

# EXPLOITED: THE UNEXPECTED VICTIMS OF ANIMAL AGRICULTURE

By  
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*Awareness of how nonhuman animals suffer in animal agriculture has been growing for years. But are they the only victims? Selling the products and parts of hundreds of millions of animals in the United States every year requires someone to manage those animals. It requires someone to kill those animals. And it requires someone to dismember those animals long before they ever reach the neat rows of plastic wrapped packaging at the grocery store. To accomplish this process at an industrial scale means hundreds to thousands of animals are together in barns which reek of their waste and create biohazards for humans. It means dangerously fast line speeds at slaughterhouses and hyper-focused jobs dedicated exclusively to killing animals and making repetitive cuts on their bodies. Unsurprisingly, these jobs are not desirable. The workers who do them are often desperate or do not have another choice. This article analyzes three major categories of workers in animal agriculture and how the law has failed to protect them. These categories are migrants, prisoners, and children. After exploring the unique ways each category of workers is exploited in animal agriculture, this article will explain how the law, or lack thereof, made it possible and what changes can be made to help prevent their exploitation in the future.*

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## I. INTRODUCTION

Suffering and exploitation of human beings exists across all facets of modern industrial agriculture, whether in the production of crops or the production of animal products. Although these issues manifest in various forms across different agricultural practices, this article focuses on their often-overlooked presence in concentrated animal feeding operations (CAFOs) and slaughterhouses. As research into nonhuman animal suffering in animal agriculture gains momentum,<sup>1</sup> the human worker often remains a nameless and faceless person hidden behind neat rows of packaged meat at the grocery store.<sup>2</sup> There have been few studies conducted on how these workers suffer to mass produce the meat consumers demand,<sup>3</sup> but as news stories of horrific conditions, questionable hiring methods, and psychological damage are slowly gaining more airtime, one thing is becoming clear: these humans are suffering.<sup>4</sup>

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<sup>1</sup> Jonny Frank, *Factory Farming: An Imminent Clash Between Animal Rights Activists and Agribusiness*, 7 B.C. ENV'T AFFS. L. REV. 423, 423 (1979).

<sup>2</sup> David Coman-Hidy, *Why the Human League Stands for Animals and Workers Exploited by the Meat Industry*, THE HUMAN LEAGUE (Aug. 20, 2022), <https://thehumaneleague.org/article/the-humane-league-stands-for-animals-and-workers-exploited-by-meat-industry> (accessed Sept. 21, 2023); Matthew Zampa, *Factory Farming: Shedding Light on the Highly Secretive Industry*, SENTIENT MEDIA (June 7, 2019), <https://sentientmedia.org/factory-farming-shedding-light-on-the-highly-secretive-industry/> (accessed Sept. 25, 2023).

<sup>3</sup> *Id.*

<sup>4</sup> *Slaughterhouse Workers*, FOOD EMPOWERMENT PROJECT, <https://foodispower.org/human-labor-slavery/slaughterhouse-workers/> (accessed Sept. 5, 2023); Oscar Heave, *For Slaughterhouse Workers, Physical Injuries Are Only the Beginning*, ONLABOR (Jan. 17, 2022), <https://onlabor.org/for-slaughterhouse-workers-physical-injuries-are-only-the-beginning/> (accessed Sept. 5, 2023); Lucas Spangher, *The Overlooked Plight of Factory Farm Workers*, HUFFPOST (Oct. 18, 2014), [https://www.huffpost.com/entry/plight-of-factory-farm-workers\\_b\\_5662261](https://www.huffpost.com/entry/plight-of-factory-farm-workers_b_5662261) (accessed Sept. 25, 2023).

They have little protection or oversight.<sup>5</sup> They experience some of the most dangerous working conditions in the United States with little to no ability to unionize, negotiate their salaries or work hours, or gain a safer workplace environment.<sup>6</sup> They were mocked by their employers during the COVID-19 pandemic for catching the deadly disease.<sup>7</sup> They are often powerless against their employers because they frequently do not have full legal rights in the United States, whether due to citizenship status, incarceration, or age.<sup>8</sup> It is time for the laws surrounding their employment to be scrutinized and amended to protect them.

To orient the reader, this Article will first describe the rise of modern industrial animal agriculture. Next, this Article will discuss the general physical and psychological dangers all industrial animal agriculture workers may face. Once the reader is oriented, this Article will discuss three categories of workers often employed in slaughterhouses: migrant workers, prisoners, and children. The migrant workers category is further divided into three subcategories: temporary agricultural workers, undocumented immigrants, and refugees. The discussion of each category of worker will begin with the relevant laws that pertain to those people. After establishing each respective legal framework, this article will illustrate the real-world application of those laws and the consequent struggles faced by workers within each category. These struggles will be illustrated by a mix of cases, lawsuits, investigations, and anecdotal stories because not all categories of workers have been adequately litigated or researched to present a clear picture of what is happening. Finally, each category will be finished with a series of policy recommendations and, where relevant, recent changes in law to illustrate ways their suffering can be alleviated and the magnitude of human exploitation reduced.

But before exploring how humans suffer in this industry, it is important to acknowledge the billions of nonhuman animals who suffer and die annually in this system.<sup>9</sup> The Humane Methods of Slaughter Act protects only limited species in specific circumstances, covering less than 1 percent of animals slaughtered and killed for human consumption in the United States annually.<sup>10</sup> And for whom it does cover, it is

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<sup>5</sup> Christina Cooke, *Animal Agriculture Is Dangerous Work. The People Who Do It Have Few Protections.*, CIV. EATS (Nov. 14, 2022), <https://civileats.com/2022/11/14/injured-and-invisible-1-few-protections-animal-agriculture-workers-cafos-dairy-migrants-injuries/> (accessed Sept. 5, 2023).

<sup>6</sup> *Id.*

<sup>7</sup> *Tyson Food Managers Bet on Workers Getting Covid-19, Lawsuit Says*, BBC (Nov. 19, 2020), <https://www.bbc.com/news/world-us-canada-55009228> (accessed Sept. 5, 2023).

<sup>8</sup> *Id.*

<sup>9</sup> Grace Hussain, *How Many Animals Are Killed For Food Every Day?*, SENTIENT MEDIA (Aug. 31, 2022), <https://sentientmedia.org/how-many-animals-are-killed-for-food-every-day/> (accessed Sept. 5, 2023).

<sup>10</sup> This is based on poultry and fish being excluded in addition to other excluded species or exemptions for otherwise included species. See Bruce Friedrich, *Still in the Jungle: Poultry Slaughter and the USDA*, 23 N.Y.U. ENV. L. J., 247, 247 (2015), <https://>

woefully inadequate.<sup>11</sup> With animal agriculture being one of the leading causes of biodiversity loss, countless wild animals suffer because of it as well.<sup>12</sup> This acknowledgment is to bring awareness to the unfathomable suffering happening in food production across all species and to clarify that this paper is not claiming humans are the only victims. Too often in food activism and progress, we pit species against each other in a competition for awareness and welfare.<sup>13</sup> We must acknowledge and fight to create real progress and to end suffering for all.

## II. BACKGROUND

Animal production and slaughter are part of a complicated food industry that is deeply intertwined with many others including pet food, fertilizer, cosmetics, and more.<sup>14</sup> The activities that occur in these industries are regulated on both the state and the federal level.<sup>15</sup> Understanding the entirety of the farmed animal industry goes beyond the scope of this paper, but to understand the categories of labor issues discussed, it is important to have background knowledge of the industry and its structure today.

### A. THE RAPID GROWTH OF MODERN ANIMAL AGRICULTURE

When people think of farming animals, what comes to mind may include rolling hills dotted with cows, pigs wallowing in mud, and chickens roaming the garden pecking for insects. However, most animals who are farmed in the United States spend at least part of their

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[www.nyuelj.org/wp-content/uploads/2015/09/Friedrich\\_ready\\_for\\_the\\_website\\_1.pdf](http://www.nyuelj.org/wp-content/uploads/2015/09/Friedrich_ready_for_the_website_1.pdf) (accessed Sept. 5, 2023) (regarding which species comprise the majority of animals slaughtered in the US); see also Stephanie Yue, *An HSUS Report: The Welfare of Farmed Fish at Slaughter*, HSUS, 1 (2008), <https://www.humanesociety.org/sites/default/files/docs/hsus-report-animal-welfare-farmed-fish-at-slaughter.pdf> (accessed Sept. 5, 2023) (discussing the lack of humane conditions for farmed fish under existing laws).

<sup>11</sup> Lisa Shames, *Humane Methods of Slaughter Act Weaknesses in USDA Enforcement*, U.S. GOV'T ACCOUNTABILITY OFF. 1-2 (Mar. 4, 2010), <https://www.gao.gov/assets/gao/10-487t.pdf> (accessed Sept. 5, 2023).

<sup>12</sup> *Livestock's Impact on Biodiversity*, FOOD & AGRIC. ORG 180, 187-195, <https://www.fao.org/3/a0701e/a0701e05.pdf> (accessed Sept. 21, 2023).

<sup>13</sup> Selana Darlim, *Farmed Animals: How Factory Farming Affects Different Species*, ANIMAL CHARITY EVALUATORS (June 29, 2023), <https://animalcharityevaluators.org/blog/author/selena-darlim/> (accessed Sept. 24, 2023); Magnus Vinding, *Animal Advocacy Should Focus on Anti-Speciesism, Not Veganism*, ALL-CREATURES.ORG (Dec. 2016), <https://www.all-creatures.org/articles/act-focus-anti-speciesism.html> (accessed Sept. 24, 2023).

<sup>14</sup> K. Jayathilakan, et al., *Utilization of Byproducts and Waste Materials from Meat, Poultry, and Fish Processing Industries: A Review*, 49 J. FOOD SCI. TECH. 278, 279 (2011).

<sup>15</sup> Daniel A. Sumner, *Farm Animal Treatment in the United States: What Role Is There for Additional Federal Regulations?*, AM. ENTER. INST. (Mar. 6, 2023), <https://www.aei.org/research-products/report/farm-animal-treatment-in-the-united-states-what-role-is-there-for-additional-federal-regulations/> (accessed Sept. 10, 2023).

lives crammed into tiny, filthy spaces filled with their own waste.<sup>16</sup> For the duration of their lives, these animals are unable to engage in their natural behaviors and are often mutilated through actions like dehorning, teeth pulling, and debeaking to prevent the violent behaviors that come from the stress caused by their suffering.<sup>17</sup> People may not like to imagine how these animals die; if they do think about it, they probably do not imagine it as a long line of terrified animals being electrocuted and beaten to move towards the kill box.<sup>18</sup> They might not think about birds hanging upside down from shackles, sometimes hit and abused by their soon-to-be killers.<sup>19</sup> And they likely do not realize the animals who are properly stunned before being butchered are, in fact, lucky.<sup>20</sup>

Animal agriculture has never been kind to the animal because in the end, a human will always cut their life short; but their life and early death has not always been this mechanized, industrialized nightmare.<sup>21</sup> Modern technology, such as refrigeration, allowed slaughterhouses to consolidate beginning in the 1800s, and this consolidation helped create the horrendous conditions workers suffer.<sup>22</sup> Intensive animal production in factories, or CAFOs, followed a few decades later when producers discovered that thousands of chickens could be crammed together in a shed without sacrificing economic output.<sup>23</sup> In the 1940s to 1950s, antibiotics became a normal part of animal feed, allowing even greater numbers of animals to be kept in even smaller spaces without too many succumbing to illness and disease before their scheduled death.<sup>24</sup>

This CAFO and consolidated slaughter system has been able to enjoy plenty of government support with minimal oversight because it rides on the public's outdated notions of wholesome family farms to support and defend it.<sup>25</sup> It grew so quickly and without regulation that

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<sup>16</sup> Claire Roberson, *Everything You Need to Know About Factory Farming*, ANIMAL EQUAL. (Oct. 14, 2022), <https://animalequality.org/blog/2022/10/14/factory-farming-facts> (accessed Mar. 28, 2023).

<sup>17</sup> *Id.*

<sup>18</sup> Jo Warrick, *They Die Piece by Piece*, THE WASH. POST (Apr. 10, 2001), <https://www.washingtonpost.com/archive/politics/2001/04/10/they-die-piece-by-piece/f172dd3c-0383-49f8-b6d8-347e04b68da1/> (accessed Mar. 28, 2023).

<sup>19</sup> Aamer Madhani, *Activists Allege Widespread Cruelty at Tyson's Chicken Factory*, USA TODAY (Oct. 27, 2015), <https://www.usatoday.com/story/news/2015/10/27/mercy-for-animals-accuses-tysons-of-abuse-at-mississippi-chicken-slaughterhouse/74704928/> (accessed Sept. 2, 2023).

<sup>20</sup> Warrick, *supra* note 18.

<sup>21</sup> See FFAC Staff, *When Did Factory Farming Start and Why Does It Still Exist?*, FACTORY FARMING AWARENESS COAL. (Jan. 11, 2022), <https://ffacoalition.org/articles/when-did-factory-farming-start-and-why-does-it-still-exist/> (accessed Sept. 21, 2023) (explaining that the industrialization of agriculture began in the 1900s).

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> See Jacy Reese, *There's No Such Thing as Humane Meat or Eggs. Stop Kidding Yourself*, THE GUARDIAN (Nov. 16, 2023), <https://www.theguardian.com/food/2018/nov/16/theres-no-such-thing-as-humane-meat-or-eggs-stop-kidding-yourself> (accessed

currently there is little avenue for enforcement of environmental protections, animal welfare violations, or labor exploitation.<sup>26</sup> By growing as quickly and widely as it did, this industry has been able to avoid the scrutiny many others have faced during their development, and now countless victims—human and nonhuman animals—suffer for it.<sup>27</sup> It may be a challenge to pass new regulations for established industries that are unaccustomed to regulation, but it is paramount if an ethical food system is ever going to become a reality.

### B. THE DANGERS OF ANIMAL AGRICULTURE

CAFOs and slaughterhouses are fraught with danger, both seen and unseen, which can impact the employees and those around them. One might expect the inherent dangers working with large animals such as being kicked by a cow or bitten by a pig, but the industrialization of these processes has led to new risks such as extreme biohazards and injury while working with heavy machinery.<sup>28</sup> To understand why it is so important to remove exemptions for the workers in these fields, it is important to understand how dangerous these jobs can be regardless of who the worker is.

Cramming hundreds to thousands of farmed animals together creates incredible amounts of dust, waste, and fumes in concentrations not seen when there are just a few animals residing in natural or minimally confined conditions.<sup>29</sup> The toxic gases the dust and waste create lead to issues—ranging from coughs to bronchitis, asthma, toxic organic

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Apr. 17, 2023) (referencing a study showing that despite 99% of animal products coming from CAFOs, 75% of Americans believe they only buy humanely raised meat).

<sup>26</sup> See e.g., U.S. ENVIRONMENTAL PROTECTION AGENCY, REP. NO. 17-P-0396, ELEVEN YEARS AFTER AGREEMENT, EPA HAS NOT DEVELOPED RELIABLE EMISSION ESTIMATION METHODS TO DETERMINE WHETHER ANIMAL FEEDING OPERATIONS COMPLY WITH CLEAN AIR ACT AND OTHER STATUTES (2017) (reporting that the EPA has not developed reliable CAFO emission estimation methods, even more than a decade after entering 2005 compliance agreement); see also, Animal Welfare Act of 1966, 7 U.S.C. § 2132(g) (2014) (defining animal as “any live or dead dog, cat, monkey (nonhuman primate mammal), guinea pig, hamster, rabbit, or other such warm-blooded animal,” and excluding “farm animals, such as, but not limited to livestock or poultry, used or intended for use as food or fiber.”).

<sup>27</sup> See Silje Kristiansen, James Painter & Meghan Shea, *Animal Agriculture and Climate Change in the US and UK Elite Media: Volume, Responsibilities, Causes and Solutions*, 2020 ENV. COMM. 1, 15 (2020) (discussing how “ag-gag” laws in some states restrict reporting on the farming sector).

<sup>28</sup> Calvin B. Carpenter, *Safety Considerations for Working with Animal Models Involving Human Health Hazards*, 1 ANIMAL MODEL EXPERIMENTAL MED. 91, 92 (2018).

<sup>29</sup> Iowa State University, *Livestock Confinement Dusts and Gases*, NAT'L DAIRY DATABASE (1992), <http://nasdonline.org/4679/o000010/iowa-state-university.html> (accessed Sept. 21, 2023); see, e.g., Marina Bolotnikova et al., *A fire killed 18,000 cows in Texas. It's a Horrifyingly Normal Disaster*, Vox (Apr. 14, 2023), <https://www.vox.com/future-perfect/23683141/texas-farm-fire-explosion-dimitt-cows-factory-dairy> (accessed Apr. 17, 2023) (demonstrating how the concentration of methane helped spread the fire from the explosion).

dust syndrome, and other chronic respiratory conditions.<sup>30</sup> These conditions are so prevalent that 50 percent to 70 percent of all workers in industrial pig factories suffer from them. The concentrated waste in “manure lagoons”<sup>31</sup> is so toxic that workers who have to handle it can be instantly asphyxiated by the gases produced by the waste and drown in the manure lagoon.<sup>32</sup> The fine imposed by OSHA for two such manure lagoon deaths on an Idaho dairy farm was \$5,000 for each death.<sup>33</sup> Farms with fewer than eleven nonfamily employees do not have to report these types of incidents.<sup>34</sup> This means about 96 percent of animal factories which hire workers are exempt from OSHA reporting and investigation.<sup>35</sup>

The heavy machinery and mechanized nature of industrial animal factories also poses threats to the often exploited and undertrained employees.<sup>36</sup> In fact, agriculture in general is ranked as one of the most dangerous jobs in the United States.<sup>37</sup> Workers face a range of risks, including: being attacked by stressed animals, sustaining feet lacerations from power washers, and suffering severed limbs resulting from operating heavy machinery.<sup>38</sup> It is a challenge to know just how many injuries happen in animal factories because they are typically underreported.<sup>39</sup>

Dangerous conditions are not limited to the industrial CAFO. For example, on January 28, 2021, eleven people were hospitalized and six people were killed when a nitrogen line ruptured inside a chicken slaughterhouse, displacing the oxygen in the facility and asphyxiating the workers.<sup>40</sup> Prior to this rupture, OSHA cited the facility over a dozen times in the past decade for improper workplace protections—including

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<sup>30</sup> Iowa State University, *supra* note 29.

<sup>31</sup> *Animal Agriculture Workers*, FOOD EMPOWERMENT PROJECT (Jan. 2022), <https://foodispower.org/human-labor-slavery/animal-agriculture-workers/> (accessed Mar. 2023) (defining “manure lagoons” as “large volumes of liquid manure [which] are stored below grated floors or outside the sheds in pits”).

<sup>32</sup> *Id.*

<sup>33</sup> Tim Craig, *Deaths of Farmworkers in Cow Manure Ponds Put Oversight of Dairy Farms into Question*, THE WASH. POST (Sept. 24, 2017), [https://www.washingtonpost.com/national/deaths-of-farmworkers-in-cow-manure-ponds-put-oversight-of-dairy-farms-into-question/2017/09/24/da4f1bae-8813-11e7-961d-2f373b3977ee\\_story.html](https://www.washingtonpost.com/national/deaths-of-farmworkers-in-cow-manure-ponds-put-oversight-of-dairy-farms-into-question/2017/09/24/da4f1bae-8813-11e7-961d-2f373b3977ee_story.html) (accessed Sept. 9, 2023).

<sup>34</sup> *Id.*

<sup>35</sup> Cooke, *supra* note 5.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> Cooke, *supra* note 5.

<sup>39</sup> *Id.*; see also, Athena Ramos, et al., *Self-Reported Occupational Injuries and Perceived Occupational Health Problems among Latino Immigrant Swine Confinement Workers in Missouri*, J ENV. PUB. HEALTH (June 19, 2018), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6029498> (accessed Sept. 30, 2023) (noting that self-reporting in Missouri has led to limited reporting).

<sup>40</sup> Jaelyn Diaz, *6 Killed In Liquid Nitrogen Leak At Georgia Poultry Plant*, NPR (Jan. 29, 2021), <https://www.npr.org/2021/01/29/961923732/6-killed-after-liquid-nitrogen-leak-at-georgia-poultry-plant> (accessed Mar. 28, 2023).

two separate amputation incidents in 2017.<sup>41</sup> Tyson denies that they prevent workers from reporting injuries in slaughterhouses, but they have been documented pressuring on-site nurses to provide rudimentary, inadequate care to injured employees—including those with broken bones—in order to circumvent OSHA’s reporting requirements.<sup>42</sup> This lack of oversight and inadequate treatment is found throughout slaughterhouses across the United States, according to the U.S. Government Accountability Office.<sup>43</sup> Of the incidents reported to OSHA, they note that on average there are seventeen “severe” injuries per month and two amputations per week.<sup>44</sup> Also, chronic physical disabilities plague slaughterhouse workers due to the fast, repetitive cutting motions they perform for several consecutive hours every day.<sup>45</sup> Despite the severity of these physical dangers they are only a fraction of the harm slaughterhouse workers suffer.

There is limited research into the psychological impacts of killing hundreds of nonhuman animals daily, but that research shows slaughterhouse workers suffer high rates of post-traumatic stress disorder (PTSD), perpetration-induced traumatic stress (PITS), high rates of substance abuse, and elevated rates of depression and anxiety.<sup>46</sup> They also suffer a mental condition commonly called the “spillover effect,” created when someone struggles to separate who they are in their personal life from the violent acts they commit during work and, as a result, are more likely to commit violent crimes like sexual assault.<sup>47</sup> The spillover effect occurs because coping with killing and dismembering hundreds to thousands of animals daily causes the worker to become desensitized to committing violence altogether.<sup>48</sup>

Regardless of someone’s citizenship, conviction status, or age, working in industrial animal agriculture is dangerous, under-represented, and overlooked.<sup>49</sup> In order to better protect workers in animal agriculture we need to enact new regulations and remove exemptions to

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<sup>41</sup> *Id.*

<sup>42</sup> Alice Driver, *Tyson Says Its Nurses Help Workers. Critics Charge They Stymie OSHA*, CIVIL EATS (Nov. 17, 2022), <https://civileats.com/2022/11/17/injured-and-invisible-worker-safety-chicken-hospital-healthcare-osha-injury/> (accessed Sept. 9, 2023).

<sup>43</sup> *Id.*

<sup>44</sup> Andrew Wasley, *Two Amputations a Week: The Cost of Working in a US Meat Plant*, THE GUARDIAN (July 5, 2018), <https://www.theguardian.com/environment/2018/jul/05/amputations-serious-injuries-us-meat-industry-plant> (accessed Sept. 9, 2023) (Injuries are classified as “severe” if they involve “hospitalizations, amputations, or loss of an eye”).

<sup>45</sup> *Id.*

<sup>46</sup> Oscar Heanue, *For Slaughterhouse Workers, Physical Injuries Are Only the Beginning*, ONLABOR (Jan. 17, 2022), <https://onlabor.org/for-slaughterhouse-workers-physical-injuries-are-only-the-beginning/> (accessed Sept. 9, 2023).

<sup>47</sup> Michael Lebwohl, *A Call to Action: Psychological Harm in Slaughterhouse Workers*, YALE GLOB. HEALTH REV. (Jan. 25, 2016), <https://yaleglobalhealthreview.com/2016/01/25/a-call-to-action-psychological-harm-in-slaughterhouse-workers/> (accessed Sept. 9, 2023).

<sup>48</sup> *Id.*

<sup>49</sup> Cooke, *supra* note 5.



existing regulations. This largely unregulated industry needs to be held to a higher standard, especially considering the toll it takes on all life.

### III. MIGRANTS

It is no secret that migrants are a common source of labor in agriculture,<sup>50</sup> but migrant workers are exploited differently depending on which limitations arise from their specific legal statuses. This section will break down three of the primary forms of migrant labor—temporary agricultural workers, undocumented immigrants, and refugees—and the unique challenges they each face before providing policy recommendations for each respective group.

#### A. TEMPORARY AGRICULTURAL WORKERS

##### i. Relevant Laws

The H-2A visa process in the Immigration and Nationality Act is the predominant labor law governing temporary agricultural workers in the United States.<sup>51</sup> Temporary agricultural workers are foreign workers who have the right to temporarily live and work in the United States for seasonal agricultural work.<sup>52</sup> For the workers to be in the United States legally they not only need the H-2A visa, but they also need to be sponsored by an employer who has been granted a temporary agricultural labor certification.<sup>53</sup> This certification allows employers to fill labor gaps in the United States labor force, but it cannot be used to avoid hiring U.S. citizens or to fill a shortage caused by labor strikes or disputes within the company.<sup>54</sup> While these temporary agricultural workers are necessarily under the law migrant laborers, they are not considered immigrants because they must leave the country either once their visa expires or when they separate from their employer, whichever comes first.<sup>55</sup> The only exception to this requirement is if the worker is sponsored by a subsequent H-2A employer and has another valid H-2A visa.<sup>56</sup>

H-2A visas are often thought to only apply to crop and produce production, especially with the implication of the term “seasonal,” but these visas apply to a limited set of animal agriculture production

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<sup>50</sup> Heanue, *supra* note 46.

<sup>51</sup> 8 U.S.C. § 1188; Sadikshya Nepal, *Primer: Evolution of the H-2A Visa Program*, BIPARTISAN POL’Y CTR (Sept. 15, 2021), <https://bipartisanpolicy.org/explainer/primer-h2a-visa/> (accessed Sept. 21, 2023).

<sup>52</sup> *See* 8 U.S.C. § 1188 (explaining the living and working standards and conditions regarding the H-2A certification).

<sup>53</sup> 20 C.F.R. § 655.135.

<sup>54</sup> 20 C.F.R. § 655.135; 20 C.F.R. § 655.1300(a)(4)(ii).

<sup>55</sup> 20 C.F.R. § 655.135 (i)(1).

<sup>56</sup> *Id.*

practices too.<sup>57</sup> Under the H-2A Herder Rule, employers can obtain certification to hire temporary agricultural workers for herding and ranging “hoofed animals” including sheep, goats, cattle, and horses.<sup>58</sup> Any additional work not done on the open range must still be closely and directly related to herding or producing these animals, such as tending to injured animals or castrating and branding them.<sup>59</sup>

In 2015, the United States Department of Labor (DOL) clarified rules for the H-2A Herder Rule which includes wage determinations, appropriate housing—which must be provided to employees on the range—, and minimum food and water standards for employees.<sup>60</sup> The Herder Rule came on the heels of a 2014 court decision, *Mendoza v. Perez*.<sup>61</sup> In this case, former U.S. citizen herders challenged the DOL for implementing a rulemaking without a notice and comment period, which caused a race to the bottom for herder pay rates and living conditions.<sup>62</sup> This significantly impacted the ability of U.S. citizens to accept these positions and in effect excluded them from the profession in favor of cheaper foreign labor.<sup>63</sup> The court held that the new procedures were sufficient to constitute substantive rulemaking and as such violated the Administrative Procedure Act (APA) because they were established without notice and comment to the public.<sup>64</sup> Shortly after, the DOL passed the Herder Rule to clarify the mandated standards set forth by the H-2A visa program.<sup>65</sup>

The Occupational Safety and Health Act of 1970, administered by the Occupational Safety and Health Administration (OSHA), is another source of law which sometimes regulates and protects temporary agricultural workers.<sup>66</sup> OSHA’s stated goal is to ensure safe working conditions by creating minimum workplace standards that employers must adhere to, as well as mandated inspections to ensure compliance.<sup>67</sup>

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<sup>57</sup> 20 C.F.R. § 655.200. (seasonal here means legal H-2A certification for up to 364 days per year if herding or producing sheep or goats and up to 10 months per year for other hooved livestock); *see also*, *H-2A Final Rule: Range Herding or Production of Livestock in the United States*, U.S. DEP’T OF LAB., 3 (2015), [https://www.dol.gov/sites/dolgov/files/ETA/oflc/pdfs/H-2A\\_Herder\\_Rule\\_Major\\_Points\\_and\\_FAQs\\_Implementation\\_Round\\_1.pdf](https://www.dol.gov/sites/dolgov/files/ETA/oflc/pdfs/H-2A_Herder_Rule_Major_Points_and_FAQs_Implementation_Round_1.pdf) (accessed Sept. 2, 2023) (delineating the duration of need).

<sup>58</sup> *H-2A Final Rule: Range Herding or Production of Livestock in the United States*, U.S. DEP’T OF LAB. 2 (2015), [https://www.dol.gov/sites/dolgov/files/ETA/oflc/pdfs/H-2A\\_Herder\\_Rule\\_Major\\_Points\\_and\\_FAQs\\_Implementation\\_Round\\_1.pdf](https://www.dol.gov/sites/dolgov/files/ETA/oflc/pdfs/H-2A_Herder_Rule_Major_Points_and_FAQs_Implementation_Round_1.pdf) (accessed Sept. 2, 2023) (hereinafter “*H-2A Final Rule*”).

<sup>59</sup> 20 C.F.R. § 655.201 (2023).

<sup>60</sup> Temporary Agricultural Employment of H-2A Foreign Workers in the Herding or Production of Livestock on the Range in the United States, 80 Fed. Reg. 62958, 62958, 62981–82 (Oct. 16, 2015) (to be codified at 20 C.F.R. pt. 655).

<sup>61</sup> *H-2A Final Rule*, *supra* note 58, at 5.

<sup>62</sup> *Mendoza v. Perez*, 754 F.3d 1002, 1002, 1017, 1020 (D.C. Cir. 2014).

<sup>63</sup> *Id.* at 1007.

<sup>64</sup> *Id.* at 1024.

<sup>65</sup> U.S. DEP’T OF LAB., *supra* note 58, at 5.

<sup>66</sup> 29 C.F.R. § 1910 (2022).

<sup>67</sup> *About OSHA*, OSHA, <https://www.osha.gov/aboutosha> (accessed Sept. 2, 2023).

However, in animal production, OSHA grants exemptions for certain requirements. For example, while workers are on the range, their employers do not have to adhere to the required distance between human housing and animals.<sup>68</sup> This is because, pursuant to OSHA's own interpretation, activities like herding fall outside of the intended safety and sanitation concerns that the promulgated rule intended to address.<sup>69</sup> If the state has an OSHA-approved State Plan for occupational health and safety, then it can choose whether it wants to implement this exemption.<sup>70</sup> However limited OSHA's applicability to H-2A herding operations was, it is further qualified in the new 2022 H-2A rule.<sup>71</sup> Now, if a state or local government has specific regulations for employee health or safety under the H-2A visa program, they can override federal regulation.<sup>72</sup> This means, for example, that a state can permit temporary agricultural workers to be housed in conditions that would otherwise violate those permitted by OSHA.

## ii. The Laws in Practice

The predominant challenge with enforcing any standards for temporary agricultural workers in animal agriculture is the remote nature of their jobs. Ranches that use the H-2A visa program are often in very remote locations with little to no cell service, where the workers are entirely dependent on their employers to supply them with food, water, shelter, and medical care.<sup>73</sup> Because employers also manage these workers' H-2A visas and often illegally hold their visas and passports for the duration of their employment, their power to fight for better working conditions is extremely limited.<sup>74</sup> Any dissatisfaction, threats to leave the property, or threats to notify authorities about a violation could result in getting fired—which makes workers eligible not only for deportation, but also for paying all the fees associated with being

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<sup>68</sup> *Temporary Labor Camp Standard Regarding Range Production of Livestock*, U.S. DEP'T OF LAB. (Apr. 12, 1988), <https://www.osha.gov/laws-regs/standardinterpretations/1988-04-12> (accessed Sept. 2, 2023).

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*; *State Plans*, OSHA, <https://www.osha.gov/stateplans/> (accessed Oct. 9, 2023) (explaining what State Plans are).

<sup>71</sup> See *Temporary Agricultural Employment of H-2A Nonimmigrants in the United States*, 87 Fed. Reg. 61660, 61710 (Oct. 12, 2022) (to be codified at 20 C.F.R. parts 501, 653, and 655) (noting that H-2A housing accommodations must meet local standards; in an absence of local standards, then state standards; in an absence of state standards, then federal standards).

<sup>72</sup> *Standards for Hotels, Motels, and Other Accommodations Under 2022 H-2A Rule*, FARMWORKER JUST. (Oct. 2022), <https://www.farmworkerjustice.org/wp-content/uploads/2022/10/2022-H-2A-Rule-Rental-Housing-Standards.pdf> (accessed Sept. 2, 2023).

<sup>73</sup> *Slavery in the U.S.*, FOOD EMPOWERMENT PROJECT, <https://foodispower.org/human-labor-slavery/slavery-in-the-us/> (accessed Sept. 2, 2023).

<sup>74</sup> *Id.*

escorted out of the country.<sup>75</sup> Workers have reported being forced to work for nearly ninety hours straight, having limited access to food, and not receiving medical attention for injuries sustained on the job.<sup>76</sup>

Although it includes crop agriculture, a 2020 report by Centro de Los Derechos del Migrante, Inc. found that 100 percent of the temporary agricultural workers they interviewed experienced at least one violation of their rights, while 94 percent experienced three or more violations.<sup>77</sup> All of these issues taken together indicate that many temporary agricultural workers in the herding industry are trafficked, and that both oversight and enforcement of H-2A visa standards and OSHA housing requirements are insufficient.<sup>78</sup>

### *iii.* Recommendations for Change

The rights and protections of temporary agricultural workers are severely limited, poorly enforced, and exclude a large swath of animal agriculture workers. The Bracero Program, a 1960's labor program described as 'legalized slavery' by its former DOL official and leader Lee G. Williams,<sup>79</sup> directly led to the creation of the H-2A visa program.<sup>80</sup> Unfortunately, the practical effects of the H-2A visa program are nearly identical to the Bracero Program.<sup>81</sup> Workers struggle to advocate for change because of additional barriers they experience in the United States, such as language barriers or limited knowledge of their rights, and attorneys who are often unwilling to take on cases that involve H-2A workers.<sup>82</sup>

One of the most pressing issues is the utter lack of enforcement for existing H-2A and OSHA regulations for herding operations. Because the operations typically exist in remote locations, it may be an issue of economic feasibility or staffing that complicates getting inspectors out onto the range. However, amendments could be made to the Immigration and Nationality Act under the H-2A provisions that add the requirement of multiple inspections per year at the operation's headquarters. This would enable government officials to track record keeping for things such as food expenditures for employees, medical records and expenditures, maintenance records for temporary labor camps, and more, which could better demonstrate whether the employer is

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<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> *Ripe for Reform: Abuses of Agricultural Workers in the H-2A Visa Program*, CENTRO DE LOS DERECHOS DEL MIGRANTE, INC. 7, <https://cdmigrante.org/wp-content/uploads/2020/04/Ripe-for-Reform.pdf> (accessed Sept. 2, 2023).

<sup>78</sup> *Id.* at 5.

<sup>79</sup> Mary Bauer & Meredith Stewart, *Close to Slavery: Guestworker Programs in the United States*, S. POVERTY L. CTR. (Feb. 19, 2013), <https://www.splcenter.org/20130218/close-slavery-guestworker-programs-united-states> (accessed Sept. 7, 2023).

<sup>80</sup> *Supra* note 78 at 14.

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*; Centro Derechos, *supra* note 77 at 18.

maintaining the minimum level of health and safety for their employees. Unfortunately, because employees are often far out on the range and unwilling to speak out against their employer for fear of retaliation, it would be hard to verify if they have access to their visas and passports or whether violations are taking place while they are away from headquarters.<sup>83</sup> To help inspire employers to comply with regulations, there needs to be strictly enforced regulations which would suspend their temporary certification status if they violated the minimum care standards of H-2A regulations. This would make it so they can only hire U.S. citizens for a set number of years—or even indefinitely if the investigative findings are severe enough. The risk of being required to only hire people who are more likely to know—and fight for—their rights could be enough of a threat to compel employers to treat migrant workers as well as others.

Another significant space ripe for change comes from migrant workers who are employed at CAFOs or slaughterhouses. These employees have not been discussed in this section at all because without access to the H-2A visa program, most migrant workers employed at these facilities are undocumented immigrants or refugees.<sup>84</sup> Even if the H-2A program was better regulated and enforced with the above mentioned suggestions, permitting a “seasonal” job to last up to 364 of 365 days in a year under the Herder Rule, while treating other animal operations as not “seasonal” in nature, is fundamentally inconsistent.<sup>85</sup> As such, an additional recommendation would be to include all forms of animal agriculture under the program to balance this inequity.

Including migrant workers in the H-2A program as temporary agricultural workers could drastically reduce the number of undocumented immigrants working at—and exploited by—CAFOs and slaughterhouses. However, because this recommendation would increase the rights of workers at these operations, CAFOs and slaughterhouses would likely push back hard against including their operations in the H-2A program.

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<sup>83</sup> *DHS Support of the Enforcement of Labor and Employment Laws*, U.S. CITIZENSHIP AND IMMIGR. SERV. (June 1, 2023), <https://www.uscis.gov/working-in-the-united-states/information-for-employers-and-employees/dhs-support-of-the-enforcement-of-labor-and-employment-laws> (accessed Nov. 13, 2023).

<sup>84</sup> *Immigrant Farmworkers and America’s Food Production: 5 Things to Know*, FWD (Sep. 14, 2022), <https://www.fwd.us/news/immigrant-farmworkers-and-americas-food-production-5-things-to-know/> (accessed Oct. 27, 2023); see also *H-2A Visa for Meat Producers to Fill Positions*, Farmer Law PC, <https://farmerlawpc.com/how-meat-producers-make-the-most-of-h-2a-visas/> (accessed Oct. 27, 2023).

<sup>85</sup> See generally *H-2A Final Rule: Range Herding or Production of Livestock in the United States*, U.S. Department of Labor (2015). [https://www.dol.gov/sites/dolgov/files/ETA/oflc/pdfs/herder\\_faq\\_round1.pdf](https://www.dol.gov/sites/dolgov/files/ETA/oflc/pdfs/herder_faq_round1.pdf) (accessed Sept. 7, 2023) (detailing the provisions and implementation of the final rule).

## B. UNDOCUMENTED IMMIGRANTS

### i. Relevant Laws

Despite being in the United States illegally, undocumented immigrants have legal rights: Federal labor and employment laws apply to all workers regardless of their immigration status.<sup>86</sup> On the one hand, undocumented immigrants have the same protections as citizens when it comes to discrimination in the workplace,<sup>87</sup> while on the other, an employer can still refuse to employ someone who is not authorized to work in the United States because of their lack of citizenship.<sup>88</sup> This means undocumented immigrants are covered by OSHA and the Fair Labor Standards Act (FLSA), though this inclusion is more incidental because the laws apply to the employers in order to benefit their employees.<sup>89</sup> As explained above, OSHA's stated goal is to ensure workplaces are safe and healthy for employees.<sup>90</sup> Therefore, undocumented immigrants have the same right to a safe and healthy workplace as legal citizens and immigrants do, and the standards set forth by OSHA still apply to their employers even if their entire workforce is undocumented. The FLSA sets forth provisions on minimum wage and includes overtime requirements that employers must adhere to regardless of employee citizenship status.<sup>91</sup>

Finally, undocumented immigrants are also protected by the National Labor Relations Act (NLRA), which protects workers' rights to unionize, strike, and collectively bargain with their employers.<sup>92</sup> It also permits employees to discuss wages, benefits, and terms of employment with each other.<sup>93</sup> The goal of the NLRA is to help fix the power imbalance that exists between employers and employees, even if those employees are undocumented.<sup>94</sup>

### ii. The Laws in Practice

While it is hard to know how many workers in CAFOs and slaughterhouses are undocumented, many operations knowingly hire them because the jobs are typically so terrible that employee turnover rates can exceed 100 percent annually.<sup>95</sup> Additionally, undocumented workers may have a misconception that they do not have legal rights due

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<sup>86</sup> *How Do Labor Laws Apply to Immigrants?*, AM. C. L. UNION (Jan. 29, 2009), <https://www.aclu.org/other/how-do-labor-laws-apply-immigrants> (accessed Sept. 21, 2023).

<sup>87</sup> Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e (1964).

<sup>88</sup> *Egbuna v. Time-Life Libraries Inc.*, 153 F.3d 184, 185-87 (4th Cir. 1998).

<sup>89</sup> AM. C. L. UNION, *supra* note 86.

<sup>90</sup> OSHA, *supra* note 70.

<sup>91</sup> 29 U.S.C. § 201-19.

<sup>92</sup> 29 U.S.C. § 151-69.

<sup>93</sup> 29 U.S.C. § 151-69.

<sup>94</sup> 29 U.S.C. § 151-69.

<sup>95</sup> *Slaughterhouse Workers*, FOOD EMPOWERMENT PROJ., <https://foodispower.org/slaughterhouse-workers/> (accessed Apr. 16, 2023).

to their unlawful status.<sup>96</sup> A two-year survey from 2009 indicated that over one third of the workers surveyed could not speak English, and almost half of them had less than a seventh-grade education.<sup>97</sup> These barriers may make it challenging if not impossible for undocumented workers to voice concerns to their employers.<sup>98</sup> As a result, employers take advantage of undocumented workers by reminding them how replaceable they are, that they can be deported, and by threatening to fire them.<sup>99</sup>

Even if an employee knows their rights, they may be hesitant to report injuries or work safety violations to OSHA—or illegally low wages to FLSA—for fear of retaliation.<sup>100</sup> And the fact that undocumented workers can be fired, deported, or replaced with ease dissuades any attempts at unionizing or bargaining for better treatment, thus diminishing the NLRA's protections.<sup>101</sup> For example, when slaughterhouse workers at Nebraska Beef tried to organize, Immigration and Naturalization Service (INS) raided the slaughterhouse and deported over two hundred employees, (including children), who were illegally hired at the plant.<sup>102</sup> INS guidelines require agents to investigate if there was an employee organization attempt before conducting a raid to ensure the raid does not interfere with workers' rights to organize.<sup>103</sup> They failed to do so.<sup>104</sup> The day following the raid, an undocumented worker who had managed to hide and avoid deportation told the Human Rights Watch that everyone who was not deported was back on the kill line, working full speed and threatened with being fired if they couldn't keep up—despite having two hundred fewer employees.<sup>105</sup> Five employees who spoke up on behalf of their coworkers, advocating for either slowing the speed down or raising their pay, were fired.<sup>106</sup>

To help ensure an endless stream of new workers, companies like Tyson pay referral rewards to any employee who can get someone else to sign on for employment and stay for at least three months, regardless

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<sup>96</sup> Virginia Reyes, *Undocumented Animal Agriculture Workers in the United States*, ENV. L. EDU. CTR. (Apr. 11, 2022), <https://elecenter.com/1276/undocumented-animal-agriculture-workers-in-the-united-states/> (accessed Oct. 9, 2023).

<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

<sup>99</sup> FOOD EMPOWERMENT PROJ., *supra* note 95.

<sup>100</sup> *Id.*

<sup>101</sup> *Id.*

<sup>102</sup> *Blood, Sweat, and Fear: Workers' Rights in U.S. Meat and Poultry Plants*, HUM. RTS. WATCH, 112, 113, note 311 (2004), <https://www.hrw.org/reports/2005/usa0105/usa0105.pdf> (accessed Apr. 16, 2023) (stating that the INS was disbanded into three separate agencies in 2003: U.S. Citizenship and Immigration Services, U.S. Immigration and Customs Enforcement, and U.S. Customs and Border Protection).

<sup>103</sup> *Id.* at 113.

<sup>104</sup> *Id.*

<sup>105</sup> *Id.* at 114.

<sup>106</sup> *Id.*

of immigration status.<sup>107</sup> A worker at Nebraska Beef reported that when he applied for a job, he was told to wait until fifteen applicants called in, then the company would put them on a Greyhound bus and ship them to the slaughterhouse to work.<sup>108</sup> When a few of the applicants on the bus said they lacked immigration papers, they were told it did not matter as long as they could work.<sup>109</sup> When questioned by the Human Rights Watch, industry officials insisted that they were neither seeking nor exploiting undocumented workers.<sup>110</sup> Yet a worker at Nebraska Beef reported that the top manager knew exactly which employees were undocumented, and used that information to threaten the undocumented workers—specifically with deportation if they caused any trouble.<sup>111</sup>

OSHA, FLSA, and NLRA might technically protect undocumented workers, but it is clear there are threats against workers that prevent them from exercising their rights. This creates a chilling effect which leaves workers without legal recourse, and stories of their exploitation are hard to come by because secrecy is a part of survival.<sup>112</sup> If someone speaks up, they risk INS removing them from the country.<sup>113</sup> As one university researcher said, slaughterhouses process “job applicants like [they process] poultry. The emphasis is on quantity, not quality.”<sup>114</sup>

### *iii. Recommendations for Change*

As of March 2023, major changes for undocumented workers are being enforced, and might be the solution to eliminate some of the chilling effects for reporting workplace violations as an undocumented immigrant.<sup>115</sup> This memorandum, signed into law by U.S. Secretary of Labor Marty Walsh, expands OSHA’s authority to provide temporary visas to undocumented workers who were the direct or indirect victim of a specific labor crime, such as labor trafficking or obstruction of justice.<sup>116</sup> These visas can be provided to both the workers and their families so they can remain in the United States together while helping

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<sup>107</sup> *Id.* at 108.

<sup>108</sup> *Id.* at 109.

<sup>109</sup> *Id.*

<sup>110</sup> *Id.*

<sup>111</sup> *Id.* at 112, 121.

<sup>112</sup> *See d.* at 112 (discussing the difficulties workers have in seeking legal recourse).

<sup>113</sup> *Id.*

<sup>114</sup> *Id.* at 108.

<sup>115</sup> U.S. DEPT OF LABOR, *READOUT: US Department of Labor Expands OSHA’s Ability to Protect All Workers by Certifying Special Visa Applications to Ensure Effective Enforcement*, OSHA (Feb. 13, 2023), <https://www.osha.gov/news/newsreleases/readout/02132023> (accessed Apr. 16, 2023).

<sup>116</sup> *Id.*; *U and T Visa Law Enforcement Resource Guide*, DEP’T OF HOMELAND SEC., [https://www.dhs.gov/sites/default/files/publications/PM\\_15-4344%20U%20and%20T%20Visa%20Law%20Enforcement%20Resource%20Guide%2011.pdf](https://www.dhs.gov/sites/default/files/publications/PM_15-4344%20U%20and%20T%20Visa%20Law%20Enforcement%20Resource%20Guide%2011.pdf) (accessed Apr. 16, 2023).



the authorities investigate and stop the reported crime.<sup>117</sup> This is an important advancement in the enforcement of undocumented workers' rights, but it only covers some of the more severe crimes.

If an undocumented worker gets injured on the job and knows they have the right to workers' compensation, the risk that their immigration status could come up during adjudication still discourages reporting the injury or a possible workplace violation.<sup>118</sup> This is because in these cases, their report could lead to being fired and then deported.<sup>119</sup> One solution to this problem would be to expand OSHA's new visa protections to include all labor and employment violations for undocumented immigrants. OSHA could create a third visa category specifically for this purpose, to at least temporarily protect workers who report violations while the investigation is underway. This way, even if a worker's immigration status improperly comes up during a proceeding, the worker will not have to fear immediate retaliation.

Another potential avenue for change was discussed in the prior subsection on temporary agricultural workers: Expand the H-2A visa program to include all animal agriculture operations.<sup>120</sup> However, this change is only recommended in addition to those amendments because the H-2A visa program suffers from the same lack of enforcement and loose standards that afflict the rights of many workers in animal agriculture.<sup>121</sup> As it stands, a worker's visa is tied to their employer, so this inclusion would not remove the risk of deportation for reporting violations.<sup>122</sup>

### C. REFUGEES

#### i. Relevant Laws

When an individual is admitted to the U.S. Refugee Admissions Program, they become eligible for resettlement.<sup>123</sup> Resettlement is a process typically handled by faith-based organizations—which help figure out immigration logistics such as where the refugee should be placed to live—and assist their integration into either a new community

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<sup>117</sup> *Id.*

<sup>118</sup> HUMAN RIGHTS WATCH, *supra* note 102, at 112.

<sup>119</sup> *Id.*

<sup>120</sup> For a detailed discussion on the H-2A visa process, *see supra* § III(A).

<sup>121</sup> Daniel Costa & Phillip Martin, *Record-low number of federal wage and hour investigations of farms in 2022*, ECONOMIC POLICY INSTITUTE (Aug. 22, 2023), <https://www.epi.org/publication/record-low-farm-investigations/> (accessed Sep. 11, 2023).

<sup>122</sup> *See Information for Employers and Employees*, U.S. CITIZENSHIP AND IMMIGRATION SERV. (2017), <https://www.uscis.gov/working-in-the-united-states/information-for-employers-and-employees> (accessed Sept. 22, 2023) (“In most instances, [a noncitizen’s] employer or potential employer must petition for [them].”)

<sup>123</sup> *An Overview of U.S. Refugee Law and Policy*, AM. IMMIGR. COUNCIL (updated Oct. 22, 2022), <https://www.americanimmigrationcouncil.org/research/overview-us-refugee-law-and-policy> (accessed Apr. 16, 2023).

or place them with known friends and family.<sup>124</sup> State department programs cover the initial ninety days of living expenses, and the Department of Health and Human Services provides longer term assistance and employment training.<sup>125</sup>

Unlike undocumented immigrants—who can be denied a job due to their citizenship status—refugees and asylees cannot be denied a job under the Immigration and Nationality Act of 1965.<sup>126</sup> Refugees will have to fill out a Form I-9 to prove their identity and right to work in the United States, but they are protected by OSHA, FLSA, and NLRA, like any other employee.<sup>127</sup> As far as labor and employment laws are concerned, refugees are like any other U.S. citizen; in a matter of years, they can become a U.S. citizen through naturalization.<sup>128</sup>

#### D. THE LAWS IN PRACTICE

On its face it may seem that because refugees have the same labor and employment protections as citizens—and are documented immigrants in the United States—they must have adequate protection. Unfortunately, their personal backgrounds and entry into the country still leave them open for exploitation by CAFOs and slaughterhouses.<sup>129</sup> As undocumented immigrant labor from Mexico has decreased over the years, and because of a series of high-profile raids which scoured slaughterhouses to deport workers, animal agriculture has begun to turn its sights to refugee labor.<sup>130</sup> These people are often both as desperate for work and as willing to take the same jobs as the undocumented immigrants, but while refugees can legally live and work in the United States, undocumented immigrants cannot.<sup>131</sup>

Operations only need to pay slightly more than minimum wage to lure refugee workers away from their jobs driving taxis, working at airports, or stocking shelves on the night shift.<sup>132</sup> Some companies, like Tyson, have refugee resettlement programs that create and coordinate with local refugee organizations to funnel refugees from a port of entry

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<sup>124</sup> *Id.*

<sup>125</sup> *Id.*

<sup>126</sup> *Egbuna*, 153 F.3d 184 (4<sup>th</sup> Cir. 1998); 8 U.S.C. § 1324b(a)(1)(A).

<sup>127</sup> U.S. DEP'T OF JUST., EMPLOYMENT RIGHTS AND RESOURCES FOR REFUGEES AND ASYLEES (2019), <https://www.justice.gov/crt/case-document/file/1132566/download> (accessed Apr. 16, 2023) (explaining the employment rights and obligations of refugees and asylees).

<sup>128</sup> *An Overview of U.S. Refugee Law and Policy*, *supra* note 123.

<sup>129</sup> Chico Harlan, *For Somalis, Hope Falls to the Cutting Floor*, WASH. POST (May 24, 2016), <https://www.washingtonpost.com/sf/national/2016/05/24/for-many-somali-refugees-this-industry-offers-hope-then-takes-it-away/> (accessed Apr. 16, 2023).

<sup>130</sup> Tom Philpott, *Refugees Make Your Dinner. Literally.*, MOTHER JONES (Jan. 31, 2017), <https://www.motherjones.com/environment/2017/01/meat-industry-refugees-trump/> (accessed Mar. 28, 2023).

<sup>131</sup> Harlan, *supra* note 129.

<sup>132</sup> *Id.*

straight to the slaughterhouse.<sup>133</sup> Animal operations are hiring translators, building prayer rooms in slaughterhouses, and publicly promising an opportunity for refugees to build a new life in America if they come work for them.<sup>134</sup> It almost seems charitable.

However, in an otherwise undesirable and dangerous industry, Tyson openly admits they use refugee labor to fill their employment gaps.<sup>135</sup> Further, refugees often have a low level of education or do not speak English, which significantly hinders their ability to look for new jobs should they leave the slaughterhouse.<sup>136</sup> Finally, refugees who leave the slaughterhouse may face strict no-rehire policies, which substantially increases the risks involved with leaving.<sup>137</sup> If they are unable to find a new job, they will not be allowed to return to the slaughterhouse.<sup>138</sup>

Because the predatory practices used on refugees by slaughterhouses are perfectly legal, and this is a marginalized group of immigrants, it is challenging to find any legal resource showing how they suffer or how people are advocating to improve their protections. The story of Mohamed Ahmed, a twenty-three year old refugee from Somalia, provides a potent illustration of the problem.<sup>139</sup> Ahmed's family risked everything to come to the United States so they could start a new, safer, life and create a future they could not have back home.<sup>140</sup> It took almost two decades to make it into the country, and once Ahmed was here he planned to save money and get a formal education.<sup>141</sup> Like many in his situation, Ahmed was tempted by the higher pay at National Beef, one of the country's largest slaughter companies, and was quickly hired after applying.<sup>142</sup> His job consisted of making the exact same cuts on the legs of three thousand slaughtered cows every shift.<sup>143</sup> What began as an opportunity quickly became a life of slaughter, sleep, repeat—without the time, energy, or funding to prepare for the better life Ahmed imagined.<sup>144</sup> After about one year he was already beginning to develop chronic musculoskeletal disorders that permanently affect

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<sup>133</sup> See, e.g., *Tyson Foods Awards Grant to EMBARC for Iowa Refugees, Immigrants*, PERRY NEWS (Jan. 21, 2023), <https://theperrynews.com/tyson-foods-awards-grant-to-embarc-for-iowa-refugees-immigrants/> (accessed Mar. 28, 2023) (example of this type of program that seeks to expedite refugees' abilities to gain legal employment in the United States).

<sup>134</sup> Philpott, *supra* note 130.

<sup>135</sup> Jule Hubbard, *Tyson Plans to Employ Refugees*, WILKES JOURNAL-PATRIOT (May 4, 2021), [https://www.journalpatriot.com/news/tyson-plans-to-employ-refugees/article\\_313389c6-4319-11e3-8ce8-0019bb30f31a.html](https://www.journalpatriot.com/news/tyson-plans-to-employ-refugees/article_313389c6-4319-11e3-8ce8-0019bb30f31a.html) (accessed Mar. 28, 2023).

<sup>136</sup> Harlan, *supra* note 129.

<sup>137</sup> *Id.*

<sup>138</sup> *Id.*

<sup>139</sup> *Id.*

<sup>140</sup> *Id.*

<sup>141</sup> *Id.*

<sup>142</sup> *Id.*

<sup>143</sup> *Id.*

<sup>144</sup> *Id.*

the hands of many slaughterhouse workers.<sup>145</sup> When Ahmed finally gained the courage to leave the company for a chance at having a better future, he found that no one else would hire him, which eventually forced him to search for work at another slaughterhouse.<sup>146</sup>

*i. Recommendations for Change*

The issues refugee workers face in slaughterhouses are not like the issues temporary agricultural workers or undocumented immigrants face. Refugee workers' issues are not about receiving less protections than other Americans, nor using their citizenship status to threaten them. Rather, the problem is that the system treats them like typical U.S. citizen workers—when they are not. Further, employers see a chance to recruit desperate or marginalized refugees to fill labor gaps in a problematic industry that has an over 100 percent annual turnover rate.<sup>147</sup>

In order to address the inequalities refugees suffer, research regarding the demographics at slaughterhouses needs to be conducted. Questions to investigate include: Which slaughterhouses depend substantially on refugee labor? Which companies work with resettlement organizations to funnel refugees directly from port of entry to slaughterhouses compared to companies which simply offer higher wages to attract employees? How many slaughterhouses promise to support education, and how many follow through? How many refugees attempt to leave slaughterhouses once hired, and how many are successful in finding alternative employment? When there are answers to questions like these, it will be easier to consider the validity of different policy recommendations to improve the situation.

One suggestion to improve the lives of refugees is to prohibit slaughter companies from making unsubstantiated promises to incoming refugees, whether directly or through resettlement programs. Rather than promising a better future to an often desperate class of employees, companies should be held accountable to those promises and required to stick to facts offered. For example, if a slaughterhouse is going to make promises regarding educational support, it should be mandatory that they follow through on those promises with educational funding.<sup>148</sup> Another simple change would be to prohibit no-rehire policies for employees who quit on good terms, thereby countering the chilling effect

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<sup>145</sup> *Id.*; Peggy Lowe, *Working 'The Chain,' Slaughterhouse Workers Face Lifelong Injuries*, NPR (Aug. 11, 2016), <https://www.npr.org/sections/thesalt/2016/08/11/489468205/working-the-chain-slaughterhouse-workers-face-lifelong-injuries> (accessed Sept. 22, 2023).

<sup>146</sup> Harlan, *supra* note 129.

<sup>147</sup> Harlan, *supra* note 129; Hubbard, *supra* note 135; FOOD EMPOWERMENT PROJECT, *supra* note 95.

<sup>148</sup> Some companies in the U.S. voluntarily offer programs to help with college education. This could be a similar system but mandated if used as a tool to hire refugee workers.

such policies have on employee departure. Such a change would grant refugees a safer chance to find other work rather than be forced to stay at the slaughterhouse where they started.

Those are small changes aimed specifically at helping refugee workers, but the most significant improvements would come from increasing regulations in slaughterhouses generally, such as reducing line speeds and improving medical oversight.<sup>149</sup> These regulatory improvements would cost the government relatively little to support as inspecting records to ensure procedural compliance could be added to pre-existing OSHA inspections and reports. This could help give a refugee worker the legal backing they need when reporting concerns regarding their employer.

The recommendations to help refugee workers in the slaughter industry are, admittedly, limited because there is not much quantifiable information about their struggles. For the most part, there are only anecdotal stories from individuals like Mohamed. Refugee workers' backgrounds and unfamiliarity with the United States makes them vulnerable to predatory companies and labor exploitation.<sup>150</sup> The U.S. State Department needs to put protections in place which will prevent refugee workers from being funneled off the planes and into industrial slaughter.<sup>151</sup>

#### IV. PRISONERS

##### A. RELEVANT LAWS

Incarceration not only restricts a person's freedoms as punishment; it exploits their labor to produce agricultural products for United States commerce. The 13th Amendment of the U.S. Constitution states, "Neither slavery nor involuntary servitude, *except as punishment for crime whereof the party shall have been duly convicted*, shall exist within the United States, or any place subject to their jurisdiction".<sup>152</sup> In *Mikeska v. Collins*, four prisoners brought claims against Texas prison officials, challenging their forced labor and the punishments they received for

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<sup>149</sup> Delcianna J. Winders & Elan Abrell, *Slaughterhouse Workers, Animals, and the Environment: The Need for a Rights-Centered Regulatory Framework in the United States That Recognizes Interconnected Interests*, 23 HEALTH & HUM. RTS. J. 21, 26 (2021).

<sup>150</sup> See *At-Risk Populations*, U.S. BUREAU OF POPULATION, REFUGEES, AND MIGRATION, <https://www.state.gov/other-policy-issues/at-risk-populations/> (accessed Sept. 4, 2023) (establishing that refugees and migrants are at-risk populations who are vulnerable to ending up in unsafe situations due to resource scarcity).

<sup>151</sup> Hubbard, *supra* note 135 (explaining that Tyson and other companies find many refugee workers with the help of nonprofit refugee resettlement organizations contracted with the U.S. State Department).

<sup>152</sup> U.S. CONST. amend. XIII (emphasis added).

refusing to work.<sup>153</sup> While a major part of the case focused on the procedure for their pro se appeal, the case demonstrates the inability of prisoners to refuse work and the punishments they face if they try to refuse.<sup>154</sup> The work that the appellants were forced to do was not disclosed in the holding, but Mikeska, one of the four appellants, attempted to invoke the 8th Amendment, prohibiting cruel and unusual punishment, because the labor aggravated his stomach ulcers.<sup>155</sup> The court, however, held that involuntary servitude can only be considered “cruel and unusual” punishment for prisoners if there is “deliberate indifference” when assigning labor that worsens a prisoner’s “serious medical needs.”<sup>156</sup>

All four appellants also argued their right to equal protection was violated because they were segregated from the rest of the prison population. They were kept in their cells for excessively long periods of time in overcrowded conditions; lacked recreation periods; and had restricted access to religious, therapeutic, and educational services.<sup>157</sup> The court held that their rights were not violated because prison officials possess the right to determine “whether and when to provide prisoners with privileges which amount to more than reasonably adequate food, clothing, shelter, sanitation, medical care, and personal safety.”<sup>158</sup> In short, any necessity deemed more than “reasonably adequate” can be taken away, but what constitutes a “reasonably adequate” necessity is undefined.<sup>159</sup> Finally, the court held that a prisoner cannot invoke the 13th Amendment as a defense against involuntary servitude.<sup>160</sup>

As shown by *Mikeska v. Collins*, prisoners can be forced to work without compensation, and they can be given punishments that drastically reduce the quality of care they receive for noncompliance.<sup>161</sup> For example, in some prison-run farms, the punishments can be as severe as solitary confinement for fainting while working, or as the supervisors insisted in that incident, for “faking.”<sup>162</sup> In short, forcing prisoners to perform unpaid labor, akin to enslavement, is legal per the U.S. Constitution.

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<sup>153</sup> *Mikeska v. Collins*, 900 F.2d 833 (5th Cir. 1990) (order withdrawn in part on rehearing to remove 3 appellants for an unrelated reason, but the substance of the claims and holding were affirmed).

<sup>154</sup> *Id.*

<sup>155</sup> *Id.* at 837.

<sup>156</sup> *Id.*

<sup>157</sup> *Id.* at 834, 837.

<sup>158</sup> *Id.* at 837.

<sup>159</sup> *Id.*

<sup>160</sup> *Id.*

<sup>161</sup> *Id.*; *Vanskike v. Peters*, 974 F.2d 806, 809 (7th Cir. 1992) (regarding no requirement to pay: compensation for labor is “by Grace Of The State”).

<sup>162</sup> Univ. of Chi. L. School, *Captive Labor Exploitation of Incarcerated Workers*, ACLU & GLOB. HUM. RTS. CLINIC, 64 (June 15, 2022), [https://www.aclu.org/sites/default/files/field\\_document/2022-06-15-captivelaborresearchreport.pdf#page=129&zoom=100,0,0](https://www.aclu.org/sites/default/files/field_document/2022-06-15-captivelaborresearchreport.pdf#page=129&zoom=100,0,0) (accessed Sept. 5, 2023).

In addition to the Constitutional exemption for forced servitude as punishment, prisoners are left out of many general workplace protections.<sup>163</sup> At the federal level, OSHA exempts most incarcerated workers from their minimum standards for health and safety in correctional facilities and prisons.<sup>164</sup> They are exempted because OSHA does not consider prisons to be “employers,” and the prisoners who work for them are subsequently not considered “employees.”<sup>165</sup> The agency goes on to explicitly state that it does not apply to state employees or inmates, nor state or local government-operated prisons.<sup>166</sup> OSHA clarified in a directive that prisoners forced to perform work similar to what exists outside of prisons, such as farming, should have a right to similar protections as free persons and the right to file violations.<sup>167</sup> Even so, they are not considered employees.<sup>168</sup> However, it is important to note that OSHA directives are guidelines, not legally binding standards, regulations, or rules, and as such are not legally actionable.<sup>169</sup> The FLSA and the NLRA both contain provisions to protect employees through proper pay and the right to bargain for improved work conditions, but the majority of prison workers are not typically defined as employees and are thereby judicially excluded from these protections as well.<sup>170</sup> For example, an inmate at a federal prison attempted to argue his right to receive minimum wage was violated under the FLSA provision for government employees because he was being paid below the minimum

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<sup>163</sup> *Id.* at 12.

<sup>164</sup> *Id.*

<sup>165</sup> 29 U.S.C. § 652(5)–(6). There are not lawsuits directly against OSHA’s exclusion of prisons and prisoners from their definition of “employer” and “employee,” but there are older lawsuits wherein prisoners and labor unions challenged state level definitions of the term “employee” which explain OSHA’s definition as well. See, e.g., *Prisoners’ Labor Union v. State (Dep’t of Corrections)* 232 N.W.2d 699, 701, 703–04 (Mich. Ct. App. 1975) (holding that prisoners do not have a voluntary, economic relationship with their prison and so are not employees in the common understanding of the term. Further, to redefine “employee,” the court held, would threaten the jurisdictional control the Dep’t of Corrections has over prison labor and industry).

<sup>166</sup> U.S. Dep’t of Labor, *Clarification on Whether an Employer With Multiple Facilities Needs a Separate Written ECP for Each Facility*, OSHA STANDARD INTERPRETATIONS (Dec. 13, 2011), <https://www.osha.gov/laws-regs/standardinterpretations/2011-12-13> (accessed Sept. 5, 2023).

<sup>167</sup> U.S. Dep’t of Labor, *Federal Agency Safety and Health Programs with the Bureau of Prisons*, U.S. Department of Justice, OSHA DIRECTIVES (April 10, 1995), <https://www.osha.gov/enforcement/directives/fap-01-00-002> (accessed Sept. 5, 2023).

<sup>168</sup> *Id.*

<sup>169</sup> U.S. Dep’t of Labor, *Directives – Publication Date*, OSHA (2023), <https://www.osha.gov/enforcement/directives/publicationdate/currentyear> (accessed Sept. 7, 2023).

<sup>170</sup> *Harker v. State Use Indus.*, 990 F.2d 131, 133 (4th Cir. 1993) (regarding the FLSA); Kara Goad, *Columbia University and Incarcerated Worker Labor Unions Under the National Labor Relations Act*, CORNELL L. SCH., 13-15 (May 2017), <https://scholarship.law.cornell.edu/cgi/viewcontent.cgi?article=1013&context=cllsrp> (accessed Sept. 9, 2023) (it is not clear per the NLRA whether prisoners can be covered employees, but given the interpretation under OSHA and FLSA, it is generally considered that they are not employees and not protected unless on a work release program).

wage at a government-run prison.<sup>171</sup> The court dismissed the claim on the grounds that forcing a prisoner to do work does not fall under the legal definition of “employment” and reiterated that the 13th Amendment has an exception to permit involuntary servitude as punishment for crime,<sup>172</sup> thus affirming the court’s reluctance to grant prisoners the legal right to a minimum wage.<sup>173</sup>

### B. THE LAWS IN PRACTICE

What do these laws mean for prison labor in industrial animal agriculture?<sup>174</sup> They mean prisoners are ill-protected, inadequately trained, and at risk of injury and even death while on the job.<sup>175</sup> In Arlington, Arizona lies Hickman’s Family Farms (Hickman), the self-proclaimed largest egg producer in the American Southwest, which has depended on prison labor for almost a quarter century.<sup>176</sup> At Hickman, one prison worker, Mary Stinson, had part of her finger ripped off while fixing a chicken feeder in her first two weeks on the job.<sup>177</sup> This injury occurred because her supervisors at Hickman told her to “figure it out” rather than properly train her on how to operate the heavy machinery.<sup>178</sup> Four other prisoners have had serious injuries at Hickman, ranging from groin impalement to loss of use in a hand, and multiple lawsuits have been filed between 2019 to 2020 for severe prisoner injuries on the farm.<sup>179</sup> Workers at Hickman discuss the severely unsanitary work conditions which caused diarrhea and vomiting—the symptoms of what they called the ‘chicken flu.’<sup>180</sup> The air quality at the CAFO was so poor that it led to a chronic respiratory condition the workers called the ‘Hickman cough’.<sup>181</sup> During investigation for Ms. Stinson’s lawsuit regarding her negligent training, OSHA found zero inspection records for the farm since five years prior to the investigation.<sup>182</sup>

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<sup>171</sup> *Emory v. U.S.*, 2 Cl. Ct. 579, 580 (1983).

<sup>172</sup> *Id.*

<sup>173</sup> *Id.*

<sup>174</sup> To see a partial list of prison labor farms and the type of goods prisoners produced, visit: *Prison Farm*, WIKIPEDIA, [https://en.wikipedia.org/wiki/Prison\\_farm](https://en.wikipedia.org/wiki/Prison_farm) (accessed Sept. 6, 2023).

<sup>175</sup> ACLU, *supra* note 162, at 62.

<sup>176</sup> Elizabeth Whitman, *Barely Trained Inmate Loses Finger Working at Hickman’s Egg Farm*, PHOENIX NEW TIMES (Sept. 12, 2019), <https://www.phoenixnewtimes.com/news/inmates-maricopa-county-arizona-injured-labor-hickman-egg-farms-11354362> (accessed Sept. 6, 2023).

<sup>177</sup> *Id.*

<sup>178</sup> *Id.*

<sup>179</sup> *Id.*; Josh Kelety, *Hickman’s Family Farms’ Reliance on Prison Labor Is Starting to Yield Lots of Lawsuits*, PHOENIX NEW TIMES (June 18, 2021), <https://www.phoenixnewtimes.com/news/hickmans-family-farms-hit-with-new-lawsuits-over-inmate-worker-injuries-11563930> (accessed Sept. 1, 2023).

<sup>180</sup> Whitman, *supra* note 176.

<sup>181</sup> *Id.*

<sup>182</sup> *Id.*



The incidents at Hickman's were not unique. In 2017, at a poultry slaughterhouse in Alabama, Frank Ellington joined the prison's work release program on a kill line in hopes of earning parole for his life sentence for third degree robbery.<sup>183</sup> While Mr. Ellington was cleaning a machine at the slaughterhouse, his arm caught on a rotating disk, pulling him inside the machine and killing him.<sup>184</sup> When OSHA launched an investigation into his death, they identified improper training at the facility and a lack of procedure to control dangerous conditions.<sup>185</sup> This same problem happened at this slaughterhouse a decade prior, indicating that the facility failed to correct the dangerous conditions after the earlier incident.<sup>186</sup> There was no wrongful death lawsuit filed, and the proposed fine that resulted from federal investigation was less than \$40,000.<sup>187</sup> Koch Foods, the operator of the slaughterhouse, contested the fine, and no change to the work release program or dangerous conditions has been reported thus far.<sup>188</sup>

Following Ellington's death, investigative reporters at The Marshall Project uncovered over two dozen injury incident reports from other poultry slaughterhouses.<sup>189</sup> These injuries were caused by chemical burns on workers' skin and eyes, knife wounds, and chronic pain in their hands.<sup>190</sup> In an incident at a slaughterhouse in North Carolina, a supervisor simply gave four prisoners diaper rash cream to treat their chemical burns rather than sending them for medical care.<sup>191</sup> While OSHA does not control labor inside prisons, its failure to inspect off-site work release for prisoners is evident and has led to substantially diminished protection for prisoner health and safety.<sup>192</sup> In addition, these workers also suffer the physical and psychological trauma typical on the kill line at a slaughterhouse.<sup>193</sup>

### C. RECOMMENDATIONS FOR CHANGE

Perhaps the most obvious legal policy to improve the protections and welfare of prison laborers would be to remove the exemption from the 13th Amendment that allows forced labor. This would require

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<sup>183</sup> Will Tucker, *The Kill Line*, SOUTHERN POVERTY LAW CTR. (July 26, 2018), <https://www.splcenter.org/news/2018/07/26/kill-line> (accessed Sept. 6, 2023).

<sup>184</sup> *Id.*

<sup>185</sup> Kristi Graunke & Will Tucker, *Why Incarcerated People At Poultry Plants Deserve Better*, THE MARSHALL PROJECT (Aug. 13, 2018), <https://www.themarshallproject.org/2018/08/13/why-incarcerated-poultry-workers-deserve-better> (accessed Sept. 7, 2023).

<sup>186</sup> *Id.*

<sup>187</sup> Tucker, *supra* note 183.

<sup>188</sup> *Id.*

<sup>189</sup> Graunke, *supra* note 185.

<sup>190</sup> *Id.*

<sup>191</sup> *Id.*

<sup>192</sup> ACLU, *supra* note 162, at 63.

<sup>193</sup> See *supra* § II(B). (discussing the dangers of animal agriculture).

amending the Constitution to delete the words “except as punishment for crime whereof the party shall have been duly convicted” from the 13th Amendment.<sup>194</sup> That proposal is unlikely to pass,<sup>195</sup> but on the state level, it might be more feasible.<sup>196</sup> As of 2022, four states: Oregon, Alabama, Tennessee, and Vermont, have voted to amend their state constitutions to remove the exemption for forced labor as punishment.<sup>197</sup> These amendments may open the door to future litigation in situations where prisoners are forced to work or are punished for refusing to work in situations they find too dangerous or untenable.<sup>198</sup> There is hope that these workers will see other improvements soon too. For example, Washington State has introduced a bill which requires prisons to pay minimum wage, rather than permitting wages at less than \$1.00 per hour.<sup>199</sup>

Similarly, Senator Cory Booker (D-NJ) has recently introduced the Fair Wages for Incarcerated Workers Act which would require the federal minimum wage be paid for prison labor.<sup>200</sup> While bills such as these certainly help ensure better pay for the work prisoners do in animal agriculture, they still fail to address the dangers of these types of jobs.

Booker’s Correction Facilities Occupational Safety and Health Act would begin to address the issue by bringing labor occurring at prisons or prison farms under OSHA’s umbrella.<sup>201</sup> However, as exemplified by the work release programs that occur in places like Hickman’s Family Farms or the described slaughterhouses, OSHA has been woefully inattentive in ensuring that the working conditions for these people are safe and healthy.<sup>202</sup> The same problems that currently exist would continue due to the lack of enforcement actions, namely, failure to file or aggressively investigate reports of OSHA violations when a prisoner is hurt or killed on the job.

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<sup>194</sup> U.S. CONST. ART. XIII, § 1.

<sup>195</sup> Simeon Spencer, *Why Slavery is Still Legal in America – And How Voters Can Take Action*, LEGAL DEF. FUND (Oct. 18, 2022), <https://www.naacpldf.org/13th-amendment-emancipation/> (accessed Sept. 10, 2023).

<sup>196</sup> See Aaron Morrison, *Voters in 4 states reject slavery, involuntary servitude as punishment for crime*, PBS (Nov. 9, 2022, 6:51 PM), <https://www.pbs.org/newshour/politics/voters-in-4-states-reject-slavery-involuntary-servitude-as-punishment-for-crime> (accessed Sept. 08, 2023) (discussing successful removals of slavery exception language at the state level).

<sup>197</sup> Aaron Morrison, *Voters in 4 States Reject Slavery, Involuntary Servitude as Punishment for Crime*, PBS (Nov. 9, 2022, 6:51 PM), <https://www.pbs.org/newshour/politics/voters-in-4-states-reject-slavery-involuntary-servitude-as-punishment-for-crime> (accessed Sept. 8, 2023).

<sup>198</sup> *Id.*

<sup>199</sup> H.B. 1024, 68th Leg., Reg. Sess. (Wash. 2023).

<sup>200</sup> *Booker Introduces Package of Bills to End Unfair and Abusive Labor Practices in U.S. Correctional Facilities*, CORY BOOKER (Feb. 23, 2023), <https://www.booker.senate.gov/news/press/booker-introduces-package-of-bills-to-end-unfair-and-abusive-labor-practices-in-us-correctional-facilities> (accessed Sept. 13, 2023).

<sup>201</sup> S. 518, 118th Cong. (2023).

<sup>202</sup> ACLU, *supra* note 162, at 63; see *supra* Section IV(B).

One solution that eliminates the problem of prison labor in animal agriculture altogether is prohibiting the use of prison labor in CAFOs and in slaughterhouses of any scale. As illustrated, these jobs are inherently extremely dangerous.<sup>203</sup> Industrial animal farms are rife with disease, create risks of respiratory and other health problems, and require some level of desensitization to the violence inflicted on hundreds to thousands of animals every single day.<sup>204</sup> Slaughterhouses are ranked as one of the most dangerous jobs in the United States and contribute to high rates of perpetration-induced traumatic stress disorder, post-traumatic stress disorder, and spillover effects which lead to higher rates of violent crime.<sup>205</sup> It is not justifiable to force someone who may be mentally unwell, who may have a criminal record, or who may have been wrongly convicted, to do a job which has high odds of damaging their mental and physical health for the rest of their life. If the goal of the prison system is rehabilitation, forced and unpaid labor in dangerous conditions involving animal cruelty is not the solution. This policy recommendation also completely sets aside the issue of enforcement and investigation present in Sen. Booker's Correction Facilities Occupational Safety and Health Act.<sup>206</sup>

However, if presented in a bill this suggestion would face an uphill battle because the reliance on prison labor is so high.<sup>207</sup> If elimination is too idealistic, an alternative proposal would be to bring prisoners under the FLSA minimum wage requirements and redefine "employee" in OSHA, FLSA, and NLRA to explicitly include prisoners and prison labor. This would ensure there is no question about the applicability of federal employment standards to these inmate employees and make prisons less likely to subject prisoners to unpaid labor and hazardous working conditions during incarceration.<sup>208</sup> Prisoners may not be traditional employees, but whether the labor is forced on them or not, prisoners are still performing labor—to produce goods or provide services—that would normally receive compensation, even if only cents on the dollar. The law should consider them employees.

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<sup>203</sup> See *supra*, § II(B).

<sup>204</sup> See *supra*, § II(B).

<sup>205</sup> See *supra*, § II(B).

<sup>206</sup> S. 518.

<sup>207</sup> See, e.g., H. Claire Brown, *How Corporations Buy—And Sell—Food Made With Prison Labor*, COUNTER (May 18, 2021, 11:38 AM), <https://thecounter.org/how-corporations-buy-and-sell-food-made-with-prison-labor/> (accessed Sept. 9, 2023) ("The Counter identified over \$40 million in transactions between private food companies, prisons, and prison industries since 2017. . .").

<sup>208</sup> *Id.*

## V. CHILD LABOR

## A. RELEVANT LAWS

If a state is struggling to fill thousands of dangerous, undesirable jobs in industrial slaughterhouses, what should they do? Apparently for some operations, child labor is the answer.<sup>209</sup> The lax rules surrounding child labor in animal agriculture may make it easier for human trafficking and forced or coerced child labor to go unnoticed.<sup>210</sup> Owners of industrial animal factories and slaughterhouses claim ignorance to hiring children as young as thirteen,<sup>211</sup> but even so, there are legitimate exemptions for child labor in various states which can muddle clarity on when it is or is not legal to hire a child.<sup>212</sup> Even if child labor were made legal, it would not mean children would be immune from exploitation by this industry.

Exemptions in child labor law, regulated federally by the FLSA and state laws, have already paved the way to make it easier to exploit children.<sup>213</sup> For example, children working in agriculture are exempt from the standard minimum age requirements set out in the FLSA, which includes the eighteen-year-old minimum age for hazardous work.<sup>214</sup> Under the FLSA, children as young as twelve can be employed on farms with parental or guardian consent, or at any age on the family's own farm outside of school hours.<sup>215</sup> Children as young as fourteen can be employed on farms outside of school hours, and children as young as sixteen can be employed during school hours.<sup>216</sup>

Federal child labor regulations in agriculture do not require children to have work permits or papers, nor do they limit the number of hours a child can work other than the school hours limitation

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<sup>209</sup> Michael Goldberg, *Mississippi Teen's Death in Poultry Plant Shows Child Labor Remains a Problem, Feds Say*, ABC NEWS (July 26, 2023), <https://abcnews.go.com/US/wireStory/mississippi-teens-death-poultry-plant-shows-child-labor-101687399> (accessed Oct. 27, 2023).

<sup>210</sup> Rachel M. Cohen, *The Republican Push to Weaken Child Labor Laws, Explained*, VOX (May 5, 2023, 1:20 PM), <https://www.vox.com/policy/2023/5/3/23702464/child-labor-laws-youth-migrants-work-shortage> (accessed Sept. 10, 2023).

<sup>211</sup> Maria Sacchetti & Lauren Kaori Gurley, *A Cleaning Company Illegally Employed a 13-Year-Old. Her Family is Paying the Price.*, WASH. POST (Mar. 3, 2023, 1:58 PM), <https://www.washingtonpost.com/business/2023/03/03/child-labor-workers-fallout-migrants/> (accessed Apr. 16, 2023).

<sup>212</sup> *Id.*; See Jennifer Sheer & Nina Mast, *Child Labor Laws are Under Attack in States Across the Country*, ECON. POL'Y INST. (Mar. 14, 2023), <https://www.epi.org/publication/child-labor-laws-under-attack/> (accessed Sept. 13, 2023) (explaining how states' proposals to weaken child labor laws have increased in recent years, along with the number of children working in violation of existing laws).

<sup>213</sup> *Id.*

<sup>214</sup> 29 C.F.R. § 570.2(a) (2023).

<sup>215</sup> 29 C.F.R. § 570.2(b) (2023).

<sup>216</sup> *Id.*

mentioned.<sup>217</sup> While federal regulations generally require children to be sixteen years old before they can handle dangerous or toxic agricultural work—such as heavy machinery, manure lagoons, or toxic chemical application—there is an exemption for child laborers who are classified as “student-learners.”<sup>218</sup> A student-learner is a minor who is permitted to work in “hazardous” agricultural occupations, provided they are enrolled in vocational training through a recognized educational authority, typically a school.<sup>219</sup> There are four key requirements to be a student-learner: 1) The school will collaborate with the student-learner’s employer, 2) the child is given safety instructions and training by both their school and employer, 3) the child has a supervisor during work, and 4) the work the child performs is incidental to their educational training.<sup>220</sup>

There are additional exceptions which permit child laborers to be paid as little as \$4.25 an hour for the first consecutive ninety days they work for any one employer.<sup>221</sup> Student-learners may perpetually be paid less, despite the fact they may be performing the same work as an adult who is required to be paid at least the federal minimum wage.<sup>222</sup> Even under the minimum federal labor standards that apply to all states, these examples illustrate the loopholes that are available—and utilized—for state child labor laws.<sup>223</sup> However, state-level regulations can be more stringent than federal-level regulations, for example, by requiring higher pay or removing the student-learner exemption for hazardous work.<sup>224</sup>

### B. THE LAWS IN PRACTICE

In 2018, there was a human trafficking case that occurred inside Trillium Farms, an Ohio egg CAFO, where minors were smuggled from Guatemala with the promise of a better life—only to find themselves forced to work in dangerous conditions for up to twelve hours per day.<sup>225</sup> Once the children were smuggled into the United States, they typically were detained at the border and placed with a “sponsor” by the Department of Health and Human Services (HHS) because they were

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<sup>217</sup> *Child Labor Requirements in Agricultural Occupations Under the Fair Labor Standards Act (Child Labor Bulletin 102)*, U.S. DEP’T OF LABOR, 2 (June 2007), <https://www.nifa.usda.gov/sites/default/files/resources/childlabor102.pdf> (accessed Apr. 16, 2023) (hereinafter ‘*Child Labor Requirements*’).

<sup>218</sup> *Id.* at 5–6.

<sup>219</sup> *Id.*

<sup>220</sup> *Id.*

<sup>221</sup> *Child Labor Requirements*, *supra* note 217, at 3.

<sup>222</sup> *Id.*

<sup>223</sup> *Id.* at 1.

<sup>224</sup> *Id.*

<sup>225</sup> Patrice Taddonio, *Inside the Hidden Reality of Labor Trafficking in America*, PBS (Apr. 24, 2018), <https://www.pbs.org/wgbh/frontline/article/inside-the-hidden-reality-of-labor-trafficking-in-america/> (accessed Apr. 16, 2023).

unaccompanied minors.<sup>226</sup> However, the smuggler who brought them to the United States had a network of sponsors who posed as friends of the children's families so that HHS would give them the children.<sup>227</sup> The sponsors then took these children to a labor contractor who forced them to work for their client, Trillium Farms.<sup>228</sup>

Once these children arrived at the egg CAFO, they were forced to live in decrepit trailers and pay off their debts for their supposed 'better life' by giving their wages to their smuggler.<sup>229</sup> If they refused to turn over most—if not all—of their wages, then they and their families' lives were threatened.<sup>230</sup> While defendants—both from the contracting company and otherwise associated with the smuggling operation—pled guilty, Trillium Farms claimed ignorance of their employees' ages and was not charged.<sup>231</sup> The Senate Permanent Subcommittee on Investigations, tasked with investigating the government's handling of unaccompanied minors with unknown citizenship, concluded both that the smuggling of child labor at Trillium Farms was not an isolated incident, and that it is impossible to know how often it is occurring.<sup>232</sup>

Investigations into child labor in slaughterhouses have been gaining momentum. One of the most recent investigations included a major child trafficking discovery which involved multiple states and multiple slaughterhouses, including those owned by JBS, the world's largest meat processing company.<sup>233</sup> In the investigation that produced this discovery, over 100 children—some as young as thirteen years old—were found to be working graveyard shifts in slaughterhouses where they were cleaning both the slaughter equipment and kill floors, in

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<sup>226</sup> *Id.* (explaining that children turned over to HHS would be placed with either a relative or an adult sponsor); *Unaccompanied Children Released to Sponsors by State*, OFF. OF REFUGEE RESETTLEMENT (Sept. 28, 2023), <https://www.acf.hhs.gov/orr/grant-funding/unaccompanied-children-released-sponsors-state> (accessed Oct. 27, 2023) ("Sponsors are adults who are suitable to provide for the child's physical and mental well-being and have not engaged in any activity that would indicate a potential risk to the child."); see also 6 U.S.C. § 279(g) (2023) (defining "unaccompanied minors").

<sup>227</sup> *Id.*; Molly Hennessy-Fiske, *Is Ohio Case of Migrant Youth Trafficking Evidence of a 'Systemic Problem'?*, LA TIMES (Nov. 15, 2015, 3:00 AM), <https://www.latimes.com/nation/la-na-ohio-immigrant-sponsor-20151115-story.html> (accessed Apr. 16, 2023).

<sup>228</sup> Taddonio, *supra* note 225.

<sup>229</sup> *Id.*

<sup>230</sup> *Id.*

<sup>231</sup> *Another Defendant Pleads Guilty in Connection With Labor Trafficking of Minors at Ohio Egg Farm*, U.S. ATT'Y'S OFF. (Sept. 18, 2018), <https://www.justice.gov/usao-ndoh/pr/another-defendant-pleads-guilty-connection-labor-trafficking-minors-ohio-egg-farm> (accessed Mar. 28, 2018).

<sup>232</sup> Taddonio, *supra* note 225; Hennessy-Fiske, *supra* note 227.

<sup>233</sup> Sacchetti & Gurley, *supra* note 211 (Since the initial raid in October, some of the children have gone missing and are nowhere to be found. Migrant advocates who are looking for them blame the Labor Department for raiding the slaughterhouse with no plan to keep the children safe).

violation of the FLSA.<sup>234</sup> Many of these children are unaccompanied minors arriving from Central America, much like the children in the Trillium Farms case.<sup>235</sup> These children's jobs on the kill floor included using hazardous chemicals to clean various saws, head splitters, and other dangerous equipment.<sup>236</sup>

Several children were reported to have suffered from chemical burns, and many had missed school due to exhaustion.<sup>237</sup> These children were not employed directly by slaughterhouses; rather, they were employed by a contract cleaning company, Packers Sanitation Services Inc. (PSSI), that assigned them to slaughterhouses.<sup>238</sup> The slaughterhouses that benefited from child labor, including JBS, Cargill, and Tyson, were not charged with child labor violations.<sup>239</sup> PSSI was charged \$1.5 million in total for child labor violations, a civil penalty, which equates to about \$15,000 per child exploited.<sup>240</sup>

This is not the first time that slaughterhouses have exploited children for their labor.<sup>241</sup> In a 2008 bust at a slaughterhouse, Agriprocessors Inc. in Postville, Iowa was found to have directly hired thirty-two children, among nearly three hundred immigrants, most of whom were undocumented.<sup>242</sup> These children worked on meat grinders and saws, which are dangerous heavy machines on the disassembly line.<sup>243</sup> A senior executive at the plant insisted that the children lied about their age, and he claimed ignorance to knowing they hired children younger than sixteen.<sup>244</sup>

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<sup>234</sup> Sacchetti & Gurley, *supra* note 211; Michael Pollan, *Inside the Slaughterhouse*, PBS, <https://www.pbs.org/wgbh/pages/frontline/shows/meat/slaughter/slaughterhouse.html> (accessed Oct. 27, 2023) (explaining that a kill floor is the area of a slaughterhouse where animals are stunned, killed, and dismembered).

<sup>235</sup> *Id.*

<sup>236</sup> Chris Moore, *More Than 100 Children Worked for PSSI; Company Fined*, MEATINGPLACE (Feb. 17, 2023), <https://www.meatingplace.com/Industry/News/Details/108511> (accessed Mar. 28, 2023).

<sup>237</sup> Maya Yang, *Over 100 Children Illegally Employed by US Slaughterhouse Cleaning Firm*, THE GUARDIAN (Feb. 17, 2023, 3:08 PM), <https://www.theguardian.com/law/2023/feb/17/underage-child-labor-working-slaughterhouse-investigation> (accessed Mar. 28, 2023).

<sup>238</sup> *Id.*

<sup>239</sup> Lauren Kaori Gurley, *U.S. Fines Firm \$1.5 Million for Hiring Kids to Clean Meatpacking Plants*, WASH. POST (updated Feb. 17, 2023, 6:47 PM), <https://www.washingtonpost.com/business/2023/02/17/child-labor-meatpacking-department-of-labor/> (accessed Sept. 3, 2023).

<sup>240</sup> Yang, *supra* note 237.

<sup>241</sup> Julia Preston, *Meatpacker Faces Charges of Violating Child Laws*, N.Y. TIMES (Sept. 9, 2008), <https://www.nytimes.com/2008/09/10/us/10meat.html> (accessed Mar. 28, 2023).

<sup>242</sup> *Id.*

<sup>243</sup> *Id.*

<sup>244</sup> *Id.*

### C. RECOMMENDATIONS FOR CHANGE

The first recommendation to curb child labor in animal agriculture is lobbying to defeat proposed bills which, if enacted, could make it easier to employ children in industrial animal operations.<sup>245</sup> Iowa, for example, intended to use the work-based learning exception to permit student-learners in slaughterhouse operations in its recently amended child labor laws.<sup>246</sup> Shortly before passing the bill, Iowa removed the exception due to extensive opposition.<sup>247</sup> Legislative response to labor shortages and substantially increased reports of child labor should not be to legalize what is known to harm children, particularly in a profession known to harm humans generally, regardless of age.<sup>248</sup>

The most comprehensive recommended action to take is to remove the agricultural exemptions from the FLSA.<sup>249</sup> The current framework allows unfettered hours outside of school for children to work in agriculture—when it would be prohibited in any other industry.<sup>250</sup> Further, by giving free reign for parents to put their child to work—regardless of the child’s age or whether parental consent is provided under duress—children become an easy resource for companies to exploit.<sup>251</sup> As a result, children may be worked like full-time adults at the expense of their school work.<sup>252</sup>

The current legal structure also makes it harder for investigators and reporters to discover illegal child labor if the employer does not report their use of child labor, because discovery largely depends on the child self-reporting the issue if not reported by the employer.<sup>253</sup> There are two reasons this is unlikely to happen: First, many parents and children may be unaware of child labor laws, and the dispersion of

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<sup>245</sup> Jennifer Sherer & Nina Mast, Iowa Governor Signs One of the Most Dangerous Rollbacks of Child Labor Laws in the Country, *ECON. POL’Y INST.* (updated June 23, 2023), <https://www.epi.org/blog/iowa-governor-signs-one-of-the-most-dangerous-rollbacks-of-child-labor-laws-in-the-country-14-states-have-now-introduced-bills-putting-children-at-risk/> (accessed Sept. 10, 2023).

<sup>246</sup> *Id.*

<sup>247</sup> *Id.*

<sup>248</sup> See generally Yang, *supra* note 237 (discussing the recent increases in child labor violations across the country and the reaction by lawmakers to decrease child labor protections).

<sup>249</sup> See 29 C.F.R. § 570.2 (2023) (stating the FLSA agricultural exemptions).

<sup>250</sup> *Child Labor Requirements*, *supra* note 217, at 2.

<sup>251</sup> See 29 C.F.R. § 570.2 (2023) (outlining the ability of parents to permit children to work).

<sup>252</sup> Guadalupe T. Luna, *An Infinite Distance?: Agricultural Exceptionalism and Agricultural Labor*, 1 *U. PA. LAB. & EMP. L.* 487, 498-99 (1998) (“Researchers report farm worker children are ostracized from other school children and experience low self-esteem, academic, and self-concept problems.”).

<sup>253</sup> See Douglas L. Kruse & Douglas Mahony, *Illegal Child Labor in the United States: Prevalence and Characteristics*, 54 *INDUS. & LAB. RELS. REV.* 17, 19-20, 25 (2000); Margaret Wurth, *Children Working in Terrifying Conditions in US Agriculture*, *HUM. RTS. WATCH* (Nov. 13, 2019, 6:01 AM), <https://www.hrw.org/news/2019/11/13/children-working-terrifying-conditions-us-agriculture> (accessed Sep. 5, 2023).



agricultural employment can make monitoring child labor in the industry difficult.<sup>254</sup> Second, many children may face a fear of employer retaliation for reporting child labor violations in addition to pressure to financially support their families with their labor.<sup>255</sup> Additionally, due to the nuances and exceptions in child labor laws regarding agricultural work, someone outside the industry witnessing child labor may have no idea whether the labor is legal or not because there may be no way of knowing whether the child's parents consented to the work.<sup>256</sup> So long as most animal products in the United States come from CAFOs, the sweeping exemptions made for child agricultural labor create massive risks of child endangerment and exploitation.<sup>257</sup>

Such a broad amendment to the FLSA that would eliminate these exemptions is unlikely to gain much support because, while most animal products come from industrial facilities, the majority of farms in the United States are still the small family farms or ranches typical of the quintessential American ideal.<sup>258</sup> A potential workaround would be to modify the exemptions rather than remove them. The agricultural exemption could be redefined to limit the scope of the facilities in which children are allowed to work. Implementing a maximum size, whether by revenue or number of animals housed or slaughtered annually, would make it more obvious whether a minor is working at an industrial facility or at a stereotypical family farm.<sup>259</sup> As an additional safeguard, child employment on farms could be restricted to only those owned by the child's family or guardian, rather than the current regime allowing parents to permit outside farms and industrial facilities to employ their children.<sup>260</sup> A final suggestion to these amendments would be to remove the exemption that allows children to work any number of hours, provided they do not occur during school.<sup>261</sup> Working hours for children in CAFOs should be limited, as they are in any other industry.

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<sup>254</sup> Kruse, *supra* note 253.

<sup>255</sup> Wurth, *supra* note 253.

<sup>256</sup> *Child Labor Requirements*, *supra* note 217, at 3 (detailing the parental consent requirements for agricultural labor outside of school hours).

<sup>257</sup> Jacy Reese Anthis, *US Factory Farming Estimates*, SENTIENCE INST. (Apr. 11, 2019), <https://www.sentienceinstitute.org/us-factory-farming-estimates> (accessed Sept. 2, 2023) (estimating how much of US animal products come from factory farming); *See also* YANG, *supra* note 248 (discussing the dangers posed to children working in slaughterhouses).

<sup>258</sup> *Farms and Land in Farms 2021 Summary*, USDA (Feb. 2022), [https://www.nass.usda.gov/Publications/Todays\\_Reports/reports/fnlo0222.pdf](https://www.nass.usda.gov/Publications/Todays_Reports/reports/fnlo0222.pdf) (accessed Sept. 2, 2023) (documenting that in 2021, over 80% of US farms had fewer sales than \$100,000, while only 7.4% of United States farms had sales of \$500,000 or greater).

<sup>259</sup> *See* Jacob Bogage & María Luisa Paúl, *The Conservative Campaign to Rewrite Child Labor Laws*, WASH. POST (updated May 1, 2023, 12:08 PM), <https://www.washingtonpost.com/business/2023/04/23/child-labor-lobbying-fga/> (accessed Sept. 3, 2023). (discussing the difficulties in enforcing child labor laws).

<sup>260</sup> *See* 29 C.F.R. § 570.2(b) (demonstrating that parents are able to give permission on behalf of their children).

<sup>261</sup> *See Child Labor Requirements*, *supra* note 217, at 2 (illustrating the exemption that allows children to work any number of hours).

If child labor is not banned from the industry as a whole or in part due to the prevalence of small family farms and ranches, then there is one final suggestion to amend the FSLA. To prevent claims or defenses by employers stating that they did not know they hired a minor, the hiring process should mandate government issued identification or proof of age.<sup>262</sup> Employers should be required to document proof of employees' ages, and any minors legally hired should have their employment reported to the state for record keeping. Employers should have to account for every minor in the field, so if there is ever any suspicion of illegal child labor at an animal agriculture facility, the Department of Labor—in conjunction with HHS, the Office of Refugee Resettlement, and the USDA—can investigate violations and deal with them swiftly.<sup>263</sup> The notion that an employer could not tell the age of a child during the hiring process should never be a valid excuse for subjecting children to hazardous work conditions.

## VI. CONCLUSION

Studies have found that there may be a positive correlation between those who harm animals and those who go on to harm humans.<sup>264</sup> The current exploitation of immigrants, prisoners, and children by the CAFO and slaughterhouse industry is a case in point. Such systemic exploitation will need to be addressed through a variety of legislative acts and amendments.<sup>265</sup>

The ideal proposal to end exploitation of workers in animal agriculture is to move away from animal agriculture entirely. Such a shift would remove the physical and psychological suffering experienced by both humans and nonhumans inherent in any animal agriculture system. Nonetheless, as long as people are still consuming animal products, there are several potential avenues to alleviate the suffering of all who are involved, whether immigrant or refugee workers, prison laborers, or children.

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<sup>262</sup> Dep't of Lab. Certificates of Age Regulation, 29 C.F.R. § 570.5 (2023) (recommending, but not mandating, that employers obtain official certificates of age when hiring minors).

<sup>263</sup> Nicole Goodkind, *Illegal Child Labor is on the Rise in a Right Job Market*, CNN (Jul. 30, 2023), <https://www.cnn.com/2023/07/30/economy/child-labor-louisiana-texas/index.html> (accessed Oct. 27, 2023) (detailing how the DOL is increasing efforts to monitor and report child labor violations).

<sup>264</sup> Cynthia Hodges, *The Link: Cruelty to Animals and Violence Towards People*, ANIMAL LEGAL & HIST. CENTER CTR. (2008), <https://www.animallaw.info/article/link-cruelty-animals-and-violence-towards-people> (accessed Sep. 5, 2023).

<sup>265</sup> See, e.g., Christina Cooke, *Congress Likely to Preserve OSHA Loophole That Endangers Animal Ag Workers*, CIVIL EATS (Jul. 12, 2023), <https://civileats.com/2023/07/12/congress-is-likely-to-preserve-osha-loophole-that-endangers-animal-ag-workers/> (accessed Oct. 27, 2023) (describing how existing laws endanger animal agriculture workers and how this endangerment may continue without legislative action).

The overarching recommendation to alleviate the suffering of humans exploited by the CAFO industry is to remove labor exemptions that currently apply to animal agriculture and slaughter. OSHA should not exclude prisoners from their definition of “employee,” as these workers provide goods and services for the economy like any other laborer. OSHA also should not exempt farms with fewer than eleven non-familial employees—an issue which may become more prevalent as industrial animal operations are able to limit the number of employees they have with automation.<sup>266</sup> The nature of hiring within these industries combined with the citizenship and incarceration status of many of their employees—means that countless workers can fall through the cracks in dangerous, exploitive work environments.

The H-2A visa system should not apply to only a fraction of the year-round animal agriculture work that depends on migrant labor. The exemption for forced labor for incarcerated individuals should be removed to better pave the way for these workers to be treated like the de facto employees they are. FLSA should not have exemptions for child labor in agriculture—exemptions which do not exist in any other industry which utilizes child labor.

Beyond removing exemptions, better enforcement of existing regulations along with increased inspection and reporting requirements are needed. Currently, it is too easy for an employer to feign innocence or find an excuse for why their employees are getting maimed or killed on the job. If an industry is deliberately taking advantage of a particularly vulnerable population to fill labor shortages in deeply undesirable and dangerous jobs, then they should be held to higher standards of care for their employees than the typical employer.

The workers in animal agriculture are too often ignored and abandoned. Discussion surrounding the exploitation in the United States food system is critical because ignoring these workers’ struggles, acting like they do not exist, or upholding the status quo is not an excuse to further entrench animal agriculture’s reliance on easily exploitable labor. Tightening regulations and improving enforcement is only the start of creating an equitable food system. If legislators and policy makers act on proposals to improve the lives of both the humans and the animals in animal agriculture, we will be able to continue moving towards a compassionate food system where “I don’t want to know how the sausage gets made” becomes a confusing, antiquated phrase.

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<sup>266</sup> *Revolutionizing Livestock Farming: How Automation is Reshaping the Industry*, ELECTRIC SOLENOID VALVES (Feb. 24, 2023), <https://www.electricsolenoidvalves.com/blog/future-of-livestock-farming-automation-trends> (accessed Oct. 27, 2023) (explaining how automation can be viewed as a labor solution in the animal agriculture sector).

