

A Dangerous Precedent: Iowa's Divergence from Federal Child Labor Norms

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I. INTRODUCTION.....	460
II. BACKGROUND.....	462
<i>A. Overview of Senate File 542 and Other Proposed Changes to Iowa's Child Labor Laws</i>	462
<i>B. Overview of Federal Child Labor Regulations Pertinent to Senate File 542</i>	463
<i>C. Federal Preemption</i>	465
<i>D. Child Labor Statistics</i>	466
<i>E. The Immigration System's Impact on Illegal Child Labor</i>	467
1. Unaccompanied Minors and Root Causes of Migration.....	468
2. Sponsor Vetting and Tracking Unaccompanied Minors.....	469
<i>F. Business Incentives to Skirt Child Labor Laws</i>	470
1. Modern Large Business Structures	471
2. Corporate Fines for Child Labor Violations	471
3. Social Compliance Audits	473
<i>G. Recent Federal Action to Prevent Child Labor Violations</i>	477
1. The Hot Goods Doctrine	477
2. Civil Monetary Fines	479
3. Congressional Action.....	480
4. Strategies to Address Root Causes of Migration.....	481
III. ANALYSIS	482
<i>A. The Legality of Senate File 542</i>	482
<i>B. SF 542's Impact on Iowa Children and Actions the Federal Government Should Take</i>	485
1. Unaccompanied Minors and Sponsor Vetting	485
2. Business Structures, Incentives, and Economic Considerations	486
3. Addressing the Root Causes of Migration	490

IV. CONCLUSION491

I. INTRODUCTION

“I didn’t have expectations about what life would be like here. . . but it’s not what I imagined.”¹ These are the words of 15-year-old Carolina Yoc, reflecting on her immigration to the United States alone to live with a family member she had never met.² Before living in the United States, Carolina hailed from a village in Guatemala, where she lived alone with her grandmother, who was of failing health.³ The village offered little in the way of electricity, running water, or food.⁴ As a result, at 14 years old, Carolina joined a group of her neighbors heading north in search of economic opportunity.⁵ The journey was harrowing, evidenced by the fact that by her journey’s end, she arrived at the U.S.-Mexico border weighing just eighty-four pounds.⁶ After being sent to a migrant shelter in Arizona, she was released by the Department of Health and Human Service’s custody to her aunt in Grand Rapids, Michigan, who herself was supporting her own three children on a household income of just \$600 per week.⁷ Carolina began attending school in the morning and working evening shifts at a factory operated by Hearthside Food solutions, a contractor for major companies such as General Mills.⁸ Seventeen-hour days are the now the norm for Carolina, and the work is exhausting.⁹ On an average shift, she stuffs a sealed bag of cereal (such as famous brands like Cheerios) into yellow cartons passing by on conveyer belts.¹⁰ Completing this task is not absent of danger, especially for a worker of Carolina’s age. Fast-moving pulleys operate around her station, and such factory equipment has previously ripped open a woman’s scalp and torn workers’ fingers off.¹¹ As a result of her work, Carolina is often physically unable to attend school due to hunger, lack of sleep, and stress related to worries about making money.¹²

¹ Hannah Dreier, *Alone and Exploited, Migrant Children Work Brutal Jobs Across the U.S.*, N.Y. TIMES (Feb 28, 2023), <https://www.nytimes.com/2023/02/25/us/unaccompanied-migrant-child-workers-exploitation.html> (on file with author) [hereinafter *Alone and Exploited*].

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Alone and Exploited*, *supra* note 1.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

Many migrant children, like Carolina, have similar harrowing and distressing stories.¹³ Several classmates of her ninth-grade class, including Christian Lopez, dropped out of school to work full-time.¹⁴ Despite widespread exploitation of children working in dangerous jobs, states such as Iowa continue to roll back protections for younger workers.¹⁵

On Friday, May 26th, 2023, Iowa Governor Kim Reynolds signed into law Senate File 542, a substantial re-write of Iowa's child labor laws.¹⁶ Part II of this Note will discuss in more detail certain provisions of Senate File 542, as well as an overview of federal child labor laws in the United States, to highlight potential inconsistencies between the two.¹⁷ This section will also examine recent developments in Iowa's child labor regulations, particularly concerning the reduction of fines for violations.¹⁸ Part II will also examine the increase of child labor violations in the United States in recent years, the underlying causes behind this increase, and the increasingly common victim of illegal child labor in the U.S.: migrant unaccompanied minors.¹⁹ Attention will be brought to the fact that a combination of failures at the federal level to devise and implement a sufficiently comprehensive plan to prevent illegal child labor, the employment practices of businesses engaged in manufacturing, and economic incentives for businesses, results in migrant unaccompanied minors laboring in dangerous conditions illegal under federal law.²⁰ Part III of this Note will argue that various provisions of Senate File 542 are likely illegal under federal law and will harm children in Iowa.²¹ Taking into account the underlying causes fueling the recent increase in child labor violations in the United States, Part III will argue that greater action must be taken, in addition to striking File 542, to ensure all children in Iowa are protected from dangerous illegal work.²² To ensure children in Iowa and across the country have legal and safe working conditions, policymakers and legislators should implement a multi-pronged approach at the federal level. This approach should include stricter enforcement of existing child labor laws, enhanced oversight mechanisms for businesses that frequently violate

¹³ See *Alone and Exploited*, *supra* note 1.

¹⁴ *Id.*

¹⁵ Scott McFetridge & Hannah Fingerhut, *Iowa Governor Signs Bill Loosening Child Labor Laws*, ASSOCIATED PRESS (May 26, 2023, 5:28 PM), <https://apnews.com/article/iowa-governor-child-labor-laws-e8cb29e2a45b956489c4a192b7ddeb5> [<https://perma.cc/TX8G-XMAN>].

¹⁶ *Id.*

¹⁷ See discussion *infra* Part II A., B..

¹⁸ See discussion *infra* Part II A., B..

¹⁹ See discussion *infra* Part II E.

²⁰ See *generally* discussion *infra* Part II (showing the cause of the labor pipeline that undocumented children are filtered into).

²¹ See discussion *infra* Part III.

²² See discussion *infra* Part III.

labor protections, increased funding for social services that support vulnerable minors, and legislative measures that deter exploitative labor practices. Additionally, specific policy recommendations should be explored, such as mandatory employer audits, expanded whistleblower protections, and stronger penalties for violations.²³

II. BACKGROUND

A. Overview of Senate File 542 and Other Proposed Changes to Iowa's Child Labor Laws

The provisions relevant to this Note fall under three separate sections of Senate File 542. Section 6 (codified as Iowa Code § 92.7), Section 7 (codified as Iowa Code § 92.7A), and Section 9 (codified as Iowa Code § 92.8A).²⁴ Together, these sections modify the working hours and available occupations for workers under the age of 18 in Iowa.²⁵

Iowa Code § 92.7 modifies the legally authorized working hours for workers under the age of 16 (and above the age of 13) in Iowa.²⁶ Workers in the age range of 14 and 15-year-olds may now work two additional hours per day when school is in session than previously permitted under Iowa law.²⁷ This adjustment increased the legally allowable working hours for this age group from four hours per day to six hours per day when school is in session.²⁸ Additionally, workers in this age group are now permitted to work two hours later than previously allowed, until 9:00 P.M. most of the year, and until 11:00 P.M. from June 1st until Labor Day.²⁹ These workers may now work a maximum of 28 hours per week during school year, a ten-hour increase from the previously authorized maximum under Iowa law.³⁰ Iowa Code § 92.7A extends the allowable working hours for workers in the 16 and 17-year-old age group.³¹ This age group is now allowed to work the same 40 hours per week as an adult.³²

Iowa Code § 92.8A permits 16 and 17-year-olds to work in certain hazardous occupations if they are enrolled in a career and technical education

²³ See generally discussion *infra* Part III (exploring how specific policies can help mitigate or solve unfair and unethical labor practices).

²⁴ IOWA CODE §§ 92.7–8 (2023).

²⁵ *Id.*

²⁶ IOWA CODE § 92.7 (2023).

²⁷ S.F. 452, 90th Gen. Assemb., Reg. Sess. (Iowa 2023); IOWA CODE § 92.7 (2023).

²⁸ S.F. 452, 90th Gen. Assemb., Reg. Sess. (Iowa 2023); IOWA CODE § 92.7 (2023).

²⁹ S.F. 452, 90th Gen. Assemb., Reg. Sess. (Iowa 2023); IOWA CODE § 92.7 (2023).

³⁰ *Id.*

³¹ IOWA CODE § 92.7A (2023); S.F. 452, 90th Gen. Assemb., Reg. Sess. (Iowa 2023).

³² IOWA CODE § 92.7A (2023).

program, internship, registered apprenticeship program, or student learners' program.³³ Under this section, 16 and 17-year-olds enrolled in qualifying programs are permitted to operate power-driven hoisting apparatuses and power-driven bakery machines, to manufacture brick, tile, or related products, and to work in wrecking, demolition, or ship breaking operations.³⁴ In a departure from federal law, Iowa Code § 92.8A does not mandate that a 16 and 17-year-old apprentice register with the Department of Labor or by a state agency, or be employed under a written apprenticeship agreement or conditions that the Department of Labor finds substantially conform to approved federal or state standards.³⁵ Additionally, whereas federal regulations provide only limited apprentice and student-learner exceptions for certain hazardous occupations, Section 9 of Senate File 542 (codified as Iowa Code § 92.8A) provides a blanket exception, meaning 16 and 17-year-old workers can generally work in hazardous occupations (as described above) if those workers are enrolled in an apprentice or student learner program.³⁶

In addition to Senate File 542, further changes to Iowa's child labor laws have been recently proposed. In early January 2025, Iowa introduced a controversial proposal to significantly reduce civil penalties for businesses found in violation of child labor laws related to time and hour restrictions.³⁷ Under the proposed rules, the maximum fine for each violation would decrease from \$10,000 to \$2,500 per child.³⁸ Additionally, the proposal includes provisions to further reduce penalties based on the size of the business.³⁹ For example, employers with 25 or fewer employees would be eligible for a 35% reduction in fines, effectively lowering the financial repercussions for small businesses engaging in such violations.⁴⁰

B. Overview of Federal Child Labor Regulations Pertinent to Senate File 542

Federal child labor regulations under the Fair Labor Standards Act (FLSA) are set forth in Title 29, part 570 of the Code of Federal Regulations.⁴¹ These regulations broadly outlaw most child labor in the

³³ IOWA CODE § 92.8A (2023).

³⁴ *Id.*

³⁵ Compare *id.*, with 29 C.F.R. § 570.50(b) (2025).

³⁶ Compare IOWA CODE § 92.8A (2023), with 29 C.F.R. § 570.50(b) (2025).

³⁷ Nikoel Hytrek, *Iowa Child Labor Protections Rolled Back Further with New Rules*, IOWA STARTING LINE, (Jan. 9, 2025), <https://iowastartingline.com/2025/01/09/child-worker-protections> [<https://perma.cc/E5XY-4Y9B>].

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ 29 C.F.R. § 570 (2025).

United States.⁴² Additionally, they establish stringent restrictions on the limited circumstances in which minors may be legally employed.⁴³

Generally, the FLSA prohibits employment of 14 and 15-year-olds, subject to certain exceptions listed under federal regulations (e.g., clerical work, cashiering, bagging/carrying groceries).⁴⁴ Additionally, strict limits are imposed on permissible working hours for teenagers in the 14 to 15-year-old age group.⁴⁵ The Act provides that when school is in session, workers in this age group are permitted to work no more than 18 hours per week and no more than three hours per day.⁴⁶ Moreover, these minors may only work between the hours of 7:00 A.M. and 7:00 P.M. on any day during the traditional school year, and between 7:00 A.M. to 9:00 P.M. during summer months.⁴⁷

In the context of 16 and 17-year-old workers enrolled in apprenticeships or student-learner programs, federal child labor regulations act as important safeguards to ensure the safety and well-being of workers in that age group as they participate in potentially hazardous work.⁴⁸ These regulations provide exceptions to certain hazardous occupation orders in nonagricultural employment for apprentices and student-learners who are at least 16 years old.⁴⁹ However, such exceptions are limited and there are specific requirements that must be met for those exceptions to apply.⁵⁰ Under 29 CFR § 570.50(b), an exemption for the employment of apprentices shall apply, in part, only when:

the apprentice is registered by the [Office of Apprenticeship] of the United States Department of Labor as employed in accordance with the standards established by that [Office], or is registered by a State agency as employed in accordance with the standards of the State apprenticeship agency recognized by the [Office of

⁴² See *id.*

⁴³ See *id.*; see also Timothy Noah, *The Shocking, Sickening Reality of Child Labor in America*, THE NEW REPUBLIC (Feb. 28, 2023), <https://newrepublic.com/article/170815/shocking-sickening-reality-child-labor-america> [<https://perma.cc/4AQJ-PV29>] (describing how the Fair Labor Standards Act “outlawed most child labor way back in 1938 and imposed strict limits on the rest”).

⁴⁴ See 29 C.F.R. § 570.34 (2025).

⁴⁵ 29 C.F.R. § 570.35 (2025).

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ Letter from Seema Nanda, Solic. of Lab., U.S. Dep’t. of Lab. & Jessica Looman, Principal Deputy of Admin., U.S. Dep’t of Lab. to The Honorable Nate Boulton, State of Iowa Ninetieth Gen. Assembly (Aug. 24, 2023) [<https://perma.cc/EUH3-LTHL>].

⁴⁹ See 29 C.F.R. § 570.50(b) (2025).

⁵⁰ See *id.*

Apprenticeship], or is employed under a written apprenticeship agreement and conditions which are found by the Secretary of labor to conform substantially with such Federal or State standards.⁵¹

Thus, federal child labor regulations require a 16 or 17-year-old apprentice to register with the Department of Labor or by a state agency, or be employed under a written apprenticeship agreement or conditions that the Department of Labor finds substantially conforms to approved federal or state standards.⁵² Additionally, the limited exception for apprentices and student-learners only applies to certain hazardous occupations.⁵³ Therefore, even if a 16 or 17-year-old worker is in an apprenticeship or student-learner program, generally these workers may not perform work in hazardous occupations unless the exception applies.⁵⁴

C. Federal Preemption

Under the Supremacy Clause of the Constitution, when federal law and state law conflict, federal law preempts and displaces state law (the doctrine of federal preemption).⁵⁵ Federal law expressly preempts state law when the language of federal law contains explicit preemptive language.⁵⁶ Comparatively, federal law impliedly preempts state law when such a preemptory intent is implicit in a federal law's purpose and structure.⁵⁷ Conflict preemption is a particular type of federal preemption the Supreme Court has recognized, whereby the ability to comply with both federal and state law is not possible, or where federal objectives are impeded by state law.⁵⁸

For example, in *In re Aurora Dairy Corp.*, the Eighth Circuit examined whether the Organic Food Production Act preempted state law.⁵⁹ The plaintiffs in the case sought to prevent Aurora Dairy from labeling their products as "organic," arguing that the label did not comply with laws in several states.⁶⁰ However, since Aurora had obtained federal certification, the

⁵¹ *Id.*

⁵² *See id.*

⁵³ *See id.*

⁵⁴ *See id.*

⁵⁵ U.S. CONST. art. VI., cl. 2.

⁵⁶ *See Hillsborough Cnty. v. Automated Med. Labs., Inc.*, 471 U.S. 707, 713 (1985).

⁵⁷ *See Gade v. Nat'l Solid Wastes Mgmt. Ass'n*, 505 U.S. 88, 98 (1992).

⁵⁸ *See id.*

⁵⁹ *See In re Aurora Dairy Corp. Organic Milk Mktg. & Sales Pracs. Litig.*, 621 F.3d 781, 787 (8th Cir. 2010).

⁶⁰ *Id.* at 787–94 (“The class plaintiffs allege the [defendants] market the milk they contain as organic when in fact it is not.”).

court determined that the state laws in question posed an “obstacle to the accomplishment of congressional objectives.”⁶¹ Determining that the state law was subject to conflict preemption, the court reasoned that the state law undermined the purpose of the Organic Food Production Act, which was to create a national standard for defining organic food.⁶² This case highlights how federal preemption operates to maintain national consistency in regulatory standards, a principle that is especially relevant when considering Iowa's Senate File 542. Federal child labor regulations under the Fair Labor Standards Act (FLSA) impose strict limits on the employment of minors, setting a comprehensive framework that includes provisions on working hours, hazardous occupations, and permissible employment of minors.⁶³ If Senate File 542 relaxes protections or permits practices that conflict with the FLSA's objectives, it risks being preempted under the doctrine of conflict preemption.⁶⁴ Courts would likely analyze whether the Iowa law creates an obstacle to Congress's intent to protect children from exploitative labor conditions through uniform federal standards.

D. Child Labor Statistics

Prior to 2015, the frequency of violations of federal child labor laws was on a significant decline.⁶⁵ Since 2015, statistics released by the Department of Labor point to an increase of child labor regulation violations.⁶⁶ According to the Department of Labor, the number of minors employed in violation of child labor laws in fiscal year 2022 increased by 283% from fiscal year 2015.⁶⁷ More specifically, the number of minors employed in violation of hazardous occupation orders increased by 94% in fiscal year 2022 from fiscal year 2015.⁶⁸ Much of this increase appears to have occurred in just the last few years. As of July 20th, 2022, Department of Labor inspectors found a 44% increase in children working under illegal conditions from October 1st, 2021.⁶⁹ The state of Iowa is not innocent when

⁶¹ *Id.*

⁶² *Id.* at 798.

⁶³ See generally 29 C.F.R. § 570 (2025) (setting occupational and age-based standards for “oppressive child labor”).

⁶⁴ See *Aurora Dairy Corp.*, 621 F.3d at 781.

⁶⁵ Kaitlyn Radde, *Child Labor Violations are on the Rise as Some States Look to Loosen Their Rules*, NAT'L PUBLIC RADIO (Feb. 26, 2023, 7:05 AM), <https://www.npr.org/2023/02/26/1157368469/child-labor-violations-increase-states-loosen-rules> [<https://perma.cc/L8VP-PDBP>].

⁶⁶ Jennifer Sherer & Nina Mast, *Child Labor Laws are Under Attack in States Across the Country*, ECON. POLICY INST. (Mar. 14, 2023), [https://www.epi.org/publication/child-labor-laws-under-attack/#:~:text=According%20to%20DOL%2C%20the%20number,FY2015%20\(DOL%20WHD%202022\)](https://www.epi.org/publication/child-labor-laws-under-attack/#:~:text=According%20to%20DOL%2C%20the%20number,FY2015%20(DOL%20WHD%202022)) [<https://perma.cc/SH9E-WLR2>].

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

it comes to children working in violation of federal child labor laws. A letter from the Department of Labor sent to Iowa Democratic legislators in May confirms that the Labor Department is actively investigating over six hundred potential child labor violations nationwide, including in Iowa.⁷⁰ Statistics are based only on violations caught by the federal government (and thus not all potential violations), and therefore likely only represent a fraction of child labor violations occurring in the United States.⁷¹ Federal and state agencies responsible for enforcing child labor laws often operate with constrained resources, limiting the frequency and scope of inspections and investigations. This limitation can result in many violations going undetected.⁷²

Importantly, migrant and non-migrant children alike are injured in the workplace at a substantially higher rate than adults.⁷³ According to data from the Centers for Disease Control, workers in age groups 15 to 24 are injured at a rate of up to nearly 250% higher than that of workers aged 25 to 44 years old.⁷⁴

E. *The Immigration System's Impact on Illegal Child Labor*

Although the number of migrant border crossings into the United States was comparable to current levels two decades ago, the recent surge is notably different because a large fraction of the crossing population now consists of children.⁷⁵ Many of these children are unaccompanied minors, largely from Central American countries, fleeing from deteriorating economic conditions caused by the pandemic.⁷⁶ Unaccompanied migrant children are a shadow workforce extending into many industries in every state.⁷⁷ The recent surge in the arrival of these children in the United States, has highlighted that the Department of Health and Human Services (HHS), the agency tasked with ensuring the safety of these children upon arrival, may lack the capability (and

⁷⁰ *Child Labor Bill Puts Iowa Kids, Businesses at Risk*, IOWA SENATE DEMOCRATS (May 17, 2023), <https://www.senate.iowa.gov/democrats/2023/05/child-labor-bill-puts-iowa-kids-businesses-at-risk> [<https://perma.cc/SG9B-8QHZ>].

⁷¹ *See id.*

⁷² *See* Terri Gerstein, *Policies for States and Localities to Fight Oppressive Child Labor*, ECON. POL'Y INST. (Feb. 27, 2024), <https://www.epi.org/publication/fight-oppressive-child-labor> [<https://perma.cc/9K3R-U9Z5>].

⁷³ *See* REBECCA J. GUERIN ET AL., NONFATAL OCCUPATIONAL INJURIES TO YOUNGER WORKERS — UNITED STATES, 2012–2018 (Sept. 4, 2020), <https://www.cdc.gov/mmwr/volumes/69/wr/mm6935a3.htm> [<https://perma.cc/Z2UE-VWWW>].

⁷⁴ *Id.*

⁷⁵ John Gramlich, *Monthly Encounters with Migrants at U.S.-Mexico Border Remain Near Record Highs*, PEW RSCH. CTR. (Jan. 13, 2023), <https://www.pewresearch.org/short-reads/2023/01/13/monthly-encounters-with-migrants-at-u-s-mexico-border-remain-near-record-highs> [<https://perma.cc/H2C5-5ZMB>].

⁷⁶ *Alone and Exploited*, *supra* note 1.

⁷⁷ *Id.*

potentially the resources) to track these children adequately.⁷⁸

1. Unaccompanied Minors and Root Causes of Migration

Since 2021, 300,000 unaccompanied minors have arrived in the United States.⁷⁹ Iowa specifically has seen a recent uptick in unaccompanied minors released into the state.⁸⁰ Over 600 unaccompanied minors were released to sponsors in Iowa between October 2023 and July 2023.⁸¹ Many of these unaccompanied minors are under pressure to earn money upon arrival into the United States.⁸² This pressure to earn money stems the need for migrant children to provide for struggling families back in their home countries, to pay off smuggling debt fees to sponsors, and to cover living expenses.⁸³ For example, Nery Cutzal, a 13-year-old unaccompanied minor living in Florida, was told by his sponsor upon arrival in the United States (whom he met over Facebook Messenger) that he owed more than \$4,000 and had to find his own place to live.⁸⁴ “Don’t mess with me,” the sponsor wrote,⁸⁵ because “[y]ou don’t mean anything to me.”⁸⁶ Cases such as Nery Cutzal’s are not rare. On September 20th, 2023, a watchdog group representing federal whistleblowers raised new concerns that HHS’s case management system may have let unaccompanied minors into the custody of sponsors who would force them to work in unsafe environments, such as slaughterhouses.⁸⁷ According to the report, the case management system utilized by HHS is in such disarray that repeated egregious discharging procedures are common.⁸⁸ For example, some children were listed as discharged to sponsors despite still being under HHS custody.⁸⁹ Moreover, reports have highlighted instances where children were released to sponsors without thorough background

⁷⁸ See *id.*

⁷⁹ *Id.*

⁸⁰ See *Unaccompanied Children Released to Sponsors by State*, OFF. OF REFUGEE RESETTLEMENT (Sept. 28, 2023),

<https://www.acf.hhs.gov/orr/grant-funding/unaccompanied-children-released-sponsors-state> [<https://perma.cc/7B28-2CE3>].

⁸¹ *Id.*

⁸² See *Alone and Exploited*, *supra* note 1.

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ Julia Ainsley, *Whistleblowers say U.S. government’s Poor Oversight May Have Led to Migrant Kids’ Working in Unsafe and Illegal Jobs*, NBC NEWS (Sept. 21, 2023, 11:00 AM), <https://www.nbcnews.com/politics/immigration/whistleblowers-hhs-child-labor-slaughterhouses-migrant-children-rcna105842> [<https://perma.cc/FQU9-QDRS>].

⁸⁸ *Id.*

⁸⁹ *Id.*

checks, increasing the risk of exploitation. In some cases, sponsors with criminal histories or those intending to subject children to labor trafficking were approved.⁹⁰

Economic incentives are one of the several factors driving immigration to the U.S. from Latin America.⁹¹ Because of the lack of economic opportunity, many individuals living in Latin American countries feel pushed to migrate out of their home countries.⁹² As the U.S. has a relatively dynamic economy compared to many Latin American countries, it is a destination for many migrants fleeing their home countries.⁹³ Thus, reducing incentives to migrate would be a key factor in minimizing the potential for migrant children to end up working in punishing, and potentially illegal, conditions in the U.S.⁹⁴ This could be accomplished by expanding economic opportunities in Latin America.⁹⁵ Expanding economic opportunities for those living in Latin America requires more than development assistance.⁹⁶ Rather, incentivizing businesses throughout the Western Hemisphere to invest and do business in Latin American countries would be a central factor in expanding opportunities in these countries.⁹⁷

2. Sponsor Vetting and Tracking Unaccompanied Minors

The Department of Health and Human Services (HHS) is responsible for vetting sponsors of unaccompanied minors and ensuring sponsors will provide protection from “mistreatment, exploitation, and trafficking, as provided under the Trafficking Victims Protection Reauthorization Act of 2008.”⁹⁸ HHS performs checks on unaccompanied minors by calling them one month after they were released to their sponsor’s custody.⁹⁹

⁹⁰ Jack Gillum & Michelle Hackman, *U.S. Officials Wanted to Avoid Trump’s ‘Kids in Cages’ Problem. Doing So Created Another Dilemma*, WALL ST. J. (July 8, 2024, 5:00 AM.), <https://www.wsj.com/us-news/biden-migrant-children-temporary-guardians-trump-cages-e4d115f1> (on file with author).

⁹¹ See Steve Liston, *To Stabilize Central America, the US Must Craft Better Incentives for Trade*, THE HILL (Jan. 3, 2022), <https://thehill.com/opinion/finance/590727-to-stabilize-central-america-the-us-must-craft-better-incentives-for-trade> [<https://perma.cc/RE8G-P6BF>].

⁹² See *id.*

⁹³ See *id.*

⁹⁴ See *id.*

⁹⁵ See *id.*

⁹⁶ See *id.*

⁹⁷ See Liston, *supra* note 91.

⁹⁸ ORR *Unaccompanied Children Program Policy Guide*, OFF. OF REFUGEE RESETTLEMENT (Aug. 8, 2023), <https://www.acf.hhs.gov/orr/policy-guidance/unaccompanied-children-program-policy-guide-section-2> [<https://perma.cc/3QZ3-954Q>].

⁹⁹ *Alone and Exploited*, *supra* note 1.

Due to the influx of unaccompanied minors arriving in the U.S., the Biden administration increased demands on HHS staffers to quickly move children out of overcrowded immigration shelters and release them to adults.¹⁰⁰ This development led to some caseworkers voicing concerns that the vetting process is being rushed.¹⁰¹ From 2022 to 2024, HHS could not reach more than 85,000 of the unaccompanied minors it released from its custody to sponsors residing in the United States, immediately losing contact with roughly one out of every three of these children.¹⁰² More than sixty caseworkers at agencies hired by HHS to track high risk minors reported that HHS ignored obvious labor exploitation of these children.¹⁰³ Many of these caseworkers estimated that two out of every three of these minors end up working full time upon their release to sponsors.¹⁰⁴ One caseworker in central Florida told reporters she stopped reporting potential child labor violations to law enforcement altogether after finding police were unwilling to investigate her claims.¹⁰⁵

Even when potential violations are investigated and uncovered by the Department of Labor, the Department often fails to ensure those children do not return to similar work in the future. The Department of Labor's failure to adequately address child labor violations creates a cycle in which vulnerable children repeatedly find themselves in exploitative work environments. For example, after the Department discovered more than one hundred minors working at a Packers Sanitation Plant in violation of federal child labor laws, social service agencies were dismayed that Department officials did not refer any of the children working in the plant to their agencies.¹⁰⁶ This oversight left the minors at risk of returning to similar exploitative work, perpetuating their exposure to harm.

F. Business Incentives to Skirt Child Labor Laws

Between 2010 and 2015, the unemployment rate continuously dropped in the U.S., reaching 5% in 2015.¹⁰⁷ At the time of writing, the unemployment rate in the United States sits at a historic low of roughly

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Alone and Exploited*, *supra* note 1.

¹⁰⁶ William Finnegan, *Child Labor is on the Rise*, NEW YORKER (June 4, 2023), <https://www.newyorker.com/magazine/2023/06/12/child-labor-is-on-the-rise> (on file with author).

¹⁰⁷ U.S. Bureau of Labor Stat., *United States Unemployment Rate*, FED. RESERVE BANK OF ST. LOUIS (Sept. 1, 2023), <https://fred.stlouisfed.org/series/UNRATE> [<https://perma.cc/LAT5-PZJM>].

3.5%.¹⁰⁸ This helps to not only explain the surge in child labor violations the last few years, but more specifically why, beginning in 2015, child labor in the U.S. saw a large uptick as employers sought to find the cheapest possible labor in a tight labor market.¹⁰⁹

1. Modern Large Business Structures

According to David Weil, former administrator of the Wage and Hour Division of the Department of Labor, since the 1970s, American corporations have put much of their focus on ensuring larger returns for shareholders.¹¹⁰ Because robust human resources departments were not considered helpful for increasing profits, corporations shed certain aspects of employment, especially in regards to frontline workers, staffing agencies, subcontractors, and third-party management companies in order to save costs.¹¹¹ Subcontractors who win contracts with low bids, as well as franchisees who agree to terms overwhelmingly advantageous to large Fortune 500 companies, often “can’t really expect to clear a profit without cutting corners.”¹¹² Illustrating this phenomenon, Hearthside Food Solutions, a contractor for Frito-Lay and General Mills (and the largest contract manufacturer in the U.S.), was recently found to be employing a 15-year-old girl from Guatemala on its assembly line in its Grand Rapids, Michigan plant, named Carolina Yoc.¹¹³ Hearthside itself relied on a local staffing agency to hire Carolina.¹¹⁴ Moreover, the fact that companies such as Hyundai appeared to be unaware that child labor was illegally utilized by their third-party contractors largely corroborates Weil’s analysis.¹¹⁵

2. Corporate Fines for Child Labor Violations

In February of 2023, the Department of Labor discovered Packers

¹⁰⁸ Reade Pickert & Alexandre Tanzi, *Unemployment Rate At or Near Record Lows in Half of US States*, BLOOMBERG (July 21, 2023, 10:57 AM), <https://www.bloomberg.com/news/articles/2023-07-21/jobless-rates-in-half-of-us-states-are-at-or-near-record-low> (on file with the author).

¹⁰⁹ See generally Radde, *supra* note 65 (discussing reasons for child labor violations).

¹¹⁰ Nicole Goodkind, *Illegal Child Labor is on the Rise in a Tight Job Market*, CNN BUS. (July 30, 2023, 9:06 AM), <https://www.cnn.com/2023/07/30/economy/child-labor-louisiana-texas/index.html> [<https://perma.cc/FH8H-MGED>].

¹¹¹ *Id.*

¹¹² Noah, *supra* note 43.

¹¹³ *Alone and Exploited*, *supra* note 1.

¹¹⁴ Noah, *supra* note 43.

¹¹⁵ See Josh Moon, *As Child Labor Scandal Grows, Hyundai Provides Details of a Crackdown on Suppliers*, ALA. POL. REP. (Feb. 14, 2023, 8:04 AM), <https://www.alreporter.com/2023/02/14/as-child-labor-scandal-grows-hyundai-provides-details-of-a-crackdown-on-suppliers> [<https://perma.cc/M4FU-RQZV>]; Hannah Dreier, *Tyson and Perdue Are Facing Child Labor Investigations*, N.Y. TIMES (Sept. 23, 2023), <https://www.nytimes.com/2023/09/23/us/tyson-perdue-child-labor.html> (on file with author).

Sanitation Services, one of the largest sanitation companies in the United States, violated federal child labor laws in its operations.¹¹⁶ More than one hundred children, ranging in ages between 13 and 17, were found to be working in meatpacking plants and slaughterhouses operated by Packers in eight states.¹¹⁷ Major corporations, including Tyson Foods and JBS, owned the facilities.¹¹⁸ Children worked overnight shifts, and even cleaned bone saws and head splitters with hazardous chemicals.¹¹⁹ At least three minors were injured while performing cleaning work in the slaughterhouses.¹²⁰ The owner of Packers, a corporation called Blackstone Inc., is the largest private equity fund in the world.¹²¹ Despite the scale and severity of the violations, as well as the size of the corporations implicated, Packers was only fined \$1.5 million for the violation.¹²² In a sale that highlights the inadequacy of the fine in light of the severity of the violation, Hearthside Food Solutions was sold to private equity firms in 2018 for over \$2.4 billion.¹²³ Under the Fair Labor Standards Act (FLSA), the Department of Labor fined the company \$15,138 for each minor illegally employed, for a total amount of \$1,544,076 (the maximum civil penalty allowed under federal law).¹²⁴ In contrast, Iowa has proposed significant reductions in state-level penalties for child labor violations, decreasing maximum fines from \$10,000 to \$2,500 per child and allowing additional reductions for small businesses.¹²⁵ Federal enforcement efforts, such as steep fines levied in 2024, reflect a direct response to Iowa's lenient approach and aim to uphold federal labor protections amidst state-level rollbacks.¹²⁶

Theoretically, significant fines can provide adequate deterrence to

¹¹⁶ See Finnegan, *supra* note 106.

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ Sareen Habeshian, *Company Fined \$1.5 Million for Hiring Children to Clean Meatpacking Plant*, AXIOS (Feb. 17, 2023), <https://www.axios.com/2023/02/17/food-sanitation-company-child-labor-fines> (on file with author).

¹²¹ Madleine Farman, *Blackstone Once Again Crowned Largest Private Equity Fundraiser in PEI 300*, PRIV. EQUITY INT'L (June 1, 2023), <https://www.privateequityinternational.com/blackstone-once-again-crowned-largest-private-equity-fundraiser-in-pei-300> (on file with author).

¹²² Habeshian, *supra* note 120.

¹²³ Laura Mullan, *Hearthside Food Solutions Sold to Private Equity Firms for More than \$2.4 Billion*, FOOD & DRINK (May 17, 2020), <https://fooddigital.com/food/hearthside-food-solutions-sold-private-equity-firms-more-dollar24bn> [<https://perma.cc/C8VG-5QRG>].

¹²⁴ *Id.*

¹²⁵ Hytrek, *supra* note 37.

¹²⁶ See Kevin Hardy, *Steep Fines in Iowa Set Off State-Federal Showdown Over Child Labor Laws*, STATELINE, (July 23, 2024), <https://stateline.org/2024/07/23/steep-fines-in-iowa-set-off-state-federal-showdown-over-child-labor-laws> [<https://perma.cc/5DU4-Y89E>].

prevent future violations of child labor laws.¹²⁷ The deterrence policy behind entity-level fines for corporations assumes that shareholders would be incentivized to deter criminal activity due to a negative impact on shareholder bottom lines, e.g., corporate stock price falling after the penalties imposition.¹²⁸ However, stock prices often rise back to their pre-fine levels rather quickly.¹²⁹ Therefore, even with the imposition of a fine, shareholders may not seek to avoid future instances of violations through demanding the optimal level of firm-wide monitoring to adequately reduce the levels of the violating activity. Many rationally apathetic shareholders may also fail to realize the issue or recognize how to tackle it.¹³⁰ Additionally, calculating a fine that could adequately deter future violations may be an impossible task.¹³¹ How does one assign a numerically measurable social cost to the harm caused by one hundred children working in a meatpacking plant?¹³² Moreover, even if such a calculation were possible, imposing an adequate fine could be politically infeasible.¹³³ For instance, what if the appropriate fine for a large corporation amounts to tens of billions of dollars or forces the company into bankruptcy?¹³⁴

3. Social Compliance Audits

Over the past twenty years, private audits (often referred to as “social compliance audits”) have become the solution for many corporations to address potential illegal child labor violations in their supply chains.¹³⁵ Ideally the Department of Labor would conduct all audits of potential illegal child labor violations in the U.S. but in reality, this scenario is impractical. One of the major reasons why private auditing has grown as an industry in recent times is because “[f]or many factories, a private inspection is the only one they will ever get.”¹³⁶ The Department of Labor currently lacks the staffing

¹²⁷ Dorothy S. Lund & Natasha Sarin, *The Cost of Doing Business: Corporate Crime and Punishment Post-Crisis*, COLUM. L. SCH. BLUE SKY BLOG (Mar. 18, 2020), <https://clsbluesky.law.columbia.edu/2020/03/18/the-cost-of-doing-business-corporate-crime-and-punishment-post-crisis> [https://perma.cc/4D9D-Y5D6].

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² *Id.*

¹³³ Lund & Sarin, *supra* note 127.

¹³⁴ *Id.*

¹³⁵ Hannah Dreier, *They're Paid Billions to Root Out Child Labor in the U.S. Why Do They Fail?*, N.Y. TIMES (Dec. 28, 2023), <https://www.nytimes.com/2023/12/28/us/migrant-child-labor-audits.html> (on file with author) [hereinafter *They're Paid Billions*].

¹³⁶ *Id.*

capacity to adequately inspect every possible site of child labor violations.¹³⁷ The Department of Labor's staffing levels are reportedly so low, that for its inspectors to visit every workplace in the Department's jurisdiction one time would take over 100 years.¹³⁸

Private auditing of child labor violations often fail to prevent illegal child labor in the U.S. for a variety of reasons. First, children are most often hired to work at night, but auditors commonly leave factories in the afternoon.¹³⁹ Auditors generally begin their inspections in the morning and conduct such audits for roughly seven hours.¹⁴⁰ This practice is consistent even at factories employing thousands of workers that operate for 24 hours.¹⁴¹ This means that late afternoon or night shifts, (the shifts in which child labor violations occur most frequently), are often not inspected at all during the private auditing process. Thus, a concerted effort to conduct evening and nighttime private audits would likely identify and prevent at least some child labor violations. Some businesses have caught on to this idea. For example, McDonald's recently announced it will be requiring that overnight shifts at slaughterhouses providing the fast food chain with its meat are reviewed by private inspectors.¹⁴² Similarly, the Northwest Dairy Association has stated it will now hire auditors to conduct interviews with night shift workers at roughly 300 dairy farms.¹⁴³

However, even if more evening and nighttime private audits are routinely conducted, their success may be hampered by language barriers. Since many migrant workers are largely Spanish speaking (or speak other indigenous languages of Central America), private auditors (who are largely white) often lack the ability to speak privately with migrant workers.¹⁴⁴ "You're supposed to ask another worker to translate. But you're trying to unearth something that people aren't trying to yell from the rooftops . . ." lamented an experienced Spanish-speaking private auditor (who has been conducting audits since the 1990s).¹⁴⁵ "If you look at the upper echelons of the industry, they're all white."¹⁴⁶ This highlights a systemic lack of diversity that

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *They're Paid Billions*, *supra* note 135.

¹⁴² Hannah Dreier, *Confronted With Child Labor in the U.S., Companies Move to Crack Down*, N.Y. TIMES (Feb. 7, 2024), <https://www.nytimes.com/2024/02/07/us/child-labor-us-companies.html> (on file with author) [hereinafter *Confronted with Child Labor*].

¹⁴³ *Id.*

¹⁴⁴ *They're Paid Billions*, *supra* note 135.

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

undermines effective communication and cultural understanding during labor audits. Thus, employing a higher number of Spanish (as well as other indigenous Central American language speakers) to conduct private audits would address at least some of the shortfalls in the current process.¹⁴⁷ To this end, Costco is now taking steps to ensure labor audits are conducted with Spanish-speaking inspectors.¹⁴⁸

The second concern regarding the private auditing process is age verification during the hiring process. Children tend to submit fake documents during the hiring process, so the standard private auditing process of verifying worker age by examining paperwork is generally ineffective at preventing illegal child labor violations.¹⁴⁹ Some companies don't even require government-issued photo identification as part of its process for hiring new workers. In response to these concerns,¹⁵⁰ Perdue Farms said it has required age verification processes for audits of its contractors.¹⁵¹ Relatedly, Hearthside Food Solution is now requiring the age of workers it now hires to be proven with government-issued photo identification.¹⁵² Some businesses have gone even further. Packers Sanitation Services is now directing its hiring managers to reject any potential applicants who they deem to look "too young to match the ages in their documents, even if they pass every other kind of screening."¹⁵³ Ford manufacturers are now inspecting workers before every shift in an effort to match workers faces with their identification documents.¹⁵⁴

The third shortcoming of private auditing for potential illegal child labor violations is that while private auditors often focus on workers hired directly by plants, children are often not hired directly by the companies whose goods the children produce.¹⁵⁵ Child workers are often hired indirectly, through outside staffing agencies or contractors.¹⁵⁶ In order to avoid potential child labor violations, companies such as JBS (a global meatpacker) are opting to directly hire workers rather than utilizing contractors.¹⁵⁷ Moreover, auditors are routinely not directed to the part of a company's supply chain where child

¹⁴⁷ *See id.*

¹⁴⁸ *See Confronted with Child Labor*, *supra* note 142.

¹⁴⁹ *See id.*

¹⁵⁰ *See id.*

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ *Confronted with Child Labor*, *supra* note 142.

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

labor is being utilized.¹⁵⁸ For example, sub-suppliers are “almost entirely unscrutinized” by private audits for child labor violations.¹⁵⁹

In addition to the concerns of the private auditing process raised thus far, auditors themselves have voiced concerns that they feel incentivized to

“deliver findings in the mildest way possible as they navigate pressure from three different sources: [1] the independent auditing firms that pay their salaries; [2] corporations, such as Walgreens, that require inspections at their suppliers; and [3] the suppliers themselves, who usually must arrange and pay for the audits.”¹⁶⁰

For example, the employee handbook for UL Solutions, a large social compliance auditing company, explicitly states that inspections its auditors conduct are “not meant to be a policing effort.”¹⁶¹ This highlights a fundamental tension in the auditing process—auditors are often placed in a position where they must balance maintaining relationships with their employers and clients while also addressing serious labor violations.¹⁶² Lastly, a novel solution to improving the social compliance auditing system is to address some of the root causes of why businesses hire underage workers in the first place. Many of these businesses are “having trouble finding people beyond children who are willing to take this work,” because what they pay its workers are exceedingly low wages.¹⁶³

An illustration of these issues can be exhibited through the auditing process conducted at a Monogram Meat Snacks plant in Chandler, Minnesota over the past several years.¹⁶⁴ In 2019, an auditor working on behalf of Walgreens drugstores arrived at the Monogram Meat Snacks plant in rural Minnesota to conduct an audit of potential labor violations.¹⁶⁵ Despite running through a checklist of hundreds of potential violations to look out for, the auditor concluded that there were no major violations occurring at the factory.¹⁶⁶ The plant was allowed to continue producing for Walgreens’s house brand beef jerky, assumedly safe of child labor abuses.¹⁶⁷ In order to stay on schedule, the auditor was required to leave the facility in the afternoon

¹⁵⁸ See *They’re Paid Billions*, *supra* note 135.

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

¹⁶² See *id.*

¹⁶³ See *Confronted with Child Labor*, *supra* note 142.

¹⁶⁴ See *They’re Paid Billions*, *supra* note 135.

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

to conduct his next audit at 4 PM that same day.¹⁶⁸ After the auditor departed, however, 150 workers arrived at the plant to work night shifts.¹⁶⁹ Among these workers were children as young as 15 years old.¹⁷⁰ The children's jobs included operating heavy machinery with the potential to crush bones and amputate fingers.¹⁷¹ This process continued for another four years until a visit by the Department of Labor in the spring of 2023 discovered severe child labor violations and temporarily halted the shipment of more jerky from the plant.¹⁷²

G. Recent Federal Action to Prevent Child Labor Violations

This section explores recent federal actions aimed at addressing child labor violations, outlining the government's efforts to enforce existing laws, impose stricter penalties, and address systemic issues. The discussion begins with an examination of the Hot Goods Doctrine, including its enforcement mechanisms and notable applications.¹⁷³ It then transitions to the Civil Monetary Fines initiative, detailing the updated penalty assessment process designed to increase accountability.¹⁷⁴ Following this, Congressional Action is analyzed, with an emphasis on bipartisan proposals to enhance penalties and other legislative measures aimed at addressing child labor violations.¹⁷⁵ Lastly, the section concludes by addressing Strategies to Address Root Causes of Migration, focusing on investments in Central America and initiatives aimed at reducing the economic and social factors that contribute to child labor in the United States.¹⁷⁶

1. The Hot Goods Doctrine

On August 31st, the Department of Labor's Wage and Hour Division (WHD) issued Field Assistance Bulletin No. 2023-3, providing guidance to its staff on how Section 212(a) of the Fair Labor Standards Act (FLSA) could be utilized as a tool to bring enforcement actions for child labor violations.¹⁷⁷ Otherwise known as the "hot goods" provision, Section 212(a) of the FLSA

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ *They're Paid Billions*, *supra* note 135.

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ See discussion *infra* Section II.G.a.

¹⁷⁴ See discussion *infra* Section II.G.b.

¹⁷⁵ See discussion *infra* Section II.G.c.

¹⁷⁶ See discussion *infra* Section II.G.d.

¹⁷⁷ See JESSICA LOOMAN, DEP'T OF LABOR, FIELD ASSISTANCE BULLETIN NO. 2023-03 1 (2023), <https://www.dol.gov/sites/dolgov/files/WHD/fab/2023-3.pdf> [<https://perma.cc/3KH L-DL65>].

prohibits hot goods from delivery or shipment in interstate commerce, as well as any downstream shipment in the supply chain, if the goods were removed from the facility where the goods were produced within 30 days following a child labor violation.¹⁷⁸ A “hot good” is defined as a good produced in an establishment in or about which oppressive child labor occurred.¹⁷⁹ The hot goods remain “hot” until they come to rest with the final consumer.¹⁸⁰ “Goods” included products such as clothing, machinery, and printed materials, as well as ideas, intelligence, and news otherwise considered intangible.¹⁸¹ When hot goods are comingled with other products, or included as component parts of a product, all such goods are regarded as hot under the Field Assistance Bulletin.¹⁸²

“Oppressive child labor” includes any violation of the Department of Labor’s Child Regulations and Orders under 29 C.F.R. § 570.¹⁸³ If any oppressive child labor violation occurs in an establishment, even if the child laborer was not directly working on the goods, the goods produced at the establishment are considered hot.¹⁸⁴ Under 212(a), purchasers of hot goods, who acquire hot goods in good faith and relied on assurances memorialized in writing that the production of the goods complied with the child labor provisions of the FLSA, may present a good faith defense.¹⁸⁵ Any reliance must have been in good faith. Reliance is not considered in good faith if the purchaser was aware of past child labor violations and did not take action to assure goods were presently under compliance, or if the purchaser had reason to know that assurances were erroneous.¹⁸⁶ Moreover, purchasers cannot rely on this defense if assurances of compliance were not written and specific, or if the purchaser took possession of the goods after learning of a child labor violation.¹⁸⁷ After finding that oppressive child labor violations have occurred, the Wage and Hour Division can ask companies in the supply chain (including downstream businesses) to voluntarily withhold further shipments of the hot goods.¹⁸⁸ If a company refuses to comply with such a request, the WHD has authority to file injunctions and restraining order actions in federal

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

¹⁸⁰ *Id.* at 8.

¹⁸¹ *Id.* at 3.

¹⁸² *Id.* at 5.

¹⁸³ See LOOMAN, *supra* note 177, at 1.

¹⁸⁴ *Id.*

¹⁸⁵ *Id.* at 2.

¹⁸⁶ *Id.* at 2, 10

¹⁸⁷ *Id.* at 9.

¹⁸⁸ *Id.* at 2.

court to enjoin further shipment of hot goods.¹⁸⁹

2. Civil Monetary Fines

As part of its strategic initiative to combat child labor, in addition to the Field Assistance Bulletin combating the use of child labor in the shipment of “hot goods” (goods produced in an establishment in or about which oppressive child labor occurred), on November 28th, 2023, the WHD recently issued a second Field Assistance Bulletin.¹⁹⁰ This second bulletin explains changes to WHD’s process for assessing civil monetary penalties for child labor law violations.¹⁹¹ Under 29 U.S.C. § 212(c), employers are prohibited from employing “any oppressive child labor in commerce or in the production of goods for commerce or in any enterprise engaged in commerce or in the production of goods for commerce.”¹⁹² Under this new bulletin, Child Labor Civil Money Penalties are no longer assessed on a per-child basis, but rather a per-violation basis.¹⁹³ In essence, what this means is whereas prior to the second bulletin’s issuance, where employers were assessed penalties for each child employed in violation of federal child labor laws, employers may now be assessed separate penalties for each violation regarding the same child.¹⁹⁴ The WHD calculates the Civil Money Penalty by utilizing the \$15,138 statutory maximum and will decrease or increase the penalty based on several factors.¹⁹⁵ These factors include: willfulness; number of minors employed; age of minors; hazardous work; resultant injury; duration of illegal employment; and the hours of employment.¹⁹⁶ The Civil Money Penalty may be reduced based on three considerations: (1) the number of employees; (2) annual sales volume; and (3) amount of capital investment and financial resources relative to the size of the business.¹⁹⁷ In Iowa, the contrast between federal enforcement and state-level policy changes is particularly stark. While the state has proposed significant reductions in penalties for child labor violations, federal agencies have increasingly imposed steep fines on Iowa businesses to deter violations.¹⁹⁸ These actions reflect an ongoing federal effort to ensure uniform compliance

¹⁸⁹ See LOOMAN, *supra* note 177, at 11.

¹⁹⁰ See JESSICA LOOMAN, U.S. DEP’T OF LAB., FIELD ASSISTANCE BULLETIN NO. 2023-04 1 (2023), https://www.dol.gov/sites/dolgov/files/WHD/fab/fab2023_4.pdf [<https://perma.cc/VX68-5CR9>].

¹⁹¹ *Id.*

¹⁹² See 29 U.S.C. § 212(c).

¹⁹³ See LOOMAN, *supra* note 190, at 3.

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

¹⁹⁶ *Id.*

¹⁹⁷ *Id.*

¹⁹⁸ See Hardy, *supra* note 126.

with labor standards despite divergent state approaches.

3. Congressional Action

On October 17th, 2023, United States Senators Brian Schatz (D-Hawaii) and Todd Young (R-Indiana) introduced a bipartisan bill that would increase current penalties as well as create new criminal penalties for child labor violations and allow victims of child labor violations to file civil lawsuits.¹⁹⁹ If the bill passes, individuals who repeatedly hire children could be fined up to \$50,000 dollars and sentenced to a year in jail.²⁰⁰ The current maximum penalty of \$15,138 per violation under the FLSA would be increased to \$132,270.²⁰¹ Additionally, the current maximum fine for serious injuries or deaths of \$25,000 would be increased to \$601,150 per violation.²⁰²

However, Congressional Democrats and Republicans generally appear to be at odds over legislation to increase civil penalties for child labor violations.²⁰³ Democrats are seeking increased funding to federal agencies to ensure support services for immigrants, including unaccompanied minors, are adequately funded.²⁰⁴ Republican Congressional leaders, particularly a segment of Republican officials in the House of Representatives, oppose increased funding to federal agencies.²⁰⁵ Many House Republicans have vowed to slash agency budgets.²⁰⁶ House Republicans also support tougher vetting of adults in household where unaccompanied minors reside, as well as expedited removal of unaccompanied minors, further indicating a gap on the child labor issue between Congressional Democrats and Republicans as both policies are unlikely to gain support from Senate Democrats.²⁰⁷ Congressional Democrats have therefore looked to other ways to address the growing issue of child labor violations, including launching a task force to combat child labor violations and requesting a federal audit in the hopes of

¹⁹⁹ Laura Strickler, *Bipartisan Senate Bill Would Increase Penalties for Child Labor Violations and Create New Criminal Penalties*, NBC NEWS (Oct. 19, 2023, 1:26 PM), <https://www.nbcnews.com/politics/congress/schatz-young-bill-increase-penalties-child-labor-violations-rcna121212> [https://perma.cc/WS8U-V6F3].

²⁰⁰ *Id.*

²⁰¹ *Id.*

²⁰² *Id.*

²⁰³ See Karoun Demirjian & Hannah Dreier, *Migrant Child Labor Debate in Congress Becomes Mired in Immigration Fight*, N.Y. TIMES (May 7, 2023), <https://www.nytimes.com/2023/05/07/us/politics/child-labor-immigration-democrats-republicans-biden.html> (on file with author).

²⁰⁴ See *id.*

²⁰⁵ Catie Edmondson & Carl Hulse, *House G.O.P. Passes Debt Limit Bill, Paving the Way for a Clash With Biden*, N.Y. TIMES (Apr. 26, 2023), <https://www.nytimes.com/2023/04/26/us/politics/debt-limit-vote-republicans.html> (on file with author).

²⁰⁶ *Id.*

²⁰⁷ DEMIRJIAN & DREIER, *supra* note 203.

quantifying the scope of child labor violations in the United States.²⁰⁸

4. Strategies to Address Root Causes of Migration

In January of 2023, the White House announced nearly one billion of investments in several Central American Countries.²⁰⁹ Among the ten private companies involved in this investment project are well-known companies such as Target, Nestle, Columbia, and Chegg.²¹⁰ This investment builds on the public-private partnership known as “Call to Action” spearheaded by Former Vice President Kamala Harris in May 2021.²¹¹ Collectively, this partnership now involves 47 companies, and the total amount of investment raised by this investment scheme now totals over \$4 billion.²¹²

Additionally, the United States Agency for International Development has recently begun implementing what it calls the “Root Causes Strategy.”²¹³ There are five organizing pillars behind the strategy.²¹⁴ Pillar one seeks to address economic insecurity and inequality.²¹⁵ Pillar two attempts to combat corruption, advance the rule of law, and strengthen democratic governance.²¹⁶ Pillar three pursues the promotion of respect for a free press, as well as human rights and labor rights.²¹⁷ Pillar four focuses on providing counterweights and prevention strategies pertaining to criminal organizations and trafficking networks.²¹⁸ Pillar five is organized around combatting

²⁰⁸ See Riley Beggin, *Kildee, Scholten Launch Task Force to Combat Child Labor*, THE DETROIT NEWS (July 18, 2023, 10:00 AM), <https://www.detroitnews.com/story/business/2023/07/18/kildee-scholten-launch-task-force-to-combat-child-labor/70422895007> [https://perma.cc/E8W5-AXNL]; Letter from Robert C. Scott, Ranking Member House Committee on Education and the Workforce, to Gene L. Dodaro, U.S. Comptroller General (July 21, 2023) https://democrats-edworkforce.house.gov/imo/media/doc/ranking_member_scott_et_al_letter_to_gao_on_child_labor_violations.pdf [https://perma.cc/5AZ3-ETCR].

²⁰⁹ Ariana Figueroa, *White House Targets Economic Development in Central America to Reduce Migration*, KANSAS REFLECTOR (Feb. 6, 2023, 3:37 PM), <https://kansasreflector.com/2023/02/06/white-house-targets-economic-development-in-central-america-to-reduce-migration> [https://perma.cc/2XGT-7ZFZ].

²¹⁰ *Id.*

²¹¹ *Id.*

²¹² *Id.*

²¹³ U.S. *Strategy to Address the Roots Causes of Migration in Central America*, FY 2022, USAID (July 3, 2023), [https://www.usaid.gov/central-america-and-mexico-regional-program/fy-2022-root-causes-strategy-results#:~:text=The%20U.S.%20Strategy%20to%20Address,\(s\)%20into%20account%2C%20as](https://www.usaid.gov/central-america-and-mexico-regional-program/fy-2022-root-causes-strategy-results#:~:text=The%20U.S.%20Strategy%20to%20Address,(s)%20into%20account%2C%20as) [https://perma.cc/B7AY-NQPX].

²¹⁴ *Id.*

²¹⁵ *Id.*

²¹⁶ *Id.*

²¹⁷ *Id.*

²¹⁸ *Id.*

gender-based, domestic, and sexual violence.²¹⁹

Since 2022 marked the first full year of the project's implementation, it serves as a key benchmark for evaluating the effectiveness of the project's organizing pillars and strategies.²²⁰ The United States Agency for International Development's support of roughly 8,000 private sector firms in Central America helped produce and maintain more than 90,000 jobs in fiscal year 2022.²²¹ Additionally, programs under the Root Causes Strategy trained roughly 12,000 individuals as part of strategy's workforce development goals.²²² What's more, firms supported by the United States Agency for International Development under this strategy generated more than \$320 million in revenue in fiscal year 2022.²²³

III. ANALYSIS

Section A of this section will argue that Senate File 542's re-writing of Iowa's child labor laws is almost certainly illegal under federal law.²²⁴ Section B of this section will argue that the bill's passing is likely to lead to increased instances of harm to Iowa children in the near term, but that even if the bill is ultimately repealed, more action is required from the federal government to address the underlying issues that have led to an increase in child labor violations across the U.S. in recent years.²²⁵

A. The Legality of Senate File 542

The Iowa state legislature's re-writing of the state's child labor laws through the passing of Senate File 542 has created Iowa child labor laws directly in conflict with various provisions of the Fair Labor Standards Act (FLSA).²²⁶ On two separate occasions, Democrats in the Iowa state legislature requested review from Department of Labor officials, seeking input on the bill's legality.²²⁷ The Department's findings were laid out in two response letters finding that Senate File 542 explicitly violates federal law in several different respects, and making it clear "states cannot nullify federal

²¹⁹ U.S. *Strategy to Address the Roots Causes of Migration in Central America*, FY 2022, *supra* note 213.

²²⁰ *Id.*

²²¹ *Id.*

²²² *Id.*

²²³ *Id.*

²²⁴ See generally discussion *infra* Part III A.

²²⁵ See generally discussion *infra* Part III B.

²²⁶ See generally Letter from Seema Nanda, *supra* note 48 (providing guidance on conflicts between Iowa and federal employment law); IOWA SENATE DEMOCRATS, *supra* note 70 (discussing conflicts between Iowa and federal employment law).

²²⁷ See IOWA SENATE DEMOCRATS, *supra* note 70.

requirements by enacting less protective standards.”²²⁸

Senate File 542’s modification of permissible working hours for 14 and 15 year old workers in Iowa is inconsistent with federal law.²²⁹ The FLSA has strict working hours requirements for this age group.²³⁰ Under the Act, 14 and 15-year-old employees are limited to working three hours per day on school days, and 18 hours per week during the school year.²³¹ The FLSA also limits workers in this age group to working hours of 7:00 A.M. to 7:00 P.M. during the school year and 7:00 A.M. to 9:00 P.M. over summer months when school is traditionally not in session.²³² Senate File 542 expands the permitted working hours for 14 and 15-year-old workers by permitting the performance of up to six hours of work on school days, and up to 28 hours on weeks during the school year.²³³ The bill also permits workers in this age group to work between 7:00 A.M. to 9:00 P.M. during the school year and 7:00 A.M. to 11:00 P.M. during summer months.²³⁴ Due to the fact that the bill re-writes the Iowa Code to explicitly exceed the scope of permissible working hours, such provisions of the Iowa code are almost certainly illegal under federal law.

Senate File 542’s exemption for the employment apprentices and student learners who are at least 16 years of age in certain hazardous nonagricultural work is inconsistent with federal law for multiple reasons.²³⁵ First, while Senate File 542 section 9 (Iowa Code § 92.8A) does not require a 16 or 17-year-old apprentice to be registered by the Department or by a State agency, or to be employed under a written apprenticeship agreement or conditions that the Department of Labor finds substantially conforms to approved federal or state standards, this is a requirement of federal law.²³⁶ Second, while Senate File 542 Section 9 permits 16 and 17-year-old apprentices and student learners to work in a broad range of hazardous occupations, under federal law these workers may work in a limited range of hazardous occupations.²³⁷ For example, under current Iowa law, 16 and 17-year-old apprentices and

²²⁸ *Id.*

²²⁹ *Id.*

²³⁰ See generally 29 C.F.R. § 570.35 (2025) (establishing federal rules regarding hours of work and conditions of employment for minors 14–15 years old).

²³¹ *Id.*

²³² *Id.*

²³³ *Id.*

²³⁴ *Id.*

²³⁵ See generally Letter from Seema Nanda, *supra* note 48 (providing guidance on conflicts between Iowa and federal employment law).

²³⁶ Compare Iowa Code § 92.8A with 29 C.F.R. § 570.50(b) (2025) (providing guidelines for when the ‘apprentice exemption’ applies to Code of Federal Regulations 29 C.F.R. §§ 570.50–570.68).

²³⁷ Compare Iowa Code § 92.8 with C.F.R. § 570.50(b) (2025).

student learners are permitted to operate power-driven hoisting apparatuses and power-driven bakery machines, to manufacture brick, tile, or related products, and to work in wrecking, demolition, and ship breaking operations.²³⁸ However, under federal law, 16 and 17-year-old children cannot work in these hazardous occupations, and there is no exception for this age group participating in apprenticeships or student-learner programs.²³⁹

Underlying the argument that Senate File 542 is likely illegal under federal law is the doctrine of federal preemption, whereby federal law displaces conflicting state law.²⁴⁰ Under the concept of conflict preemption, Senate File 542 impedes the federal objectives of the FLSA and is therefore likely preempted by federal law.²⁴¹ Similarly to how the organic labeling laws in several states posed an “obstacle to the accomplishment of congressional objectives” by undermining the purpose of the Organic Food Production Act in *In re Aurora Dairy Corp.*, Senate File 542’s provisions under Section 9 undermine the purposes of the child labor provisions of the FLSA.²⁴² While the objectives of the Organic Food Production Act of creating a national standard for defining organic food were impeded by conflicting state law, the objectives of the child labor provisions of the FLSA, to ensure a national standard for the safety and well-being of young workers and preventing work experiences from having a negative effect on a minor’s health or education, is impeded conflicting law under Senate File 542. While the objectives of the Organic Food Production Act were to create a national standard for defining organic food, these objectives were impeded by conflicting state laws.²⁴³ Similarly, the child labor provisions of the FLSA aim to ensure a national standard for the safety and well-being of young workers.²⁴⁴ These provisions also seek to prevent work experiences from negatively affecting a minor’s health or education.²⁴⁵ However, the conflicting provisions of Senate File 542 undermine these federal objectives, thereby impeding the FLSA’s purpose.

²³⁸ See Iowa Code § 92.8 (2024) (outlining unlawful conditions of work for 16 and 17 year olds); Iowa Code § 92.8A (2024) (providing exemptions to § 92.8 for minors enrolled in “[a]pproved career and technical education, work-based learning, internships, registered apprenticeship programs, and student learners.”).

²³⁹ See 29 C.F.R. § 570.50(b) (2025).

²⁴⁰ U.S. Const. art. VI., § 2; see, e.g., *Gade v. Nat’l Solid Wastes Mgmt. Ass’n*, 505 U.S. 88, 98 (1992).

²⁴¹ See *In re Aurora Dairy Corp. Organic Milk Mktg. & Sales Pracs. Litig.*, 621 F.3d 781, 794 (8th Cir. 2010).

²⁴² See *id.*

²⁴³ See *id.*

²⁴⁴ See generally 29 C.F.R. § 570 (2022) (establishing federal standards limiting the employment of minors in hazardous occupations and restricting work hours for young workers).

²⁴⁵ *Id.*

246

B. SF 542's Impact on Iowa Children and Actions the Federal Government Should Take

Senate File 542's passing will likely result in negative consequences for child workers in Iowa in the near future, especially unaccompanied migrant children, as the bill incentivizes the employment of children in illegal conditions under federal law.²⁴⁷ State bills like Senate File 542, which weaken federal child labor protections, are a symptom of the federal government's broken enforcement policies. However, these bills are not the sole cause of the recent rise in child labor violations, as this increase began several years before the enactment of Senate File 542.

Therefore, to truly ensure that children in Iowa are adequately protected from illegal child labor conditions, more is needed than the striking down and repealing of Senate File 542. Specifically, thorough analysis from policymakers and proactive involvement of legislators utilizing a multi-pronged approach on the issue of child labor in the U.S., at the federal level in particular, is required to ensure children in Iowa are not subject to illegal work conditions detrimental to their health and safety.

1. Unaccompanied Minors and Sponsor Vetting

“The first day that I arrived, I didn’t want to return because it was so horrible. . . . It was very cold. And the carts that we would take out of the cooler were heavy. The machines are very sharp and if you’re not paying attention, you put your hand in and it will cut everything.”²⁴⁸

This is how one teenage migrant worker described his experience performing manual labor at an Iowa plant.²⁴⁹ Several interrelated factors lead explain how and why migrant children are increasingly working under punishing, potentially illegal, conditions in clear violation of decade-old child labor laws.²⁵⁰ First, many unaccompanied migrant children are under immediate pressure to earn money when they reach the United States. Second, the sponsor vetting process for unaccompanied minors in the

²⁴⁶ See *In re Aurora Dairy Corp.*, 621 F.3d at 781; Letter from Seema Nanda, *supra* note 48.

²⁴⁷ See Gloria Oladipo, *Republican Iowa Governor Rolls Back State's Child Labor Law Protections*, THE GUARDIAN (May 27, 2023, 3:06 PM), <https://www.theguardian.com/us-news/2023/may/27/republican-iowa-governor-rolls-back-child-labor-law-protections> [<https://perma.cc/TEW8-JFKL>].

²⁴⁸ Priyanka Boghani, *America's "Invisible" Child Labor Problem*, IOWA PBS (April 24, 2018), <https://www.pbs.org/wgbh/frontline/article/qa-americas-invisible-child-labor-problem> [<https://perma.cc/ZVU7-4KF8>].

²⁴⁹ *Id.*

²⁵⁰ See *Alone and Exploited*, *supra* note 1.

Custody of the Department of Health and Human Services also plays a role in children laboring under illegal conditions.

Senate File 542 may lead to an increase in unaccompanied minor children working under illegal conditions for several reasons. First, the Bill is likely to increase the already significant pressures on migrant children to earn money, as the Bill incentivizes children aged 14 to 17 “to develop their skills in the workforce” according to Iowa Governor Kim Reynolds.²⁵¹ Thus, the Bill explicitly aims to increase the number of children aged 14 to 17 in the Iowa workforce.²⁵² Due to the apparent lack of capability on the part of HHS to adequately vet sponsors and track unaccompanied children released from the agency’s custody, many sponsors who, feeling no particular sense of moral responsibility over the welfare of migrant children under their care, may be incentivized by the Bill’s passing to put those children to work.

Regardless of any increase in the instances of child labor violations related to the enactment of Senate File 542, the pressures on migrant children to earn money coupled with the inadequate vetting of sponsors by HHS will likely contribute to the increase in U.S. child labor violations observed in recent years, even if the bill is struck down. For example, it is unclear how the repeal of Senate File 542 would prevent common instances of sponsor neglect, such as the case of Nery Cutzal.²⁵³

To address this issue, HHS must update its current case management system and process for vetting sponsors so that the agency’s responsibility of ensuring sponsors provide protection for unaccompanied minors from “mistreatment, exploitation, and trafficking” can be upheld.²⁵⁴ Until HHS’s shortcomings in the sponsor vetting process are properly resolved, the faults in the vetting process are likely to result in repeated, frequent exploitation of unaccompanied migrant children working under illegal conditions.

2. Business Structures, Incentives, and Economic Considerations

Many of the largest and most well-known American corporations do not have direct control over the workers who provide labor for their companies.²⁵⁵ Corporations are outsourcing their employment processes to large contractors, who take the extra step of contracting labor out to a subcontractor. For example, the contractor who hired children to work one of the assembly lines for Hearthside Food Solutions relied on a local staffing

²⁵¹ Oladipo, *supra* note 247.

²⁵² Nery Cutzal, a 13-year-old unaccompanied minor living in Florida, was informed by his sponsor upon arrival in the United States (whom he met over Facebook Messenger) that he owed more than \$4,000 and was required to find his own place to live. *See Alone and Exploited*, *supra* note 1.

²⁵³ *See id.*

²⁵⁴ *See* ORR Unaccompanied Children Program Policy Guide, *supra* note 98.

²⁵⁵ Goodkind, *supra* note 110.

agency to hire the young worker.²⁵⁶ Despite its positioning as the largest contract manufacturer in the U.S., Hearthside is a largely unknown entity to a vast swath of the American public. Despite being in violation of federal child labor regulations, because Hearthside is not a common household name, Hearthside is unlikely to suffer a reputational loss that would prevent it from continuing to produce goods for numerous Fortune 500 companies.²⁵⁷

As the Hearthside illustration shows, corporations employing workers in the United States do not face worthy incentive today to change their hiring practices to ensure child labor does not benefit their companies. The underlying issue of large businesses benefiting from child labor, without assuming many of the risks through contracting out employment of front-line workers to other entities, will likely persist absent further action from the federal government, regardless of whether SF 542 is struck down. Recent federal actions, such as imposing steep fines on Iowa businesses for violating child labor laws, illustrate one way to address this problem.²⁵⁸ These fines, aimed at ensuring compliance with federal labor protections, highlight the federal government's role in countering state-level rollbacks like Iowa's reduction of penalties under SF 542.²⁵⁹

Moreover, the Department of Labor has signaled its willingness to utilize the “hot goods” doctrine of interstate commerce to bring accountability to companies such as Frito-Lay and General Mills who frequently benefit from their own contractors' child labor violations without assuming any of the liability.²⁶⁰ In theory, the “hot goods” provision of Section 212(a) of the FLSA could be an effective tool for the Department to curtail federal child labor violations. Under this enforcement action, if a company such as Hearthside was found to have used oppressive child labor violations in violation of the Department Child Regulations and Orders under 29 C.F.R. § 570, any good shipped from the facility in question within 30 days of the violation are considered “hot” and cannot be shipped, regardless of if the child labor directly produced a specific good.²⁶¹ This also applies to companies downstream in the supply chain, such as companies like Frito-Lay and General Mills.²⁶² Therefore, Frito-Lay and General Mills would be prohibited from further shipment of any “hot goods” shipped to them within

²⁵⁶ *Id.*

²⁵⁷ See generally Noah, *supra* note 43 (discussing the reputational benefits of Hearthside's role as a contractor).

²⁵⁸ See Hardy, *supra* note 126.

²⁵⁹ *Id.*

²⁶⁰ Hannah Dreier, *Biden Administration Plans Crackdown on Migrant Child Labor*, N.Y. TIMES <https://www.nytimes.com/2023/02/27/us/biden-child-labor.html> (on file with author).

²⁶¹ See LOOMAN, *supra* note 177, at 1.

²⁶² *Id.*

30 days from a Hearthside facility discovered to be in violation of oppressive child labor violations.

Downstream purchasers' (which do not include the final purchaser) only defense would be that they purchased the goods in good faith after written assurances from producing contractors, assuring that the goods were produced in compliance with FLSA child labor provisions and they had no reason to believe any assurances were inaccurate (i.e., knew child labor violations occurred in the past with that producer and took no action to assure compliance in the present).²⁶³ Such an approach would likely incentivize downstream purchasers to demand more assurances of FLSA child labor compliance from entities they contract with to produce their goods. This incentive stems from the fact downstream purchasers may believe that the risk from its contractors violating child labor laws may outweigh any potential benefits if potentially large quantities of goods the purchasers are putting out for sale are halted for a single violation.

The process for fining corporations for child labor violations is another factor in the business incentive context that indicates additional federal action is warranted to ensure children in the U.S. and Iowa specifically are protected from illegal working conditions. Fines for child labor violations are often disproportionate to the severity of the child labor violations that businesses partake in.²⁶⁴ Therefore, when fines for child labor violations are low for large businesses, such penalties become treated as just a cost of doing business. This is how many companies treat fines under the FLSA, which fines entities a mere \$15,131.80 per worker employed in violation of the Act.²⁶⁵ Theoretically, significant fines can provide deterrence adequate to prevent future violations of child labor laws.²⁶⁶ Recent federal fines against Iowa businesses reflect a growing acknowledgment of the inadequacy of existing penalties under the FLSA, which fines entities a mere \$15,138 per worker employed in violation of the Act.²⁶⁷ For businesses operating in states like Iowa, where penalties are being reduced under laws like SF 542, federal fines become an essential tool for maintaining compliance and ensuring a baseline of protections for vulnerable workers. While the recent federal enforcement actions signal a step in the right direction, practical challenges remain. Practically, large corporations often have substantial financial resources, making fines a mere "cost of doing business" rather than a meaningful deterrent.²⁶⁸ Politically, imposing sufficiently high fines to deter violations

²⁶³ *Id.*

²⁶⁴ See generally Finnegan, *supra* note 106 (discussing the modern increase in child labor).

²⁶⁵ See generally Habeshian, *supra* note 120 (discussing a single case of children being employed in a meatpacking plant).

²⁶⁶ See Lund & Sarin, *supra* note 127.

²⁶⁷ See Hardy, *supra* note 126.

²⁶⁸ See *id.*

could face resistance from corporate lobbying groups and lawmakers concerned about the economic consequences of penalizing businesses too heavily.²⁶⁹

Addressing the inadequacies of the current private auditing (social compliance) system for discovering and preventing child labor violations has the potential to reduce illegal child labor violations, as this process currently accounts for the vast majority of audits for potential child labor violations at workplaces.²⁷⁰ Action needs to be taken by the federal government to increase the staffing levels at the Department of Labor. Doing so would allow the Department to inspect a higher number of facilities, which would in turn decrease reliance on private audits. As mentioned previously in this Note, based on the current staffing levels at the Department, it would take its inspectors over one hundred years to visit every workplace in the Department's jurisdiction.²⁷¹ Increasing the capacity of the Department to conduct more audits is important because while private audits could be more effective, the structural dynamics of the private auditing process will likely lead to private audits being less effective than public audits.

Recent changes in the private sector have signaled a willingness to address at least some of the pitfalls of the private auditing process that were almost entirely unaddressed even just a few months ago. For example, the current trend from companies to conduct audits at night has the potential to reduce child labor violations if implemented broadly.²⁷² By conducting audits when child workers are most likely to physically be in the workplaces in question (child workers commonly work evening and night shifts at factories and plants), the opportunity for auditors to identify child labor violations in theory would rise significantly.

Moreover, direct scrutiny of suppliers, contractors, and third-party staffing agencies who directly hire and employ many of the frontline workers that produce products for American businesses is another potential way to reduce the current failures of the private auditing process.²⁷³ Hiring workers directly, as global meatpacker JBS has opted for with night-shift workers (rather than using contractors), reduces several pitfalls of the private auditing process.²⁷⁴ If this practice is employed by the manufacturing industry more broadly, it could reduce the chances of underage workers being hired to conduct illegal work, because third-party contractors tend to have far less

²⁶⁹ See *id.*

²⁷⁰ See *They're Paid Billions*, *supra* note 135.

²⁷¹ *Id.*

²⁷² See *Confronted with Child Labor*, *supra* note 142.

²⁷³ See generally *id.*

²⁷⁴ See *id.*

stringent hiring processes.²⁷⁵

Another recent trend of developing a more stringent age verification process (such as requiring government-issued photo-identification and more scrutiny of workers at each shift), could minimize the shortcoming of the private auditing process for potential illegal child labor violations. At a minimum, these practices would address the issue of auditors often opting to not “unearth something that people aren’t trying to yell from the rooftops,” due to policies from many auditing firms such as UL that tell their auditors that their jobs are “not meant to be a policing effort.”²⁷⁶

3. Addressing the Root Causes of Migration

The “Root Causes Strategy” implemented by the United States Agency for International Development has potential to reduce key factors incentivizing immigration to the United States, which often results in migrant children working under illegal conditions in plants and factories within country. By focusing on creating economic opportunities in countries where such activity is scarce, the strategy seeks to tackle the structural issues that drive migration at their source.²⁷⁷ Additionally the Strategy’s workforce development program helps improve economic opportunity in Latin American countries by helping participants develop or improve skills required to attain meaningful employment opportunities, or even start businesses of their own.²⁷⁸ These programs provide long-term economic benefits by fostering entrepreneurship, strengthening the private sector, and reducing reliance on low-wage labor abroad.²⁷⁹ Moreover, the increased productivity and enhanced production capabilities stemming from these initiatives lead to broader poverty reduction, addressing one of the primary drivers of migration.²⁸⁰ By mitigating poverty, inequality, and unemployment, the Root Causes Strategy not only addresses the symptoms of migration but also helps to reduce reliance on exploitative labor practices and child labor

²⁷⁵ See generally *id.* (discussing how child labor violations often go undetected in private audits and noting that child workers are frequently assigned to evening and night shifts in factories and meatpacking plants, where oversight is weaker).

²⁷⁶ See *They’re Paid Billions*, *supra* note 135.

²⁷⁷ See U.S. DEP’T OF STATE, REPORT TO CONGRESS ON PROGRESS MADE IN THE STRATEGY TO ADVANCE ECONOMIC PROSPERITY, COMBAT CORRUPTION, STRENGTHEN DEMOCRATIC GOVERNANCE, AND IMPROVE CIVILIAN SECURITY IN EL SALVADOR, GUATEMALA, AND HONDURAS SECTION 352(F) OF THE UNITED STATES – NORTHERN TRIANGLE ENHANCED ENGAGEMENT ACT (DIV. FF, P.L. 116-260) (2023), <https://www.usaid.gov/sites/default/files/2023-07/PA0213D1.pdf> [<https://perma.cc/34KX-NMUU>].

²⁷⁸ See *id.* at 4–13.

²⁷⁹ See *id.*

²⁸⁰ See *id.*

violations both domestically and abroad.²⁸¹

IV. CONCLUSION

Several provisions of Senate File 542 are forbidden under the Fair Labor Standards Act and almost certainly illegal under federal law, and these provisions should be struck from the Iowa Code.²⁸² However, striking down such bills alone will not address the systemic issues driving illegal child labor in the United States.²⁸³ As of 2024, the federal government, as well as the private sector, have taken several substantial steps to tackle the underlying causes of child labor violations. For example, the recent imposition of steep federal fines against Iowa businesses for child labor violations highlights the critical role of federal enforcement in safeguarding vulnerable children from illegal child labor.²⁸⁴ This Note argues that while recent federal and private sector initiatives have taken meaningful steps to combat child labor violations, significant gaps remain. Specifically, the federal government must overhaul the Department of Health and Human Services' sponsor vetting process and strengthen enforcement mechanisms under the FLSA. Without these types of targeted reforms, vulnerable children in Iowa and across the U.S. will continue to face exploitation and dangerous working conditions.²⁸⁵

²⁸¹ See generally *id.* (identifying reduction in insecurity and inequality as a force to address the symptoms of migration).

²⁸² See generally Letter from Seema Nanda, *supra* note 48 (providing guidance on conflict between Iowa law and federal employment law statutes); IOWA SENATE DEMOCRATS, *supra* note 70.

²⁸³ See generally *Alone and Exploited*, *supra* note 1 (critiquing Iowa's recent child labor law changes, including Iowa Code Ann. §§ 92.7, 92.8 (2023), which expand allowable work hours for minors and permit them to work in hazardous occupations, in direct conflict with federal FLSA protections).

²⁸⁴ See Hardy, *supra* note 126.

²⁸⁵ See generally *Alone and Exploited*, *supra* note 1.