessed September 5, 2022), pp. 3-5.

²³ Convention on the Rights of the Child (CRC), adopted November 20, 1989, 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 September 2, 1990, art. 32. The United States signed the CRC on February 16, 1995.

²⁴ International Labor Organization Convention No. 182 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 I.L.M. 1207 (entered into force November 19, 2000), ratified by the United States on December 2, 1999, art. 3.

²⁵ International Labour Organization (ILO) Committee of Experts on the Application of Conventions and Recommendations (CEAR), “Observation: Worst Forms of Child Labour Convention, 1999 (No. 182) - United States (Ratification: 1999),” adopted 2012, published 102nd ILC session (2013), http://www.ilo.org/dyn/normlex/en/?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3057769:NO (accessed January 17, 2014).

²⁶ International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), 660 U.N.T.S. 195, entered into force January 4, 1969 (prohibiting unlawful discrimination “based on race, colour, descent, or national or ethnic origin”), art. 1(1). The ICERD was ratified by the US on October 21, 1994.

the convention to prohibit laws or policies that have “an unjustifiable disparate impact” on racial and ethnic minorities.²⁷

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This Congress has an opportunity to make long overdue changes to US labor law to provide child farmworkers the same protections as children working in all other sectors and to help the US better align with international human rights standards.

H. R. 7345, the Children's Act for Responsible Employment and Farm Safety of 2022 (or the CARE Act), sponsored by Representative Lucille Roybal-Allard and co-sponsored by many members of this committee, would give child farmworkers the same workplace protections that other working children enjoy. The bill would eliminate work by 12-year-olds and raise the basic minimum age for agricultural work to 14. It would ensure 14- and 15-year-old children only do work that will not interfere with their health, safety, or education.

Another important piece of legislation, H.R.3865/S.2044, the Children Don't Belong on Tobacco Farms Act, sponsored by Representative David Cicilline and Senator Dick Durbin, would prohibit children under 18 from work involving direct contact with tobacco.

I urge this committee to work to pass both of these important bills and also to use its discretion and authority to urge the US Department of Labor to initiate regulatory changes to update the list of hazardous agricultural occupations off limits to the youngest children working in agriculture.

Child farmworkers have a right to equal protection under the law. Existing US child labor laws are woefully out of date and put child farmworkers at unacceptable risk. Congress should act swiftly to ensure that all working children are protected equally.

²⁷ 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.