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ENDING ABUSES AND IMPROVING WORKING CONDITIONS FOR TOMATO WORKERS

HEARING

OF THE

COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS

UNITED STATES SENATE

ONE HUNDRED TENTH CONGRESS

SECOND SESSION

ON

EXAMINING ENDING ABUSES AND IMPROVING WORKING CONDITIONS FOR TOMATO WORKERS

APRIL 15, 2008

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ENDING ABUSES AND IMPROVING WORKING CONDITIONS FOR TOMATO WORKERS

TUESDAY, APRIL 15, 2008

U.S. SENATE,
COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS,
Washington, DC.

The committee met, pursuant to notice, at 10:01 a.m., in Room SD–430, Dirksen Senate Office Building, Hon. Bernard Sanders, presiding.

Present: Senators Sanders, Kennedy, and Brown.

Also Present: Senator Durbin.

OPENING STATEMENT OF SENATOR SANDERS

Senator SANDERS. Good morning, and thank you all for being here. Please sit down.

I am going to make a statement in a moment. But first, I want to introduce the Chairman of the committee, who was kind enough to put this hearing together, and we very much appreciate what he is doing today and what he has done for so many years to protect the needs of American workers.

Senator Kennedy.

OPENING STATEMENT OF SENATOR KENNEDY

The CHAIRMAN. Well, good morning. First of all, let me thank Senator Sanders for being willing to chair these hearings and for all of the good work that he has been doing on this issue, as well as many others. He has been a real voice for those who need a strong voice on their behalf—working families.

I am very, very personally appreciative of all of his leadership as I am for our other colleague, Senator Brown, who is an active member of this committee, and has a long history of involvement in terms of worker and worker family issues.

My colleague and friend Dick Durbin, not a member of the committee, but nonetheless, a very concerned, active, involved friend on this issue. I thank them all, and particularly my acting Chair today, Senator Sanders of Vermont.

A half a century ago, Edward R. Murrow and CBS broadcast a documentary exposing the plight of migrant farmworkers in Immokalee, FL. Airing shortly after Thanksgiving in 1960, "A Harvest of Shame" told the story of a neglected and mistreated class of Americans who worked long and back-breaking hours to put food on the tables of families across the Nation. The story shocked the

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conscience of the Nation and compelled us to speak out against these abuses.

The appalling conditions of farmworkers moved my brother President Kennedy and others to crack down on the abuses in the infamous Bracero program and end a dark chapter in our Nation's history. Later, when Robert Kennedy and I were both Members of the Senate's Migratory Labor Committee, we met with a group of migrant workers and saw their plight firsthand. Both of us were very moved by their plight, inspired by their campaign for justice and equality.

But too little has changed over the years. At today's hearing, we will hear about the challenge that still exists for migrant farmworkers in Immokalee, FL, and throughout the Nation, and how far we have to go to provide genuine fairness and justice for this vulnerable workforce. Farmworkers in Immokalee and nationwide have some of the hardest jobs in America. Yet they often toil for the lowest wages and under the most dangerous conditions.

For the tomato workers in Immokalee, the pay they receive hasn't changed in a decade. They head off into the fields before the sun rises, and they are still working hard when the sun sets. During the harvest, they work 10- to 12-hour days, 7 days a week with no overtime pay. They each pick as many as 2 tons of tomatoes per day, and they earn only $40 to $50 dollars for this hard day's work.

Their work can disappear for weeks or months, leaving them without the means to support their families. Their working conditions are deplorable. But most of them are afraid to demand fair treatment because they know they will be fired, blacklisted, or turned over to immigration officials. These conditions are not limited to Immokalee. They are widespread and getting worse.

Today, we will hear from a courageous campaign to increase the wages of tomato workers by a penny a pound. It may not sound like much, but for the tomato pickers, it means the difference between poverty and decent wages.

Several major companies, including Yum! Brands and McDonald's, have already recognized the urgent need and reached agreement with the coalition of Immokalee workers to pay an additional penny a pound. They have also adopted a code of conduct and agreed to have a third-party monitor whether the workers are, in fact, receiving the higher wages.

I commend these companies for demonstrating strong leadership on this issue. They understand that it is good business to pay workers fairly even if the law doesn't require it.

Shamefully, however, soon after the Immokalee workers began receiving the extra pay, the Florida tomatoes exchange rose up and threatened its members with $100,000 fines if they continued to make the extra payment to the workers, citing unspecified legal concerns. The growers exchange succeeded in blocking these increases.

Twenty-six prominent law professors have told this committee in a statement that any such concerns are unfounded. Yet the growers continue to stand in the way of fair wages for tomato workers. By meeting today, I hope we can ensure that the Immokalee workers will receive an extra penny a pound that they deserve. We will also

explore other widespread problems that the farmworkers have faced throughout America.

As Robert Kennedy said, "We must help those who have not been able to help themselves, whom society has not helped, whom the Federal Government has not helped, whom not enough States have helped. It is not only our responsibility in Government, it is also the responsibility of people who are in management, of those who are growers, and those who are employees and have some leadership ability. All of us must try to do something to rectify the situation, or it is never going to change."

As I mentioned, I commend Senator Sanders, Senator Durbin, Senator Brown for their leadership on this issue, and I particularly thank Senator Sanders for urging the committee to hold these hearings. I look forward to the testimony of our witnesses.

Senator Sanders, Senator Durbin that are here, Senator Brown, we want all to know that we are not letting up and giving in. We are staying after this issue. We want all of those, particularly the growers, to understand we are staying after this.

Thank you very much.

Senator SANDERS. Senator Kennedy, thank you very much.

Let me make a statement. Then I am going to introduce Senator Durbin, who has been so active on this issue.

Today, we are a very long way away from Immokalee, FL, and I remember visiting Immokalee mid-January. I think it was January 19. I remember, and won't forget, being in the town center, a large parking lot, where at 5:30 in the morning, it appeared that hundreds and hundreds of workers assembled in order to be determined whether or not they would be selected to get on a bus and go to work.

Many of these workers were selected, got on a bus, and went to the fields. Some of them were not selected, and we saw them after the buses left, sitting there dejectedly, not earning any income that day. That is one of the memories that I have, kind of the helplessness of people who just were sitting there without a day's pay.

In addition, I had the opportunity when I was in Immokalee to talk to a number of the workers. I learned that they make approximately 45 cents for every 32-pound bucket of tomatoes they pick. That is about a penny and a half per pound. This wage has not increased since 1998, and in fact, farmworker wages in general, beyond the tomato industry, have actually declined by about 65 percent in the last 30 years. So if it was bad back then, when Edward R. Murrow wrote about it, it is worse in many ways today after adjusting for inflation.

While I was in Immokalee, I also learned that while it is possible under optimum conditions—and we are going to explore this issue today—to make as much as $10 to $12 an hour, the average hourly wage is far lower than that, and, in fact, when you look at the income of the workers over a week or over a year, you are looking at abysmally low wages. In fact, most workers in the tomato fields earn about, as I understand it, $250 a week in income.

I also learned, and this is an important issue, that there is no overtime when workers work more than 8 hours a day or 40 hours a week. I also learned that there are no benefits. Now, working in the tomato fields is dangerous work. You are out in the hot sun.

People get injuries. But to the best of my knowledge, there are no healthcare benefits available to these workers.

What I also observed when I was in Immokalee was just awful housing conditions. What I saw were old trailers where some 8 to 10 workers were living, and they had to have so many people in a trailer because it took that much money—and I believe it was about $500 per person—to pay for the outrageously high rental. What I will say as a former mayor, that in my city of Burlington, VT, no housing like that would have been accepted or would have been allowed to exist. That is certainly the case. They are outrageous housing conditions.

Let me also quote at this moment from an editorial that appeared in the *St. Petersburg Times* just a few days ago on April 11. This is what this editorial said.

> "Is it really going to take an act of Congress to get Florida's tomato pickers a raise? The men and women who work the fields in Immokalee earn 45 cents on average for every 32-pound bucket of tomatoes harvested. It is a meager wage that has not been raised in more than 20 years. Yet when a couple of fast food giants generously agreed to pay workers an added penny per pound, the Florida Tomato Growers Exchange sabotaged the deal and has refused to negotiate even after congressional leaders offered to be intermediaries."

Then the editorial goes on to say,

> "The truth is that Florida's migrant farm laborers are among the worst-paid workers in the State. They haven't had a piece-rate increase in a generation, and the growers exchange wants to keep it that way even when someone else is willing to foot the bill."

That is not me. That is not Senator Kennedy. That is not Senator Durbin. That is the *St. Petersburg Times*.

Thankfully, due to the dedication and hard work of a number of people, including the Coalition of Immokalee Workers, the conditions that exist in the Florida tomato fields have begun to come to light.

I am very pleased that Lucas Benitez, a co-founder of the coalition, could be with us today to shed even more light on the subject. It is a direct result of the CIW's efforts to large fast food companies McDonald's and Yum! Brands, whose subsidiaries include Taco Bell, Pizza Hut, Kentucky Fried Chicken, Long John Silver, and A&W, have agreed to supplement the pay of these workers at a rate of an additional penny per pound for the tomatoes they buy. McDonald's and Yum! are to be commended for their commitment to help alleviate the despicable situation in the Florida tomato fields.

Sadly, however, some other fast food companies, like Burger King, continue to resist making a similar move, which, for a minimal cost, could almost double the income of the Florida tomato workers. In addition, the Florida Tomato Growers Exchange has threatened fines of up to $100,000 for any grower who cooperates in implementing the penny per pound agreement, something that I simply cannot comprehend.

I have met with Mr. Brown, and we are going to hear from him in a few minutes, with the Florida Tomato Growers Exchange, about the subject, and we will pursue this. I am glad that he is with us here today.

Unfortunately, this, as Senator Kennedy indicated, is not a new problem. Edward R. Murrow talked about it in 1960, but not much has changed in all of those years.

I would just want to say to all of my friends here, all of us know that we live in a global economy. I think, increasingly, all of us understand that when people eat food, they are not only looking at the quality of the food, which is important, they are not only wondering about where they get their clothing from, they also want to know what are the conditions that exist for the workers who produce the food, who produce the sneakers, who produce the clothing?

People are becoming more and more conscious about that. In my view, people are saying no to slavery, no to the kind of exploitation of workers that we are now seeing from those who are producing these tomatoes.

Last point that I would make—some may say, "Well, this is just a local Immokalee issue. It is a Florida issue." No, it is not. In America today, we are seeing a race to the bottom. The middle class, in many ways, is collapsing. Poverty is increasing. What I saw in Immokalee is the bottom in the race to the bottom. If we do not lift that bottom up, every worker in this country is in danger.

So it is terribly important that we understand how, in the year 2008, slavery can exist in Immokalee and how workers can be treated as badly as they are. I very much appreciate all of the panelists who are here today. I look forward to a wonderful discussion.

Now let me introduce Senator Durbin, who has played such an active role in this process.

Senator Durbin.

STATEMENT OF SENATOR DURBIN

Senator DURBIN. Thank you, Senator Sanders, for this hearing.

Senator Kennedy, thank you for your leadership on this, and Senator Brown as well.

This is an important hearing, and I thank all of the witnesses who are here. I want to thank especially Mr. Schlosser for his article in the *New York Times*, which brought this issue to my attention.

Mr. SCHLOSSER. Thank you.

Senator DURBIN. I wasn't sensitized to it. I didn't know what was going on. But thank goodness for your efforts in educating me and a lot of Americans about what we face.

As Senator Sanders said, this is not a new issue. It is an issue that has been around for decades. Edward R. Murrow, the legendary CBS analyst, really alerted America to this harvest of shame decades ago. Many things have changed since Edward R. Murrow's portrayal of this situation, but many things have not.

Florida's migrant farmworkers still live in shantytowns and earn basically the same wages that they earned decades ago. They lack labor protection, the same labor protections that they needed 50

years ago. Our society continues to depend on them to perform tough jobs.

You will find during the course of this testimony that some of our witnesses here will need interpreters and translators to be with them. They have come from other countries to do work which Americans will not do, cannot do, certainly wouldn't even consider doing for the amount of money that they are being paid.

This is a reality that we should face in America, and we have to ask some hard questions. It isn't just a matter of fair trade coffee at your local Starbucks. We are conscious and sensitive of that. It is a matter of whether that tomato on your hamburger or the tomatoes chopped up on your taco really come from a fair situation where the workers are being treated and paid fairly for what they do.

This is a photo of the Immokalee worker—and I want to call attention to it because Mr. Brown, who came to my office and met with Senator Sanders and I, told us that these workers are paid about $12 an hour. Please join with me in doing the basic math. What that worker is carrying is 32 pounds of tomatoes, roughly 100 tomatoes. For that bucket of tomatoes, that worker is paid 45 cents—40 to 45 cents.

Just show the next one, please. It isn't just a matter of picking them. That worker then has to take—if you will turn to the one with the truck, please? That worker has to carry the tomatoes, once picked, to the truck to be off-loaded before he returns to pick another bucket of tomatoes. Remember, 45 cents for 100 tomatoes.

Mr. Brown is going to tell you these workers make $12 an hour. Please join me in doing the math. How many tomatoes do you have to pick in 1 hour under those conditions to make $12? Almost 3,000 tomatoes. You have to fill that bucket and empty that bucket every 2 minutes, every 2 minutes. Is that physically possible? I don't think it is.

Listen to what Senator Sanders says about the workday for these people. Many of them don't know if they will get to work at all. Then when they come to the fields, they may have to wait an hour or more for the dew to come off the tomatoes before they can be safely picked and transported. So to suggest that these people are making dramatically more, maybe double the minimum wage in America is beyond any credible belief. That is what we are faced with here.

Companies of conscience, Yum! and McDonald's, came forward and said these workers deserve more. We will pay more. We won't ask the growers to pay it. We will pay it. McDonald's will pay it. Yum! will pay it for Taco Bell and the other companies that they manage. They came forward in what I think is a sensible, sensitive response to what is a shameful situation, a penny a pound. It meant that that bucket might no longer be worth 45 cents. It might be worth 75 cents, a dramatic change in wages for that poor worker.

Look at the conditions these workers live in. Show, if you will, David. This is the inside of one of the trailers that they live in. You can see the conditions. I don't have to say much about that. Now take a look at the outside of the trailers. As Senator Sanders said,

basic migrant workers living in pretty rundown conditions. That is fact.

So what did the Florida tomato growers say when these companies of conscience came forward and said we will give you an extra penny a pound out of our bottom line? Not only "no," they said, "we will fine you $100,000 if you dare pay them an extra penny a pound." That is why we are here. That is why we are here.

I don't understand it. We have met with Mr. Brown. I am glad he came. I appreciate his being here today. But I think the Florida tomato growers ought to step back and take a hard look at the position they are in today and many of the consumers of tomatoes are in today, and I think it gets to a very basic bottom line.

If Florida tomato growers can't live with workers being paid a penny a pound more, then I can live without tomatoes from Florida on my hamburger. I think most Americans will say the same. We can get by with it, if that is what it takes that people working in the United States will be treated humanely and decently, that we can consume the products grown in this country with a clear conscience. That is what this hearing is all about.

Thank you.

[Applause.]

Senator SANDERS. Thank you, Senator Durbin.

Senator Sherrod Brown of Ohio has long been a spokesman for American workers.

Senator Brown.

STATEMENT OF SENATOR BROWN

Senator BROWN. Thank you, Mr. Chairman.

Senator Durbin, thank you for always standing up, and Senator Kennedy, on the right causes and issues.

Mr. Schlosser, nice to see you and thank you for teaching us so much about workers all over our country and the world and how you have brought these issues forward.

There is not much more to say from what Senators Durbin and Kennedy and Sanders said. But I want to tell a little story because I think these issues are human rights issues, whether it is Tibet, whether it is murder of labor activists in Colombia, whether it is the way that workers are treated in this country.

About 2 years ago, my cousin, through her church, was working in a homeless shelter near Cleveland. She met a woman who was living there, who was in the homeless shelter, who was a full-time worker at the Cleveland airport. This woman and her co-workers had one of two jobs. They either pushed the wheelchair carts up and down the aisles there at the airport in the concourses, or they ran those little electric carts that they drove.

These workers were paid less than minimum wage, but they were supposed to get up to minimum wage and beyond by tips, which many didn't get much in tips because most people don't know these people. They figure they work for the airlines. These workers, none of these workers work for the airlines. They were subcontracted through some private group, and the airlines, of course, don't know how much these workers are paid.

But, so many people in our society now have—and I know this isn't exactly about the Immokalee workers. But so many workers

in our society now work in very, very prestigious corporations, where the companies pay generally good benefits, but these workers are subcontracted. They are cafeteria workers. They are push-cart workers at the airport. They are people that clean hotels. They are people that are security guards at television stations.

None of these businesses would want to stand the public heat of paying their own employees those kinds of sub-minimum wages, in some cases, with no benefits, no healthcare, no retirement. But they subcontract more and more of these. We are seeing this whole class of people in this country that are invisible, that are paid way less than a living wage, that companies kind of wash their hands of and most of us are unaware of.

I think that this hearing, coupled with the work that so many of you on this panel and so many of you in this room are doing to raise the visibility of workers that are ignored in this society, is so very, very important.

So, thank you for that.

Senator SANDERS. Thank you, Senator Brown.

Let me now introduce all of the panelists, and then we are going to go back and start with Mr. Benitez.

Lucas Benitez is a former tomato worker, and he is co-founder of the Coalition of Immokalee Workers in Immokalee, FL. We thank him for being here.

Charlie Frost is a detective with the Collier County Anti-Trafficking Unit in Naples, FL. I had the opportunity to meet him when I was down there, and thank you very much, Detective Frost, for being with us.

Eric Schlosser, as we have heard, is one of the outstanding writers in America. His book "Fast Food Nation" was a bestseller and opened up many vistas, I think, to people understanding what the agricultural economy is about. He is from Monterey, CA. We thank Mr. Schlosser for being here.

Mary Bauer is the Director, Immigrant Justice Project of the Southern Poverty Law Center in Montgomery, AL, and we thank you very much for being here.

Reggie Brown is the Executive Vice President of the Florida Tomato Growers Exchange in Maitland, FL, and we thank you very much for being here.

And Roy Reyna is a farm manager in Immokalee, FL. Mr. Reyna, we thank you very much for being here as well.

Let us begin the testimony with Mr. Benitez, and what I would appreciate is if the panelists could take 5 minutes of time. Then if you have a longer statement, please enter it into the record. Any size statement is fine, but keep your verbal comments to 5 minutes, please.

The CHAIRMAN. Could I just add its a special pleasure to have Mr. Benitez here. He was an award recipient of the Robert Kennedy Human Rights Award in 2003, as well as many national and other international awards. We have a very distinguished panel, but we have a very courageous spokesman for workers as well on this panel. We thank him.

Senator SANDERS. Thank you, Mr. Kennedy.

Also I should mention that Julia Perkins is going to be Mr. Benitez's translator. Mr. Benitez, the floor is yours.

STATEMENT OF LUCAS BENITEZ, FORMER TOMATO WORKER AND CO-FOUNDER, COALITION OF IMMOKALEE WORKERS, IMMOKALEE, FL

Mr. BENITEZ [Interpreted by Julia Perkins]. Buenos dias.

Good morning. It is a tremendous honor to be here today, testifying in front of this committee in such a storied institution as the U.S. Senate. I thank you for this once in a lifetime opportunity.

At the same time, of course, the reason I am here today is very troubling. The sad fact is that we are here today because there is slavery in the fields in the United States in the 21st century.

Exactly 200 years ago, in an act now mostly forgotten in the pages of history, the Congress of the United States voted to end the importation of slaves into this country. Two hundred years ago, the opponents of that law argued that slaves were happy with their lot, that they were certainly better off here than where they came from, and that agriculture in this country would surely collapse if that law were to pass.

Two hundred years ago, the choice before Congress seemed very complicated and controversial. But in the end, they voted in favor of human rights and advanced the cause of human dignity. Today, 200 years later, I sit before you representing the Campaign for Fair Food, a campaign with the objective of eliminating modern-day slavery and sweatshop conditions in the fields of Florida.

I work with the Coalition of Immokalee Workers. Our members pick tomatoes and oranges during 8 or 9 months of the year and then follow the crops up the East Coast during the summer. I came to this country from Mexico at the age of 17, and I began to work in the picking of oranges and tomatoes.

The job of picking tomatoes is hard and heavy, dirty and dangerous. You run all day long under a burning sun with a 32-pound bucket on your shoulder, carrying it from the row where you are picking to the truck where you dump it out and back, and that is when you aren't stooped over to pick tomatoes. At the end of the day, the cramps don't even allow you to sleep. Not only is your body exhausted, but so is your spirit after having to put up with the yelling of your supervisors all day long.

One day, my own experience, I was working, staking tomatoes, and I got ahead of the rest of the crew. When I stopped for a moment to catch my breath, the boss yelled at me, got down from his truck, and threatened to beat me up if I didn't continue to work immediately. I was alone in the middle of hundreds of acres of fields, miles from any town, and one of the reasons for our organizing the coalition was so that no one would ever have to feel that alone again.

For women who work in the fields, in addition to putting up with all of this, they have to also endure an environment that is charged with sexual harassment. All of this that you hear about right now is what happens to workers who are working free and not those who are working under forced labor. That is a completely different situation.

Others here will speak more in detail about modern-day slavery. But I assure you that the seven cases of modern-day slavery that have been uncovered in the fields of Florida are just the tip of the iceberg. Countless more workers have suffered the humiliation of

beatings, rapes, wage theft by their bosses over the past 10 years. Today, we are investigating more of those cases that haven't been to courts yet.

Truly my job here today, to paint a picture for you of the life of a farmworker, is almost impossible. It is so difficult because for years farmwork has been the exclusive domain of such a small and marginalized portion of the overall U.S. population that the vast majority of Americans for several generations now have no context in which to understand the reality of the work that we do.

The growers know this well. That is how they have been able to make the clear seem complicated and the obvious so controversial. Take the issue of wages, for example. Incredibly, even this issue that farmworkers are poor has been made complicated with the growers' statements that farmworkers earn an average of $12.46 an hour.

To dispute that, I could cite reports from the U.S. Department of Labor, an objective source that confirms the obvious—that farmworkers are the poorest and least-protected workers in this country. Or I could cite the opinion of a respected voice in the agriculture industry. He is the editor of Produce Business magazine, which says that growers' public relations strategy of focusing on an hourly wage can never cover up the fact that farmwork is a full-time job with irregular hours with which a worker will never be able to get his family out of poverty.

But these arguments are just more words. I want to make this issue as clear as possible. So I say to you today, fine, we will take it. If Mr. Brown can guarantee that $12.46 an hour, backed up by a verifiable system of hours with time clocks in the fields and thereby eliminate the antiquated system of work by the piece, then we will take it. If they already say that they pay $12.46 an hour, there should be no problem with actually paying that wage.

However, unfortunately, I don't think I have to be a fortune teller to know what the response will be. If we really want to put an end to this eternal debate about farmworkers' wages, it is simple. The tomato industry can simply implement a surcharge in the same way they have done three other times in the last few years to cover other production costs, like diesel and pesticides.

Just like the other surcharges, there will be no impact on the market. But in this case, the money won't go to Exxon or to Monsanto, but will go directly to the families of the farmworkers—or the workers of the poorest workers in this country.

To close, I want to tell you another story from our past. In 1997, after a 30-day hunger strike by six of our members, a friend of ours asked one of the growers why they weren't willing to sit down and talk with us. The grower answered, "Let me put it to you like this. The tractor doesn't tell the farmer how to run his farm." That is how they have always seen us, just another tool and nothing more.

But we aren't alone anymore. Today, there are millions of consumers with us, willing to use their buying power to eliminate the exploitation behind the food they buy, and a new dawn for social responsibility in the agricultural industry is on its way. With the help of Congress and with the faith that the complicated will be made clear under the purifying light of human rights, today, just as it was 200 years ago, we will witness the dawn of that new day.

Thank you, Senator Kennedy, Senator Sanders, Senator Brown, Senator Durbin, and thank you to all who are here listening to us today.

[The prepared statement of Mr. Benitez follows:]

PREPARED STATEMENT OF LUCAS BENITEZ

Good morning. It's a tremendous honor to be here today testifying in front of this committee in such a storied institution as the U.S. Senate. I must say, my parents never could have dreamed I would be sitting at this table in this place, and I thank you for this once in a lifetime opportunity. At the same time, of course, the reason I am here is very troubling. The sad fact is that we are here today because there is slavery in the fields in the United States in the 21st century.

Exactly 200 years ago, near this very spot, men in your position voted to outlaw the importation of slaves into the United States. That little known act did not end slavery, but it was an important step toward the eventual abolition of that brutal institution.

At the time, moving to ban the slave trade was a complex, controversial and courageous decision. Those who supported the status quo argued that most slaves were happy with their lot, that they were certainly better off than where they came from, and that the economic collapse of U.S. agriculture would surely follow. Fortunately, the moral arguments of a growing movement of abolitionists—an alliance of consumers with slaves and former slaves—prevailed. Indeed, their campaign launched what is today the modern human rights movement.

Two hundred years later, time has stripped away the complexity and controversy surrounding the Act to Prohibit the Importation of Slaves, leaving only the now-obvious moral correctness of Congress' decision to protect and further human dignity.

Two hundred years later, I sit before you representing a new movement for fundamental human rights in this country's agricultural industry—the Campaign for Fair Food. Our campaign is a growing alliance of farmworkers and consumers calling for an end to modern day slavery and sweatshop conditions in Florida's fields. And like the original abolitionists, we come to you today in the hope that our Congress will once again help advance the cause of dignity and human rights in this country's fields.

The organization I helped found, the Coalition of Immokalee Workers, is spearheading the Campaign for Fair Food. The CIW is a membership organization made up largely of migrant farmworkers, with over 4,000 members in Immokalee and around the country. Our town, Immokalee, is really more of a labor reserve than a traditional community. It is the largest farmworker community in Florida and provides labor for the heart of the State's fruit and vegetable industry. Our members pick tomatoes and oranges 9 months of the year in Florida, and then follow the crops up the East Coast, as far as New York, during the summer harvest.

I myself immigrated to work in U.S. fields at the age of 17. I am the second of six children of Mexican peasants from the highlands of Guerrero. I came to the United States as a teenager with the hopes that through my work in this country I could support my parents and siblings. In 1994, I was picking oranges and tomatoes in Immokalee when I noticed an invitation taped to a wall in town and began participating in evening meetings with a handful of other workers after our long days of work. Our small group gathered in a room borrowed from the Our Lady of Guadalupe Catholic church to discuss the extreme poverty and brutal mistreatment we shared in common in the hope that, by working together, we could improve our community and our working conditions.

One day during that time, when I was hammering the stakes to which tomato plants are tied in the fields, one of the bosses started yelling at me, got down from his truck, and threatened to beat me up. He thought I was not working hard enough, when in fact I had gotten ahead of the other workers and was merely catching my breath while they caught up to me. There, in the middle of hundreds of acres of fields, miles from any town, I faced my boss's threats alone. None of the other workers, crippled by the overwhelming climate of fear in the fields, dared stand up to him. Holding a tomato stake in my hand, I managed to face him down that day, but I was lucky. The new group that I was meeting with in the evenings wanted to make sure no one would ever feel that alone again in the fields.

Today, nearly 15 years later, that small group has become a nationally respected leader in the fight to end farmworker exploitation.

CIW ANTI-SLAVERY EFFORTS

We did not set out to be an anti-slavery organization. In the summer of 1992, however, while CIW members were visiting a labor camp in South Carolina, they encountered a young woman, Julia Gabriel, and her friends who explained that they had fled another labor camp on an isolated farm after a worker there had been shot for wanting to leave. Over time, others from her crew told of 12-hour workdays and 7-day work weeks, of being awaken at dawn by gunshots instead of alarm clocks, of a young man who was beaten for telling other workers that forced labor was illegal in the United States, of women sexually assaulted by the crew bosses, and of earning no more than $20 a week in wages, once "deductions" for transport to the job, rent, food, and so forth were taken out. More than 400 workers suffered this plight.

After 5 years of the CIW investigating and pressuring the Government to act, the young woman who escaped saw her captors sentenced to 15 years in Federal prison. Her employers were prosecuted on slavery, extortion, and firearms charges, using the same laws passed just after the U.S. Civil War prohibiting peonage. Julia Gabriel is now a CIW member and winner of the Robert F. Kennedy Human Rights Award for her ongoing activism

But was that case perhaps an anomaly? Was it just "one bad apple," as one agricultural industry lobbyist put it when pressed by a journalist 10 years ago? Certainly no one in the agricultural industry or the corporations that bought the produce Ms. Gabriel and her colleagues picked spoke out after the sentencing. Their response was a deafening silence. There were no outraged calls for reform, no contracts cut—the vegetables kept flowing to the market without so much as a hiccup.

But then our members uncovered another operation, this time just outside of Immokalee. That operation was prosecuted on slavery charges in 2000. Two bosses were ultimately convicted for holding dozens of workers in a trailer deep in the swamp of Southwest Florida and forcing them to pick tomatoes for virtually no pay. The manager of the farm where they worked—Manley Farms—said he had no idea whatsoever that the workers were being held against their will.

After that case, another. Late one night, we received a call from my brother, who worked for a taxi-van service catering to migrant farmworkers. "I called 911 emergency"—he said—"we are being attacked by men with guns! They look like bosses!"

We immediately drove an hour north to Lake Placid, to find a scene of blood, broken glass, and terrified workers at a store on the side of the highway. This time, the passenger vans had made a scheduled stop to pick up workers wanting to leave Lake Placid to go elsewhere—but the armed gunmen, crew bosses, didn't want their workers to be free to leave. So they held up the passengers at gunpoint, beat the van drivers, and pistol-whipped the owner of the van service, splitting his head open and leaving him unconscious, saying, "You're the SOB's who are stealing our workers!" During the years-long investigation of those bosses, we had to help terrified workers escape the camp. Those workers later testified in Federal court, and again, the crew bosses received 15-year sentences on slavery and firearms charges.

In all of these cases we are speaking of modern-day slavery, in the form of debt bondage, different of course from the legally sanctioned chattel slavery of the plantation era. Workers caught in this brutal trap soon learn they cannot leave until they pay off their debt. Employers enforce this system of servitude through violence or threats of violence, their power imposed in many cases by armed guards through beatings, shootings, and threats of death to families back home.

When we use the term slavery we confine it to operations that have met the high standard of proof necessary to prosecute under Federal law—anti-slavery laws based on the 13th Amendment of the U.S. Constitution and a new law enacted in 2001, The Trafficking Victims Protection Act (TVPA). The TVPA is designed to guarantee that victims' human rights are respected. In fact, the first case I spoke of, involving Julia, was one of the seminal cases leading to the drafting of the new law.

It is important to understand that, while the cases I've mentioned here involve immigrants, that is only because the workforce as a whole in Florida is today mostly immigrant. But forced labor pre-dated the relatively recent arrival of immigrant workers in Florida's fields. Thirty years ago, when the farm labor force was mostly U.S. citizens, a significant percentage of the workers were also held in forced labor. Citizenship is not the key factor—the drastic imbalance of power between workers and employers is. These brutal conditions have existed virtually unchanged for many, many decades, independent of the changing status of the workers who toil in our fields.

In fact, our most recent prosecuted case involved an employer working a crew in fields in the small rural town of Palatka, FL. That boss received 30 years in jail for what the Department of Justice called the "worst form of servitude." His wife

received 15 years and his son 10 years. They recruited homeless U.S. citizens, mostly African-American, from homeless shelters, with promises of a roof over their heads and a good job. The workers found themselves locked in debt in isolated rural labor camps in Florida and the Carolinas, in fear and penniless. It's a chilling illustration of how fragile human rights truly are, and how they constantly need defending and expanding.

This too is important to keep firmly in mind: the investigative work we do is vital, but it is cleaning up an abuse after it has already happened, that is, when it's already too late. Here we have workers who've escaped describe the experience as, "I feel I came out of the darkness into the light," or "I came from death back to life." It is outrageous that anyone has to go through that in this day and age, or that we even have to have an Anti-Slavery Campaign at all. But there is a way to prevent this from happening in the first place.

CIW CAMPAIGN FOR FAIR FOOD

Eliminating existing slavery operations, while absolutely imperative, is nonetheless treating the symptom, not curing the disease. So while we of course will continue to investigate and help prosecute slavery cases as they arise, we must cure the disease, and prevent modern-day slavery from taking root in the first place. To do so, we are working together with consumers—in the tradition of the abolitionist movement—as allies. As allies fighting together in our Campaign for Fair Food, we have arrived today at the threshold of a more modern, more humane agricultural industry. But before I explain where that campaign stands at this moment, I'd first like to describe a bit of the road that has brought us to where we are.

Workers in Immokalee endure terrible exploitation—and I speak here of the majority of farmworkers, those who are free, not held in forced labor. In the agricultural industry, "sweatshop" conditions prevail, what we call "sweatshops in the fields." The conditions are similar to those in factories at the turn of the 20th century in the United States—subpoverty wages, no benefits (that is, no health insurance, no sick leave, no pensions), no right to overtime pay, and no right to organize.

Like sweatshop workers a century ago, workers who pick tomatoes today are paid not by the hour but by an antiquated piece rate system—at an average rate of 45 cents a bucket—a rate which has not risen significantly in 30 years. But unlike a factory, there is no roof over your head. Rather you work—half the day bent-over, half the day running from your row to the truck and back—all day under the broiling sun. You're constantly on the move, looking for jobs from farm to farm, State to State. You live in trailers or shacks, 10–12 men per trailer, with exorbitant rents that can only be met by extreme overcrowding. Most workers have no cars, no phones in homes, no heat, no air-conditioning (in Florida!), none of the amenities taken for granted in the United States.

We began organizing against this grim reality as a few dozen workers, and held a general strike of 3,000 workers in 1995, beating back a wage cut. In 1997, six CIW members organized a 30-day hunger strike, their only demand: dialogue with the growers. Christmas passed, and then New Year's. A striker went to the hospital, and still no word. The growers' resistance was not so much economic but rather based on a refusal to shift how they view their workers. They had a deep-rooted aversion to seeing workers as employees instead of as peons or, worse still, machine parts. Back then, a friendly businessman told us of how he asked one of the growers, "Why don't you all go down to Immokalee and simply talk to the workers?" The grower responded, "**Because a tractor doesn't tell the farmer how to run the farm**."

In the following years we organized two more general strikes and a 240-mile march across Florida, and though our strikes brought about the first raises in 20 years, it grew increasingly clear that systemic change was not going to come from confronting the growers. In response to our pressure, growers claimed that they were caught in a "cost-price squeeze" with pressure from their buyers for ever-lower prices leaving them unable to raise wages.

Corporate buyers from the fast-food industry do indeed pool the purchasing power of tens of thousands of restaurants to demand the lowest possible prices for their produce. That downward pressure on prices at the farm gate is translated directly into downward pressure on farmworker wages in the fields, and so in this way the major buyers of Florida produce are in fact a driving force behind the increasing misery of our members. Fast-food profits from farmworker poverty.

As we came to realize this, we also came to realize that if fast-food giants can wield buying power to depress wages and working conditions, they can also use that power to demand fairer conditions and help improve wages. The same mechanism that draws profits to the top of the food industry can be reversed to return a tiny

part of those profits back down the supply chain to those who have been impoverished for so long at the bottom of that industry.

And so the Campaign for Fair Food was born.

We began our campaign after finding out that Taco Bell, a major fast-food chain in the United States, bought its tomatoes from a major grower based in Immokalee. A year after first contacting Taco Bell and receiving no response, we launched a national boycott campaign. With the growing support of students, religious, and labor allies across the country, we were able to win that boycott after 4 years, establishing three key precedents for fair labor standards in agriculture:

- a penny more per pound to be passed directly on to the workers
- a supplier code of conduct establishing fundamental human rights in the field, including the first enforceable zero tolerance policy against slavery and certain other abuses
- a guaranteed role for workers in drafting, enforcing, and monitoring the code in the fields.

Starting in March 2005, workers harvesting for Taco Bell began receiving a check from Yum! Brands for the additional penny-per-pound of tomatoes harvested. For two seasons, workers received two checks at pay time, one from their employer and a second from Taco Bell for the bonus.

We then turned to McDonald's, and 2 years later, came to an agreement that expanded upon the Taco Bell agreement, involving the development of an industry-wide supplier code of conduct and a third-party monitoring system, with worker participation in its implementation.

Soon after, Taco Bell's parent company, Yum! Brands—owner as well of Pizza Hut, KFC, and others—extended the agreement to cover all of its five brands.

So with the leadership from both the world's largest restaurant system (Yum! Brands) and the world's largest restaurant chain (McDonald's), the road to systemic change was laid out, and a functioning, workable model was in place. Other corporations serious about social responsibility now needed only to agree to participate and dramatically improve the lives of the farmworkers picking the tomatoes that end up in burgers and sandwiches.

As the current season began last fall, we stood on the threshold of a more humane agricultural industry in Florida—until the tomato growers' lobby, the Florida Tomato Growers Exchange, stepped in the way. The FTGE imposed a $100,000 fine for any of its members that would participate in the Yum! or McDonald's agreements, and as a result, the penny per pound payments to workers that began in 2005 have been temporarily halted.

The other Yum! companies were due to initiate the penny-per-pound payment in the fall of 2007 as a result of a voluntary agreement by Yum! Brands. The McDonald's agreement was also due to begin with the fall 2007 picking season.

Today, however, both agreements are being held hostage by the resistance posed by the FTGE. It is important to emphasize that both Yum! Brands and McDonalds remain firmly committed to the agreements and continue to pay the penny per pound into escrow accounts.

But it is equally important to understand that already poor workers have seen their income cut as a result of the threatened fine.

The FTGE's threatened fine cannot keep us from continuing to build an historic alliance of workers and consumers for slavery-free, exploitation-free food, however. That alliance is key to bringing an end to the sweatshop conditions that allow slavery to persist, through moving more and more corporations to take responsibility for abuses in their supply chains. The movement is growing. Consumers don't want to partake in the exploitation of farmworkers through their food purchases, farmworkers understand the dynamics that underlie their poverty, and social responsibility in the U.S. food industry is inevitable. It is today not a question of if U.S. agriculture will have to face up to this fact, but when.

WHAT ARE THE SOLUTIONS TO THE CURRENT ABUSIVE CONDITIONS IN THE FIELDS?

I want to put this plainly, farmwork is not like any other job. Farmwork is a full-time job with irregular hours. Some weeks you'll work overtime. Some weeks you'll work part-time. Some weeks you won't work at all. But you have to be available every day, or you won't have a job. In the vast majority of picking jobs, you get paid for what you pick, not for the hours you work.

That's why farmworkers are poor. If we want farmwork—one of the hottest, most difficult, most dangerous jobs this country has to offer—to be less degrading and more dignified, if we want it to be stable employment, then we have to raise the pay workers earn when they are working, because they only get paid when they are

working. That means a raise to the piece rate is essential, although it is not all that should be required.

1. The first, best way to raise the now-stagnant piece rate paid to tomato pickers is for the Florida Tomato Growers Exchange to impose an industry-wide surcharge of one penny per pound of tomatoes to cover the increased cost of labor, just as it has done three times in the last 10 years to account for other production inputs, such as the cost of chemicals, fuel and palletization.

2. In the absence of an industry-wide surcharge, Congress should insure that the FTGE is required to eliminate its threat to fine, or otherwise retaliate against, willing growers who agree to participate in the agreements like those that the CIW has reached with Yum! Brands and McDonald's. Those agreements represent a pure market solution to an intractable situation that has resisted progress for over 100 years. Without artificial and coercive intervention by what is essentially a tomato cartel, this market solution will indeed succeed in bringing needed change to the agricultural workplace.

3. Congress should also mandate the development and implementation of an accurate time record system, specifically including time clocks (as is the case in factories), designed in such a way as to allow the workers themselves to determine and demonstrate whether they are getting credit for all the time they actually spend in the fields.

4. Congress should eliminate the farmworker exemption from the overtime requirement of the Fair Labor Standards Act.

5. Congress should require the development of a multi-employer system for providing health and other common employee benefits to farmworkers, so that the benefits are available as those workers move from job to job and employer to employer within the agricultural industry.

6. Congress should examine other ways to protect farmworkers' fundamental human rights, including but not limited to a right to organize without fear of retaliation, taking into account the unique hurdles faced by farmworkers who might seek to exercise those rights.

Senator SANDERS. Thank you very much, Mr. Benitez.

Charlie Frost is a detective with the Collier County Anti-Trafficking Unit in Naples, FL. Mr. Frost, thanks very much for being with us.

STATEMENT OF CHARLIE FROST, DETECTIVE, COLLIER COUNTY ANTI-TRAFFICKING UNIT, NAPLES, FL

Mr. FROST. Thank you, Chairman Kennedy, Senator Sanders, and other distinguished members of this committee, for granting me the privilege to speak to this committee today.

On behalf of the Sheriff's Office of Collier County, I am honored to speak to this committee about my experience in investigating human trafficking and how this crime against the fundamental human rights impacts workers in the agricultural field. Prior to the inception of the Trafficking Victims Protection Act of 2000, the Sheriff's Office had been involved in some human trafficking investigations.

In December 2004 through a grant from the Bureau of Justice Administration, we began with a full-time investigator and full-time victim advocate. In the beginning of 2006, I became the investigator for the human trafficking unit. Since then, I have worked with the U.S. Attorneys Office, the Civil Rights Unit of the Department of Justice, special agents from ICE, FBI, and other State and local law enforcement agencies to ensure the prosecution of perpetrators of human trafficking offenses.

In addition, we collaborate with nongovernmental organizations, such as the Coalition of Immokalee Workers and the Florida Freedom Network, to provide assistance to the victims. One aspect of my duties is to provide education on the subject of human traf-

ficking to law enforcement agencies, community service providers, and civic groups throughout the area.

When I first began, there was one common occurrence that tied these all together. Most people were unaware that human trafficking, which is nothing more than another moniker for slavery, was occurring today. Today's form of slavery does not bear the overt nature of pre-Civil War slavery, but it is nonetheless as heinous and reprehensible than the slavery of our Nation's past.

Today, human trafficking has surreptitiously found its way into our society and continues to thrive even as I speak to this committee today. As I mentioned earlier, human trafficking is nothing less than modern-day slavery. It is the recruitment, harboring, transporting, and obtaining of a person for labor or services through force, fraud, or coercion, involuntary servitude, peonage, and debt bondage.

Through interviews with victims, I have gained knowledge of how traffickers accomplish control of their victims. They use threats and actual violence to enforce their will upon them. Victims have been beaten or have witnessed beatings of other workers who will not relinquish their earnings, disobey the traffickers, or have left the camp and been found or have attempted to escape. Traffickers create an environment of fear meant to control and isolate victims.

Another method is perpetually accruing debt. Victims have incurred debts for housing, food, water, and transportation. In one instance, victims have related to me if they were unable to work for 1 day, then they would be charged 3 days' worth of labor. After a full week of picking tomatoes, they may expect to receive only $20 at the end of the week.

Traffickers use threats against the victim's family in their home country to control victims. In one instance, the victim ran away. The trafficker's family went to the victim's family. They told the family that, "If he doesn't return, we will kill you. Next time you talk to him, you tell him that." When the victim called home, he returned to the camp.

In another instance, I had a prosecution that was ready to go. The victims called their family, told them what was going to happen, and they asked them not to cooperate with us. When I asked them why not, they said that they were fearful for their lives. The family was fearful for their lives. I asked them what that meant. They said, "Well, the traffickers are the law of the village. They have the guns. They make the laws."

These are only a few examples of what I have learned during my investigations. Traffickers employ these and several other methods to exploit victims for the trafficker's own personal financial gain. The bottom line is the trafficker is profiting from the suffering of other human beings to satisfy their greed. Traffickers cultivate this environment of fear to their own benefit, and because of the fear, few people are willing to identify themselves as victims.

The State of Florida has been the venue of several cases of human trafficking over the past decade. During this time, several cases have been brought against traffickers who have forced their victims to work in the agricultural fields of Florida. One common denominator throughout all of this is that traffickers are usually

subcontractors of large corporations, larger businesses. The system allows the larger corporation to remain willfully blind of any abuses occurring and minimizes any liability. In turn, both the trafficker and the business profit from the work of the enslaved victim.

Currently, actual knowledge is the standard of proof required to find a business culpable of human trafficking offenses. Short of a change to State and Federal law, both the corporations and traffickers will be able to continue to profit from this system.

Since 1997 until now, including investigations I am currently involved with, human trafficking and slavery is occurring in the agricultural fields of Florida. Because this work is migratory, slavery is not just affecting Florida, but other States as well, where workers are transported to pick in the fields of other States. In addition, this atrocity has affected United States citizens who were enslaved in Florida in the cases of *U.S.* v. *Evans* and *U.S.* v. *Lee*, where U.S. citizens were held and forced to work in agricultural fields.

One public misperception is that a person needs to be transported into this country to be a victim. This couldn't be any further from the truth, and crossing borders is not required. Knowing that this is occurring not just in the State of Florida, but across this Nation, it is egregious that any entity should deny the existence of human trafficking. This arrogance, willful blindness, and lack of social responsibility offends our basic rights guaranteed by this Nation's Constitution.

Once again, I would like to thank Chairman Kennedy and the Senators of this committee.

[The prepared statement of Mr. Frost follows:]

PREPARED STATEMENT OF CHARLIE FROST

Thank you, Chairman Kennedy, Ranking Member Enzi, Senator Sanders and other distinguished committee members, for granting me the privilege of speaking to this committee today. On behalf of Sheriff Hunter of the Collier County Sheriff's Office, I am honored to speak to this committee about my experiences in investigating human trafficking and how this crime against fundamental human rights impacts victims working in the agricultural fields. Prior to the inception of the Trafficking Victims Protection Act of 2000 (TVPA) the Collier Sheriff's Office had been involved in some investigations of human trafficking, but in December 2004 through a grant from the Bureau of Justice Administration the Collier Sheriff's Office dedicated a full-time investigator and victim advocate to combat human trafficking and assist victims in Collier County. In the beginning of 2006, I became the investigator for the human trafficking unit. Since then, I have worked with prosecutors from the U.S. Attorneys Office, and Department of Justice's Civil Rights Unit, Special Agents from the Federal Bureau of Investigations (FBI), and the Department of Homeland Security Immigrations and Customs Enforcement (ICE), and State and local law enforcement agencies to ensure the prosecution of the perpetrators of human trafficking offenses. In addition, I have collaborated with members of non-governmental organizations such as, The Coalition of Immokalee Workers, and the Florida Freedom Network to provide assistance to victims of human trafficking.

One aspect of my duties is to provide education on the subject of human trafficking to law enforcement agencies, community service providers and civic groups throughout the area. When I first began providing the presentations there was one common occurrence. Most people were unaware that human trafficking, which is just another moniker for slavery, was occurring today. Today's form of slavery does not bear the overt nature of pre-civil war slavery, but it is no less heinous and reprehensible than the slavery of our Nation's past. Today, human trafficking has surreptitiously found its way into our society and continues to thrive even as I speak to this committee today.

As I mentioned earlier, human trafficking is nothing less than modern day slavery. Trafficking is the recruitment, harboring, transporting, provision, or obtaining

of a person for labor or services through the use of force, fraud or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage and slavery (TVPA 2000). Through interviews with victims, I have gained knowledge of how traffickers accomplish their control of the victims. Traffickers use threats and actual physical violence on victims to enforce their will upon them. Victims have been beaten or have witnessed beatings of other workers who would not relinquish their earnings, disobeyed traffickers, who have left the camp and been found, or who have attempted to escape. Traffickers create an environment of fear meant to control and isolate victims. Another method of control used by traffickers is to hold a victim in a system perpetually accruing debt. Victims have incurred debts for housing, food, water and transportation. In one instance, victims related to me were charged 3 days worth of wages if they were sick for 1 day and could not work. This of course is added to the debt then subtracted from what the victims have earned at the end of the week. Victims earning a dollar per bucket of picked tomatoes can work for the full week and receive nothing more than $20 from the trafficker at the end of the week.

Traffickers use threats against the victim's family in their home country to control the victims. In one instance, a victim ran away from the camp and the traffickers called the victim's family in Mexico. The family was threatened and told to tell the victim, he needed to return to the camp or the traffickers would kill the family. Once the victim heard this, he returned to the camp. This same tactic has hindered an investigation of mine. Victims were cooperative, and were ready to assist in prosecution. They subsequently related this to their family, and the family asked them to no longer cooperate. The family became fearful for their lives because as the victims said to me the traffickers are the law of the village. I asked the victims what this meant. They replied the trafficker's family has all the guns, and they run the village.

These are only a few of the examples of what I have learned during my investigations. Traffickers employ these and several other methods to exploit victims for the traffickers own personal financial gain. The bottom line is the traffickers profiting from the suffering of other human beings to satisfy their greed. Traffickers cultivate this environment of fear to their own benefit and because of the fear; few people are willing to identify themselves as victims to law enforcement making my task difficult at best.

The State of Florida has been the venue of several cases of human trafficking over the past decade. During this time, several cases have been brought against traffickers who have forced their victims to work in the agricultural fields in Florida. Victims of these cases were forced to work in both tomato and citrus fields. One common denominator identified by Florida State University's Center for the Advancement of Human Rights (CAHR) research and in my investigations is in almost all cases of labor trafficking in Florida, the traffickers are subcontractors to larger businesses. This system also allows the larger corporation to remain willfully blind of any abuses occurring and minimize any liability. In turn, both the trafficker and the business profit from the work of the enslaved victim. Currently, actual knowledge is the standard of proof required to find a business culpable of human trafficking offenses. Short of a change to State and Federal law both corporations and traffickers will be able to continue to profit from this system.

Since *United States* vs. *Ramos* in 1997 until now and including investigations I am currently involved with human trafficking, slavery, is occurring in the agricultural fields of Florida. Because the work is migratory, slavery is not just affecting Florida but other States as well where workers are transported to pick in the fields. In addition, this atrocity has affected U.S. citizens who were enslaved in Florida in the case of *United States.* vs. *Evans* where U.S. citizens were held and forced to work in the citrus fields. One public misperception is that a person needs to be transported into this country to be a victim of human trafficking. This couldn't be further from the truth and not required by the Trafficking Victims Protection Act. Knowing that this is occurring not just in the State of Florida but across the Nation, it is egregious that any entity should deny the existence of human trafficking. This arrogance, willful blindness, and lack of social responsibility offends our basic rights guaranteed by our Nation's constitution.

Once again, I would like to thank Chairman Kennedy, Ranking Member Enzi, Senator Sanders, and the other distinguished members of this committee for allowing me to be here today.

It would be my pleasure to answer any questions this committee has.

Senator SANDERS. Thank you very much, Mr. Frost.

Eric Schlosser is a well-known investigative reporter, familiar with agriculture and food issues, and we thank him very much for being with us.

STATEMENT OF ERIC SCHLOSSER, INVESTIGATIVE REPORTER, MONTEREY, CA

Mr. SCHLOSSER. Thank you. I would like to thank the committee for inviting me to testify here today.

I have been involved for more than a decade in the effort to improve the lives of America's farmworkers, and I am here today to say that what is going on in the tomato fields of Florida right now is so bad that it defies words. Senator Sanders and I happened to be in Immokalee, FL, this January when the U.S. Department of Justice released its indictment in the latest slavery case there. Here are some details from that case.

The defendants have been accused of threatening, slapping, and kicking farmworkers, chaining them to a pole, beating them, locking them inside U-Haul trailers, keeping them in debt, and forcing them to work for free. The indictments read like something you might see in the year 1868, not the year 2008.

Last year, a Florida labor contractor named Ronald Evans, Sr., was sentenced to 30 years in Federal prison for a wide variety of crimes. Evans had recruited migrant workers at homeless shelters throughout the Southeast, often paid them with crack cocaine instead of cash, kept them in debt, and housed them behind a fence topped with barbed wire.

Mr. Evans wasn't recruiting migrants for some fly-by-night operation, some fringe operator. Mr. Evans was working for the former chairman of the Florida Fruit and Vegetable Association, one of the most prominent farmers in the State. I find it incredible that in the year 2008 there is still slavery in the United States. I find it even more incredible that the tomato growers of Florida and some of their fast food customers continue to deny that these abuses exist.

During the same week that three tomato pickers escaped from a U-Haul truck where they were being imprisoned, setting in motion the Justice Department's latest slavery case, during that very week, representatives of the Florida Tomato Growers Exchange and the Burger King Corporation staged a press junket in a nearby field and claimed that slavery wasn't a real problem.

They presented an independent report by an independent auditor that suggested there was no slavery in the tomato fields of Florida. Their so-called independent auditor was soon proven to be totally and independently wrong.

I am glad that Reginald Brown from the Florida Tomato Growers Exchange is here with us today. Mr. Brown, if your farmers are doing such a good job taking care of their workers, why have none of the seven major slavery cases in Florida been uncovered by one of your farmers or by one of their farm managers? The labor contractors in this industry are in an ideal position to uncover these abuses. Yet, again and again, they have been the ones indicted and convicted and sent to Federal prison for committing these abuses.

Mr. Brown, you have said that your industry is shocked and appalled by the idea of involuntary servitude. Yet, after Abel Cuello was released from Federal prison after being convicted of slavery,

after holding more than 30 tomato pickers at an isolated camp against their will, after all of that, Abel Cuello was released from Federal prison and then hired as a labor recruiter by one of the largest tomato growers in Florida. I ask what kind of message does that send?

Why hasn't your organization condemned the rehiring of a man convicted of slavery? Mr. Brown, you have said more than once that it would be un-American for a fast food company to pay an extra penny per pound for tomatoes with the extra penny going to the migrants. Well, I say it is un-American to allow slavery in the year 2008, to deny that this problem is real, and to vilify and attack the one group, the Coalition of Immokalee Workers, that has done more than any other to fight against slavery in the State of Florida.

I applaud the committee for today's hearing. Much more needs to be done to hold tomato growers accountable for what is happening to their workers. Farmers who obey the law shouldn't have to compete with farmers who employ slave labor. These abuses are un-American. They are unacceptable. And they must stop.

Thank you.

[The prepared statement of Mr. Schlosser follows:]

PREPARED STATEMENT OF ERIC SCHLOSSER

I'd like to thank the committee for inviting me to testify here today. I have been involved for more than a decade in the effort to improve the wages and working conditions of America's farmworkers. This committee deserves much praise for taking an interest in the plight of some of the poorest working men and women in the United States. What is happening right now in the tomato fields of Florida is so bad that it almost defies description, let alone belief.

This January Senator Bernie Sanders and I happened to be visiting Immokalee, FL, the heart of the State's tomato-growing region, when the U.S. Justice Department released its indictments in the latest farmworker slavery case. The defendants in the case have been accused of threatening, slapping and kicking workers, beating workers, locking them inside trucks, chaining them to a pole, deliberately keeping them in debt and forcing them to work for free. The indictments read like something you might encounter in the year 1868, not 2008. The defendants have been charged, among other things, with violating the 13th amendment of the U.S. Constitution. That is the amendment outlawing slavery and involuntary servitude.

I find it incredible that in the year 2008—the two hundredth anniversary of the abolition of the slave trade—there is still slavery in the United States. I find it even more incredible that the tomato growers of Florida and some of their largest customers continue to deny that such abuses exist. It was pure coincidence that the Department of Justice's slavery indictments were announced on the same day that Senator Sanders and I were talking to tomato pickers in Immokalee. But you do not need to be a rocket scientist or have an advanced degree in farm labor economics to see that the living conditions and the working conditions there are terrible. You need only spend a few hours talking to farmworkers, away from the prying eyes of their labor contractors and employers.

I think most Americans would agree that the practice of slavery in the United States is unacceptable. But that sense of outrage does not seem to extend to the tomato growers of Florida and some of their fast food customers. During the same week that three tomato pickers climbed through the ventilation hatch of the box truck where they were being held against their will and escaped to freedom, setting in motion the Justice Department's latest slavery case—during that very same week, representatives of the Florida Tomato Growers Exchange and the Burger King Corporation staged a press junket in nearby fields, introducing reporters to happy farmworkers with "no complaints" and strongly denying that involuntary servitude or slavery was a problem. Perhaps the growers and some of their fast food customers are sincerely unaware that tomato pickers are being exploited. But such earnest pleas of ignorance bring to mind the scene in the film Casablanca when a French policeman, Captain Renault, is "shocked, shocked" to find out that gambling is occurring—at the casino where he regularly gambles.

The plight of tomato pickers in Florida needs to be understood in a broader historical context. Farmworkers are now, and have long been, among the poorest workers in the United States. The historian Cletus E. Daniel has described early twentieth century efforts to recruit farmworkers for California's fruit and vegetable harvest as "the search for a peasantry." In 1951 the President's Commission on Migratory Labor condemned the abysmal working conditions that farmworkers endured. "We depend on misfortune to build up our force of migratory workers," the commission concluded, "and when the supply is low because there is not enough misfortune at home, we rely on misfortune abroad to replenish the supply." During the 1970s, campaigns led by Cesar Chavez and the United farmworkers union raised wages and greatly improved working conditions. But most of those gains were lost during the 1980s and 1990s. According to the U.S. Department of Labor, the typical farmworker earns roughly $10,000 to $12,000 a year. That figure may be somewhat inflated, due to the inclusion of supervisory workers in the most recent wage survey. In 2001 the Department of Labor estimated that the typical farmworker earned about $7,500 a year. It is hard to see how some of the most desperate workers in the United States gained a pay increase of 50 percent or more during the past 7 years. Whatever the actual figure, there is little dispute that farmworkers rank near the very bottom of the American pay scale.

Farmworkers not only do hard manual labor for low wages, but they also suffer enormous stress and uncertainty about the prospects of employment. Almost all harvest work is considered "at will." There is no contract, no seniority, no obligation from the employer beyond the day-to-day. A farmer hires and fires workers as necessary, without need for explanation. It makes no difference whether the worker has been an employee for 10 days or 10 years. The terms of employment are laid down on a daily basis. A migrant usually does not know how long he or she will work on a given day—or even if work will be available. On a good day, the wages that can be earned may be high. But a good day may be followed by weeks without any work. This system gives an extraordinary amount of power to farmers and their labor contractors.

I spent a year investigating the poverty of farmworkers in California, the State with by far the largest number of migrants. I found that migrants were living in garages, abandoned cars, labor camps unfit to be horse barns. Right now there are thousands of farmworkers living outdoors in the hillsides of northern San Diego County. At one of the hillside encampments I visited, migrants slept beneath plastic garbage bags at night and did their laundry each week in a neighboring stream. The farmworkers I met seemed to embody a great many of the virtues that we cherish in the United States. These migrants were hard-working, deeply religious, devoted to their families—and yet were being exploited. It seemed wrong to me, pure and simple. In this country, hard work should get you out of poverty, not keep you in it.

Bad as things are for the migrant workers in California, the migrants in Florida seem to have it even worse. Organizations like the United Farmworkers Union and California Rural Legal Assistance provide some outlet for migrant grievances and some hope for a better future in that State. The primarily Latino workforce in Florida agriculture is much more isolated, with little institutional support. The abuse of farmworkers in Florida has a uniquely dark history. Various systems of peonage, forced labor, and slavery thrived there long after the end of the Civil War. For decades, African-American men convicted of petty crimes were routinely leased to farmers and put to work in the fields. An excellent historical account of this sort of convict-leasing has a fitting title: *Worse Than Slavery*. Florida was one of the last States in the south to outlaw convict-leasing, finally prohibiting it in 1923. But Florida's vagrancy laws allowed sheriffs to arrest young African-American men, fine them, and force them to pay off the fine by working for local citrus and tomato growers. That practice continued well into the 1940s.

Today the living conditions among migrant workers in Immokalee, FL, though deplorable, are not as bad as in some rural California communities. But the power that farmers wield in Florida seems much more complete. The early morning scene in Immokalee's town square—where crowds of migrants gather at dawn hoping to find work, and labor contractors pick workers like cattle in an auction—feels like a scene in a nineteenth century novel. "Harvest of Shame," the documentary about migrants made by Edward R. Murrow in 1960, opens with a similar scene, showing migrants being selected and packed into trucks. Much of "Harvest of Shame" was filmed in Florida. In the documentary, a Florida farmer describes his workforce in terms that remain unfortunately relevant today: "We used to own our slaves—now we just rent them."

Tomato pickers in Immokalee now earn about 40 to 50 cents for each 32-pound bucket that they harvest. The wage rate has not changed significantly in 30 years.

Adjusted for inflation, that means the wages in Immokalee's tomato fields have declined by as much as 75 percent. Tomato pickers are hired mainly by labor contractors, who try to shield farmers from legal responsibility. The labor contractors often charge migrants for food, housing, and transportation, deducting the costs straight from the migrant's paycheck. Labor contractors often pay the smuggling fees of new migrants, then force them to work off the debt. This system is an invitation to abuse. Many of the recent slavery cases in Florida involve illegal immigrants being held in servitude by their labor contractors. But this is not primarily an immigration problem. It is a human rights problem. U.S. citizens have been enslaved lately in Florida, as well.

A Florida labor contractor named Michael Allen Lee recruited migrants at homeless shelters, charged them for room, board, transportation, and cigarettes, loaded them with debt, gave them as little as $10 for a day's work in the fields, sometimes paid them in crack cocaine and alcohol instead of cash, and threatened to hurt anyone who ran off. Lee was later arrested, convicted in Federal court, and given a 4-year prison sentence in 2001. A Florida labor camp owner named Ronald Evans, Sr., also recruited migrants at homeless shelters, focusing on African-American drug addicts. Evans pushed his workers into debt, supplied them with alcohol and cocaine, housed them behind a fence topped with barbed wire, and paid them less than one-third of their full wages. Last year Evans was convicted in Federal court and sentenced to 30 years in prison for a wide range of offenses. The seven major slavery cases prosecuted in Florida over the past decade have all been handled by the Department of Justice. In keeping with the brutal history of farm labor in Florida, State officials have done little to prevent or punish cases of involuntary servitude.

Not a single Florida farmer has thus far been prosecuted in the seven Federal slavery cases, which have involved hundreds of migrants. Perhaps the farmers who employed these migrants were entirely innocent—entirely unaware that some of their workers were being beaten and enslaved. If that is the case, then at the very least there is a problem with labor management at the highest levels of Florida agriculture. Ronald Evans, Sr., one of the labor contractors imprisoned for paying migrants with crack cocaine, worked as a labor recruiter for Frank Johns, a former chairman of the Florida Fruit and Vegetable Association. The industry seems remarkably forgiving about violations of the 13th amendment. In 1999, a labor contractor named Abel Cuello was convicted in Federal court for enslaving at least 30 migrants in Florida and South Carolina. After spending less than 3 years in prison, Cuello was released, eventually regained his license as a labor contractor and found work as a labor recruiter, along with his wife, at Ag-Mart Produce, one of Florida's largest tomato growers.

The Department of Justice has done a fine job pursuing slavery cases in Florida. But it can devote even more resources to the fight against trafficking and involuntary slavery. A much stronger effort can be made to hold farmers legally responsible for the enslavement of their workers. Farmers in Florida must be held accountable for what they suffer and permit to happen on their land. At the moment, a loophole in the Trafficking Victims Protection Act makes it difficult to prosecute farmers in slavery cases. That loophole should be closed, and those who "know or have reason to know" about involuntary servitude should face criminal charges. The Department of Labor should devote greater resources to enforcing the labor laws not only in Florida agriculture, but also in agriculture throughout the United States. A significant increase in the Federal minimum wage—-which, adjusted for inflation, has declined by about 40 percent since the late 1960s—would greatly improve the lives of the Nation's poorest workers.

The immediate solution to these problems, however, does not lie with the Federal Government or with State officials in Florida. The largest purchasers of Florida tomatoes must take responsibility for the labor conditions in which those tomatoes are produced. Fruit and vegetable farmers today are under enormous pressure to cut operating costs. They face increased competition from overseas suppliers and price reductions imposed by their largest customers. A few years ago, an article in *The Packer*, an industry journal, described the leading role that fast food chains have played in lowering the prices that Florida tomato farmers receive. "Forcing down the cost of tomatoes, a minor component on the fast food menu, does little to make the restaurant more profitable" the article warned. "It will go a long way toward harming a loyal group of suppliers and growers and their workers."

Today the major fast food chains stand atop America's food chain. Their purchasing decisions can transform entire sectors of the Nation's agricultural economy. The fast food chains issue strict product specifications to suppliers and insist that they be met. When McDonald's introduced the Chicken McNugget in the mid-1980s, it fundamentally changed how poultry are raised, bred, processed and sold in the United States. When McDonald's decided in 2000 not to purchase any genetically

modified potatoes, it effectively eliminated the market for those potatoes. In recent years, the animal welfare demands of the leading chains have prompted huge changes in the industrial practices of the American meat packing industry.

The Coalition of Immokalee Workers recognized years ago that the fast food industry has enormous influence over what happens in the tomato fields of Florida. The coalition is a non-profit group that works on behalf of migrants in Florida. It has led the campaign to increase the wages of tomato pickers by one penny per pound, thereby significantly raising their wages. It has helped the Department of Justice investigate most of the slavery cases prosecuted since the mid-1990s. In recognition of this work, the coalition has received awards from the Robert F. Kennedy Memorial Foundation and Anti-Slavery International, the world's oldest human rights group. The Coalition of Immokalee Workers has been one of the few brave and effective defenders of migrants in the State of Florida.

I have been a strong critic of the fast food industry for years. But I applaud Yum! Brands Inc., the parent company of Taco Bell and Pizza Hut, for its commitment to ending the exploitation of tomato pickers in Florida. Its agreement with the Coalition of Immokalee Workers provides a model for how wages can be meaningfully increased and working conditions can be carefully monitored. The additional penny per pound that Yum! has agreed to pay, given directly to the workers, imposes no hardship upon Florida tomato farmers and does not increase the consumer price of any Yum! Brands product. The McDonalds Corporation deserves credit for agreeing to a similar arrangement.

The admirable behavior of these two industry giants makes the behavior of Burger King and its ally, the Florida Tomato Growers Exchange, seem completely unjustifiable. It is hard to see how the payment of an extra penny per pound for labor costs would violate U.S. antitrust laws, as the tomato growers claim. The Florida Tomato Growers Exchange has imposed various surcharges on its members for years, without running afoul of any Federal law. If it can impose a mandatory surcharge for higher fuel costs (as was done in 2005), it can surely allow a voluntary surcharge to help eliminate the poverty of tomato pickers. Burger King, for its part, has argued that Florida tomato pickers are actually well-paid—and at the same time has made a well-publicized donation to a charitable group devoted to the children of those workers. It is hard to see why the children of migrants who are being paid a decent wage would need any charity whatsoever. The tomato pickers in Florida are not asking for charity. They are seeking a fair wage for their hard work and an end to slavery.

Instead of making charitable donations, Burger King should be showing the same sort of concern for human rights that it recently demonstrated on behalf of animal rights. "Our corporate conscience drives our commitment to animal welfare," a Burger King executive said on March 27. "For almost a decade we have used our purchasing power to encourage positive steps in animal agriculture. We are proud to set an example for the restaurant industry."

If Burger King can partner with People for the Ethical Treatment of Animals to improve the lives of chickens, it can certainly work with the Coalition of Immokalee Workers, a far less controversial group, to improve the lives of migrant workers in Florida.

The head of the Florida Tomato Growers exchange has called the proposed one-penny surcharge for migrants "un-American." I think most Americans would strongly disagree. Slavery, indentured servitude, desperate workers living in fear—that's what most people would consider unacceptable and un-American. The exploitation of farmworkers should not be tolerated in Florida. It should not be tolerated anywhere in the United States. There are many social problems that are extremely difficult to solve. This is not one of them. A few years ago I calculated how much it would cost the typical American household if the wages of every migrant farmworker was doubled. The answer was about $50 a year—and even that amount is probably too high. By paying a few pennies extra, an enormous amount of misery can be ended. The large fast food chains and supermarket chains must insure that those pennies are paid, and that the money goes directly to farmworkers. A little bit of compassion will go an awfully long way.

Senator SANDERS. Thank you very much, Mr. Schlosser.

Mary Bauer is the Director of the Southern Poverty Law Center's Immigrant Justice Project. She represents farmworkers and other low-wage immigrant workers in high-impact cases in nine States in the South. Ms. Bauer has a B.A. from William and Mary and a law degree from the University of Virginia School of Law.

Ms. Bauer.

STATEMENT OF MARY BAUER, DIRECTOR, IMMIGRANT JUSTICE PROJECT, SOUTHERN POVERTY LAW CENTER, MONTGOMERY, AL

Ms. BAUER. Thank you, Senators, for inviting me to speak about farmworkers in the United States.

Over the past 2 decades, I have spoken with thousands of farmworkers in many States and represented workers in dozens of wage and hour and other kinds of cases in numerous States throughout the Nation. This is, unfortunately, not just a Florida issue.

Farmworkers are desperately poor. While the Federal Government has estimated that the average annual income of farmworkers is a mere $11,000, that estimate is actually quite high because it includes some higher paid workers, such as crew leaders. A scholar studying farmworkers has said the most vulnerable migrant workers, such as those working for farm labor contractors in Eastern States, earn annual wages less than $5,000 per year.

Farmwork is arduous and dangerous. Indeed, agriculture is consistently rated among the most dangerous occupations in the United States. But workers receive few benefits that other workers take for granted. Farmworkers were excluded from nearly all the major Federal labor laws passed during the New Deal. Some laws have been amended since then, but many exemptions remain.

For example, farmworkers are not entitled to overtime under Federal law. On smaller farms and in short harvest seasons, farmworkers are not even entitled to the Federal minimum wage. Farmworkers are excluded from the National Labor Relations Act, which protects workers' rights to collectively organize.

Child labor laws are riddled with exemptions for farmworkers. Children may legally perform farmwork as young as the age of 10, where 16 is the minimum age for many other occupations. In preparation for this hearing, I interviewed workers and advocates in Immokalee, FL, about their experiences in the field. Their reports are wholly consistent with my own experiences working with farmworkers over two decades.

Based on their reports, Immokalee tomato workers are desperately poor, fearful of retaliation, lack benefits most workers take for granted, and are denied access to basic legal protections. Specifically, workers reported recurring problems with waiting time and other violations of the Fair Labor Standards Act.

Workers report that they show up for work and are required to wait, often for hours, until the dew dries and the tomatoes can be picked. Similarly, when it rains, workers are routinely required to wait and are not paid for that time. Workers report that their pay stubs routinely fail to reflect the actual number of hours worked. Workers report that they are paid only by their production and the hours are doctored to coincide with that production.

Workers suffer long periods of unemployment and are forced to migrant to obtain other low-paying, short-term jobs. When they do not work for a day or a week or a month, they receive no pay. Workers report that Government enforcement, particularly as to wage and hour violations, has no practical effect on their employment situation. Most workers report that they would never call the Department of Labor under any circumstances and have never seen Government enforcement officials in the field.

Workers report chronic discrimination in hiring, placement, and working conditions. Workers reported that the sexual harassment of women on the job is a serious problem. Our office represented a group of Immokalee farmworker women in a case against a major tomato company in which the workers complained of rampant sexual harassment and retaliation when they complained. That case settled in 2007, but the problem remains in the industry.

We receive numerous reports that children of very young ages work in the field to help out the family income. Workers fear retaliation if they complain or assert their rights. Workers report significant problems with safe and uninsured transportation to and between the fields. Workers are deeply concerned about the risks associated with exposure to pesticides. Workers express deep concerns about the crew leader and subcontracting systems.

I spoke with Immokalee tomato workers about claims that workers average over $12 an hour. Every worker and every advocate with whom I spoke disputed that contention. "Oh, if it were only so," they said.

Congress should end agricultural exceptionalism that is enshrined in the law. Farmworkers should be entitled to overtime pay and the other kinds of protections that most workers take for granted. Most importantly, farmworkers deserve a living wage and strong enforcement of the law. The focus of that enforcement should not be on low-level crew leaders, but on the entities that have the power to change these conditions.

I thank you for this opportunity and await any questions you might have.

[The prepared statement of Ms. Bauer follows:]

PREPARED STATEMENT OF MARY BAUER

Thank you for the opportunity to speak to you about the abuses experienced by farmworkers in the United States.

My name is Mary Bauer. I am the Director of the Immigrant Justice Project of the Southern Poverty Law Center. Founded in 1971, the Southern Poverty Law Center is a civil rights organization dedicated to advancing and protecting the rights of minorities, the poor, and victims of injustice in significant civil rights and social justice matters. Our Immigrant Justice Project represents low-income immigrant workers in litigation across the Southeast.

During my legal career, I have represented and spoken with literally thousands of farmworkers in many States. Currently, the Southern Poverty Law Center is representing agricultural workers in at least six class action lawsuits in the South. I have handled dozens of wage and hour cases in many States, and I am familiar with the kinds of routine exploitation that low-wage immigrant workers generally—and farmworkers specifically—experience.

In preparation for this hearing, I interviewed workers and advocates in Immokalee, FL about their experiences in the field. What they told me is consistent with my own experiences working with farmworkers: Immokalee tomato workers are desperately poor, fearful of retaliation, lack benefits most workers take for granted, and denied access to basic legal protections.

FARMWORKER DEMOGRAPHICS

There are 2 to 3 million farmworkers in the United States. Nearly 80 percent are male, and most are younger than 31 years of age. Most farmworkers are married and/or have children, but most live apart from their immediate family members as a function of their employment.[1]

[1] National Agricultural Workers Survey, U.S. Department of Labor, 2005.

While the Federal Government has estimated that the average annual income of farmworkers is a mere $11,000,[2] that estimate is actually quite high because it includes higher paid workers, such as crewleaders. A scholar studying farmworkers has said:

> "Seasonal farmworkers are the poorest laborers in the United States, earning an average of $6,500 per year. Farmworkers who migrate are poorer than settled seasonal laborers, with migrants earning $5,000 per year. The most vulnerable migrant workers, such as those laboring for farm labor contractors in eastern States, earn annual wages as low as $3,500."[3]

Piece-rate workers are generally paid by the bucket—in tomatoes, as little as 40 to 45 cents per bucket (a bucket is 32 pounds of tomatoes). At that rate, farmworkers have to pick around two tons of produce (125 buckets) to earn 50. The piece rate wages paid to tomato workers have not changed significantly in more than 20 years.[4] In addition, workers reported that there is wide uniformity in the wages paid by tomato growers.

Migrant farmworkers are very poor, and they receive very few social benefits. Less than 1 percent of farmworkers receive general assistance welfare, and only 2 percent receive Social Security benefits.[5]

Farmworkers have long periods of unemployment, and most do not receive any form of pay, including unemployment compensation, during those periods. Crop workers are employed in the United States an average of 34½ weeks (66 percent) of the year.[6]

By the time a migrant farmworker child is 12 years old, he or she may work in the fields between 16–18 hours per week, leaving little time for school work.[7]

FARMWORKER HEALTH AND SAFETY

Agriculture is consistently rated as one of the most dangerous occupations in the United States.[8] Farmworkers suffer from the highest rate of toxic chemical injuries and skin disorders of any workers in the country.[9] The children of migrant farmworkers have higher rates of pesticide exposure, malnutrition, and dental disease than the general population. Children of migrant farmworkers are also less likely to be immunized against disease.[10]

Only 10 percent of farmworkers report having employer-provided health insurance.[11] None of the Immokalee workers I interviewed reported having any health insurance whatsoever.

AGRICULTURAL EXCEPTIONALISM IN THE LAW

Farmworkers were excluded from nearly all major Federal labor laws passed during the New Deal. Some laws have been amended since then, but many exemptions remain. The dire situation faced by farmworkers stems from their lack of economic and political power. Because farmworkers have no measurable political influence, there has been little organized opposition to the efforts of agribusiness interests to deny farmworkers most of the legal protections other American workers take for granted.[12] Among other things:

- Farmworkers are not covered by workers' compensation laws in many States.
- Farmworkers are not entitled to overtime pay under Federal law.
- On smaller farms and in short harvest seasons, farmworkers are not entitled to the Federal minimum wage of $5.85 per hour.[13]

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[2] National Agricultural Workers Survey, U.S. Department of Labor, 2005.

[3] Daniel Rothenberg, *With These Hands: The Hidden World of Migrant Farmworkers Today* (1998), p. 6.

[4] Review of data from the Florida Department of Labor, 1980 to present.

[5] National Agricultural Workers Survey, U.S. Department of Labor, 2005.

[6] National Agricultural Workers Survey, U.S. Department of Labor, 2005.

[7] Migration Education Messages and Outlook (MEMO) 1994.

[8] National Center for Farmworker Health.

[9] National Agricultural Workers Survey, U.S. Department of Labor, 2005.

[10] National Center for Farmworker Health.

[11] National Institute for Occupational Safety and Health, 2004.

[12] Farmworkers' lack of political clout predates the relatively recent transformation of the farm labor workforce to one dominated by undocumented workers. Even during the decades when most farmworkers were U.S. citizens, their itinerant employment schedules, coupled with local residency requirements, prevented the vast majority of them from registering as voters.

[13] Also, in most southern States, either there is no State minimum wage or farmworkers are expressly excluded from the State statute's coverage.

• Child labor laws are riddled with exemptions for farmworkers. Children may legally perform farmwork as young as 10 years of age. By contrast, 16 is the minimum age for most non-agricultural jobs.

• In some States, farmworker children are exempt from the State's compulsory education laws.[14]

• Many State health and safety laws exclude farmworkers.[15]

• Farmworkers are not covered by the National Labor Relations Act and thus have no protection against unfair labor practices when they seek to collectively act for better wages or working conditions, except in the handful of States that have passed statutes extending NRLA-type protections to agricultural workers.

Although this hearing is not focused on conditions affecting H–2A workers, it should be noted that the Department of Labor's existing proposals to eviscerate the legal protections for those workers is likely to have a deleterious impact on the wages and working conditions of farmworkers generally. While the specifics of the Department of Labor's proposals to change the H–2A regulations are beyond the scope of my testimony today, the Southern Poverty Law Center strongly opposes efforts by the Department to slash H–2A workers wages and weaken the modest labor protections of the H–2A guestworker program.

FARMWORKER CONDITIONS IN THE SOUTHEAST ARE THE WORST IN THE NATION

It is not merely coincidental that most of the major documentaries and exposés relating to farmworkers over the past four decades, from the epic "Harvest of Shame" aired in November 1960 to the April 2003 *New Yorker* article on "American Slaves Today," have focused on conditions in the Southeast. Historically, the worst abuses of migrant farmworkers have occurred in the region. The Southeastern States generally have few laws regulating employment, and those that exist largely exclude farmworkers. The farmworker population in the Southeast has always been composed principally of racial or ethnic minorities and has suffered considerable prejudice as a result. Finally, far more than in any other section of the country, growers in the Southeast have relied on farm labor contractors, or "crewleaders," to recruit, supervise, transport, and pay the harvest workers. Undercapitalized and poorly regulated, farm labor contractors oftentimes abuse or cheat the workers, with the growers avoiding liability by contending that the migrants are employees of the crewleader, rather than the farm.

In Florida, the Coalition of Immokalee Workers has committed to eliminating slavery and other abuses in the agricultural industry. The Coalition has been pivotal in making possible several important slavery and peonage prosecutions. In a recent case brought to court, a Federal grand jury indicted six people in Immokalee on January 17, 2008 for their part in what U.S. Attorney Doug Mallow called "slavery, plain and simple."[16] Unfortunately, despite the concerted efforts of the Coalition, slavery and peonage continue in the fields of Florida and the United States.

The Federal Government must increase its enforcement efforts to end these terrible abuses. Any focus on changing practices must entail a high-level focus on the companies using the services of these farm labor contractors and crewleaders. As United States Judge K. Michael Moore of the Southern District of Florida noted at the sentencing of one defendant found guilty of running a slavery operation in Florida:

> "others at another level in this system of fruit-picking, at a higher level . . . are complicit . . . They rely on migrant workers, and they create a legal fiction or corporation that insulates them between them and the workers themselves so that they can be relieved of any liability for the hiring of illegal immigrants. And yet they stand to benefit the most."[17]

In crafting solutions now, Congress should be mindful of its own unsuccessful efforts to regulate abuses in the agricultural industry by targeting solely farm labor contractors. In 1964, Congress passed the Farm Labor Contractor Registration Act,

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[14] Under Alabama Statute § 16–28–6(4), children who are legally employed under the State child labor code are not obligated to attend school. Because Alabama's child labor law (Ala. Stat. § 25–8–1) exempts agriculture, children employed in agriculture are not required to attend school in the State.

[15] *See, e.g.*, Ala. Stat. 25–1–1; Ark. Code Ann. § 11–2–101; O.C.G.A. (Georgia) §§ 34–2–2, 34–2–10; La. R.S. § 23.13.

[16] Ft. Myers News-Press, *"Group Accused of Keeping, Beating, Stealing from Immokalee Laborers" January 18, 2008.*

[17] Quoted in Rural Migration News; *See also* Miami Herald "Fields of Pain," series beginning, August 31, 2003.

which has been widely viewed as a failure, and the act was later repealed.[18] Congress later enacted the Migrant and Seasonal Agricultural Worker Protection Act to regulate employers directly.[19] It is clear that reform will not occur as a result of a crackdown on unscrupulous crewleaders because those crewleaders lack the power to bring about real change.

FARMWORKERS LACK EFFECTIVE LEGAL REMEDIES

Workers face dramatic barriers to obtaining legal redress when their rights are violated. Migrant farmworkers are disproportionately poor, non-English speaking, geographically isolated immigrants. For many, they are in an unfamiliar country with virtually no money, thousands of miles from home. They do not speak English. They are fearful of retaliation by an employer who is often also their landlord. Farmworkers' very reasonable fear is that the result of their asserting their rights will be not only losing their jobs and their income and being blacklisted from future employment, but also facing eviction and, often, deportation. When their rights are violated, they have few places, if any, to turn.

Government enforcement of basic labor protections has decreased for all American workers in recent decades. The number of wage and hour investigators in the Department of Labor (DOL) declined by 14 percent between 1974 and 2004, and the number of completed compliance actions declined by 36 percent. During this same period, the number of U.S. workers covered by the Fair Labor Standards Act *increased* by more than half—from about 56.6 million to about 87.7 million.[20] The Brennan Center for Justice concluded in 2005 that "these two trends indicate a significant reduction in the Government's capacity to ensure that employers are complying with the most basic workplace laws."[21]

Over the past 15 years, the U.S. Department of Labor, the agency charged with primary enforcement of Federal laws protecting migrants, has sharply reduced its resources directed to cases of farmworker abuse. This reduction is particularly acute in the Southeast. Although historical data reveal that more violations of farmworker protective laws occur in the Southeast than in any other area of the country, the Department of Labor's efforts have lagged badly in this region.

There is a particular absence of enforcement against growers, with the majority of enforcement resources devoted to judgment-proof, itinerant farm labor contractors, or "crewleaders," despite the fact that the principal Federal farmworker protective law provides that growers are responsible for ensuring farmworkers are properly paid, housed, and transported whenever the growers "employ" the workers.[22]

For many years, enforcement of farmworkers' legal rights has come, in part, through advocacy undertaken by grantees of the Legal Services Corporation ("LSC"). Beginning in the mid-1970s, the LSC started making special grants for LSC programs to serve migrant farmworkers in various States. Because of the restrictions placed on those programs in 1996, these programs have been unable to file class action lawsuits and to represent undocumented workers for more than 10 years. These restrictions mean that LSC programs cannot bring the very impact litigation most likely to bring about legal change.

There have been some efforts to interest private practitioners in taking on representation of migrant workers in the Southeast. Unfortunately, migrant farmworker cases are generally unattractive to the private bar. The logistics of such litigation are daunting, and the cases are not generally financially lucrative.

Farmworker advocates have also attempted to use the Justice Department's Civil Rights Division as a mechanism to address situations that constitute peonage. However, jurisdiction is limited to those matters that reach the threshold of peonage. Very few criminal cases have been, or will be, brought. For each worker who can present a credible, corroborated claim of threat, there may be a hundred victims who have suffered the same kind of harm, but may not be able to prove that they are victims of a severe form of trafficking.

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[18] Pub. L. No. 88–582, 78 Stat. 920 (1964) (repealed 1983); Michael G. Tierce, Note, *The Joint Employer Doctrine Under the Federal Migrant and Seasonal Worker Protection Act*, 18 RUTGERS L.J. 863, 869 (1987) ("It is generally agreed that FLCRA failed to achieve its objective of improving the working conditions of the migrant farmworkers.")

[19] 29 U.S.C. §§ 1801–1874.

[20] Brennan Center for Justice, *Trends in Wage and Hour Enforcement by the U.S. Department of Labor*, 1975–2004, Economic Policy Brief, No. 3, September 2005.

[21] *Id.*

[22] Most courts analyzing such situations have concluded that the growers "employ" migrant workers supplied to them by farm labor contractors. *See, e.g., Charles* v. *Burton*, 169 F.3d 1322 (11th Cir. 1999); *Torres-Lopez* v. *May*, 111 F.3d 633 (9th Cir. 1997); *Antenor* v. *D & S Farms*, 88 F.3d 925 (11th Cir. 1996); *Luna* v. *Del Monte*, 2008 U.S. LEXIS 21636 (N.D. Ga. 2008).

In addition, criminal cases will not result in farmworker victims being adequately compensated; even in the rare case where the contractor is prosecuted, most of the victims will never receive even their unpaid minimum wages.

Perhaps the greatest shortcoming of reliance on criminal prosecutions to curb farmworker exploitation has been the inability to reach those who benefit economically and have the power to restrain violations of the workers' rights—the farm owners who employ the services of the farm labor contractors.

WOMEN WORKERS FACE SYSTEMIC ABUSE ON THE JOB

It is estimated that there are 70,000 women farmworkers in Florida alone.[23] For some women workers, problems include chronic sexual harassment on the job. The problem has received little public attention but is well-known to farmworker women, many of whom remain silent about sexual exploitation on the job.

According to a study done by Maria Elena Trevino-Lopez, ". . . Ninety percent of the farmworker women, the overwhelming majority of these women being immigrants, reported that sexual harassment is a major problem confronting women farmworkers in the workplace."[24] While investigating harassment of farmworker women in California, the U.S. Equal Employment Opportunity Commission found that hundreds, if not thousands, of farmworker women had to have sex with supervisors to get or keep jobs.[25] In addition, these women put up with a constant barrage of grabbing, touching and propositions for sex by their supervisors.[26]

In one of the few such lawsuits ever brought on behalf of farmworker women in the United States, the Southern Poverty Law Center represented five Haitian women who were sexually harassed on the job while working in the packing house of Gargiulo, Inc. in Immokalee, FL. The lawsuit alleged that the women were subjected to repeated, unwelcome sexual advances by their supervisor and then faced retaliation after they complained. The women, who worked as tomato graders, rejected the supervisor's advances and then were suspended without pay, subjected to adverse working conditions and either fired or not rehired for a new packing season.

In reaching a settlement in 2007, Gargiulo, Inc., one of Florida's largest fruit and vegetable wholesalers, agreed to pay $215,000 and entered into a consent decree to change its practices.[27]

In another case involving women in tomato packing, the EEOC Miami District Office filed a title VII action alleging that defendants, national produce companies, subjected three female employees at its Immokalee, FL vegetable grading and packing facility to a sexually hostile work environment through the offensive verbal and physical conduct of two supervisors. The complaint also alleged that one of the employees was discharged in retaliation for rejecting the sexual advances of her supervisor. Defendants' sexual harassment policy was written only in English even though its workforce was comprised largely of immigrants of Haitian or Hispanic descent who read little or no English.[28]

In addition to sexual harassment in the workplace, immigrant women face other forms of gender discrimination, including unequal pay for equal work, pregnancy discrimination and disparate treatment.

TOMATO WORKERS IN IMMOKALEE REPORT CHRONIC WORKPLACE ABUSE

I have conducted numerous interviews with tomato workers and their advocates, in Florida and in other States. They report the following chronic difficulties:

• Workers suffer recurring problems with unpaid "waiting time" and other violations of the Fair Labor Standards Act. Workers routinely report that they show up for work and are required to wait, often for hours, until the dew dries and the tomatoes can be picked. Similarly, when it rains, workers are routinely required to wait, and are not paid for that time. As one worker told me: "We are paid only when we pick; we are paid only for the buckets we produce."[29]

• I spoke with Immokalee tomato pickers about claims that workers average over $12 per hour. Every worker and every advocate with whom I spoke disputed that

[23] Larson, A Farmworker Enumeration Study, 2000; National Agricultural Workers Survey, U.S. Department of Labor.

[24] Dominguez, Maria M. *Sex Discrimination & Sexual Harassment in Agricultural Labor*. 6 Am. U.J. Gender & L. 231, 14 (Fall 1997)

[25] Ontiveros, Maria L. *Lessons from the Fields: Female Farmworkers and the Law*. Maine Law Review, 55 Me. L. Rev. 157, 8 (2003).

[26] *Id.*

[27] *EEOC* v. *Gargiulo, Inc.*, No. 2:05–cv–460–Ft.M–29–SPC (M.D.Fla. 2005).

[28] *EEOC* v. *Produce, Inc., and Six L's Packing Co.* No. 2:03–cv–570–FtM–29DNF (M.D. Fla. November 30, 2004).

[29] See, for example, *Mesa, et al.* v. *Ag-mart*, (M.D. Fla., January 26, 2007).

contention. One workers' response summed up the general refrain: "If it were only so!"

• Workers reported to me that their paystubs routinely fail to reflect the actual number of hours worked. Workers report that the hour records on their pay stubs are routinely falsified to show that they have worked substantially fewer hours than they did, in fact, work. Workers report that they are paid only by their production, and the hours are "doctored" to coincide with their production. Thus, workers on identical crews who work identical hours (and who travel to the fields together) will have wildly disparate hours reported on their pay.

• Workers suffer long periods of unemployment and are forced to migrate to obtain other low-paying, short-term jobs. When they do not work—for a day, or a week, or a month—they receive no pay. For low-income families, this is devastating.

• Workers report that government enforcement, particularly as to wage and hour violations, has no practical effect on their own employment situation. Most workers told us that they would not consider calling the Department of Labor under any circumstances. None report having seen or spoken with any government enforcement agents.

• Workers report chronic discrimination in hiring, placement, and working conditions. Employers have a strong preference for young men. Men over the age of 35 are considered undesirable. Women, too, are less desirable. All workers reported that sexual harassment of women on the job is a problem.

• Workers report that there are significant difficulties in obtaining safe and decent housing at affordable rates.[30]

• We received numerous reports that children of very young ages work in the field to "help out" the family income. These children typically do not receive their own paystub (a violation of law); their production is simply added onto the pay of their parents.

• Workers report significant problems with uncompensated accidents and illnesses. Because workers are not paid when they do not show up for work (no worker reported having either health insurance or paid vacation or sick time), workers routinely work even when hurt or sick.

• Workers report significant problems with fears of retaliation if they complain or assert their rights. As one worker said: "If you say something, they fire you."

• Workers report significant problems with unsafe and uninsured transportation to and between fields.

• Workers report very significant problems with exposures to pesticides. Many incidents of the overuse of pesticides in the tomato industry, and the effects on workers and their families, have been well-documented.[31] According to the *Palm Beach Post*, in a recent 10-year period, Florida inspectors found 4,609 violations of pesticide regulations, but only 7.6 percent resulted in fines.

• Some workers are employed through farm labor contractors, rather than directly through the employer. This exacerbates existing abuses, and means that workers have fewer real remedies.

CONCLUSION

The exploitation of migrant farmworkers is one of the major civil rights issue of our time. Laws excluding farmworkers from protection and the restrictions that keep legal services lawyers from effectively representing the most vulnerable workers are morally unacceptable.

Far more can be done to improve conditions for farmworkers in the Southeastern United States and in the United States more generally. There is no justification for the continued agricultural exceptionalism that is codified in our laws. Farmworkers who labor long, arduous hours should be paid overtime wages and they should be eligible for unemployment compensation when they are out of work. The restrictions on legal services undermine efforts to enforce legal protections. Congress alone has the authority to change many of those laws.

Congress must demand an increase in the effective enforcement of the legal rights of workers by the Department of Labor and other agencies—with a strong, targeted focus on growers and associations, rather than on crewleaders.

We must all support the efforts made by workers themselves to improve their wages and working conditions. Where workers come together to take courageous actions to enforce their rights—such as the workers who have created the Coalition

[30] See *Renteria-Marin, et al.* v. *Ag-Mart Produce Inc., et al*, 488 F. Supp. 2d 1997 (M.D. Fla. 2007).

[31] See *Palm Beach Post* "*Why Was Carlitos Born This Way?*" March 16, 2005; see also *Herrera* v. *Ag-Mart Produce, Inc.*, Circuit Court of Hillsborough County, Florida, Case No. 06–001725, Division B.

of Immokalee Workers—those efforts should be supported. The workers who do the backbreaking work to put produce on our table should receive a decent, living wage. Each day we accept the benefits of that labor; we should also accept the concomitant responsibility to ensure that workers are treated fairly.

Thank you again for the opportunity to testify. I welcome your questions.

Senator SANDERS. Thank you very much, Ms. Bauer.

Reginald Brown is the Executive Vice President of the Florida Tomato Growers Exchange. Prior to joining the exchange, Mr. Brown worked for the Florida Fruit and Vegetable Association and also for the Collier County Extension, as director for the Florida Cooperative Extension.

Mr. Brown, thanks very much for being with us.

STATEMENT OF REGGIE BROWN, EXECUTIVE VICE PRESIDENT, FLORIDA TOMATO GROWERS EXCHANGE, MAITLAND, FL

Mr. BROWN. Thank you, Senator.

Just as our growers need seed, rain, and Florida sunshine, we need the workers to harvest our crops. We value the services of our workers by paying and treating our workers fairly. The fact that thousands voluntarily return to our fields to pick tomatoes year after year, decade after decade demonstrates that fact.

We are here before this committee because the Coalition of Immokalee Workers, a purported Florida labor organization, has leveled accusations at Florida's tomato growers on a number of fronts. We thank you for the opportunity today to state the facts, which stand in stark contrast to CIW's charges.

In the past several years, CIW has organized boycotts of major fast food corporations and demanded that these companies pay an extra penny a pound to workers who pick tomatoes they buy. Two fast food companies, Yum! Brands and McDonald's, agreed to the deal and, in turn, have pressured Florida's tomato growers to take on the role of passing the extra payments onto their workers. For a number of sound business reasons and legal reasons, the producers have declined to participate.

The CIW has also accused Florida's tomato producers of slavery, substandard housing, abusive working conditions, and sub-poverty wages. Each claim raised—housing, wages, working conditions, and slavery—are addressed by local, State, and Federal laws. We absolutely agree with the committee that these laws should be aggressively enforced. Our growers comply with all of these laws and many others.

First, let me state unequivocally that the Florida tomato growers abhor and condemn slavery. We are on the same side in this issue. It is outrageous to have slavery happening in Florida or any other State. Like all Americans, we are angered that slavery is even an issue in America in 2008. The reality, however, is that there are, indeed, cases of slavery and human trafficking occurring in many States today, and that is a tragedy.

Many of our growers provide free and inexpensive housing that must pass Government inspection. We are committed to providing positive housing solutions for our workers and their families. Broad charges have been made that workers are being exploited and that Florida growers are not following labor standards. We firmly deny

those allegations. It is difficult to prove a negative that our members are not and have no pattern of exploiting our workers.

In 2005, we met with the officials of McDonald's to discuss how our growers could best show we were improving working conditions for our workers. A program was developed that calls for thorough direct auditing by independent third parties to assure that working standards are met and that workers are receiving the wages to which they are entitled. This program is the first of its kind in the U.S. produce industry, and we are proud of making that step forward. The program is Socially Accountable Farm Employers, or SAFE. SAFE is an independent, nonprofit organization that independently audits, certifies fair, legal farm labor practices in the agricultural industry.

Exchange members pay their employees competitive wages. We must if we are to have workers each season to plant and harvest our crops. Otherwise, workers will go elsewhere. It is important to note that farmworkers are seasonal employees who often work for multiple employers during the year.

Tomato harvesters have the opportunity to earn more than double the Federal minimum wage of $5.85 and nearly double Florida's $6.79 minimum wage. These are legal, competitive, and fair wages. Tomato harvesters' wages potentially can exceed by a considerable margin the hourly wage for most workers at fast food restaurants.

Our exchange is a voluntary association of tomato growers. As a group, the growers have made a business decision not to participate in the penny a pound distribution arrangement, as is their right. For the record, we did not object to the fast food chains paying extra to workers who pick the tomatoes they buy. Our members simply do not want to be part of that arrangement.

The critical fact is that no one can identify which worker should receive an additional payment, nor can the correct payment be calculated. If the extra penny funds are distributed among all workers, the fact that some will be paid too much and others will not get what is due them, this is neither right, nor fair.

The exchange strongly believes because the parties to the arrangement know it is impossible to distribute the correct payment amounts to the right workers, the growers' participation would open them up to lawsuits from workers who were knowingly treated unfairly. Workers also could allege that it was or is a scheme to defraud them, and each check issued could be a separate bank or wire fraud. This is the definition of RICO.

We believe that if our growers participate, they will be placed at a competitive disadvantage in the marketplace. We believe that ultimately the fast food chains and other companies will buy tomatoes elsewhere, most likely Mexico. If the business shifts offshore, not only will tomato harvesters be without the extra penny, they will be without jobs.

We believe that entering into CIW's penny a pound program would legally tie the growers with each of our parties to the agreement. Our growers, the CIW, the fast food chains, and their suppliers would become joint employers under the Migrant and Seasonal Workers Protection Act. Given the fact that the growers are not mandated to participate in the penny a pound program and

based on the facts as we know them, it would not be rational, reasonable, or in the best interest of the growers to join the program.

We called upon CIW to take on the task of providing a way for Yum! and McDonald's to distribute monies to its members and workers without involving the growers. Alternatively, like our growers, McDonald's could contribute to charities that will be helpful to CIW's members and workers and their communities, such as the Catholic Charities, the University of South Florida Migrant Scholarships, the Redland Christian Migrant Association, and many others.

There is no question that the harvesting of tomatoes is physically demanding work that most people do not want to do. Florida tomato producers are grateful to have a steady workforce that allows us to provide Americans with a bountiful, nutritious, and healthful crop. We have and continue to work with organizations such as Redland Christian Migrant Association, Catholic Charities, the University of South Florida Migrant Scholarships, and others so that we can jointly create, develop, and execute meaningful programs relating to healthcare, child care, housing, and education so that farmworkers and their families have a real chance to achieve the American dream.

Thank you for giving us the opportunity to present our position on these issues.

[The prepared statement of Mr. Brown follows:]

PREPARED STATEMENT OF REGINALD L. BROWN

INTRODUCTION

My name is Reggie Brown. I am the Executive Vice President of the Florida Tomato Growers Exchange (the Exchange). I worked for the Collier County Extension Director for the Florida Cooperative Extension Service in the 1980's. I worked for the Florida Fruit & Vegetable Association as Marketing Director for 11 years before working for the tomato industry. Our members are tomato growers. We harvest generally from November through May. Almost half of all the tomatoes consumed in the United States year-round come from the Sunshine State.

Tomato growers have seen major challenges in recent years from hurricanes, invasive pests and diseases, and increased international competition from Mexico and Canada. The fruit and vegetable industry is a critically important sector of Florida agriculture, which is second only to tourism in importance to the State's economy. According to a 2006 University of Florida study, agriculture, food manufacturing and natural resource industries in Florida directly create more than 400,000 full- and part-time jobs, with a total employment impact of more than 700,000 full-time and part-time jobs. The direct value-added contribution is estimated at $20.32 billion, with a total impact of $41.99 billion.

During the winter, Florida competes in the U.S. marketplace with Mexico and Canada. During the 6- to 7-month harvesting season, Florida's tomato growers employ more than 30,000 tomato workers.

Just as our growers need the seeds, rain and Florida sunshine, we need the workers to harvest our crops. We value the services of our workers by paying and treating our workers fairly. The fact that thousands voluntarily return to our fields to pick tomatoes year after year, decade after decade, demonstrates that fact.

BACKGROUND

We are here before this committee because the Coalition of Immokalee Workers (CIW), a purported Florida labor organization, has leveled accusations at Florida's tomato growers on a number of fronts. We thank you for the opportunity today to state the facts, which stand in stark contrast to the CIW's charges.

In the past several years, the CIW has organized boycotts of major fast-food corporations and demanded that these companies pay an extra penny-per-pound to workers who pick the tomatoes they buy. Two fast-food companies, Yum! Brands and McDonald's, agreed to the deal and in turn have pressured Florida's tomato

growers to take on the role of passing the extra payments on to their workers. For a number of sound business and legal reasons, the producers have declined to participate.

In the meantime, the CIW also has accused Florida's tomato producers of slavery, substandard housing, abusive working conditions, and sub-poverty wages. Each claim raised—housing, wages, working conditions, and slavery—are addressed by local, State and Federal laws. We absolutely agree with the committee that these laws should be aggressively enforced. Our growers comply with all of these laws and many others, too.

My testimony today will refute the false allegations that have been made by the CIW and perpetuated in the media. It also will outline the growers' concerns over the penny-per-pound initiative, explain the technical and legal reasons they have chosen not to participate and suggest better solutions to improve the lives of farmworkers.

SLAVERY

First, let me state unequivocally that Florida's tomato growers abhor and condemn slavery. We are on the same side on this issue. It is outrageous to have slavery happening in Florida or in any other State. However, charges that tomato growers have enslaved workers are false and defamatory. Indeed, in correspondence with members of this committee and during meetings with Senators and staff, we have denounced slavery and these unsubstantiated claims. We could not survive without our valued employees.

On numerous occasions, we have asked for any evidence that would substantiate these allegations against growers of Florida tomatoes and have received none. To the best of our knowledge, CIW has not taken any such evidence to the appropriate Federal, State or local authorities who are vested with oversight in these matters. If we had any information indicating a grower was involved in slavery, we would immediately turn it over to authorities and assist in prosecution.

There is some confusion involving labor contractors and their relationship with growers. Like the workers, these contractors are employed by the growers. They assemble a crew and bring them to a farm and they as well as the workers are paid directly by the grower. To ensure that the workers are treated fairly and paid directly, growers participate in the SAFE program described in greater detail below. SAFE provides certification by an independent third party that the working conditions are safe and fair for the workers. No other produce group in the country has such a program to help workers.

Like all Americans, we are angered that slavery is even an issue in America in 2008. The reality, however, is that there are indeed cases of slavery and human trafficking occurring in many States today, and that is a tragedy.

HOUSING

Many of our growers provide free or inexpensive housing that must pass government inspection. Many employers also pay for utilities including gas, electric, water and garbage, even when workers are not picking tomatoes. We are committed to provide positive housing solutions for our workers and their families.

We are not aware of any substandard housing being owned, operated or controlled by any member of our Exchange. I was advised by members of this committee of sub-standard housing in Immokalee, FL. We requested any specific information that might help us investigate but received none. However, we did contact the Collier County Commissioner for Immokalee and asked that appropriate county agencies query the CIW about any specific cases of substandard housing, follow-up on the complaint and enforce the County's housing code.

WORKING CONDITIONS

Broad charges have been made that workers are being exploited and that Florida tomato growers are not following labor standards. We firmly deny these allegations. Again, we have asked for specific information on where this might be occurring so we could notify the proper authorities. We received no response, nor do we have any other information about worker standards violations.

It is difficult to prove a negative—that our members are not and have no pattern of exploiting our workers. However, we believe we can in this case offer clear evidence of commitment to providing all of our workers a safe, secure working environment that complies with all laws and standards of performance.

In 2005, we met with officials from McDonald's to discuss how our growers could best show we were improving working conditions for our workers. Based on these discussions with McDonald's and others in the industry, a program was developed

that calls for thorough, direct auditing by an independent third party to assure that working standards are met and that workers are receiving the wages to which they are entitled. This program is the first of its kind in the U.S. produce industry. Indeed, McDonald's Web site indicates as part of its social responsibility program that it collaborated with us "to improve conditions for farmworkers in the Florida tomato industry."

The program is Socially Accountable Farm Employers, or SAFE (*www.safeagemployer.org*). SAFE is an independent, nonprofit organization that independently audits and certifies fair, legal farm labor practices in the agriculture industry. It is a serious program that addresses important issues such as working conditions and wages. SAFE's certification signifies that a grower has complied with all employment laws and regulations such as the Migrant and Seasonal Worker Protection Act, and that the grower fosters a work environment that is free of hazard, intimidation, violence and harassment.

WAGES

Exchange members pay their employees competitive wages. We must, if we are to have workers each season to plant and harvest the crops. Otherwise, workers will go elsewhere. Yet each year thousands of workers return to the region to harvest Florida's tomatoes.

It's important to note that farmworkers are seasonal employees who often work for multiple employers during the year, so what a worker might earn on a farm in Immokalee constitutes only part of his or her wages for the whole year.

Tomato harvesters have the opportunity to earn more than double the Federal minimum wage of $5.85 and nearly double Florida's $6.79 per hour. These are legal, competitive and fair wages. Not only has the minimum wage increased in the past 20 years, the per-bucket rate workers earn has gone up as well. Yes, sometimes workers' hours are cut short because the weather is bad and they can't pick the tomatoes, or there are no tomatoes to be picked. Yet tomato harvesters' wages potentially can exceed by a considerable margin, the hourly wage for most workers at fast-food restaurants.

In addition, the growers comply with all withholding of taxes and payment of FUTA, SUTA and WC contributions according to law.

Based on payroll records our members submitted to the Federal Government for the last growing season, the average rate was between $10.50 and $14.86 per hour for tomato harvesters. We believe it may be higher for the 2007–2008 crop year. Again, these wages will be just a portion of the annual income for harvesters who move on to other crops in other regions.

PENNY-PER-POUND PROGRAM

Our Exchange is a voluntary association of tomato growers. As a group, the growers have made a business decision not to participate in the penny-per-pound distribution arrangement, as is their right. My goal today is to explain as clearly as possible the reasons behind that decision.

Because the Exchange's members have not seen the agreements announced by Yum! Brands and McDonald's and don't know the specific details, it is difficult to fully assess the responsibilities, liabilities and impact of CIW's program. However, from a legal standpoint, we have been advised that the potential risks of participating in the penny-per-pound agreement far outweigh any benefit.

At first blush, the penny-per-pound initiative sounds like a positive program. Fast-food chains agree to pay an extra penny for each pound of tomatoes they buy from Florida producers, with that extra penny distributed to the workers who picked them. Ostensibly, the growers would serve as the conduit through which the harvesters would receive the extra payment. But practically—and legally—speaking, the program is flawed.

For the record, we do not object to the fast-food chains paying extra to the workers who pick the tomatoes they buy. Our members simply do not want to be part of that arrangement.

However, we don't believe it is possible to legally and fairly get the extra payments into the hands of the specific harvesters who pick the tomatoes bought by the restaurants. The root of the problem is this: How can the fast-food chains (or any other company that agrees to the extra penny) accurately identify how many tomatoes come from which producer and which specific employees picked them? It is not possible, so how can they ensure the workers who picked their tomatoes are the ones who receive the additional wages?

A review of the supply chain shows why the Yum! Brands and McDonald's agreements are unworkable.

During harvest, tomatoes that the workers pick are not individually identified or labeled by worker or by customer. At the time of harvest, a tomato picked by a worker could ultimately be purchased by any number of the producer's customers.

Tomatoes are not made available for commercial channels until after they have been washed, graded to Federal standards, sized and packed into cartons in a State and federally licensed packing facility. Some tomatoes (on average 20–25 percent) are never purchased because they are "dumped" for failing to meet grade or size standards, or have damage that makes them unfit for sale.

Producers send their harvested and packed tomatoes to their customers, the repacking and distribution companies that supply the fast-food chains. A repacking facility receives tomatoes from any number of producers, and those tomatoes are then co-mingled in large lots.

We believe the suppliers have agreed to participate in the program at the insistence of the fast-food chains. McDonald's indicates on its Web site that, "[o]ur suppliers will establish a way for the additional penny per pound to be given to the farmworkers." Thus, these extra-penny agreements are made among several parties: the CIW, the fast-food chains, and their suppliers.

The critical fact is that no one can identify which worker should receive an additional payment, nor can the correct payment be calculated. If the extra-penny funds are distributed among all of the workers, the fact is some will be paid too much and others won't get what is due them. This is neither right nor fair.

Additionally, because the extra payments are considered wages, how will the fast-food chains withhold appropriate amounts? How will they pay the required employer contributions for FUTA, SUTA and WC, which can amount to 15 to 20 percent of the wages paid?

The Exchange strongly believes that, because the parties to the agreements know it is impossible to distribute the correct payment amounts to the right workers, the growers' participation would open them up to lawsuits from workers who were knowingly treated unfairly. Workers also could allege that there is/was a scheme to defraud them, and each check issued (allegedly in an incorrect amount) could be a separate bank or wire fraud. This is by definition a RICO case. What's more, RICO allows plaintiffs to bring additional grounds to allege fraud-based activities on whatever size "enterprise" they seek to attack.

In addition to the aforementioned concerns related to the penny distribution, there are additional problems with the program:

We believe if our growers participate they will be placed at a competitive disadvantage in the marketplace. We believe that ultimately fast-food chains and other companies will buy tomatoes elsewhere—most likely Mexico—because the extra penny makes Florida tomatoes more expensive. If that business shifts offshore, not only will tomato harvesters be without the extra penny, they will be without jobs. The tomato industry will go away, and Florida's economy will suffer.

We also are skeptical of any secret agreement that obligates our growers but prevents them from seeing the details of the agreement. We also believe it is at the very least improper for the CIW on behalf of our workers to enter into an agreement that affects the wages we pay our workers.

In addition, we believe that entering into the CIW's penny-per-pound program would legally tie the growers with each of the other parties to the agreement. In effect, our growers, the CIW, the fast-food chains and their suppliers would be joint employers under the Migrant and Seasonal Workers Protection Act. Thus, there is a risk to the growers for the actions taken by the other participants.

The Exchange's members also are concerned that the extra-penny program constitutes an attempt to restrain trade. The agreements signed so far appear to join independent companies, the customers and their suppliers collectively, who in turn have joined forces to demand growers participate in the Program or risk losing their sales to their customers.

Finally, it is important to note that the CIW is not licensed or registered as a collective bargaining agent as required by law, but as a 501(c)(3) charitable organization whose supporters gain favorable tax treatment under Federal law. However, we believe that under the cover of being a social organization hoping to better the life of its farmworker members, the CIW is in fact a "labor organization" as defined under Florida statutes and that certain employees of the CIW are "business agents" as defined under Florida statutes. CIW is organized and acts for the purposes of improving its members' hours of employment, rates of pay, working conditions and grievances relating to employment. What's more, the CIW is attempting to negotiate wage increases for tomato workers by threatening a secondary boycott against the fast-food chains.

Given the fact that the growers are not mandated to participate in the extra-penny program, and based on the facts as we know them, it would not be rational, reasonable or in the best interest of the growers to join the program.

We call upon CIW to take on the task of providing a way for Yum! Brands and McDonald's to distribute monies to its members and workers without involving the growers. CIW, as a representative of its members and workers, should gladly accept the challenge of getting this job done. If it had figured a way to do this, its member and workers would have been receiving checks from McDonald's since last November. Alternatively, like our growers do, McDonald's could contribute to charities that are helpful to CIW's members and workers, and their communities such as Catholic Charities, the University of South Florida Migrant Scholarships, the Redlands Christian Migrant Association and others.

CONCLUSION

There is no question that harvesting tomatoes is physically demanding work that most people do not want to do. Florida's tomato producers are grateful to have a steady workforce that allows us to provide Americans with a bountiful, nutritious and healthful crop.

We believe that education, improved housing, fair wages and safe working conditions are comprehensive, impactful and long-term solutions to improving the lives of farmworkers and their families. We are working toward those goals and invite others to join us.

We have and continue to work with organizations such as Redlands Christian Migrant Association, Catholic Charities, University of South Florida Migrant Scholarships and others so that we can jointly create, develop and execute meaningful programs relating to health care, child care, housing and education so that farmworkers and their families have a real chance to achieve the American Dream.

Thank you for giving us the opportunity to present our position on these issues.

Senator SANDERS. Thank you very much, Mr. Brown.

Roy Reyna is a former tomato picker who now manages a farm for Grainger Farms in Immokalee, FL. He has spent more than 25 years working in Florida's tomato fields.

Thank you for being with us, Mr. Reyna.

STATEMENT OF ROY REYNA, FARM MANAGER, IMMOKALEE, FL

Mr. REYNA. Good morning. My name is Roy Reyna. I worked in the Florida tomato fields for more than 25 years. I started off, me personally, as a tomato picker, and today I manage a farm in Immokalee for Grainger Farms.

My Mexican-born father was also a farmworker, and we would travel as a family to many different areas around the country, pick fruits, vegetables. I love working the fields because every day I put tomatoes on the tables of our Nation's families.

I am here before this committee to share with you my perspective on working and living conditions of farmworkers in Immokalee, FL. In my 25-year history of working in Florida's tomato fields, I have never seen slavery or in any situation where I have or someone was forced to work against their will. All, of roughly 90 to 100 percent, of our employees in Immokalee voluntarily work for us during our season, which runs from November through May. They choose to work for our company during the season because we pay them fair wages, offer them very inexpensive housing, and treat them with dignity and respect.

Without satisfied workers, no one would pick our tomatoes, and our farm would be out of business. That is the way it is, really important for us to create an atmosphere of trust between us. As a former tomato picker, I completely understand the importance of earning and maintaining that trust.

As you know, farmwork is very hard. Tomatoes have to be hand picked. I also recognize that many workers want to be rewarded with more money if they work harder. For this reason, we will offer our harvester an incentive by paying them 50 cents per bucket of tomatoes they pick during the harvest. Their hard work is definitely rewarded, as it is common for our farm tomato pickers to earn $125 for 5, maybe 6 hours of picking tomatoes. That is $25 an hour.

If Mother Nature does not cooperate with us on certain days, we still try to do something with our workers. Again, we want them to be happy. My personal satisfaction is when a worker thanks me for giving them the opportunity if we have a great season or earn money. I know we will help them and their families in Mexico. Most of our farmworkers send their money home to Mexico. Some will want to have a permanent life here in the United States.

As you know, there are a lot of challenges in the community of Immokalee. I wish this area had better housing and services for its residents. Our company owns brand-new Government-inspected housing, so our workers have a clean place to live.

At the end of the day, we want our workers to have the best possible experience with us so they will return the following season. It is a mutually beneficial relationship. We need each other so we can feed our Nation.

I appreciate the opportunity to present our position in these issues. Thank you.

[The prepared statement of Mr. Reyna follows:]

PREPARED STATEMENT OF ROY REYNA

INTRODUCTION

My name is Roy Reyna. I have worked in Florida's tomato fields for more than 25 years. I started off as a tomato picker and today I work as a farm manager for Grainger Farms in Immokalee, FL.

My Mexican-born father was also a farmworker and we would travel as a family to many different areas around the country to pick fruits and vegetables. I love working in the fields because every day we are putting American tomatoes on the tables of our Nation's families.

ISSUE

I am here before this committee to share with you my perspective on the working and living conditions of farmworkers in Immokalee. In my 25-year history of working in Florida's tomato fields, I have never seen slavery or any situation where someone was forced to work against their will.

All of our roughly 90 to 100 employees in Immokalee voluntarily work for us during our season, which runs from November through May. They choose to work with our company during the season because we pay them a fair wage, offer very inexpensive housing and treat them with dignity and respect.

Without satisfied workers, no one would pick our tomatoes and our farm would be out of business. That's why it's really important for us to create an atmosphere of trust between us. As a former tomato picker, I completely understand the importance of earning then maintaining that trust.

As you know, farmwork is hard work. Tomatoes have to be hand picked. I also recognize that many workers want to be rewarded with more money if they work harder. For that reason, we will offer our harvesters an incentive by paying them 50 cents per bucket of tomatoes they pick during the harvest.

Their hard work is definitely rewarded, as it is common on our farm to see a tomato picker earn $125 for 5 hours of picking tomatoes. That's $25 per hour.

If Mother Nature doesn't cooperate with us on a certain day, we still try to do something for our workers. Again, we want them to be happy.

I receive personal satisfaction when my workers thank me for giving him the opportunity to earn money I know will help him and his family. Most of our farmworkers send their money home to Mexico while some will want to have a permanent life here in the United States.

As you know, there are lots of challenges in the community of Immokalee. I wish the area had better housing and services for its residents. Our company owns brand new, government-inspected housing so that our workers have a clean place to live.

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I appreciate the opportunity to present our position on these issues.

Senator SANDERS. Thank you very much, Mr. Reyna.

Let me begin the questioning on an issue that I think is on the minds of many Americans. Just coincidentally, as Mr. Schlosser indicated, when I was in Immokalee, it just so happened that there was another indictment on slavery. I think, for the average American in the year 2008, people are scratching their heads. They are saying how, in God's name, in this great country in the year 2008 are people still being held in slavery?

So I want to start with Detective Frost, who has obviously been involved in this issue. Detective, I want to thank you very much for the very good work you and your department have done. I found your testimony to be very compelling, and you testified without reservation that, "Human trafficking, slavery is occurring in the agricultural fields of Florida." That was in your statement.

So my question to you is do you believe that there is human trafficking happening in Florida agriculture as we speak right now, or is this just an aberration? What is going on there?

Mr. FROST. It is still occurring today. It is probably occurring most likely right now while we sit here. Workers are held, forced to work, threatened every day if they don't work. It is the conditions that they live under, the way they are forced into a debt servitude process, or they pay weekly for their housing, for their food, substandard.

At the rate they are paid, it is hard for them to ever get out of that debt cycle. So they are continually perpetually put into that situation. Then if they decide to leave or decide that they want more money from whoever they are working for, their crew leader or whoever, then there are the threats of violence.

Senator SANDERS. So your point is, this is—there have now been, what, five or six indictments with regard to slavery.

Mr. FROST. Roughly. Yes, Senator.

Senator SANDERS. OK. Your point is it may well be going on today, as we speak right now?

Mr. FROST. Almost assuredly it is going on right now.

Senator SANDERS. Let me also ask you another question. You stated in your statement that the system, as it is set up right now, allows larger companies, the growers, to "remain willfully blind of any abuses occurring and minimize any liability." Your testimony, as it happens, mirrors the opinion of Judge K. Michael Moore of the Southern District of Florida in a slavery case that is quoted in Ms. Bauer's testimony.

Judge Moore wrote, and I quote from Judge Moore, "Others at another level in the system of fruit picking at a higher level are complicit." In other words, he was talking about the growers.

Detective Frost, would you agree with Judge Moore's sentiment that in these slavery cases there are people higher up the economic chain who are complicit and who have cause to benefit financially from what goes on?

Mr. FROST. If they are complicit, they isolate themselves from what actually is occurring, and now they are benefiting from what is going on.

Senator SANDERS. So the argument that, gee, I don't know what is going on, from what I am hearing you say, is not holding a lot of water?

Mr. FROST. No, sir.

Senator SANDERS. As a law enforcement professional, do you believe that we need to change the law to prevent the growers from shielding themselves from responsibility?

Mr. FROST. We have to do something. I mean, we have to hold them accountable. This is occurring in their back yard. This is occurring in our fields. This is occurring in our country.

Senator SANDERS. OK, thank you very much.

Let me open that question to other members of the panel. We will start with Mr. Benitez. Is slavery just an aberration? Is it the exception to the rule, or are we seeing a climate and a culture in the industry right now which forces the surrender situation?

Mr. BENITEZ. I believe that with the imbalance of power that exists in the agricultural industry today between the worker and his boss, the industry allows this type of thing to flourish.

Another thing that we need to remember when we are talking here today about the agricultural industry, we are not talking about small farmers or small companies. They are huge agri-businesses that control how the worker works. It is absolutely the exceptions that the agricultural industry enjoys today from laws that has allowed this problem to grow and to flourish.

Senator SANDERS. Thank you.

Mr. Schlosser.

Mr. SCHLOSSER. Yes, I think that the Migrant and Seasonal Agricultural Worker Protection Act was passed in 1983 in order to prevent growers from avoiding responsibility for what their labor contractors were doing. The labor contractors are essentially the middle managers in agriculture here. If the middle managers are involved in slavery, you would think that the chief executives would either know about it or, in some way, should be held culpable.

Right now, there is a loophole in the Trafficking Victims Protection Act that makes it more difficult to prosecute farmers in these slavery cases. I think that loophole should be closed. I have looked at the war on drugs and how the war on drugs operates. If there is marijuana grown on a property, that property can be forfeited or seized under civil or criminal statutes. I might recommend that farmers face the possible loss of their land if there are repeated instances of slavery.

I mean, as I said in my testimony, we are not talking about small fringe operators. In the one case, where the labor contractor has already served time in a Federal prison for slavery, by rehiring that person you are sending a message to the workers that slavery really isn't that big a deal.

Florida has a very long and a very dark history of labor relations. As recently as the 1950s, African-American men were arrested on the streets in Florida for vagrancy. They were fined, and they were put to work in the vegetable fields to pay off their fine.

So this is a problem that can be solved. Certainly in other agricultural areas in this country, we are not seeing this sort of slavery case. But there is a culture right now that is permitting it and not condemning it, and I think there are things that Congress can do very simply and easily to end it.

Senator SANDERS. Thank you.

Ms. Bauer, is what we have seen in terms of the slavery cases the exception to the rule, or is there a culture there now which allows this to go on?

Ms. BAUER. There is clearly a culture, and I think we should say I echo the comments that have been made before. But it is clear that these things happen on a continuum, and some of the cases we are talking about are particularly dramatic examples. But for every case we hear about, there are dozens, hundreds of other cases with similar kinds of power relationships.

I mean, there are cases where—we have represented workers, for example, who when they are recruited are required to leave the deed to their home with a recruiter in Guatemala. Now when I brought a case like that to the Government, they have said, "Well, that doesn't rise to the level of slavery." That is not bad enough. There were thousands of workers in that circumstance.

So I think that we have to recognize that there are these really terrible, dramatic slavery examples, and then there are kind of less dramatic, but still incredibly oppressive circumstances that, in effect, amount to forced labor that are extremely common and, in fact, close to the norm in many industries.

So what we really need to do is take a very hard look not just at the law and the enforcement, but what is really happening in the fields, what is happening in the fields and what is happening with workers and what is the totality of circumstances that workers are experiencing because it is—I do not believe that the American people would be comfortable if they knew how their food and other industries are operated, how their food is being produced. I don't think people would be comfortable with this, and they would not want to eat food that had been produced in this way.

Senator SANDERS. Mr. Brown, I want you to respond in any way you want. But I did want to just start off with the question. In your testimony, you indicated that you are opposed to slavery. You are appalled by slavery. Yet, the truth of the matter is that Immokalee is not a huge community. There aren't thousands of growers. It is a fairly small community of growers.

How could it be that you, who know the industry intimately, were completely unfamiliar with what was going on in terms of slavery, was shocked every time that a slavery case came up? Maybe you might want to comment on Mr. Schlosser's point that within the industry, a gentleman who was let out of jail for having served time for slavery was rehired by the industry again? Could you respond to some of those questions, please?

Mr. BROWN. Certainly, Senator. First of all, we are on the same side on the issue of slavery. We are as opposed to slavery as you

are. We are an extremely progressive industry and moving forward with the help of McDonald's and a partner in that process in setting up systems that will allow for third-party audits entering our farms, interviewing our farmworkers to, in fact, search out those conditions that you are referring to if they were occurring.

To date, in 2 years of audits by third-party entities under the SAFE program, we have not found those cases to exist in our commercial tomato industry. The case that a member of law enforcement was referring to earlier was, in fact, an individual family that was enslaving these folks for the enrichment of their own enterprise, and they were not involved in the commercial tomato industry.

We would ask the Sheriff's Department and the trafficking program to come forward with us in a joint program to try, in fact, to educate our industry and to inform our workers of those conditions that warrant trafficking and slavery in our industry or in our State, so that we can provide a better-informed platform to root out any of those circumstances that would be typical of human trafficking or slavery in our industry.

Senator SANDERS. Again, I just—Immokalee is not a very, very large community. My guess is, you know quite well all of the growers. Would that be a fair statement? Do you know those guys pretty well?

Mr. BROWN. I know most of the tomato industry, but there are numerous other industries in agriculture based in Immokalee.

Senator SANDERS. Right. But it just seems to me, given your statement that you are appalled by slavery, that you in the past have not come up with any effort to expose slavery. In fact, as we have heard, somebody in the industry actually hired somebody who was freed from jail for slavery charges. What kind of statement does that make to the community?

Mr. BROWN. I believe, if the Senator would explore that issue further, when that individual was identified as a prior convicted individual, the individual was released from employment by that company. They acted in a prudent fashion at that point.

Senator SANDERS. Well, he was identified. I gather it wasn't much of a secret. The fellow came out of jail.

Mr. BROWN. We don't do background checks on every individual that works on every farm, Senator.

Senator SANDERS. OK. Mr. Reyna, did you want to comment on this issue of slavery?

Mr. REYNA. No. The only thing I can say is I have never seen it, but it is a shame it is going on in Immokalee.

Senator SANDERS. You have never seen it. You have been in the industry for 25 years, and we have Detective Frost saying not only has it gone on, he suspects it is going on today. But that is something that you——

Mr. REYNA. Not at my farm. I mean, not as far as I know of, and I have never seen it, and it is a shame.

Senator SANDERS. Let me move on to another issue, if I might? That is, Mr. Brown, you stated in your testimony and just repeated a moment ago, that to ensure that the workers are treated fairly and paid directly, growers participate in the SAFE program, which you describe as "an independent, nonprofit organization that inde-

pendently audits and certifies fair, legal farm labor practices in the agricultural industry." Is that kind of what you said?

Mr. BROWN. That is correct, Senator.

Senator SANDERS. OK. Well, my staff did a little bit of quick research here, and maybe you can help me and tell me if I am wrong. But when we pulled up the names of the board of directors of SAFE, we found that Mike Stuart, the President of the Florida Fruit and Vegetable Association, serves on that board. Is that correct?

Mr. BROWN. That is correct, sir.

Senator SANDERS. We also found that, according to the Web site of a Florida Fruit and Vegetable Association, which is headed by Mr. Stuart, "they are responsible for helping growers meet labor needs while keeping costs down." That was on their Internet.

Now, as it happens, there is also another person on the board of this independent organization. His name is Reggie Brown.

Mr. BROWN. That is correct.

Senator SANDERS. Would that be you, sir?

Mr. BROWN. Yes, sir.

Senator SANDERS. OK. So I think some people might ask if we have an independent board, independent of the industry, how does it happen that people like yourself and Mr. Stuart would be sitting on this "independent" board?

Mr. BROWN. Senator, in order for an industry to exercise progressive leadership, sometimes the industry leaders need to step forward in establishing programs that, in fact, move the industry forward into the future.

Senator SANDERS. Now that is certainly true, but that doesn't make it an independent agency. In other words, if you want to—it would seem to me, as having some experience in organizations, that if the growers wanted to establish an organization to do A, B, and C in a number of things, that is one thing. But to call it an independent third-party agency when it is dominated by the industry itself seems to suggest that it is not quite independent.

Do other people maybe want to comment on the independence of that organization? Any other comments on that?

Mr. SCHLOSSER. Well, I think it is interesting that in the 2 years of SAFE, they have not found any instances of involuntary servitude, but clearly, the involuntary servitude was going on. The latest case, Senator Sanders, was happening right in the middle of the town of Immokalee. We walked by the house where people were being enslaved. So it was present in clear sight.

I think a truly independent monitoring group would be the Coalition of Immokalee Workers, and you would think that if this industry is so concerned about slavery, they would work closely with the group that has been involved in investigating six of the seven cases of slavery in Florida in recent years, which is the coalition.

I also want to make clear that this involuntary servitude is not being practiced by all of the tomato growers or all of the tomato farmers, and I think there are farmers who are honest and decent. But it is unfair to them to have to compete with farmers who are employing and profiting from slavery, and that is why this needs to change. I think, again, it can be changed very easily.

Mr. Brown has talked about some great hardship that would be imposed by a penny a pound extra for migrants and careful monitoring by the coalition. This isn't a mandatory requirement. It is simply farmers, who wish to sell to these fast food chains, could participate in this program, and I don't understand why that would upset Mr. Brown so much if farmers want to participate——

Senator SANDERS. We are going to explore that in a few minutes.

Mr. SCHLOSSER. Yes, great.

Senator SANDERS. What I wanted to get to now is another area of serious differences of opinion, and that is the issue of wages and how much farmworkers are earning.

In his testimony, Mr. Brown says that, "Tomato harvesters have the opportunity"—is the word that he used in his written testimony—"to earn more than double the Federal minimum wage." He goes on to testify that, "Tomato harvesters' wages potentially can exceed by a considerable margin the hourly wage for most workers at fast food restaurants."

Then Mr. Brown testified that, "Based on payroll records our members submitted to the Federal Government for the last growing season, the average rate was between $10.50 and $14.86 per hour for tomato harvesters.

For the record, I would say that it sounds to me like this carefully worded, caveat-laden testimony about what workers are making stands in contrast with the unqualified assertions Mr. Brown made in meetings that he and I and others had held previously. I didn't see all those caveats about "potential" and so forth.

Furthermore, let me quote from the Florida Tomato Growers Exchange own Web site, which says in no uncertain terms, that—this is on their Web site.

> "Florida tomato harvesters earn an average of $12.46 per hour according to 2006–2007 payroll records required by the Government. Florida tomato harvesters earn more than double the current Federal minimum wage of $5.85 per hour and nearly double Florida's minimum wage of $6.79 per hour."

And that is the Florida Tomato Growers Exchange Web site.

Ms. Bauer, let me ask you to begin this discussion. In your testimony, you stated that workers you interviewed claimed that they didn't make anywhere near as much as what Mr. Brown has asserted. Based on your interviews with Immokalee workers and your work in this field, is the problem that the workers that you have talked to were just very slow workers, not very competent workers or, in fact, is there another explanation as to the discrepancy here?

Ms. BAUER. There is clearly another explanation, Senator. I mean, what the workers that I interviewed told me is consistent with several decades of experience I have working with farmworkers and with kind of general practices.

We handle wage and hour cases in our office, and what the workers described is what we see in wage and hour cases. When piece-rate workers are paid, their hours are routinely falsified. That doesn't happen in every setting. That doesn't happen with every farm or every industry. But it is certainly what the workers in Immokalee were describing to me. So that workers on the same crew, working identical hours will have their pay reflect different

numbers of hours, widely disparate hours, based on how productive they are.

Senator SANDERS. You have personally spoken to workers who have found themselves in this situation?

Ms. BAUER. I have personally represented workers who have found themselves in that situation.

Senator SANDERS. But one might ask, that sounds like on the surface this is grossly illegal?

Ms. BAUER. It is——

Senator SANDERS. So why aren't these workers going before the law or going to their employer and saying, "Look, two workers working the same hours, yet our pay slips are very different?"

Ms. BAUER. It is clearly illegal. But it is more common than any of us would like. It is extremely common in the agricultural industry that workers' pay stubs do not reflect the actual number of hours that they work. In my written comments, I express in further detail the kind of tremendous structural barriers and obstacles a worker will have to enforcing their rights.

There is a very dramatic decrease in wage and hour enforcement, in over the past 15 years. As a practical matter, the worker's ability to sort of have lawyers represent them has been eviscerated by the LSC restrictions and by lots of other obstacles that exist. There are just tremendous fears of retaliation workers have that are wholly warranted by the fact that if they complain, they will be fired.

Senator SANDERS. Well, how easy is it for employers to falsify the wage and hour records of their employees?

Ms. BAUER. It is very easy without real government enforcement, which is the situation we find ourselves in now. I mean, we have a case, an agricultural case which we had an expert go through the records and say, "based on these, it is clear to me that I see patterns of falsification." There are ways in which people who are on the same crew are working these kind of wildly disparate hours, and this doesn't make sense.

If anybody was coming in and looking at this, they would know that the people who are riding on the same bus together to the fields are, in fact, working identical hours. So we certainly see that, and the problem is that there are such tremendous obstacles to workers enforcing their rights, that we really need to take a look at what is happening in kind of a different approach. Much more enforcement is needed.

Senator SANDERS. OK. Let me ask Mr. Benitez this question. Mr. Benitez, you have heard Mr. Brown's statement today. Perhaps you are familiar with the Florida Tomato Growers Exchange own Web site, and they say again—let me repeat this. "Florida tomato harvesters earn an average of $12.46 per hour according to 2006–2007 payroll records required by the Government."

So my question to you is does that seem right to you? Does that seem to be the kind of money that people are making, as you talk to workers and to the degree that you have familiarity with what the tomato pickers are earning?

Mr. BENITEZ. To begin with, a case was just resolved, a complaint like this, with one of the large tomato growers, and it has to do with wages that weren't paid.

If you were to really earn $12 an hour, you would have to, as was already mentioned, pick a bucket of tomatoes every 2 minutes and 11 seconds. Senator, you will remember from your visit to Immokalee, when we went to visit a field, the workers had arrived there at 7 a.m. They got out of the bus, and they sat down and waited until the dew was dry before they began picking.

That day looked like it was going to be a good day for picking. But many days you arrive at the fields, and it begins to rain before you can even begin, and you are taken back home without earning a single penny. Some days, when you are able to work only 3 or 4 hours, you will return home having earned maybe $20.

We have seen pay records, paychecks from workers who worked not 3 or 4 days a week, but 7 days a week, and their paycheck says that they only worked 18 hours. What usually happens is that your time is only counted from when you fill up that first bucket to when you empty the last bucket.

You have to count your tickets when you finish harvesting, and that takes an hour or maybe longer. There are a lot of factors that you have to consider when you want to say that workers can make $12 an hour. Realistically, it is an impossibility.

Senator SANDERS. Thank you.

Mr. Brown, did you want to comment on this?

Mr. BROWN. The reality of harvesting tomatoes, the piecework system, at the 45 to 60 cents a bucket, depending on the condition of the crop, is, in fact, a way for the worker to obtain maximum income for his labor. It is an incentive reward system. If the worker is not working picking tomatoes and is working at another task on the farms, we are bound by law to pay $6.79 per hour, which is the Florida minimum wage.

If, in fact, our friends in the CIW are aware of miscounting or miscrediting of work hours, there are laws that are enforceable in our State, and I would encourage them to report those kinds of activities to Wage and Hour and let the Government who is the, in fact, enforcer of the law become the regulator of this system.

Senator SANDERS. Well, I think you heard from Ms. Bauer that apparently that is not quite as easy as it looks on the surface. Give me a rough idea, Mr. Brown—let us get beyond the hourly wage. At the end of 40 hours a week, what do you figure the average tomato picker makes? I know it depends on weather, and it is going to be up and down. Give me a rough guess.

Mr. BROWN. The typical harvesting period during the week will not be 6 or 7 days a week under most growing conditions. You are probably talking about working 25 to 30 hours as a harvester. Let us just assume from the standpoint, Senator, that the average wage is $12. So if you work 30, that is $300 and some—30 hours a week at a $12 wage would be, what, $360 a week.

There may be other employment on the farm for that same farmworker, or he may work for other entities during that week other than the farm he is harvesting tomatoes on for 4 or 5 days and have additional income.

Senator SANDERS. That might be difficult because the assumption is when you get up in the morning, you are going to go to work picking tomatoes. I gather it is not a Monday, Wednesday, Friday,

9 o'clock to 4 o'clock, and then you have time for other work, is there?

Mr. BROWN. In some circumstances, if a farm is not harvesting tomatoes today or tomorrow, and there are times when we actually do not harvest for 2 or 3 days depending on weather conditions and planting patterns, those workers will either work for those farms on other tasks, or those workers may, in fact, work for other farms in other enterprises. They may very well be—they could be harvesting citrus for those days.

Senator SANDERS. Let me ask you to respond to this again. I read this earlier. This is not me. It is not Senator Kennedy. It is not Senator Durbin. This is the *St. Petersburg Times*, a paper I have no familiarity with other than I saw this editorial. This is what they say.

> "Is it really going to take an act of Congress to get Florida's tomato pickers a raise? The men and women who work the fields in Immokalee earn 45 cents on average for every 32-pound bucket of tomatoes harvested. It is a meager wage that has not been raised in more than 20 years. Yet when a couple of fast food giants generously agreed to pay workers an added penny per pound, the Florida Tomato Growers Exchange sabotaged the deal and has refused to negotiate even after congressional leaders offered to be intermediaries."

The editorial concludes,

> "The truth is that Florida's migrant farm laborers are among the worst-paid workers in the State. They haven't had a piece-rate increase in a generation, and the growers exchange wants to keep it that way even when someone else is willing to foot the bill."

Do you want to comment on that?

Mr. BROWN. Senator, that is one view. Ours is different. We are, in fact, paying fair wages, and we are treating our workers fairly. In fact, the Florida Tomato Growers Exchange does not object to the penny a pound being paid by McDonald's or Yum! Brands. We simply do not wish to participate in the distribution of those monies for the legal reasons we have outlined.

Senator SANDERS. We are going to get to that in a second. But again, please respond. *St. Petersburg Times* says, "The truth is that Florida's migrant farm laborers are among the worst-paid workers in the State." True or not true?

Mr. BROWN. Our migrant laborer piece rate, Senator, has changed in the last 20 years. It has risen from 30 to 35 cents in the mid-1980s to 45 to 60 cents today. In fact, our farmworkers that are harvesting tomatoes are making fair wages that are competitive, and we are blessed with the opportunity that those workers return by the thousands to our farms every year to earn those wages to send home to their families in Mexico.

Senator SANDERS. You consider these wages to be fair wages?

Mr. BROWN. Yes, sir.

Senator SANDERS. OK. Anyone else want to comment on the "fair wages" that the workers there are getting?

Mr. SCHLOSSER. I would just say that repeating that something is a fact doesn't make it a fact. There is a great deal of involuntary

labor. Certainly, Senator, when we were in Florida and Immokalee and talking to workers away from labor contractors and growers, we didn't meet anyone who was earning $12.50 an hour.

Senator SANDERS. Yes, Ms. Bauer?

Ms. BAUER. Senator, I just wanted to follow up that not only are the conditions that workers described unfair, they are often illegal. The kinds of not being paid for waiting time and the falsification of hours, these are clearly violations of the law. I spoke briefly about how the law doesn't protect workers nearly as well as it should, but even with the minimal protections that exist, we are seeing really rampant kind of wage and hour violations.

Senator SANDERS. Mr. Benitez.

Mr. BENITEZ. I just want to clarify that agricultural work, being a farmworker, is absolutely a full-time job because you are required to be available to the industry when they need you to work. If one day you went to look for work and there wasn't work that day, you still have to be there tomorrow to look for work. Because if you miss one day looking, then you won't be offered a job the next.

So I would like to know from Mr. Brown how much turnover they have, how many workers they have working in the fields now that were the same workers 20 years ago if the wages are so good to keep workers?

Senator SANDERS. Mr. Brown, did you want to comment on that question?

Mr. BROWN. Certainly, Senator. Because our jobs are basically entry-level jobs for unskilled workers in the American economy, over the last 20 years, there have been thousands of individuals that have come in as farmworkers and migrated to better jobs and better opportunities. We have supported thousands of kids in educational programs and scholarship programs to, in fact, enable them to move up and achieve the American dream.

Senator SANDERS. It seems to me here, Mr. Benitez raised this issue, you are suggesting—correct me if I am wrong—that in the course of a week, people may work 20 or 30 hours. Is that correct?

Mr. BROWN. In the task of harvesting tomatoes.

Senator SANDERS. Right. Then if they, as I understand what you said, they have time left over when they are not working in the fields to earn income doing something else?

Mr. BROWN. There are situations where those workers may, in fact, do other jobs such as pull plastic, stake tomatoes, tie tomatoes.

Senator SANDERS. Mr. Benitez has suggested that, in fact, people, if they are going to be in the industry, if they are going to do the work, have to report to work and be available for work every single day. This is not like a Monday, Wednesday, Friday situation, where one can plan to be somewhere else on Tuesday and Thursday. Isn't that true?

Mr. BROWN. In some situations, that may be the case where that worker is basically in the job market every day. In some situations, we may have farm operations that, in fact, may release their work crews for a day to work for someone else when they are not planning to have work available. This is a very seasonal-related employment system, and the weather and the circumstances of pro-

ducing a crop in Mother Nature's outdoors is challenging at times, Senator.

Senator SANDERS. But the key point here is, of course, it is a seasonal operation, but this is not a 5-day, in most cases, or 6-day a week job. This is a job where wages are low, and people have got to be available to do that work and yet only accumulate 20 or 30 hours, which I think indicates why overall income is so abysmally low.

I wanted to pick up on another point, and that is something that confused me, Mr. Brown, and I would like some clarification. You state in your testimony that labor contractors are employed by growers?

Mr. BROWN. Labor contractors are paid by the grower. In many cases, they operate as employees of the farm's crew leaders, but they may very well be licensed labor contractors under the Federal law.

Senator SANDERS. Has this situation changed? What I would like an answer from you on is, Is your labor contractor an employee of the farm, or is this an independent contractor?

Mr. BROWN. Under our SAFE program, the labor contractor is an employee of the farm, and the employees are paid directly by the farm, OK?

Senator SANDERS. They are employees of the farm.

Mr. BROWN. This is a step forward in the progressive industry, a step forward in addressing some of the issues of concern. I believe Ms. Bauer would also acknowledge that if they were not employed directly by the farm, we would be joint employers regardless under MSWPA. Am I not correct?

Ms. BAUER. We would certainly acknowledge that.

Mr. BROWN. The industry, I think, is fully aware of that circumstance.

Senator SANDERS. Let me ask you this. This is a new development, yes? How long have these contractors been, in fact, employees of the growers, and were they previously independent contractors?

Mr. BROWN. The labor contract situation is a system that has been in place in Florida for decades, and the industry's progressive step forward in creating SAFE as a mechanism to try to address these kinds of concerns and to open our companies up for third-party audits to a firm that we are, in fact, not participating in these acts and that our workers are, in fact, being treated fairly and in a positive, constructive working environment, are not intimidated or harassed, has been part of the process of our industry exercising leadership.

Senator SANDERS. Did anyone else want to comment on Mr. Brown's statement?

Ms. Bauer.

Ms. BAUER. Well, I would just say that I find that Mr. Brown's reporting of the wages and the conditions experienced by farmworkers leads me to wonder about whether he actually has any information about what farmworkers lives are like in the real world. I mean, it seems to me that at best one can say that the comments are disingenuous to say that workers are, in fact, earning $12 an hour.

It would take very little time for someone out in the field talking to workers to realize that those statements are simply not true in the real world.

Senator SANDERS. OK. Let me move on to another area. We have heard a lot about some of the large fast food companies attempting to address this problem. We have letters in the public record now from both Yum! and McDonald's talking about their willingness to pay an extra penny a pound to improve wages for tomato pickers.

Mr. Brown, let me ask you this. You state in your testimony that your growers do not want to participate in the penny per pound program with Yum! and with McDonald's. Is it not true that two of your member growers voluntarily participated in this program with Yum! Brands for 2 years?

In other words, you say that they don't want to do it, but is it, in fact, true that two of your growers did participate in that program with Yum! for several years?

Mr. BROWN. For a period of time, there was some limited participation in the Yum! Brand effort, and those efforts were ceased when legal review and legal issues were fully explored by those companies.

Senator SANDERS. Mr. Brown, you indicate now and you have in your written testimony that you believe that this penny a pound program is illegal. Is that——

Mr. BROWN. We believe involvement in the penny a pound program in the payrolls of our companies, where we knowingly know that we do not know and cannot track which worker picked what tomato—Senator, they do not come with labels in the field. If we involve ourselves in a program as it is outlined and has been demanded of us by the quick-serve restaurant industries and their distributors, we believe we would be in violation of the law.

Senator SANDERS. Mr. Brown, let me ask you this. Is this legal opinion your idea, or have you gotten legal opinions from attorneys who know something about this issue?

Mr. BROWN. Senator, we have purchased legal opinions from legal firms in this country to affirm those opinions, yes.

Senator SANDERS. Let me just mention to you, Mr. Brown, that you might be interested to know that according to Mr. Blum's written testimony to the committee, "Yum! Brands"—and this is, as you know, not a small company. This is a huge corporation that, I gather, has the money to hire expert legal advice. That he writes that, "Yum! Brands attorneys are fully confident that the agreement is legal."

In addition, this committee has a letter signed by 26 law professors from around the country, which states in relevant part, and let me quote you this.

> "The ostensible legal concerns of the growers exchange are utterly without merit. Growers who comply with the CIW-Yum! and CIW-McDonald agreements will not violate antitrust, labor, or racketeering law. The unfounded assertions of the growers exchange should not deter any grower from adhering to the CIW agreements, nor should those assertions deter any fast food company or other buyer from entering into similar future agreements with the CIW. The only real——"

I would like you to listen to this. This is according to 26 law professors around the country.

> "The only real anti-trust concern would arise if several growers agree among themselves to not participate in the CIW-Yum! or CIW-McDonald monitoring program."

Furthermore, McDonald's, the largest fast food chain in the world, sent us a letter, which I will include in the recording, stating,

> "McDonald's USA and our suppliers continue to support the initiative with CIW to pay an additional penny per pound for Florida tomatoes and to arrange for growers to pass the funds directly on to their workers."

[The two letters referred to can be found in additional material.]

Senator SANDERS. I gather McDonald's also has the resources to hire some pretty good lawyers.

Furthermore, in addition to nationally recognized law firms, Kramer Levin Naftalis & Frankel and Simpson Thacher & Bartlett have reviewed this agreement and have concluded that, "Any claim that the terms of the Yum! agreement and McDonald's agreement violate Section 1 of the Sherman Act appears meritless."

Mr. Brown, do you really expect this committee to believe that the attorneys at Yum!, the largest restaurant company in the world, and McDonald's, the largest fast food chain in the world, 26 law professors, and 2 highly regarded law firms with anti-trust practices are wrong and you are right?

Mr. BROWN. Senator, that is one group of legal opinions. Our legal opinion is different, OK? Our concern, Senator, is not necessarily totally an anti-trust issue. Our concern revolves around the potential of a RICO case for knowingly mispaying workers when we, in fact, have no way of knowing who picked what tomato or to what volumes of tomatoes they have picked in marketplace that is very complicated.

Senator SANDERS. All I would suggest to you is that when you are dealing with such huge companies—I mean, these are multi-billion dollar companies who do not get involved in activities that they think are illegal. Not when you are Yum!, not when you are McDonald's. We have some leading law professors around the country, major law firms who study this issue, you might want to reconsider the attorneys that you are currently consulting.

Mr. BROWN. I will take your advice under consideration, Senator.

Senator SANDERS. All right. Take seriously what these folks are saying about the position that you now hold, and I would hope that, seriously, you will rethink this issue.

Other comments on that?

Mr. Schlosser.

Mr. SCHLOSSER. One of the crucial points here is that no tomato grower is being forced to enter one of these contracts with the fast food chains. What Mr. Brown didn't mention in his testimony is that the tomato growers exchange has threatened fines of potentially hundreds of thousands, if not millions of dollars against growers who want to pay their migrants the extra penny.

So if there are tomato growers who are willing to enter these agreements with the fast food chains and if there might be some

minute chance of liability, I don't understand why they should be prevented and threatened with fines for paying an extra penny that goes to the migrants. I would assume that freedom of contract should allow them to enter these agreements with the fast food chains and not face this sort of retribution.

Senator SANDERS. Mr. Benitez, will you say a word about the agreement that existed for a while?

Mr. BENITEZ. Of course. The agreement that we had with Yum! Brands, and that was working, it required the participation of the supplier, the grower. It didn't cost them any money at all. The only thing that they had to do was to pass their pay records to a third party. That was calculated by the third party, the proportion of the full amount of tomatoes harvested was the amount that Yum! Brands bought and then compared with the number of buckets picked by each worker.

Those workers were receiving an extra check representing that penny per pound based on the number of buckets that they picked. It was directly from Yum! Brands. This agreement was a win-win-win situation. The workers earned a higher wage and the assurance of some basic rights in the code of conduct.

The companies, the growers were winning as well because with the extra penny, that ensures a more stable workforce and saves them the cost of having to retrain workers every season. Yum! Brands in the situation also wins because from the public they have a better social responsibility. They appear more socially responsible in front of the public.

Senator SANDERS. Is it your view this program could work effectively if other fast food companies also contributed a penny a pound?

Mr. BENITEZ. So when the agricultural industry, when the committee is willing to take off their fine of their members and other fast food companies come to the table, I am absolutely certain that this agreement—that agreements like this can work.

When more companies enter in and buy more tomatoes, then it will be not just a percentage of what the workers are earning that is getting paid the extra penny more per pound, but would be all of the tomatoes. That is why I suggest to Mr. Brown that the Florida tomato committee implements, like they have in the past, a surcharge across the board, a labor surcharge.

Senator SANDERS. OK. I just wanted to go back to Mr. Brown. Just for the record—I think I know the answer, but I wanted the committee to have this on the record. Isn't it the case that the Florida Tomato Growers Exchange agreed to impose a fine of $100,000 for member growers who participated in this penny a pound program?

Mr. BROWN. Senator, the Florida Tomato Growers Exchange is a voluntary organization owned and operated by its board of directors and members, and they have chosen to implement operational policies that standardize procedures and operations in the industry. As a contractual performance requirement, there is a fine in that process, yes, sir.

Senator SANDERS. That fine is $100,000 for member growers who participated in this penny a pound program. Is that accurate?

Mr. BROWN. That is correct.

Senator SANDERS. OK. Thank you, Mr. Brown.

What I want to do now is simply—let me pick up a point that I think Mr. Schlosser had raised a moment ago in terms of this penny a pound business. Mr. Brown, is it true that the Florida Tomato Growers Exchange voted in 2002 to oppose a surcharge to cover the cost of phasing out the widely used pesticide methyl bromide?

Haven't Florida tomato growers also imposed surcharges on tomatoes for the price of fuel and the wooden pallets you use to help box your tomatoes? In other words, is this concept of a surcharge a new idea, or is that something that you have been doing in the past?

Mr. BROWN. The up-charging of certain items in many cases are services performed for the buyer by the shipping company that is shipping that product, has been a common business practice in the industry.

Senator SANDERS. So the idea of imposing a surcharge is not a new concept?

Mr. BROWN. The surcharges or up-charges have been added to the industry over time. However, Senator, the reality of our marketplace is that in the last 16 years, we have seen imports into this country jump by 175 percent in the case of fresh tomatoes, while the domestic industry has grown by less than 10 percent. We are under severe pressure as an industry to be a least-cost producer of tomatoes, and the addition of any charges to our product basically make us noncompetitive.

When we are noncompetitive, and our customers go to the cheap source of product coming out of Mexico, the industry goes out of business, Senator.

Senator SANDERS. Well, believe me, some of us on this committee are more than aware of what cheap labor abroad has meant for American workers. But that maybe is a discussion for another day.

My question, once again, is in the past, have the tomato growers imposed surcharges?

Mr. BROWN. There have been surcharges applied for gassing, palletization, and cooling and other issues that are universal in the industry. Yes, sir.

Senator SANDERS. OK. Thank you very much.

Let me just, as we come to the end of this hearing, thank all of the witnesses and the Senators who have been with us. I happen to think that what we have done today has simply begun the process, as Senator Kennedy indicated, in investigating the situation among Florida tomato pickers.

Let me just repeat what Senator Kennedy, who is the Chairman of this committee, has said because this is the beginning. This is not the end. We have broken ground on this issue. We are going to stay on this issue. Most of us on this committee think that what is going on in Immokalee in terms of the working conditions there is not something that in the year 2008 should be going on in the United States of America.

And let me say that given the conflicting discussion about wage rates, we need either a congressional or a GAO audit of wage and hour records of the growers. As many of you know, the General Ac-

countability Office here in the Congress is widely respected for their objective work.

Mr. Brown, would this committee have the cooperation of the tomato growers with a GAO audit of wages and hour records?

Mr. BROWN. Senator, we are a very progressive industry, and we are willing to open ourselves up to SAFE audits, and we stand behind our willingness to provide fair and safe working conditions.

Senator SANDERS. I wasn't talking about the SAFE audit of which you are a member. I was talking about the General Accountability Office of the U.S. Congress. In other words, we have heard conflicting testimony today about how much people are earning, and I think all of us should try to ascertain what the truth is.

The GAO is a widely respected nonpartisan organization. Would you be prepared to work with the GAO?

Mr. BROWN. Senator, as the growers exchange, we would be willing to work with the GAO. But there are individual business decisions of individual business companies. That would be decisions they would make, and I am not in a position here today.

Senator SANDERS. You are here representing the exchange. Would the exchange be prepared to work with the GAO so we can get to the truth? So the next time around, we will be able to say this is what the GAO determined were the wages in the industry rather than having conflicting opinions.

Mr. BROWN. Yes.

Senator SANDERS. So I am hearing you say that the exchange would be willing to work with the General Accountability Office?

Mr. BROWN. We would be willing to work with them within the limits of our authority. Yes, sir.

Senator SANDERS. Thank you. It seems to me that in addition, that we are likely to need to expand protections for workers in a number of ways, including adding coverage of both the Fair Labor Standards Act and the National Labor Relations Act to agricultural workers.

It seems to me that the testimony of Detective Frost and others make it abundantly obvious that we need to make changes to the Federal trafficking statutes to address the problem of growers and others who are avoiding prosecution by remaining willfully blind to the abuses around them. We also need to make sure that people cannot escape civil liability to workers who are enslaved, abused, or cheated out of wages.

It seems to me that we should also examine the anti-trust implications of the Florida Tomato Growers Exchange's activities. That is an area we will want to look at.

Finally, we need to make sure that slavery, servitude, and other abuses in the Florida tomato industry continue to receive the attention—both in and outside of Congress—they deserve, with the goal of ending this abomination.

Needless to say, slavery is not something which should exist in America in 2008, and needless to say, the horrendous wage and working conditions that exist in that industry need to be significantly improved.

Let me just conclude on that note. I thought this was a very good start. I want to thank all of the witnesses for being here. We look forward to continuing this discussion with you.

This meeting is now adjourned.

[Additional material follows.]

ADDITIONAL MATERIAL

PREPARED STATEMENT OF LAW PROFESSORS

Re: Legality of Tomato Growers' Compliance with Agreements between Farmworkers and Fast-Food Companies

We are 26 Professors of Law. We specialize in labor law, including the antitrust dimensions of labor standards.

We write this statement in response to statements by the Florida Tomato Growers Exchange, which urged its members to refuse to comply with certain labor standards for Florida farmworkers. Those standards are set out in two agreements between the Coalition of Immokalee Workers (CIW) and, respectively, Yum! Brands and McDonald's. The statements by the Growers Exchange cited concerns that growers' compliance with the two agreements would be unlawful.

The legal concerns cited by the Growers Exchange are entirely ill-founded. The agreements between the CIW and the fast-food chains have been hailed by former President Jimmy Carter, former Secretary of Labor Robert Reich, former National Labor Relations Board chairman William Gould, and many other distinguished officials, as well as many eminent law professors, including Harvard Law Professor Paul Weiler. In addition, the U.S. Department of Justice has reviewed and approved a program that is closely analogous to the CIW agreements.

We issue this statement to ensure that the growers' ostensible legal concerns do not serve as a pretext for obstructing the great strides that CIW is making on behalf of Florida farmworkers.

First, some background about the agreements that the Growers Exchange challenges:

In March 2005, Yum! Brands entered into its agreement with CIW, an organization of Florida farmworkers who pick tomatoes that go into fast-food products sold by Yum! Yum! owns Taco Bell and other fast-food chains. The farmworkers do not work directly for Yum!, but instead work for large farms ("growers") that sell their tomatoes to Yum!. (That is, the growers are the "suppliers" and Yum! is the "buyer.")

The agreement between Yum! and CIW stipulates that growers supplying Yum! will not engage in slavery and will adhere to other basic labor standards. Yum! and CIW also agreed that they will jointly monitor labor conditions to ensure that growers adhere to the standards. In addition, Yum! agreed to provide an additional penny in wages to farmworkers for each pound of tomatoes they picked. The expectation was that growers would cooperate in passing the penny per pound to the workers, although Yum! would bear the cost.

In April, 2007, McDonald's reached a similar agreement with CIW. McDonald's also agreed to the creation of a third-party organization that will monitor the growers' compliance with the labor standards set out in the McDonald's-CIW agreement. McDonald's and CIW agreed that they will, at some point in the near future, jointly fashion the details of the third-party organization.

On May 24, 2007, the Growers Exchange, an organization of large Florida growers, issued a statement urging its members not to adhere to labor standards contained in the Yum-CIW and McDonald's-CIW agreements. The brief statement cited "concerns over Federal and State laws relating to antitrust, labor and racketeering." According to the statement, these "concerns" related to "any labor deal that requires tomato companies to adhere to terms and conditions for its employees set by unaffiliated organizations." The statement provided no details or legal analysis supporting those concerns. The Growers Exchange subsequently reiterated the assertions made in the May 24 statement.

In fact, there is nothing illegal about the CIW's agreements with Yum! and McDonald's, nor is there anything unlawful about the growers' adherence to the standards in those agreements. There are many similar codes of conduct establishing labor standards among suppliers of products to large producers and retailers in many sectors of the national economy. Compliance with those codes of conduct is monitored by third-party organizations much like those to which Yum! and McDonald's have agreed.

Antitrust Law.[1] Authoritative analysis of antitrust law has been particularly detailed with respect to recent initiatives in monitoring the production of garments

[1] The discussion in this section refers to Federal antitrust law. Florida State antitrust law follows federal antitrust precedents. See Fla.Stat.Ann. § 542.32; Levine v. Central Fla. Medical Affiliates, 72 F.3d 1538, 1556 n.20 (11th Cir. 1996).

and footwear—initiatives that are directly analogous to CIW's agreements with Yum! and McDonald's.

Two such initiatives bear particular note.

The first is the multi-stakeholder organization called the Fair Labor Association (FLA). In April, 2000, the Nation's highest antitrust agency—the Antitrust Division of the Department of Justice—formally vetted the FLA and concluded there was no cause to bring an antitrust action against it.

The analogy between the FLA and the CIW agreements is very close. The FLA engages in investigations of factories producing garments and footwear. It also certifies other third-party organizations to monitor the factories' compliance with the FLA Code of Conduct. Many large manufacturers and retailers of garments and footwear (such as Nike and Reebok) have pledged to buy the products they sell only from factories that adhere to the FLA Code. Most of these "manufacturers" in fact do not produce the clothing and shoes they sell, but instead enter into contracts with other corporations owning the factories that actually produce the goods. The relationship between a manufacturer such as Nike (the buyer) and the factories (the suppliers) is therefore much the same as the relationship between McDonald's (the buyer) and the growers (the suppliers).

Together with human rights organizations, labor rights organizations, consumer organizations, and universities, the large garment manufacturers and retailers created the FLA. All of these groups play a direct, ongoing, controlling role in the organization. They are, among other things, represented on the policymaking Board of the FLA. Hence, many "unaffiliated organizations," to use the language of the Growers Exchange, control the third-party organization (the FLA) that is responsible for writing the Code of Conduct applicable to suppliers and for monitoring and enforcing that Code.

When the FLA was created, it sought a "Business Review Letter" from the Antitrust Division of the Department of Justice. Upon request, the Antitrust Division issues such Business Review Letters announcing its intention to bring or not bring antitrust enforcement actions. In its letter regarding the FLA, the Antitrust Division concluded that it had no intention to bring enforcement actions against the FLA. The letter stated:

> [T]he Department of Justice has no current intention to institute antitrust enforcement action against the implementation of the [FLA's] Workplace Code of Conduct and Monitoring Principles. Under the circumstances you have asserted, it is far from clear that adherence to the Code will have any adverse effect on the prices paid by United States consumers of apparel or footwear. Moreover, to the extent that a firm's ability to advertise compliance with the Code provides useful purchasing information to a substantial number of consumers, it is possible that development of the Code and Monitoring Principles will have a net procompetitive effect.[2]

The two factors on which the Antitrust Division relied—*the de minimus* effect on consumer prices, and the benefits to consumers who wish to buy products made under decent labor conditions—are equally applicable to CIW's agreements with Yum! and McDonald's. The labor costs of picking tomatoes are an infinitesimal percentage of the final product prices of fast-food chains—lower than one ten-thousandth of 1 percent.[3] And many consumers wish to know whether the food they eat was made under conditions of slavery and other inhumane employer practices. Therefore, under the Antitrust Division's authoritative analysis, the CIW's agreements raise no antitrust concerns.

Furthermore, in the 7 years during which the FLA has functioned, no supplier factory has brought an antitrust lawsuit against the FLA or its affiliated manufacturers. No supplier factory has brought suit alleging that *compliance with* the FLA Code and FLA investigations violates antitrust law. Nor has any supplier factory that *failed to comply* with the FLA Code filed suit alleging an antitrust violation on the ground that it was denied sales to FLA manufacturers.

The second recent initiative that is noteworthy is the Worker Rights Consortium (WRC), another monitoring organization in the garment and footwear sector. The

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[2] U.S. Department of Justice, Antitrust Division, Business Review Letter (April 7, 2000), available at *http://www.usdoj.gov/atr/public/busreview/4513.htm.* The business review letter formally refers to the Apparel Industry Partnership, which subsequently changed its name to the Fair Labor Association. When the name changed, the facts relevant to the business review letter remained the same.

[3] Taco Bell estimates that the CIW-Yum agreement will cost $100,000 per year, constituting an infinitesimal percentage of its multi-billion dollar annual sales. McDonald's has estimated that the CIW-McDonald's agreement will raise labor costs by less than 1 million dollars, which is likewise an infinitesimal percentage of its more than $20 billion in annual sales.

WRC investigates factories on behalf of 180 universities in the United States to ensure that collegiate merchandise (such as sweatshirts and caps bearing university names and logos) is made under decent labor conditions. The market structure in this sector is this: The universities license their names and logos to manufacturers. In the licenses, the universities contractually require manufacturers to comply with University Codes of Conduct, which are modeled on the WRC Code with variations from university to university. The manufacturers then enter into contracts with supplier factories to produce merchandise bearing the university name and logo. The manufacturer requires its supplier factories to comply with the University Codes of Conduct. Once again, the relationship between the manufacturer (buyer) and the factories (suppliers) is directly analogous to the relationship between fast-food companies (buyers) and the growers (suppliers).

The WRC investigates supplier factories, writes reports, and recommends corrective action for any violations of the WRC Code of Conduct and the various Codes of Conduct adopted by the universities. On the basis of the WRC investigations and reports, the universities demand that manufacturers come into compliance with the Codes. The manufacturers, in turn, demand that the supplier factories come into compliance with the Codes. If factories do not come into compliance, the universities may cut off contracts (licenses) with the manufacturers, and manufacturers may cut off contracts with the factories. (Many of the manufacturers have also adopted the FLA Code and are therefore committed to compliance and monitoring of their supplier factories through the FLA protocols as well as the WRC rules.)

The WRC is controlled by three groups: a student organization called United Students Against Sweatshops (USAS), University administrators, and an "Advisory Council" made up of various experts and advocates in the area of labor rights. In addition, when undertaking investigations, the WRC collaborates with a variety of worker-rights organizations and advocates around the world. Therefore, to use the terminology of the Growers Exchange, several categories of "unaffiliated organizations" formulate and enforce Codes of Conduct against the supplier factories: the WRC, USAS, the Advisory Council, the universities, the manufacturers, and various worker-rights organizations and advocates.

As with the FLA, *no supplier factory* has brought an antitrust lawsuit against the WRC, its affiliated universities, or the manufacturers that source from the factory, nor against other, compliant factories that benefit from the WRC program. No supplier factory has brought suit alleging that its *compliance* with the WRC Code, the University Codes, and WRC investigations violates antitrust law. Nor has any supplier factory that *failed to comply* with the WRC Code filed suit alleging an antitrust violation on the ground that it was denied sales to manufacturers. Nor has *any manufacturer* brought suit alleging that its compliance or failure to comply with WRC Code or the University Codes constitutes a violation of antitrust law.

The WRC has recently proposed a new policy that would require manufacturers to pay supplier factories a price for garments sufficient to enable supplier factories to pay a "living wage" to their workers. The WRC would monitor compliance with the new policy, just as the WRC has monitored other standards contained in the University Codes of Conduct. The proposed living-wage policy has been subject to extensive antitrust evaluation by the preeminent antitrust lawyer in the Nation—Mr. Donald I. Baker, the former Chief of Enforcement in the Antitrust Division of the Department of Justice. In a lengthy opinion letter, Mr. Baker concludes that the new policy would not violate antitrust laws.[4]

Mr. Baker's conclusion rests principally on the fact that no party that adopts the new policy—the universities, the manufacturers, or the factories—is motivated by profit-maximization or revenue-enhancement. The policy, rather, is motivated by *the humanitarian goal* of improving standards for workers in the supplier factories.

Mr. Baker emphasizes that his conclusion is sound, even if the universities are deemed to be competitors with one another, the manufacturers are deemed to be competitors with one another, and the factories are deemed to be competitors with one another in the market for collegiate merchandise. Apart from having the humanitarian goal of labor monitoring, the living-wage policy does not require any "horizontal agreement" among the universities, among the manufacturers, or among the factories. Rather, the policy is implemented by "vertical agreements." That is, the university demands that its manufacturers pay a sufficient price to factories to ensure they can pay a living wage, and the manufacturer demands that its supplier factories in fact pay the wage. These are vertical, not horizontal, restraints. Vertical restraints of this kind are lawful—indeed, they are ubiquitous in supplier-buyer contracting. That is, supplier factories typically compete among themselves to supply

[4] Mr. Baker's Opinion Letter and supplemental letters are available at www.workersrights.org.

each manufacturer. In order to get the business of a manufacturer, the supplier factories must abide by the terms demanded by the manufacturer—such as product price, product quality, delivery time, and so on. When manufacturers demand that supplier factories adhere to the living wage, this is just one more term in the vertical contract between the manufacturer and its suppliers.

Indeed, Mr. Baker emphasizes that if several manufacturers decide among themselves *not* to compete for the business of a university on the ground that the university demands that manufacturers comply with a Code of Conduct (including the proposed living-wage policy) and submit to monitoring, then the manufacturers themselves may stand in violation of antitrust laws. The manufacturers' collective refusal to deal may constitute a horizontal restraint of trade aimed at securing better contractual terms from the university—which constitutes a *per se* violation of antitrust laws.

By direct analogy, the CIW's agreements do not violate antitrust law. If McDonald's and Yum! each require their growers to abide by a Code of Conduct, to cooperate in McDonald's and Yum's payment to workers of an additional penny per pound of tomatoes picked, and to submit to monitoring, these are purely vertical agreements between buyer and supplier and are perfectly legal. Under the CIW agreements, Yum! and McDonald's do not and need not "horizontally agree" between themselves to demand the same terms from their suppliers. The conclusion is the same, even if Yum! and McDonald's each require their suppliers to submit to monitoring by the same third-party organization—just as Nike and Reebok require their suppliers to submit to monitoring by the same third-party organization. The agreements remain purely vertical.

In any event, even if there were horizontal agreements between Yum! and McDonald's or other buyers of tomatoes, such horizontal agreements would not violate antitrust laws because they are motivated by humanitarian concerns, not by revenue-enhancement or profit-maximization.

And, apart from their humanitarian purpose, the agreements simply have no discernable anticompetitive effect. No grower is excluded from negotiating to supply tomatoes to Yum! or McDonald's; and if a grower agrees to supply tomatoes in conformance with Yum's or McDonald's respective Codes of Conduct, there is no inefficiency imposed on that grower or on growers who reject Yum's or McDonald's demands and decline to supply them with tomatoes. The grower that agrees to deal with Yum! or McDonald's must simply pass along to its workers the additional penny per pound provided by Yum! or McDonald's. Hence, there is no anticompetitive effect, viewed from the standpoint of competition among the growers.

Nor is there any anticompetitive effect, viewed from the standpoint of competition among the fast-food companies. Indeed, most fast-food companies already have codes of conduct to which they demand their suppliers adhere. These kinds of codes have become ubiquitous in the global economy. Businesses with brand reputations to protect seek to ensure that their global suppliers, whether factories, farms, or mines, do not unduly exploit workers, abuse animals, or damage the environment. Therefore, the market for fast food is already structured by the fast-food companies' legitimate efforts to protect their brand reputation and act like good corporate citizens. In the CIW-Yum and CIW-McDonald's agreements, CIW and McDonald's have simply announced that they will add provisions against forced labor to their existing corporate codes, and will ensure that workers are paid an additional penny per pound of tomatoes picked. As noted above, the effect on prices of fast-food products is infinitesimal; and Justice Department opinions recognize that such codes have a *pro*-competitive effect, to the extent they inform consumers about the conditions on farms supplying their food and enable ethical consumers to satisfy their preferences for food made by workers who are not so severely exploited.

By contrast, if several growers horizontally agree among themselves to reject Yum's or McDonald's demands that the growers comply with a Code of Conduct, cooperate in Yum's and McDonald's payment to workers of an additional penny per pound of tomatoes picked, and submit to monitoring, then *the growers* themselves may violate antitrust laws—because they are seeking to preclude competition among themselves over the terms demanded by each buyer. Indeed, the Growers Exchange has threatened to impose monetary penalties on any of its members who cooperate with the CIW-Yum or CIW-McDonald's agreements.

Based on these precedents, the growers' ostensible concerns over antitrust law are flatly mistaken. The only real antitrust concern would arise if several growers agree among themselves to not participate in the CIW-Yum or CIW-McDonald's monitoring programs.

Labor Law. The Growers Exchange's ostensible "concerns" about labor law are mystifying. (As with its antitrust concerns, the Growers Exchange gives no details

or analysis of its labor law concerns.) There are simply no plausible labor law issues raised by the CIW-Yum and CIW-McDonald's agreements.

It is true that Federal labor law prohibits certain types of indirect pressure known as secondary boycotts. For example, if a labor union is seeking higher wages from employer A, the union may not engage in a strike against employer B (say, a buyer of employer A's products) to induce employer B to coerce employer A to raise wages; and the union is, in some circumstances, barred from entering into a contract with B to cease doing business with A. However, farmworkers are excluded from the coverage of Federal labor law. They are therefore not bound by Federal restrictions on secondary activity. And, even if Federal labor law *were* applicable to farmworkers, labor law does not prohibit non-coercive secondary *consumer* boycotts—that is, the law would not prohibit CIW from calling a consumer boycott against a buyer of tomatoes to induce the buyer to adopt a Code of Conduct that is applicable to tomato growers. But to repeat: farmworkers are exempt from all Federal labor laws against secondary action or agreements not to deal. Under Florida State law as well, collective boycott of a party is only unlawful if those engaging in the boycott act out of malicious or punitive motive - when, for example, a group of manufacturers agree among themselves to cease doing business with a certain distributor in order to increase their own profits or the profits of other distributors. The CIW agreements, which are motivated by humanitarian goals, clearly have no malicious or profit-driven purpose.[5]

Racketeering. The Growers Exchange's reference to racketeering is even more mystifying than its reference to labor law. A party violates the Federal racketeering law—the Racketeer Influenced and Corrupt Organizations Act (RICO)—only if the party, in association with others, commits two or more "predicate offenses," such as kidnapping or slavery.[6] CIW, McDonald's, and Yum! have engaged in no such criminal acts. The concern raised by the Growers Exchange is ironic—since the CIW-Yum and CIW-McDonald's agreements aim to prevent future acts of kidnapping and slavery by the growers themselves or by their agents.

In conclusion, the ostensible legal concerns of the Growers Exchange are utterly without merit. Growers who comply with the CIW-Yum and CIW-McDonald's agreements will not violate antitrust, labor, or racketeering law. The unfounded assertions of the Growers Exchange should not deter any grower from adhering to the CIW agreements. Nor should those assertions deter any fast-food company or other buyer from entering into similar future agreements with the CIW.

Sincerely,

David Abraham, *Professor of Law, University of Miami School of Law*; James Atleson, *Professor of Law, State University of New York at Buffalo*; Mark Barenberg, *Professor of Law, Columbia University School of Law*; Linda Bosniak, *Professor of Law, Rutgers University School of Law*; Christopher David Ruiz Cameron, *Professor of Law, Southwestern Law School*; Roberto Corrada, *Professor of Law, University of Denver Sturm College of Law*; Marion Crain, *Paul Eaton Professor of Law, University of North Carolina at Chapel Hill*; Kenneth G. Dau-Schmidt, *Willard and Margaret Carr Professor of Law, Indiana University-Bloomington*; Cynthia Estlund, *Professor of Law, New York University*; Catherine Fisk, *Douglas Blount Maggs Professor of Law, Duke University*; Jennifer Gordon, *Associate Professor of Law, Fordham Law School*; Seth Harris, *Professor and Director, Labor & Employment Law Programs, New York Law School*; Alan Hyde, *Professor and Sidney Reitman Scholar, Rutgers University School of Law*; Karl E. Klare, *George J. & Kathleen Waters Matthews, Distinguished University Professor, Northeastern University*; Arthur S. Leonard, *Professor of Law, New York Law School*; Carlin Meyer, *Professor of Law, New York Law School*; Gary Minda, *Professor of Law, Brooklyn Law School*; Peter Pitegoff, *Dean, Professor of Law, University of Maine School of Law*; James G. Pope, *Professor of Law, Rutgers University School of Law*; Joel Rogers, *Professor of Law, University of Wisconsin Law School*; Michael Selmi, *Professor of Law, George Washington University Law School*; William H. Simon, *Arthur Levitt Professor of Law, Columbia University School of Law*; Emily A. Spieler, *Dean, Edwin Hadley Professor of Law, Northeastern University School of Law*; Robert Steinfeld, *Professor of Law and Roger and Karen Jones Faculty Scholar, State University of New York at Buffalo*; Kendall Thomas, *Nash Professor of Law, Columbia University School of Law*; Lucy A. Williams, *Professor of Law, Northeastern University School of Law.*

[*academic affiliation for identification only*]

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[5] Margolin v. Morton F. Plant Hospital Ass'n, Inc., 342 So. 2d 1090 (Fla. Dist. Ct. App. 2d Dist. 1977).

[6] 8 USC § § 1961–1962.

McDONALD'S USA, LLC,
OAK BROOK, IL 60523,
April 11, 2008.

Hon. EDWARD M. KENNEDY,
Chairman,
Committee on Health, Education, Labor, and Pensions,
U.S. Senate,
Washington, DC 20510.

Hon. BERNARD SANDERS,
U.S. Senate,
Washington, DC 20510.

DEAR SENATORS KENNEDY AND SANDERS: Thank you for the opportunity to share McDonald's position on Florida tomatoes and our commitment to social responsibility.

In April 2007, with support from the Carter Center, the Coalition of Immokalee Workers (CIW) and McDonald's USA, working with our produce suppliers, announced plans to work together to address wages and working conditions for the farmworkers who pick Florida tomatoes.

McDonald's USA and our suppliers continue to support the initiative with CIW to pay an additional penny per pound for Florida tomatoes and to arrange for growers to pass the funds directly on to their workers. Despite the response by the growers, McDonald's produce suppliers continue to look for ways to achieve these important objectives.

McDonald's produce suppliers have also been working directly with the CIW to finalize a strong code of conduct for Florida tomato growers. Additionally, discussions are moving forward between our produce suppliers and the CIW to develop a third-party verification system of the code of conduct which could be adopted by a broader group of purchasers.

We respect the CIW's commitment to enhancing conditions for the workers. All people deserve to be treated with respect. Together with our produce suppliers, we remain steadfast in our commitment to improving the wages and working conditions for tomato farmworkers in Florida.

Sincerely,

J.C. GONZALEZ-MENDEZ,
Senior Vice President,
Chief Supply Chain Officer, North America

[Whereupon, at 12:05 p.m., the hearing was adjourned.]

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