
Children, Labor, and Child Labor

Leticia M. Saucedo^{†*} and Andrea Senteno^{**}

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^{*} Martin Luther King, Jr. Professor of Law, UC Davis School of Law.

^{**} Southeast Regional Counsel, Mexican American Legal Defense and Educational Fund (“MALDEF”). The views expressed in this Essay do not necessarily represent the views of MALDEF. Thank you to the editors for your help editing this article. I would also like to acknowledge my appreciation to Barrett H. Pitner for your insights and assistance.

INTRODUCTION

In the public imagination our nation long ago repudiated child labor, invested in children as a future asset,¹ and prioritized education as the vehicle for children's advancement into the labor market.² The belief is that those laws that allow employers to hire children do so in the service of training and educating children, and not to supply the labor market with more bodies.³ Unfortunately, media revelations over the past couple of years demonstrate that our country's reliance on child labor — and the exploitation inherent in such a market — is not a thing of the past. This Essay explores a particular historical thread of the arguments around child labor which links today's child labor market to yesterday's. We argue that the reasons given to end child labor at the beginning of the 20th century⁴ — to save children from the whims of their parents and unscrupulous third parties — are still being used today in the narratives about why children are in dangerous workplaces. Both at the turn of the 20th century and today, narratives about poverty, family need, exploitation by third parties, and even cultural attitudes dominate the debate over child labor.⁵ In the past, efforts to save children from exploitative working conditions focused on progressive aspirations for

¹ See BETSY WOOD, *UPON THE ALTAR OF WORK: CHILD LABOR AND THE RISE OF A NEW AMERICAN SECTIONALISM* 139 (2020).

² See, e.g., Lynn Gordon, *Women and the Anti-Child Labor Movement in Illinois, 1890–1920*, 51 *SOC. SERV. REV.* 228, 235 (1977) (discussing the need to invest in children's educational and labor endeavors as a form of welfare). See generally WALTER I. TRATTNER, *CRUSADE FOR THE CHILDREN: A HISTORY OF THE NATIONAL CHILD LABOR COMMITTEE AND CHILD LABOR REFORM IN AMERICA* (1970) (outlining the history of child labor and its interaction with discourses around education).

³ See Fair Labor Standards Act of 1938, 29 U.S.C. § 212(c); Child Labor Regulations, Orders and Statements of Interpretation, 29 C.F.R. pt. 570 (2023).

⁴ Jane Addams aptly summarized this moral imperative in her words at the National Conference of Charities in 1903: “[T]he children should be saved from the breakdown, which premature labor so often implies. When children are thus broken down it means that we do not stand up to the obligations which belong to our own time, but insist upon using up the energy which belongs to the future.” Jane Addams, *Child Labor and Pauperism*, in *PROCEEDINGS OF THE NATIONAL CONFERENCE OF CHARITIES AND CORRECTION* 114, 116 (Isabel C. Barrows ed., 1903).

⁵ See TRATTNER, *supra* note 2, at 49–50; Hannah Dreier, *The Kids on the Night Shift*, *N.Y. TIMES* (Sept. 20, 2023), <https://www.nytimes.com/2023/09/18/magazine/child-labor-dangerous-jobs.html> [<https://perma.cc/VU85-ZE3F>] [hereinafter Dreier, *Night Shift*].

American society.⁶ These efforts also focused primarily on saving white children from child labor exploitation.⁷ Today, the arguments of the mostly white progressive reform movement of the early 20th century show up in a focus on external factors to explain why children — mostly immigrants — are in dangerous and exploitative workplaces. However, within this conversation it is important to highlight that the discussion and historic activism around child labor has focused on the presence of white children in the workforce. In order to understand the exploitative use of child labor today, we cannot ignore the role that race has played with regard to the child labor debate throughout our nation's history. While not meant as a comprehensive history of child labor in the United States and its roots, this Essay pulls on some of the strands of arguments surrounding who is responsible for allowing child labor and the assumptions behind those arguments.

This Essay proceeds in four parts. Part I discusses the historical roots of child labor and efforts to end it in the United States. Part II describes the threads that carry through to today's child labor market, especially in media and policy narratives. Part III explores the threads that carry through to today's child labor discussions, especially in media and policy narratives. It also discusses proposed recommendations to end child labor and analyzes why we miss the mark by not addressing the racialized component that makes child labor possible in U.S. labor markets.

I. HISTORICAL ANTECEDENTS OF CHILD LABOR NARRATIVES

Since this nation's founding, the exploitation of entire categories of people has been a core component of the U.S. economy. Chattel slavery condemned people to a lifetime of enslavement from birth to death, and thus, child labor had always been a feature of the U.S. economy. However, the discussion around child labor did not arise regularly within the general political discourse until the post-slavery era of the late 19th century.⁸ During this period, in the North, workers were

⁶ See TRATTNER, *supra* note 2, at 47.

⁷ See SHELLEY SALLEE, *THE WHITENESS OF CHILD LABOR REFORM IN THE NEW SOUTH* 1-2 (2004).

⁸ TRATTNER, *supra* note 2, at 32.

unionizing and building a labor movement, and child labor became a key issue.⁹ In the South, the message around child labor focused on the evolving forms of post-slavery servitude, and the growing desire to remove white children from the workforce.¹⁰

Indentured servitude, a feature of the mid-19th century labor market in the North, included whole families, including children, in work contracts.¹¹

Company towns now grew up around mills in Rhode Island, Connecticut, New Jersey, Pennsylvania, using immigrant workers who signed contracts pledging everyone in the family to work for a year.¹² They lived in slum tenements owned by the company, were paid in scrip, which they could use only at company stores, and were evicted if their work was unsatisfactory.¹³

In Paterson, New Jersey, children actually started the first of a series of mill worker strikes.¹⁴

Debates over child labor occurred in the context of increasing labor movement activity and the entry into the labor market of immigrants from southern and eastern Europe.¹⁵ Historian Howard Zinn describes one example of the working conditions in these immigrant workplaces:

The work force were immigrant families — Portuguese, French-Canadian, English, Irish, Russian, Italian, Syrian, Lithuanian, German, Polish, Belgian — who lived in crowded, flammable wooden tenements. . . . A woman physician in Lawrence . . . wrote: “A considerable number of the boys and girls die within the first two or three years after beginning work”¹⁶

⁹ In the late nineteenth century, unions and political parties targeted child labor as one of a number of the ills of capitalism, including the sweating system and contract convict labor. TRATTNER, *supra* note 2, at 33.

¹⁰ TRATTNER, *supra* note 2, at 37.

¹¹ See HOWARD ZINN, *A PEOPLE’S HISTORY OF THE UNITED STATES* 225 (1980).

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ See Gordon, *supra* note 2, at 229-31.

¹⁶ ZINN, *supra* note 11, at 327.

The labor movement's message focused on the flaws of capitalism, including employer greed.¹⁷ During this period, labor movement activists initiated strikes to improve labor conditions for workers, including children.¹⁸ There was much public mistrust, however, of the growing labor movement, due in part to its composition of newly arrived immigrants from southern and eastern Europe, of recently freed Black people, and of socialists and anti-capitalists.¹⁹ This distrust fueled a narrative that parents were forcing children into work while it undermined the family as an institution by placing blame on parents but not on the exploitative system that made use of child labor.²⁰

Efforts of social reformers such as Jane Addams and Florence Kelley to end child labor strategically focused on family erosion and lost educational opportunity, rather than on the economic conditions and employer efforts pulling children into work.²¹ The social reformers aimed to funnel children into compulsory education as a strategy to keep them out of the labor market, and passed bills limiting the number of hours children could work.²² The reformer narrative blamed parents and foreigners' cultural attitudes for child labor. Although socialist labor movement leaders were successful in the North with a class-conscious message, labor leaders such as Samuel Gompers pivoted from a more radical labor message and collaborated with social reformers to create a different message — one based on race — that would appeal to Southern workers.²³ A movement made up of labor organizations, social welfare

¹⁷ See SALLEE, *supra* note 7, at 45; TRATTNER, *supra* note 2, at 30-33; WOOD, *supra* note 1, at 58.

¹⁸ See ZINN, *supra* note 11, at 346-47. Race was an important part of the discussion at the time about the labor movement, its goals, who it was for, and strategies for success, and thus many labor movement leaders and social reformers at the time were understood to be focused on the improved working conditions and social welfare of white workers and children. See TRATTNER, *supra* note 2, at 32.

¹⁹ See SALLEE, *supra* note 7, at 35; see also TRATTNER, *supra* note 2, at 32.

²⁰ See Gordon, *supra* note 2, at 235.

²¹ See *id.*; TRATTNER, *supra* note 2, at 34.

²² See Gordon, *supra* note 2, at 241. States that passed minimum wage and maximum hours legislation for children after Reconstruction include Massachusetts, New York, Minnesota, Ohio, Michigan, and Wisconsin. TRATTNER, *supra* note 2, at 35.

²³ See SALLEE, *supra* note 7, at 3, 46-47.

groups, and religious organizations thus disseminated a message to end child labor that appealed to white Southerners.²⁴

A. *Post-Reconstruction Child Labor Reform North and South*

While a class-conscious labor message was successful in the industrial North, it was less successful in the Jim Crow South.²⁵ A coalition of white progressives from the North and the South framed child labor as a welfare issue, and created a narrative of child labor as a symbol of backwardness.²⁶ They convinced poor white families that they were “too good” to allow children to work.²⁷ As one historian noted, “In the face of apparent disparities between Southern white haves and have-nots and between a rapidly modernizing North and an impoverished, rural South, reformers promoted white supremacy as a basis for bringing the New South in line with minimal national standards of child welfare.”²⁸ Northern and Southern reformers professed a mission to save “the forgotten child” from the ravages of child labor.²⁹ By focusing on child labor as a child welfare issue divorced from the class politics and class divisions underlying traditional labor movement demands, the reformers built support for child labor restrictions in the South. The rhetoric avoided class antagonisms and also created a message of racial solidarity that united Northern and Southern Whites.³⁰ Importantly, the emphasis on white children made it possible “for northerners and southerners to work together without southern suspicion that ‘outsiders’ were intervening out of an interest in African Americans’ rights.”³¹

As labor organizing began to succeed in the North, employers moved their mills south, precipitating the fight for child labor protections in Southern states.³² Predictably, employers blamed foreign labor agitators

²⁴ See TRATTNER, *supra* note 2, at 163-64.

²⁵ TRATTNER, *supra* note 2, at 39.

²⁶ See SALLEE, *supra* note 7, at 1.

²⁷ See *id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.* at 2.

³¹ *Id.* at 6.

³² See *id.* at 45-46.

— rather than their profit-seeking imperatives — for their decisions to move their plants south.³³ Employers successfully lobbied Southern state legislatures to repeal the few existing laws limiting work for women and children to eight hours a day, and banning the employment of children under fourteen years of age.³⁴

As the reform movement in the South progressed in the late nineteenth and into the twentieth century, the fight for child labor protections changed from a focus on corporate greed, a living wage and class conflict to one focused on children's literacy and welfare.³⁵ The child labor movement in Alabama provides an example of the instinct to blame poor white families for allowing children to work.³⁶ Southern progressives linked citizenship to whiteness, and appealed to whiteness, rather than class as they had in the North, in their effort to convince families to pull children out of work.³⁷ As one historian noted, "Emphasizing that mill children were Anglo-Saxons rather than inferior whites had the benefit of disassociating reform from a rhetoric about the rights of labor."³⁸ Reform was thus framed to focus on children's education, without directly attacking the family-based economic system in the South. This excerpt describes the challenges for reformers seeking to end child labor in the South:

The trade union ideal was a skilled male worker paid a living wage that enabled him to maintain the American standard of living — a modern definition of independence — and to provide for his wife and children Male mill workers still identified male independence and the autonomy of the family with collective labor. In the absence of organization, commanding the labor of his children provided a male mill worker with some degree of leverage against his employer. Furthermore, child labor helped provide the funds that allowed some men to

³³ *Id.* at 16.

³⁴ For example, Alabama passed legislation prohibiting children under 14 from work in 1887. However, as certain industries grew in the state, the state legislature repealed the law in 1894. *Id.* at 15-16.

³⁵ *See id.* at 72.

³⁶ *See id.* at 73.

³⁷ *Id.* at 94.

³⁸ *Id.* at 95.

continue farming or enabled entire families to return periodically to farming. Trade unionism, in contrast, was built on the idea of a permanent acceptance of industrial capitalism and working for wages. At the turn of the century, many southern textile workers thought of themselves as farmers temporarily working in the mill, not as permanent industrial wage workers.³⁹

By appealing to race-based reasons for taking children out of the mills and into schools, reformers hoped to convince white parents that their children deserved better. The child labor reform agenda, explicitly race-based in its nature, was not billed as a savior for all children.⁴⁰ Its humanitarian message was reserved for whites, even as its professed aim was to keep children as a group out of the labor market. As one historian notes,

in a highly racialized context where difference and otherness were racially categorized to justify subordinate social, political, and economic status, reformers sought to create a positive racial identity for cotton mill children. . . . Reformers elevated the Anglo-Saxonism of mill children beyond manufacturers' promotions of a reliable workforce. . . . [R]eformers had a new goal of making it hard to say that factory work was acceptable for white children in the South.⁴¹

B. The Public Debate and Media Message During Reconstruction

After the Civil War, the public and media found themselves reckoning with the fact that slave labor was abolished, but it persisted in different forms in the North and South, including forms of forced labor with children. The padrone system used in the North, the apprenticeship system in the South, and factory labor — which all exploited the labor of children — required social reformers, government officials, the media, and the public to try and understand how these systems fit into, or offended, this new era in the United States.

³⁹ *Id.* at 58.

⁴⁰ *See id.* at 100-01.

⁴¹ *Id.* at 101.

Post-Civil War, child labor reformers and the media targeted two sets of child labor systems: the padrone system (focused on immigrant families) and the apprenticeship system. Their criticisms focused on child exploitation by third parties, sometimes with the willing acquiescence of their parents.⁴² In both cases, the reformers' emphasis on saving children from exploitation failed to provide for deeper debates over a child's place in the family as an economic unit, the authority of the family unit and the distinctions based on race, and the economic conditions that made children more vulnerable to exploitation.⁴³

First, media stories about trafficked southern European immigrant children fueled concerns over child labor.⁴⁴ The Italian padrone system, in which Italian children were shipped and bound to masters for three years in the United States, received special scrutiny.⁴⁵ The Italian word padrone translates to "owner," "master," or "boss" in English. One New York Times ("NYT") article warned that this system amounted to child trafficking and was "as absolute[ly] a slave-trade as ever existed down South."⁴⁶ While the padrone system was not new in this era, reformers criticized the padrone system as a form of forced labor that conflicted with the principles of a post-slavery free market in labor.⁴⁷ Opposition to the padrone system was also clothed in xenophobic rhetoric about the families involved in the practice. As one historian noted:

The threat that the padrone system posed was multifaceted. On the one hand, it was perceived as the result of a dangerous "foreign" influence, a reflection of strange values that originated outside of America's borders. [Reformers] described the trafficking of Italian children as having begun in far-off "villages, the inhabitants of which [were] half savages in habits,

⁴² WOOD, *supra* note 1, at 40-43.

⁴³ *See id.* at 32.

⁴⁴ *Id.* at 34.

⁴⁵ *See id.*

⁴⁶ *The Italian Slave-Trade: How Boy Musicians Are Entrapped and Imported — Sufferings and Trials of the Unfortunates — A Shameful Practice*, N.Y. TIMES, July 7, 1872, at 3, <https://www.nytimes.com/1872/07/07/archives/the-italian-slavetrade-how-boy-musicians-are-entrapped-and-imported.html> [<https://perma.cc/XZ7P-NHE8>]; *see also* WOOD, *supra* note 1, at 35.

⁴⁷ WOOD, *supra* note 1, at 35.

with misery and starvation steadily staring at them from the beginning to the end of the year.” (quotations omitted).⁴⁸

The media also focused on how the padrone system was the product of fraud and deception.⁴⁹ Children were trafficked to the United States without parents’ understanding of the slave-like conditions children faced, or without parental consent. In the public’s view, the padrone was akin to today’s human trafficker.⁵⁰ The padrone system was compared unfavorably to capitalism in popular literature, such as Horatio Alger’s novel, *Phil the Fiddler*.⁵¹ The padrone was portrayed as “a fraudulent slave master within capitalist society.”⁵²

Second, reformers and the media targeted another form of forced labor: the apprenticeship. After the end of the Civil War, apprenticeships in the South became a way to indenture workers — adults and children — once slavery was abolished. Former slaveholders manipulated the legal system to take legal custody of Black children declared by the courts to be orphaned after the Civil War, and “bound” them to apprenticeships on the same plantations where they had been enslaved.⁵³ Through the legal system, “if the mother was judged to be a pauper and therefore incapable of supporting her children — a judgment formerly enslaved people most often protested and believed was unfair — then an agent of the [Freedmen’s Bureau] would decide whether or not to allow her children to be bound out.”⁵⁴ This type of manipulation by former slave owners, similar to the padrone system in the North, represented a continuation of slavery and undermined the ideals of the free labor market that was supposed to define the post-war era.⁵⁵

Debates over both the padrone system and apprenticeships pinned moral blame on the parents who placed children in these situations.⁵⁶

⁴⁸ *Id.*

⁴⁹ *See id.* at 39.

⁵⁰ *See id.* at 38.

⁵¹ *See* WOOD, *supra* note 1, at 41.

⁵² *Id.*

⁵³ *Id.* at 28.

⁵⁴ *Id.* at 29.

⁵⁵ *Id.* at 27.

⁵⁶ *Id.* at 44-45.

Child labor in factories posed similar dangers to children.⁵⁷ Factory labor, however, was not viewed as an extension of slavery the same way that the apprenticeship or padrone systems were, even though it had many of the attributes of both.⁵⁸

Long working hours, greed, ignorance, deception, and cruelty were features of factory child labor that were surfacing at the same time the public worried about the padrone system. When factory child labor first emerged as a topic of public interest in the 1870s, complaints were similar to those of the padrone system.⁵⁹

But the media and most of the public did not condemn the factory owners and northern industrialists in the same way as antebellum slave-owners and Italian padroni. Factory owners represented the free labor market, particularly during the rapid industrialization and expansion of wealth during the Gilded Age that defined the American economy at the end of the 19th century, and thus the public and the media needed to distinguish the exploitation in factories from the padrone and apprenticeship systems.⁶⁰ Mill owners, especially in the South,

[W]ere the most trusted and respected members of their communities. They looked upon themselves, and they were looked upon by others, as altruists and benefactors despite the working conditions they oversaw. They were the trustees of the economic aspirations of their communities and the whole South. The use of women and children in the mills, it was argued, was not avarice but philanthropy.⁶¹

Instead, parents' greed was to blame for this perceived corruption of the free labor market.⁶²

⁵⁷ *Id.* at 43.

⁵⁸ *Id.* at 44-45.

⁵⁹ *Id.* at 43.

⁶⁰ TRATTNER, *supra* note 2, at 31, 39.

⁶¹ *Id.* at 39.

⁶² WOOD, *supra* note 1, at 45.

For example, a NYT article noted that parents “show[ed] no conscience” with respect to the exploitation of children in factories.⁶³ Another article stated, “There are trades in this city where from eight to ten thousand children under the age of thirteen years are employed ten hours a day; that infants as young as four and eight years are kept steadily at work by the greed of their parents.”⁶⁴ In part, the moral blame was aimed at immigrant families and third party brokers who were portrayed as greedy for sending children into factories to work.⁶⁵ This moral condemnation accompanied a nativist and racialized view of immigrants entering the country. An NYT editorialist “made an explicit connection between cruel Italian padroni and the supposedly selfish parents of factory children. Child workers with ‘selfish parents’ were just ‘like the little Italians . . . the apprentices of cruel masters.’”⁶⁶

The media refused to place responsibility on factory owners for child labor because, in the media narrative, owners were simply following the rules of the market in a functioning capitalist system.⁶⁷ As one article noted, the capitalist, “must take the cheapest labor which presents itself.”⁶⁸ The capitalist was given the role of a disinterested market player, who could “not be expected to be more considerate of the little ones than are the parents.”⁶⁹ Capitalist logic justified their practices. One employer noted, “The children will go elsewhere and get work; their parents are in want and need their labor, and so it seems impossible to avoid hiring them.”⁷⁰

In each of these examples of child labor, the public and the media placed moral blame on parents for keeping children in the labor market without penalizing employers for their role.

⁶³ *Id.*

⁶⁴ *Id.* at 44.

⁶⁵ *Id.* at 43-44.

⁶⁶ *Id.* at 44.

⁶⁷ *See id.* at 45.

⁶⁸ *The Little Slaves of Capital*, N.Y. TIMES, Jan. 26, 1873, at 4, <https://www.nytimes.com/1873/01/26/archives/the-little-slaves-of-capital.html> [<https://perma.cc/YG8N-MW7T>].

⁶⁹ *Id.*; *see* WOOD, *supra* note 1, at 45.

⁷⁰ Julia A. Holmes, *Children Who Work*, 1 SCRIBNER'S MONTHLY 607, 611 (1870); *see* WOOD, *supra* note 1, at 45.

C. *The Fair Labor Standards Act and Labor Agency Enforcement*

After much advocacy, Congress enacted the Fair Labor Standards Act (“FLSA”) in 1938.⁷¹ Its provisions contain the primary federal law regarding unlawful child labor.⁷² The FLSA banned products manufactured for interstate commerce by children under the age of sixteen and goods manufactured in hazardous industries by children under eighteen. It also prohibited the employment of minors in some industries, while allowing other industries to employ children with restrictions on hours and times depending on age and sector.⁷³

Despite advocacy to the contrary, Congress exempted several types of employment from child labor restrictions.⁷⁴ The FLSA exempted employers that handled but did not produce goods for interstate commerce, such as transportation, communications, and domestic service; children in agricultural labor; children employed as actors or in theater productions; and children employed by parents in any occupation but manufacturing or mining.⁷⁵

II. CURRENT STATE OF AFFAIRS

Child labor violations continue to be a problem for enforcement agencies, policy makers, and legislators. As this Part demonstrates, the problem has received renewed attention in the past few years, with enforcement agencies, state and federal legislators, and the media providing different perspectives on the problem and its solutions. The same messages that persisted before the passage of the FLSA exist today.

A. *Documented Labor Violations*

Child labor violations are increasing in every state and in many different types of industries, but particularly in manufacturing occupations, food service, and food processing. The employment of

⁷¹ TRATTNER, *supra* note 2, at 204.

⁷² 29 U.S.C. § 203(1) (defining “oppressive child labor”).

⁷³ *Id.*; *see also* 29 C.F.R. § 570.35 (2023) (regulations restricting work, hours, and times for child labor).

⁷⁴ TRATTNER, *supra* note 2, at 205.

⁷⁵ 29 C.F.R. §§ 570.108, 570.122 (2023); *see also* WOOD, *supra* note 1, at 151.

children in hazardous and late-night jobs has received attention over the past couple of years. For example, labor investigations have revealed children working longer than allowed under federal law at establishments such as McDonald's,⁷⁶ Arby's,⁷⁷ Subway,⁷⁸ Burger King,⁷⁹ and Popeyes.⁸⁰ One NYT investigation found children working in various fields in dangerous, hazardous conditions, and on graveyard shifts.⁸¹ The article described a child whose arm was nearly torn off while he worked the overnight shift cleaning machinery at a poultry processing plant.⁸² A similar article found well-known companies as varied as Fruit of the Loom, Cheerios, Nature Valley, Ben and Jerry's, Target, Walmart, and J. Crew had used child labor to manufacture their products.⁸³

The news of child labor incidents and investigation has been steady over the past year. In September 2023, National Public Radio ("NPR") reported that the U.S. Department of Labor ("DoL") was investigating poultry processing plants Perdue Farms and Tyson Foods after the NYT

⁷⁶ Press Release, U.S. Dep't of Lab., Three McDonald's Franchisees in Kentucky Pay \$212k in Fines After Federal Investigations Find 305 Minors — Including 10-Year-Olds — Working Illegally (May 2, 2023), <https://www.dol.gov/newsroom/releases/whd/whd20230502-0#:~:text=The%20division%20investigated%20Bauer%20Food,permitted%20hours%20and%20perform%20tasks> [<https://perma.cc/79PA-4QJY>].

⁷⁷ Press Release, U.S. Dep't of Lab., Arby's Franchisee Allows Teens to Work Outside of Federally Allowed Limits at 9 South Carolina Locations, Federal Investigation Finds (Jan. 3, 2023), <https://www.dol.gov/newsroom/releases/whd/whd20230103> [<https://perma.cc/X9NZ-5P68>].

⁷⁸ Kaitlyn Radde, *Child Labor Violations Are on the Rise as Some States Look to Loosen Their Rules*, NPR (Feb. 26, 2023 7:05 AM EST), <https://www.npr.org/2023/02/26/1157368469/child-labor-violations-increase-states-loosen-rules> [<https://perma.cc/72TS-WNZQ>].

⁷⁹ *Id.*

⁸⁰ Elena Kadvany, *Popeyes Shuts Down Bay Area Restaurant After Child Labor, Violence Complaints*, S.F. CHRON. (Aug. 1, 2023, 10:49 AM), <https://www.sfchronicle.com/food/restaurants/article/popeyes-oakland-shut-down-18106593.php#> [<https://perma.cc/UD23-7CUR>].

⁸¹ See Dreier, *Night Shift*, *supra* note 5.

⁸² *Id.*

⁸³ Hannah Dreier, *Alone and Exploited, Migrant Children Work Brutal Jobs Across the U.S.*, N.Y. TIMES (Feb. 28, 2023), <https://www.nytimes.com/2023/02/25/us/unaccompanied-migrant-child-workers-exploitation.html> [<https://perma.cc/8CT3-H6Z5>] [hereinafter Dreier, *Alone and Exploited*].

reported illegal child labor in their plants.⁸⁴ There, migrant children as young as thirteen were working overnight cleaning shifts.⁸⁵ In July 2023, the DoL found that Crepevine, a San Francisco Bay Area restaurant, violated overtime and child labor laws and fined its owners over half a million dollars.⁸⁶ Several of the chain's restaurants failed to pay overtime and had staff as young as fourteen working beyond the legal limits allowed.⁸⁷ Also in July 2023, a teenager died after getting tangled in a machine at a Mar-Jac poultry processing plant in Mississippi.⁸⁸

The DoL Wage and Hour Division found that child labor violations have more than tripled since a low point in 2015 (resulting in more injuries and more deaths) and have risen sixty-nine percent between 2018 and 2022.⁸⁹ In addition to food service and processing,⁹⁰ children

⁸⁴ Juliana Kim, *Perdue Farms and Tyson Foods Under Federal Inquiry over Reports of Illegal Child Labor*, NPR (Sept. 25, 2023, 4:07 PM EST), <https://www.npr.org/2023/09/25/1201524399/child-labor-perdue-farms-tyson-foods-investigation> [https://perma.cc/T3T6-ZT2X].

⁸⁵ *Id.*

⁸⁶ Kate Darby Rauch, *Crepevine's Berkeley, Oakland Locations Fined for Violating Child Labor and Overtime Laws*, NOSH (July 12, 2023, 1:07 PM), <https://www.berkeleyaside.org/2023/07/12/crepevine-child-labor-law-overtime-fine> [https://perma.cc/EY63-6R76].

⁸⁷ *Id.*

⁸⁸ Dustin Jones, *A 16-Year-Old Died While Working at a Poultry Plant in Mississippi*, NPR (July 20, 2023, 4:23 PM EST), <https://www.npr.org/2023/07/20/1188959743/meatpacking-death-teenager-mississippi-poultry-plant> [https://perma.cc/F5SJ-BWCY].

⁸⁹ Press Release, U.S. Dep't of Lab., Department of Labor, Interagency Task Force Announce Recent Actions to Combat Exploitative Child Labor with New Partnerships, Innovative Tactics, Ramped Up Enforcement (July 27, 2023), <https://www.dol.gov/newsroom/releases/osec/osec20230727> [https://perma.cc/7TNK-6TQ8] [hereinafter Interagency Task Force Announce Recent Actions].

⁹⁰ See Press Release, U.S. Dep't of Lab., More than 100 Children Illegally Employed in Hazardous Jobs, Federal Investigation Finds; Food Sanitation Contractor Pays \$1.5M in Penalties (Feb. 17, 2023), <https://www.dol.gov/newsroom/releases/whd/whd20230217-1> [https://perma.cc/97F7-BFX8] [hereinafter More than 100 Children Illegally Employed]; Danielle Wiener-Bronner, *Tyson and Perdue Under Investigation by Department of Labor*, CNN (Sept. 28, 2023, 6:28 AM EDT), <https://www.cnn.com/2023/09/28/business/tyson-perdue-child-labor-dol-investigation/index.html> [https://perma.cc/Y7SW-M2HD].

have been found working in construction,⁹¹ sawmill operations,⁹² and manufacturing⁹³ in violation of federal labor law.

Employers have resorted to narratives similar to those of past eras to avoid liability for child labor violations. In one particularly egregious case, the employer claimed that traffickers or third parties were to blame. In that case, a teenager was killed while working for a construction crew that was building a hotel in Tennessee.⁹⁴ Sixteen-year-old Gustavo Ramirez died at a construction site when he fell 120 feet from a scaffold.⁹⁵ In addition to being underage, he was working without a harness in violation of Occupational Safety and Health Administration (“OSHA”) requirements.⁹⁶ His parents sued the construction company and its subcontractors, claiming he was recruited to work at the hazardous site.⁹⁷ The family claimed that Ramirez and other kids were recruited for these jobs from a youth program called Casa de Oraciones, located where the family attended church.⁹⁸ The family alleged that the church served as a recruiting ground for

⁹¹ Press Release, U.S. Dep’t of Lab., Federal Investigation of Teen Worker’s Fall from New Castle Store Roof Finds Georgia Contractor Violated Child Labor, Overtime, Worker Safety Laws (Mar. 21, 2023), <https://www.dol.gov/newsroom/releases/whd/whd20230321#:~:text=NEW%20CASTLE%2C%20PA%20%E2%80%93%20A%20federal,30%20employees%20their%20full%20wages> [https://perma.cc/64XE-7MAM].

⁹² Consent Order and Judgment, *Su v. Florence Hardwoods, LLC*, No. 23-C-1167 (E.D. Wis. Sept. 6, 2023), <https://www.dol.gov/sites/dolgov/files/OPA/newsreleases/2023/09/SOL120231733.pdf> [https://perma.cc/8X72-PSCH]; see also Press Release, U.S. Dep’t of Lab., Sawmill Operator Agrees to Compliance with Federal Child Labor Laws After Wisconsin Teen Suffers Fatal Injuries Operating Dangerous Machinery (Sept. 7, 2023), <https://www.dol.gov/newsroom/releases/whd/whd20230907> [https://perma.cc/4VPA-ACEZ].

⁹³ Press Release, U.S. Dep’t of Lab., Federal Court Orders Hyundai, Kia Auto Parts Manufacturer to Stop Employing Minors Illegally, End “Oppressive” Child Labor Law Violations (Oct. 11, 2022), <https://www.dol.gov/newsroom/releases/WHD/WHD20221011> [https://perma.cc/ABL2-CBVX].

⁹⁴ Dulce Torres Guzman, *Lawyer Charges Human Trafficking Played Part in 16-Year-Old’s Death on Construction Site*, TENN. LOOKOUT (July 19, 2021, 5:00 AM), <https://tennesseelookout.com/2021/07/19/lawyer-charges-human-trafficking-played-part-in-16-year-olds-death-on-construction-site/> [https://perma.cc/YBP9-F783].

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.*

companies to hire underage workers.⁹⁹ After investigating, DoL found that the company, Stover & Sons Contractor Inc., violated the child labor provisions of the FLSA.¹⁰⁰ Specifically, the company permitted Gustavo to work on a roof and attempt to jump onto a hoisting device next to the building, even though minors under eighteen are prohibited from performing roofing work or riding on a power-driven hoisting apparatus.¹⁰¹ The company also permitted Gustavo to work more than eight hours a day and over forty hours a week when he was fifteen.¹⁰²

The company responded to the lawsuit with a narrative reminiscent of the padrone-system era. The company blamed human traffickers and third parties for hiring Gustavo.¹⁰³ The employer argued that Gustavo was actually not an employee of the company, or of its subcontractors, making him a kind of “ghost employee.”¹⁰⁴ By focusing on the issue of whether Gustavo was an employee, the company distanced itself from liability. In the meantime, after Gustavo died, the Tennessee legislature passed a law making it more difficult for contractors to be held liable for workplace safety violations or for subcontractor actions.¹⁰⁵

While children may lie about their age to get these jobs — which are dangerous and violate child labor provisions of the FLSA — the NYT investigations speak to the tendency of adults around them to shield employers from blame. As one article noted about Marcos, the child maimed when he was cleaning a machine on the overnight shift at a poultry slaughterhouse:

He lay in the hospital for two weeks as medical staff wondered why the paperwork for this boy with long eyelashes and a round baby face said he was an adult man named Francisco. . . . There

⁹⁹ *Id.*

¹⁰⁰ Press Release, U.S. Dep’t of Lab., US Department of Labor Investigation Finds Tennessee Contractor Violated Child Labor Laws Related to Teenage Worker’s Fatal Fall (May 25, 2021), <https://www.dol.gov/newsroom/releases/whd/whd20210525#:~:text=Further%20investigation%20determined%20the%20employer,Child%20Labor%20Enhanced%20Penalty%20Program> [<https://perma.cc/EUW6-DNZX>].

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ See Guzman, *supra* note 94.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*; see also TENN. CODE ANN. § 50-3-109 (2023).

were reasons that supervisors, teachers, federal inspectors and even police officers had said nothing for years about children working at the slaughterhouses. Everyone understood that the children were under extraordinary pressure to earn money to pay off their travel debts and help their families back home. They were living on a remote stretch of peninsula with few job options — if the plants shut down because of a labor scandal, the local economy could collapse. Now, with an eighth grader in the hospital, many wondered if they had been wrong to keep quiet.¹⁰⁶

The story shifts responsibility for the children’s working conditions away from employers to smugglers and to the absent parents. This narrative is similar to that of the reformers who decried the padrone system and sought its elimination by focusing on family greed and ignorance of the parents who “let” their children into the system.¹⁰⁷ As a result, these stories often offer the public an incomplete picture of the factors that lead to children working in exploitative conditions.

B. Child Labor at the Intersection of Labor and Immigration

While child labor violations affect minors of all backgrounds, the population of children working in jobs in violation of federal labor laws is comprised disproportionately of immigrant children. Investigations have revealed immigrant children working in industries as diverse as agriculture, meatpacking, and construction.¹⁰⁸

The NYT investigations demonstrate how the story about third parties/traffickers taking advantage of children is constructed. According to the NYT investigation, the problem of child labor has been exacerbated by the arrival of unaccompanied minors (“UAC”) in the United States coming from Central America and other parts of Latin America.¹⁰⁹ The agency charged with the welfare of unaccompanied minors, the United States Department of Health and Human Services Office of Refugee Resettlement (“ORR”), and the agency charged with

¹⁰⁶ Dreier, *Night Shift*, *supra* note 5.

¹⁰⁷ See discussion *supra* Part I.B.

¹⁰⁸ Radde, *supra* note 78.

¹⁰⁹ Dreier, *Alone and Exploited*, *supra* note 83.

monitoring workplaces, the DoL, disclaim blame for the pipeline of UAC's into the labor market.¹¹⁰ The children are processed through ORR to be placed in a network of shelters that provide temporary housing and services. ORR works to place children longer term with family members or other sponsors. But with a lack of resources to the agency, ORR has prioritized processing and placing children with sponsors as quickly as possible. As a result, there are numerous reports of hasty vetting of sponsors, and it is common for children to be placed with more distant relatives, with strangers, and with sponsors hosting multiple children.¹¹¹ This hasty vetting combines with minimal or non-existent monitoring, and these children are often very vulnerable to trafficking and exploitation.¹¹² Children may have to pay debts to smugglers, pay rent or expenses to their sponsors or family members, and also need to send money back home to help support their families. These are impossible situations for young tweens or teens to navigate. More importantly, employers take advantage of these vulnerabilities to pull children into the labor market despite laws meant to protect them.

III. RESPONSES TO CHILD LABOR VIOLATIONS

The similarities between the messages of the reformers in the early 20th century and today's narratives about the proliferation of children in the labor market are striking. In both eras, the responsibility centers on parents and third parties taking advantage of vulnerable children, with little accountability for companies that employ or benefit from child labor in the United States. This Part describes the similarities in messaging, and how they affect policy and enforcement efforts.

A. *Public and Media Narratives Coincide with Past Narratives that Put Blame on the Parents*

Recall the example of Marcos in the NYT article investigating child labor in hazardous occupations. The article focused on the conditions

¹¹⁰ See Hannah Dreier, *As Migrant Children Were Put to Work, U.S. Ignored Warnings*, N.Y. TIMES (Apr. 17, 2023), <https://www.nytimes.com/2023/04/17/us/politics/migrant-child-labor-biden.html> [<https://perma.cc/Z8SS-4YGD>].

¹¹¹ *Id.*

¹¹² *Id.*

that Marcos and his family faced, rather than the responsibility of the employer who hired him:

He came from a village in Guatemala to this small town on the Eastern Shore of Virginia several months earlier. Before he left, his family was struggling to pay for electricity and skipping meals in the aftermath of the pandemic. They couldn't afford formula for his infant sister. His parents were growing desperate and knew that while adults who arrive at the U.S. border are generally turned back, minors traveling by themselves are allowed in.¹¹³

The article goes on to declare that the desperate condition of parents in foreign places led to the child labor problem:

In recent years, poverty worsened in Central America, and the work force changed once again. More than 300,000 migrant children have entered the United States on their own since 2021, by far the largest such influx in memory. Most have ended up working full time, fueling a resurgence in child labor not seen in a century, with children living far from their parents and working illegally in all 50 states.¹¹⁴

A similar NYT article documenting child labor in manufacturing across the country offered a "cultural differences" explanation for the normalization of child labor among immigrants:

When Carolina arrived in Grand Rapids last year, Ms. Ramirez told her she would go to school every morning and suggested that she pick up evening shifts at Hearthside. She knew Carolina needed to send money back to her grandmother. She also believed it was good for young people to work. Child labor is the norm in rural Guatemala, and she herself had started working around the second grade.¹¹⁵

Today, as in the past, it is not the employer, but the parents and lack of enforcement that are blamed as the problem. Mainstream media

¹¹³ Dreier, *Night Shift*, *supra* note 5.

¹¹⁴ *Id.*; see Dreier, *Alone and Exploited*, *supra* note 83.

¹¹⁵ Dreier, *Alone and Exploited*, *supra* note 83.

lends credit to the message that employers are simply seeking to fill jobs that no one else will fill. The NYT article chronicling Marcos' plight downplays the employers' role in creating the problem:

It was dangerous, grueling work, and half the plant employees quit each year. The managers found a solution to chronic turnover by looking to migrant seasonal workers, who now settled in Parksley and other nearby towns in Accomack County and worked year-round at the plants.¹¹⁶

This narrative, that only immigrants will do certain work, has been accepted as an explanation for the rise in immigrant labor in the workplace.¹¹⁷ The narrative has now been extended to immigrant children. An NPR story exploring the rise in child labor quoted a child welfare advocate attributing part of the rise in child labor to a shrinking labor market, noting that “[i]n a tight labor market — like the current one — employers sometimes prefer to fill jobs with minors, who tend to be cheaper and more docile workers.”¹¹⁸ The narrative echoes that of earlier employers who distanced themselves from their practices using the logic of capitalism and the free labor market. As one child advocate recently opined, “I think they felt that if they could get kids, they would take them.”¹¹⁹

B. Federal Government Enforcement

After the NYT investigation, the Biden Administration promised to enforce child labor laws more vigorously. It investigated Packers Sanitation Services, a food processing janitorial company, and fined the company \$1.5 million for child labor violations in its operations.¹²⁰ The DoL found more than 100 children working in dangerous jobs cleaning slaughterhouses across eight states.¹²¹ Packers Sanitation Services had

¹¹⁶ Dreier, *Night Shift*, *supra* note 5.

¹¹⁷ See Leticia M. Saucedo, *The Employer Preference for the Subservient Worker and the Making of the Brown Collar Workplace*, 67 OHIO ST. L.J. 961, 962 (2006).

¹¹⁸ Radde, *supra* note 78.

¹¹⁹ *Id.*

¹²⁰ Press Release, U.S. Dep't of Lab., More than 100 Children Illegally Employed, *supra* note 90.

¹²¹ *Id.*

contracts with national brands including Tyson Foods, Cargill, Inc., and JBS Foods.¹²²

The DoL also stepped up its enforcement collaborations. In February 2023, the DoL created the Interagency Task Force to Combat Child Labor Exploitation to improve information sharing among federal agencies, outreach to affected children and their advocates, and public education around child labor issues.¹²³ The DoL also launched the National Strategic Enforcement Initiative on child labor, to increase enforcement of child labor laws, like utilizing the “hot goods” provision of the FLSA to prevent the shipment of goods produced using illegal child labor.

While labor agencies acknowledge their role in holding employers accountable, they, too, blame the parents, alongside societal resignation about the problem. Wage and Hour Division Administrator Jessica Looman noted that while it is important to hold employers accountable,

[T]his is also an issue that is community based. It is school based. It is parent based . . . All of us together as a society and an economy have to come together and make sure that we are protecting our kids. And when we look at the increase in child labor violations, we have to ask ourselves the question, how are we letting this happen in 2022, 2023?¹²⁴

The agency’s message tracks that of the progressive reformers at the turn of the 20th century. Child protection efforts are focused on societal forces and cultural attitudes rather than a race and class-conscious message that focuses on how employers pull children into the workplace and exploit the system to take advantage of the precarious circumstances of vulnerable children.

¹²² *Id.*

¹²³ See Press Release, U.S. Dep’t of Health & Hum. Serv., Departments of Labor and Health and Human Services Announce New Effort to Combat Exploitative Child Labor (Feb. 27, 2023), <https://www.hhs.gov/about/news/2023/02/27/departments-labor-and-health-and-human-services-announce-new-efforts-combat-exploitative-child-labor.html> [<https://perma.cc/BQU2-HHDF>]; see also Press Release, U.S. Dep’t of Lab., Interagency Task Force Announce Recent Actions, *supra* note 89.

¹²⁴ Radde, *supra* note 78.

C. The State Legislative Landscape

At the same time that DoL investigations into federal child labor violations have increased, several states have moved to deregulate state law protections for child workers. In response to employer claims of labor shortages, legislators in fourteen states have introduced weaker protections for children in the workplace.¹²⁵ Legislators in Iowa have passed the most extreme version of child labor deregulation. There, a recently passed law increases the number of hours fourteen and fifteen-year-olds can work during school weeks and during the summer and allows sixteen to seventeen-year-olds to work the same amount of hours as an adult.¹²⁶ It also allows sixteen and seventeen-year-olds to work in occupations involved in dangerous activities such as the operation of circular and band saws, or occupations involved in demolition, wrecking, and roofing operations, even if they cannot directly conduct those activities.¹²⁷ It allows fourteen and fifteen-year-olds to work in commercial laundries,¹²⁸ to do light assembly work,¹²⁹ and to work six-hour nightly shifts,¹³⁰ all of which are prohibited under the FLSA.¹³¹ It also allows teens to work in places where they can serve alcohol.¹³²

In Arkansas, the governor signed the Youth Hiring Act of 2023, eliminating the state's youth work permits, which state agencies used to

¹²⁵ Legislators in Arkansas, Georgia, Iowa, Maine, Michigan, Minnesota, Missouri, New Hampshire, New Jersey, Ohio, South Dakota, Virginia, and Wisconsin have introduced legislation. Of these states, five — Arkansas, Iowa, Michigan, New Hampshire, New Jersey — have enacted legislation. See Jennifer Sherer & Nina Mast, *Iowa Governor Signs One of the Most Dangerous Rollbacks of Child Labor Laws in the Country*, ECON. POL'Y INST.: WORKING ECON. BLOG (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/> [https://perma.cc/68ZC-XK7A].

¹²⁶ S. File 542 §§ 6-7 (Iowa 2023).

¹²⁷ *Id.* § 8.

¹²⁸ *Id.* § 3.

¹²⁹ *See id.* § 5.

¹³⁰ *Id.* § 6.

¹³¹ *See* 29 C.F.R. §§ 570.32, 33(i) (2023); *see also* Letter from Seema Nanda & Jessica Looman, U.S. Dep't of Lab., to Nate Boulton, Iowa Sen. (May 10, 2023), <https://www.senate.iowa.gov/democrats/wp-content/uploads/2023/05/DOL-Child-Labor-Law-Response.pdf> [https://perma.cc/L5S2-ZBJV].

¹³² S. File 542 § 20(f).

track child labor.¹³³ Similar bills were introduced in Georgia and Missouri.¹³⁴ The legislation is part of a national campaign to weaken child labor protections led by the Foundation for Government Accountability.¹³⁵

As labor advocates note, state legislative initiatives to weaken protections for minors in the workplace have increased just as the federal government has tightened its scrutiny of workplaces that hire under-age workers.¹³⁶ The Economic Policy Institute, for example, warned:

The trend reflects a coordinated multi-industry push to expand employer access to low-wage labor and weaken state child labor laws in ways that contradict federal protections. And the recent uptick in state legislative activity is linked to longer-term industry-backed goals to rewrite federal child labor laws and other worker protections for the whole country.¹³⁷

These state efforts to deregulate child labor are reminiscent of the repeal of child labor restrictions at the behest of employers seeking favorable business environments in the South at the turn of the twentieth century.¹³⁸

D. Federal Legislative Efforts

Congress has entertained several proposals for increasing enforcement against child labor violations. The vast majority of proposed federal legislation has features similar to those proposed by reformers in the early twentieth century. Legislation focuses on

¹³³ See Edwin Rios, *Arkansas Leads Charge to Weaken Child Labor Protections*, *GUARDIAN* (Mar. 8, 2023, 12:22 PM EST), <https://www.theguardian.com/us-news/2023/mar/08/arkansas-bill-child-labor-protections> [<https://perma.cc/L2KG-ZDFM>].

¹³⁴ See H.B. 501, Gen. Assemb., Reg. Sess. (Ga. 2023); H.B. 960, 102d Gen. Assemb., First Reg. Sess. (Mo. 2023).

¹³⁵ See *Let Our Youth Thrive: Remove Unnecessary Work Permit Requirements*, *FOUND. FOR GOV'T ACCOUNTABILITY* (May 5, 2023), <https://thefga.org/one-pagers/let-our-youth-thrive-remove-unnecessary-work-permit-requirements/> [<https://perma.cc/44DH-3LFC>].

¹³⁶ See Sherer & Mast, *supra* note 125.

¹³⁷ *Id.*

¹³⁸ See WOOD, *supra* note 1, at 51.

enforcement, exploitation by third parties, and little to no moral condemnation of employers and their practices.

Even so, congressional efforts to protect children in the workplace have thus far been unsuccessful. Several proposals increase enforcement tools for labor agencies. The Protecting Children Act, for example, increases civil and criminal penalties for child labor violations, OSHA violations, and injuries or death to children in the workplace.¹³⁹ It strengthens the DoL's ability to prevent the sale of goods produced by children in violation of the FLSA.¹⁴⁰ It also includes public information initiatives to publicize enforcement efforts and train child workers on their workplace rights.¹⁴¹ The Child Labor Exploitation Accountability Act¹⁴² uses the spending power of the federal government to regulate companies. It requires companies to disclose labor infractions as part of the contracting process with the U.S. Department of Agriculture ("USDA"). It also requires the DoL to maintain a list of companies ineligible for USDA contracts because of labor law violations.¹⁴³ The Child Labor Prevention Act¹⁴⁴ also significantly increases maximum employer civil and criminal penalties for child labor violations (including a year in jail) and ensures that all minors are covered by the FLSA's existing protections.¹⁴⁵

In keeping with the message that third parties are to blame for the proliferation of children in the labor market, Senator Josh Hawley has proposed the Corporate Responsibility for Child Labor Elimination Act

¹³⁹ Protecting Children Act, H.R. Res. 4440, 118th Cong. (2023), <https://www.congress.gov/118/bills/hr4440/BILLS-118hr4440ih.pdf> [<https://perma.cc/YST8-RKTE>].

¹⁴⁰ *Id.*

¹⁴¹ *Id.* § 403(a).

¹⁴² Child Labor Exploitation Accountability Act, H.R. 2822, 118th Cong. (2023), <https://www.congress.gov/118/bills/hr2822/BILLS-118hr2822ih.pdf> [<https://perma.cc/657N-XW25>].

¹⁴³ *Id.* § 2(d).

¹⁴⁴ Child Labor Prevention Act, S. 637, 118th Cong. (2023), <https://www.congress.gov/118/bills/s637/BILLS-118s637is.pdf> [<https://perma.cc/6DV5-BESD>].

¹⁴⁵ *Id.* § 2(b)-(c).

of 2023¹⁴⁶ which requires employers to conduct yearly audits to prevent the employment of child labor. The bill would require large companies (with \$500 million in gross receipts) to audit supply chain providers and their own labor force to determine the presence of unlawful child labor.¹⁴⁷ The bill assumes that traffickers and subcontractors are introducing children into the market and employers have no knowledge that such practices are occurring. The individual employer's responsibility is thus limited to monitoring their worksites for such trafficking activity. The proposed bill would sanction employers that fail to conduct such audits.¹⁴⁸

This proposed legislation reflects similar provisions in immigration law to prevent undocumented workers in the workplace.¹⁴⁹ The provisions require employers to engage in workplace monitoring and enforcement efforts. Employer sanctions provisions in immigration law require employers to monitor their worksites and verify the immigration status of workers upon hire.¹⁵⁰ Employers that knowingly hire undocumented workers are fined.¹⁵¹ Likewise, the sanctions in Senator Hawley's proposed legislation fine employers that fail to conduct audits, retaliate against workers, or fail to certify that their supply chains are free of unlawful child labor.¹⁵² While the sanctions are more substantial than the provisions in immigration law, they are only for failure to conduct employer audits but not for unlawfully hiring children.¹⁵³ The assumption behind the proposed legislation is that third parties are trafficking children into the labor market,¹⁵⁴ not that

¹⁴⁶ Corporate Responsibility for Child Labor Elimination Act of 2023, S. 1434, 118th Cong. (2023), <https://www.congress.gov/118/bills/s1434/BILLS-118s1434is.pdf> [<https://perma.cc/HMZ8-YNVP>].

¹⁴⁷ *Id.* § 2(b).

¹⁴⁸ *Id.* § 4(a).

¹⁴⁹ *See id.*

¹⁵⁰ 8 U.S.C. §§ 1324a(b), (d)(1)(A).

¹⁵¹ *Id.* § 1324a(f).

¹⁵² Corporate Responsibility for Child Labor Elimination Act of 2023 § 4(a).

¹⁵³ *See id.* § 2(b).

¹⁵⁴ Press Release, Off. of Sen. Josh Hawley, New Hawley Bill Holds Corporations Accountable for Exploiting Biden's Child Smuggling and Labor Crisis (May 3, 2023), [https://www.hawley.senate.gov/new-hawley-bill-holds-corporations-accountable-exploiting-bidens-child-smuggling-and-labor-crisis#:~:text=Senator%20Hawley%27s%](https://www.hawley.senate.gov/new-hawley-bill-holds-corporations-accountable-exploiting-bidens-child-smuggling-and-labor-crisis#:~:text=Senator%20Hawley%27s%20)

employers are creating the conditions pulling children into the market in the first place.

The Children Harmed in Life-threatening or Dangerous Labor Act (“CHILD Labor Act”) of 2023 and the Combating Child Labor Act are two examples of an approach that focuses on the employer’s exploitation of vulnerability by sanctioning the employer for its practices.¹⁵⁵ The CHILD Labor Act holds all parts of the supply chain responsible for the unlawful employment of child labor; it authorizes the Secretary of Labor to label goods produced with child labor and issue stop-work orders to employers in violation of child labor provisions; and it significantly increases civil and criminal penalties for child labor violations.¹⁵⁶ Most importantly, it makes employers liable to employees in compensatory damages for child labor violations.¹⁵⁷ Similarly, the Combating Child Labor Act significantly increases penalties for employers that violate child labor provisions and publicizes information about employers that benefit unlawfully from child labor.¹⁵⁸ These two bills hearken back to the labor movement’s earlier class-conscious messages targeting employer responsibility for the proliferation of children in the labor market.

Legislative efforts to further prevent child labor exploitation and strengthen protections for child workers are important and timely. This issue raises many questions for policymakers and the public to consider and the priorities we, as a society, choose to make in order to protect children in the workplace. However, the legislative proposals discussed above and the broader discussion about how to make children safer at work still often only focuses on responding to harm done, rather than a discussion about how to create a good environment for children who work, deterring child labor abuse, and condemning exploitative child

20Corporate%20Responsibility%20for,child%20labor%20in%20their%20workforce
[<https://perma.cc/W7KB-DMAD>].

¹⁵⁵ See CHILD Labor Act, S. 3163, 118th Cong. § 103 (2023), <https://www.congress.gov/118/bills/s3163/BILLS-118s3163is.pdf> [<https://perma.cc/SA33-JX9E>]; Combating Child Labor Act, H.R. 2956, 118th Cong. § 2 (2023), <https://www.congress.gov/118/bills/hr2956/BILLS-118hr2956ih.pdf> [<https://perma.cc/URG3-2BMB>].

¹⁵⁶ CHILD Labor Act § 102.

¹⁵⁷ *Id.* § 103(f)(1)(A)(ii).

¹⁵⁸ Combating Child Labor Act §§ 2-3.

labor. For example, in other areas of the law, punitive damages or license suspensions may be used to condemn unwanted actions and deter that behavior by others. These types of proposals are not yet part of the national narrative or congressional debate over how to prevent child labor exploitation. Similar to the early reformer movements, the historic reticence to direct public blame or broad condemnation on employers for their role in exploitative child labor has limited the current legislative debate to one that is often reactive versus proactive.

CONCLUSION

There is a throughline in the narrative about child labor violations in the messaging of the post-Civil War progressive reformers about the culture, attitudes, and needs or failures of the parents that allow/force children into the workplace. The messaging was overtly racialized and nativist in the early twentieth century. Those remnants still exist in the focus on immigrant children's need to work, either because of absent parents or because of human trafficking.

The enforcement provisions of the FLSA were based on compromises made by progressive reformers and conservative politicians. These compromises were based on assumptions that include the narrative that it is the parents' and/or society's fault that children are in the labor market. To keep kids out of the labor market, policy and enforcement initiatives need a new narrative. The labor reformers were right to criticize employers and their profit-seeking motives for targeting children. An enforcement mechanism that holds employers accountable and addresses their hiring tactics makes the consequences of child labor violations more severe for employers and companies and reflects the assumption that the employer pull is much stronger than is currently accounted for. Most of the current policy and legislative proposals fail on this score.

Changing the assumptions about how and why kids enter the workplace — refocusing on employer actions and motives — will better target employers with increased enforcement efforts and provide vulnerable workers with greater leverage and protection. A renewed perspective on child labor reform will account for the role that race has played in how employers have structured labor markets and allow us to

transcend to a new era that is race and class-conscious in placing the proper onus on employers to protect children from labor abuses.