

“This Ancient Atrocity”: The Return of Child Labor in the United States: Why Now? What Should be Done?

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About the Author

David Weil is a professor at the Heller School for Social Policy, Brandeis University and Visiting Senior Faculty Fellow at the Harvard Kennedy School's Ash Center for Democracy. He served as Wage and Hour Administrator at the US Department of Labor in the Obama administration.

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617-495-0557

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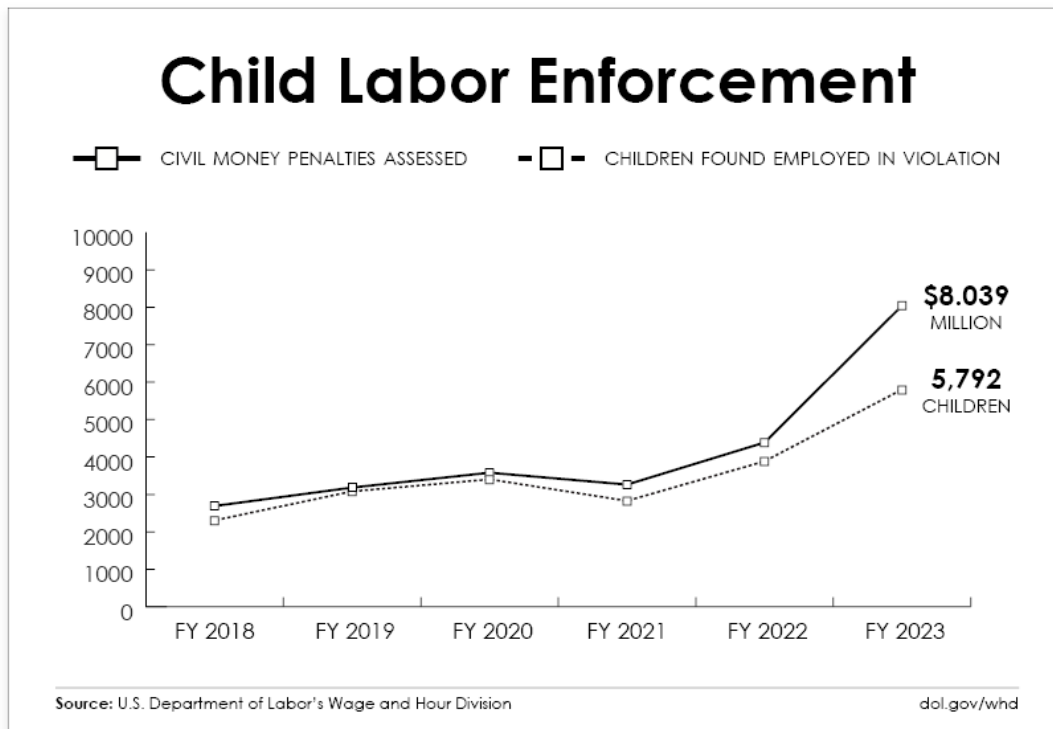
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Abstract

We tend to think of child labor in factories as a thing of the past. However, child labor in the US is surging with recent investigations and reporting finding violations in meat processing, automobile, packaged food and seafood manufacturing. In several cases, children as young as 14 have been exposed to chemicals, dangerous machinery and long hours (often working in the middle of the night). I examine the causes for this upsurge and connect it to the confluence of three forces: the presence of a large pool of unaccompanied minors in the US awaiting asylum decisions; labor shortages arising from the post-pandemic recovery; and the widescale use of "fissured" business models relying on contracted workforces in all of the recent cases. Given these causes, I review steps that can be taken under the federal law (the Fair Labor Standards Act) that regulates child labor as well as review potential revisions of that law to prevent future violations.

In October 2023, the US Department of Labor’s Wage and Hour Division reported that its investigations surfaced almost 5800 children employed in violation of federal child labor laws and had collected civil monetary penalties above \$8 million in cases closed in fiscal year 2023. This represented 2.5 times of the number of children employed in violation found in FY 2018 and 3 times the penalties collected in that year (Figure 1). And, given the limited resources available to the agency, the underlying number of child labor violations in the US are undoubtedly multiples of those numbers.

Figure 1. Federal Child Labor Enforcement, FY2018–2023



But the number of violations and penalties collected mask the underlying nature of the current situation. Child labor violations have been persistent problems in industries like restaurants and retail establishments. Violations in those industries often involve cases where children work in excess of the hours allowed under the law. Or, in more severe cases, they involve cases where minors (defined as workers between age 14 and 17) have been allowed to operate hazardous machinery like trash compactors or meat slicers in workplaces where they are otherwise permitted to work.¹

But the violations in FY2023 were different in kind, scope and severity. In February 2023, the Labor Department levied record fines of \$1.5 million for child labor violations against a cleaning contractor serving some of the largest meatpacking companies in the country. The settlement, arising from investigations of 13 plants in 8 states, revealed appalling violations that included employing 13- to 17-year olds to clean machines with names like “skull splitters” and “brisket saws” using hazardous chemicals.²

The investigations revealed egregious violations of the law involving children working during the school year in excess of maximum working hours and at prohibited times (i.e., the middle of the night). Furthermore, they were doing work that has been forbidden since the Fair Labor Standards Act (FLSA)—the law regulating child labor, minimum wage and overtime—passed in 1938. The cases all

centered on *PSSI*, a major outsourcing sanitation company, who were cited for their employment of more than 100 children to do work like cleaning killing floor equipment in at least five meat processing plants. The 85-year-old FLSA is very clear in regards to such work: children under the age of 18 are prohibited from “oppressive child labor” in manufacturing and meatpacking. Period.

In the past year, similarly brazen child labor violations surfaced in investigative reporting and enforcement actions at automobile factories supplying Hyundai and Kia and packaged food manufacturing facilities serving Frito Lay and General Mills.³ An investigation by PBS Frontline documented widescale use of children in the seafood processing industry.⁴ And in September 2023, the Labor Department opened investigations into children working in the slaughterhouses of Tysons Foods and Perdue Farms—companies that account for one-third of chicken sold in the US.⁵ Once again, these cases involved children as young as 14 years old worked in occupations and industries long prohibited by our federal laws.

In short, child labor has returned to the nation’s factories. Writing that sentence feels outrageous. That it is occurring in facilities producing products for such well-known brands makes these cases all the more galling. How can this be happening now?

Part of the child labor story involves the growing presence of unaccompanied children who are allowed to reside in the US as they await processing for asylum. In seeking a more humane approach to processing unaccompanied children seeking asylum than the Trump administration policies that cracked down on families and separated parents and children seeking asylum, the Biden approach, coupled with a surge in asylum seekers, has led to an estimated 250,000 unaccompanied children arriving in the US over the past two years.⁶ At the same time, in order to prevent large numbers of children being held in temporary detention facilities while they await placement in homes, the protocols for vetting households for children to be housed in the US broke down. This created a large pool of young people desperate to help support their families in their home countries and themselves while they await processing of their asylum requests.⁷

But that only explains how a supply of workers vulnerable to exploitation due to their age, economic need, and immigration vulnerability emerged. How did these children find their way into dangerous manufacturing facilities producing such prominent brands?

Enter the Fissured Workplace . . . Again

My research and that of other scholars over the last decade documents how major companies across the economy adopted a relentless focus on “core competencies”—that is, products or services that provided value to customers and investors. At the same time, those companies sought to offload the costs and burdens associated with being a direct employer onto other, intermediary businesses. Through a variety of complex organizational models that I have termed the “fissured workplace,” major companies like Hyundai, JBS, and General Mills outsource ever more labor to subcontractors while keeping close tabs and instituting exacting standards regarding how that contracted work is performed.⁸ As a result, companies have their cake (branded products and happy investors) while eating it too (avoiding the costs and responsibilities of direct employment).

The fissured strategy often leads to wage theft as lower-tier contractors or staffing agencies engage in a race to the bottom, winning work from the lead companies by neglecting to comply with minimum wage and overtime requirements. As President Obama’s head of the U.S. Department of Labor’s Wage and Hour Division, I saw these impacts firsthand.

Sadly, child labor in auto and packaged food factories and meatpacking facilities is another textbook example of fissuring, made all the more explicable during a time of labor shortages as companies

struggle to hit their production targets and keep their supply chains lean. Take the case of Hyundai Motor Group (Figure 2). Its Hyundai and Kia automotive divisions depend on dozens of manufacturing suppliers in Alabama, including two named in the aforementioned investigations: SMART Alabama and Hwashin. Those companies, in turn, use staffing agencies or labor brokers to find workers for its plant. Child workers came in through those doors, potentially through an additional layer of foreign recruiters and possibly, according to the *Reuters* reporters cited above, labor traffickers.

Figure 2. Child Labor in the Auto Manufacturing Sector



The meatpacking cases arose from similar arrangements. There, companies like JBS Foods, the second largest beef and pork producer in the US, contracted with PSSI to provide cleaning services on the kill floors of its facilities. PSSI a "premier provider of food safety solutions," owned by private equity company Blackrock,⁹ contracted a workforce from local labor brokers and staffing agency, including in towns with large numbers of immigrant children. The WHD investigation found children working in 13 facilities of multiple companies where PSSI served as the prime cleaning contractor.

Figure 3. Child Labor in the Meat Processing Sector



Similarly, children worked at Hearthside, a contract manufacturer for Frito Lay, General Mills, Quaker and other familiar consumer food products. Hearthside—one of the largest contract manufacturers in the US—drew on a network of local staffing agencies like Forge Industrial Staffing based in Grand Rapids, Michigan to hire its workforce including many underage workers.¹⁰

Figure 4. Child Labor in the Packaged Food Sector



When pressed to comment on the child labor allegations, the companies keep to a familiar fissured workplace script that professes outrage and shirks all responsibility. A spokesperson for Kia quoted in the Reuters story emphasized that the company “strongly condemns any practice of child labor and does not tolerate any unlawful or unethical workplace practices internally or within our business partners and suppliers.”¹¹ Similarly, a PSSI spokesperson, the cleaning contractor, piously stated “While rogue individuals could of course seek to engage in fraud or identity theft, we are confident in our company’s strict compliance policies and will defend ourselves vigorously against these claims.”¹² In other words, we are not responsible.

More than just avoiding blame, this narrative shifts it, pointing fingers downwards to staffing agencies or labor brokers, the lower tiers of fissuring. The implication is that someone at the bottom snookered or deceived the company by hiring underage workers and placing them in such hazardous jobs.

But shifting the blame is also a function of how this form of business organization operates: Achieve cost control by fissuring, while making sure contractors hit just-in-time production schedules or meet product safety codes. Lead companies at the top look the other way while lower-level contractors scramble to do whatever they need to do to meet targets.

Responding to Child Labor

Child labor breaches one of our most fundamental labor standards not to mention ethical norms about how our society treats children. Not only does it transgress our duty to provide protection, education, and a chance to develop the next generation, these violations drive down wages and conditions of others in those workplaces and industries. Addressing it forcefully and systemically is therefore critical.

Reducing the “supply” of child labor requires fundamental reform of the system of vetting and economic support for unaccompanied minors as well as a broader review of our broken immigration policies. That review, beginning with the policies of the US Department of Health and Human Services who oversee and support unaccompanied minors seeking asylum, is being undertaken by the Biden administration and requires separate treatment.

Responding to the demand side of the labor market—that is the funneling of children into jobs where they should not be employed—requires the use of federal and state policies. Fortunately, there is much to build on in that regard if we have the political will to do so.

Federal Government: Enforcing the Existing Law

After the National Recovery Act was overturned by the Supreme Court in 1935, Frances Perkins told Franklin Roosevelt not to worry because she had two bills “locked in the lower left-hand drawer of my desk against an emergency.”¹³ One of them was the Fair Labor Standards Act that set a minimum wage and overtime rules as well as prohibited child labor in manufacturing and other industries. FDR successfully persuaded Congress to pass the FLSA (partly by bringing Southern Democrats on board by exempting industries with large concentrations of Black workers) in 1938.¹⁴

In drafting the law, Congress lifted language from state laws limiting child labor and embraced the broadest definition of employment in any federal statute.¹⁵ Defining employment as “to suffer or permit work,” the FLSA specifies that businesses cannot flout their obligation to prevent child labor simply by shedding it onto someone else. As a result, from early days to the present, joint employment—that is the concept that more than one employer can be held responsible for violations of child labor—became an important potential tool for assuring responsibility.

Sections 15(a)(1) and 12(a) of the FLSA lay out a “hot goods” provision that makes it illegal for a business to ship goods in interstate commerce produced in an establishment where child labor occurred in the last 30 days. The provision gives the WHD authority to notify businesses taking possession of

items that the agency determined were produced through the use of child labor, thereby holding the receiving businesses liable for those violations if they accept them. In so doing, a manufacturer notified of the violations of its contractors or a retail establishment notified of violations may not ship or sell those goods.

These decades old but still vital tools can be used to assure that the businesses at the top of the chain—e.g., Hyundai, Frito Lay, JBS Foods—take responsibility not only for past violations but prospectively for preventing future ones. As the WHD's actions in the PSSI case illustrate, proactive notification of violations can bring responsible parties at different level of the supply chain to come to the table and agree to future terms on monitoring, training, and contractor selection to prevent future violations. Federal and state-level experience demonstrate how pressure from the top of a supply chain can create lasting improvements in labor standards at lower levels by creating systems that commit businesses at the top of fissured structures to improving compliance.¹⁶

Communicating agency child labor findings to the public is an additional tool available under current law. Research by Matt Johnson demonstrates that media releases about OSHA violations increase compliance and reduce injury rates in surrounding facilities.¹⁷ So too can publicity about these cases. Publicity about PSSI's child labor violations including in the business press (Bloomberg, Fortune) and the airing of a CBS *60 Minutes* segment in early May 2023, set off a crisis for its owner, Blackrock. Some of PSSI's largest customers—Tyson Foods and JBS—announced terminations of their contracts in plants where child labor violations occurred; Cargill ended all of its contracts with the company. And Blackrock announced that PSSI would be hiring a new CEO.¹⁸

All of the above, however, require investigations as their bedrock. In cases with systemic problems of the magnitude found here, it also requires litigation. The PSSI case resulted in civil monetary penalties arising from intensive investigations (e.g., the use of stakeouts in the middle of the night to document children working in JBS plants) and close coordination with the Solicitor office leading to a sweeping injunction. Some of the most impactful enforcement we undertook in the Obama administration similarly relied on this close and ongoing cooperation between the WHD and Solicitor at all levels.

Investigations and litigation require sufficient resources to do the work—particularly complicated and multi-pronged cases like those described above. Upholding child labor laws requires providing the Department of Labor with sufficient resources to undertake its enforcement responsibilities. This is something that the Congress has failed to do for more than a decade despite the efforts of both the Obama and Biden administrations. Illustrative of this failing is that the Wage and Hour Division in its first full year of operation in 1939 had 63 times the number of investigators relative to the workplaces it was responsible for than it did in 2023.

Strengthening the Law on Child Labor

The documented outbreak of child labor has provoked actions by Congress to amend the FLSA itself. Setting aside the question whether there is sufficient bi-partisan will to pass them, what should those amendments entail?

A current focus of several bills in the House and Senate are appreciable increases in the maximum penalties for child labor violations.¹⁹ Currently, the FLSA sets maximum penalties at \$15,138 for each under-aged worker employed in violation of the law.²⁰ In the PSSI case involving egregious and widespread violations, the maximum penalties permitted by the law equaled \$1.5 million. This provides insufficient incentive to deter a major company to change behavior. Penalties should be drastically increased where widespread, systemic and particularly willful violations of the law are documented. Penalty structures should be further modified to accrue on the basis of time—that is additional penalties for each day/week they persist after when they are first documented—to provide further incentives for

all parties responsible for them to act with alacrity—or pay the price for failing to do so. This has proved an effective spur to action under other regulatory systems.

Congress should also clarify and update the confusing designations of “hazardous occupations” used to implement child labor prohibitions by specifying the broad industries—manufacturing, construction, food processing of all varieties—in clear terms.²¹ Finally, Congress could make its “no tolerance” for child labor crystal clear to businesses by establishing criminal as well as civil sanctions for cases where there is repeat and willful violations of child labor prohibitions and restrictions.

State Policy Responses: How Not to Deal with Child Labor

Iowa, Minnesota and other state legislatures have also recently taken up the issue of child labor. However, in stark juxtaposition to the documented cases of child labor revealed by federal investigations, Republican lawmakers have sought to relax prohibitions. In the forefront of these efforts, the Iowa legislature passed a law in April 2023 making it easier for companies to employ young workers for longer hours during the school year and allowing them to do currently prohibited hazardous work prohibited by the FLSA.²²

Fortunately, the FLSA preempts state laws that are less restrictive in most instances. But given that a growing number of states are pursuing similar legislation, the premises of these efforts require attention. First, legislators promote them as solutions to the ongoing problem of labor shortages facing many industries. Second, proponents argue that relaxing restrictions provides young people more opportunity to gain work experience.

It is true that the labor market at the time of this writing remain remarkably tight. Recent jobs reports by the Labor Department show continued robust increases in employment in almost all industries, including those where young workers are often employed (restaurants and retail). Further, the Labor Department’s measures of labor market turnover continue to show high levels of job openings relative to new hires. The unstated assumption of the Iowa and other proposed state laws is the best option to increase labor supply is allowing children to work longer hours and in more hazardous occupations.

The economics textbook response to labor shortages is simple: raise wages. Even in a tight labor market, companies want to avoid doing that if they can. The reality is that young workers can be compensated for less than older workers. The use of child labor in that regard not only violates long-standing law, it undermines the earnings for adult workers who might demand higher wages who might accept that work.

If legislators truly wish to address shortages in their state through policies without putting children in harm’s way, there are better options available. For example, they could tap the pool of people who have their served time in the criminal justice system who have skills and abilities and are anxiously seeking work. States could do so by improving programs that assist formerly incarcerated individuals find jobs; removing barriers to employment such as by sealing criminal records after a period of time; and rescinding arbitrary laws that prevent these workers from holding certain licensed jobs.²³

What about the proponents’ second claim: work opportunities are good for young people? This argument ignores the obvious: Our current laws allow children between 14 and 17 to work. Rather than prohibit employment, the FLSA acknowledges that work can be beneficial for young people. But it also rests on two additional principles:

First the primary public policy goal for young people should be their development and education. That’s why the law limits the amount of time people under 18 are allowed to work during the school year as well as why certain hours (late shifts) are prohibited. Indeed, several of the recent child labor cases were triggered by reports from school officials that children involved in these cases were falling asleep in class having worked through the night.

Second, our laws embrace the public's role in protecting young people from harm by prohibiting certain hazardous jobs (e.g., using compactors, meat slicers and heavy equipment) or employment in entire industries. Child labor laws therefore balance opportunities to work against these larger compelling values.

Reestablishing Norms at Work and Society

The cases of 12-year old children working in auto stamping facilities, 14-year-olds cleaning equipment on the kill floors of major meatpacking companies or operating bakery ovens and most recently two 10-years old children and 305 minors working in in multiple McDonalds restaurants reveal the measures companies will take to fill jobs in a tight labor market.²⁴ But these cases also speak to the erosion of basic social norms.

The FLSA's core labor standards remain a statement of values about what constitutes just work. Preventing what Franklin Roosevelt called "this ancient atrocity" could not be more fundamental to the task of rebuilding norms about the kind of life we want for our children—and the treatment they should expect as they become members of the workforce.²⁵

Endnotes

1. Child labor requirements for non-agricultural occupations under the Fair Labor Standards Act are described in Wage and Hour Division, "Fact Sheet #43: Child Labor Provisions of the Fair Labor Standards Act (FLSA) for Nonagricultural Occupations," Revised December 2016 (<https://www.dol.gov/agencies/whd/fact-sheets/43-child-labor-non-agriculture>). The law regarding child labor in agriculture—particularly on family farms—are less restrictive in a variety of respects and have been highly contested for that reason. For a brief overview of the requirements, see National Agricultural Law Center, "Child Labor Laws," March 2022 (<https://nationalaglawcenter.org/child-labor-laws/>).
2. The findings of these investigations are described in Michael Levenson, "Food Safety Company Employed More than 100 Children, Labor Officials Say." *New York Times*, 2/20/23. (<https://www.nytimes.com/2023/02/17/business/child-labor-packers-sanitation.html>). Details of the findings can be found in U.S. Department of Labor, "More than 100 Children Illegally Employed in Hazardous Jobs, Federal Investigation Finds," *US Department of Labor News Release*, 2/17/23 (<https://www.dol.gov/newsroom/releases/whd/whd20230217-1>).
3. There has been a great deal of reporting on all of the cases described in this article. For the cases in automobile factories, see in particular Mica Rosenberg, Kristina Cooke and Joshua Schneider, "Child Workers Found Throughout Hyundai-Kia Supply Chain in Alabama," *Reuters*, 12/16/2022. (<https://www.reuters.com/investigates/special-report/usa-immigration-hyundai/>). For the packaged food cases, see Hannah Dreier, "Searching for the Faces of Migrant Child Labor," *New York Times*, 3/3/23 (<https://www.nytimes.com/2023/03/03/insider/searching-for-the-faces-of-child-migrant-labor.html>).
4. See Nadine Sebai, Nina Sparling and Bruce Gil, "Migrant Teens Worked in Risky Jobs in New Bedford Seafood Processing Plants." PBS Frontline Documentaries, 9/18/23 (<https://www.pbs.org/wgbh/frontline/article/migrant-teens-worked-in-risky-jobs-in-new-bedford-seafood-processing-plants/>).
5. See Hannah Drier, "As Migrant Children Were Put to Work, US Ignored Warnings," *New York Times*, 4/17/23 (<https://www.nytimes.com/2023/04/17/us/politics/migrant-child-labor-biden.html>).
6. The recent legal history of the policies regarding unaccompanied children is complicated. It arises in part from the implementation of Title 42 of the Public Health Service Act that authorizes the Director of the Center for Disease Control and Prevention (CDC) to suspend entry into the US during a public health crisis. The Trump administration imposed this policy in March 2020 in response to the COVID-19 pandemic. The Biden administration continued to enforce Title 42, but provided special exceptions for unaccompanied minors. Biden administration efforts to suspend Title 42 in May 2022 were challenged in federal court. They remained in place until the administration ended the Covid public health emergency in May 2023. For a discussion, see, Drishti Pillai and Samantha Artiga, "Title 42 and Its Impact on Migrant Families," *KFF Issue Brief*, May 26, 2022 (<https://www.kff.org/racial-equity-and-health-policy/issue-brief/title-42-and-its-impact-on-migrant-families/>). Note: This is a racial equity and health policy issue brief by KFF, formerly known as the Kaiser Family Foundation
7. See Hannah Drier, "Tyson and Perdue are Facing Child Labor Investigations," *New York Times*, 9/23/23 (<https://www.nytimes.com/2023/09/23/us/tyson-perdue-child-labor.html>). See also an April 29, 2022, memorandum from Secretary of Health and Human Services, Xavier Becerra, regarding resettlement plans for unaccompanied children (<https://www.hhs.gov/sites/default/files/orr-plan-for-uc-program-following-t42-termination.pdf>).
8. David Weil, *The Fissured Workplace: How Why Work Became So Bad for So Many and What Can Be Done to Improve It*. (Cambridge, MA: Harvard University Press, 2014).

9. On its company website, PSSI describes its history as "What started as a small company in a non-existent market (in 1977) has blossomed into a high-performing organization larger than all of our competitors combined." See PSSI, "Our History," (<https://www.pssi.com/about/>).
10. This was not the first brush that Hearthside had with federal workplace regulators in recent years. Since 2019, the company was charged with 34 violations of the Occupational Safety and Health Act in its facilities. See Hannah Drier, "Alone and Exploited, Migrant Children Work Brutal Jobs Across the US." *New York Times*, 2/28/23 (<https://www.nytimes.com/2023/02/25/us/unaccompanied-migrant-child-workers-exploitation.html>).
11. Mica Rosenberg, Kristina Cooke and Joshua Schneyer. "Child Workers Found Throughout Hyundai-Kia Supply Chain in Alabama," *Reuters Special Investigative Report*, 12/22/22 (<https://www.reuters.com/investigates/special-report/usa-immigration-hyundai/>).
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15. *United States v. Rosenwasser*, 323 U.S. 360 (1945).
16. For an evaluation of federal supply chain efforts in the garment industry, see David Weil, "Public Enforcement / Private Monitoring: Evaluating a New Approach to Regulating the Minimum Wage," *ILR Review*, Vol. 58, No. 2 (January 2005), pp. 238–257. For a recent state example, see "AG Healy, Chipotle Reach Nearly \$2 million Settlement to Resolve Child Labor and Earned Sick Leave Violations," Office of the Attorney General Press Release, 1/27/20 (<https://www.mass.gov/news/ag-healey-chipotle-reach-nearly-2-million-settlement-to-resolve-child-labor-and-earned-sick-time-violations>).
17. Matthew Johnson, "Regulation by Shaming: Deterrence Effects of Publicizing Violations of Workplace Safety and Health Laws," *American Economic Review*, Vol.110, No.6 (June 2020), pp. 1866–1904.
18. The repercussions described above are discussed in Reshmi Basu and Erin Hudson, "Child-Labor Scandal Hits Blackstone-Backed Slaughterhouse Cleaner," *Bloomberg*, April 28, 2023 (<https://www.bloomberg.com/news/articles/2023-04-28/slaughterhouse-scandal-sends-blackstone-firm-s-debt-tumbling-44#xj4y7vzkg?leadSource=verify%20wall?leadSource=verify%20wall>); Josh Funk, "A Slaughterhouse Cleaning Company that Used More than 100 Children as Workers Keeps Losing Contracts with Big Companies," *Fortune*, 5/1/23, (<https://fortune.com/2023/05/01/slaughterhouse-cleanign-company-child-labor-losing-contracts-packers-sanitation-services/>); Shannon Thaler, "Shocking Photos Show Kids as Young as 13 Hired by Blackstone Firm to Clean Slaughterhouse," *New York Post*, 5/10/23 (<https://nypost.com/2023/05/10/us-labor-department-releases-photos-of-children-working-in-slaughterhouse/>).
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20. Kristina Cooke and Mica Rosenberg, "Bipartisan Bill Aims to Increase Penalties for US Child Labor Violations," *Reuters*, 3/29/23 (<https://www.reuters.com/world/us/bipartisan-bill-aims-increase-penalties-us-child-labor-violations-2023-03-29/>).
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