



**Joint Submission to the United Nations Committee on the Elimination of Racial  
Discrimination in advance of its review of the United States of America**

*107<sup>th</sup> Session - July 15, 2022*

**Human Rights Watch** is an independent, nongovernmental organization that does research and advocacy on human rights issues in more than 100 countries worldwide.

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The **Child Labor Coalition** is an international network with 38 members working to end child labor worldwide. <https://stopchildlabor.org/>

**Justice for Migrant Women** is an organization that protects and advances migrant women's rights through education, public awareness, and advocacy.

<https://justice4women.org/>

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**I. Introduction**

Human Rights Watch, the Child Labor Coalition, and Justice for Migrant Women are grateful for the opportunity to provide input to the United Nations Committee on the Elimination of Racial Discrimination (the committee) in advance of its upcoming review of the United States of America (US) during the 107<sup>th</sup> session. This submission discusses weak protections for child farmworkers in US law and regulations that have devastating impacts

on children’s health, safety, and education. 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. We urge the committee to recognize the disproportionate effects these policy gaps have on the human rights of children of color. We also ask the committee, in its recommendations to the US, to urge long overdue reforms to remedy these racially disproportionate harms.

## II. Children Face Danger Working in US Agriculture

Since 2000, Human Rights Watch has reported on the dangerous conditions children face while working in US agriculture. Human Rights Watch interviewed hundreds of child workers and published their accounts in four detailed reports.<sup>1</sup> The research documented how children, some as young as 7, work long hours in extreme heat with insufficient breaks or hydration, use sharp tools and heavy machinery, and climb to dangerous heights 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. Children, and in particular, pregnant girls,<sup>2</sup> are at heightened risk of heat illness<sup>3</sup> and adverse effects from toxic exposures as their brains and bodies are still developing, and they consume more water and food, and breathe more air, pound for pound, than adults.<sup>4</sup> The children interviewed worked in various US states on a broad range of different crops, including apples, asparagus, beets, blueberries, cherries, Christmas trees, corn, cotton, cucumbers, oranges, peaches, pumpkins, sorghum, sweet potatoes, tobacco, tomatoes, and watermelon.<sup>5</sup>

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<sup>1</sup> 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/frmwkr/>; *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](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>.

<sup>2</sup> Centers for Disease Control and Prevention, The National Institute for Occupational Safety and Health, “Heat – Reproductive Health,” <https://www.cdc.gov/niosh/topics/repro/heat.html> (accessed December 13, 2021).

<sup>3</sup> Taylor J. Arnold, Thomas A. Arcury, Joanne C. Sandberg, et al., “Heat-Related Illness Among Latinx Child Farmworkers in North Carolina: A Mixed-Methods Study,” *New Solutions: A Journal of Environmental and Occupational Health Policy*, vol. 30, no. 2 (2020): pp. 111–126, accessed December 13, 2021, doi:10.1177/1048291120920571.

<sup>4</sup> See, for example, Antonio Pascale and Amalia Laborde, “Impact of pesticide exposure in childhood,” *Reviews on Environmental Health*, vol. 35, no. 3 (2020): pp. 221-227, accessed December 13, 2021, doi: 10.1515/reveh-2020-0011.

<sup>5</sup> *Ibid.*

Numerous reports and studies by public health researchers and other nongovernmental organizations have also documented the grave dangers children face while working in US agriculture.<sup>6</sup>

Though child farmworkers make up an estimated 3 percent of working children, more than half of all work-related deaths among children between 2003 and 2016 were in agriculture. Four times as many children died working in agriculture as in construction and mining, the sector with the second highest number of work-related child fatalities.<sup>7</sup> There were nearly 12,000 injuries to youth ages 19 and younger on farms in 2014, the last year for which the National Institute for Occupational Safety & Health (NIOSH) collected data.<sup>8</sup> Nearly 70 percent of those injuries were in children younger than 16 – the age group that should be protected by regulations called the hazardous occupations orders. Between 2001 and 2014, animals and vehicles were the most common source of injuries on farms.<sup>9</sup>

### III. Gaps in US Law and Regulations Leave Child Farmworkers Unprotected

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. There is no minimum age for children to work on small farms or family farms. Children working in agriculture can do jobs at age 16 that the US Department of Labor has determined are hazardous, while in all other sectors, workers must be 18 to do hazardous work.<sup>10</sup> We note that the Department of Labor highlighted these gaps in US law in its recent report: *2020 Findings on the Worst Forms of Child Labor*.<sup>11</sup>

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<sup>6</sup> See, for example, publications by Association of Farmworker Opportunity Programs, “Children in the Fields Campaign,” 2007-2019, <https://afop.org/cif/#table23> (accessed November 11, 2021); National Children’s Center for Rural and Agricultural Health and Safety, “Childhood Agricultural Injuries (U.S.) 2020 Fact Sheet,” <https://marshfieldresearch.org/Media/Default/NFMC/PDFs/ChildAgInjuryFactsheet2020.pdf> (accessed November 11, 2021); Sara A. Quandt, Taylor J. Arnold, Dana C. Mora, et al., “Hired Latinx Child Farmworkers in North Carolina: Educational Status and Experience Through a Social Justice Lens,” *New Solutions: A Journal of Environmental and Occupational Health Policy*, vol. 30, no. 4 (2021): pp. 282-293, accessed December 13, 2021, doi: 10.1177/1048291120970207; Thomas A. Arcury, Sara A. Quandt, Taylor J. Arnold, et al., “Work Safety Culture of Latinx Child Farmworkers in North Carolina,” *American Journal of Industrial Medicine*, vol. 63, no. 10 (2020): pp. 917-927, accessed December 13, 2021, doi: 10.1002/ajim.23161.

<sup>7</sup> United States 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 December 13, 2021).

<sup>8</sup> Kitty J. Hendricks, Scott A. Hendricks, and Larry A. Layne, “A National Overview of Youth and Injury Trends on U.S. Farms, 2001-2014,” *Journal of Agricultural Safety and Health*, vol. 27, no. 3 (2021): p. 125, accessed May 5, 2022, doi: 10.13031/jash.14473.

<sup>9</sup> Ibid.

<sup>10</sup> US Department of Labor, Wage and Hour Division, *Child Labor Bulletin 102: Child Labor Requirements in Agricultural Occupations Under the Fair Labor Standards Act*, September 20, 2020, <https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/childlabor102.pdf> (accessed December 13, 2021).

<sup>11</sup> US Department of Labor, Bureau of International Labor Affairs, *2020 Findings on the Worst Forms of Child Labor*, September 2021,

Legislation introduced by members of the US Congress would address these gaps. The Children’s Act for Responsible Employment and Farm Safety (CARE Act) would amend US labor law to raise the minimum hiring age in agriculture to 14, and the minimum age for hazardous work to 18, matching the minimum ages for other areas of work.<sup>12</sup> Another important bill, the Children Don’t Belong on Tobacco Farms Act, would prohibit children under 18 from work involving direct contact with tobacco, a toxic crop containing nicotine.<sup>13</sup>

The list of hazardous occupations off limits to children under 16 working in agriculture has not been updated since 1970 and is far too narrow.<sup>14</sup> For example, in agriculture, children under 16 can work at heights of up to 20 feet (nearly 7 meters) without any fall protection, and 16 and 17-year-olds can work at any height without protection. By contrast, in the construction sector, employers must ensure fall protections for any work taking place over six feet (two meters). The list of hazardous occupations also does not prohibit children from working in direct contact with tobacco, even though such work exposes them to toxic nicotine.<sup>15</sup> In 2014, some tobacco companies announced new policies prohibiting children under 16 from hired employment on farms in their supply chains.<sup>16</sup> While significant, the industry’s policies have no enforcement mechanisms other than monitoring by the companies themselves or third party auditors, which may not be sufficient to detect child labor. Research by Wake Forest School of Medicine *after* these commitments were announced showed some children under 16 continued to work on tobacco farms in North Carolina.<sup>17</sup>

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[https://www.dol.gov/sites/dolgov/files/ILAB/child\\_labor\\_reports/tda2020/2020\\_TDA\\_BigBook\\_Online\\_optimized.pdf](https://www.dol.gov/sites/dolgov/files/ILAB/child_labor_reports/tda2020/2020_TDA_BigBook_Online_optimized.pdf) (accessed December 13, 2021).

<sup>12</sup> Children’s Act for Responsible Employment and Farm Safety of 2022 (CARE Act of 2022), H.R.7345, introduced March 31, 2022, <https://www.congress.gov/bill/117th-congress/house-bill/7345?s=1&r=2> (accessed July 14, 2022).

<sup>13</sup> Children Don’t Belong on Tobacco Farms Act, H.R.3865, introduced June 14, 2021, <https://www.congress.gov/bill/117th-congress/house-bill/3865?s=1&r=7> (accessed July 14, 2022).

<sup>14</sup> United States 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 April 28, 2022).

<sup>15</sup> 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>.

<sup>16</sup> Jo Becker, “Dispatches: Tobacco Industry Moves to Stem Child Labor,” commentary, Human Rights Dispatch, December 17, 2014, <https://www.hrw.org/news/2014/12/17/dispatches-tobacco-industry-moves-stem-child-labor>.

<sup>17</sup> See, for example, Sara A. Quandt, Taylor J. Arnold, Thomas A. Arcury, et al., “Self-Reported Physical Demands Associated With Crops and Job Tasks Among Latinx Hired Child Farmworkers,” *Journal of Occupational and Environmental Medicine*, vol. 63, no. 12 (2021), pp. e838-e845, accessed December 13, 2021, doi: 10.1097/JOM.0000000000002322.

In a 2002 report to the Department of Labor, NIOSH recommended updating the hazardous occupations orders for both agricultural and non-agricultural jobs.<sup>18</sup> 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.<sup>19</sup> The proposed regulations would not have applied to children working on family farms. The Department of Labor withdrew the proposed amendments to the rules in 2012 in response to opposition from some groups representing agricultural interests.<sup>20</sup>

#### **IV. The Vast Majority of Hired Child Farmworkers are Children of Hispanic Origin**

The International Convention on the Elimination of All Forms of Racial Discrimination defines racial discrimination as “any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.” The burden of weaker labor law protections for agricultural workers compared to non-agricultural workers in the United States falls overwhelming on people of Hispanic origin, and amounts to discrimination under international law.

The National Agricultural Workers Survey (NAWS), “an employment-based, random survey of the demographic, employment, and health characteristics of the US crop labor force,” is the only national level source of information on characteristics of hired crop farm workers.<sup>21</sup> The survey shows that the overwhelming majority of hired farmworkers of all ages in the United States identify as members of a Hispanic group. According to 2019-2020 data, 78 percent of crop workers identified as Hispanic: 60 percent as Mexican, 10 percent as Mexican-American, and the remaining 8 percent as Chicano, Puerto Rican, or

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<sup>18</sup> 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 December 13, 2021).

<sup>19</sup> 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 December 13, 2021).

<sup>20</sup> 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 December 13, 2021).

<sup>21</sup> US Department of Labor, Employment and Training Administration, “National Agricultural Workers Survey,” <https://www.dol.gov/agencies/eta/national-agricultural-workers-survey> (accessed December 13, 2021).

other Hispanic.<sup>22</sup> This includes crop workers born in the US, and those born outside the US: NAWS data found 63 percent of farmworkers were born in Mexico, 30 percent in the US or Puerto Rico, and 5 percent in Central America.<sup>23</sup> It also includes individuals with a variety of racial identities: 33 percent of farmworker respondents identified as white, less than one percent as Black, and 66 percent indicated a racial identity “not on the standard list” developed by the US Office of Management and Budget. NAWS estimated about 10 percent of farmworker respondents were Indigenous.<sup>24</sup>

By comparison, 18 percent of the total labor force is comprised of people who identify as Hispanic or Latino, according to the Bureau of Labor Statistics.<sup>25</sup>

## V. Gaps in Data Prevent Effective Child Labor Monitoring

The US government has not created an effective system for collecting comprehensive data about children working in agriculture each year.

There is no comprehensive estimate of the number of child farmworkers in the US.

As described above, NAWS collects data on crop workers, but does not count working children under age 14. In its report on 2019-2020 data, NAWS estimated that 5 percent of hired crop workers in the US are ages 14-19.<sup>26</sup>

The Current Population Survey (CPS), a monthly survey of households conducted by the Bureau of Census for the Bureau of Labor Statistics, reports 16- and 17-year-old children’s employment in agriculture, but “does not count unpaid family workers, on farms or in other family businesses, who work less than 15 hours per week,” according to a 2018 GAO report.<sup>27</sup> In the past, NIOSH collected and reported data on the number of children under age 18 hired directly by farm operators to work on crop and livestock farms, as well as

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<sup>22</sup> 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 July 11, 2022), p. 4.

<sup>23</sup> *Ibid.*, p. 3

<sup>24</sup> *Ibid.*, p. 5.

<sup>25</sup> US Bureau of Labor Statistics, “Labor force characteristics by race and ethnicity, 2020,” November 2021, <https://www.bls.gov/opub/reports/race-and-ethnicity/2020/pdf/home.pdf> (accessed July 11, 2022).

<sup>26</sup> 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 July 11, 2022).

<sup>27</sup> United States Government Accountability Office, *Working Children: Federal Injury Data and Compliance Strategies Could Be Strengthened*, <https://www.gao.gov/assets/gao-19-26.pdf>.

children working on the farms on which they resided. In 2014, the last year for which it collected data, NIOSH estimated 265,604 youth under age 20 were hired directly by farm operators to work in agriculture, and at least 147,000 of those youth were children under age 18.<sup>28</sup> However, these figures significantly underrepresented the total number of children working in agriculture as they excluded children hired by farm labor contractors, employed informally, or whose work is added to their parents' wages.<sup>29</sup>

Better data on the number of children working in agriculture each year, disaggregated by age, gender, race, ethnicity, national origin, state, crop, employment arrangement, and the conditions in which children work would help governmental and non-governmental stakeholders in various sectors—agriculture, child protection, education, and workers' rights—work collaboratively to end child labor.

## **VI. Recommendations**

We recommend that the committee urge the US to:

- Use its regulatory authority to initiate a rulemaking process to update the list of hazardous occupations off limits to children under 16 working in agriculture;
- Enact legislation to close gaps in the Fair Labor Standards Act to give child farmworkers the same protections as children working in all other sectors, limiting their hours and raising the minimum ages to begin work and to perform hazardous work.
- Collect more comprehensive data on child farmworkers and the conditions in which they work, including on their exposure to toxic pesticides and other health risks for children working on farms;
- Rigorously enforce child labor laws;
- Collaborate with other government agencies, Congress, and other stakeholders on policies and initiatives to prevent child labor through education, robust social protection systems, economic policies, and other efforts.

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<sup>28</sup> Kitty J. Hendricks, Scott A. Hendricks, and Larry A. Layne, "A National Overview of Youth and Injury Trends on U.S. Farms, 2001-2014," *Journal of Agricultural Safety and Health*, vol. 27, no. 3 (2021): pp. 124-125, accessed May 5, 2022, doi: 10.13031/jash.14473.

<sup>29</sup> Human Rights Watch telephone conversation with Kitty Hendricks, Research Health Scientist, Division of Safety Research, NIOSH, February 7, 2014.