



ISSUE BRIEF

RAISING VOICES, PROTECTING LIVES: WHISTLEBLOWERS AT THE INTERSECTION OF OVERSIGHT FAILURES IN THE IMMIGRATION SYSTEM AND FOOD PRODUCTION INDUSTRY



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Government Accountability Project is the nation's leading whistleblower protection organization. Through litigating whistleblower cases, publicizing concerns and developing legal reforms, Government Accountability Project's mission is to protect the public interest by promoting government and corporate accountability. Founded in 1977, Government Accountability Project is a nonprofit, nonpartisan advocacy organization based in Washington, D.C.

<https://whistleblower.org>

The Food Integrity Campaign (FIC) is a program of the Government Accountability Project. Food industry whistleblowers have been bringing food safety concerns to Government Accountability Project for more than three decades. In 2009, FIC was created and expanded to include food and agriculture related disclosures about animal welfare, environmental health, and worker rights.

<https://foodwhistleblower.org>

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EXECUTIVE SUMMARY

In 2023, reports of immigrant children working in conditions of dangerous and unlawful child labor, such as slaughterhouse kill floors, shone light on the intersection of oversight issues in both the immigration and food production industries. Tragically, the untimely death of 16 year old Duván Tomás Pérez, an immigrant youth who was killed in a July 2023 accident while working at a poultry plant with a history of complaints demonstrates the gravity of the issue. As the international leader in whistleblower protection and advocacy, Government Accountability Project, which represents dozens of whistleblowers from both the immigration and food production systems, offers this issue brief to highlight the gaps in oversight and whistleblower protection which created an environment ripe for the exploitation of immigrant youth. The issue brief demonstrates that while immigration continues to be a ceaselessly fraught political issue, the reality in the United States is that immigrants and their undervalued labor are critical to the success of domestic food production. This is in part due to the vulnerable state of many noncitizens who lack regularized immigration status, a condition exploited by large corporate actors in the food industry who capitalize by offering low wages and dangerous working conditions.

At the same time, the instability in U.S. immigration policy along with global economic, political, and climate developments have created a situation in which recent years have seen an increase in minors immigrating to the U.S. alone or without their family units. The federal agency tasked with their reception, the Office of Refugee Resettlement (ORR) of the Department of Health and Human Services (HHS), has faced a history of complaints, particularly about its emergency operations beginning in 2021. Government Accountability Project represents several whistleblowers who, beginning in 2021, have spoken out about the neglectful and dangerous conditions of warehousing children in desert tent camps near the southern border. Due to widespread backlash for its haphazard emergency sites, HHS and the HHS Office of Inspector General (OIG) conducted some limited monitoring and oversight initiatives. Notably, a 2022 report of the HHS OIG confirmed reports of whistleblower chilling at emergency sites, and that case management failures may have contributed to immigrant children released from government custody into situations of child labor. However, oversight efforts to date have failed to hold accountable government contractors earning billions of federal dollars for their mismanagement of the care of immigrant children.

In light of ongoing oversight failures, whistleblowers remain a critical accountability and enforcement mechanism in the food production and immigration systems. The issue brief offers legislative and policy solutions that would bolster whistleblower protections for employees who speak up about wrongdoing in the workplace, regardless of their immigration status; break up monopsony power in the food production industry; protect workers, including noncitizen workers; and strengthen oversight of federal agencies and their contractors. These measures are necessary to ensure the safety of immigrant youth, all workers in the food production industry, and the integrity of U.S. domestic food supply.

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RAISING VOICES, PROTECTING LIVES: WHISTLEBLOWERS AT THE INTERSECTION OF OVERSIGHT FAILURES IN THE IMMIGRATION SYSTEM AND FOOD PRODUCTION INDUSTRY

Government Accountability Project is the international leader in whistleblower protection and advocacy, representing and supporting thousands of workers who have blown the whistle about issues that impact the public interest since 1977. A common thread when employees blow the whistle on problems they witness and experience in the workplace is the lack of oversight of the systems in which they work. Thus, whistleblowers are often the last line of defense against systemic failures in oversight and accountability.

Government Accountability Project has represented whistleblowers who have spoken out about a myriad of issues, including concerns about food safety and immigration justice. Their numerous disclosures include reports of dangers in the meatpacking industry, threats posed to small farmers and consumers by the monopolization of U.S. food production, and concerns about failures to meet standards of care for noncitizens in government custody, including unaccompanied immigrant children.

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Recently, these two areas of work – food safety and immigration – have intersected in the public eye with explosive reports beginning in February 2023 that children, who migrated to the United States without their parents, have been discovered in situations of illegal child labor within the food production industry.¹

Tragically, the gravity of the risks associated with children working in food production was soon made clear by the untimely death of 16-year-old Duván Tomás Pérez, a member of the Maya Mam Nation,² who was killed on July 14, 2023 while working at the Mar-Jac Poultry processing plant in Hattiesburg, Mississippi.³ The Mar-Jac Poultry processing plant has long been accused of violating safety standards, and has a history of worker deaths, with two other fatalities at the plant since 2020.⁴

Government Accountability Project offers this issue brief in support of ongoing efforts for transparency and accountability in the U.S. food production and immigration systems. This issue brief highlights the oversight failures exposed by whistleblowers at this intersection, many of which harm citizen and noncitizen workers alike. In addition, the brief also provides several suggestions for reform, including stronger oversight and whistleblower protection to safeguard workers and consumers alike.

As the loss of Duván indicates, these matters cannot continue unaddressed as children's and workers' lives are at risk.

IMMIGRANTS FEED AMERICA

The food production industry is one place in today's fraught political landscape where "America First" and pro-immigrant sentiments find common ground.⁵ As Americans face steeper prices for meat and produce in grocery stores, a primary contributing factor for inflation is the shortage of labor in the agricultural and meat production industries.⁶ Across the agricultural sector, farmers and ranchers struggle to find domestic workers for the intense labor required for their operations, with jobs that historically offer low wages for intense physical work in extreme conditions.⁷ The situation is dire; as one food industry leader stated, "...food security is national security. A nation that cannot feed itself is not secure."⁸

As one farmer said, "[w]ithout immigrant workers... we don't put food on the American table. And that's just an open secret. And we need to realize that that's the case and fix the problem."

Farmers and ranchers have turned to Congress, calling for new paths to facilitate legalized immigrant labor.⁹ Indeed, noncitizen and undocumented workers currently comprise the majority of employees in the food production industry.¹⁰ One piece of legislation, the Farm Workforce Modernization Act (FWMA), showed promise in the 117th Congress; it would have provided year-round, rather than seasonal

agricultural work visas to some sectors and a pathway to citizenship for some long-term agricultural workers.¹¹ Although the bill passed in the House and made it out of Senate committee, the FWMA stalled in part because it expanded the scope of employee protections in the Migrant and Seasonal Agriculture Workers Protections Act to allow temporary seasonal workers to sue their employer, though data shows such lawsuits are rare under existing law.¹² Additionally, many farmworker advocacy groups decried provisions that would make current noncitizen workers more susceptible to workplace abuse, such as a requirement that noncitizens work for years before obtaining legal status.¹³

Ultimately, finding a solution to the labor shortage and a means to regularize labor migration is critically needed. As one farmer said, "[w]ithout immigrant workers... we don't put food on the American table. And that's just an open secret. And we need to realize that that's the case and fix the problem."¹⁴

THE FOOD PRODUCTION INDUSTRY ENDANGERS WORKERS

Extremely hazardous conditions of work, particularly in the meatpacking sector, are another reason for the labor shortage in the food production industry.¹⁵ Meatpacking workers, for instance, face many potential risks for injury, including exposure to harsh chemicals like ammonia, sharp knives and equipment, floors covered in animal residue, and repetitive motion injuries, among other hazards.¹⁶ Indeed, Government Accountability Project has represented dozens of whistleblowers¹⁷ who have spoken publicly about safety concerns in the meat and poultry industry, including machines which reduced poultry inspection time to one-third of a second and thereby increased the risk for worker injuries,¹⁸ and air so saturated with toxic chemicals it caused illness to workers.¹⁹ The hazardous conditions in meatpacking plants were gravely exacerbated²⁰ by the COVID-19 pandemic during which the Defense Production Act characterized slaughter plant workers as “essential.”²¹ Without access to sick leave, these essential workers were forced to work in cramped conditions, contributing to the spread of coronavirus and high rates of illness and death among plant employees.²²

At the same time, accountability for these abuses is impeded by the concentration of power in the food production industry. Today, for example, just six companies control the bulk of the global meat market. With monopsony power, a single or small group of firms can manage their hiring practices to lower wages and boost profits.²³ As Anthony Vallone, USDA meat inspector and whistleblower represented by Government Accountability Project, stated, “It’s all about the bottom line. I’d like to be able to say that this was one bad plant, or one bad company, but unfortunately this kind of talk is common. Plant managers don’t care about these slaughter workers – they yell at them, threaten, mistreat them.”²⁴

While antitrust laws like the Packers and Stockyards Act²⁵ exist to promote fair competition in the marketplace and protect business and consumer interest, in the last 50 years, fewer and fewer multinational agribusiness corporations have come to control more and more of our food system. Thus, with virtually unchecked power, companies have standardized exploitative practices that are harmful to farmers, workers, and rural communities at large.²⁶

Meanwhile, workers operating from an informational disadvantage unknowingly find themselves receiving inadequate pay and working in dangerous conditions. Making matters worse, consolidation in labor markets disproportionately impacts women and workers of color as they have diminished bargaining power and often lack the resources to switch jobs or seek legal assistance for employment violations. Furthermore, existing antitrust laws have been interpreted to minimize protections for some noncitizen workers.²⁷

Without the passage of protective legislation, noncitizen workers in the food industry continue to be especially vulnerable to exploitation and remain fearful of speaking out about dangerous conditions that impact both them and American consumers.²⁸ Jessica Roberts, a meat inspection whistleblower represented by Government Accountability Project, aptly described the human cost of the dangers noncitizen food workers face: “These are human beings...They breathe, they live, they eat, they have families like we do. Just because they came here to try to make a better life for themselves doesn’t give you the right to treat ‘em like garbage . . . exposing them to difficult and toxic jobs, knowing damn good and well they won’t speak a word because they won’t dare to jeopardize the money that’s coming in that’s providing food for their families.”²⁹

THE DANGEROUS INTERSECTION OF OVERSIGHT FAILURES IN FOOD SAFETY AND IMMIGRANT CARE

The death of 16-year-old Duván Tomás Pérez at the Mar-Jac Poultry facility highlights how the nexus between immigration and food policy has reached twisted levels of tragedy for immigrants, particularly for youth who immigrate to the U.S. without their families. The New York Times reported in February 2023 that many unaccompanied migrant children who were registered and held in government custody after crossing the border have ended up in dangerous jobs that violate child labor standards in the food production industry.³⁰ These jobs have included 14-hour shifts, injuries from dangerous equipment, such as industrial milking machines, and overnight cleaning of meatpacking kill floors and machinery with caustic chemicals.³¹ Furthermore, children who migrate alone are particularly vulnerable to exploitative labor situations, facing significant cumulative trauma and stressors from their migration journey and their experience of adjusting to the realities of a new country with limited psychosocial support.³² Teens of legal working age also often face legal barriers to access work authorization, exacerbating their susceptibility to labor exploitation.³³

Since 2021, Government Accountability Project has represented many whistleblowers who have spoken out about the neglectful conditions for children in government care, urging their prompt release from squalid tent camps.³⁴ Unlike the Department of Homeland Security, the Department of Health and Human Services (HHS), the agency charged with caring for unaccompanied immigrant minors, is authorized to hold children in its custody for extended periods of time.³⁵ In 2021, as adults were prevented from seeking asylum at the border under the covid-related Title 42 authority invoked by President Trump, HHS lacked sufficient capacity to hold the unaccompanied minors who were exempted from Title 42. In response, HHS set up tent camps in the spring of 2021 to temporarily warehouse children, including at Fort Bliss in El Paso, Texas.³⁶

HHS operations at these facilities were decried as negligent, mismanaged, and harmful to children from their inception by several federal employees who were detailed to Fort Bliss to help care for the large influx of children. These whistleblowers, represented by Government Accountability Project, disclosed numerous problems caused by chaotic operations, including “children held for weeks without basic needs such as clean underwear or bedding...; contractors with no experience or expertise in childcare regularly threatening children with deportation; insufficient and with rare exception, unqualified mental health staff incapable of attending to children with demonstrable mental health needs; [and] an unsafe environment for children including harmful noise levels, 24 hour lighting in sleeping areas, and sleeping arrangements that impeded supervision.”³⁷

Whistleblowers additionally raised concerns specific to the management of minors’ cases while at Fort Bliss, implicating delays in their release from the facility to sponsors within the United States. These concerns included, for example, the lack of a coordinated case management tracking system, resulting in hundreds of children languishing at the facility for weeks without ever talking with a case manager; egregious errors in discharge procedures, with some children listed as having been discharged despite still being on site in HHS custody; and alarming incompetence of contractors who could not perform basic duties, such as completing transport manifests necessary to discharge children from the site.³⁸ Many children suffered in silence, and when whistleblowers raised concerns, they were ignored.³⁹

Under fire for the conditions in which it was holding unaccompanied children, HHS committed to moving children out of the tent camps as quickly as possible, though case management operations had not significantly improved.⁴⁰ Two years later, reports, including from the HHS Office of Inspector General (OIG), indicate that these case management failures contributed to unaccompanied minors being released to work in exploitive food production factories.⁴¹

SHORTFALLS IN HHS OVERSIGHT OF ITS EMERGENCY OPERATIONS

Beginning in 2021, prompted by the media frenzy covering the disclosures of Government Accountability Project's multiple whistleblower clients, HHS commenced some oversight initiatives into its emergency operations for unaccompanied minors.⁴² Reports issued after investigations into Fort Bliss validated many of the whistleblowers' disclosures about poor oversight of conditions and case management.

Specifically, the HHS OIG found that staff at Fort Bliss lacked relevant experience or training, that safeguards which may have decreased children's risk of release to unsafe sponsors were quickly removed, and deficiencies in the online case management system "potentially increased children's risk of release to unsafe sponsors."⁴³ A second report released in May 2023 revealed that background checks of contract staff and security protocols

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were inconsistently applied across multiple emergency HHS operations.⁴⁴ Importantly, in its report about Fort Bliss, the OIG validated the existence of a chilled environment noting, "reported acts of potential retaliation and whistleblower chilling may have affected staff's willingness to share feedback with ORR management who might have been better able to remedy problems."⁴⁵

Of concern, significant temporal and topical gaps in the reports of the HHS OIG reveal a second layer of insufficient oversight, compounding the harmful effects of the chaotic operations at Fort Bliss and the other emergency sites. For instance, the OIG investigation of Fort Bliss spanned only March 30-June 30, 2021, and the OIG investigation into background check protocols occurred between May and June of 2021, both cumulatively covering just over three months of a nearly two-year operation. Additionally the report focused on Fort Bliss fails to mention the lack of qualifications and inexperience in childcare of the disaster clean up companies that were awarded multi-million dollar contracts to manage the facility.⁴⁶ The report also suggests that many problems identified during the brief review period were due to the specific convergence of an increase in minors in custody and the COVID-19 pandemic, failing to consider the systemic, ongoing problems at Fort Bliss and other emergency or influx HHS operations. For instance, had HHS implemented strong whistleblower protections and effective reporting channels for employees with concerns rather than enabling a "wait and see" culture that dismissed urgent complaints, many of the problems later confirmed through retrospective investigations might have sooner been addressed.

In June 2023, again following alarming reporting about HHS operations, this time of unaccompanied minors working in situations of unlawful child labor which implicated child trafficking concerns, HHS conducted an internal audit to review the narrow category of releases of children to unrelated sponsors who received three or more children.⁴⁷ This agency self-audit favorably found that ORR largely complied with its policies and statutory requirements pertaining to sponsor vetting and post-release follow up with children released from custody; effectively communicating that concerning headlines were not indicative of operations as a whole.⁴⁸

It also noted that ORR implemented important improvements between 2021-2023 including stronger background check protocols and whistleblower training.⁴⁹ However, this report, too, falls short of addressing the systemic issue of insufficient contractor oversight. It also fails to offer a comprehensive evaluation of conditions for unaccompanied minors in the event that ORR lacks sufficient shelter capacity for arriving immigrant children.

These investigations have been, in a sense, too little too late; ex post facto investigations cannot redress the harms caused by faulty oversight of initial emergency operations. The harm to children caused by systemic failures in government functions is grave, and sadly has been a matter of life and death.⁵⁰

Between 2018 and 2019, six children died in federal custody or shortly following their release,⁵¹ marking the first deaths of children in custody since 2010.⁵² Most recently, HHS reported that two children died in the agency's custody in March and May of 2023.⁵³

Ultimately, the failures of HHS to protect children in its care and custody, manage their cases to ensure their safe placement, and oversee its own operations and contractors, has served as a conduit between labor supply and demand within the U.S. food system.

Ultimately, the failures of HHS to protect children in its care and custody, manage their cases to ensure their safe placement, and oversee its own operations and contractors, has served as a conduit between labor supply and demand within the U.S. food system. The lack of effective oversight in many aspects of both the food industry and immigration system converged to create conditions in which children are now filling the labor gap to provide Americans with food produced domestically. In yet another cruel twist, many of the children who have recently been discovered in some of the worst circumstances of exploitative labor, such as overnight cleaning of meatpacking facilities, are indigenous children from Guatemala whose families find themselves in perilous economic situations because of displacement from subsistence farming by multinational agricultural companies.⁵⁴ Therefore, the economic exploitation they experience in their home countries fuels a need for survival and a supply of labor to the United States.⁵⁵ This insidious phenomenon is all the more alarming against the backdrop of a trend in rolling back child labor laws across the country.⁵⁶

IMMIGRANTS AS WHISTLEBLOWERS: VITAL AND VULNERABLE

With noncitizens comprising an overrepresented demographic of workers in every aspect of the food industry,⁵⁷ they are in a uniquely vital position to see and identify serious problems that threaten worker safety and consumers. However, noncitizen food industry workers are also uniquely vulnerable, facing not only the standard playbook of potential retaliation for blowing the whistle – such as termination, demotion, harassment, and isolation – but also threats of or actual deportation.⁵⁸ Retaliation against noncitizen whistleblowers by reporting them to immigration or other law enforcement authorities can often lead to swift removal and placement in immigrant detention.

The danger posed by the risk of incarceration in immigration detention for noncitizens cannot be overstated. Over the last five years Government Accountability Project has represented several whistleblowers who have spoken out about the systemic dangers that impact people held in the ICE detention system.⁵⁹ These include lack of adequate medical care,⁶⁰ failures to implement COVID-19 precautions,⁶¹ medical abuse of detained women by subjecting them to unnecessary and invasive gynecological procedures,⁶² and the punitive use of solitary confinement, particularly against those with mental health and medical needs,⁶³ which experts of the United Nations have described as torture.⁶⁴ With such risks directly affecting noncitizen workers, especially those

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vulnerable to immigration enforcement if they were to speak out against their employers, it is all the more critical that adequate protections be put in place to prevent their retaliatory thrust into the immigration detention system.

Current legal protections for whistleblowers are a complicated patchwork of federal and state laws. Whether a worker, be they a citizen or non-citizen, might have an available legal remedy depends on several factors, including the content

of the misconduct disclosed, whether the employee is a government or corporate employee, and to whom the employee reports their concerns. Furthermore, each form of legal protection has its own statute of limitations, process for filing a claim, and remedies.⁶⁵ Of critical concern, the Food Safety Modernization Act (FSMA), which affords whistleblower protections to workers in industries regulated by the Food and Drug Administration, explicitly exempts meat and poultry plant employees whose work is regulated by the U.S. Department of Agriculture.⁶⁶ Therefore, there exists a significant gap in protection for citizens who work in major sectors of the food production industry and an accompanying disproportionate risk for noncitizen workers in those same sectors.

This year, the Biden administration instituted two new protective initiatives for noncitizen workers to counteract both workplace abuses and their disparate impact on immigrant victims and witnesses of wrongdoing. The first, new rules issued by the Department of Labor effective March 30, 2023, allow the Occupational Safety and Health Administration (OSHA) to provide “U” and “T” visa certification to victims of certain criminal or trafficking activity who assist government officials investigating or prosecuting the crimes.⁶⁷ Examples of qualifying criminal activity relevant to the workplace include obstruction of justice or witness tampering related to investigations into an employer’s labor practices, extortion, false imprisonment, labor trafficking, felonious assault, and sexual misconduct - including rape and sexual assault.⁶⁸ Prior to the new rules, workers who were

victims of one of these qualifying crimes in relation to a health and safety investigation by OSHA were unable to seek a U visa certification, which is required for a noncitizen to then apply for a visa, opening a pathway to permanent legal status.⁶⁹

While the new rule only offers protection from employer conduct that rises to the level of criminal activity in certain narrow circumstances, and not in general circumstances of workplace safety and health violations, it is nonetheless an acknowledgment of the important role immigrant workers play as whistleblowers and witnesses to address serious abuses in the workplace health and safety context, as well as their unique vulnerability,

The second new policy, an inter-agency process involving state and federal labor agencies and the Department of Homeland Security, aims to address noncitizens' fears of reporting workplace abuses due to the risk posed by threats of deportation.⁷⁰ The policy supports the enforcement of employment and labor laws by creating a process for noncitizens who are victims or witnesses to workplace violations to seek "deferred action,"⁷¹ a form of prosecutorial discretion that temporarily protects workers from deportation and confers work authorization, if they fall within the scope of a labor agency investigation. This policy is a welcome and needed new protection for immigrant workers, recognizing the unique risks they face through their vital role in exposing abuses of unscrupulous employers.

Unfortunately, the new deferred action program is a discretionary administrative remedy, subject to changing political tides with a new administration. Whether immigration laws serve to punish or protect noncitizen workers has indeed always been dependent on politics and whether immigrants are valued or vilified as evidenced by the policies and practices of past administrations. For example, during the Bush administration, intimidating immigration enforcement tactics discouraged noncitizen whistleblowing. In one July 2005 example, ICE lured undocumented construction workers to a sham occupational safety and health meeting, which resulted in 48 immigration arrests and had a harsh chilling effect.⁷²

The pendulum swung the opposite direction during the Obama administration. For instance, among other notable policy measures, a Memorandum of Understanding between the Department of Labor and ICE communicated that ICE was not to engage in immigration enforcement against an individual when a labor dispute was under investigation.⁷³ President Trump swung the pendulum back towards Bush-era policies with a return to large-scale immigration enforcement workplace raids.⁷⁴ One set of raids on a series of meat processing plants occurred two weeks after OSHA issued 13 citations and a \$211,194.00 fine against the company after a worker was killed by a meat-skipping machine in 2017.⁷⁵ The significance of the timing of the raid was not lost on immigrant and labor-rights advocates, particularly as evidence arose that Trump-era raids specifically targeted Latino workers regardless of immigration status.⁷⁶ The fear noncitizen workers have of being deported simply for working, let alone in connection with speaking up about any workplace violations, is wholly warranted.

While the new DHS deferred action program and the OSHA T and U visa certification authority at least offer noncitizen whistleblowers avenues of protection against deportation during the rest of the Biden Administration's term, their impermanence highlights the vulnerability of critical whistleblowers in the food industry. In such a context, it is imperative that comprehensive solutions address the unique risks noncitizen whistleblowers face.

SOLUTIONS

In 2023, as reporting about the unsafe conditions for unaccompanied immigrant children in the food production industry unfolds, Congress and immigration justice organizations have called for immediate attention and resources to address these problems.⁷⁷

Though hazards in the food production industry coupled with the intersection of oversight failures in both the food and immigration systems form complex webs of dysfunction which will require layers of transformation to remedy, there exist concrete actions Congress and the Biden administration can take to address the problem. The solutions that follow outline broad policy changes as well as reforms in whistleblower protection and corporate oversight which would help prevent or mitigate abuses of power and misconduct that endanger immigrants, workers, and consumers.

Strengthening Whistleblower Protections

Stronger whistleblower protections for workers in food-related industries, including explicit safeguards for noncitizen whistleblowers, might have encouraged workers to speak out about the prevalence of immigrant child labor around them. Several bills have been introduced which would strengthen protections for these workers in Congress, and there are additional policies the Biden administration can implement to improve whistleblower protections.

The Protect Our Workers from Exploitation and Retaliation (POWER) Act. Introduced most recently on March 8, 2023 by Representatives Judy Chu and Bobby Scott, the POWER Act has been reintroduced in every Congress since 2011. Similar to the DHS deferred action policy for noncitizen workers, this bill aims to protect workers who participate in investigations of labor rights violations. However, the POWER Act provides more robust protections by affording U-Visa eligibility and its accompanying pathway to permanent immigration status, rather than the temporary protection of deferred action offered in DHS' 2023 policy. It also expands the criteria for eligibility for a U-Visa by broadening the category of qualifying crimes to include "emotional abuse," removes the limit on the number of U-Visas that can be approved annually, and offers temporary protection from deportation for workers who have filed a workers' compensation claim or are receiving treatment for a workplace injury.⁷⁸

The Protecting America's Meatpacking Workers Act. Proposed by Sen. Cory Booker in November 2021 with a companion bill sponsored by Rep. Ro Khanna in the House, this legislation would improve working conditions and whistleblower protections in the meat and poultry industry. Importantly, it ends the existing dangerous carve out in the Food Safety Modernization Act which exempts meatpacking and poultry workers from anti-retaliation protections for blowing the whistle on workplace health and safety violations. The bill also enhances whistleblower protections under the OSH Act for workers who speak out about health and safety violations by expanding the circumstances in which their disclosures are protected and expanding prohibited adverse employer actions. Additionally, the bill creates a private right of action under the OSH Act for employees, including in the meat and poultry industries, to sue their employers in the event they face retaliation for their protected whistleblowing.⁷⁹

The Whistleblower Protection Improvement Act (WPIA). This bill, which has been reintroduced in the House after passing the House in 2022, would strengthen the outdated whistleblower protections for federal employees found in the 1989 Whistleblower Protection Act and the Whistleblower Protection Enhancement Act of 2012.⁸⁰ This high-priority legislation would provide court access for whistleblowers to seek justice from a jury in the absence of a timely administrative ruling; protect workers against retaliatory investigations by employers; strengthen channels for whistleblowers to communicate with Congress without retaliation; establish realistic legal standards to get temporary relief when an employee has shown there is a substantial likelihood their whistleblowing was a contributing factor to their adverse personnel action; and allow workers to challenge violations of the WPIA's anti-gag provisions.⁸¹

Federal workers, including those from agencies like DHS, HHS, or the USDA who have witnessed abuses affecting noncitizens, have been reluctant to blow the whistle out of fear of retaliation. Furthermore, the current track record for success under the WPIA is low; according to a study conducted by Government Accountability Project and the International Bar Association, only seven percent of public sector whistleblowers who filed retaliation complaints pursuant to the WPIA won favorable rulings.⁸² Stronger legal protections for federal employees would empower and protect workers across federal agencies involved with operations and oversight of our food production and immigration systems to speak up when they witness serious problems.

Strengthening Whistleblower Protections for Federal Contractors and Grantees. A significant portion of the private sector workforce in both the immigration and food industries are federal contractors, whose whistleblower activity is protected under 41 U.S.C. § 4712, part of the National Defense Authorization Act (NDAA).⁸³ Strengthening the current law that covers millions of federal contractors and grantees would also improve protections for many of those working in case management at HHS facilities for unaccompanied minors, including those who might have known about concerning sponsor placement.⁸⁴ Similarly, JBS, one of the slaughterhouse companies that benefitted from immigrant children cleaning its plants through its subcontractor PSSI, is a federal contractor. JBS and PSSI employees—many of whom according to the Department of Labor and in media reports were aware that children were doing this hazardous work illegally⁸⁵—would be able to claim whistleblower protection under 41 USC § 4712 had they blown the whistle on the abuses they witnessed.⁸⁶ But the risk of retaliation, from losing their jobs to facing deportation, was exceptionally high. Instead, it took teachers who saw their students in class with chemical burns, struggling to stay awake after working night shifts, to alert the Department of Labor.

While Congress has provided whistleblower protections for workers employed by federal contractors, existing loopholes in the contractor protection law have resulted in curtailed relief for whistleblowers facing reprisal, a lack of accountability for government officials who direct contractors to retaliate against whistleblowers, and questions about which workers are protected by the law. For instance, recent federal court decisions have created confusion about whether the law protects employees of state and tribal governments.⁸⁷ Other weaknesses in protections for contractors can be addressed through several measures, including: incorporation of an “anti-gag” provision to ensure that employers cannot create situations in which workers waive their right to blow the whistle through non-disclosure agreements or directives in their employment contracts or policies; addition of protections for whistleblowers from retaliatory lawsuits, such as claims of defamation or unauthorized

use of company materials; and protections to ensure whistleblowers will not face harm for refusing to participate in any activity they believe is in violation of any law, rule, order, or regulation.

Legislation introduced by Senators Peters and Braun⁸⁸ would close many of these significant loopholes, strengthening the ability of millions of federal contractors and grantees to report fraud, waste, and abuse. The legislation includes new mechanisms to hold federal officials who retaliate against contractor whistleblowers accountable, including anti-gag provisions, in addition to protecting whistleblowers by prohibiting blacklisting as a form of reprisal, offering a legal defense against retaliatory civil or criminal litigation, and protecting from reprisal workers who refuse to perform an action they believe is illegal.

The Protecting America’s Workers Act. This vitally needed legislation would increase protections for whistleblowers, provide a private right of action for OSHA whistleblower claims, increase penalties for high gravity violations, adjust penalties for inflation, and provide rights for victims or their family members.⁸⁹

Recently reintroduced in the House by Reps. Joe Courtney (D-CT) and Bobby Scott (D-VA), the Protecting America’s Workers Act would improve the weak protections of the Occupational Safety and Health Act (OSH Act).⁹⁰ Currently, noncitizens are covered by the Occupational Safety and Health Act (OSH Act),⁹¹ though the law has weak whistleblower protections. Although noncitizens have the right to file civil lawsuits in federal court, the OSH Act does not allow for a private right of action for whistleblower retaliation, meaning that it is up to the Occupational Safety and Health Administration (OSHA) of the Department of Labor to determine whether to sue to enforce an OSH Act retaliation claim. This barrier is compounded by the fact that OSHA has a very low rate of suing on behalf of employees. Even if OSHA successfully sues an employer on behalf of a whistleblower for unlawful retaliation, undocumented workers who are fired in retaliation for reporting OSHA violations may not be awarded reinstatement to their jobs if they are unable to present valid documentation of their authorization to work in the U.S.⁹²

Furthermore, for food or agricultural workers who have noticed health or safety violations in the workplace to make a whistleblower disclosure, they must file a the disclosure within six months of noticing the violation.⁹³ Then, if an employer retaliates against the worker for reporting the violation, the worker must file the retaliation complaint within 30 days of the alleged reprisal, an extremely short time frame for the worker to deliberate, find and acquire legal assistance, and file a retaliation complaint. This truncated time frame also presumes the noncitizen worker is aware of their legal rights and the statute of limitations at the onset of the health or safety violation and at the time of their retaliation. All of these factors make whistleblower protections under the OSH Act one of the weakest options for protections of all workers, citizens and noncitizens alike.⁹⁴

Government Accountability Project has advocated for amendments to the OSH Act to allow for a private right of action and to address the short statute of limitations for filing complaints, and has proposed several other policy solutions to OSHA.⁹⁵ Congress should pass legislation that ensures that the OSH Act and other federal whistleblower laws allow noncitizens equal access to the same make-whole remedies that U.S. citizens have.

Strengthening Corporate Oversight

Several pieces of legislation offer opportunities for Congress to strengthen oversight of corporations involved in the food production industries, including legislation specific to the issue of noncitizen child labor. Short of congressional action, the Biden Administration can take steps to strengthen executive and agency oversight.

Strengthening Anti-Trust Laws. Enforcement of, and strengthening the effectiveness of, anti-trust laws could increase competition in the meatpacking and poultry industries by preventing dominant players from using their market power to exclude competitors, resulting in a more level playing field for smaller producers. When there is more competition in the market, companies are forced to differentiate themselves from their competitors, which can include offering better wages, benefits, and working conditions to attract and retain workers. Additionally, when antitrust and labor laws are enforced, companies are more likely to comply with them, which can lead to better labor conditions and protections for workers, including noncitizens.⁹⁶

To address these issues, it is essential to promote competition and enforce strong regulatory oversight to ensure that corporations are held accountable for their actions and prioritize worker safety and well-being. In 2022, Senators Booker, Tester, Merkley, and Warren re-introduced the Food and Agribusiness Merger Moratorium and Antitrust Review Act of 2022 to put a moratorium on acquisitions and mergers in the food and agriculture sector.⁹⁷ The bill would also commission a study on the nature and consequences of concentration in America's food and agriculture economy with recommendations on how to change antitrust and other laws to keep a fair and competitive agriculture and marketplace.⁹⁸

Other policy solutions include legislative opportunities to expand the scope of the Criminal Antitrust Antiretaliation Act of 2019 to protect reporting of civil antitrust violations to the Federal Trade Commission, to expand the Federal Trade Commission's enforcement power with, for example, the authority to seek civil penalties for antitrust violations, and to create a whistleblower incentive program to encourage the reporting of antitrust violations. Finally, it is also important that Congress pass legislation to resolve the limitations from courts that interpret immigration laws as limiting the scope and force of antitrust laws.

Strengthen the Packers and Stockyards Act. Recognizing that unchecked concentration allows companies to exert power over workers by lowering wages and worsening working conditions,⁹⁹ the Biden Administration has taken steps to strengthen the century old Packers and Stockyards Act. In 2021, the administration announced the addition of fairness rules, which are currently pending, that aim to: increase transparency and create structural reform strengthen prohibitions against unfair and deceptive practices; and prohibit discrimination and retaliation.¹⁰⁰ These remedial measures intended to deconsolidate power in the meat and poultry industry will in turn promote choice for workers experiencing exploitative labor practices and weaken the disincentive against speaking out about abuses.

The Meat Packing Special Investigator Act. Introduced by Senators Rounds, Tester, and Grassley in the 118th Congress, this legislation would create a new Office of the Special Investigator for Competition Matters within the Department of Agriculture with the mandate to target anticompetitive practices among prominent players in the meat and poultry industry.¹⁰¹

The Child Labor Exploitation Accountability Act. Introduced on April 25, 2023 by Senators Booker and Welch with a companion bill sponsored by Representative Casar, this legislation would prohibit the USDA from contracting with companies who themselves, or through their own subcontractors, have incurred and failed to rectify serious labor violations including the use of child labor.¹⁰²

The Protecting Children Act. Introduced on June 29, 2023 by Representatives Bobby Scott and Alma Adams, the Protecting Children Act aims to strengthen federal protections against child labor, specifically in light of state-led efforts to roll back child labor laws.¹⁰³ The bill would increase civil and criminal penalties for child labor violations and workplace safety violations; expand the ability of the Wage and Hour Division of the Department of Labor to stop the sale transport of goods produced in violation of child labor protections; create a private right of action for child labor violations; and improve capacity for enforcement, public education, and processes for future updates on child labor standards.¹⁰⁴

Strengthen HHS' historically weak oversight of contractors. The brief investigation into operations at Fort Bliss and other emergency sites conducted by the HHS OIG spurred in large part by Government Accountability Project whistleblower clients spanned only a few months in 2021.¹⁰⁵ While the accompanying September 2022 and May 2023 reports of the OIG validated the whistleblowers' disclosures about case management failures, such as hiring of unqualified staff and glitchy technology, the investigations failed to meaningfully account for the dangerously neglectful operations of HHS contractors that enabled the harmful conditions at the site.¹⁰⁶ Furthermore, reports in 2023 indicate that while ORR temporarily closed operations at Fort Bliss, the agency is working to open a new emergency site in Greensboro, North Carolina.¹⁰⁷ This development has raised alarms in the context of HHS past operational failures.¹⁰⁸

Debar Companies that Engage in Egregious and Illicit Activities. Under the Federal Acquisition Rules, agencies may suspend or debar federal contractors from receiving federal contracts for, among other reasons, the "commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a Government contractor or subcontractor."¹⁰⁹ Senator Elizabeth Warren (D-MA) and Congressman Jamie Raskin (D-MD) recently urged USDA Secretary Thomas Vilsack to exercise the agency's authority to initiate suspension and debarment proceedings against meatpacker JBS USA, one of the companies that has been employing immigrant children in violation of child labor laws.¹¹⁰ This same tool could also potentially be used to hold accountable HHS contractors who may have been responsible for placing unaccompanied children with exploitive industry sponsors.

Reframing Immigration and Foreign Policy

As this issue brief has articulated, the invaluable labor of noncitizens is critical to the ability of the United States to maintain a domestic food supply. While authorization to immigrate to the United States should not be dependent on ones' ability to provide this important labor, immigration policy should fairly reflect the important role that noncitizens play in U.S. food production. With a recognition of the vital need noncitizens meet, immigration policy should move away from xenophobic fear of what immigrants will take from the country and instead increase lawful pathways for noncitizens to participate in the U.S. economy. Of key importance, these pathways should be expanded without unfairly and unsafely shackling individuals to any one employer, especially given the safety problems caused by a lack of competition and oversight.

Additionally, expanded pathways for lawful migration rooted in economic reality and not in xenophobia must also center family unity. A primary cause for the influx of children migrating without parents in the last decade is because of punitive immigration enforcement policies which disfavor adult and family migration.¹¹¹ As accounts of children found working across the food industry indicate, many children are in positions which require them to serve as breadwinners for their families due to their parents' inability to lawfully migrate with them.¹¹²

Finally, U.S. foreign policy must address the root causes of migration. The Biden Administration, more than other recent administrations, has emphasized initiatives to support particular Latin American countries in an effort to foster safety and opportunities for citizens from these countries and to avoid their displacement and forced migration.¹¹³ However, as the example of indigenous communities in Guatemala illustrates, some situations of displacement are caused by multinational corporations with U.S. operations. Solutions that emphasize economic development but fail to address root causes of climate change and the maintenance of subsistence agriculture, especially for indigenous communities, will fall short.

CONCLUSION

Oversight and protection for immigrant children and noncitizen agricultural workers demands reform. As leaders in the food industry have made clear, the unavoidable present reality is that U.S. food production is all but wholly dependent on the important labor of immigrants and noncitizens. The dangerous and exploitative practices incentivized through the consolidation of power in the meat and poultry industry, weak protections for both citizen and noncitizen food industry workers, and agency oversight failures have collectively created an environment ripe for the exploitation of immigrant children in situations of illegal and notoriously dangerous child labor. While many of the law and policy solutions recommend above have been introduced with bipartisan support, the current gridlocked political environment, particularly on any issues related to immigrant justice, makes the likelihood of nuanced reforms all but impossible.

Amid systemic industry factors leading to worker exploitation, pervasive oversight weaknesses, and the unlikelihood of legislative action, now more than ever we need workers to be able to blow the whistle on workplace hazards, gross mismanagement, legal violations, and other dangerous abuses they witness and experience. Protecting those who grow, gather, and produce our food from retaliation for blowing the whistle is the least we can do to protect our economy, the environment, our food, and our integrity.

END NOTES

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² Mayan League, "We are outraged and grieving the death of another Maya relative.," Instagram, July 20, 2023, https://www.instagram.com/p/Cu7Mye_AfyN/?igshid=MzRIODBiNWFIZA%3D%3D.

³ Dustin Jones, "A 16-Year-Old Died While Working at a Poultry Plant in Mississippi," *NPR*, July 20, 2023, <https://www.npr.org/2023/07/20/1188959743/meatpacking-death-teenager-mississippi-poultry-plant>.

⁴ Jones, "A 16-Year-Old Died While Working at a Poultry Plant in Mississippi."

⁵ While this dynamic is pervasive in many business industries which recognize the important role immigrant workers play in the economy, partisan politics are unfolding in the opposite direction with the end of Title 42. On May 11, 2023, the Biden administration ended the use of Title 42 public health authority to restrict immigration at the southern border. See Eileen Sullivan and Michael D. Shear, "Border Is Calm as Crowds Cross and Biden Administration Fights Court Ruling," *New York Times*, May 12, 2023,

<https://www.nytimes.com/2023/05/12/us/politics/title-42-expires-border-migrants.html>. In response, Florida Governor Ron DeSantis signed a bill into law that will curtail participation of many noncitizens in the labor economy by requiring the use of E-Verify for businesses with over 25 employees. Staff, "Governor Ron DeSantis Signs Strongest Anti-Illegal Immigration Legislation in the Country to Combat Biden's Border Crisis," Governor Ron DeSantis News Releases, May 10, 2023, <https://flgov.com/2023/05/10/governor-ron-desantis-signs-strongest-anti-illegal-immigration-legislation-in-the-country-to-combat-bidens-border-crisis/>. The new law also makes the state inhospitable for those without secure legal status in several ways, including criminalizing the transportation of those without secure lawful status, requiring hospitals that accept Medicaid to inquire about a patient's legal status, and invalidating out of state driver licenses issued to those without legal status, among other punitive conditions. C. A. Bridges, "'My truck won't move.' Are Truckers Boycotting Florida over DeSantis' New Immigration Law?," *Tallahassee Democrat*, May 15, 2023,

<https://www.tallahassee.com/story/news/politics/2023/05/15/florida-trucker-boycott-floridas-strict-new-immigration-law-draws-response/70217625007/>. Similar to actions taken in response to anti-immigrant state legislation in the 2010s, noncitizen workers are leaving the state or choosing to exit their workplaces and limit engagement in the community, demonstrating their significant role in the U.S. economy. Pamela Constable, "Alabama Law Drives Out Illegal Immigrants but Also Has Unexpected Consequences," *Washington Post*, June 17, 2012, https://www.washingtonpost.com/local/alabama-law-drives-out-illegal-immigrants-but-also-has-unexpected-consequences/2012/06/17/gJQA3Rm0jV_story.html; Joel Lopez, "Florida's New Immigration Law Creates 'panic' in Agriculture Community," *WPTV*, May 12, 2023, <https://www.wptv.com/news/palm-beach-county/floridas-new-immigration-law-creates-panic-in-agriculture-community>.

⁶ Lynn Grooms, "Industry Wrestles with Labor Shortage," *Agri-View*, November 9, 2022, https://agupdate.com/agriview/news/business/industry-wrestles-with-labor-shortage/article_f4b2bc07-da96-5594-a4e0-f14dec90a91b.html; Justin Ferguson, "Labor Shortages Continue to Impact Farmers," *American Farm Bureau Federation*, November 1, 2022, <https://www.fb.org/focus-on-agriculture/labor-shortages-continue-to-impact-farmers>.

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⁹ Conniff, "Dairy Farmers Demand Year-Round Visa for Immigrant Workers"; Rafael Bernal, "Farmers Are Eager for Senate to Vote on Migrant Worker Bill," *The Hill*, September 7, 2022, <https://thehill.com/latino/3631431-farmers-are-eager-for-senate-to-vote-on-migrant-worker-bill/>; Sergio Martínez-Beltrán "Without Enough Workers in the U.S. to Fill Jobs, Ranches and Farms in Texas Look Abroad," *KUT 90.5-The Texas Newsroom*, December 21, 2022, <https://www.kut.org/politics/2022-12-21/without-enough-workers-in-the-u-s-to-fill-jobs-ranches-and-farms-in-texas-look-abroad>.

¹⁰ U.S. Department of Agriculture, "Farm Labor," *Economic Research Service U.S. Department of Agriculture*, March 22, 2023, <https://www.ers.usda.gov/topics/farm-economy/farm-labor/#demographic>.

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<https://www.npr.org/2022/07/18/1111768365/immigration-bill-food-prices-farmers-h-2a-visas-republicans>; Lisa Held, "Congress Killed a Bill to Give Farmworkers a Path to Citizenship. What Comes Next?," *Civil Eats*, February 22, 2023, <https://civileats.com/2023/02/22/congress-killed-a-bill-to-give-farmworkers-a-path-to-citizenship-what-comes-next/>; Bernal, "Farmers Are Eager for Senate to Vote on Migrant Worker Bill."

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¹⁵ Michael Hirtzer and Elizabeth Elkin, "Meat Inflation Is Linked to Poor Working Conditions at Plants, Group Says," *Bloomberg*, February 14, 2023, <https://www.bloomberg.com/news/articles/2023-02-14/meat-shortages-high-prices-linked-to-poor-conditions-group-says#xj4y7vzkg>. Indeed, these issues are not new. In fact, one hundred years ago groundbreaking yet basic food safety legislation and worker protection laws were borne out of the squalid conditions in which immigrant laborers toiled in Chicago's meatpacking industry. See, e.g., Anya Jabour, "As Our Meat, Pork and Poultry Supply Dwindles, We Should Remember Why," *Washington Post*, April 21, 2023, <https://www.washingtonpost.com/outlook/2020/04/21/our-meat-pork-poultry-supply-dwindles-we-should-remember-why/>.

¹⁶ Ricardo Lopez, "Meatpacking Has Long Been Dangerous, Grueling Work. Then COVID-19 Hit," *Minnesota Reformer*, May 12, 2020, <https://minnesotareformer.com/2020/05/12/meatpacking-has-long-been-dangerous-grueling-work-then-covid-19-hit/>; "Meatpacking," OSHA, U.S. Department of Labor, accessed May 16, 2023, <https://www.osha.gov/meatpacking>; Jeffrey Gross "Safety Hazards for Meat Processing Workers," HG.org, Gross & Kenny LLP, accessed May 16, 2023, <https://www.hg.org/legal-articles/safety-hazards-for-meat-processing-workers-52571>.

¹⁷ "Food Integrity Campaign Blog: Affidavit," Food Whistleblower, Food Integrity Campaign, May 16, 2021, https://foodwhistleblower.org/resource_type/affidavit/.

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¹⁹ Eyal Press, "Something in the Air: Jessica Robertson Got Sick Working as an Inspector at a Poultry Plant. Now She's Speaking Out to Defend Workers Exposed to Chemicals," *The Intercept*, July 19, 2018, <https://theintercept.com/2018/07/19/moroni-utah-turkey-farm-workers-norbest/>.

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²⁵ “Packers and Stockyards Act,” Agriculture Market Service U.S. Department of Agriculture, accessed June 2, 2023, <https://www.ams.usda.gov/rules-regulations/packers-and-stockyards-act>.

²⁶ When a single corporation or a small number of market dominators has a monopoly over a particular market, they have substantial power over their industry, including the power to set prices, control supply and demand, and influence regulatory policies. See, e.g., Lina Khan and Sandeep Vaheesan, “Market Power and Inequality: The Antitrust Counterrevolution and Its Discontents,” *Harvard Law & Policy Review* 11 (2017): 235, <https://harvardlpr.com/wp-content/uploads/sites/20/2017/02/HLP110.pdf>. This concentration of power can weaken oversight and lead to exploitative and dangerous workplace conditions in several ways, such as reduced competition (with no competition, there is little incentive for the company to invest in improving working conditions or employee safety, leading to unsafe or unhealthy work environments that increase the risk of workplace accidents and injuries); limited regulatory oversight (market dominators can influence regulators and limit their ability to enforce safety and labor regulations, resulting in weaker regulatory oversight of workplace conditions); lower wages and benefits (in a monopoly situation, workers may have limited options for alternative employment, which can lead to lower wages and fewer benefits as the company seeks to maximize profits); reduced worker bargaining power (with limited employment options, workers may be less likely to unionize or push for better working conditions, reducing their bargaining power); and incentive to maximize profits at the expense of other interests (in a monopoly situation, the company is able to prioritize maximizing profits over investing in safety or working conditions with relative impunity, leading to a focus on short-term gains rather than long-term sustainability). See Cody McCracken, “Old MacDonald had a Trust: How Market Consolidation in the Agricultural Industry, Spurred on by a Lack of Antitrust Enforcement, is Destroying Small Agricultural Producers,” *William & Mary Business Law Review* 13, no. 2 (2022): 575, <https://scholarship.law.wm.edu/wmblr/vol13/iss2/6/>; Senator Elizabeth

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²⁸ Bustillo, "The Senate Is Nearing a Deal on Immigration That Could Also Lower Food Prices."

²⁹ Press, "Something in the Air: Jessica Robertson Got Sick Working as an Inspector at a Poultry Plant. Now She's Speaking Out to Defend Workers Exposed to Chemicals."

³⁰ Hannah Dreier, "Alone and Exploited, Migrant Children Work Brutal Jobs Across the U.S.," *New York Times*, February 25, 2023, <https://www.nytimes.com/2023/02/25/us/unaccompanied-migrant-child-workers-exploitation.html>. Indeed, the USDA released a press statement on April 12, 2023 noting a 69% increase in the use of illegal child labor since 2018, and in the last fiscal year found "835 companies it had investigated employed more than 3,800 children in violation of the Fair Labor Standards act." USDA Office of Communications, "USDA Takes Steps to Prevent Illegal Child Labor," *Equity and Initiatives* (blog), U.S. Department of Agriculture, April 12, 2023, <https://www.usda.gov/media/blog/2023/04/12/usda-takes-steps-prevent-illegal-child-labor>.

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³³ Kids In Need of Defense, "Legal Representation: A Vital Safeguard to Protect Unaccompanied Children from Labor Exploitation."

³⁴ In total, Government Accountability Project represents six whistleblowers who made public disclosures about poor conditions and management at Fort Bliss. Letters to the U.S. House of

Representatives, U.S. Senate, U.S. Office of Special Counsel, and HHS-OIG from the Government Accountability Project on July 7, 2021, July 28, 2021, and September 8, 2021. Accessed at <https://whistleblower.org/wp-content/uploads/2021/07/070721-Fort-Bliss-Whistleblowers-Disclosure.pdf>, <https://whistleblower.org/wp-content/uploads/2021/07/072821-2nd-Fort-Bliss-Whistleblower-Disclosure-FINAL.pdf>, and <https://whistleblower.org/wp-content/uploads/2021/09/2021-09-08-Govt-Accountability-Project-Third-Disclosure-on-Ft-Bliss-EIS-Exhibits.pdf> on June 5, 2023 (hereinafter referred to as First, Second and Third Protected Whistleblower Disclosure Letter, respectively); Letter to the U.S. House of Representatives, U.S. Senate, U.S. Office of Special Counsel, and HHS-OIG from the Government Accountability Project on April 5, 2022. Accessed at <https://whistleblower.org/wp-content/uploads/2022/04/040522-Letter-to-Cong-re-UCs-EISs-w-Hess-Whistleblower-Disclosure.pdf> on June 5, 2023 (hereinafter referred to as Fourth Protected Whistleblower Disclosure). Government Accountability Project additionally represents other whistleblowers who made confidential disclosures to the HHS OIG. See also Keegan Hamilton, “Migrant Kids Face Danger, Trauma, and Separation at ‘Hellhole’ Border Tent Camp,” Vice News, April 6, 2022, <https://www.vice.com/en/article/bvnkvm/whistleblower-kaitlin-hess-migrant-kids> (reporting on Government Accountability Project’s whistleblower clients’ public-facing disclosures made between July 2021-April 2022 to the HHS Office of Inspector General, the Office of Special Counsel, Congress and the press).

³⁵ “Unaccompanied Children,” Administration for Children and Families, July 19, 2022, <https://www.acf.hhs.gov/orr/programs/uc>.

³⁶ Nick Miroff and Maria Sacchetti, “Migrant Teens and Children Have Challenged Three Administrations, but Biden Faces Rush with No Precedent,” *Washington Post*, March 22, 2021, <https://www.washingtonpost.com/nation/2021/03/22/unaccompanied-minors-immigration-obama-trump-biden/>; Nomaan Merchant, “U.S. Reopens Texas Tent Facility to Hold Immigrant Teenagers,” *PBS NewsHour*, February 22, 2021, <https://www.pbs.org/newshour/nation/u-s-reopens-texas-tent-facility-to-hold-immigrant-teenagers>.

³⁷ Government Accountability Project, Fourth Protected Disclosure Letter, p. 2 (outlining concerns previously identified in First, Second and Third Protected Whistleblower Disclosure Letters). See also Julia Ainsley, “Whistleblowers Allege Poor Care for Migrant Kids by Contractor Specializing in Disaster Cleanup,” *NBC News*, July 7, 2021, <https://www.nbcnews.com/politics/immigration/whistleblowers-allege-poor-care-migrant-kids-contractor-specializing-disaster-cleanup-n1273124>; Priscilla Alvarez, “Whistleblowers Allege Poor Conditions at Fort Bliss Facility for Migrant Children,” *CNN Politics*, July 28, 2021, <https://www.cnn.com/2021/07/28/politics/fort-bliss-whistleblowers-immigration/index.html>; Adolfo Flores and Hamed Aleaziz, “Immigrant Children Were Burned With Scalding Water And Threatened At An Emergency Shelter, A Whistleblower Said,” *Buzzfeed News*, September 8, 2021, <https://www.buzzfeednews.com/article/adolfoflores/fort-bliss-immigrant-children-shelter-whistleblower>.

³⁸ Government Accountability Project, Fourth Protected Disclosure Letter, Exhibit 1.

³⁹ All of the whistleblowers Government Accountability Project represents—some of whom continue to remain anonymous for fear of retaliation—reported working in an environment where secrecy was made paramount and raising concerns was actively deterred, with instructions to just use a “suggestion box” and go through an opaque chain of command, or worse, suffered direct reprisal. See Government Accountability Project, Third Protected Whistleblower Disclosure Letter and Exhibits 1 and 2; Government Accountability Project, Fourth Protected Whistleblower Disclosure Letter. Other senior HHS ORR employees not represented by Government Accountability Project filed whistleblower complaints after their efforts to warn about risks to child safety from problems with case management and sponsor vetting were met with both inaction and reprisal. Hannah Dreier, “As Migrant Children Were Put to Work, U.S. Ignored Warnings,” *New York Times*, April 17, 2023, <https://www.nytimes.com/2023/04/17/us/politics/migrant-child-labor-biden.html>.

⁴⁰ Dreier, “Alone and Exploited, Migrant Children Work Brutal Jobs Across the U.S.”

⁴¹ Dreier, “Alone and Exploited, Migrant Children Work Brutal Jobs Across the U.S.”; Department of Health and Human Services, Office of Inspector General, *Operational Challenges Within ORR and the ORR Emergency Intake Site at Fort Bliss Hindered Case Management for Children* (Washington, DC: OEI-07-21-00251, September 2022), accessed June 5, 2023, <https://oig.hhs.gov/oei/reports/OEI-07-21-00251.pdf>.

⁴² Department of Health and Human Services, Office of Inspector General, *Operational Challenges Within ORR and the ORR Emergency Intake Site at Fort Bliss Hindered Case Management for Children* (Washington, DC: OEI-07-21- 00251, September 2022), accessed June 5, 2023, <https://oig.hhs.gov/oei/reports/OEI-07-21-00251.pdf>; Department of Health and Human Services, Office of Inspector General, *The Office of Refugee Resettlement Needs To Improve Its Practices for Background Checks During Influxes* (Washington, DC: A-06-21-07003, May 2023), accessed June 6, 2023, <https://oig.hhs.gov/oas/reports/region6/62107003.pdf>; Department of Health and Human Services, Office of Refugee Resettlement, *Update on Efforts to Mitigate Child Labor Exploitation and Internal Audit on Placement Process Used to Transfer Custody of Unaccompanied Children to Vetted Sponsors*, June 2, 2023, <https://www.acf.hhs.gov/sites/default/files/documents/orr/update-on-efforts-to-mitigate-child-labor-exploitation-internal-audit-placement-process.pdf>.

⁴³ DHHS OIG, *Operational Challenges Within ORR and the ORR Emergency Intake Site at Fort Bliss Hindered Case Management for Children*. Pp. 17-19. It is important to acknowledge that current reports do not necessarily allege that children were released to sponsors without the consent and/or knowledge of either them or their parents or guardians. See, e.g., Hannah Dreier, "Alone and Exploited, Migrant Children Work Brutal Jobs Across the U.S." Instead, current reporting indicates that the situation of children after release from HHS custody is one in which there are few or effective safeguards for children to access support if they find themselves in unsafe sponsorship situations. Dreier, "As Migrant Children Were Put to Work, U.S. Ignored Warnings." While HHS recently found in an audit it conducted examining ORR's placement process used to transfer unaccompanied children to sponsors during 2021-2022 that ORR "complies with its statutory requirements and adheres to its policies and procedures for sponsor vetting," Department of Health and Human Services, Office of Refugee Resettlement, *Update on Efforts to Mitigate Child Labor Exploitation and Internal Audit on Placement Process Used to Transfer Custody of Unaccompanied Children to Vetted Sponsors*, June 2, 2023, <https://www.acf.hhs.gov/sites/default/files/documents/orr/update-on-efforts-to-mitigate-child-labor-exploitation-internal-audit-placement-process.pdf>, it also found that over 300 children were released to unrelated sponsors who had sponsored three or more children, raising red flags for immigration advocates about child labor trafficking. Julia Ainsley, "Report finds more than 340 migrant kids were sent to live with nonrelatives who sponsored other children," NBC News, June 2, 2023, <https://www.nbcnews.com/politics/immigration/advocates-hhs-questions-unaccompanied-migrants-child-labor-rcna87326>. There are certainly competing child safety priorities involved in the management of reception of unaccompanied minors; namely, children should not be held in unsafe conditions of detention, and care must be taken to ensure that children are safe post-release. At the same time, oversight of conditions of children following release from government custody implicates delicate questions of government surveillance. In such a complex web of considerations, and in light of the current status quo, it is all the more crucial for whistleblowers, including noncitizens themselves, to be protected when they speak out about oversight concerns.

⁴⁴ Department of Health and Human Services, Office of Inspector General, *The Office of Refugee Resettlement Needs To Improve Its Practices for Background Checks During Influxes* (Washington, DC: A-06-21-07003, May 2023), accessed June 6, 2023, <https://oig.hhs.gov/oas/reports/region6/62107003.pdf>.

⁴⁵ DHHS OIG, *Operational Challenges Within ORR and the ORR Emergency Intake Site at Fort Bliss Hindered Case Management for Children*. Pp. 20-22.

⁴⁶ Lauren Villagran, "A Horrible Mess: Contractor Issues Add to Turmoil at Fort Bliss Migrant Children Shelter," *El Paso Times*, June 25, 2021, <https://www.elpasotimes.com/story/news/2021/06/25/fort-bliss-migrant-children-intake-shelter-deplorable-conditions-sources-allege/5324736001/>.

⁴⁷ Department of Health and Human Services, Office of Refugee Resettlement, Administration for Children and Families, *Update on Efforts to Mitigate Child Labor Exploitation and Internal Audit on Placement Process Used to Transfer Custody of Unaccompanied Children to Vetted Sponsors* (Washington, DC: OEI-07-21-00250, June 2023), accessed June 9, 2023, <https://www.acf.hhs.gov/sites/default/files/documents/orr/update-on-efforts-to-mitigate-child-labor-exploitation-internal-audit-placement-process.pdf>.

⁴⁸ DHHS ACF, *Update on Efforts to Mitigate Child Labor Exploitation and Internal Audit on Placement Process Used to Transfer Custody of Unaccompanied Children to Vetted Sponsors*. Pp. 12-13.

⁴⁹ DHHS ACF, *Update on Efforts to Mitigate Child Labor Exploitation and Internal Audit on Placement Process Used to Transfer Custody of Unaccompanied Children to Vetted Sponsors*. Pp. 16-17.

⁵⁰ In another example of unconscionable agency failures, the preventable May 2023 death of 8-year-old Anadith Reyes Alvarez sparked widespread outrage particularly as Anadith's mother repeatedly sought medical assistance for her daughter as her condition deteriorated while the family was held in the custody of U.S. Customs and Border Protection (CBP); subsequent investigations by CBP affirm that medical failures did cause Anadith's death. Camilo Montoya-Galvez, "Official concedes 8-year-old who died in U.S. custody could have been saved as devastated family recalls final days," *CBS News*, July 20, 2023, <https://www.cbsnews.com/news/anadith-danay-reyes-alvarez-8-year-old-migrant-died-border-patrol-custody-family/>.

⁵¹ Stefan Becket, Camilo Montoya-Galvez and Margaret Brennan, "Unaccompanied Migrant Child Dies in U.S. Custody, the Second Death in 2 months," *CBS News*, May 12, 2023, <https://www.cbsnews.com/news/unaccompanied-migrant-child-died-angel-eduardo-maradiaga-espinoza-us-custody-florida/>.

⁵² Becket et al., "Unaccompanied Migrant Child Dies."

⁵³ Becket et al., "Unaccompanied Migrant Child Dies."

⁵⁴ Jeff Abbott and Sandra Cuffe, "Palm Oil Industry Expansion Spurs Guatemala Indigenous Migration," *Al Jazeera*, February 6, 2019, [https://www.aljazeera.com/news/2019/2/6/palm-oil-industry-expansion-spurs-guatemala-indigenous-migration](https://www.aljazeera.com/news/2019/2/6/palm-oil-industry-expansion-spurs-guatemala-indigenous-migration;); Ciara Nugent, "They Left Guatemala for Opportunities in the United States. Now They Want to Help Others Stay," *TIME*, April 13, 2022, <https://time.com/6166459/guatemala-migration-economy-remittances/>. The specific harms indigenous communities face correspond to greater dangers at the border and in U.S. immigration custody; indeed, the majority of children who have died in immigration detention have been indigenous children from Guatemala. "Open Letter From the International Mayan League on the First Anniversary of the Death of Jakelin Caal Maquin," Mayan Language Immigration Law Info, The Rights of Asylum Seekers Who Speak Indigenous Languages, December 8, 2019, <https://mayanlanguageimmigrationlawinfo.wordpress.com/2019/12/08/open-letter-from-the-international-mayan-league-on-the-first-anniversary-of-the-death-of-jakelin-caal-maquin/>. See also "Deaths of Indigenous Children at Border Amplifies the Need for Policy Change," Indian Law Resource Center, 2018, <https://indianlaw.org/story/indigenous-children-border-deaths-amplifies-need-policy-change>.

⁵⁵ Current U.S. immigration policy, which restricts movement of indigenous people across the hemisphere, especially since the invocation of Title 42, prevents families and adults from accessing economic security. This often results in minors serving as lifelines for their families in which they offer financial support and the possibility of social mobility through access to education. Since reports of child labor have led to scrutiny of the food production sector, many minors have been fired, leaving them and their families in precarious financial situations. *NBC News*, "Migrant Workers in NBC News Interview is Older Than Previously Reported," *NBC News*, April 12, 2023, <https://www.nbcnews.com/news/us-news/kansas-teen-cleans-slaughterhouse-pssi-rcna78539>.

⁵⁶ Jennifer Sherer and Nina Mast, *Economic Policy Institute Report: Child Labor Laws Are Under Attack in State Across the Country*, March 14, 2023, <https://www.epi.org/publication/child-labor-laws-under-attack/>.

⁵⁷ Migration Policy Institute, *The Essential Role of Immigrants in the U.S. Food Supply Chain (UPDATED)*, April 2020, <https://www.migrationpolicy.org/content/essential-role-immigrants-us-food-supply-chain>; American Immigration Council, *Tending to America's Food Supply: The Essential Role of Immigrants in America's Meat and Dairy Industries*, June 2022, https://www.americanimmigrationcouncil.org/sites/default/files/research/tending_to_americas_food_supply_meat_dairy_industries.pdf.

⁵⁸ Rebecca Smith, National Employment Law Project; Ana Avendaño, AFL-CIO; Julie Martínez Ortega, American Rights at Work Education Fund, *ICED OUT: How Immigration Enforcement Has Interfered with Workers' Rights*, October 2009, https://ecommons.cornell.edu/bitstream/handle/1813/88125/afl_cio16_icedOut_report.pdf; Eunice Hyunhye Cho and Rebecca Smith, National Employment Law Project, *Workers' Rights on ICE: How Immigration Reform Can Stop Retaliation and Advance Labor Rights*, February 2013, <https://www.nelp.org/wp-content/uploads/2015/03/Workers-Rights-on-ICE-Retaliation-Report-California.pdf>; "What is Immigration Related Retaliation?" Resilience Force, 2020, <https://resilienceforce.org/what-is-immigration-related-retaliation/>.

⁵⁹ "Immigration," Whistleblower.org, Government Accountability Project, 2023, <https://whistleblower.org/immigration/>; "Press Statement: Virtual Forum on ICE Detention Facilities Featuring Dr. Scott Allen," Whistleblower.org, Government Accountability Project, September 21, 2020, <https://whistleblower.org/press-release/press-statement-virtual-forum-on-ice-detention-facilities-featuring-dr-scott-allen/>.

⁶⁰ Dr. Scott A. Allen, MD, "Written Statement: Examining Best Practices for Incarceration and Detention During COVID-19," U.S. Senate Committee on the Judiciary, June 2, 2020, <https://www.judiciary.senate.gov/imo/media/doc/Scott%20Allen%20Testimony.pdf>; Dr. Scott A. Allen, MD. and Dr. Josiah Rich, MD, "Letter re Coronavirus and Immigrant Detention," U.S. Congress, March 19, 2020, <https://www.documentcloud.org/documents/6816336-032020-Letter-From-Drs-Allen-Rich-to-Congress-Re#document/p4/a557238>.

⁶¹ Dana L. Gold, "Whistleblower Disclosures on COVID-19 -- Private Contractors Mismanaging ICE Detention Facilities Are Endangering Public Health and Safety," U.S. Congress, July 10, 2020, <https://whistleblower.org/wp-content/uploads/2020/07/071020-letter-to-Congress-from-GovAcctProj-re-whistleblowers-ICE-Detention-COVID-FINAL-Submitted.pdf>.

⁶² Dana L. Gold, "Written Statement for the Record for the Senate Committee on Homeland Security and Governmental Affairs Permanent Subcommittee on Investigations," November 29, 2022, <https://whistleblower.org/wp-content/uploads/2022/11/NEW-112922-Revised-GAP-Statement-for-the-Record-PSI-Medical-Mistreatment-hrg-1.pdf>; U.S. Congress, Senate, Committee on Homeland Security & Governmental Affairs Permanent Subcommittee on Investigations, *Medical Mistreatment of Women in ICE Detention*. 117th Cong., 2nd sess., 2022, <https://www.congress.gov/event/118th-congress/house-event/116285?s=1&r=1>.

⁶³ Maryam Saleh and Spencer Woodman, "A Homeland Security Whistleblower Goes Public About ICE Abuse of Solitary Confinement," *The Intercept*, May 21, 2019, <https://theintercept.com/2019/05/21/ice-solitary-confinement-whistleblower/>.

⁶⁴ "United States: Prolonged Solitary Confinement Amounts to Psychological Torture, Says UN Expert," OHCHR, United Nations Human Rights Office of the High Commissioner, February 28, 2020, <https://www.ohchr.org/en/press-releases/2020/02/united-states-prolonged-solitary-confinement-amounts-psychological-torture>.

⁶⁵ Jason Zuckerman, "Navigating the Maze of Corporate Whistleblower Protections," American Bar, American Bar Association, November 2022, https://www.americanbar.org/groups/labor_law/publications/labor_employment_law_news/fall-2022/navigating-the-maze-of-corporate-whistleblower-protections/; Dana L. Gold, "Introduction: Speaking Up for Justice, Suffering Injustice: Whistleblower Protection and the Need for Reform," *Seattle Journal for Social Justice* 11, no. 5 (2013): 555, <https://digitalcommons.law.seattleu.edu/sjsj/vol11/iss2/5/>.

⁶⁶ Sara Lacy, "Hard to Watch: How Ag-Gag Laws Demonstrate the Need for Federal Meat and Poultry Industry Whistleblower Protections," *Administrative Law Review* 65, no. 1 (2013): 127, <https://www.administrativelawreview.org/wp-content/uploads/2014/04/Hard-to-Watch-How-Ag-Gag-Laws-Demonstrate-the-Need-for-Federal-Meat-and-Poultry-Industry-Whistleblower-Protections.pdf>.

⁶⁷ "READOUT US Department of Labor Expands OSHA's Ability to Protect All Workers by Certifying Special Visa Applications to Ensure Effective Enforcement," OSHA, United States Department of Labor, February 13, 2023, <https://www.osha.gov/news/newsreleases/readout/02132023>.

⁶⁸ CFR 214.14(a)(9).

⁶⁹ "Labor Secretary Marty Walsh Delegates U and T Visa Certifying Authority to OSHA," Surlegal.org, Sur Legal Collaborative, February 16, 2023, <https://www.surlegal.org/our-news/labor-secretary-delegates-u-and-t-visa-certifying-authority-to-osha>; "US Department of Labor Posts Process For Seeking its Supports for Immigration Related Prosecutorial Discretion During Labor Disputes," dol.gov, U.S. Department of Labor, July 6, 2022, <https://www.dol.gov/newsroom/releases/sol/sol20220706>; "EEOC's Support for Immigration-Related Deferred Action Requests to the DHS," EEOC.gov, U.S. Equal Employment Opportunity Commission, 2023, <https://www.eeoc.gov/faq/eeocs-support-immigration-related-deferred-action-requests-dhs>; "NLRB General Counsel Jennifer Abruzzo Applauds the Department of Homeland Security's Process Enhancements to Support Labor Law Enforcement," NLRB, National Labor Relations Board, January 13, 2023, <https://www.nlr.gov/news-outreach/news-story/nlr-general-counsel-jennifer-abruzzo-applauds-the-department-of-homeland>.

⁷⁰ “DHS Announces Process Enhancements for Supporting Labor Enforcement Investigations,” DHS, U.S. Department of Homeland Security, January 13, 2023, <https://www.dhs.gov/news/2023/01/13/dhs-announces-process-enhancements-supporting-labor-enforcement-investigations>.

⁷¹ “DHS Support of the Enforcement of Labor and Employment Laws,” DHS, U.S. Department of Homeland Security, April 7, 2023, <https://www.dhs.gov/enforcement-labor-and-employment-laws>; “New DHS Guidance on Prosecutorial Discretion for Labor Disputes,” National Immigration Law Center, Updated March 8, 2023, <https://www.nilc.org/wp-content/uploads/2023/01/FAQ-New-DHS-Guidance-on-Prosecutorial-Discretion-for-Labor-Disputes-v-2023-01-17.pdf>.

⁷² Jayesh M. Rathod, “Beyond the ‘Chilling Effect’: Immigrant Workers and the Regulation of Occupational Safety & Health,” *Employee Rights and Employment Policy Journal* 14, no. 2 (2010): 267, <https://ssrn.com/abstract=1994427>.

⁷³ Deborah Berkowitz, Laura Huizar, and Rebecca Smith, *National Employment Law Project: Protecting Injured Immigrant Workers From Retaliation*, October 2017, <https://www.nelp.org/publication/protecting-injured-immigrant-workers-from-retaliation/>. See also, National Employment Law Project and National Immigration Law Center, *IMMIGRATION AND LABOR ENFORCEMENT IN THE WORKPLACE The Revised Labor Agency–DHS Memorandum of Understanding*, May 2016, <https://www.nilc.org/wp-content/uploads/2015/11/ImmigrationLaborEnforcementWorkplace.pdf>.

⁷⁴ Rogelio V. Solis and Jeff Amy, “Largest US Immigration Raids in a Decade Net 680 Arrests,” AP News, Associated Press, August 7, 2019, <https://apnews.com/article/donald-trump-us-news-ap-top-news-arrests-immigration-bbcef8ddae4e4303983c91880559cf23>; “Worksite Immigration Raids,” NILC.org, National Immigration Law Center, Last Updated January 2020, <https://www.nilc.org/issues/workersrights/worksite-raids/>.

⁷⁵ Fatima Hussein, “ICE Raids at Work May Keep Undocumented Workers Silent on Safety,” Rosenberg Foundation, June 27, 2018, <https://rosenbergfound.org/ice-raids-at-work-may-keep-undocumented-workers-silent-on-safety/>.

⁷⁶ The pattern of discriminatory enforcement in workplace raids led the National Immigration Law Center and the Southern Poverty Law Center to file a lawsuit in 2019 against ICE and IRS agents alleging racial profiling. National Immigration Law Center, *ICE Raid Violated Tennessee Workers’ Constitutional Rights Zelaya, et al. v. Hammer, et al.*, <https://www.nilc.org/issues/workersrights/zelaya-et-al-v-hammer-et-al/>; See also, Hussein, “ICE Raids at Work May Keep Undocumented Workers Silent on Safety.”; Jamie Satterfield, “Feds to Settle Suit Over 2018 Tennessee Slaughterhouse Raid Targeting Latino Workers,” *Tennessee Lookout*, September 5, 2022, <https://tennesseelookout.com/2022/09/05/feds-to-settle-suit-over-2018-tennessee-slaughterhouse-raid-targeting-latino-workers/>.

⁷⁷ For example, in the wake of Duván Tomás Pérez’s death, the Immigrant Alliance for Justice and Equality (IAJE) in Mississippi began collaboration with with the Department of Labor (DOL) and the Occupational Safety and Health Administration (OSHA) to connect workers to resources to protect them from retaliation for speaking out about abuses, and with the National Day Laborer Organizing Network, called on the DOL and OSHA to perform a statewide investigation. Efrén Nunez, “Immigrant Alliance Responds to Death of 16 Year Old in Mississippi Poultry Plant,” Press Release, July 18, 2023, <https://twitter.com/IAJEofMS/status/1682451091508858880?s=20>. The indigenous-led organization, The Mayan League, has called for changes in the immigration system to address the unique needs of indigenous communities, including, among other measures: investigations and prosecutions of companies and contractors violating child labor laws, for the U.S. Department of Health and Human Services (HHS) and the HHS Office of Refugee Resettlement (ORR) to disclose the whereabouts of the more than 85,000 children released from ORR custody to sponsors along with information about children who have died or been injured in the workplace, and that DHHS or ORR will work with Indigenous communities to create a process that will appropriately recognize the Indigenous identities of the children in its programs. Mayan League, “We are outraged.”

⁷⁸ “The Power Act: Protect Our Workers from Exploitation and Retaliation Act,” National Immigration Law Center, April 2023, https://www.nilc.org/wp-content/uploads/2023/05/POWER-Act_1pager_April2023.pdf; U.S. Congress, House, *POWER Act*, H.R.1828, 118th Cong., 1st sess., introduced in House March 28, 2023, <https://www.congress.gov/bill/118th-congress/house-bill/1828/actions>.

⁷⁹ "Booker Introduces Protecting America's Meatpacking Workers Act," *Safety+Health Magazine*, January 11, 2021, <https://www.safetyandhealthmagazine.com/articles/22103-booker-introduces-protecting-americas-meatpacking-workers-act>; U.S. Congress, Senate, *Protecting America's Meatpacking Workers Act of 2021*, S.3285, 117th Cong., 1st sess., introduced in Senate November 30, 2021, <https://www.congress.gov/bill/117th-congress/senate-bill/3285/actions?r=16&s=1>.

⁸⁰ Rep. Adam Schiff, "Rep. Schiff Introduces Landmark Bill to Strengthen and Protect Our Democracy," July 27, 2023, <https://schiff.house.gov/news/press-releases/rep-schiff-introduces-landmark-bill-to-strengthen-and-protect-our-democracy>; U.S. Congress, House, *Whistleblower Protection Improvement Act of 2021*, HR 2988, 117th Cong., 1st sess., introduced in House May 4, 2021, <https://www.congress.gov/bill/117th-congress/house-bill/2988/summary/00>.

⁸¹ U.S. Congress, House, *Whistleblower Protection Improvement Act of 2021*, HR 2988; Government Accountability Project, "Letter: 101 Organizations Praise Chairwoman Maloney's Efforts to Protect Whistleblowers," July 28, 2022, <https://whistleblower.org/letter/letter-101-organizations-praise-chairwoman-maloney-s-efforts-to-protect-whistleblowers/>.

⁸² Government Accountability Project and International Bar Association Legal Policy and Research Unit, *Are Whistleblowing Laws Working? A Global Study of Whistleblower Protection Litigation*, March 2021, <https://whistleblower.org/wp-content/uploads/2021/03/Are-Whistleblowing-laws-working-REPORT.pdf>, pp. 12, 41.

⁸³ *National Defense Authorization Act*, U.S. Code 41 (2023), § 4712, [https://uscode.house.gov/view.xhtml?req=\(title:41%20section:4712%20edition:prelim\)](https://uscode.house.gov/view.xhtml?req=(title:41%20section:4712%20edition:prelim)).

⁸⁴ Notably, the initial whistleblowers who came forward to speak about poor conditions at the Fort Bliss EIS in 2021 were federal employees who volunteered on detail to work at Fort Bliss. Because of the whistleblower protections afforded to them as federal employees, and because as detailees they were not employed with HHS, their risk of reprisal was relatively low. Even still, they were hesitant to blow the whistle because of the risks inherent to speaking out against the government and large contractor corporation

⁸⁵ Pelley, "From Stakeouts to Warrants: How Federal Investigators Found More Than 100 Children Cleaning Slaughterhouses."

⁸⁶ Currently the whistleblower activity of noncitizen federal contractors is protected under 41 U.S.C. §4712 of the National Defense Authorization Act. Because Congress did not specify that the statute covers a "lawful employee," but rather covers an "employee," courts are unable to exclude immigrants working as employees of federal contractors who are not lawfully employed from protection.

⁸⁷ The U.S. Court of Appeals for the 5th Circuit, in *Texas Education Agency v. U.S. Department of Education*, 992 F.3d 350 (5th Cir. 2021), held that Congress had not effectively waived sovereign immunity in section 4712, and therefore, the Court barred the Education Department from ordering the Texas Education Agency from providing relief to an employee after the Education OIG had determined the employee was retaliated against. Numerous other federal whistleblower protection laws have explicitly included state governments in the definition of covered employee, including the anti-retaliation provisions of the 2009 American Recovery and Reinvestment Act, the Safe Drinking Water Act, the Solid Waste Disposal Act, and the Clean Air Act among others.

⁸⁸ U.S. Congress, Senate, *Expanding Whistleblower Protections for Contractors Act*, S1524, 118th Cong., 1st sess. Introduced in Senate May 10, 2023, <https://www.congress.gov/bill/118th-congress/senate-bill/1524>.

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