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The Deadly Cost of Unregulated Labor: How the United States Fair
Labor Standards Act Violates the International Labour
Organization's ILO Convention No. 182 in Failing to Provide
Protections for Children Working in Agriculture

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Option 3

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Abstract

The Fair Labor Standards Act of 1938 (FLSA) was the first successful comprehensive legislation addressing child labor laws in the United States. While important, the FLSA left a lot to be desired for agricultural child workers as it provides less protections for them than for non-agricultural child workers. This disparity has left child agricultural workers legally allowed to work in hazardous conditions at a young age, and work nearly unlimited hours. For the most part, child labor laws were at a stalemate until 1999 when the United States ratified the International Labor Organization (ILO) Convention No. 182, also known as the Worst Forms of Child Labour Convention. However, the provisions in the United States' FLSA violate the standards set forth in ILO Convention No. 182.

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Introduction

The United States has had a complicated history with child labor laws since the nineteenth century.¹ It utilized child labor as a form of cheap labor during the first century of the United States' formation.² In fact, children between the ages ten and fifteen made up as much as forty percent of the workforce according to the 1880 census.³ As the United States entered the 20th century, the number children in industrial work decreased,

¹ See Child Labor in the United States,

<https://eh.net/encyclopedia/child-labor-in-the-united-states/>

(last visited February 26, 2021) (discussing the different sectors children worked in during the 1800s); see also Amir Radfar et. al., Challenges and Perspectives of Child Labor 27 **Industr. Psychiatry J.** 17, 17-20 (2018) (explaining the ethical issues raised of child labor practices across the world which “has long term physical psychological, behavior, and societal consequences” on child development).

² Id.

³ Child Labor in the United States,

<https://eh.net/encyclopedia/child-labor-in-the-united-states/>

(last visited February 26, 2021) (outlining the census data of children working between 1880-1930).

while the number of children in agricultural work increased.⁴ As of 2021, there are an estimated 500,000 child farmworkers in the United States, ranging from ages eight to eighteen, working in the fields anywhere between three to ten hour plus days.⁵

Considering this high number of children working in agriculture, there is a strong need to address the lack of protections for them under federal child labor laws.⁶ The federal protections that govern child labor laws are provided in the Fair Labor Standards Act (FLSA), which regulates work conditions for children.⁷ There is a great disparity of workplace standards under the FLSA between children in agricultural and industrial work, with industrial child workers having more protections regarding the minimum age, work hours, and hazardous work

⁴ Id.

⁵ **Child Labor in the United States**, <https://www.aft.org/community/child-labor-united-states> (last visited Jan. 31, 2021) (arguing the limited legal protections for child farmworkers).

⁶ Carolyn M. Moehling, State Child Labor Laws and the Decline of Child Labor, 36 **Expl. in Econ. Hist.** 72, 72-74 (1999).

⁷ Fair Labor Standards Act, 29 U.S.C §§ 212, 213 (Outlining the child labor law requirements for agricultural work).

conditions.⁸ Child workers are fatally injured more often in agriculture than in any other industry in the United States, which demonstrates the need for better legal protections for children working in that industry.⁹

The Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, more commonly known as the International Labor Organization (ILO) Convention No. 182 (hereinafter ILO Convention No. 182), was created to address child labor shortfalls and aimed, in Article 3(d), to prohibit labor which was "likely to harm the health, safety or morals of children."¹⁰ This Comment argues that the United States FLSA violates ILO Convention No. 182's Article

⁸ Id.

⁹ Margaret Wurth, More US Child Workers Die in Agriculture Than Any Other Industry, **Human Rights Watch** (Dec. 4, 2018, 5:48PM), <https://www.hrw.org/news/2018/12/04/more-us-child-workers-die-agriculture-any-other-industry> (arguing child farmworkers should have the more protections considering the hazardous conditions they face in the field).

¹⁰International Labor Organization [ILO], Worst Forms of Child Labour Convention, art. 3(d), Jun. 17, 1999, T.I.A.S. No. 13045, 2133 U.N.T.S 161 (creating guidelines to protect to child workers in every sector).

3(d)¹¹ by exempting minors in agricultural work from important protections regarding work hours, hazardous occupations, and minimum working age, as outlined in the Worst Forms of Child Labour Recommendation (hereinafter ILO Recommendation No.190).¹²

Part II of this Comment provides the history of child labor regulation within the United States and introduces the obligations outlined in ILO Convention No. 182 addressing child labor violations.¹³ Part III analyzes how the FLSA violates numerous provisions of ILO Convention No. 182 for child agricultural workers.¹⁴ Part IV presents recommendations for the United States to change the FLSA to come into compliance with

¹¹ Id. at art. 3(d) (providing the technical definition of worst forms of child labor).

¹² Worst Forms of Child Labour Convention Recommendation, adopted June 17, 1999, ILO No. 190 (acknowledging the populations most at risk for the worst forms of child labor and defining hazardous work conditions prohibited in the Worst Forms of Child Labor Convention); Fair Labor Standards Act, 29 U.S.C § 213 (Outlining the child labor law requirements for agricultural work).

¹³ See infra Part II.

¹⁴ See infra Part III.

ILO Convention No. 182.¹⁵ Finally, Part V summarizes key points made in the prior sections, highlighting provisions to initiate change.¹⁶

I. Background

a. History of Child Labor Laws in the United States

The United States federal government has had a complicated history with the regulation of child labor laws. The United States trade labor unions were among the first groups to oppose child labor in the early twentieth century, and later formed the National Child Labor Committee to end the exploitation of child labor in the United States.¹⁷ The leaders of the child labor movements struggled to stir change on the state level, and therefore set their goals at the federal level.¹⁸

¹⁵ See infra Part IV.

¹⁶ See infra Part V.

¹⁷See **Child Labor in the U.S History,**

<https://laborcenter.uiowa.edu/special-projects/child-labor-public-education-project/about-child-labor/child-labor-us-history> (last visited Jan. 24, 2021).

¹⁸ Child Labor in America: History, Policy, and Legislative Issues, **EveryCRSReport** (Nov. 18, 2013),

<https://www.everycrsreport.com/reports/RL31501.html> [hereinafter Child Labor in America] (describing the difficulties faced by

The first attempt to regulate child labor on the federal level was in 1907, when legislation gave the Secretary of Commerce the authority to report on the social, moral, educational, and physical work conditions of women and children in the United States.¹⁹ Using the data collected from the Secretary of Commerce, Congress in 1917 passed the Owen-Keating Act to regulate child labor through the interstate commerce clause.²⁰

reformers on the state level to advocate for policies across different sectors).

¹⁹ U.S. Congress, Senate, 61st Cong., 2nd sess., Document No. 645. Report on Condition of Woman and Child Wage-Earners in the United States, 19 Volumes, Washington, U.S. GPO, 1913; See Id. (explaining the early work of federal government to compile reports on child labor conditions in the United States to create a path for legislation to regulate child labor laws).

²⁰ 64 P.L. 249, 39 Stat. 675, 64 Cong. Ch. 432; *See generally* **Keating-Owen Child Labor Act of 1916 (1916)**, <https://www.ourdocuments.gov/doc.php?flash=false&doc=59> (last visited Jan. 31, 2021) (discussing how the act “banned the sale of products from any factory, shop, or cannery that employed children under the age of 14, from any mine that employed children under the age of 16, and from any facility that had

However, in June 1918, the Owen Keating Act was challenged in the Supreme Court in the landmark case Hammer v. Dagenhart, and the Owen Keating Act was declared unconstitutional.²¹ Another attempt to regulate child labor was through Child Labor Tax Law, but in Bailey v. Drexel Furniture Company, the Supreme Court held the tax unconstitutional under the Tenth Amendment.²² In 1933, Congress passed the National Industrial Recovery Act (NIRA) which included allowing industries to create codes to regulate child labor.²³ Yet, in 1935, the Supreme Court ruled

children under the age of 16 work at night or for more than 8 hours during the day").

²¹ Hammer v. Dagenhart, 247 U.S. 251, 62 L.Ed. 1101 (1918) (holding interstate commerce clause does not give federal government authority over the production of goods in states and the Tenth Amendment expressly provides powers not delegated to the federal government is reserved for the States).

²² Child Labor Tax Case, 259 U.S. 20, 66 L.Ed. 817 (1922) (holding the tax was disguised as a penalty, a power reserved to the states under the Tenth Amendment).

²³ See, Child Labor in America, supra note 7 (discussing how Cotton Textile industry temporarily eliminated child labor).

again against child labor reform and held the NIRA was an “unconstitutional delegation of legislative power.”²⁴

However, in 1936, the Walsh Healy Act passed, which prevented the United States government from purchasing goods produced by underage children.²⁵ The next victory for child labor activists was the Sugar Act of 1937, which prevented farmers from receiving benefits if they violated the minimum age and work hours requirements.²⁶ Finally in 1938, comprehensive legislation regarding child labor laws came with the passage of the FLSA.²⁷

b. Fair Labor Standards Act

The FLSA provides standards and protections for child agricultural workers.²⁸ But, the FLSA only covered a small

²⁴ A. L. A. Schechter Poultry Corp. v. United States, 295 U.S. 495, 519 (holding the interstate commerce clause does not extend to the production of the goods including child labor used to produce the goods).

²⁵ **Child Labor in the U.S History**, supra note 6.

²⁶ See Id. (discussing the child labor protections in the early twentieth century).

²⁷ Fair Labor Standards Act, 29 U.S.C §§ 203, 212 (outlining the child labor protections within the FLSA).

²⁸ Child Labor Bulletin 102 - Child Labor Requirements in Agricultural Occupations Under the Fair Labor Standards Act,

percentage of all child workers when it was first passed.²⁹ Additionally, not all child workers are protected equally - the FLSA creates exemptions for agricultural child workers that do not exist for industrial child workers.³⁰ For instance, the FLSA protects children in non-agricultural work by placing limits on

Department of Labor Wage and Hour Division, (2016)

<https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/childlabor102.pdf>. (describing the labor standards for children in different types of work sectors).

²⁹ History of Child Labor in the United States - Part 2: the Reform Movement, **U.S. Bureau of Labor Statistics,** (2017)

<https://www.bls.gov/opub/mlr/2017/article/history-of-child-labor-in-the-united-states-part-2-the-reform-movement.htm>

(explaining that the FLSA only covered six percent of the 850,000 child workers during its passage in 1938 demonstrating the lack of coverage).

³⁰ Handy Reference Guide to the Fair Labor Standards Act, **U.S.**

Department of Labor

<https://www.dol.gov/agencies/whd/compliance-assistance/handy-reference-guide-flsa> (providing clarification on the protections outlined between agricultural and non-agricultural child workers).

hazardous work, work hours per day, and minimum age.³¹ In contrast, the FLSA permits children in industrial work to work in hazardous conditions, for unlimited hours, and does not have a minimum age requirement for family-owned or operated farms.³²

i. Agricultural Child Workers under the FLSA

Under the FLSA, child agricultural employees are defined as “individual[s] engaged in interstate commerce or in the production of goods for interstate commerce” this includes the production, manufacturing, mining, handling, transporting or any other matter related to the goods in the DOL reporting.³³ However, there are a variety of exemptions available to

³¹ Id.

³² Id.; See generally, Zama Neff, Child Farmworkers in the United States: A “Worst Form of Child Labor” **Human Rights Watch** (Nov. 17, 2011 1:31PM), <https://www.hrw.org/news/2011/11/17/child-farmworkers-united-states-worst-form-child-labor> (discussing the failure of the federal government in protecting children in working agricultural subjecting them to hazardous work conditions).

³³ Child Labor Bulletin 102 - Child Labor Requirements in Agricultural Occupations Under the Fair Labor Standards Act, supra note 31.

employers of agricultural child workers under the FLSA.³⁴ The FLSA provides complete child labor exemptions for children employed on a farm owned or operated by their parent or guardian.³⁵ A child as young as twelve years old can work on the farm that is operated or owned by their parent.³⁶ Fourteen and fifteen year-olds may work an unlimited hours outside of school hours.³⁷ In addition, sixteen year-olds are able to work an unlimited amount of hours, even during school hours.³⁸ Also,

³⁴ Id.

³⁵ **Fair Labor Standards Act Advisor**, <https://webapps.dol.gov/elaws/whd/flsa/docs/hours.asp> (last visited Jan. 6, 2021).

³⁶ **Children in the Fields Campaign**, <https://afop.org/wp-content/uploads/2010/07/Children-in-the-Fields-Campaign-Fact-Sheet.pdf>, (last visited February 8, 2021) (outlining the work conditions between non-agriculture and agricultural child workers).

³⁷ Id. (discussing how fourteen and fifteen year-olds in agricultural occupations have no restrictions on the number of hours work per day compared to teens of that same age group in non-agricultural occupations).

³⁸ **Youth in Agriculture**, <https://www.osha.gov/SLTC/youth/agriculture/other.html> (last

Sixteen year olds have no restrictions as to hazardous work conditions or working hours for farm labor.³⁹ These hazardous conditions include operating a forklift, chainsaw, tractors, machinery, and interacting with chemicals, dynamite, and ammonia.⁴⁰

ii. Non-agricultural Child Workers under the FLSA

In comparison, non-agricultural employers have extremely limited exemptions for children working in hazardous conditions under the FLSA.⁴¹ Also, there is a minimum age requirement for non-agricultural workers: they cannot work under the age of

visited Feb. 8, 2021) (discussing the child labor laws under the FLSA and the exemptions outlined for child agricultural workers).

³⁹ Fair Labor Standards Act Advisor, supra note 23.

⁴⁰ Id. (finding that disproportionately higher of child farm worker fatalities were among children fifteen years and younger working at family owned farms).

⁴¹ Child Labor Bulletin 101 - Child Labor Requirements in Non-agricultural Occupations Under the Fair Labor Standards Act, Department of Labor Wage and Hour Division, 8 (2016) <https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/childlabor101.pdf> (detailing the child labor law provisions for non-agricultural occupations and exemptions).

fourteen.⁴² Another difference is that fourteen and fifteen year olds non-agricultural workers are prohibited in working in hazardous conditions outlined by Department of Labor.⁴³ In addition, fourteen and fifteen year olds in non-agricultural workers have limitations in number of hours they can work a day, with a maximum of three hours of work on a school day and eight hours of work on a non-school day.⁴⁴ Children working in agriculture do not receive the same beneficial protections as children working in other industries, even though they are more at risk of injuries and fatalities due to the dangerous nature of the work.⁴⁵

c. Workplace Fatalities and Injuries

⁴² **Children in the Fields Campaign**, supra note 38.

⁴³ Id.

⁴⁴ Id. (outlining the differences of work hours between agricultural and non-agricultural child workers); see Child Labor Bulletin 101 - Child Labor Requirements in Non-agricultural Occupations Under the Fair Labor Standards Act, at 1.

⁴⁵ Id.

Agricultural child workers in the United States have a high risk of workplace fatalities and injuries.⁴⁶ Child agricultural work only accounts for five and a half percent of the child labor force, but accounts for the largest number of fatalities and injuries.⁴⁷ The United States Government Accountability Office (GAO)'s report on working children compiled data on workplace injuries and fatalities.⁴⁸ The GAO found that from 2003 to 2016, agricultural child work accounted for fifty-two percent of child workplace fatalities, while other industries with child labor such as construction, mining, and quarrying, oil, and gas accounted for only thirteen percent of child workplace fatalities.⁴⁹ Even more alarming, 31.4 percent of work-related,

⁴⁶ Margaret Wurth, Historic Commitment to End Worst Forms of Child Labor, **Human Rights Watch** (Aug. 5, 2020 10:09AM) <https://www.hrw.org/news/2020/08/05/historic-commitment-end-worst-forms-child-labor> (arguing the child farmworkers injuries and deaths could be prevented by better workplace protections).

⁴⁷ Government Accountability Office, **Working Children Federal Injury Data and Compliance Strategies Could be Strengthened** 27 (2018).

⁴⁸ *Id.*

⁴⁹ Id. at 28.

child fatalities are children under the age of fourteen.⁵⁰ The amount of injuries suffered by agricultural workers is also great, with child workers suffering an estimated 10,000 between 2012 and 2014.⁵¹ The majority of these injuries are incurred by children working on a family farm, under the age of fifteen, or on smaller farms with less than ten workers.⁵²

These injuries are exacerbated by the underreporting of labor violations from employees for fear of deportation.⁵³ The next leading industry in child fatalities is construction and mining accounting for thirteen percent of child fatalities.⁵⁴ Between 2003 and 2016 the number of fatalities of children working in agriculture totaled to 237 deaths, however many believe the number of child fatalities is much larger as children deaths in

⁵⁰ Id. at 30.

⁵¹ Id. at 35.

⁵² Id. at 27.

⁵³ Maria M. & Marcos M. Child Labor in the US Agriculture, **Human Rights Watch**, (May 5, 2010), <https://www.hrw.org/report/2010/05/05/fields-peril/child-labor-us-agriculture> (discussing the dangers faced by child agricultural workers in the United States).

⁵⁴ Id. at 25.

agricultural is underreported.⁵⁵ The ILO acknowledges that agricultural work is one of the most dangerous work sectors.⁵⁶ The ILO estimates 170,000 deaths a year in agricultural work,

⁵⁵ Id. (displaying a graph with the number of child fatalities in in agriculture); see Salah F. Issa, et al., Estimating the Number of Agricultural Fatal Injuries Prevented by Agricultural Engineering Developments in the United States, 5,63 **U.S. Department of Agriculture, National Institute of Food and Agriculture**, 1, 1-11, 8 (2019) (discussing that fatal injuries may be underreported in agriculture because of OSHA limited farm regulations) ; see generally, ILO warns on farm safety Agriculture mortality rates remain high Pesticides pose major health risks to global workforce, https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_008027/lang--en/index.htm (last visited Mar. 19, 2021) (explaining how agricultural work conditions tend not to be included in national law).

⁵⁶ **Agriculture: A Hazardous**, https://www.ilo.org/safework/areasofwork/hazardous-work/WCMS_110188/lang--en/index.htm (last visited Jan. 23, 2021) (addressing agricultural workers face hazardous work conditions due to the risks associated with the physically demanding outdoor work).

with many due to the hazardous work conditions such as the exposure to harmful chemicals.⁵⁷ The long term exposure to these chemicals can have disastrous effects leading to injury and illness, pesticide poisoning, and death.⁵⁸

Additionally, the ILO argues that the number may be greater due to underreporting of injuries and fatalities.⁵⁹ The Human Rights Watch estimates that thirty-three farm working children are injured a day in the United States.⁶⁰

d. State Efforts to Establish Child Labor Reforms

⁵⁷ Id.

⁵⁸ See Melissa J. Perry, Children's Agricultural Health: Traumatic Injuries and Hazardous Inorganic Exposures, **J Rural Health**. 2003 Summer;19(3):269-78. doi: 10.1111/j.1748-0361.2003.tb00573.x. PMID: 12839135 (explaining how hazardous work conditions along with long hours of work for children in the farm environment, has long term health effects which can go undetected); accord Wurth, supra note 80.

⁵⁹ Id.

⁶⁰ Wurth, supra note at 48.

California has a large population of child agricultural workers.⁶¹ Cesar Chavez and Dolores Huerta were instrumental in paving the way for labor reforms for migrant agricultural workers and their families in California.⁶² They led the National Farm Workers Association (NFWA) which was later renamed the United Farm Workers (UFW).⁶³ The UFW advocated to improve the lives of farmworkers and the Latino community.⁶⁴ Through the UFW's advocacy efforts, California passed the Agricultural Labor Relations Act to allow for collective bargaining of farmworkers and established the Agricultural Labor Relations Board to oversee the implementation of the Act.⁶⁵ Even after this landmark

⁶¹ The State of Farmworkers in California, **Center for Farmworker Families**, <https://farmworkerfamily.org/information> (last visited April 02, 2021).

⁶² Cesar Chavez, <https://www.learningtogive.org/resources/ch%C3%A1vez-c%C3%A9sar> (last visited Mar. 7, 2021) (discussing the life history of Cesar Chavez and the issues he pursued during the labor rights movement he led).

⁶³ Id.

⁶⁴ Id.

⁶⁵ California Agricultural Labor Relations Act, Cal. Lab. Code §§ 1140 – 1140.4 (Deering) (1975); See Reid Maki, The Legacy of

achievement in the labor rights movement, Cesar Chavez and Dolores Huerta continued to fight for farmworkers rights and the lives of farm-working children.⁶⁶ Chavez advocated for better policies to protect farm-working children, as he was troubled by the high mortality rate of babies born to migrant workers, particularly in the Latino Community.⁶⁷ In 1986, Cesar Chavez led the "Grapes of Wrath" campaign to raise awareness about

César Chávez on César Chávez Day - How his Vision Inspires our Work on Child Labor, **The Child Labor Coalition** (Mar. 31, 2015), <https://stopchildlabor.org/?p=4189> (discussing the advocacy work of Cesar Chavez and Dolores Huerta during the 1960s and the organization's goal to change United States labor laws to not discriminate against the Latino children).

⁶⁶ Reid Maki, supra note 66; Debra Michals, Dolores Huerta, **National Women's History Museum** (2015), <https://www.womenshistory.org/education-resources/biographies/dolores-huerta#:~:text=Huerta%20briefly%20taught%20school%20in,organizing%20farmers%20and%20farm%20workers.&text=She%20also%20founded%20the%20Agricultural%20Workers%20Association> (explaining the role Dolores Huerta had in the Chicano labor rights movement in California).

⁶⁷ Id.

pesticide poisoning and hazardous chemicals farm workers and their children were exposed to while working.⁶⁸

e. Recent Developments in Child Labor Law

The Children's Act for Responsible Employment (CARE Act) presented by Representative Lucille Roybal-Allard (D-CA) on June 12, 2013 raised the minimum age of agricultural workers from fourteen to sixteen and raised the age of children in hazardous work conditions from sixteen to eighteen.⁶⁹ Unfortunately, this bill failed in 2013, but Representative Roybal-Allard has continued to reintroduce this bill every session of Congress.⁷⁰

⁶⁸ Maureen Pao, Cesar Chavez: The Life Behind A Legacy Of Farm Labor Rights, **NPR** (Aug. 12, 2016)

<https://www.npr.org/2016/08/02/488428577/cesar-chavez-the-life-behind-a-legacy-of-farm-labor-rights#:~:text=Chavez's%20work%20and%20that%20of,1975%20that%20codified%20and%20guaranteed> (illustrating a timeline of Cesar Chavez's life and labor movement events).

⁶⁹ Rep. Roybal-Allard, 24 Cosponsors Reintroduce CARE Act to Strengthen Protections for Child Farmworkers, **Congresswoman Lucille Roybal-Allard** (Jun. 19, 2019), <https://roybal-allard.house.gov/news/documentsingle.aspx?DocumentID=401599> (explaining the provisions within the CARE Act).

⁷⁰ Id.

f. ILO Convention No. 182 & ILO Recommendation No. 190

For many years, child labor laws and conditions were at a standstill in the United States. On June 17, 1999, The Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, now more commonly known as ILO Convention No. 182, was universally ratified by all 187 Member States in the International Labour Organization (ILO).⁷¹ The United States Senate unanimously ratified the Convention on November 5, 1999 with the support of the Clinton Administration.⁷² President Clinton also issued Executive Order 13123 to stop the federal government from purchasing products made with forced child labor.⁷³

A key provision of ILO Convention No. 182 is Article 3(d) which defines the worst forms of child labor as "work which, by its nature or the circumstances in which it is carried out, is

⁷¹ Worst Forms of Child Labour Convention, supra note 6.

⁷² Ratification of ILO Convention on Worst Forms of Child Labor, **U.S. Department of State** (Jan. 20, 2009), https://1997-2001.state.gov/issues/economic/991202_fsdos_bkilo.html (discussing the Clinton's Administration support of the Worst Forms of Child Labour Convention).

⁷³ Id.

likely to harm the health, safety or morals of children.”⁷⁴ Furthermore, ILO expands upon this definition that worst forms of child labor is “work that deprives children of their childhood, their potential and their dignity, and that is harmful to physical and mental development.”⁷⁵ The worst forms of child labor is further defined in article 3 of the Worst Forms Child Labour Convention Recommendation No. 190 as “work with dangerous machinery, equipment and tools, or which involves the manual handling or transport of heavy loads;” or work in an unhealthy environment exposing children to hazardous substance, temperatures, noise levels or “work under particularly difficult conditions such as work for long hours.”⁷⁶ The ILO Convention Recommendation No. 190 supplements the ILO Convention No. 182 by

⁷⁴ Worst Forms of Child Labor Convention, supra note 6.

⁷⁵ What is Child Labour, **ILO**,
<https://www.ilo.org/ipecc/facts/lang--en/index.htm>.

⁷⁶ Worst Forms of Child Labour Convention Recommendation No. 190, art. 3(c)-(e), adopted June 17, 1999, ILO No. 190 (including additional protocols in the Worst Forms of Child Labor Convention describing the application of the Convention article).

providing additional guidelines on how it should be implemented, but unfortunately, recommendations are not legally binding.⁷⁷

Article 2 of the ILO Convention No. 182 also establishes that the Convention apply to all persons under the age of eighteen.⁷⁸ Article 6 of the ILO Convention No. 182 requires Member States to “design and implement programmes of action to eliminate as a priority the worst forms of child labour.”⁷⁹ This is further reinforced Article 4 of the ILO Recommendation No. 190 also describes States’ obligation to create a supervising authority - to consult with employees and employers on regulations.⁸⁰ In addition, the ILO Recommendation No. 190 urges Member States to create mechanisms for compiling data to determine which demographic and areas must be urgently be addressed and requires

⁷⁷ Conventions and Recommendations, **ILO**, <https://www.ilo.org/global/standards/introduction-to-international-labour-standards/conventions-and-recommendations/lang--en/index.htm> (last visited Apr. 2, 2021).

⁷⁸ Worst Forms of Child Labour Convention, supra note 6, at art. 2 (defining children under the age of eighteen and protected under the convention).

⁷⁹ Id. at art. 6 (outlining the obligation of the state to create programs to consult and protect workers).

⁸⁰ Id. at paragraph 2.

periodic reports on the different types of work which implement child labor.⁸¹ Lastly, Article 7 of the ILO Convention No. 182 also ensures Member States implement the Convention through stressing the importance of education in eliminating and preventing the worst forms of child labor.⁸²

Since the Member States' ratification of ILO Convention No. 182 in 1999, the ILO has seen nearly a forty percent decrease in the worst forms of child labor world-wide.⁸³ Other Member States, such as New Zealand adopted provisions of the ILO Convention No. 182 in their national child labor law.⁸⁴

⁸¹ Id. at Paragraph 3.

⁸² Worst Forms of Child Labour Convention, supra note 6, at art. 7 (defining the state's obligation to ending child labor and prevent the worst forms of child labor).

⁸³International Labor Organization: Child Labor Convention Ratified by All ILO Member States, a First in ILO History, **Library of Congress** (Oct. 1, 2020), <https://www.loc.gov/law/foreign-news/article/international-labor-organization-child-labor-convention-ratified-by-all-ilo-member-states-a-first-in-ilo-history/> (discussing how child labor laws impacted the ratification of ILO Convention No.182).

⁸⁴ **Children and young people on farms**, <https://www.worksafe.govt.nz/topic-and->

g. International Labor Convention - Minimum Age

Convention No. 138

ILO Convention No. 182 was not the only an international agreement to set the standard for international child labor law norms.⁸⁵ The International Labour Convention Minimum Age Convention No. 138 (hereinafter Minimum Age Convention) was the predecessor of the ILO Convention No. 182 and established the minimum age for work at fifteen years old with limited exceptions.⁸⁶ Unfortunately, the United States has not ratified the 1973 Minimum Age Convention, demonstrating a lack of commitment to regulating the age at which children should begin

industry/agriculture/keeping-safe-on-farms/children-and-young-people-on-farms/ (last visited Mar. 20, 2021.) (discussing the child labor law standards implemented in New Zealand).

⁸⁵ International Labour Organization (ILO), Minimum Age Convention 1973 (No. 138), June 26, 1973, U.N.T.S. 14862; Worst Forms of Child Labour Convention, at Preamble; See also, The Paquete Habana, 175 U.S. 677 (1900) (holding international law norms supports costal fishing vessels cannot be captures as prizes of war).

⁸⁶ Minimum Age Convention, at art. 10

working.⁸⁷ United States is not the only Member State to ratify ILO Convention No. 182 but not the Minimum Age Convention, New Zealand also followed the same approach.⁸⁸ The lack of minimum age is confirmed in the FLSA, which does not set a minimum age for minor agricultural workers.⁸⁹ The United States has had a strained relationship with ILO Conventions, putting in perspective the United States' desire to not update the FLSA.⁹⁰

⁸⁷ Up-to-date Conventions and Protocols not ratified by United States of America,
https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11210:0::NO::P11210_COUNTRY_ID:102871 (last visited March 5, 2021).

⁸⁸ See Country Baseline Under the ILO Declaration Annual Review, https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_752589.pdf (last visited Mar. 20, 2021.) (explaining New Zealand's views on the Minimum Age Convention).

⁸⁹ See generally, Matthew Mason, Compliance of the United States with International Labor Law, 98 **Minn. L. Rev.** 1842, 1875-76 (2014) (discussing the legal relationship between ILO Convention and the United States).

⁹⁰ Id.

II. Analysis

The FLSA violates ILO Convention No. 182 Article 3(d)⁹¹ because it exempts minors in agriculture work protections from the work hours, hazardous occupations, and minimum working age outlined in the ILO Recommendation No.190. Prior to the FLSA, nearly all government regulation on child labor created through legislation was struck down in the Supreme Court, which stated that the Commerce Clause could not be applied to all aspects of production in interstate commerce.⁹² It was not until Congress passed the Fair Labor Standards Act (FLSA) in 1938 that child

⁹¹ Id. at art. 3(d) (providing the technical definition of worst forms of child labor).

⁹² Hammer v. Dagenhart, 247 U.S. 251, 62 L.Ed. 1101 (1918) (holding the Owen-Keating Act as unconstitutional as the Commerce Clause cannot regulate the production of products within the states); accord, Bailey v. Drexel Furniture Company, 259 U.S. 20 (1922) (finding the child labor tax of 1919 as unconstitutional); accord Schechter Poultry Corp. et al. v. United States, 295 U.S. 495) (declaring the National Industrial Recovery Act of 1933 was unconstitutional as the stream of interstate commerce is not included under federal authority of the Commerce Clause).

labor became regulated.⁹³ The FLSA created standards and working conditions for children in the agricultural and non-agricultural sector.⁹⁴ However, the standards for these two different types of work are drastically different, leaving child agricultural workers most at risk and with limited protections under the FLSA.⁹⁵ For agricultural child workers, The FLSA has many exemptions regarding minimum age, work hours, and hazardous work conditions.⁹⁶

a. Enforceability of the ILO Convention No. 182

The US cannot argue that ILO Convention 182 is not obligated because the treaty is not self-executing. Through the FLSA Congress has implemented the Convention domestically

⁹³ Child Labor Bulletin 102 - Child Labor Requirements in Agricultural Occupations Under the Fair Labor Standards Act, supra note at 1.

⁹⁴ Id.

⁹⁵ Handy Reference Guide to the Fair Labor Standards Act, **U.S. Department of Labor** <https://www.dol.gov/agencies/whd/compliance-assistance/handy-reference-guide-flsa> (explaining the different wage, age, and hour requirements for agricultural and non-agricultural child workers).

⁹⁶ Id.

through ratification of the Senate.⁹⁷ Congress has also executed parts of the treaty through the FLSA, demonstrating the enforceability of the treaty.⁹⁸ If the United States did not want to create this international standard for the worst forms of child labor, it had ample opportunity to denounce the treaty or submit a reservation.⁹⁹ The United States national legislation to address child labor laws, the universal adoption of ILO Convention No. 182, and lack of formal declaration of reservation or denouncement by the United States makes the ILO Convention No. 182 legally binding.¹⁰⁰

⁹⁷ Cf., Medellín v. Texas, 552 U.S. 491 (2008) (holding that the United States court is not bound by judicial decision on the international front and thus treaties cannot be enforced by the President alone).

⁹⁸ Id. (discussing how Congress taking action by having legislation to which incorporates parts of the treaty is binding).

⁹⁹ Worst Forms of Child Labour Convention No. 182.

¹⁰⁰ Id.; Cf., Medellín, 552 U.S. 491 (addressing the concerns of finding non-executing treaty binding). See Filartiga, 630 F.2d 876 (holding international norms in human rights leads to jurisdiction under the Alien Tort Statute

Another factor to consider the enforceability of ILO Convention No. 182, is that the Convention provides Member State's independence in implementing the treaty at the international level.¹⁰¹ Although this ILO Convention No. 182 provides instructions on how the Member States should report on their child labor standards, but it leaves a lot of room for ambiguity.¹⁰² ILO Convention states: "The list of the types of work determined under paragraph 1 of this Article shall be periodically examined and revised as necessary, in consultation with the organizations of employers and workers concerned."¹⁰³ Although the DOL has been reporting on the types of work considered the worst forms of child labor, the DOL has not made necessary revisions to comply with ILO Convention No. 182, as

¹⁰¹ Worst Forms of Child Labour Convention No. 182, at art. 4 (discussing the state's obligation in implementing the convention's article 3 provisions in national laws or regulations).

¹⁰² Id.

¹⁰³ Id.

they have not consulted with organization or representatives of child agricultural workers in violation of article 3 and 4.¹⁰⁴

In examining other countries who have ratified the ILO Convention No. 182, New Zealand has implemented national legislation to conform to the Convention.¹⁰⁵ The Health and Safety Employment Regulations of 1995 prohibits children fifteen

¹⁰⁴ Id.; Child Labor Bulletin 102 - Child Labor Requirements in Agricultural Occupations Under the Fair Labor Standards Act, supra note 31.

¹⁰⁵ New Zealand - Country baselines under the ILO Declaration Annual Review (2000-2008): Effective Abolition of Child Labour (CL), **ILO** (Feb. 15, 2008) https://www.ilo.org/declaration/follow-up/annualreview/archiveofbaselinesbycountry/WCMS_DECL_CL_NZL/lang--en/index.htm (describing the ILO Convention New Zealand has ratified); See **Country Baseline Under the ILO Declaration Annual Review**, https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_752589.pdf (last visited Mar. 20, 2021.) (discussing the reporting made by the Department Labour on the Member State's legislation to effectively abolition child labour).

years old from working in dangerous workplaces.¹⁰⁶ Also, children under fifteen years cannot work with machinery or ride or drive tractors or any other hazardous conditions.¹⁰⁷ New Zealand also has a limit on time and hours a day children under sixteen years old can work, thus reinforcing international norms of child labor standards.¹⁰⁸ Comparatively, The United States minimum age for hazardous condition is sixteen and agricultural child

¹⁰⁶ **Country Baseline Under the ILO Declaration Annual Review**, https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_752589.pdf (last visited Mar. 20, 2021.) (explaining the child labor law restrictions on fifteen and sixteen years olds).

¹⁰⁷ Id.

¹⁰⁸ See Country Baseline Under the ILO Declaration Annual Review, https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_752589.pdf (last visited Mar. 21, 2021); see also Children and Young People on Farms, <https://www.worksafe.govt.nz/topic-and-industry/agriculture/keeping-safe-on-farms/children-and-young-people-on-farms/> (last visited Mar. 21, 2021) (describing the national legislation protecting child agricultural workers in New Zealand).

workers do not have limit of hours they can work if they farm is operated or owned by their parents.¹⁰⁹

b. FLSA violates ILO Convention No. 182 article 3

ILO Convention No. 182 set the international standard and obligations for child labor laws for Member States to implement in their domestic policy to eliminate the worst forms of child labor.¹¹⁰ The exemptions outlined in the United States' FLSA for agricultural child workers directly violate ILO Convention No. 182. Article 3(d) of ILO Convention prohibits "work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children."¹¹¹ Article 3(a)- (e) describe the types of work considered the worst forms of child labor:

(a) work which exposes children to physical, psychological or sexual abuse;

¹⁰⁹ **FLSA - Child Labor Rules Advisor,**

<https://webapps.dol.gov/elaws/whd/flsa/cl/exemptions.asp> (last visited Feb. 11, 2021).

¹¹⁰ See **ILO Conventions on Child Labour,**

<https://www.ilo.org/ipec/facts/ILOconventionsonchildlabour/lang-en/index.htm> (last visited Feb. 10, 2021) (discussing ILO Conventions which make child labor standards an international priority).

¹¹¹ Worst Forms of Child Labour Convention, at art. 3.

- (b) work underground, under water, at dangerous heights or in confined spaces;
- (c) work with dangerous machinery, equipment and tools, or which involves the manual handling or transport of heavy loads;
- (d) work in an unhealthy environment which may, for example, expose children to hazardous substances, agents or processes, or to temperatures, noise levels, or vibrations damaging to their health;
- (e) work under particularly difficult conditions such as work for long hours or during the night or work where the child is unreasonably confined to the premises of the employer.¹¹²

These articles create legal obligations for Member States to abide by and set clear guidelines on what they should implement at the domestic level.¹¹³ However, the United States has not followed the provisions set out in the Recommendation, as the Fair Labor Standards Act creates exemptions for agricultural child labor workers, allowing them to legally work in hazardous work conditions, long

¹¹² Worst Forms of Child Labour Convention Recommendation, at art. 3.

¹¹³ See Reeves, Teresa Young. Harvest of Danger: The Child Farmworker in the United States Human Rights Brief 8, no. 2 (2001): 12-14 (discussing the United States obligations under the Worst Forms of Child Labor Convention).

work hours, and below the minimum age.¹¹⁴ This section argues that the FLSA allows children to work in hazardous work condition, long work hours, and lacks a minimum age requirement for agricultural child workers violating the ILO Convention No. 182 child labor standards.

i. The FLSA Allows Children to Work in Hazardous Work Conditions violating ILO Convention No. 182.

Many agricultural work by children fits the definition of the worst forms of child labor outlined in Article 3(d) of the ILO Convention No. 182.¹¹⁵ In fact, many types of child agricultural work is considered hazardous and prohibited under the ILO Convention No. 182.¹¹⁶ The ILO Convention No. 182 defines a hazardous work environment as one which "expose[s] children to hazardous substances, agents or processes, or to temperatures, noise levels, or vibrations damaging to their health," and "work

¹¹⁴ FLSA - Child Labor Rules Advisor, <https://webapps.dol.gov/elaws/whd/flsa/cl/exemptions.asp> (last visited Jan. 24, 2021).

¹¹⁵ Worst Forms of Child Labour Convention, supra note 111, at art. 3.

¹¹⁶ Worst Forms of Child Labour Convention Recommendation, supra note 112, at art. 3.

with dangerous machinery, equipment and tools, or which involves the manual handling or transport of heavy loads.”¹¹⁷ However, the FLSA allows agricultural child employees to work in hazardous work conditions, in comparison to non-agricultural child workers who are prohibited.¹¹⁸ For instance, there is no restriction for children working in hazardous work conditions on farms owned or operated by their parent or a person in place of their parent.¹¹⁹ This circumstance is very common, as much of the agricultural child worker population are children whose parents own the farm

¹¹⁷ Worst Forms of Child Labour Convention Recommendation, at art. 3.

¹¹⁸ Fair Labor Standards Act, 29 U.S.C. § 203; Child Labor Bulletin 102 - Child Labor Requirements in Agricultural Occupations Under the Fair Labor Standards Act, Department of Labor Wage and Hour Division, (2016) <https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/childlabor102.pdf> (discussing the agricultural and non-agricultural provisions in the FLSA).

¹¹⁹ **FLSA - Child Labor Rules Advisor**, <https://webapps.dol.gov/elaws/whd/flsa/cl/exemptions.asp> (last visited Feb. 11, 2021).

or who are children of employees operating the farm.¹²⁰ In comparison, non-agricultural child workers are prohibited from working in hazardous works under the age of eighteen.¹²¹ In

¹²⁰ See **Protecting Youth at Work: Health, Safety, and Development of Working Children and Adolescents in the United States** 150-151 (1998). (discussing the reasoning for parents employing their children in agricultural work); see also, Marsha Mercer, Children as Young as 10 Can Do Farm Work in Some States, **Stateline** (Aug. 30, 2013) <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2013/08/30/children-as-young-as-10-can-do-farm-work-in-some-states> (explaining how the exemptions in the FLSA can legally allows children as young as twelve years old to work with heavy machinery on family owned farms).

¹²¹**Child Labor Provisions of the Fair Labor Standards Act (FLSA) for Non-agricultural Occupations** <https://www.dol.gov/agencies/whd/fact-sheets/43-child-labor-non-agriculture> (last visited Feb. 11,2021) (outlining the types of hazardous occupations banned for non-agricultural child workers). **FLSA - Child Labor Rules Advisor**, <https://webapps.dol.gov/elaws/whd/flsa/cl/exemptions.asp> (Last visited Mar. 6, 2021). (“The circumstances where 14- and 15-year-olds may be employed in certain hazardous occupations” are if “the Work is incidental to the training; Work shall be

reality, there is limited monitoring of these required additional conditions, and many children are left working in hazardous conditions with little to no training.¹²² Children are able to work with harmful pesticides, in tobacco fields, and use dangerous machinery.¹²³ There are consequences to children working in these conditions - Human Rights Watch estimates thirty three children are injured on United States farms every day.¹²⁴ The lack of restrictions on hazardous works conditions

intermittent, for short periods of time, and under the direct and close supervision of a qualified, experienced person; School shall give safety instruction coordinated by the employer with on-the-job training; and a schedule of organized and progressive work processes to be performed on the job has been prepared".)

¹²² Contra Id.

¹²³ Wurth, supra note at 48; see generally, **Protecting Youth at Work: Health, Safety, and Development of Working Children and Adolescents in the United States**, supra note at 73.

¹²⁴ Wurth, supra note at 48; Government Accountability Office, supra note 38, at 35 (discussing in two years alone, between 2012 and 2014, child agricultural workers suffered 10,000 injuries).

for child agricultural workers has led to disastrous consequences and fatalities.¹²⁵

Children are also able to work in hazardous occupation through the use of dangerous and heavy machinery in violation of ILO Convention No. 182 Recommendation article 3(c).¹²⁶ As compared to other Member States who ratified the ILO Convention 182, New Zealand's Health and Safety Employment Regulations does not allow children under the age of fifteen to work in hazardous work conditions such as operating machinery, or riding or driving a tractor, but twelve year olds can use a tractor if they have been fully trained.¹²⁷ However, the United States FLSA legally allows children working on family owned or operated farms to work in hazardous occupations defined by the FLSA.¹²⁸

¹²⁵ Id.

¹²⁶ Worst Forms of Child Labour Convention Recommendation, at art. 3.

¹²⁷ Roth, Paul, "Child Labour in New Zealand: a job for the nanny state?" [2010] OtaLawRw 2; (2010) 12 Otago Law Review 245 (discussing the child labor regulations in New Zealand for numerous work sectors).

¹²⁸ Child Labor Bulletin 102 - Child Labor Requirements in Agricultural Occupations Under the Fair Labor Standards Act, supra note 71 at 27.

For instance, children can use operate any machinery such as: forklift, earthmoving equipment, chainsaw, work on heights over twenty feet, driving tractors, manure pit, "oxygen deficient or toxic atmosphere," handle toxic agricultural chemicals, blasting agents, dynamite, and ammonia.¹²⁹ Children permitted to use heavy machinery violates ILO Convention No. 182 Recommendation 3(c) and 3(d).¹³⁰ The United States exposes children to an unhealthy work environment of chemical agents and pesticides constituting a hazardous work environment under the definition set forth in ILO Convention No. 182 Recommendation.¹³¹ The FLSA legally allows children on family owned or operated farms to work in hazardous work conditions.

¹²⁹ Id. (finding that disproportionately higher of child farm worker fatalities were among children fifteen years and younger working at family owned farms).

¹³⁰ Worst Forms of Child Labour Convention Recommendation, at art. 3 ("work[ing] with dangerous machinery, equipment and tools, or which involves the manual handling or transport of heavy loads").

¹³¹ Id. at art. 3 ("work[ing] in an unhealthy environment which may, for example, expose children to hazardous substances, agents or processes, or to temperatures, noise levels, or vibrations damaging to their health").

The exemptions in the FLSA for agricultural child workers are in direct violation of the United States' obligation to prevent hazardous work conditions outlined in ILO Convention No. 182, especially the lack of restriction for children working on small farms owned or farms operated by child workers' parents.¹³² The ILO acknowledges that much of agricultural work is inherently hazardous and better mechanisms are needed in place to protect workers.¹³³ Unfortunately, the FLSA violates ILO Convention No. 182 and ILO Recommendation No. 190 in numerous ways, failing to protect child agricultural workers.

ii. The Number of Hours Agricultural Child Workers

Can Work under the FLSA violates the ILO Convention
No. 182

ILO Convention No. 182 Recommendation prohibits children from "work[ing] under particularly difficult conditions such as work for long hours or during the night or work where the child is

¹³² Worst Forms of Child Labour Convention, at art. 3.

¹³³ **Agriculture: A Hazardous,**

https://www.ilo.org/safework/areasofwork/hazardous-work/WCMS_110188/lang--en/index.htm (last visited Jan. 23, 2021)

(finding hazardous work conditions were exasperated because of lack of enforcement by the national government on the international obligations).

unreasonably confined to the premises of the employer.”¹³⁴ The FLSA, however, provides many exemptions for child farmworkers regarding the hours they are allowed to work per day.¹³⁵ For instance, parents who own or operate farms have no restrictions on the hours their children can work each day.¹³⁶ The only restriction for hours is that minor child farm workers, under age sixteen, cannot work during school hours - otherwise, they can work for unlimited hours.¹³⁷ This is in direct violation of Article 6 in which each Member State is responsible for implementing programs to eliminate worst forms child labour.¹³⁸

¹³⁴ Worst Forms of Child Labour Convention, at art. 3.

¹³⁵ Fair Labor Standards Act § 213; accord **FLSA - Child Labor Rules Advisor**, supra note at 72.

¹³⁶ Id. (detailing the exemptions for child workers on small farms)

¹³⁷ See Child Labor Bulletin 102 - Child Labor Requirements in Agricultural Occupations Under the Fair Labor Standards Act, supra note at 84 (describing the school hours requirement in the FLSA prohibiting non-agricultural child workers from the hours school is in session).

¹³⁸ Worst Forms of Child Labour Convention, supra note 116, at art. 6 (discussing the state obligation to implement and create

In comparison, Non-agricultural child workers, in contrast, have restricted hours from age fourteen to fifteen.¹³⁹ It is not until non-agricultural child workers reach age sixteen that they may work unlimited hours per day.¹⁴⁰ Undoubtedly, there is a great disparity between permitted work hours for agricultural and non-agricultural child workers.¹⁴¹ The FLSA also violates Article 7 of the ILO Convention No. 182 as Member States failed to implement and enforce programs to prevent the worst forms of child labor by allowing many agricultural children work unlimited hours.¹⁴² In comparing to other Member States, New Zealand places a limit on work hours that children under the age of sixteen who cannot work between the hours of 10pm and 6am.¹⁴³

institutions to prioritize on elimination the worst forms of child labor).

¹³⁹ **Child Labor Provisions of the Fair Labor Standards Act (FLSA) for Non-agricultural Occupations**, supra note at 74.

¹⁴⁰ Id.

¹⁴¹ Id.

¹⁴² Worst Forms of Child Labour Convention, supra note 116, at art. 7 (eliminating the worst forms of child labor through education and prevention).

¹⁴³ Roth, Paul "Child Labour in New Zealand: a job for the nanny state?" [2010] OtaLawRw 2 (explaining the child labor

Minors can suffer devastating consequences from long hours working on farms, as they are exposed to extreme heat and harmful chemicals and are more prone to injury and illness.¹⁴⁴ The long term health effects for minors who work long hours in a farm environment are unknown at this time.¹⁴⁵ Many children who are exposed to harmful chemicals for long periods of time can suffer from pesticide poisoning, which causes “higher rates of birth defects, developmental delays, leukemia, and brain cancer

regulations for workers); (2010) 12 Otago Law Review 245; see **Children and Young People on Farms**, <https://www.worksafe.govt.nz/topic-and-industry/agriculture/keeping-safe-on-farms/children-and-young-people-on-farms/> (last visited Mar. 21. 2021).

¹⁴⁴ See Melissa J. Perry, Children's Agricultural Health: Traumatic Injuries and Hazardous Inorganic Exposures, J Rural Health. 2003 Summer;19(3):269-78. doi: 10.1111/j.1748-0361.2003.tb00573.x. PMID: 12839135 (explaining how hazardous work conditions along with long hours of work for children in the farm environment, has long term health effects which can go undetected); accord Wurth, supra note 80.

¹⁴⁵ Id.

among farm children.”¹⁴⁶ These health issues are exacerbated by a lack of medical insurance and access to medical care.¹⁴⁷ Long work hours lead to long-term exposure to chemicals associated with working in the agricultural field.¹⁴⁸ They also lead to more injuries.¹⁴⁹ The long work hours allowed under the FLSA, leading to long term exposure to heat and chemicals, directly violate article 3(d) of ILO Convention No. 190 Recommendation and No. 182 as children are exposed to “hazardous substance, agents, or processes ... damaging to their health” and is likely to harm the health and safety of the children.¹⁵⁰

¹⁴⁶ **Exposed and Ignored, How Pesticides are Endangering our Nation’s Farmworkers** 8 (2013) (arguing the lack of workplace protections is due to lack of information available for farm workers to protect themselves).

¹⁴⁷ Id.

¹⁴⁸ Id.

¹⁴⁹ Id.; see generally, Child Labor Bulletin 102 - Child Labor Requirements in Agricultural Occupations Under the Fair Labor Standards Act, supra note at 84.

¹⁵⁰ Id.; Worst Forms of Child Labour Convention No. 182, at art. 3; Worst Forms of Child Labour Convention Recommendation, at art. 3 (“work[ing] in an unhealthy environment which may, for

iii. The FLSA lack of Minimum Age Requirement for
Agricultural Child Workers Violates ILO Convention
No. 182

The FLSA also violates ILO Convention No. 182 in not providing a minimum age requirement for children to work in agriculture.¹⁵¹

ILO Convention No. 182 states:

For the types of work referred to under Article 3(d) of the Convention and Paragraph 3 above, national laws or regulations or the competent authority could, after consultation with the workers' and employers' organizations concerned, authorize employment or work as from the age of 16 on condition that the health, safety and morals of the children concerned are fully protected, and that the children have received adequate specific instruction or vocational training in the relevant branch of activity.¹⁵²

The FLSA violates this provision by allowing children working at family-owned or operated farms to work at any age - even

example, expose children to hazardous substances, agents or processes").

¹⁵¹ Id.

¹⁵² Worst Forms of Child Labour Convention Recommendation, at art. 4 (explaining how the national government is given authority over creating necessary regulations for children health and safety).

under age twelve.¹⁵³ Also, on small, family farms, children as young as ten may hand-harvest seasonal crops, as long as the work is outside of the school year and the farm is not required to pay the federal minimum wage.¹⁵⁴ A small farm is considered a farm which an employees work less than 500 hours during a 3 month period.¹⁵⁵ The FLSA allows child agricultural workers under twelve years old to be employed in non-hazardous jobs with parental permission.¹⁵⁶ In fact, the FLSA offers complete child labor exemptions as "youth of any age may be employed at any time, in any occupation on a farm owned or operated by their

¹⁵³ **FLSA - Child Labor Rules Advisor,**

<https://webapps.dol.gov/elaws/whd/flsa/cl/exemptions.asp> (last visited Feb. 11, 2021).

¹⁵⁴ Id.; Lisa Foust Prater, Dos and Don'ts of Hiring Youth on the Farm, Successful Farming (Apr. 22, 2016),

<https://www.agriculture.com/content/do-s-and-don-ts-of-hiring-youth-on-the-farm> (discussing the Department of Labor laws on hiring children farmworkers and abiding to federal regulations).

¹⁵⁵ **FLSA - Child Labor Rules Advisor,**

<https://webapps.dol.gov/elaws/whd/flsa/cl/exemptions.asp> (last visited Feb. 13, 2021).

¹⁵⁶ Id.

parent or person standing in place of their parent.”¹⁵⁷ Under Article 2 of the ILO Convention No. 182 the Convention applies to a child who is defined as individuals under the age of eighteen.¹⁵⁸ Yet non-agricultural workers cannot be employed under age fourteen, unless exempted by the FLSA, demonstrating a great disparity between minimum ages of agricultural and non-agricultural child workers.¹⁵⁹ Minors aged fourteen and fifteen years old can do agricultural work in nonhazardous positions on farms.¹⁶⁰ However the FLSA allows children to work conditions

¹⁵⁷ Id.

¹⁵⁸ Worst Forms of Child Labour Convention, supra note 141, at art. 3 (definition of child who is covered under the convention).

¹⁵⁹ **FLSA - Child Labor Rules Advisor**, <https://webapps.dol.gov/elaws/whd/flsa/cl/exemptions.asp> (last visited Feb. 13, 2021) (discussing the exempt occupations for minors under fourteen include delivering newspapers, acting, minor chores, and baby-sitting).

¹⁶⁰ Id.; Lisa Foust Prater, Dos and Don'ts of Hiring Youth on the Farm, **Successful Farming** (Apr. 22, 2016), <https://www.agriculture.com/content/do-s-and-don-ts-of-hiring-youth-on-the-farm> (discussing the Department of Labor laws on hiring children farmworkers and abiding to federal regulations).

that harm the “health, safety, and morals of the children” by allowing sixteen-year-olds to work in hazardous work conditions described under article 3(d) in the Worst Forms of Child Labour Convention.¹⁶¹ Comparatively, in New Zealand there is no minimum age for work, however, the Member State outlines that children under the age of fifteen cannot work in a sector which the work may likely harm the child.¹⁶² In the United States, the lack of minimum age outlined within the FLSA for agricultural child workers is in violation of the ILO’s Convention 3(d) as young children will be allowed to work in hazardous work conditions harming their health.¹⁶³

V. Recommendations

a. International Recommendations

¹⁶¹ Worst Forms of Child Labour Convention, at art. 3(d); Worst Forms of Child Labour Convention Recommendation, at art. 4.

¹⁶² **How young is too young to work?**

<https://www.hcamag.com/nz/news/general/how-young-is-too-young-to-work/140276> (last visited Mar. 21, 2021).

¹⁶³ Id.; **FLSA - Child Labor Rules Advisor,**

<https://webapps.dol.gov/elaws/whd/flsa/cl/exemptions.asp> (last visited Feb. 13, 2021); Worst Forms of Child Labour Convention No. 182, at art. 3; International Labour Organization (ILO), Minimum Age Convention 1973 (No. 138), at art. 1

There are several recommendations on the international level to reduce child labor violations in agriculture. The first recommendation is enforcing ILO Convention No. 182 through ILO creating an Optional Protocol where individuals can submit claims of child labor violations.¹⁶⁴ This Optional Protocol would improve the ILO's ability to investigate child labor exploitation claims in agricultural work.¹⁶⁵ Further, this protocol would provide additional reporting to child labor violations in Member States, particularly the United States.¹⁶⁶

b. Accountability in Global Supply Chains

Another way to address child labor violations internationally is to increase accountability and transparency in global supply chains.¹⁶⁷ Multinational corporations (MNC) enable child labor

¹⁶⁴ See Jack Martin & Mr. David Tajgma, **Eliminating the Worst Forms of Child Labour**, 64 (Mr. Kari Tapiola et al. eds. 2002). (discussing previous Conventions relating to children adopted Optional Protocols to create a forum for individuals to submit complaints).

¹⁶⁵ Id.

¹⁶⁶ Id.

¹⁶⁷ The Interfaith Center on Corporate Responsibility, Christian Brothers Investment Services, and Calvert Investment, **Effective Supply Chain Accountability: Investor Guidance on Implementation**

exploitation, using agricultural child labor in various parts of their operations.¹⁶⁸ The ILO has found companies are responsible for the increased use of child labor in their supply chains.¹⁶⁹ To ensure private entities follow child labor regulations established by the ILO, the UN Guiding Principles on Business and Human Rights must be adopted into binding international

of The California Transparency in Supply Chains Act and Beyond 6 (2011) (arguing supply chains is one of the leading causes to child labor violations).

¹⁶⁸ See id.; Komala Ramachandra & Juliane Kippenberg, Building Momentum to Hold Companies to Account, **Human Rights Watch** (Dec. 11, 2019 11:47AM) <https://www.hrw.org/news/2019/12/11/building-momentum-hold-companies-account>(discussing how lack of accountability in multinational corporations causes child labor violations).

¹⁶⁹ **Corporate Social Responsibility (CSR) and child labour** (last visited Mar. 7, 2021) <https://www.ilo.org/ipec/Action/CSR/lang-en/index.htm> (addressing the growing trend of companies being responsible for child labor violations in their supply chains and current mechanisms in place to support business implementing the corporate social responsibility).

law.¹⁷⁰ The ILO currently provides a framework for companies to follow to ensure they are not abusing child labor in their supply chains.¹⁷¹ The ILO has also provided a forum for businesses to meet with other companies and discuss methods to address child labor violations in supply chains; however, both frameworks are optional and have not been enforced.¹⁷² These principles ensure businesses respect human rights in the workplace through accountability for the labor companies use to produce their products.¹⁷³

c. National Recommendations

In the United States, one of the best ways to address child labor violations is through legislation.¹⁷⁴ Congress should pass

¹⁷⁰ Human Rights in Supply Chains: A Call for a Binding Global Standard on Due Diligence, **Human Rights Watch** (Mar. 30, 2016), <https://www.hrw.org/report/2016/05/30/human-rights-supply-chains/call-binding-global-standard-due-diligence> (discussing global supply chains as one of the leading causes for child labor violations).

¹⁷¹ Corporate Social Responsibility (CSR) and child labour, supra note 160.

¹⁷² Id.

¹⁷³ Id.

¹⁷⁴ Id.

the bill introduced by Representative Roybal-Allard, which provides child farmworkers the same protections as children working in any other sector.¹⁷⁵ The bill places limits on child agriculture working hours and raises the minimum age.¹⁷⁶ Unfortunately, each time this bill has been reintroduced, it has failed.¹⁷⁷

Another recommendation and most effective method to address the worst forms of child labor in agricultural work in the United States is to remove the FLSA's exemptions for agricultural child workers.¹⁷⁸ The FLSA's parental exemption must be removed as it allows children to work unlimited number of hours in hazardous work conditions at any age as long as it does not interfere with school hours. Changing the law to not allow children below 18 to work in hazardous work conditions, setting a minimum age for family owned and operated farms, and limiting the number of hours children are able to work on farms per day

¹⁷⁵ Rep. Roybal-Allard, 24 Cosponsors Reintroduce CARE Act to Strengthen Protections for Child Farmworkers, <https://roybal-allard.house.gov/news/documentsingle.aspx?DocumentID=401599> (last visited Feb. 17, 2021).

¹⁷⁶ Id.

¹⁷⁷ Id.

¹⁷⁸ Id.

would prevent child labor violations outlined in ILO Convention No. 182. Furthermore, providing training and additional regulations on how agricultural child workers can protect themselves while working in farm environments would also reduce injuries and deaths on farms.¹⁷⁹ In addition, providing adequate safety gear to work for child farmworkers would help children working in hazardous work conditions and prone to danger, and provide protection against the COVID-19 pandemic, pesticides, and others.¹⁸⁰

These are a few of the recommendations to address child labor laws on the local, national, and international levels. In order for the United States to be compliant with international child labor standards, one, if not all, of these recommended measures

¹⁷⁹ **Exposed and Ignored, How Pesticides are Endangering our Nation's Farmworkers**, supra note 99, at 8.

¹⁸⁰ Id.; See Manuela Tobias, California Farmworkers say They didn't get Masks During Wildfires, **Cal Matters** (Sep. 13, 2020) (discussing how during the California wildfires farmworkers did not have access to facemasks to prevent breathing in the toxic smoke); See also, Masks4Farmworkers Project (last visited Mar. 7, 2021), <https://justice4women.org/masks4farmworkers> (advocating for masks for farmworkers).

must be adopted.¹⁸¹ The United States has many steps to take to address the child labor laws. The recommendations cited would cure the international law violation of ILO Convention No.

182.¹⁸²

VI. Conclusion

By not affording child agricultural workers the same protections as industrial child workers under the FLSA, the United States is causing child farmworkers to suffer more preventable injuries and fatalities.¹⁸³ Furthermore, the United States is violating international law. The FLSA violates ILO Convention No. 182 Article 3(d)¹⁸⁴ because it exempts minors in agriculture work protections from the work hours, hazardous occupations, and minimum working age outlined in the ILO Recommendation No.190.¹⁸⁵ This Comment argues that for the United

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¹⁸² *Supra* Part V.

¹⁸³ *Id.*; Government Accountability Office, *supra* note 48 at 27 (discussing the injuries of agricultural child workers on small family-owned farms).

¹⁸⁴ *Id.* at art. 3(d) (providing the technical definition of worst forms of child labor).

¹⁸⁵ Worst Forms of Child Labour Convention Recommendation, adopted June 17, 1999, ILO No. 190 (acknowledging the

States to be compliant with international child labor standards, the exemptions for agricultural for child workers must parallel the standards for industrial child workers.¹⁸⁶ The United States must update its child labor laws created during the depression era, which do not prioritize agricultural child workers.¹⁸⁷ A more comprehensive legislation addressing child farm workers'

populations most at risk for the worst forms of child labor and defining hazardous work conditions prohibited in the Worst Forms of Child Labor Convention).

¹⁸⁶ Id. at art. 3; ILO's Worst Forms of Child Labour Convention No. 182 art. 3(d), supra note 7.

¹⁸⁷ See generally, Carlos Manuel Vasquez, The Four Doctrines of Self-Executing Treaties, 89 **Am. J. Int'l L.** 695, 695-696

(1995); Child Labor, History (Oct. 27, 2009)

<https://www.history.com/topics/industrial-revolution/child-labor#:~:text=The%20Great%20Depression,->

[The%20Great%20Depression&text=Almost%20all%20of%20the%20codes,placed%20limitations%20on%20child%20labor](https://www.history.com/topics/industrial-revolution/child-labor#:~:text=The%20Great%20Depression&text=Almost%20all%20of%20the%20codes,placed%20limitations%20on%20child%20labor) (discussing the history and politics of child labor laws in the United States).

specific needs is necessary for the United States to come into compliance with international law.¹⁸⁸

¹⁸⁸ ILO's Worst Forms of Child Labour Convention No. 182 at art. 3(d), supra note 7; Worst Forms of Child Labour Convention Recommendation No. 190 at art. 3, supra note 160.