

CHILD LABOR ENFORCEMENT: ARE WE ADEQUATELY PROTECTING OUR CHILDREN?

HEARING

BEFORE THE

SUBCOMMITTEE ON WORKFORCE PROTECTIONS

COMMITTEE ON

EDUCATION AND LABOR

U.S. HOUSE OF REPRESENTATIVES

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CHILD LABOR ENFORCEMENT: ARE WE ADEQUATELY PROTECTING OUR CHILDREN?

**Tuesday, September 23, 2008
U.S. House of Representatives
Subcommittee on Workforce Protections
Committee on Education and Labor
Washington, DC**

The subcommittee met, pursuant to call, at 11:05 a.m., in Room 2175, Rayburn House Office Building, Hon. Lynn Woolsey [chairwoman of the subcommittee] presiding.

Present: Representatives Woolsey, Bishop, Shea-Porter, Hare, Wilson, and Kline.

Staff Present: Aaron Albright, Press Secretary; Tylease Alli, Hearing Clerk; Tico Almeida, Labor Policy Advisor; Jody Calemine, Labor Policy Deputy Director; Lynn Dondis, Senior Policy Advisor, Subcommittee on Workforce Protections; David Hartzler, Systems Administrator; Brian Kennedy, General Counsel; Sara Lonardo, Junior Legislative Associate, Labor; Joe Novotny, Chief Clerk; Robert Borden, Minority General Counsel; Cameron Coursen, Minority Assistant Communications Director; Rob Gregg, Minority Senior Legislative Assistant; Jim Paretto, Minority Workforce Policy Counsel; Chris Perry, Minority Legislative Assistant; Molly McLaughlin Salmi, Minority Deputy Director of Workforce Policy; Linda Stevens, Minority Chief Clerk/ Assistant to the General Counsel; and Loren Sweatt, Minority Professional Staff Member.

Chairwoman WOOLSEY. A quorum is present. The hearing of the Subcommittee on Workforce Protections will come to order.

I will present my opening statement, and then Ranking Member Wilson will present his.

Good morning. I want to welcome all of you today for the hearing on, "Child Labor Enforcement: Are We Adequately Protecting our Children?"

What a question that we have to ask in the United States of America.

While we will primarily examine the current state of enforcement of our Federal child labor laws by the Department of Labor, I am hoping that our witnesses will also address how the Fair Labor Standard Act treats children who work in agriculture differently than those who work in other industries. The fact is that children who work on a farm are allowed to work at a younger age, for longer hours, and in more hazardous conditions than kids who work at a grocery store. This is unacceptable. This difference is a

throwback, a throwback to another era, when one-quarter of Americans lived on family farms, and a majority of agriculture work was performed by family members, and children did their part, believe me. So while times have changed, and less than 2 percent of Americans live on farms today, our laws have not.

As a result of technical advances in the growth of large-scale agriculture, most children working in the fields are hired as laborers on large commercial farms. This is not the family farm, and we must be aware of that, and we must deal with it to protect kids in a better way.

Representative Roybal-Allard, Lucille Roybal-Allard, from California, has legislation called the CARE Act, and her legislation would correct this imbalance by raising protections for child farm workers to the same level of children working in other industries. I am proud to be a cosponsor of this legislation, and we are going to give it serious attention in the next Congress.

Representative Bruce Braley has just introduced a bill to increase criminal sanctions on employers who exploit children.

Last year, I introduced a bipartisan bill, with DOL cooperation, called the Child Care Protection Act, which increases penalties and establishes a civil penalty for a violation which causes the death or serious injury of a child laborer. My good friend, Ranking Member Wilson, is an original cosponsor of that bill.

The provisions of the bill were signed into law this year as part of the Genetic Information Nondiscrimination Act. Well, this is progress. It is moving it along. However, as I said when the child labor penalty bill was passed, this is a first good step, but additional enforcement measures are needed to adequately protect our kids.

Unfortunately, all the legislation in the world won't help if we are not able to adequately enforce our child labor laws. It is clear that this administration doesn't seem to be focused on enforcing the laws already on the books.

Let me give you an example. The Wage and Hour Division has 730, 730 inspectors, for the entire United States of America. That is down from 945 in 2001. These inspectors are charged with enforcing every aspect of FLSA which, in addition to child labor, includes minimum wage and overtime protections. It appears from the numbers that the Wage and Hour Division spends very little time investigating child labor complaints, as opposed to other violations. In 2005, for example, the division devoted less than 5 percent of its total investigatory time on child labor matters, and only a small fraction of this time was devoted to investigating agriculture issues.

In fiscal year 2007, the DOL uncovered 4,672 children who were working in violation of Federal child safety laws. We know that that was just the tip of the iceberg. Four years earlier, DOL found double that number. I find it almost impossible to believe that child labor violations have decreased by half over the same time period.

There are serious violations of child labor laws that need DOL attention. For example, on September 9th, the State of Iowa filed over 9,000 counts of State child labor law violations at Agriprocessors, a meatpacking plant in Pottsville, Iowa. You are probably all familiar with Agriprocessors in Iowa. It was the site

of one of the largest workplace immigration raids in U.S. history just recently.

The State alleges that 32 children, seven of whom were under the age of 16, were employed at the plant, in violation of the prohibition against children working in meatpacking facilities. In addition, these children were exposed to dangerous chemicals, and children under 16 were found to be illegally operating power machinery, working during prohibited hours, and in excess of the hours allowed by law.

These allegations also appear to be violations of Federal law. But while the Immigration and Customs Enforcement, ICE, was out in droves, DOL has been missing in action. So it is hard to claim adequate enforcement with that kind of a record.

I am looking forward to hearing Mr. Passantino today, and other witnesses, on this issue. Actually, I am really looking forward to all of you.

With that, I defer to Ranking Member Joe Wilson for his opening statement.

[The statement of Ms. Woolsey follows:]

**Prepared Statement of Hon. Lynn C. Woolsey, Chairwoman,
Subcommittee on Workforce Protections**

I want to welcome you all today for a hearing on "Child Labor Enforcement: Are We Adequately Protecting Our Children?"

While we will primarily examine the current state of enforcement of our federal child labor laws by the Department of Labor, I hope that our witnesses will also address how the Fair Labor Standards Act (FLSA) treats children who work in agriculture differently than those who work in other industries.

The fact is that children who work on a farm are allowed to work at a younger age, for longer hours and in more hazardous conditions than kids who work at a grocery store.

This is unacceptable.

This difference is a throwback to another era when one-quarter of Americans still lived on family farms and a majority of the agricultural work performed by children was done on behalf of their family.

While times have changed and less than 2% of Americans live on farms today, our laws have not.

As a result of technical advances and the growth of large-scale agriculture, most children working in the fields are hired as laborers on large commercial farms. This is a far cry from the family farm.

Representative Roybal-Allard's CARE Act, would correct this imbalance by raising protections for child farmworkers to the same level of children working in other industries.

I am proud to be a cosponsor of this legislation, which we will give serious attention to next year.

Representative Bruce Braley has just introduced a bill to increase criminal sanctions on employers who exploit children.

Last year I introduced a bi-partisan bill, the Child Care Protection Act, which increases penalties and establishes a (\$50,000) civil penalty for a violation which causes the death or serious injury of a child laborer.

And my good friend, Ranking Member Wilson is an original co-sponsor of the bill.

The provisions of the bill were signed into law this year as part of the Genetic Information Non-Discrimination Act.

This is progress.

However, as I said when the child labor penalty bill was passed, this is a first good step, but additional enforcement measures are needed to adequately protect our children.

Unfortunately, all the legislation in the world won't help if we are not able to adequately enforce our child labor laws.

And it is clear that this Administration does not appear to be focused on enforcing the laws already on the books.

Let me give you a few examples:

The Wage and Hour Division has 730 inspectors for the entire country, down from 945 in 2001.

These inspectors are charged with enforcing all aspects of the FLSA, which in addition to child labor, include minimum wage and overtime protections.

And it appears from the numbers that the Wage and Hour Division spends little time investigating child labor complaints as opposed to other violations.

In 2005, for example, the Division devoted less than 5 percent of its total investigatory time on child labor matters.

And only a small fraction of this time is devoted to investigations in the agricultural sector.

In FY2007, the DOL uncovered 4,672 children who were working in violation of federal child safety laws.

Four years earlier, DOL found double that number.

I find it hard to believe that child labor violations have decreased by half over that time period.

There are serious violations of child labor laws that need DOL's attention.

For example, on September 9, the State of Iowa filed over 9,000 counts of state child labor law violations at Agriprocessors, a meatpacking plant in Postville, Iowa.

You are all undoubtedly familiar with Agriprocessors, which was the site of the one of the largest workplace immigration raids in U.S. history.

The State alleges that 32 children, seven of whom were under the age of 16, were employed at the plant in violation of the prohibition against children working in meatpacking facilities.

In addition, these children were exposed to dangerous chemicals, and children under 16 were found to be illegally operating power machinery, working during prohibited hours, and in excess of the hours allowed by law.

These allegations also appear to be violations of federal law, but while the Immigration and Customs Enforcement (ICE) was out in droves, DOL has been missing in action.

It is hard to claim adequate enforcement with that kind of a record, but I look forward to hearing from Mr. Passantino and our other witness on this issue.

With that, I defer to the ranking member, Joe Wilson, for his opening statement.

Mr. WILSON. Thank you for yielding, Madam Chair, and I join you in welcoming our witnesses here today.

Every year, millions of teens work in part-time or summer jobs that can provide valuable work experiences and opportunities for teens to learn important work skills. I know firsthand by distributing newspapers and working in a service station. That work is not completely without risk, however, and unfortunately, each year there are young workers who are either injured or killed on the job. But even one injury is too many.

The Department of Labor has an important role in helping to ensure that young workers have safe and appropriate work experiences. While the employment of young workers is essential to helping instill a solid work ethic and in teaching the value of a dollar, their collective safety must be the highest priority.

I look forward to hearing from the Department today about their enforcement initiatives and compliance efforts which help to educate teens, parents, and employers about the hours of work and types of jobs that young people can perform.

Youth employment has been an ongoing focus for the Department, and I commend the administration for its work in this area. Last year, the Department submitted a legislative proposal to Congress to strengthen the Department's ability to impose significant civil penalties for child labor violations that result in the death or of serious injury of a child, particularly where the violation is repeated or willful.

I thank the Chairwoman for her important work on that proposal which she introduced in the House. I was pleased to join a senior

Republican member of the full committee, Mr. Buck McKeon of California, as an original cosponsor of her bill, the provisions of which were enacted into law in May of this year. That has provided the Department with an additional tool to address serious child labor violations, decrease repeat occurrences, and to strengthen the overall enforcement of critical child labor laws.

I look forward to hearing the testimony from all of our witnesses here today, and I thank the chairwoman for holding this hearing.

I yield back the balance of my time.

[The statement of Mr. Wilson follows:]

**Prepared Statement of Hon. Joe Wilson, Ranking Minority Member,
Subcommittee on Workforce Protections**

Thank you for yielding Madam Chair, and I join you in welcoming our witnesses here today.

Every year, millions of teens work in part-time or summer jobs that can provide valuable work experiences and opportunities for teens to learn important work skills. That work is not completely without risk, however, and unfortunately each year there are young workers who are either injured or killed on the job.

Because even one injury is too many, the Department of Labor has an important role in helping to ensure that young workers have safe and appropriate work experiences. While the employment of young workers is essential to helping instill a solid work ethic and in teaching the value of a dollar, their collective safety must be the highest priority.

I look forward to hearing from the Department today about their enforcement initiatives and compliance efforts, which help to educate teens, parents, and employers about the hours of work and types of jobs that young people can perform. Youth employment has been an ongoing focus for the Department and I commend the Administration for its work in this area.

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I look forward to hearing the testimony from all of our witnesses here today, and I thank the Chairwoman for holding this hearing. I yield back the balance of my time.

Chairwoman WOOLSEY. Thank you, Mr. Wilson.

Now I have the honor on of introducing our witnesses. I will introduce them in the order that they will present.

Let me talk first a little bit about the lighting system. We have a five-minute rule here. So when you start speaking, the green light goes on in front of you. When it gets to yellow, you have a minute left. And when it is red, the floor opens and your chair disappears. No, it doesn't. But it means it is time for you to tie it up. If you have more to say add that in to your responses when we ask questions.

We only get five minutes also. So if we sit up here and give you a speech and don't ask our question, we have lost our five-minute time.

First, I would like to introduce Alex Passantino, who is the acting wage and hour administrator for the Department of Labor. Alex has been with DOL since November, 2005. He previously served as the senior policy advisor to the assistant secretary for the Employ-

ment Standards Administration and as the deputy administrator for wage and hour.

Mr. Passantino received his BA from Emory University and his JD from the University of Georgia School of Law.

Sally Greenberg is executive director of the National Consumers League and co-chair of the Child Labor Coalition. She previously worked at Consumers Union, the nonprofit organization that is perhaps best known for publishing Consumer Reports. Prior to that, Ms. Greenberg worked at the Justice Department's Foreign Claims Settlement Commission. She earned her BA from Antioch College and her JD from the Catholic University School of Law.

Norma Flores grew up as a migrant child farm worker, traveling over 3,000 miles every year. She began to work full time in the fields at 12 years old, working 70 hours a week. Because of this, Ms. Flores started school late, had to leave before the school year was over, and switched schools often.

With the help of migrant programs, she was able to graduate from high school. She went on to college and received her BA from the University of Texas Pan American.

David Strauss is executive director of the Association of Farm Worker Opportunity Programs. He is on the steering committee of the Child Labor Coalition and the National Farm Worker Alliance and is a member of the Board of Directors of the East Coast Migrant Head Start Project.

Mr. Strauss has a masters of arts in Public Administration and a BA in political science.

All right. Mr. Passantino.

STATEMENT OF ALEXANDER J. PASSANTINO, ACTING WAGE AND HOUR ADMINISTRATOR, DEPARTMENT OF LABOR

Mr. PASSANTINO. Chairwoman Woolsey, Ranking Member Wilson, and distinguished members of the subcommittee. Thank you for the opportunity to discuss the Wage and Hour Division efforts to promote compliance with the Fair Labor Standard Act's child labor provisions. As is detailed in my written testimony, the Wage and Hour Division staff's dedication to ensuring that the Nation's youth work safely and legally is second to none.

Increasing compliance with the child labor provisions of the FLSA is a cornerstone of the agency's annual performance plan. Every onsite investigation, complaint, or directive, has a child labor component. Every low-wage initiative requires that investigators examine child labor compliance, regardless of whether the case is designated as a child labor case. Indeed, last year, 47 percent of the cases in which we found child labor violations were not set up as child labor cases.

Child labor complaints are given the highest priority within the agency, and every Wage and Hour investigator is trained to look for child labor violations.

We employ a number of tools to fulfill our mission of ensuring compliance. We conduct investigations in industries in which young workers are likely to be injured or killed on the job. We provide compliance assistance to raise awareness of child labor requirements, and we participate in partnerships with numerous Federal and State agencies.

Our local offices undertake targeted child labor investigations in grocery stores, shopping malls, theaters, restaurants. We conduct low-wage initiatives in other industries, such as construction and agriculture. Each of those investigations requires the district offices to examine an employer's compliance with the FLSA child labor provisions.

As a result of our enforcement efforts, Wage and Hour has levied fines against employers found in violation of the law. These fines are proportionate to the severity of the violations and exceeded \$5,300 a case in the last fiscal year. In addition, we have secured future corporate-wide compliance and cooperative public awareness campaigns by many of the investigated employers.

With over 7 million covered worksites in the United States, our efforts cannot be limited to enforcement. Rather, voluntary compliance with the child labor laws must be encouraged and supported. We have an active and effective compliance assistance program. Our managers and investigators speak regularly to employer-employee community and advocacy groups. We address student groups and work directly with school and work-permitting officials to educate issuing authorities on how to screen potential violations before the work actually begins.

The centerpiece of our public awareness efforts is the YouthRules! Campaign. Since its inception in 2002, our Web site has received over 3 million views, and our PSAs have reached 27 million radio listeners in 39 States, and generated 252 newspaper articles with a readership of approximately 15 million. We have had YouthRules! rallies in Philadelphia, New Jersey, Houston, and San Antonio.

These efforts continue a longstanding Wage and Hour tradition of promoting safe and positive work experiences by educating teens, employers, educators and the public about the rules concerning young workers. Our goal is to increase compliance and prevent violations from occurring in the first instance, thereby safeguarding the lives and future of young workers.

We employ the same tools to ensure compliance with the youth employment rules in agriculture. The nature of agricultural employment, its short duration, the remote locations, and the mobility of the work, pose particular enforcement challenges. As you all know, the standards for youth employment in agriculture have historically differed from nonagricultural employment.

Wage and Hour is committed to providing the safe employment of youth in the agriculture industry. Our investigators who conduct investigations in agriculture are instructed to examine compliance with the provisions of all applicable statutes providing protections, including the child labor provisions.

We have developed compliance assistance materials emphasizing occupational safety and health, disseminated public service announcements, and collaborated with other entities to educate parents and teens of age-appropriate task standards.

Ensuring that young workers in this country have safe and appropriate early work experience has been, and continues to be, a high priority for Wage and Hour. As you mentioned, we were proud to have included in the President's budget for several years the Child Labor Penalty Enhancement, and we thank you for your sup-

port. The President signed that bill into law increasing the CMPs for serious injury or death to \$50,000.

We also continue to address youth employment through regulation and plan to send to OMB shortly a final rule updating the Youth Employment Provisions for the 21st century.

Ensuring compliance in the Youth Employment Provisions is an integral part of every investigation. We believe that we have demonstrated success in these efforts but, as in every program, we look for opportunities to improve. Last year, we began working with an independent evaluator to assess our strategies and their effectiveness in increasing compliance with the FLSA child labor provisions. That study is ongoing, and we look forward to any recommended opportunities for improvement that may come.

Although our measures of compliance are encouraging, the declines in workplace injuries and fatalities are the most significant indicators of improved working conditions for young workers in this country. According to NIOSH-provided statistics, in 2008, 38 youth under the age of 18 died from work-related injuries, a significant drop from the average of 61 youth who were killed on the job during the years 1998 to 2002. Injuries to young workers have also declined in recent years.

These injury and fatality results demonstrate significant progress in addressing child labor violations. The actions and activities of many parties have contributed to these declining statistics, but many minors continued to be injured while working, and even one death of a working teen is one too many.

The challenge of protecting the welfare of young workers is a shared responsibility. It rests with Federal and State officials, parents, educators, community-based and advocacy organizations, employers, and the young workers themselves. Wage and Hour remains committed to this challenge and will continue to promote legal employment opportunities for young men and women that are safe, positive, and do not distract from or interfere with their education.

Thank you again for this opportunity to discuss this important issue. This concludes my prepared statement. I will be glad to answer any questions the committee may have.

[The statement of Mr. Passantino follows:]

Prepared Statement of Alexander J. Passantino, Acting Administrator of the Wage and Hour Division, U.S. Department of Labor

Chairwoman Woolsey, Ranking Member Wilson, and distinguished members of the Subcommittee, thank you for the opportunity to discuss the efforts taken by the Department of Labor's (Department) Wage and Hour Division (WHD) to promote compliance with the Fair Labor Standard Act's (FLSA) child labor provisions. Let me begin by saying that WHD is committed to full and fair enforcement of all the laws under WHD's jurisdiction, but WHD staff's dedication to ensuring that youth in this country work safely and legally is second to none. As I will highlight, our accomplishments in strengthening child labor laws, raising public awareness of child labor requirements, and targeting industries in which young workers are likely to be injured or killed on the job have contributed to safer workplaces for young workers.

Like all regulatory enforcement agencies, WHD employs a variety of tools and activities to enforce the law and achieve compliance. The agency's mission is to promote and achieve compliance—not just to identify violations after they occur, but particularly in instances in which the health and safety of workers are concerned, to prevent violations in the first instance. The agency's child labor activities and ini-

tiatives are far too numerous to list individually, so I will point out our key efforts and accomplishments over the past several years.

WHD Enforcement Priorities In Improving Child Labor Compliance

WHD has prioritized its statutory enforcement responsibilities to maximize protections for the greatest number of workers, including those most vulnerable in the workforce—low-wage workers, immigrants, and young workers. The absence of a private right of action to address oppressive child labor underscores the importance of this agency's role in safeguarding young workers. For this reason, increasing compliance with the child labor provisions of the FLSA is a cornerstone of the agency's annual performance plan. Every on-site investigation—complaint or directed—has a child labor component. Every low wage initiative—targeted for child labor compliance or targeted for other compliance reasons—requires that investigators examine child labor compliance. Child labor complaints, although not numerous, are given the highest priority within the agency. Every WHD investigator is trained early in his or her career to look for child labor violations. With each national child labor initiative, investigators gain both a renewed focus and specialized training.

Each year, WHD regional and local offices plan and undertake child labor compliance initiatives in a variety of industries and businesses, such as grocery stores, shopping malls, theaters, and restaurants. These industries are among those in which the agency has historically found high levels of non-compliance with the child labor Hazardous Occupations Orders (HOs) and in which large numbers of young workers are traditionally employed. The agency's low-wage initiatives in other industries, such as construction and agriculture, also require district offices to examine an employer's compliance with the FLSA child labor provisions in conjunction with a minimum wage or overtime investigation or concomitant with the labor standards statutes that apply to agricultural workers.

In recent fiscal years, WHD regional and district offices have developed child labor compliance initiatives in industries or establishments that had a history of child labor HO violations or that have a high likelihood that a young employee might suffer a work-related injury or fatality. In fiscal year 2006, for example, WHD offices nationwide investigated discount department store operations to determine the level of compliance with the child labor provisions, in particular to determine their compliance with HOs that regulate paper balers, forklifts, and teen driving. In fiscal year 2007, district and regional offices continued their emphasis on reducing injuries and deaths to young workers by stressing compliance with the HOs. This year, the agency placed a particular emphasis on increasing compliance with HO No. 12, which regulates the loading and operating paper balers and compactors—a common and particularly hazardous piece of equipment found in many retail establishments and increasingly used in nursing homes, schools, and restaurants. The focus on HO No. 12 compliance will continue in fiscal year 2009 as offices develop their child labor initiatives for the upcoming fiscal year.

Several key statistics support the agency's continued emphasis on child labor enforcement. First, the number of enforcement hours charged to child labor compliance has averaged 57,900 over the last seven years (from fiscal year 2001 through fiscal year 2007). This is not significantly different than the 58,080 average child labor enforcement hours recorded during the preceding seven years (from fiscal year 1994 through fiscal year 2000).

Second, as noted above, WHD investigators examine child labor compliance in all on-site investigations. In the last three years, approximately 47 percent of the investigations in which a child labor violation was identified occurred in an on-site investigation initiated under another statute or program area enforced by WHD—primarily in investigations initiated to determine FLSA minimum wage and overtime compliance.

Third, the percentage of child labor cases in which a child labor violation is found has increased steadily over the last three years. Thirty-seven percent of child labor investigations in fiscal year 2005 found child labor violations. By the end of fiscal year 2007, the percentage had increased to 40 percent, which suggests improvements in targeting establishments and industries with likely child labor violations.

Fourth, WHD civil money penalty assessments per investigation have increased from \$4,558 assessed per case in fiscal year 2003 to \$5,303 assessed per case in fiscal year 2007. The agency has not hesitated to levy fines against employers found in violation of the child labor laws—proportionate to the severity of the violations. Although we have been successful in collecting civil money penalties, as established in the examples below, the more significant and long-term results have been demonstrated in our ability to secure future corporate-wide compliance and cooperative public awareness campaigns by many of the investigated companies. Recent investigations include the following examples:

- In August 2008, American Multi-Cinema, Inc., (AMC Theatres), headquartered in Kansas City, Missouri, paid \$141,570 in child labor civil money penalties to resolve violations found in AMC theaters in several states. As part of the resolution, AMC Theaters produced a child labor public service announcement (PSA) on hazards associated with compactors and balers. The PSA is being shown in theatres nationwide as part of the company's First Look pre-feature entertainment program, and the expected audience is 8 million theater-goers.

- In January 2008, the Department obtained a permanent injunction in U.S. district court against Paragon Contractors Corp., a Hildale, Utah, contractor, for repeated violations of federal youth employment laws. The most recent investigation uncovered a 16-year-old working in roofing operations in violation of HO No. 16. The assessed civil money penalty of \$5,280 was paid by the company.

- In December 2007, Connecticut-based CVS Pharmacy Inc. agreed to pay \$226,598 in child labor civil money penalties after a 2007 investigation of CVS stores in New England and the Mid-Atlantic states found 78 minors illegally loading, unloading, or operating cardboard compactors and seven minors employed in violation of the FLSA time standards. CVS Pharmacy Inc. also agreed to ensure compliance with the FLSA at its more than 6,000 stores nationwide.

- In July 2007, Pretzel King LLC, doing business as an Auntie Anne's franchisee in San Bernardino, Downey, Arcadia, Glendale, Northridge and Bakersfield, California, paid \$51,500 in civil monetary penalties for allowing eleven 14- and 15-year-olds to work beyond the hours permitted by law and nine youths to be involved in prohibited baking activities. The stores also allowed 60 minors to operate freight elevators, dough mixers, and trash compactors, which are prohibited hazardous occupations for anyone under 18 years of age.

- In 2007, Jim Barnes Enterprises Inc., a McDonald's franchisee, paid \$86,500 in penalties after WHD determined that the firm allowed minors to perform hazardous duties, e.g., operating a trash compactor and frying, at a Mobile, Alabama, restaurant. In addition, a Piggly Wiggly franchisee, SCVS Inc., paid \$30,000 in penalties after an investigation found 20 minors operating paper balers at two stores. These violations were uncovered as part of the WHD's Gulf Coast District Office local child labor initiative to increase compliance in grocery stores and restaurants.

- In the summer of 2007, Caesars Utah LLC, doing business as Little Caesars Pizza in Sandy, Utah, paid a \$110,800 civil monetary penalty for allowing minors to operate dough mixers and bake, among other activities in violation of the child labor provisions. The company also agreed to educate the public at large by creating a statewide public service campaign called Stop, Look and Listen.

- In April 2006, Target Corporation paid \$92,400 in civil money penalties for exposing young workers to hazardous machinery in violation of the FLSA child labor provisions. Twenty-nine minors in seven New York/New Jersey-area stores were found to have operated either power-driven hoisting apparatus or power-driven scrap paper balers, or in some cases, both. The company provided WHD with an outline of the steps it planned to take to ensure full compliance with all child labor regulations in the future.

WHD believes its continued emphasis on child labor compliance has resulted in fewer child labor violations. The total number of investigations in which child labor violations were found is lower today than the total number in 2001, and the trend appears to be continuing. The number of minors found illegally employed last fiscal year (4,672) is nearly half of the number found illegally employed in fiscal year 2001 (8,818). The average number of minors found illegally employed per investigation has also declined from 4.2 in fiscal year 2001 to 3.7 in fiscal year 2007. More importantly, the number of minors found employed in violation of a hazardous occupations order in fiscal year 2007 (1,000) was a reduction of more than half the number found working in a hazardous situation in fiscal year 2001 (2,040). While these statistics can be attributed in part to the overall drop in the number of teens in the workplace, these declining trends should also be taken as an encouraging sign that fewer young workers are employed in violation of the law.

Children who work in agriculture are among the most vulnerable of the country's workers. The nature of agricultural employment, i.e., its short duration, the remote locations, and mobility of the work, pose particular enforcement challenges. Agricultural work is difficult and dangerous. For youth, the hazards are significant. The fatality rate for young workers in agriculture is nearly six times the rate in other industries. Nearly 60 percent of the youth fatalities in agriculture during 1998—2002 occurred to youths who worked on the family farms. The deaths of young family farm workers accounted for nearly a quarter of all of the young worker deaths that occurred in all industries during the same period.

The standards for youth employment in agriculture have historically differed from nonagricultural employment. Under the FLSA, the child of a farmer can do any job,

at any age, at any time, on a farm owned or operated by the parent of that child. The minimum age for employment is lower than for nonagricultural work. There is no minimum age for employment on small farms that the Act exempts from minimum wage requirements. The agricultural HOs prohibit only those youth under the age of 16, who are not working on his or her own family farm, from performing those tasks that the Secretary has found to be particularly hazardous for youth, as opposed to nonagricultural HOs, which apply to youth under the age of 18. Because youth are permitted to work in agriculture at a younger age, WHD is committed to promoting their safe employment in the industry. WHD investigators who conduct investigations in the agricultural industry are instructed to examine compliance with the provisions of all applicable statutes providing protections for agricultural workers, particularly wages, housing, and transportation, field worker safety and child labor provisions. WHD investigated four occupational fatalities that occurred in fiscal years 2007 and 2008 involving teens under the age of 16 working in agriculture. Of those four cases, WHD found that only one involved a violation of the FLSA child labor provisions. The employer was assessed \$11,962 in civil money penalties—the maximum allowable penalty at the time. In the remaining three instances, there was no employment relationship.

Even in situations in which young workers are not subject to the FLSA child labor provisions, WHD has looked to methods other than enforcement to help young farm workers on family farms enjoy safe and positive work experiences. As I will discuss later, WHD has developed compliance assistance materials emphasizing occupational safety and health, disseminated public service announcements, and collaborated with other entities to educate parents and teens of “age-appropriate” task standards that parents can use to measure the capabilities of their children in performing agricultural work.

Compliance Assistance And Public Awareness Campaigns Affect Compliance

Compliance assistance activities, which include providing clear and easy-to-access information on how to comply with federal employment laws, are key strategies in promoting voluntary compliance and should not be discounted. Parents, educators, employers, and young workers who are aware of the federal and state child labor requirements can make more informed decisions on when and where young people should work. Compliance assistance and educational activities are communicated in many ways, whether through speeches and presentations given to school groups or by PSAs. WHD uses every available means to provide compliance information to the public. WHD staff speak regularly to employer, employee, community, and advocacy groups. Local offices distribute self-audit materials and compliance guides to help employers evaluate their employment practices against the child labor laws. WHD investigators and managers work directly with school and work-permit officials to educate issuing authorities on how to screen potential violations before the work actually begins. With over 7 million covered worksites in the U.S., voluntary compliance with the child labor laws must be encouraged and supported.

In May 2002, the Department launched the YouthRules! public awareness campaign, which quickly became the centerpiece of WHD’s child labor compliance and public awareness efforts. The YouthRules! initiative is designed to increase public awareness of both federal and state rules concerning young workers; since its implementation, the initiative has provided an easily recognizable vehicle by which the public can obtain compliance materials. The web page, www.youthrules.dol.gov, provides a gateway to child labor compliance information on the internet. The site gets approximately 500,000 views a year in part because some 75 partners, associations, and governmental entities have linked or agreed to link their web site to the YouthRules! site. Most recently, Major League Baseball established an internet link from its web site to the agency’s YouthRules! page.

As part of this public awareness effort, WHD published and distributed a YouthRules! bookmarks and a YouthRules! Employer Pocket Guide in both English and Spanish. Similar publications were developed to educate employers and the public about the rules for youth employment in agriculture. Each year, WHD augments these printed and on-line YouthRules! materials with new fact sheets, guides, and other aides for compliance. WHD developed and posted self-assessment tools for restaurants, grocery stores, and other non-agricultural industries to help employers assess their compliance with the child labor laws. WHD designed posters with bold attention-getting colors and graphics to attract young readers. Agency field personnel developed a child labor compliance PowerPoint presentation geared towards a teenaged audience. The YouthRules! web site contains stickers that employers may place on dangerous equipment to warn teens and others that young workers are not permitted to operate certain equipment, such as forklifts and paper balers.

Wage and Hour regularly updates this website to inform the public of new developments, such as the publication of new regulations.

The Department also developed and disseminated a YouthRules! PSA in fiscal year 2004. That first year, over 6,000 radio stations received a taped PSA, and 10,000 newspapers received a YouthRules! news article, including ethnic media and newspapers. That year, the radio PSA played over 340 times on 197 radio stations with an audience of 27 million listeners in 39 states. The print article generated 252 newspaper articles in 20 states with a readership of approximately 15 million.

In fiscal years 2005 and 2006, WHD's summer public awareness campaign focused on youth employed in construction, because of increasing numbers of young workers—primarily Hispanic—employed in that industry. As part of the campaign, WHD launched a new electronic seminar, "Youth Working in Construction," which is available on CD-ROM and on the YouthRules! web site. The seminar discusses the requirements for youth working in construction and concentrates on identifying the prohibited occupations in construction. A radio PSA and print article were issued to highlight the new seminar.

WHD's first YouthRules! rally was held in 2003. The event, at a Philadelphia mall, was highly successful, so WHD expanded the concept in 2004 to include additional rallies in Houston and New Jersey. The rallies are now annual events in Houston and San Antonio. Participation in the events numbers in the thousands.

In the last fiscal year, WHD updated the child labor PSAs and distributed them to more than 1,900 radio stations, including all 600 Spanish radio stations in the U.S. and Puerto Rico. The new PSAs focused on youth in agriculture—the industry with the highest youth fatality rate. WHD continued public dissemination of the PSAs as part of this year's annual YouthRules! campaign.

These diverse public awareness and compliance assistance activities continue a longstanding WHD tradition of promoting positive and safe work experiences by educating parents, teens, employers, educators, and the public at large about the federal and state rules concerning young workers. The goal, as stated earlier, is to increase compliance and prevent violations from occurring in the first instance and through those efforts, safeguard the lives and futures of young workers.

Partnerships Promote Child Labor Compliance

Strategic partnerships provide opportunities and avenues to encourage compliance in communities and among employers. Business associations, unions, state governments, federal agencies, community groups, academia, and others have collaborated with WHD to promote public awareness and undertake compliance assistance activities. The added support of our partners enhances the scope and effect of both enforcement and compliance assistance. WHD's national partnership activities include (but are certainly not limited to) collaboration with the following organizations.

Federal Network for Young Worker Safety and Health (FedNet)

The Department is a founding member of FedNet, a partnership of 14 federal agencies that share ideas, resources, and opportunities to keep young workers safe. This program strives to:

- Increase awareness of young worker occupational safety and health among key community players and young workers as they enter the workforce;
- Foster education, training, and outreach to promote young worker safety and health;
- Enhance federal initiatives that create relationships with small businesses, trade associations, and other organizations that employ young workers; and
- Promote resources that enhance employer compliance and knowledge of federal and state regulations related to young workers.

FedNet accomplishments include safe summer job kick-offs, brochures, and safety tips. The collaboration available through FedNet enhances opportunities for WHD to disseminate materials and information.

National Institute for Occupational Safety and Health (NIOSH) and the Occupational Safety and Health Administration (OSHA)

WHD has a longstanding partnership with NIOSH in the areas of improving workplace safety for young workers and in the collection and interpretation of injury and fatality data, especially as it related to rulemaking efforts. In 1998, WHD provided funding to NIOSH to conduct a comprehensive review of scientific literature and available data in order to assess current workplace hazards and the adequacy of the current child labor HOs. The report, entitled (NIOSH report), was issued in July 2002. The NIOSH report, which makes 35 recommendations concerning the existing non-agricultural HOs and recommends the creation of 17 new HOs, was the impetus for the Department's April 2007 Notice of Proposed Rulemaking (NPRM).

National Institute for Occupational Safety and Health (NIOSH) Recommendations to the U.S. Department of Labor for Changes to Hazardous Orders

In addition, WHD and OSHA have, for many years, been active members of the NIOSH-sponsored Federal Interagency Work Group on Preventing Childhood Agricultural Injury. This group, whose membership includes representatives of the U.S. Department of Agriculture (USDA), works to reduce young farm-worker deaths and injuries.

Finally, WHD works with NIOSH and OSHA in a “rapid response” young worker fatality notification system that keeps all three agencies advised of youth workplace deaths.

Young Workers Health and Safety Network (YWN)

WHD has also worked for many years with the YWN, a subcommittee of the Occupational Health and Safety Section of the American Public Health Association, to promote compliance with the child labor provisions and to reduce occupational injuries to and workplace deaths of minors. The YWN—which describes itself as an informal network of public health professionals, advocates, and government agency staff—includes individuals from academia, public health, labor law enforcement, health and safety consultation and enforcement, and labor organizations.

Interstate Labor Standards Association (ILSA)

WHD has an active collaborative relationship with ILSA, an organization of state labor department officials. As part of this ongoing coordination, WHD officials at the national, regional, and local organizations levels communicate with State labor departments on various child labor activities.

U. S. Department of Agriculture (USDA)

Given the higher fatality rates among young workers in the agricultural industry, WHD works with USDA on many issues. WHD’s most recent collaboration with USDA involves the reinvention and streamlining of the tractor certification program. Under the child labor agricultural HOs, 14- and 15-year-olds may operate certain otherwise prohibited farm equipment after being properly trained and certified in the safe operation of the equipment. In most cases, agricultural extension service agents or agricultural vocational school instructors perform the training, testing, and certification based on requirements established by regulation. These requirements have become outdated, many of the training materials are no longer in print, and because of funding reallocations, not all states now provide the training or certification. The interagency agricultural HO Steering Committee has overseen the identification of the required skill sets, the development of a modern curriculum with multiple methods of delivery, the engineering of an electronic system that will register teachers, administer examinations, issue certificates, and monitor the operation of the entire process. WHD continues to work with USDA to ensure the completion of this important project.

National Children’s Center for Rural and Agricultural Health and Safety (NCCRAHS)

NCCRAHS, based in Marshfield, Wisconsin, strives to enhance the health and safety of all children exposed to hazards associated with agricultural work and rural environments. NCCRAHS receives funding from NIOSH. WHD staff have served on the NCCRAHS steering committee and have helped develop and disseminate the North American Guidelines for Children’s Agricultural Tasks (NAGCAT). NAGCAT is a collection of guidelines designed to assist parents and others in assigning age-appropriate tasks for children ages 7 to 16 that live or work on farms and ranches across North America. The guidelines are based on an understanding of childhood growth and development, agricultural practices, principles of childhood injury, and agricultural and occupational safety. Voluntary use of the guidelines can help parents and others make informed decisions about appropriate tasks for youth.

Equal Employment Opportunity Commission (EEOC)

WHD works with EEOC to ensure that young workers experience a workplace free from discrimination and sexual harassment. WHD and EEOC jointly provide compliance assistance to employers of workers with disabilities—many of whom are under the age of 18.

Regulatory And Legislative Initiatives Have Strengthened Child Labor Laws

Because of changes in the workplace, the introduction of new processes and technologies, the emergence of new types of businesses in which young workers may find employment opportunities, the existence of differing federal and state standards, and divergent views on how best to balance scholastic requirements and work expe-

riences, the Department has for many years been conducting an ongoing review of the criteria for permissible child labor employment. Some of the most significant accomplishments towards protecting working young men and women in this country are reflected in the recent revisions to the child labor regulations.

On December 16, 2004, the Department published a final rule that amended the child labor regulations to implement statutory amendments to two existing HOs: the Compactors and Balers Safety Standards Modernization Act, affecting paper balers and compactors (HO No. 12); and the Teen Drive for Employment Act, affecting teenagers whose jobs may include driving on public roads (HO 2). The regulations also updated the types of cooking activities allowed for 14- and 15-year-olds; revised the “roofing” HO to ban all work on or about roofs by youths under age 18; updated the definition of “explosives” in HO 1; and reduced paperwork in processing age certificates.

As previously noted, the NIOSH report made recommendations concerning the existing non-agricultural HOs and recommended the creation of 17 new HOs. Upon receiving the NIOSH report, WHD conducted a detailed review and met with various stakeholders to evaluate and prioritize each recommendation for possible regulatory action consistent with the established national policy of balancing the benefits of employment opportunities for youth with the necessary and appropriate safety protections. The 2004 final rule addressed six of the NIOSH recommendations.

In April 2007, the Department published an NPRM and an Advance Notice of Proposed Rulemaking (ANPRM) as part of its continuing efforts to update the youth employment regulations for the 21st Century. The current proposals would represent the most significant revisions to the child labor regulations in 30 years. The proposals would strengthen youth employment regulations to protect against workplace hazards, expand youth workplace opportunities that have been judged safe and permissible, update regulations to better reflect the modern workplace, and address many of the remaining recommendations from the NIOSH report. WHD is in the process of drafting a final rule based on the comments it received in response to the NPRM, and anticipates transmitting that rule to the Office of Management and Budget shortly. WHD continues to review the comments received in response to the ANPRM, and the remaining NIOSH recommendations, for potential future rulemaking.

For the last several years, the President’s budget has included a legislative proposal to increase the amount of civil money penalties that could be assessed for child labor violations that cause the serious injury or death of a young worker. On May 21 of this year, President Bush signed into law the Genetic Information Non-discrimination Act of 2008 (GINA). Among other things, GINA amends the FLSA by increasing the civil money penalties that may be imposed for child labor violations resulting in death or serious injury. The legislation raised the maximum penalty to \$50,000 for each violation resulting in the death of or serious injury to working youth. In cases where the employer’s violation is repeated or willful, the maximum penalty was raised to \$100,000. This new authority provides WHD with an important tool in securing compliance with the child labor provisions.

Improvements In Child Labor Compliance—A Continuing Priority For WHD

As we have demonstrated, ensuring that young workers in this country have safe and appropriate early work experiences has been and continues to be a high priority for this agency. It is an integral part of every investigation, and WHD personnel nationwide are committed to this agency goal. WHD has used and continues to use every tool available—enforcement, compliance assistance, public awareness, partnership, regulation, and legislation—to promote compliance with the Nation’s child labor laws. We believe that we have demonstrated success in these efforts, but as in every program, we look for opportunities to improve. Last year, the Department began working with an independent evaluator to assess our strategies and their effectiveness in increasing compliance with the FLSA child labor provisions. That study is ongoing, and we look forward to any recommended opportunities for improvements that may come. In examining our activities and accomplishments, however, we can cite several measures of success.

WHD has conducted two national, statistically valid, investigation-based compliance surveys of youth employed in the grocery store and restaurant industries. These are two industries that employ a high percentage of young workers. The first baseline survey was conducted in 2000 to gauge the level of child labor compliance in full-service restaurants, quick-service restaurants, and grocery stores. A second investigation-based survey was conducted in 2004 to determine if the levels of compliance had changed. These two surveys were full on-site investigations that not only included interviews of the young workers, but also included interviews with their co-workers and employers. The investigation-based surveys allowed WHD in-

investigators to establish coverage under the FLSA, review payroll records, and make conclusive determinations on whether the teens were employed in violation of applicable federal law.

The 2004 investigation-based survey showed continued high levels of child labor compliance in the full-service restaurant and grocery store industries, similar to the levels found in 2000. The 2004 survey also demonstrated improvements in child labor compliance in quick-service restaurants in comparison to the 2000 survey results. WHD found significant reductions in the percentage of employers with repeat violations in all three industries. The 2004 survey investigations found that 91 percent of quick-service restaurants were in compliance with the FLSA child labor provisions and that 99 percent of youth employed in this industry were employed in compliance. The survey also found 73 percent of full-service restaurants were in compliance and 88 percent of youth workers were employed in compliance. Finally, 80 percent of grocery stores were in compliance and 95 percent of youth were employed in compliance in this industry. Ninety-six (96) percent of full- and quick-service restaurants and 88 percent of grocery stores were in compliance with the child labor HO provisions. The high percentage of youth employed in compliance and the increase in compliance among prior violators can be attributed to the compliance activities of the agency during the intervening year between the surveys. Those efforts continue today.

The 2004 survey results are not the only indicators of improved compliance. In FY 2007, WHD completed an investigation-based compliance survey, i.e., the Youth Employment Survey (YES), to determine child labor compliance in four large national retail chains, Sears, Roebuck and Company (Sears); K-Mart; Wal-Mart Stores, Inc. (Wal-Mart); and Target Corporation (Target). All four companies had a history of child labor violations. Following the prior investigations, Sears and Wal-Mart had entered into settlement agreements with WHD to promote future child labor compliance.

Of the 67 establishments investigated, WHD found 82 percent (55 of 67) in full compliance with the child labor provisions. All establishments, but one, were in compliance with the child labor hours standards. Eight-four (84) percent of the establishments were in compliance with the child labor HOs. In total, 40 child labor violations were found involving 36 minors; one child labor hours violation and 39 HO violations. Of the 39 HO violations cited, 38 involved violations of HO No. 12 (balers). One HO No. 7 (forklift) violation was found. The findings in this initiative contributed, in part, to WHD's decision to place an emphasis on increasing compliance with HO No. 12 as part of its fiscal year 2008 performance plan.

Sears was fully in compliance, with no child labor violations found. One Wal-Mart establishment was found in violation with a single HO No. 12 violation. Three Target establishments accounted for 14 violations involving 11 minors. K-Mart has the highest rate of non-compliance, with 7 stores having 24 violations involving 23 minors. These large corporate enterprises, that employ minors nationwide, have far fewer child labor violations and are far more aware of their obligations as a result of WHD's continued presence.

While these measures of compliance are encouraging, the declines in workplace injuries and fatalities are the most significant indicators of improved working conditions for young workers in this country. According to NIOSH-provided statistics, 38 youth under the age of 18 died from work-related injuries in 2007—a significant drop from the average of 61 youth aged 17 and under who were killed on the job during the years 1998 to 2002. Equally encouraging is the corresponding decline in youth fatality rates from a high of more than 3.5 per 100,000 FTE in 1999 to approximately 2 per 100,000 FTE in 2006. Injuries to young workers have also declined in recent years, although not as sharply as fatalities. In 1999, NIOSH estimated that over 70,000 14-to 17-year-olds were injured on the job seriously enough to warrant a trip to a hospital emergency room. By 2006, the estimate had dropped to 52,600.

The agency believes these injury and fatality results demonstrate significant progress in addressing child labor violations. The actions and activities of many parties have contributed to these declining statistics, but clearly too many minors continue to be injured while working, and even one death of a working teen is one too many. The challenge of protecting the welfare of young workers is a shared responsibility. It rests with federal and state officials, parents, educators, community-based and advocacy organizations, employers, and the young workers themselves. WHD remains committed to this challenge and will continue to promote legal employment opportunities for young men and women that are safe, positive, and do not distract from or interfere with their education.

Thank you again for this opportunity to discuss this important issue. This concludes my prepared statement. I would be glad to answer any questions.

Chairwoman WOOLSEY. Ms. Greenberg.

**STATEMENT OF SALLY GREENBERG, EXECUTIVE DIRECTOR,
NATIONAL CONSUMERS LEAGUE, AND CO-CHAIR, CHILD
LABOR COALITION**

Ms. GREENBERG. Thank you, Madam Chair, for inviting me to testify here today.

My name is Sally Greenberg, and I am executive director of the National Consumers League. We very much appreciate the subcommittee holding this hearing and asking this very important question, "Child Labor Enforcement: Are We Adequately Protecting Our Children?"

The National Consumers League believes that the answer to the question that the subcommittee is posing is, no, and that much more can and must be done to protect our young people from hazards and dangers they confront from the workplace. Every 10 days in America, a young person is killed at work. Every day, more than 100 youth workers under the age of 19 are seriously injured or become ill from their jobs.

My testimony focuses today on the Department of Labor's enforcement of the Federal child labor laws. I plan to make recommendations about reforms that I would like to see at DOL to strengthen protections for youth workers. I will also make recommendations for legislative reforms that we believe Congress should consider to help protect young people from hazardous work conditions.

The National Consumers League is America's oldest consumer group, and our mission is to protect economic justice for consumers and workers. We are also co-chair of the Child Labor Coalition, or the CLC, which was established in 1989 and is a group of more than 30 organizations representing consumers, labor unions, educators, human rights and labor groups, child advocacy, religious and women's groups. The CLC's mission is simply to protect working youth here and abroad.

Let me start by saying that NCL very much supports the notion that young people can learn and grow by working, as long as they are placed in jobs that are appropriate and safe.

Much of my testimony is going to be based on findings of two reports on DOL's child labor enforcement that were released by the CLC and published by the National Consumers League, one in June 2005 and the other, September 2006.

What these reports make clear is that enforcement of the child labor laws is no longer a high priority for DOL. Why do we say this? First, what many believe is the definitive document in upgrading and updating Federal child labor laws and enforcement, this is the NIOSH, or National Institute for Occupational Safety and Health, report from 2002. It was issued now over six years ago. NIOSH recommended that 38 hazardous occupation orders, or HOs, and HOs prohibit children from working in jobs that are particularly dangerous; they recommended in the NIOSH report that 38 of those HOs be revised. It took DOL five years to respond. And when they did, they proposed revising only five existing non-agricultural hazardous orders of the total of 38 that were rec-

ommended. They recommended no changes whatsoever in HOs for agriculture, the most dangerous work environment for children.

Six years of inaction while children are maimed and injured on the job, we believe, is six years too many. DOL's refusal to protect working children by appropriately revising those hazardous orders is inexcusable, in our view.

Secondly, the number of child labor investigations by DOL has declined drastically. For example, there was a 48 percent decline from 2004 to 2006. There were 2,606 child labor investigations in 2004, but only 1,344 in 2006. If we look back more than two years, the story is even worse. The number of child labor investigations conducted in 2006, 1,344. It was the lowest in the last 10 years.

The second issue we have is that the time spent investigating child labor has declined, from 58,000 hours in 2004 to 48,000 hours and change in 2006. If we look back more than two years, the story is even worse. From 2001, when Wage and Hour spent 73,000-plus hours doing child investigations, to 2006, the time devoted to child labor investigations plummeted by 35 percent.

There are an estimated 3.2 million working children in the United States. In other words, what our figures tell us is that there are only 28 DOL child labor investigators looking out for the children of this country, which number well over 3 million.

Third, the penalties that DOL imposes, we believe, are far too low to provide sufficient deterrent to companies hiring underage workers. We are pleased to see that the GINA bill did increase penalties to \$50,000 for each violation. We don't know whether the Department of Labor has imposed penalties with GINA in mind, but we believe the penalties at this point have been historically way too low.

Fourth, DOL has almost no child labor enforcement in agriculture, and I believe my colleagues are going to address those issues, so I am going to quickly move to a couple of recommendations.

And I do want to mention that we believe that DOL needs to focus on a couple of industries, including agriculture and

meatpacking. We are particularly concerned about, Congresswoman, you mentioned the Pottsville, Iowa, case with Agriprocessors. We went out there to take a look around and talk to some of the workers, and Reed Mackey, who is here with me today, actually met with and interviewed a young man who had worked at the plant when he was 16, and he unrolled his sleeve and he showed him a stab wound that he had gotten while working on the job in the Agriprocessors plant. And the young worker said he was routinely cheated out of wages each week. He said he believed the plant supervisors knew that he was too young to work in the plant but looked the other way.

We believe that there are probably a lot more of these kinds of violations going on, and we would like the Department of Labor to take a look at that.

I will make further recommendations during the Q & A.

[The statement of Ms. Greenberg follows:]

Prepared Statement of Sally Greenberg, Executive Director, National Consumers League

Thank you for inviting me to testify today. My name is Sally Greenberg, and I serve as Executive Director of the National Consumers League. We very much appreciate the Subcommittee on Workforce Protections holding a hearing that asks, "Child Labor Enforcement: Are We Adequately Protecting our Children?" The National Consumers League believes that that answer to the question this Subcommittee hearing poses is "No," and that much more can and must be done to better protect our young people from hazards and dangers they confront in the workplace.¹

Every 10 days in America, a young person is killed at work. Every day, more than 100 young workers under the age of 19 are seriously injured or become ill from their jobs.

My testimony today focuses on the U.S. Department of Labor, or DOL's poor enforcement of the federal child labor laws and I will make recommendations about reforms I would like to see at DOL to strengthen protections for working children. I will also make recommendations for legislative reforms that we believe Congress should consider to help to protect our young people from hazardous work conditions.

The National Consumers League, or "NCL," is a private, non-profit advocacy group representing consumers on marketplace and workplace issues. Our mission is to protect and promote social and economic justice for consumers and workers in the United States and abroad. We are the nation's oldest consumer organization. The NCL is the cochair, along with the American Federation of Teachers, of the Child Labor Coalition, or "CLC." The CLC, established in 1989, is a group of more than 30 organizations, representing consumers, labor unions, educators, human rights and labor rights groups, child advocacy groups, and religious and women's groups. The CLC's mission is to protect working youth and to promote legislation, programs, and initiatives to end child labor exploitation in the United States and abroad.

Let me start by saying that the NCL very much supports the notion young people can learn and grow by working, as long as they are placed in a jobs that are appropriate and safe. We wish to focus, however, on workplace settings and jobs that are risky or dangerous for young people and what can be done to correct the loopholes in the law that expose youngsters to these workplace hazards.

Much of my testimony is based on the findings of two reports on DOL's child labor enforcement released by the Child Labor Coalition and published by the National Consumers League, one in June 2005 and the other in September 2006, as well as more recent data on the same topic. I have provided copies of the two reports to the Subcommittee, and I ask that they be included in the record.

What these reports make clear is that enforcement of the child labor law is no longer a high priority for DOL.

Here is a quick overview that shows why this is so.

- First, the number of child labor investigations by DOL has declined drastically. For example, there was a 48 percent decline from 2004 to 2006—2,606 child labor investigations in 2004, but only 1,344 in 2006.² If we look back more than two years, the story is even worse. The number of child labor investigations conducted in 2006—1,344—was the lowest in the last ten years for which we have data, and may be the lowest in many decades.

- Second, the time spent investigating child labor also declined: 58,220 hours in 2004, but only 48,005 hours in 2006. If we look back more than two years, the story is even worse. For example, from 2001, when the Wage-Hour division spent 73,736 hours doing child labor investigations, to 2006, the time devoted to child labor investigations plummeted by 35 percent. The 48,005 hours spent by DOL in 2006 investigating child labor violations may sound like a lot of time, but based on our calculations, this is roughly the equivalent of 28 full-time employees doing child labor investigations exclusively.³ There are an estimated 3.2 million working children in the United States, according to the federal government.⁴ In other words, each of these 28 DOL child labor investigators is in effect responsible for assuring a safe and healthy work environment for about 115,000 youth workers.

- Third, the penalties that DOL imposes are too low to provide sufficient deterrent to companies hiring underage workers. While the law imposes a maximum penalty of \$11,000 for each violation,⁵ the average penalty in 2004 was only \$718, less than 7 percent of the maximum penalty permitted. Two years later, in 2006, the average penalty was only \$939, less than 9 percent of the maximum penalty. Here's a concrete example of low child labor penalties. In 2006 DOL found 29 children in six Target Corporation retail stores in New York's Hudson River Valley who had been working in jobs prohibited for children under age 18 because the work is so hazardous—operating power-driver scrap paper balers and operating power-driven

hoisting equipment, like forklifts.⁶ DOL imposed a penalty of \$92,400, or an average of \$3,166 per child, not a lot for a multibillion dollar corporation. Another example dates from 2005. Wal-Mart committed child labor violations affecting 85 children in 24 stores, many involving youth who did jobs that DOL has determined to be particularly dangerous, such as operating chain saws, cardboard balers, and forklifts.⁷ DOL imposed \$135,540 in penalties, or an average of \$1,595 per child. Given that Wal-Mart had \$285 billion in annual sales, the \$135,540 total penalty is a negligible amount—the equivalent of fining someone with an average salary a tiny fraction of a penny. The law says that the size of any child labor penalty that DOL imposes must take account of “the size of the business of the person charged and the gravity of the violation,”⁸ but it is hard to see how DOL has done that in its investigations, given the very low amount of the average penalty imposed.

- Fourth, DOL has almost no child labor enforcement in agriculture. Hundreds of thousands of children work in agriculture, yet, in 2006, just 28 of DOL’s 1,344 child labor investigations—2 percent—were in agriculture. In 2005 the number of child labor investigations in agriculture was even lower—just 25. These numbers contrast sharply with earlier years. In 1999, for example, DOL conducted more than five times as many investigations in agriculture—142. What is particularly troubling about this poor enforcement record is that the risks of injury, illness, and death are greater for children working in agriculture than in any other jobs. For example, children age 15 to 17 working in agriculture have over four times the risk of fatal injury of children working in other industries.⁹

Children under age 15 working on farms account for about three-fourths of all work-related deaths for that age group.¹⁰ As for nonfatal injuries, hospital emergency room and workers’ compensation data have suggested that youth injuries in agriculture tend to be more severe than injuries in other employments.¹¹ What can DOL do to assure greater protections to working children? There are several key steps DOL should take.

- First, DOL needs to devote more time and effort to investigating potential child labor violations. The equivalent of 28 full-time child labor investigators for the entire United States is simply indefensible. The child labor provisions of the FLSA are unique in that only DOL can enforce them, whereas the FLSA’s minimum wage and overtime pay provisions can be enforced not only by DOL, but also by aggrieved employees represented by lawyers in court. In other words, if DOL places less emphasis on enforcing the minimum wage and overtime pay provisions, employees have another route to address the problem—a private right of action. In 2006, for example, DOL filed only 3 percent—143 of 4,207—FLSA lawsuits in federal court. But if DOL does not enforce the FLSA’s child labor provisions, then no one else can.

- Second, DOL needs to impose much higher penalties than in the past. Average penalties of less than \$1,000 do not provide sufficient deterrent effect. There is no deterrent effect when a large company faces a nominal penalty after permitting underage youth to perform work forbidden under DOL regulations. DOL could easily change its regulations, or even just revise its internal procedures for calculating penalties, to achieve this result. Moreover, DOL should take employers who commit repeat child labor violations to court to get an injunction barring future violations, as the FLSA authorizes DOL to do. Any employer that violates such an injunction can be held in contempt of court and be required to pay DOL’s costs of investigating and prosecuting to prove to the court that the employer has violated the injunction.

- Third, DOL needs to update and strengthen its regulations that list jobs that are so hazardous that no child under age 18 (or in agriculture, under age 16) can do them. The government’s premier job safety agency—the National Institute for Occupational Safety and Health, or “NIOSH”—issued a lengthy report over six years ago recommending that more than half of these existing regulations be revised and that 17 new regulations be added, but DOL has acted on a paltry number of these recommendations, and adopted no changes whatsoever for agriculture, the most dangerous work environment for children. Six years of inaction, while children are maimed and injured on the job, are six years too many. DOL’s refusal to protect working children by appropriately revising the hazardous orders is inexcusable.

- Fourth, DOL needs to conduct targeted investigations of two industries in which child laborers may be most vulnerable to death or injury: agriculture and meatpacking. It has been nearly a decade since the Department of Labor’s targeted Salad Bowl investigation found dozens of children, including many under the age of 10, helping harvest the nation’s fruits and vegetables. And in the area of slaughterhouses, the recent investigation by the State of Iowa of the Agriprocessors plant in Postville, Iowa found dozens of minors working illegally in what is often considered to be one of the worst and most dangerous jobs in America. In August, NCL spoke to an Agriprocessors child laborer who had stabbed himself in the arm while on the cutting line and had been bandaged up and told to go back to work. The

young worker said he was routinely cheated out of hours of wages each week. He also said that he believed his plant supervisors knew he was too young to work in the plant but looked the other way. Given that meat processing plants tend to attract an impoverished, mostly immigrant work force, the possibility that child laborers may be employed in slaughterhouse around the nation should be investigated by U.S. DOL with vigor.

- Fifth, DOL needs to publicize its child labor enforcement activities much more aggressively. The most that DOL does typically is to issue an innocuous press release, and in many instances no publicity at all is given to child labor penalty cases. This approach needs to be changed drastically to make both employers and employees much more aware of the child labor laws, and the penalties that can result for violating those laws.

- Sixth, DOL needs to revive the Child Labor Task Force that coordinated child labor enforcement efforts between state and federal inspectors. Increased coordination and communication between state and federal inspectors should increase the efficacy of enforcement efforts.

What can this Committee and Congress do to strengthen the child labor law? We have several recommendations:

- First, Congress must increase funding for DOL Wage and Hour inspectors. One of the primary reasons for the lack of child labor enforcement: Wage and Hour is grossly understaffed. Less than 750 investigators are available to go out into the field and investigate labor violations. That translates to one investigator for every 10,000 businesses. Kim Bobo, the executive director of Interfaith Worker Justice testified in Congress earlier this summer, that if the ratio of investigators to businesses that existed in 1941 held today, we would have 34,000 investigators—not less than 1,000. As a first step, NCL believes the number of inspectors should be doubled and Congress should mandate that child labor inspections become a greater priority of enforcement efforts. Congress should require DOL to report on its enhanced child labor enforcement efforts not less than 18 months after funding for the additional inspectors is provided.

- Second, Congress should eliminate many of the special exclusions in agriculture that permit children as young as young as 12 years old, and in some cases even younger, to work in the fields. It is unconscionable to allow 12 year olds to toil in over 100 degree heat and be exposed to toxic chemicals and pesticides; this gaping loophole in the law should be changed. By doing so, Congress would ensure that children working in agriculture would be subject to the same protections as children working in all other jobs. We are not talking here about children who work on their own parent's farms (who are not subject to the child labor law at all), but children who work for hire on farms, such as migrant and seasonal farmworkers. Rep. Lucille Roybal-Allard's "Childrens Act for Responsible Employment," also known as the CARE Act, would close these shameful loopholes, leveling the playing field for hundreds of thousands of farmworker youth who are dropping out of high school in high numbers.

- Third, because of the great hazards to children working in agriculture, Congress should strengthen the protections for children working on farms.

Under existing law, the Secretary of Labor has the authority to declare which jobs are particularly hazardous for children, and the law provides a minimum age of 18 for such jobs—except in agriculture, where the minimum age is 16. For example, a young worker must be 18 to drive a forklift at a Wal-Mart warehouse, but that young worker could drive a forklift at a fruit and vegetable packing house at age 16—even though the dangers are very similar.

- Congress should amend the law to raise the minimum age for doing particularly hazardous work in agriculture to 18, especially in view of the high incidence of deaths and injuries to children working in agriculture (as noted above). The CARE Act would remedy this problem as well. Fourth, Congress should impose minimum penalties for child labor violations—say at \$500—to make employers more likely to comply with the child labor requirements.

Thank you again, Madam Chair, for calling this hearing on whether young workers are being properly protected in America's workplace. The National Consumers League remains ready to work with you and your staff to see that children in this country are kept safe and are protected against the many dangers and hazards they may face in the workplace.

ENDNOTES

¹[EDITOR'S NOTE: Not provided.]

²The data we have are based on the federal fiscal year, not the calendar year. Also, our data go only through 2006, because information on DOL's child labor enforcement is not on the DOL

Web site; the data are available through a Freedom of Information Act request only—we have filed a FOIA request but have yet to receive the information.

³A full-time DOL employee with a 40-hour workweek for 52 weeks is paid for 2,080 hours per year, but with time off for vacations, holidays, and sick leave for medical appointments and illnesses, actual working hours in a year are probably closer to 1,700 hours. Thus, the 48,005 child labor investigative hours in 2006 would require the equivalent of about 28 full-time employees.

⁴The National Institute for Occupational Safety and Health (NIOSH), relying on reports by DOL's Bureau of Labor Statistics and the Current Population Survey, estimates that 2.78 million 16- and 17-year-old children were employed in 2000, as well as over 450,000 15-year-olds, for a total of 3,230,000 youth workers. National Institute for Occupational Safety and Health (NIOSH) Recommendations to the U.S. Department of Labor for Changes to Hazardous Orders (May 2002), p. 3 ("NIOSH Report") (available at www.cdc.gov/niosh/docs/NIOSHRecsDOLHaz/DOL-recomm.pdf). The NIOSH Report has no estimate for the number of youth workers under age 15. However, many children under this age do in fact work, as evidenced by DOL's Bureau of Labor Statistics estimate that 134 children under age 15 were killed on the job during the period 1992-1998 (see report on the Youth Work Force, revised November 2000, Chapter 6, p. 60 (Table 6.1), available at www.bls.gov/opub/rylf/pdf).

⁵This \$11,000 maximum penalty was increased by FLSA child labor amendments included in the Genetic Information Nondiscrimination Act, or "GINA" (which took effect on May 21, 2008), with regard to particularly serious child labor violations. Any child labor violation that causes death or serious injury now has a maximum penalty of \$50,000, which can be doubled where the violation is a repeated or willful violation. We don't know whether DOL has begun to impose these higher penalties, though they took effect over four months ago.

⁶The information about the Target Corporation child labor investigation comes from the Daily Labor Report of April 19, 2006, published by the Bureau of National Affairs in Washington, D.C.

⁷The information about the Wal-Mart child labor investigation is based largely on articles in The New York Times on February 12 and 21, 2005.

⁸FLSA section 16(e), 29 U.S.C. 216(e).

⁹National Institute for Occupational Safety and Health (NIOSH Recommendations to the U.S. Department of Labor for Changes in Hazardous Orders (U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control and Prevention, May 2002), p.12, available at <http://www.cdc.gov/niosh/docs/NIOSHRecsDOLHaz/default.html>.

¹⁰Ibid.

¹¹Id. at p. 7.

[Additional submissions by Ms. Greenberg follow:]
 ["Protecting Working Children in the United States," June 2005,
 may be accessed at the following Internet address:]

<http://www.stopchildlabor.org/pressroom/clc%20report.pdf>

["The Government's Striking Decline in Child Labor Enforcement Activities," September 2006, may be accessed at the following Internet address:]

<http://www.stopchildlabor.org/pressroom/CLC%20report%20Sept%202006.pdf>

Chairwoman WOOLSEY. Thank you. We will ask you for those recommendations.

Ms. Flores.

STATEMENT OF NORMA FLORES, FORMER CHILD WORKER

Ms. FLORES. Hi. Thank you for the opportunity to be able to share my story.

My name is Norma Flores, and I am just one of the estimated hundreds of thousands of farm worker children working hard to feed Americans every day. My four sisters and I began to work in the farm fields since the age of 12 during our summers and any other school breaks we had, but we weren't strangers to farm work at that age. Full-time work now meant 70 hours, including weekends, for weeks at a time with no days off.

Growing up in a family of many generations of farm workers, we thought life was supposed to be this hard for everyone. Even though we saw both of our parents work hard year round and spend every penny carefully, we grew up poor. This taught us to value all the possessions differently. We knew if we wanted a nice pair of sneakers or ticket to see a new movie, those would be things that would have to be earned with a lot of hard hours of difficult manual labor. But this was life to us.

We weren't informed of what rights we had or educated on what resources were available to help us. In the six years that I worked in the fields, I never saw an inspector out in the any of the fields that I was working in. Had I seen an inspector out there, I would have pointed out the lack of clean bathrooms, sometimes half a mile away, and the lack of places to wash our hands after handling plants covered in pesticides. I would have pointed out the missing drinking water and the containers with day-old water that we had to drink from at times. I would have pointed out the underage children allowed to work out there during regular school hours.

Working in the cornfields of Indiana or in the asparagus fields of Michigan, it felt like we were at the mercy of contractors, with no one to look out for us and no one to turn to for questions or concerns. One of the most terrifying moments in my life was when an airplane accidentally sprayed pesticide over the field we were working in. We ran out frantically across the street and immediately called our contractor. He simply apologized and asked us to go to another field to continue our workday. Who were we supposed to contact in case we got sick from the pesticides? How would we know?

Farm labor is difficult and dangerous work. We are exposed to many chemicals that can damage our health, and migrant farm workers don't have benefits like health insurance to help us with expensive medical treatments.

We are exposed to long hours and hot summer months with backbreaking labor. We work with sharp tools and heavy machinery that can cause a lot of damage if not used properly. Yet, as children, we are trusted to have the ability and maturity to handle all of these dangers carefully.

I have seen too many times accidents in which children working beside me have gotten deeply cut and infected with sharp tools we work with or sick from the chemicals we work around.

Children at age 12 would not be allowed to work making copies in air-conditioned office or cleaning floors at a local store, yet today, in America, children can legally work in harsh conditions out in the farm field for wages sometimes below minimum wage.

Like all other Americans across the country, the migrant community is also concerned about today's economy. We see in the news how gas prices and the cost of living are on the rise. Yet what we don't see rising are our wages. Since Cesar Chavez, no major improvements in the life of migrant farm workers have been made. They continue to receive the same pay as decades ago.

Growers claim that wages must be kept low in order for food prices to stay affordable, but at what price? Is it worth it to exploit children and hurt their futures so you won't have to pay cents for

your groceries? Even this isn't saving Americans from the rising food price inflation.

By giving fair wages, migrant families will no longer need their children to work to supplement their incomes, and these farm worker children can focus on their studies instead of worrying about pending family bills.

I was blessed to have parents that put my education as a top priority and migrant youth programs that helped give the educational support I needed to get through my education. After overcoming many educational hardships, including interrupted school years and different State school systems, I was able to graduate from one of the Nation's leading high schools and complete college in 3½ years. Even though my family continues to work in fields of Iowa and Texas, I am proudly working in an international public relations firm in downtown Chicago.

Other farm worker children aren't so fortunate. I believe at least two-thirds of migrant farm worker children drop out of high school before graduation from the pressures of migration, changing schools, and exhaustion. This dooms most of them to a life of poverty.

Farm worker children continue to be an ignored injustice today in the United States, the world's greatest country. The information is out there, but many choose to look the other way. Just Google migrant farm worker children and you will get over 87,000 results. Exploitation of children, regardless if it is done legally or illegally, needs to stop today. It is more than doing what is right; it is also about changing the lives of these children and giving them the opportunity to make a few for themselves.

[The statement of Ms. Flores follows:]

Prepared Statement of Norma Flores, Former Child Worker

My name is Norma Flores and I am just one of estimated hundreds of thousands of farmworker children working hard to feed Americans every day. My four sisters and I began to work in the farm fields since the age of 12 during our summers and any other school breaks we had, but we weren't strangers to farm work at that age. Full-time work weeks now meant 70 hours—including weekends—for weeks at a time with no days off. Growing up in a family of many generations of farm workers, we thought life was supposed to be this hard for everyone. Even though we saw both of our parents work hard year-round and spend every penny carefully, we grew up poor. This taught us to value all of our possessions differently. We knew if we wanted a nice pair of sneakers or a ticket to see a new movie, those would be things that would have to be earned with a lot of hard hours of difficult manual labor.

But this was life to us. We weren't informed of what rights we had or educated on what resources were available to help us. In the six years that I worked in the fields, I never saw an inspector in any of the fields I was working in. Had I seen an inspector out there, I would have pointed out the lack of clean bathrooms sometimes half a mile away and the lack of places to wash our hands after handling plants covered in pesticides. I would have pointed out the missing drinking water and the containers with day-old water we had to drink from at times. I would have pointed out the under-age children allowed to work during regular school hours. Working in the corn fields of Indiana or in the asparagus fields of Michigan, it felt like we were at the mercy of the contractors with no one to look out for us and no one to turn to for questions or concerns. One of the most terrifying moments of my life was when an airplane accidentally sprayed pesticides over the field my family and I were working in. We ran out frantically across the street and immediately called our contractor. He simply apologized and asked us to go to another field to continue our work day. Who were we supposed to contact in case we got sick from the pesticides? How would we know?

Farm labor is difficult and dangerous work. We are exposed to many chemicals that can damage our health and migrant farmworkers don't have benefits like

health insurance to help us with expensive medical treatments. We are exposed to long hours in hot summer months with back-breaking labor. We work with sharp tools and heavy machinery that can cause a lot of damage if not used properly. Yet as children, we are trusted to have the ability and maturity to handle all of these dangers carefully. I have seen too many times accidents in which children working beside me have gotten deeply cut and infected with the sharp tools we work with or sick from the chemicals we work around. Children at age 12 would not have been allowed to work making copies in an air-conditioned office or cleaning floors at a local store, yet today, in America, children can legally work in harsh conditions out in the farm fields for wages sometimes below minimum wage.

Like all other Americans across the country, the migrant community is also concerned about today's economy. We see in the news how gas prices and the cost of living are on the rise. Yet what we don't see rising are our wages. Since Cesar Chavez, no major improvements in the lives of migrant farmworkers have been made. They continue to receive the same pay as decades ago. Growers claim that wages must be kept low in order for food prices to stay affordable, but at what price? Is it worth it to exploit children and hurt their futures so you won't have to pay cents more for your groceries? Even this isn't saving Americans from the rising food price inflation. By giving fair wages, migrant families will no longer need their children to work to supplement their incomes and these farmworker children can focus on their studies instead of worrying about the pending family bills.

I was blessed to have parents that put my education as a top priority and migrant youth programs that helped give the educational support I needed to get through my education. After overcoming many educational hardships including interrupted school years and different state school systems, I was able to graduate from one of the nation's leading high schools and complete college in three and a half years. Even though my family continues to work in the fields of Iowa and Texas, I proudly work in an international public relations firm in downtown Chicago.

Other farmworker children aren't so fortunate. I believe that at least two-thirds of migrant farmworker children drop out before high school graduation from the pressures of migration, changing schools, and exhaustion. This dooms most of them to a life of poverty.

Farmworker children continue to be an ignored injustice today in the United States, the world's greatest country. The information is out there, but many choose to look the other way. Just Google migrant farmworker children and you'll get over 87,000 results. Exploitation of children, regardless if it's done legally or illegally, needs to stop today. It's more than doing what is right. It's also about changing the lives of these children and giving them the opportunity to make a future for themselves.

Chairwoman WOOLSEY. Thank you.
Mr. Strauss.

**STATEMENT OF DAVID A. STRAUSS, EXECUTIVE DIRECTOR,
ASSOCIATION OF FARMWORKER OPPORTUNITY PROGRAMS**

Mr. STRAUSS. Representative Woolsey and members of the subcommittee, thank you for inviting me to testify this morning on the conditions endured by children who work for wages in the farms, fields, and orchards of America.

I also want to comment on the lack of enforcement of child labor laws in agriculture and recommend changes to the law that will give the same protections to children working in agriculture as other children enjoy.

My organization, the Association of Farmworker Opportunity Programs, is the national federation of organizations that conduct job training programs for eligible farmworkers throughout the United States. In the mid-1990s, our members noticed that in many places young children were preparing and harvesting crops. As they began looking into this, they realized that the Fair Labor Standards Act actually permits children as young as 12 and, in rare instances, as young as 10, to work in agriculture.

I am not talking about family farms, where sons and daughters of farmers learn the business firsthand at a young age. I am talking about farms that employ large numbers of workers that aren't related to the owners.

There are about 2.5 million people who earn their living, at least in part, by performing farm work in this country. Among them, tens of thousands migrate among various States each year, following the crops and seeking work wherever they can find it. Often, families travel from Texas or Florida to the upper Midwest, the Southeast, and the Northeast. In California, there are many workers that migrate long distances and often stay within that State.

They are typically paid miserably low wages, receive no job-related benefits and have no job security. The average farmworker family earns less than \$15,000 per year from all sources, well below the Federal poverty level.

In these situations, they sometimes require their children, like Norma, to work to help to bring in more income. While there are no reliable statistics on children that work in the fields, our research indicates that there are about 400,000 such young people below the age of 18.

The FLSA requires that they not work during school hours and when school is in session. That is virtually the only restriction in Federal law, along with the prohibition against hazardous employment for children 15 and younger. That means, as Norma said, that a 12-year-old kid can work 12 or more hours a day during the summer, on weekends, or during the school year, as long as those hours are outside of school time.

I have spoken with teenage children of migrant families who worked after school until midnight during a heavy harvest. That same child, if he worked in my office, could only work, at most, three hours during a school day. After school is out, and no more than 40 hours a week in the summer. And my offices are air-conditioned and comfortable; the fields are not.

One of my staff recently completed a two-week visit to North Carolina's blueberry fields and found dozens of children, some as young as six, working in 105-degree heat all day long for several weeks at a time. California, though, for example, has heat illness prevention standards to protect child workers, but the Secretary of Labor at the Federal level has not issued a hazardous occupation for excessive heat.

The toll on the children is real. Sometimes their families take them out of school before the end of the semester and return after the new school year begins. While in many places there are federally funded migrant education programs available, those programs aren't always congruent with those in the home State school, so children lose the credits they thought they were earning. They start the year behind and have to work doubly hard to catch up, even though they may be working in fields again after school.

The results are predictable. Most migrant children, perhaps more than 67 percent, drop out of school well before high school graduation. Without a diploma and without good jobs, they often end up continuing the cycle of poverty their parents hoped they could break. It is a tragic waste that we cannot and should not allow to

continue. Most of these children want to succeed. They know the meaning and value of hard work but are cut off from accessing the American Dream as soon as they drop out.

While we believe the law is not sufficiently protective of child agricultural workers, my staff has observed violation of current law over and over. For example, the staff member I mentioned earlier visited 12 farms and on those 12 farms saw 11 instances of the law being broken, where kids were under 12 years old, working. Where were the Wage and Hour people there?

This needs to stop. The Federal Government and the States need to make a renewed commitment to protecting our youngest workers. In addition, Congress should equalize the protections of these children with the rest of America's workforce. We support the CARE bill.

Finally, we must dramatically increase the Federal commitment to the development of farmworker children. Legal protections alone won't assure their progress, so we have to invest in those actions we know will keep them in school and allow them to become as successful as Norma has.

The reality is that, under our very noses, this country has a farm labor sector that resembles similar sectors in third-world countries. It is a disgrace that the people who prepare and harvest our food often barely earn enough to purchase the food that their families need to survive. The least we can do is protect their children and give them a chance at the American Dream.

[The statement of Mr. Strauss follows:]

Prepared Statement of David A. Strauss, Executive Director, Association of Farmworker Opportunity Programs

Representative Woolsey and members of the subcommittee, thank you for inviting me to testify this morning on the conditions endured by children who work for wages in the farms, fields and orchards of America. I also want to comment on the lack of enforcement of child labor laws in the agriculture industry and recommend changes to the law that will give the same protections to children working in agriculture as other children enjoy. The Association of Farmworker Opportunity Programs is the national federation of nonprofit and public agencies that conduct job training programs for eligible migrant and seasonal farmworkers throughout the United States. In the mid-1990s, our members noticed that in many places young children were preparing and harvesting crops, often but not always alongside their parents or other family members. As they began looking into this, they realized that the Fair Labor Standards Act (FLSA) actually permits children as young as 12 and in rare instances as young as 10 to work in agriculture. I'm not talking about family farms, where sons and daughters of farmers learn the business firsthand at a young age. I'm talking about working farms that employ large numbers of workers who aren't related to the owners. There are about 2.5 million people who earn their living, at least in part, by performing farmwork in this country. Among them, tens of thousands migrate among various states each year, following the crops and seeking work wherever they can find it. Often, families are traveling from Texas or Florida to the upper Midwest, Southeast and Northeast. In California, there are many workers that migrate long distances often within that state. They are typically paid miserably low wages, receive no job-related benefits, and have no job security. The average farmworker family earns less than \$15,000 per year from all sources, well below the federal poverty level. In this situation, they sometimes require their children to work to help bring in more income. While there are no reliable statistics on children that work in the fields, our research indicates that there are about 400,000 such young people below the age of 18. The FLSA requires that they not work during school hours when school is in session. That is virtually the only restriction in federal law, along with a prohibition against hazardous employment for children 15 and younger. That means that a 12 year old kid can work 12 or more hours a day during the summer, on weekends, or during the school year as long as those hours are outside of school time. I have spoken with teenage children of mi-

grant families who worked after school until midnight during a heavy harvest. That same child, if he worked in my office, could only work at most three hours during a school day after school is out, and no more than 40 hours a week in the summer. And my offices are air conditioned and comfortable. The fields are not. One of my staff completed a two week visit to North Carolina's blueberry fields this past June and found dozens of kids, some as young as 6, working in 105 degree heat all day long for several weeks at a time. California, for example, has heat illness prevention standards to protect child workers, but the Federal Secretary of Labor has not issued a Hazardous Occupation Order for excessive heat.

The toll on the children is real. Sometimes their families take them out of school before the end of the semester, and return after the new school year begins. While in many places there are federally funded migrant education programs available, those programs aren't always congruent with those in the home state school, so children lose the credits they thought they were earning. They start the year behind, and have to work doubly hard to catch up, even while they may be working in fields again after school. Their parents typically do not have much formal education and may speak English very poorly, so they aren't in the same environment of learning as most of their peers, nor can their parents afford tutors or other special aids. The results are predictable: most migrant children, perhaps more than 67%, drop out of school well before high school graduation. Without a diploma, without good job skills, they often end up continuing the cycle of poverty their parents hoped they could break. It is a tragic waste that we cannot allow to continue. Most of these children want to succeed, know the meaning and value of hard work, but are cut off from accessing the American Dream as soon as they drop out.

While in my opinion, the law is not sufficiently protective of child agricultural workers, my staff has observed violation after violation of FLSA provisions. For example, one staff member saw children below the age of twelve working for pay with no sign of any inspector. The law was broken in 11 of the 12 farms she visited; where were the wage and hour people? This needs to stop. The federal government and the states need to make a renewed commitment to protecting our youngest workers.

In addition, Congress should equalize the protections of these children with the rest of America's workforce. Amend the FLSA to protect children working in agriculture just the same as we protect children working in nearly every other industry. Representative Lucille Roybal-Allard introduced a bill (HR 2674) in June 2007 that would do just that. Finally, we must dramatically increase the federal commitment to the development of farmworker children. Legal protections alone won't assure their progress, so we have to invest in those actions we know will keep them in school and allow them to become as successful as Norma has. The reality is that under our very noses, this country has a farm labor sector that resembles similar sectors in third world countries. It is a disgrace that the people who prepare and harvest our food often barely earn enough to purchase the food that their families need to survive. The least we can do is protect their children and give them a chance at the American Dream. Thank you for your time and attention and I'll be glad to answer any questions you might have.

[Additional submission of Mr. Strauss follows:]

["Children in the Fields," May 2007, may be accessed at the following Internet address:]

<http://www.afop.org/CIF%20Report.pdf>

Chairwoman WOOLSEY. All right. Thank you.

Now, you have heard the bells ringing. We have five minutes to get down to the floor to vote. So I am going to take my first round of questions. I am going to ask Ms. Greenberg to finish her testimony. Then I will ask my questions on the second round.

When we come back, Mr. Kline will be the ranking member, and he will ask the next question, and then the rest of the committee will ask their questions.

Ms. Greenberg, go ahead. We have to get out of here when we have one minute left. So you have about 3½ minutes for me.

Ms. GREENBERG. I am overwhelmed with gratitude that no Member of Congress has ever done that for me. I greatly appreciate it.

We have a lot to say on this. We have recommendations for Congress, and that is increasing the funding for the DOL Wage and Hour inspectors. One of the primary reasons for lack of child labor enforcement is Wage and Hour is grossly understaffed, as you pointed out, Congresswoman.

The representative from DOL talked a lot about the education work and sort of the marketing and going to cities and towns to talk about Wage and Hour laws, but there is nothing that can replace strong enforcement. We just have way too few investigators going out there. The agency has become a paper tiger, as a result. Employers know that, and so they will engage in violations of the law because they know the chances that they are going to get caught are very slim.

Secondly, Congress should eliminate many of the special exclusions in agriculture. We certainly join Norma Flores and David Strauss in their very passionate and I think powerful statements on that. It is unconscionable for 12-year-olds to toil in 100-degree heat. So we would support your legislation certainly, and the CARE Act.

Congress should amend the law to raise the minimum age for doing particularly hazardous work to 18 and close all of those loopholes.

We also believe there should be a minimum penalty for child labor violation, say \$500, to make employers more likely to comply with child labor requirements. As I said, I think the Department's Wage and Hour right now is a paper tiger. It really needs to be strengthened. Employers need to know that they mean business when they set these laws.

So that concludes my testimony. I appreciate the time.

Chairwoman WOOLSEY. All right. It will probably be 20 minutes. So relax. Thank you for waiting for us.

[Recess.]

Chairwoman WOOLSEY. If everybody can get in their seat, Mr. Kline.

Mr. KLINE. Thank you, Madam Chair. And to our witnesses, thanks very much for being here today. Thanks for your patience. I am sure some of you have been here before and those of you who haven't know how this works. When we get called to vote, that trumps sort of everything we are doing on Capitol Hill, so I appreciate your patience.

Mr. Passantino, let me start with you, if I could. Could you describe, give us a little more amplification on Wage and Hour's compliance assistance activities? Does Wage and Hour, for example, educate growers through their associations on the rules with respect to the employment of child workers? Is that part of what you do?

Mr. PASSANTINO. Yes. We have an active compliance assistance program. As I mentioned during my testimony, I guess the centerpiece for our youth employment compliance assistance is what is called the Youth Rules program. Through Youth Rules and through other outreach, including agricultural associations and parent groups, we speak to students where we are trying to educate every-

one about their rights and responsibilities under the law so that they are aware, in the case of a teen, whether they are working in compliance, and to make employers aware of their obligations under the youth employment provisions.

Mr. KLINE. Could you give me some idea of the size of the effort? You have two people involved in this education thing, or 20, or how does that work? Give me a sense of the scope here.

Mr. PASSANTINO. I think it is fair to say that virtually everyone in the organization does some measure of it. It is primarily a manager function to provide compliance assistance, but our investigators provide compliance assistance as well. So there is not one specific person responsible for providing compliance assistance.

Mr. KLINE. I guess I am not sure about the size of the office. How many people are we talking about that would be engaged in this, since it is essentially a manager's function, you said?

Mr. PASSANTINO. There are about, I think, 200 managers, 730 or so investigators; so somewhere between 200 and a thousand.

Mr. KLINE. Thank you. And speaking of investigators, does the Wage and Hour Division have a staff of investigators dedicated solely to investigations of child labor violations, or is there a cross-over here? How does that work?

Mr. PASSANTINO. All of our investigators are trained to enforce all of the laws enforced by the Wage and Hour Division. That includes the Fair Labor Standards Act, which includes the child labor provisions, the Family Medical Leave Act, the Davis-Bacon Act, the Service Contract Act. All of our investigators are cross-trained in each of those statutes and enforcement of all of those statutes.

Mr. KLINE. Okay. Thank you. I have some familiarity with the farming sector. I have got an awful lot of farms in my district. My wife and I have a farm in southeast Minnesota, and I know it is very complicated in the farming business sometimes, trying to figure out who is in charge. I know that we have heard that there is a lack of inspections in the agricultural industry. We have heard some of that here today.

I also know, though, that there are sometimes duplicative inspections that occur in the industry and it would appear—and this is my experience—that there are a number of government agencies which share oversight of the workplace conditions in the agriculture industry, including perhaps the State Labor Office, OSHA, EPA, in addition to the Wage and Hour Division.

Would it be possible for the agencies which have jurisdiction in this industry, particularly in the areas of health and safety, to have some formal agreement to come together and determine who would conduct the inspections and share information? Has there been some effort to sort of corral that morass of agencies?

Mr. PASSANTINO. Sure. And we work with State agencies and we work with OSHA. When OSHA learns of, say, a child labor fatality, they will make a referral to us so that we can conduct our investigation. As far as—

Mr. KLINE. Excuse me, if I can interrupt. Do you then conduct an investigation and OSHA is out of it, or how does that work?

Mr. PASSANTINO. I believe that there are still going to be joint investigations or parallel investigations, and I suppose we can ex-

plore opportunities for coordinating with various agencies. But right now it is more of a notification-type process.

Mr. KLINE. It just seems to me that if there is a shortage of investigators, if you will, that it might be good to get some synergy out of this and not some duplication.

Madam Chair, I see that my time is about to expire so I will yield back. Thank you very much.

Chairwoman WOOLSEY. Thank you very much, Mr. Kline.

Mr. Strauss, you have said it, and we understand that the Wage and Hour Division's investigations are generally started as a result of a complaint from someone. In your experience, are children apt to complain? Do they know how to complain? And what should be changed to make that more available to them.

Mr. STRAUSS. My experience is, no, they would not complain. Frankly, neither would most adult farm workers complain about conditions. As Norma said, they don't know what their rights are, and if they did, they wouldn't know who to contact. How to cure that is a tough one.

That is why we think really more targeted and better enforcement is needed. I think it is unrealistic to think that people who are working in the conditions they are working in on farms are going to say; tonight I think I will be calling a Wage and Hour inspector. They may not have any phones or they may have traveled to a place where information is not available.

For example, when we had our staffers out in the blueberry fields of North Carolina, we didn't wake up—we weren't born knowing that that was a problem area. We found out about it. We believe that they can find out about it even more easily than we can, and can target those areas of agriculture at the right times of the year that are likely to have kids working. We would be glad to help the Department of Labor figure that out, but that would really make a difference. When the word goes out that they are on the case, you will see many, many fewer children under the age of 12 working on these farms.

Chairwoman WOOLSEY. So that takes me right to you, Mr. Passantino. You said that there are public service ads running and telling kids and farm workers where to go and how to complain. If there is not enough enforcement officers, what good would that do in the first place? They go, and then what happens?

Mr. PASSANTINO. First, I guess I would like to clarify that we understand that there are not as many complaints in child labor and in agriculture, and that is why we dedicate so much of our directed enforcement resources into those two program areas for youth employment and for agriculture.

I will also say, again, that with respect to youth employment in low-wage industries, when we do a low-wage targeted initiative in a particular area, part of that investigation is a determination of whether that employer is in compliance with the youth employment provisions in addition to minimum wage, overtime, those sorts of things.

With respect to our staffing levels, the President's fiscal year 2009 budget request requested an additional 75 FTEs. We obviously have not gotten that request.

So, yes, we acknowledge that we need additional staff to conduct investigations, but I don't think it is an accurate picture to just look at investigations that are coded in our system as primarily child labor. We look at child labor—

Chairwoman WOOLSEY. You told us that when a lot of the complaints are child labor they don't come in as child labor, right?

Mr. PASSANTINO. I'm sorry?

Chairwoman WOOLSEY. You said in your testimony that a lot of complaints are child labor that didn't start out child labor.

Mr. PASSANTINO. We don't get many complaints at all in child labor, but a lot of our cases—

Chairwoman WOOLSEY [continuing]. Turn out to be child labor.

Mr. PASSANTINO. I think it is around 50 percent. A little bit less than 50 percent of the violations that we find of child labor laws take place in cases that did not originally begin as a child labor case.

Chairwoman WOOLSEY. So let's take that and go to Ms. Flores, who absolutely would have benefited had there been some representation from the Federal Government at the properties you were working.

Did you have any idea how to complain, or if you could, or would you have?

Ms. FLORES. No. There wasn't any information. When I started working, we worked mostly in the States of Indiana and Michigan. We were—there was no break room. There was no common area for us to work. We were—when we worked out in the field, that is where we ate our lunch. It was just lunchtime and everybody just sat around the bus, sat around, trying to find some sort of shade and just ate out there.

So there was no actual public area for us to be able to post signs to be able to read any information. There was nowhere that said call this number for any questions, any concerns, any problems.

It wasn't until we actually went to Iowa, which were the last couple of years where I worked at that, I actually saw some sort of area that had some sort of number. But other than that, there was nowhere to be able to see—nobody was out there to educate us to let us know these are your rights, these are the things. We just went out there and worked, which is why I say we were basically at the mercy of the contractors, whatever information they gave to us, whatever they told us.

It is not like when you go to school that you get trained in your job and you get informed and you know everything that is going on. You just grow up in working in the fields, and that is just the way of life. So there was nowhere to go. And besides, a lot of growers share a lot of the same workers. So if you are a trouble worker, another grower isn't going to want to hire you if you are raising questions and raising concerns. That ends up putting your whole life, your whole family's life in jeopardy because if you don't have any work and nobody wants to hire you, then what else can you do?

Chairwoman WOOLSEY. Right.

Mr. Kline, do you have any other questions? Then I am going to keep going for just a little bit.

Ms. Greenberg, there is some sense that through DOL, when they have defended their low penalty rate for child labor infractions, that actually the company's bad publicity, the bad publicity of a company or a grower, would be worse than the penalty. Do you see that as any truth to that? Does that work?

Ms. GREENBERG. Well, no company, I suppose, likes bad publicity. But if you asked the average American consumer which companies had gotten into trouble for child labor violations, I think you would get a blank stare back.

So there is no real publicity given—that is one of the things we say in our testimony. There is no publicity given to—or effort to publicize that a company has engaged in these kinds of activities.

We have companies that are involved in multiple violations of the child labor law. So I don't think that is a very effective deterrent. It could be if there were more publicity, but I just don't see it happening.

Chairwoman WOOLSEY. All right. We aren't going to have any other members here. We have a very important meeting going on with our Democratic Caucus at this moment, and Mr. Wilson had another appointment.

And Mr. Kline, would you like to make a closing statement?

Mr. KLINE. Thank you, Madam Chair. Again, I would just like to thank the witnesses and apologize, I suppose, on behalf of the institution—that is sort of the way we work here—and we have a couple of gigantic issues in front of us this week. So there is a great deal pulling us off to various huddles of two or three or more as we try to work through how we are going to deal with this.

So thank you again for your testimony and for your answers and for your wonderful patience in helping us work through this. Thank you.

Chairwoman WOOLSEY. Thank you, Mr. Kline.

Ms. Flores, you laid it out perfectly. I mean, you painted the picture. Thank you so much and also thank you for getting through it and getting past the blockades. And you are going to make a difference in a lot of lives because of who you are. Thank you.

And Mr. Passantino, your heart is in the right place and I really—I sound like President Bush; I am connecting with your heart. I don't mean it that way. You mean well, let me put it that way. But we need to do much, much more.

But thank you and thank you all for your testifying today. What you have told us is very informative, and we must have a renewed commitment to the child labor laws and this subcommittee will be taking up child labor laws at the very beginning of the next Congress, I can assure you of that.

With over 3 million children employed in the United States each year, they must be protected. And I believe that whatever we do to enhance the DOL and child labor laws, that we bring the farm worker kids right in with it, that we don't have two separate kinds of children. How ridiculous. So we will do better. We will work together and maybe you will all come back and help us put together the strengthening of DOL laws.

So thank you very much. You have been very, very helpful.

So as previously ordered, members will have 14 days to submit additional materials for the hearing record. Any member who wish-

es to submit follow-up questions in writing to the witnesses should coordinate with Majority staff within 14 days.

Without objection, the hearing is adjourned.

[The statement of Ms. Roybal-Allard follows:]

**Prepared Statement of Hon. Lucille Roybal-Allard, a Representative in
Congress From the State of California**

Madam Chair, thank you for holding this hearing on the U.S. government's enforcement of child labor laws. The enforcement of our existing child labor statutes is insufficient at a time when our nation's youth remain very much at risk of suffering serious and even fatal injuries on the job. Though accurate data is scarce, estimates indicate that sixty to seventy children die annually in the workplace¹ and another 230,000 are injured.² Yet, the Department's Wage and Hour Division had thirty-five percent fewer employee hours dedicated to child labor investigations in 2006 than it did in 2001.³

The need to better protect working children is particularly evident in the agricultural sector. In fact, children working in agriculture are six times more likely to die on the job than youth working in non-agricultural occupations.⁴ Agricultural work is more dangerous for youth in part because the law affords weaker protections for children working in this field compared to protections provided to children working in other industries.

Under the 1938 Fair Labor Standards Act (FLSA), children working outside of agriculture are not allowed to perform tasks deemed by the Secretary of Labor to be particularly hazardous. However, that same statute allows youth aged sixteen- and seventeen-years-old to perform hazardous tasks in agriculture.

This dangerous double-standard may have made more sense seventy years ago, when twenty-five percent of Americans lived on farms and when many of those children working in the fields were doing so on their families' lands. In 2008, however, only roughly two percent of Americans live on farms, and farm laborers are often migrant workers unrelated to the farm's owners. Working in farms and orchards sprayed with carcinogenic pesticides and groomed by dangerous machinery, child farmworkers are exposed to serious risk of injury, illness or death.

The FLSA not only fails to ensure the safety of children when they are working in agriculture, it also fails to guarantee that these children have the same educational opportunities as children working in other industries. Other than prohibiting children from working during school hours, current federal law allows farmworker youth to work unlimited hours before and after school, and on weekends when school is in session. By contrast, on school days, fourteen- and fifteen-year-old children working in non-agricultural jobs are prohibited from working more than three hours a day or past 7:00 in the evening. Similarly, these children are prohibited from working a total of more than eighteen hours a week when school is in session.

The result of this double-standard in federal child labor law is that non-agriculture child workers have time to complete homework and get sufficient rest, while child farmworkers do not, therefore often arriving to class exhausted and unprepared. This unfair and irresponsible federal approach to agricultural child labor has contributed to a fifty percent dropout rate among those youth who regularly perform farm work.

I have introduced the Children's Act for Responsible Employment, or "CARE Act", to bring labor standards for youth farmworkers in line with the standards that govern the employment of youth in industrial, office and all other settings. This legisla-

¹Child Labor Coalition, *Protecting Working Children in the United States: Is the Government's Indifference to the Safety and Health of Working Children Violating an International Treaty?*(June 2005), p 9.

²Child Labor Coalition, *Advocacy Group Releases New Information from States Showing Ongoing Child Labor Enforcement Woes* (February 15, 2006).

³According to testimony by Sally Greenberg, Executive Director, National Consumers League, at the House Workforce Protections Subcommittee hearing on September 23, 2008, the Wage and Hour Division (WHD) spent 73,736 hours doing child labor investigations in 2001 and 48,005 hours doing so in 2006.

⁴According to the prepared statement of Alexander Passantino, Acting Administrator of the Wage and Hour Division of the Department of Labor, at the House Workforce Protections Subcommittee hearing on September 23, 2008. According to Human Rights Watch, *The Hidden Problem of Child Farmworkers in America: Facts and Figures* (2000), while about eight percent of employed youth work in agriculture, about forty percent of workplace deaths and nearly half of workplace injuries suffered by minors occur in our nation's fields, farms and orchards.

tion is created to protect children laboring in America's fields and orchards from needless threats to their health and educational achievement.

Specifically, the CARE Act raises the standard age for agricultural work to sixteen, matching the standard set for all other industries. As in all other industries, under the bill the Secretary of Labor would issue regulations specifying the conditions under which fourteen- and fifteen-year-olds can work in agriculture so that their employment does not interfere with the child's schooling or health and well-being.

The CARE Act also protects our children by strengthening safeguards against pesticide exposure and requiring increased reporting of pesticide use and violations. The bill guards against employers turning a blind eye to children working in their fields by setting a minimum fine and increasing the maximum penalties for child labor violations. And because there is currently little information on the challenges that child agricultural laborers face, the CARE Act will require a greater level of data collection from employers on injuries, illness and deaths of these young workers.

Madam Chair, we must do everything in our power here at home to protect the rights, safety and educational future of all our children. It is tragic that children who work in agriculture, one of this country's most dangerous occupations, are less protected under U.S. law and have fewer educational opportunities than juveniles working in other safer occupations.

This hearing represents a crucial first step to educating the public about the need for increased enforcement of our existing child labor laws and the unacceptable double-standard in our child labor laws. Thank you for your efforts to protect America's youth.

[Whereupon, at 12:25 p.m., the subcommittee was adjourned.]

