



in our own backyard

THE HIDDEN PROBLEM OF
CHILD FARMWORKERS IN AMERICA

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Part I: The Hidden Problem

"Fingers to the Bone"

Summary of a Human Rights Watch report on child labor in the United States.
*Source: Fingers to the Bone: United States Failure to Protect Child Farmworkers,
Human Rights Watch, 2000*



Damaris A., now nineteen, started working in the broccoli and lettuce fields when she was thirteen years old and continued until she was nearly eighteen.¹ During the five months of peak season, she usually worked fourteen hours a day, with two fifteen-minute breaks and a half-hour for lunch. She often worked eighty-five or ninety hours a week. For months on end she suffered daily nosebleeds; several times her blood pressure plummeted and she nearly passed out. She was exposed to pesticide drift and fell ill, yet was required to keep working. "I just endured it," she said, of her time in the fields. "It was very difficult."

Mark H. was twelve the summer he first worked in the cotton fields of central Arizona, getting up at 3:00 a.m. and finishing work at 2:00 p.m. His parents, aunts, and uncles had all worked in the fields for years. "My dad started when he was ten years old, and he didn't finish 'til he was twenty-two," Mark H. said. Like his father, Mark H. missed a lot of school and eventually dropped out. Now nineteen years old, he is struggling to catch up on his education. "A lot of my friends worked the fields, and a lot dropped out. I was supposed to graduate last year and I didn't. . . I would tell kids just to finish school. You can't get a good job without a diploma. With a diploma you can go to college. You get more options."

Two years ago, when he was fifteen, Benjamin C. cut his finger badly with a broccoli-harvesting knife. "That knife was so sharp," he said, showing a three-inch long scar running the length of his finger. Instead of taking Benjamin C. to a local hospital or clinic, the field supervisor sent him home to his parents' house in Mexico; from there, his parents took him to a Mexican hospital. This delayed by two or three hours his medical care, and also circumvented the employer's responsibility under workers' compensation law. According to advocates, this is typical in the border region. "The foremen send them off with thirty bucks to Mexico," said one.

In the fields, the United States is like a developing country²

Agricultural work is the most hazardous and grueling area of employment open to children in the United States.³ It is also the least protected.

Hundreds of thousands of children and teens labor each year in fields, orchards, and packing sheds across the United States. They pick lettuce and cantaloupe, weed cotton fields, and bag produce. They climb rickety ladders into cherry orchards, stoop low over chili plants, and "pitch" heavy watermelons for hours on end. Many begin their work days-either in the fields or en route to the fields-in the middle of the night. Twelve-hour workdays are common.

These hardworking youth labor under more dangerous conditions than their contemporaries working in nonagricultural settings. They are routinely exposed to dangerous pesticides, sometimes working in fields still wet with poison, often given no opportunity to wash their hands before eating lunch. They risk heat exhaustion and dehydration, as their employers fail to provide enough water, or any at all. They suffer injuries from sharp knives, accidents with heavy equipment, falls from ladders. Repetitive motions in awkward and punishing poses can interfere with the proper growth of their bodies. Lack of sleep-because they are working too many hours-interferes with their schooling and increases their chances of injury. Depression affects them more often than other minors, a reflection of the cumulative stresses and burdens in their young lives. Only 55 percent of them will graduate from high school.

Farmworker youth face persistent wage exploitation and fraud. One-third of those interviewed by Human Rights Watch reported earnings that were significantly less than minimum wage. Some earned only two or three dollars an hour.

Incredibly, these juvenile workers are protected *less* under United States law than are juveniles working in safer occupations. Under the Fair Labor Standards Act (FLSA), children working on farms may be employed at a younger age than other working children-twelve (even younger under some circumstances) as opposed to fourteen. Employers may also work them for longer hours-in agriculture, there is no limit to the number of hours a child may work. In all other occupations, children under the age of sixteen are limited to three hours of work a day when school is in session. Not only that, but the FLSA does not require overtime pay for agricultural work it does for other occupations. Finally, juveniles in agriculture may engage in hazardous work at the age of sixteen; for all other occupations, the minimum age for hazardous work is eighteen.

The Fair Labor Standards Act claims to prohibit "oppressive child labor." Yet the FLSA permits oppressive child labor in agriculture to continue. The FLSA's bias against farmworker children amounts to de facto race-based discrimination: an estimated 85 percent of migrant and seasonal farmworkers nationwide are racial minorities; in some regions, including Arizona, approximately 99 percent of farmworkers are Latino.⁴ In addition to raising serious concerns under the Equal Protection clause of the U.S. Constitution, this discrimination may violate numerous provisions of international law.

It is discrimination in legal protection-de jure discrimination against farmworker children as opposed to other working children, with a doubly discriminatory effect against Latino children-that leads directly to deprivation of other rights, most notably the right to education and the right to health and safety. By allowing agricultural employers to work children for unlimited hours, United States law severely undermines their opportunity to participate fully in universal education. Longer hours worked also increase the risk to children of pesticide exposure, repetitive-motion disabilities, fatigue and injuries, and depression and substance abuse.

In addition, United States law and practice contravene various international law prohibitions on exploitative and harmful work by children, including standards set by the Convention on the Rights of the Child. The United States appears to be headed toward noncompliance with the 1999 ILO Worst Forms of Child Labor Convention as well, which will enter into force for the U.S. in December 2000. It requires that member governments prohibit and eliminate "the worst forms of child labor." The United States is off to a dubious start in this regard, having claimed that it is already in full compliance with the convention and that no change to law or practice is necessary.

The failings of the FLSA are not the only way that the United States leaves its young farmworkers unprotected. Congress exempts all farms with fewer than eleven employees from enforcement of Occupational Safety and Health Administration (OSHA) regulations. This affects many juvenile farmworkers' well-being directly, compromising their right to a clean and safe work environment.

The Environmental Protection Agency (EPA), meanwhile, offers no greater protection from pesticide contamination for child laborers than it does for adults. There is only one set of regulations and standards, which take as their model the adult male body. The fact that children's bodies are typically both smaller than adults' bodies and developmentally more

vulnerable to pesticide-related damage has not been addressed. The results of this failure to protect children are potentially deadly and are emerging daily all across the United States.

Even to the limited extent that U.S. laws do protect farmworker youth, they are not adequately enforced. The Department of Labor, charged with enforcing the child labor, wage and hour provisions of the FLSA, cited only 104 cases of child labor violations in fiscal year 1998. (Estimates are that there are approximately one million violations related to child labor in U.S. agriculture each year.) The EPA leaves enforcement of its worker safety regulations to the individual states, but expresses little confidence in their ability to perform this task. The Occupational Safety and Health Administration, meanwhile, enforces its regulations in about half of the states, with the other half enforcing their own OSHA-approved "State Plans." Despite the fact that agriculture is second only to mining as the most hazardous occupation, a recent federal study found that OSHA devoted less than 3 percent of its inspections to agriculture. In Arizona, a State-Plan state, no farm inspections at all take place at the initiative of the Industrial Commission of Arizona, the enforcing agency.

The laws and enforcement practices of individual states are no better and sometimes worse. Many states don't even have minimum age requirements for children working in agriculture. All but a handful of states perform no enforcement whatsoever regarding juvenile labor in agriculture.

When violations are discovered and cited, growers frequently escape accountability by hiding behind the farm labor contractors they employ. Farm labor contractors act essentially as middlemen between the growers and the workers. They are paid by growers to hire the necessary workers, get them to the job site, ensure that the work is completed as desired, and pay the workers. When violations of the workers' rights are discovered, the growers frequently emerge untouched by fines and citations, on the grounds that the farm labor contractors and *only* the farm labor contractors are the workers' employers. For the most part, enforcement agencies have acquiesced to the growers on this point. Because farm labor contractors often have little money and no liability insurance, the result is that judgments and fines go unpaid and the workers remain uncompensated. Even when growers are cited and fined, however, sanctions are minimal and insufficient to deter future wrongdoing.

The result of these weak laws and enforcement efforts is that, as a practical matter, farmworking juveniles have second-class status: they enjoy fewer rights than their non-farmworking peers and they are exploited while the government looks the other way. They are vulnerable to occupational injury and illness because their jobs are dangerous; they are worked too hard because employers don't have to limit their hours; and they are underpaid because the growers and farm labor contractors can get away with it.

This report documents a wide range of troubling practices-some legal under current, inadequate domestic law, some blatantly illegal-that affect juvenile farmworkers. Most of these practices affect adult workers too. It is the widespread exploitation of adult workers, in fact, that contributes to the precarious situation of their sons and daughters who also must work in the fields.

If adult farmworkers were paid a living wage-as of 1999, average yearly earnings were less than \$7,500-then their children would be under less pressure to begin working at such young ages and for such long hours. They would get more sleep and rest and more time to study. They would be less likely to drop out of school and, with a high school diploma, would have more options available to them.

This report recommends numerous changes to U.S. law. Key among them: that Congress amend the Fair Labor Standards Act to *protect all working children equally*. This means imposing, for the first time ever, limits on the number of hours children aged fifteen and younger can work in agriculture when school is in session.

Simultaneously with this, however, Congress and the administration must acknowledge that farmworker families need assistance on all fronts. Enforcement of workers' rights, assurance of adequate housing, increased availability of traditional and nontraditional education, free and accessible health care, and other assistance as necessary—these are the minimum conditions necessary to ensure that all children in the United States, including the children of agricultural laborers, have the possibility of a safe, dignified, and healthy start in life.

This report is based on interviews with more than thirty farmworker juveniles, most of them in Arizona, as well as with dozens of farmworker advocates and experts both in Arizona and nationally. The report also draws upon government officials in the areas of labor, agriculture, and health and safety. Except where otherwise noted, all names of farmworker children interviewed have been changed in this report for the protection of privacy and to guard against employer retaliation.

¹ This and all other children's names have been changed, except where otherwise noted.

² Darlene Adkins, Coordinator, Child Labor Coalition. Human Rights Watch telephone interview, January 25, 1999. The Child Labor Coalition, comprised of fifty member organizations, is part of the National Consumers League.

³ Mining, the most dangerous occupation in the country, is not open to those under the age of eighteen. Agriculture is the second-most dangerous occupation overall.

⁴ In the United States, "Latino" refers to people of Latin American ancestry.