

THE FAILURE THAT TOPPLES SUCCESS: HOW THE MIGRANT AND SEASONAL AGRICULTURAL WORKER PROTECTION ACT DOES NOT ACTUALLY PROTECT

*There is a crime here that goes beyond denunciation. There is a sorrow here that weeping cannot symbolize. There is a failure here that topples all our success.*¹

I. INTRODUCTION

The seedy underbelly of agricultural labor was exposed in 1960 on the day after Thanksgiving when Edward Murrow first released his documentary “Harvest of Shame.”² Americans found out that the farm workers whose labor had produced the food they were enjoying were being subjected to horrific living conditions.³

The documentary followed several families Murrow deemed part of the 1960s version of *The Grapes of Wrath*.⁴ Belle Glade, Florida, a city whose welcome sign boasts “Her soil is her fortune,” was “base camp” to many families who resided on the Okeechobee Labor Camp for a portion of the year.⁵ “Harvest of Shame” opens on its loading ramp with numerous men calling out to recruit for the new season.⁶ The images of the Okeechobee Labor Camp seem far from the fortune boasted of and more akin to something in a developing country.⁷ Dilapidated structures used for housing filled the screen and American households were shown, for the first time, what migrant workers actually experienced.⁸ Fifty-four years later Belle Glade’s loading

¹ JOHN STEINBECK, GRAPES OF WRATH 349 (Steinbeck Centennial ed., Penguin Books 2002) (1939).

² *CBS News: Harvest of Shame* (CBS television broadcast Nov. 26, 1960), available at http://www.cbs.com/shows/cbs_evening_news/video/1662282819/1960-harvest-of-shame/.

³ *See id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *See id.*

⁸ *Id.*

ramp is still used to recruit workers for the season's harvest and a simple Google search will reveal images of housing reminiscent of a developing country.⁹

According to then president of the American Farm Bureau Federation, provided housing is an invaluable luxury which cannot be calculated.¹⁰ The reality told a different story. One labor camp in North Carolina only had straw available for beds, no mattresses;¹¹ there were no bathrooms and only one water spigot was available for the entire camp.¹²

Transportation was just as bad. On June 6, 1957, twenty-one migrants were killed enroute to their next camp.¹³ The police investigating the accident said that the deaths were "partially due to the packaging of the occupants in the truck."¹⁴ This is how little the migrant worker was valued.

Secretary of Labor James P. Mitchell told Murrow that he was "frustrated . . . [by his] inability to make any impact" that would help the farm workers.¹⁵ He called it a "blot on [his] conscience."¹⁶ Mitchell noted that migrants do not have a voice, but the farm owners do.¹⁷

At the film's conclusion, Murrow challenged the public to do something for these "forgotten, under-protected people," saying: "The migrants have no lobby. Only an enlightened, aroused, and perhaps angered public opinion can do anything about the migrants. The people you have seen have the strength to harvest your fruit and vegetables. They do not have the strength to influence legislation. Maybe we do."¹⁸

⁹ Elizabeth Blair, *In Confronting Poverty, 'Harvest of Shame' Reaped Praise and Criticism*, NPR, (May 31, 2014, 05:22 AM), www.npr.org/2014/05/31/317364146/in-confronting-poverty-harvest-of-shame-reaped-praise-and-criticism.

¹⁰ *CBS News: Harvest of Shame*, *supra* note 2.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

Legislation was influenced.¹⁹ Three years after the documentary aired, the Farm Labor Contractor Registration Act (“FLCRA”) seemed to be the answer to the exploitation of farm laborers.²⁰ The FLCRA’s purpose was to protect agricultural workers experiencing poor working conditions with a primary focus on the crew leaders.²¹ Testimony before Congress had revealed that crew leaders frequently exaggerated employment conditions during recruitment.²² The FLCRA was ignored and had no adequate means of enforcement with noncompliance becoming “the rule rather than the exception.”²³ In 1974, Congress amended the FLCRA.²⁴ This amendment extended the FLCRA’s coverage through stronger provisions for enforcing the Act and creation of a civil remedy.²⁵ When the FLCRA ultimately could not protect agricultural workers, Congress decided it was time for a new approach.²⁶

Congress attempted to address the plight of agricultural workers by enacting the Migrant and Seasonal Agricultural Worker Protection Act (“MSPA”).²⁷ The new Act granted the Department of Labor blanket discretion to conduct investigations on agricultural property regarding the same regulations which had existed under the FLCRA.²⁸ Unfortunately agricultural workers have received little relief from this Act because the language of the Act is too broad for the courts to be satisfied that it adheres to the demands of the Fourth Amendment.²⁹

This Comment will show that the MSPA will remain vulnerable to invalidation in the courts and therefore cannot effectively protect agricultural workers until it is amended to comport with the requirements of the Fourth Amendment. Part II will examine the social and political climate that led to Congress’s enactment of the MSPA

¹⁹ See H.R. REP. NO. 97-885, at 1 (1982), reprinted in 1982 U.S.C.C.A.N. 4547, 4548.

²⁰ See *id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.* at 4549 (“The Committee has concluded, as a result of direct evidence, that the [FLCRA], as amended has failed to reverse the historical pattern of abuse, and exploitation of migrant and seasonal farm workers . . .”).

²⁷ Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C.A. § 1801 (1983).

²⁸ See *id.*

²⁹ See *id.*

and will discuss how, by granting too much discretionary power to the Department of Labor for enforcement, it fails to conform to the standards established by the Fourth Amendment, ultimately leaving agricultural workers vulnerable. Part III will analyze the Fourth Amendment's concern for privacy as well as the processes by which a search warrant may be obtained. Part IV will describe administrative searches, which may excuse an agency from obtaining a warrant, and how they are utilized to regulate industries, including the agricultural industry. Part V will dissect the judicial treatment of the MSPA to date in order to demonstrate how particular flaws in the language of the statute are preventing it from passing Constitutional muster. Part VI will recommend amendments to the MSPA that will allow it to better comport with the search standards imposed by the Fourth Amendment as outlined in *Perez v. Blue Mountain Farms*, 961 F.Supp.2d 1164 (2013), and will further address why the *Perez* test should be uniformly implemented for administrative searches. Finally, this Comment will show that, while growing concern for migrant workers demonstrates tremendous success, the MSPA is ultimately a failure.

II. THE MSPA

"Harvest of Shame" challenged the legislature toward meaningful action.³⁰ When the FLCRA proved inadequate, the Committee on Education and Labor received evidence of ongoing abuse of agricultural workers despite Congress's earlier attempts to protect them.³¹ For example, a Haitian migrant worker was charged for rent instead of receiving payment for his work.³² He was unable to pay and was left penniless at a bus station.³³ When a grain truck that was transporting forty-seven teenage workers overturned, the workers were seriously injured.³⁴ Young Puerto Ricans were recruited by one crew leader only to find that the housing was overcrowded and unsanitary and they were to receive payments below the minimum wage.³⁵ In one labor camp, the electricity was only turned on when the workers were

³⁰ *CBS News: Harvest of Shame*, *supra* note 2.

³¹ H.R. REP. NO. 97-885, at 1 (1982), reprinted in 1982 U.S.C.C.A.N. 4547, 4548.

³² *Id.* at 4549.

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

out in the fields and unable to benefit from it.³⁶ These stories led Congress to enact the MSPA and shaped its purpose.³⁷

The purpose of the MSPA is to ensure protection of migrant and seasonal agricultural workers by providing a method of regulating the agricultural industry.³⁸ Under the MSPA, farm labor contractors are required to register with the Department of Labor and may be subject to both criminal and administrative sanctions for noncompliance.³⁹ The MSPA also provides aggrieved workers with a private right of action rather than forcing them to rely on the Department of Labor to initiate and conduct an investigation.⁴⁰

The MSPA expressly charges non-exempt farm labor contractors, agricultural employers, and agricultural associations with maintaining standards to ensure the protection of migrant and seasonal agricultural workers.⁴¹ One requirement is the disclosure of the terms and conditions of employment.⁴² This disclosure must take place at the time the worker is recruited.⁴³ The worker may also request the terms

³⁶ *Id.*

³⁷ *See id.* (“The Committee has concluded, as a result of direct evidence, that the Farm Labor Contractor Registration Act, as amended has failed to reverse the historical pattern of abuse and exploitation of migrant and seasonal farm workers and that a completely new approach must be advanced.”).

³⁸ *See* Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C.A. § 1801 (1983) (“It is the purpose of this chapter to remove the restraints on commerce caused by activities detrimental to migrant and seasonal agricultural workers; to require farm labor contractors to register under this chapter; and to assure necessary protections for migrant and seasonal agricultural workers, agricultural associations, and agricultural employers.”).

³⁹ Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C.A. §§ 1851-1852 (1983).

⁴⁰ UNITED STATES DEPARTMENT OF AGRICULTURE, MIGRANT AND SEASONAL AGRICULTURAL WORKER PROTECTION ACT OF 1983: FEDERAL LAWS AND REGULATIONS AFFECTING AGRICULTURAL EMPLOYERS, 25, 29 (“A unique feature of MSPA is that it permits anyone aggrieved by a violation of any provision by a farm labor contractor, agricultural employer, agricultural association, or other person to file suit in any Federal District Court having jurisdiction over the parties. The suits may be filed regardless of the amount in controversy, the citizenship of the parties, and whether all administrative remedies available under the act have been exhausted.”).

⁴¹ *The MSPA*, UNITED STATES DEPARTMENT OF LABOR, The Migrant and Seasonal Agricultural Worker Protection Act (MSPA): Overview, <http://www.dol.gov/compliance/laws/comp-msawpa.htm#overview> (last visited July 22, 2014).

⁴² *Id.*

⁴³ *Id.*

and conditions of employment in writing.⁴⁴ The terms must include: the place of employment; the wage rates to be paid; the crops and kinds of activities for which the worker may be employed; the period of employment; the transportation, housing, and other benefits to be provided, along with any charges to the worker associated with such benefits; whether a strike is presently occurring (meaning that the new employee would be replacing workers who are already claiming that unfair treatment or abuse has occurred); and any commission or benefit produce stands or stores receive from sales.⁴⁵ Congress determined that these provisions were necessary to protect agricultural workers from financial abuse by their employers, hazardous working conditions, unsafe transportation, and substandard housing.⁴⁶

Congress was acutely aware that migrant and seasonal agricultural workers were routinely treated unfairly regarding compensation.⁴⁷ In an effort to prevent unfair treatment, Congress requires employers to post information about the MSPA at the various worksites where agricultural workers may be working.⁴⁸ Workers must be paid with an itemized statement of earnings and deductions in a timely manner and all records of payroll must be kept for each employee for at least three years.⁴⁹ These requirements should equip workers with information which will help them prevent their own abuse.

Congress was especially concerned with addressing employer provided housing and transportation because they were aware of the prevalence of these services in agricultural work and believed there was a distinct probability such services would be substandard.⁵⁰ Under the MSPA, if housing is provided, it must comply with federal and state housing, health, and safety standards.⁵¹ Where transportation is provided, the vehicles involved have to meet federal and state safety

⁴⁴ *Id.*

⁴⁵ H.R. REP. NO. 97-885, at 1 (1982), reprinted in 1982 U.S.C.C.A.N. 4547, 4559.

⁴⁶ *See id.*

⁴⁷ *See id.*

⁴⁸ *The MSPA*, UNITED STATES DEPARTMENT OF LABOR, The Migrant and Seasonal Agricultural Worker Protection Act (MSPA): Overview, <http://www.dol.gov/compliance/laws/comp-msawpa.htm#overview> (last visited July 22, 2014).

⁴⁹ *Id.*

⁵⁰ *See, e.g.*, H.R. REP. NO. 97-885, at 1 (1982), reprinted in 1982 U.S.C.C.A.N. 4547, 4549.

⁵¹ *The MSPA*, UNITED STATES DEPARTMENT OF LABOR, The Migrant and Seasonal Agricultural Worker Protection Act (MSPA): Overview, <http://www.dol.gov> (last visited July 22, 2014).

standards, be properly insured, and drivers are required to have a valid license.⁵² These provisions promote the safety of migrant workers and their families.

Farmers are on notice that their business may be searched for these issues because they are required to register with the Department of Labor.⁵³ What farmers may not fully understand is that the MSPA is primarily concerned with the safety and treatment of agricultural workers.⁵⁴ Farmers may not recognize what types of searches are possible pursuant to the MSPA.⁵⁵ If they know the purpose and goals during the inspections, farmers will be better prepared not only to comply with the MSPA, but also with any requests the Department of Labor makes during an investigation and the potential consequences of a search. The MSPA also does not give parameters for when and with what frequency investigations may occur.⁵⁶

To investigate possible violations of the MSPA, Congress allows the Department of Labor to conduct warrantless searches.⁵⁷ Title 29 of the United States Code section 1862 (a) states:

To carry out this chapter the Secretary, either pursuant to a complaint or otherwise, shall, as may be appropriate, investigate, and in connection therewith, enter and inspect such places (including housing and vehicles) and such records (and make transcriptions thereof), question such persons and gather such information to determine compliance with this chapter, or regulations prescribed under this chapter.⁵⁸

While the granting of appropriate investigatory power is necessary to effectively enforce the MSPA, recent court decisions have criticized the broad discretion afforded to the Department of Labor in exercising its search and seizure powers under the Act.⁵⁹ Consequently, instead of improving compliance with the MSPA through investigation and prosecution of labor violations, inspectors have been impeded in their

⁵² *Id.*

⁵³ See Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C.A. § 1811 (1983).

⁵⁴ See discussion *infra* Part VI.A.

⁵⁵ See discussion *infra* Part VI.A.

⁵⁶ *Perez v. Blue Mountain Farms*, 961 F.Supp.2d 1164, 1171 (E.D. Washington 2013).

⁵⁷ Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C.A. § 1862 (1983).

⁵⁸ *Id.*

⁵⁹ See discussion *infra* Part V.

ability to enforce employers' compliance with the Act.⁶⁰ Unless important changes are made to the language of the MSPA to limit such broad administrative discretion, the Department of Labor will likely continue to run afoul of the search and seizure limitations imposed by the Fourth Amendment.⁶¹ As a result, employers will remain vulnerable to infringement of their privacy rights and evidence vital to prosecuting violations of the MSPA will be susceptible to exclusion by the courts.⁶² A closer examination of the contours of the Fourth Amendment is necessary to understand the criticism the MSPA has faced in the courts and the changes that should be made to its language so that it can be appropriately enforced.

III. THE FOURTH AMENDMENT

A. The History, Purpose, and Expansion of the Fourth Amendment

The Fourth Amendment provides:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.⁶³

The Fourth Amendment embodies the concerns that the colonists had regarding writs of assistance that granted "sweeping power to customs officials and other agents of the King to search at large for smuggled goods."⁶⁴ The Virginia Bill of Rights, which was influential in establishing the first ten amendments to the Constitution, opposed

⁶⁰ See discussion *infra* Part VI.A.

⁶¹ See discussion *infra* Part V.

⁶² *E.g.*, *Mapp v. Ohio*, 367 U.S. 643, 648 (1961). If the search is found to be in violation of the Fourth Amendment, the exclusionary rule requires that "all evidence obtained" as a result of such conduct be suppressed. *Id.* at 655. Such evidence includes not only what was seized in the course of the unlawful conduct itself, the "primary" evidence, but also what was subsequently obtained through the information gained in the course of such conduct, the "derivative" or "secondary" evidence. *Wong Sun v. United States* (1963) 371 U.S. 471, 485. Thus, the "fruit of the poisonous tree," as well as the tree itself, must be excluded. *Nardone v. United States* (1939) 308 U.S. 338, 341.

⁶³ U.S. CONST. amend. IV.

⁶⁴ *Marshall v. Barlow's Inc.*, 436 U.S. 307, 311 (1978) (quoting *U.S. v. Chadwick*, 433 U.S. 1, 7-8 (1997)).

“general warrants” that allowed an officer to search “suspected places without evidence of a fact committed.”⁶⁵ The colonists were deeply concerned with protecting their right to privacy—at home and at work.⁶⁶

The purpose of the Fourth Amendment is to protect the privacy rights of the people.⁶⁷ This right to privacy is a basic right required to ensure a free society.⁶⁸ It has been extended to businesses and industrial or commercial facilities.⁶⁹ The standard used by the courts to determine whether a person or an entity has a reasonable expectation of privacy in a particular place was introduced in Justice Harlan’s concurring opinion in *Katz*.⁷⁰ Justice Harlan set out a two-prong test: (1) the subjective test—whether a person exhibits an actual expectation of privacy; and (2) the objective test—whether society is prepared to recognize the expectation of privacy as reasonable.⁷¹ The expectation of privacy is not just for individuals to claim, but must be one that society as a whole is willing to accept.⁷² The court considers the intent of the Framers, the uses of the location, and society’s understanding that some areas “deserve the most scrupulous protection from government invasion.”⁷³

The Supreme Court has acknowledged that even in areas accessible to the public, people may have constitutional protection against warrantless searches where they have made efforts to maintain privacy.⁷⁴ In *Katz v. United States*, 389 U.S. 347 (1967), the Court considered whether a public telephone booth afforded the defendant any Fourth Amendment protection when the FBI used an electronic listening and recording device to hear his conversations regarding illegal conduct.⁷⁵ The Court held that because the defendant had taken precautions to ensure his privacy by closing the door to the telephone booth, his privacy was unjustifiably violated when the government

⁶⁵ *Id.*

⁶⁶ *See id.* at 312.

⁶⁷ *See, e.g., Katz v. United States*, 389 U.S. 347, 351 (1967).

⁶⁸ *E.g., Camara v. Mun. Ct. of S.F.*, 387 U.S. 523, 528 (1967).

⁶⁹ *Dow Chem. Co. v. United States*, 476 U.S. 227, 235 (1986).

⁷⁰ *Katz v. United States*, 389 U.S. 347, 360 (1967), *cited with approval in U.S. v. Jones*, 132 S.Ct. 945, 950.

⁷¹ *Id.* at 361.

⁷² *Oliver v. U.S.*, 466 U.S. 170, 177 (1984).

⁷³ *Id.* at 178.

⁷⁴ *Katz v. United States*, 389 U.S. 347, 351 (1967).

⁷⁵ *Id.* at 348.

listened without a warrant.⁷⁶ The Court noted that “[w]herever a man may be, he is entitled to know that he will remain free from unreasonable searches and seizures.”⁷⁷

Farmers will argue that they have a right to privacy on their agricultural properties just as other business entities and private parties do.⁷⁸ In keeping with the subjective test, agricultural employers may erect fences or post “No Trespassing” signs exhibiting an actual expectation of privacy.⁷⁹ The MSPA addresses the objective test though, by acknowledging that society is not prepared to grant such privacy to agricultural employers where exploitation of its workers is of concern.⁸⁰ Under the MSPA, there is no right to privacy as the Secretary of Labor is granted general access to agricultural property to investigate for violations of the MSPA.⁸¹ While society does have an interest in these investigations, such broad discretion was never intended by the Fourth Amendment, as is evident in its warrant requirement.⁸²

B. The Warrant Requirement

The Fourth Amendment provides that searches must be conducted with the use of a warrant.⁸³ Those searches conducted without a warrant are per se unreasonable⁸⁴ and have been held unlawful despite “facts unquestionably showing probable cause.”⁸⁵ The purpose behind this warrant provision is to guard against “giving police officers unbridled discretion to rummage at will among a person’s private effects” by having a neutral magistrate determine whether or not probable cause exists to conduct a search.⁸⁶ The Fourth Amendment prevents randomized searches by requiring officers to obtain a warrant.⁸⁷ The courts have expressed concern regarding the MSPA’s

⁷⁶ *Id.* at 352.

⁷⁷ *Id.* at 359.

⁷⁸ *See supra* text accompanying note 67.

⁷⁹ *See supra* text accompanying notes 68-71.

⁸⁰ *See supra* text accompanying notes 68-71.

⁸¹ *See supra* text accompanying notes 55-56.

⁸² *See* U.S. CONST. amend. IV.

⁸³ *Id.*

⁸⁴ *See, e.g.,* Arizona v. Gant, 556 U.S. 332, 338 (2009).

⁸⁵ Katz v. United States, 389 U.S. 347, 357 (1967) (quoting Agnello v. United States, 269 U.S. 20, 33 (1925)).

⁸⁶ Arizona v. Gant, 556 U.S. 332, 338 (2009).

⁸⁷ *See id.*

lack of any warrant substitute.⁸⁸ Furthermore, a warrant must be issued by a neutral magistrate.⁸⁹ The neutral magistrate prevents a potential conflict of interest that would be present if officers or agents of the government, tasked with enforcing a statute, were allowed to issue their own warrants.⁹⁰ Warrants serve an important purpose by requiring a neutral magistrate's affirmation that probable cause exists and by specifying the limits the inspector must adhere to during the search, while also legitimizing the search for those subject to the warrant.⁹¹

In order to obtain a warrant, officers must demonstrate to the satisfaction of the neutral magistrate that there is probable cause to believe that evidence of a crime is likely to be found in the location they desire to search.⁹² The Constitution does not define probable cause; but the applicable constitutional standard for determining the existence of probable cause is reasonableness.⁹³ The Supreme Court has acknowledged that probable cause is “a fluid concept—turning on the assessment of probabilities in particular factual contexts—not readily, or even usefully, reduced to a neat set of legal rules.”⁹⁴ The adopted approach is a totality of the circumstances test where the neutral magistrate is charged with making a decision to grant a warrant based on whether all of the circumstances suggest a fair probability that evidence of a crime will be located in a particular place.⁹⁵

There are circumstances in which the courts have determined that warrants are not required before law enforcement officers can conduct searches and seizures.⁹⁶ For example, administrative agencies conducting searches for the purpose of investigating and ensuring compliance with industry regulations are generally not required to produce a warrant prior to entry.⁹⁷ Under the MSPA, the Department

⁸⁸ See discussion *infra* Part V.

⁸⁹ *Katz v. United States*, 389 U.S. 347, 357 (1967).

⁹⁰ *Illinois v. Gates*, 462 U.S. 213, 240 (1983).

⁹¹ *Marshall v. Barlow's Inc.*, 436 U.S. 307, 323 (1978).

⁹² *Illinois v. Gates*, 462 U.S. 213, 238 (1983).

⁹³ See *Camara v. Mun. Ct. of S.F.*, 387 U.S. 523, 538 (1967) (understanding of the standard of “reasonableness” comes directly from the language of the Fourth Amendment without any explanation of what the reasonableness is in relationship to).

⁹⁴ *Illinois v. Gates*, 462 U.S. 213, 232 (1983).

⁹⁵ *Id.* at 238.

⁹⁶ Fourth Amendment—Administrative Searches and Seizures, 69 J. Crim. L. & Criminology 552, 553 (1978).

⁹⁷ See *Donovan v. Dewey*, 452 U.S. 594, 600 (1981).

of Labor is granted the authority to enter agricultural property to inspect conditions related to the safety and welfare of the workers.⁹⁸ This authority has been substantially curtailed by the recent decision rendered in *Perez*.⁹⁹ However, when fashioned and used appropriately, administrative searches provide valuable information about the treatment of agricultural workers.¹⁰⁰

IV. ADMINISTRATIVE SEARCHES

Administrative searches have long been understood as necessary in order to regulate certain industries.¹⁰¹ Congress has been charged with regulating interstate commerce¹⁰² and has been granted the authority to regulate industries engaged in interstate commerce—including the agricultural industry.¹⁰³ Federal statutes are enacted to grant agencies responsibility for ensuring that a particular industry is in compliance with federal regulations.¹⁰⁴ Congress then delegates its investigatory and enforcement power to an agency (e.g., the Department of Labor or the Environmental Protection Agency).¹⁰⁵ This power to investigate and enforce regulations “generally carries with it all the modes of inquiry and investigation traditionally employed or useful to execute the authority granted.”¹⁰⁶ In other words, the enforcing agency can investigate in ways that have been deemed constitutionally appropriate for other regulating agencies, such as the police.¹⁰⁷ The MSPA gives the Department of Labor the responsibility to investigate violations of the MSPA through the use of administrative searches.¹⁰⁸

In some industries, an inspection program, or routine investigations, may be “a necessary component of federal regulations.”¹⁰⁹ Congress can deem that such investigations will be conducted without a

⁹⁸ See discussion *supra* Part II.

⁹⁹ See discussion *infra* Part V.B.

¹⁰⁰ See discussion *infra* Part IV.

¹⁰¹ See *Dow Chem. Co. v. United States*, 476 U.S. 227, 233 (1986).

¹⁰² U.S. CONST., art. I, § 8, cl. 3.

¹⁰³ See *id.*; see also *United States v. Lopez*, 514 U.S. 549, 560 (1995) (“Where economic activity substantially affects interstate commerce, legislation regulating that activity will be sustained.”).

¹⁰⁴ See *Dow Chem. Co. v. United States*, 476 U.S. 227, 233 (1986).

¹⁰⁵ See *id.*

¹⁰⁶ *Id.*

¹⁰⁷ See *id.*

¹⁰⁸ See discussion *supra* Part II.

¹⁰⁹ *Donovan v. Dewey*, 452 U.S. 594, 599 (1981).

warrant.¹¹⁰ In order to do so, Congress must have first “reasonably determined that warrantless searches are necessary to further a regulatory scheme.”¹¹¹ Where the “regulatory presence is sufficiently comprehensive and defined [so] that the owner of commercial property cannot help but be aware that his property will be subject to periodic inspections,” the investigation does not violate the constitutional requirement for a warrant.¹¹² The MSPA operates on the assumption that the agricultural industry is on notice that agricultural properties are subject to regulation which involves periodic inspections.¹¹³

Furthermore, a warrantless search is considered reasonable where the federal regulation is pervasive and regular.¹¹⁴ The reasonableness of warrantless searches may also change depending on the enforcement needs and privacy expectations relevant to the federal statute governing the search.¹¹⁵ A warrant provides protection of privacy, but where regulated industries are already on notice that they may be subject to random searches, a warrant may not provide any additional privacy protections.¹¹⁶ The Supreme Court has affirmed that Congress has the power to define the standards of reasonableness for administrative searches and seizures.¹¹⁷ Congress determined that administrative searches would be available for the Department of Labor to investigate violations of the MSPA, but it did not take into account that such broad investigative powers would actually make the MSPA vulnerable to invalidation in the courts.¹¹⁸

A. *The Evolution of Administrative Search Jurisprudence*

Administrative searches are a fairly recent development.¹¹⁹ Before the Occupational Health and Safety Administration (“OSHA”) was formed in 1970, inspections relating to health, safety, and welfare were not conducted on a large scale.¹²⁰ Consequently, most of the

¹¹⁰ *Id.* at 600.

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ See discussion *supra* Part II.

¹¹⁴ *Donovan v. Dewey*, 452 U.S. 594, 606 (1981).

¹¹⁵ See *id.*

¹¹⁶ *Id.* at 605.

¹¹⁷ *Colonnade Catering Corp. v. U.S.*, 397 U.S. 72, 77 (1970).

¹¹⁸ See discussion *infra* Part V.

¹¹⁹ Fourth Amendment—Administrative Searches and Seizures, 69 *J. Crim. L. & Criminology* 552, 552 n. 12 (1978).

¹²⁰ *Id.*

jurisprudence setting the parameters for administrative searches came in the period following OSHA's creation.¹²¹ Prior to that time, the courts generally analyzed administrative searches and seizures using the traditional Fourth Amendment framework requiring a warrant issued by neutral magistrate.¹²² For example, in *Camara v. Municipal Court of San Francisco*, 387 U.S. 523 (1967), the Court held that because a judicial magistrate must decide when the power to search trumps the right to privacy the government had to obtain a warrant before entering the building.¹²³

Three years after *Camara*, the Court recognized Congress's authority to structure the standard for administrative searches and seizures.¹²⁴ The Court said, "[w]here Congress has authorized inspection but made no rules governing the procedure that inspectors must follow, the Fourth Amendment and its various restrictive rules apply."¹²⁵ This means that whenever a statute is not clear as to the scope of the search, the default is the Fourth Amendment standard requiring that a warrant be obtained upon probable cause.¹²⁶ The MSPA is an example of a statute that is not clear as to the scope of its searches because it grants general power to search without any parameters set forth.¹²⁷ The contours of administrative searches were soon to change though, granting regulatory agencies more discretion.

By 1972, the Court held that a search was constitutionally valid where the relevant statute specifically authorized warrantless searches because there was notice of potential inspections.¹²⁸ The Court restricted its holding to "pervasively regulated business[es]."¹²⁹ When the industry involved is not a historically regulated business, obtaining a warrant is manageable.¹³⁰ Therefore, if the industry is not already heavily regulated, in order to inspect the business, a warrant must be obtained.¹³¹ With the spread of industry, the spread of potential mistreatment of workers arises, and it becomes vital to have a way to

¹²¹ *Id.*

¹²² *See, e.g., Camara v. Mun. Court of S.F.*, 387 U.S. 523, 529 (1967).

¹²³ *Id.*

¹²⁴ *Colonnade Catering Corp. v. U.S.*, 397 U.S. 72, 77 (1970).

¹²⁵ *Id.*

¹²⁶ *See id.*

¹²⁷ *See supra* text accompanying notes 56-59.

¹²⁸ *See U.S. v. Biswell*, 406 U.S. 311, 317 (1972).

¹²⁹ *Id.* at 316.

¹³⁰ *See Marshall v. Barlow's Inc.*, 436 U.S. 307, 324 (1978).

¹³¹ *See id.*

combat abuse;¹³² regulations are ineffective if there is no way to see if they are being implemented.¹³³ The agricultural industry is heavily regulated, but the MSPA is not concerned with the production of the produce, but rather with the protection of the people involved in production.¹³⁴

B. Varying Purposes for Administrative Searches

Investigations help the Department of Labor ensure the protections afforded migrant workers in the MSPA.¹³⁵ The government must monitor agricultural businesses in order to verify that migrant workers are being treated fairly by their employers.¹³⁶ The goals behind the search should determine the type of search that will be conducted—criminal or administrative.¹³⁷ A criminal search is concerned with obtaining evidence of a specific crime in a particular place.¹³⁸ Civil searches are aimed at widespread compliance with a regulation.¹³⁹ These regulatory searches are beneficial because unannounced inspections can lead to better business practices.¹⁴⁰

An administrative search for a civil purpose is a search conducted for a violation of a statute, usually involving health, safety, or welfare.¹⁴¹ The result of a violation is generally a fine and a reminder that the violator must adjust his or her conduct to ensure compliance with the regulation.¹⁴² Health, safety, and welfare codes require routine inspections, even where there is no suspicion of a violation, in order to maintain the code itself.¹⁴³ When health, safety, and welfare codes are at issue the probable cause necessary for criminal searches may be

¹³² See Anup Shah, *Corporations and Worker's Rights*, GLOBALISSUES.ORG, <http://www.globalissues.org/article/57/corporations-and-workers-rights> (last updated May 28, 2006).

¹³³ See *id.*

¹³⁴ See discussion *supra* Part II.

¹³⁵ See Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C.A. § 1862(a) (1983).

¹³⁶ See *id.*

¹³⁷ See *id.*

¹³⁸ See, e.g., *Camara v. Mun. Court of S.F.*, 387 U.S. 523, 535 (1967).

¹³⁹ See, e.g., *id.*

¹⁴⁰ See, e.g., *Donovan v. Dewey*, 452 U.S. 594, 603 (1981).

¹⁴¹ Fourth Amendment—Administrative Searches and Seizures, 69 J. Crim. L. & Criminology 552, 552 n.10 (1978).

¹⁴² *Id.*

¹⁴³ *Id.* at 553.

difficult to find.¹⁴⁴ Probable cause for criminal searches requires evidence of a specific violation in a particular building; information that is often unavailable to the enforcing agency.¹⁴⁵ The same standard of probable cause for criminal searches does not apply to administrative searches for civil purposes.¹⁴⁶

An issue arises when administrative searches for civil purposes lead to criminal penalties.¹⁴⁷ The Court in *Michigan v. Tyler*, 436 U.S. 499 (1978), was faced with deciding whether an administrative search was appropriate without a warrant once criminal evidence had been obtained.¹⁴⁸ The court held that conviction after the fact could not be used to validate the warrantless searches that took place after a reasonable time for the initial investigation had passed.¹⁴⁹ When administrative searches become criminal searches, a warrant must be obtained.¹⁵⁰ The MSPA allows for civil and criminal sanctions.¹⁵¹ Occasionally, one risks criminal sanctions simply by refusing the warrantless entry.¹⁵² This is particularly problematic when individuals refuse entry because they are uncertain of the legitimacy of the inspector, especially when such an individual is not adequately on notice of any cause or legitimate societal concern that allows for the administrative inspection.¹⁵³

The MSPA is primarily focused on administrative searches for civil purposes because its goal is to regulate the agricultural industry, not necessarily to find criminal activity.¹⁵⁴ It functions like a health, safety, and welfare code with a focus on migrant workers.¹⁵⁵

V. JUDICIAL TREATMENT OF THE MSPA

¹⁴⁴ *See id.*

¹⁴⁵ *Id.*

¹⁴⁶ *Id.* at 562.

¹⁴⁷ *See Camara v. Mun. Court of S.F.*, 387 U.S. 523, 532 (1967).

¹⁴⁸ *See Michigan v. Tyler*, 436 U.S. 499, 502 (1978).

¹⁴⁹ *Id.* at 506.

¹⁵⁰ *See id.*

¹⁵¹ Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C.A. §§ 1851-1853 (1983).

¹⁵² *Camara v. Mun. Court of S.F.*, 387 U.S. 523, 532 (1967).

¹⁵³ *See id.*

¹⁵⁴ *See Fourth Amendment—Administrative Searches and Seizures*, 69 J. Crim. L. & Criminology 552, 553 (1978).

¹⁵⁵ *See id.*

Administrative searches are primarily designed to promote health, safety, and welfare concerns such as proper food preparation, safe workplace conditions, and prevention of child labor law violations.¹⁵⁶ The MSPA targets a mixture of those concerns in addition to potential criminal concerns.¹⁵⁷ Over the years the courts have addressed one major flaw in the MSPA regarding its administrative searches: the MSPA grants wide discretion to the Department of Labor to conduct investigations.¹⁵⁸ These investigations are conducted to ensure that agricultural workers are not systemically abused, but, as a result of the immense discretion inherent in the process, the courts have held that the searches do not comport with the Fourth Amendment and have excluded evidence obtained through these searches.¹⁵⁹ Therefore, the MSPA is not able to effectively protect agricultural workers.¹⁶⁰

In *McLaughlin v. Elsberry*, 868 F.2d 1525 (11th Cir. 1988), Elsberry prevented the Department of Labor from entering fields to interview migrant workers.¹⁶¹ Elsberry had allegedly violated the MSPA by failing to inform workers of the terms of employment, making improper payments and deductions, and by engaging in physical abuse of the workers.¹⁶² Elsberry gave consent to the Department of Labor's initial visit two years prior to enactment of the MSPA in 1981 to inspect its business records, but only gave consent to interview workers if a designated employee was present at all times, so no interviews were conducted at that time.¹⁶³ The Department of Labor entered into negotiations with Elsberry regarding the interview conditions, eventually agreeing that Elsberry could be present for the interviews with crew leaders, but not with migrant workers.¹⁶⁴ When the Department of Labor arrived for the interviews with migrant workers in 1982, Elsberry again denied access.¹⁶⁵ In 1983 the MSPA superseded the FLCRA, so the Department of Labor renewed

¹⁵⁶ *See id.*

¹⁵⁷ *See* Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C.A. § 1862 (1983).

¹⁵⁸ *See id.*

¹⁵⁹ *See* *Perez v. Blue Mountain Farms*, 961 F.Supp.2d 1164, 1171 (E.D. Washington 2013.)

¹⁶⁰ *See id.* at 1170.

¹⁶¹ *McLaughlin v. Elsberry, Inc.*, 868 F.2d 1525, 1526 (11th Cir. 1988).

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

investigations knowing it should be more fruitful with the enhanced ability to enforce the MSPA.¹⁶⁶ When Elsberry refused the Department of Labor this time, the Department of Labor sought an injunction which was granted.¹⁶⁷ On appeal, the court was faced with the issue of whether warrantless entry per the newly enacted MSPA was unconstitutional.¹⁶⁸

Elsberry's fields were fenced with gated entries, which were kept locked with "No Trespassing" signs posted around the perimeter.¹⁶⁹ The labor camps were located on privately owned property which were only accessible using private drives and, like the fields, had "No Trespassing" signs.¹⁷⁰ The court ruled that the fields, despite being enclosed, were subject to the open field exception and no violation of the Fourth Amendment existed where Department of Labor investigators entered these fields.¹⁷¹ The court also held that the Department of Labor investigators had authority to make warrantless entries into the common areas of the labor camps.¹⁷² The MSPA survived in this case simply because it was not necessary to determine the MSPA's validity where the Department of Labor was already allowed access to the fields classified as open.¹⁷³ Not all cases pertaining to the MSPA involve only an open field, such as in *Perez v. Blue Mountain Farms*, 961 F.Supp.2d 1164 (2013), where more was at stake than just the open fields doctrine.¹⁷⁴

In *Perez*, Blue Mountain Farms did not want to allow the Department of Labor access to their blueberry farm for an investigation and threatened to call the police if the investigators did not leave.¹⁷⁵ The Department of Labor sought an injunction to enter the defendant's fields and packing shed.¹⁷⁶ The court partially granted

¹⁶⁶ *See id.* at 1526- 1527.

¹⁶⁷ *Id.* at 1527.

¹⁶⁸ *See id.*

¹⁶⁹ *Id.* at 1529.

¹⁷⁰ *Id.*

¹⁷¹ *Id.* at 1530.

¹⁷² *Id.* at 1531 n.6.

¹⁷³ *See id.* at 1530-1531, *relying on* *Hester v. United States*, 265 U.S. 57, 59 (1924) (holding that, "[I]t is enough to say that, apart from the justification, the special protection accorded by the Fourth Amendment to the people in their 'persons, houses, papers and effects,' is not extended to the open fields.").

¹⁷⁴ *See Perez v. Blue Mountain Farms*, 961 F.Supp.2d 1164, 1167 (E.D. Washington 2013).

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

the injunction allowing the Secretary of Labor entry into the open fields while denying access to buildings such as the packing shed.¹⁷⁷ The court in *Perez* said that the MSPA and related regulations did not satisfy the “requirement for a warrantless search of a pervasively regulated industry.”¹⁷⁸ Nothing limited the scope of the search, so the warrantless entry into the buildings was in violation of the Fourth Amendment.¹⁷⁹ The Department of Labor could not show it had power to conduct its search of buildings because the MSPA lacked the proper restraints necessary to make the MSPA a warrant substitute and was therefore prevented from conducting its investigation.¹⁸⁰ Although the MSPA gives the Secretary of Labor power to investigate by means of entry for the purpose of determining compliance with the MSPA, the court reasoned that the language of the MSPA was too broad and any searches of structures on farms required a warrant.¹⁸¹ This effectively rendered the MSPA impotent.¹⁸²

The *Perez* court provided a test to determine when warrantless entries of properties belonging to a business in a highly regulated industry might be acceptable under the Fourth Amendment.¹⁸³ First, “there must be a substantial government interest” for the investigation.¹⁸⁴ Second, the inspection must be necessary in order to further the regulatory scheme.¹⁸⁵ Finally, there must be “a constitutionally adequate substitute” for the typical warrant requirement provided for in the Fourth Amendment.¹⁸⁶

A regulatory statute may act as the warrant substitute.¹⁸⁷ To act as a warrant substitute, the regulatory statute “must advise the owner of the” business that a search is pursuant to law.¹⁸⁸ The statute must also “limit the discretion of the inspecting officers” by defining the scope of the search to be conducted.¹⁸⁹ The statute will likely meet these

¹⁷⁷ *Id.* at 1171.

¹⁷⁸ *Id.* at 1170.

¹⁷⁹ *Id.* at 1171.

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² *See id.* at 1170.

¹⁸³ *Id.*

¹⁸⁴ *Id.*

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*

requirements where it is comprehensive and defined so that owners of commercial properties are on notice that they may be subject to inspections.¹⁹⁰

The MSPA meets the first two prongs, but fails on the third. First, agriculture is a highly regulated industry, which has been subject to regulations regarding laborers since 1963.¹⁹¹ It is well understood that there is a substantial government interest because agricultural workers have experienced a history of abuse.¹⁹² One farmer admitted to this abuse, saying, “We used to own our slaves; now we just rent them.”¹⁹³ Inspections are necessary to ensure compliance with the MSPA because they are the only logical method of determining whether abuse is ongoing.¹⁹⁴ However, the MSPA falls short in providing the constitutionally adequate substitute for a warrant primarily by not limiting the discretion of the inspecting officers.¹⁹⁵

For the MSPA to actually protect agricultural workers, changes must be made.

VI. RECOMMENDATIONS

Society has a compelling interest in protecting agricultural workers from abusive employers.¹⁹⁶ The Constitution does not guarantee affirmative protection, but it is well understood that one of the Constitution’s goals is to preserve human dignity.¹⁹⁷ Conducting investigations on agricultural properties ensures that human dignity is preserved for agricultural workers by revealing abuses, such as financial misconduct, hazardous working and housing conditions, and/or unsafe transportation.¹⁹⁸ Nonetheless, the Department of Labor should not be given free rein to conduct warrantless searches of

¹⁹⁰ *Id.*

¹⁹¹ H.R. REP. NO. 97-885, at 1 (1982), reprinted in 1982 U.S.C.C.A.N. 4547.

¹⁹² *Id.* at 4549.

¹⁹³ *CBS News: Harvest of Shame*, *supra* note 2.

¹⁹⁴ *See* Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C.A. § 1862 (1983).

¹⁹⁵ *Perez v. Blue Mountain Farms*, 961 F.Supp.2d 1164, 1170 (E.D. Washington 2013).

¹⁹⁶ *See id.* at 1171.

¹⁹⁷ Jeffrey G. Purvis, Constitutional Law Professor, Lecture at San Joaquin College of Law (March 26, 2014).

¹⁹⁸ *See* H.R. REP. NO. 97-885, at 1 (1982), reprinted in 1982 U.S.C.C.A.N. 4547, 4559.

agricultural businesses.¹⁹⁹ Not only does such broad enforcement power infringe on the privacy rights of farmers, but, as demonstrated in *Perez*, unlimited discretion to conduct warrantless searches of agricultural property undermines the very protections the MSPA was enacted to provide.²⁰⁰ Changes are necessary for both the restoration of the MSPA's strength and ability to protect workers and the preservation of the privacy interests inherent in the Fourth Amendment.²⁰¹

A. The MSPA Should Be Amended to Better Reflect the Third Prong of Perez

Agriculture is an industry that is, and should be, highly regulated.²⁰² However, the MSPA fails to take into consideration the privacy interest of agricultural businesses and landowners.²⁰³ The MSPA does not comport with the Fourth Amendment because it fails to effectively limit the discretion of the Department of Labor in conducting searches pursuant to its enforcement authority.²⁰⁴ In doing so, the MSPA has made itself vulnerable to invalidation by the courts and will continue to do so.²⁰⁵

The MSPA is a vital piece of legislation that protects a vulnerable group of people.²⁰⁶ However, as it is written, it does not satisfy the third prong of *Perez* and therefore places agricultural workers at risk of receiving no protection from its enactment.²⁰⁷ Somewhat paradoxically, before the Act can adequately protect migrant workers,

¹⁹⁹ See *Perez v. Blue Mountain Farms*, 961 F.Supp.2d 1164, 1171 (E.D. Washington 2013).

²⁰⁰ See *id.*

²⁰¹ This Comment focuses on agriculture and the MSPA. However, these recommendations, especially that the *Perez* test be the universal test, apply broadly to all administrative searches.

²⁰² See H.R. REP. NO. 97-885, at 1 (1982), reprinted in 1982 U.S.C.C.A.N. 4547, 4559.

²⁰³ *Perez v. Blue Mountain Farms*, 961 F.Supp.2d 1164, 1170 (E.D. Washington 2013).

²⁰⁴ See Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C.A. § 1862 (1983).

²⁰⁵ See *Perez v. Blue Mountain Farms*, 961 F.Supp.2d 1164, 1170 (E.D. Washington 2013).

²⁰⁶ See H.R. REP. NO. 97-885, at 1 (1982), reprinted in 1982 U.S.C.C.A.N. 4547, 4549.

²⁰⁷ See *id.*

the MSPA must be amended so that it limits the discretion of the investigating officers.²⁰⁸

The MSPA does not sufficiently define the scope of the investigations it allows.²⁰⁹ To better reflect the spirit of the Fourth Amendment's warrant requirement and the test set out in *Perez* for conducting investigations pursuant to the MSPA, the MSPA should be amended to include: (1) provisions for what records and/or places may be searched; (2) what is involved in a regular inspection; and (3) when inspections may occur and at what frequency.²¹⁰

The MSPA is focused on housing, transportation, wages, and transparency between employers and agricultural workers.²¹¹ The MSPA should limit the scope of searches by explicitly stating where investigating officers can conduct their investigations, the relevant documents that may be obtained, and what they are searching for at the particular place.²¹² For example, if the investigator is conducting a search pertaining to unsafe vehicle conditions, then the investigator should be inquiring about vehicle maintenance, proper licensing of the driver, the ratio of people to seatbelts, and searching vehicles involved in transportation of workers. The investigator would not be allowed to investigate vehicles that are not used for transporting the workers, such as a vehicle used to transport a harvested crop.²¹³

The MSPA does not actually inform farmers of what may be involved in a potential inspection.²¹⁴ For instance, in a regulatory inspection, will investigators be searching for general violations of the MSPA or will they be focused on a particular violation? While farmers must comply with all aspects of the MSPA, knowing what a search might involve will better prepare them to comply with any valid requests the Department of Labor has pursuant to a search.²¹⁵

²⁰⁸ See *Perez v. Blue Mountain Farms*, 961 F.Supp.2d 1164, 1170 (E.D. Washington 2013).

²⁰⁹ *Id.* at 1171.

²¹⁰ See *id.*

²¹¹ See Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C.A. §§ 1801-1872 (1983).

²¹² See *Perez v. Blue Mountain Farms*, 961 F.Supp.2d 1164, 1171 (E.D. Washington 2013).

²¹³ See *supra* text accompanying notes 50-52.

²¹⁴ See Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C.A. §§ 1801 and 1862 (1983).

²¹⁵ See *Perez v. Blue Mountain Farms*, 961 F.Supp.2d 1164, 1171 (E.D. Washington 2013).

The MSPA must also be amended to reflect the hours during which searches may take place and how often a property may be searched.²¹⁶ Furthermore, the Department of Labor should not be permitted to harass a particular farmer by conducting multiple investigations per season regarding the same matter.²¹⁷ Investigations should be permitted to occur once per season, contingent on the season relevant to the type of crop grown and whether the farmer has multiple crops that span different seasons for which the farmer employs agricultural workers. Where continued investigation of *the same matter* is needed, multiple entries will be permitted as part of the same, ongoing investigation.

By providing instructions regarding the scope of the investigations, the MSPA will satisfy the third prong of *Perez*.²¹⁸ Otherwise the MSPA will continue to violate the Fourth Amendment and courts will continue to determine that evidence obtained by warrantless entry of properties is inadmissible until the MSPA conforms to *Perez*.²¹⁹ Once the MSPA is amended so that its terms address the scope of searches, agricultural workers will be better protected and the MSPA will be in alignment with the intent of the legislators who created it.²²⁰ Only then will the MSPA act as a constitutionally acceptable substitute to the warrant requirement of the Fourth Amendment.²²¹

*B. The Perez Test Should Be Consistently Applied by Courts
When Analyzing the Constitutionality of Administrative
Searches*

The courts have no universal test for determining the validity of an administrative search.²²² The courts need to adopt the *Perez* test in its entirety to ensure that administrative searches satisfy the concerns of the Fourth Amendment.²²³ A uniform test for administrative searches will provide the guidance the courts need for differentiating when a search violates the Fourth Amendment warrant requirement and when

²¹⁶ *See id.*

²¹⁷ *See id.*

²¹⁸ *Id.* at 1170.

²¹⁹ *See id.* at 1172.

²²⁰ *See id.* at 1171.

²²¹ *See id.*

²²² *See id.* at 1170.

²²³ *See id.*

a search is conducted utilizing the statute as a warrant substitute.²²⁴ Until the courts have a cohesive framework for determining the difference between the two, mistakes will be made. The cost of these potential mistakes is more than migrant workers should have to bear. For it is the migrant worker who will be told, “Sorry, we have no evidence of your abuse,” when courts are left with no option but to deem evidence inadmissible.²²⁵ The exploitation of agricultural workers cannot be allowed to continue on a technicality.

VII. CONCLUSION

“Harvest of Shame” introduced an otherwise ignorant people to the exploitation of the migrant worker.²²⁶ According to Greg Schell, an attorney with the Migrant Farmworker Justice Project, “The ‘Harvest of Shame’ cannot be underestimated in terms of what it produced.”²²⁷ Without the eye-opening exposé, it is unclear whether the MSPA would have been realized in Congress, but Congress must complete what it started.²²⁸

The agricultural industry should be subject to regulation through administrative searches to ensure the protection of agricultural workers.²²⁹ The MSPA attempts to protect agricultural workers by providing the Department of Labor with the power to conduct administrative searches to determine whether agricultural workers are being mistreated.²³⁰ While Congress intended the MSPA to be the solution to the FLCRA’s inability to adequately protect agricultural workers, the MSPA is failing for it grants too much discretion to the Department of Labor to conduct investigations.²³¹ As long as the MSPA allows such broad search and seizure authority, the courts will continue to deem evidence to be in violation of the Fourth Amendment

²²⁴ *See id.*

²²⁵ *See supra* text accompanying note 60.

²²⁶ *See CBS News: Harvest of Shame, supra* note 2.

²²⁷ Elizabeth Blair, *In Confronting Poverty, ‘Harvest of Shame’ Reaped Praise and Criticism*, NPR, (May 31, 2014, 05:22 AM), www.npr.org/2014/05/31/317364146/in-confronting-poverty-harvest-of-shame-reaped-praise-and-criticism.

²²⁸ *See* discussion *supra* Part I.

²²⁹ *See* discussion *supra* Part IV.

²³⁰ *See* discussion *supra* Part II.

²³¹ *See* discussion *supra* Part II.

and hence, inadmissible.²³² As a result, agricultural workers will remain vulnerable to abuse.²³³

Amending the MSPA, making it an adequate substitute to the warrant requirement, will protect agricultural workers.²³⁴ Once farmers understand the scope of the investigations, they will be better equipped to comply with the MSPA.²³⁵ Congress will simultaneously be able to effectuate the protections intended when it enacted the MSPA.²³⁶ Amending the MSPA is a win-win for farmers and for agricultural workers.²³⁷

This is a story of success and its ultimate failure. Success was achieved when “Harvest of Shame” not only drew attention to the plight of migrant workers, but also propelled action in Congress.²³⁸ However, by leaving the MSPA vulnerable to invalidation it becomes powerless to protect migrant workers.²³⁹ This is the failure that topples all our success.

AMANDA KENDZORA²⁴⁰

²³² See discussion *supra* Part V.

²³³ See discussion *supra* Part V.

²³⁴ See discussion *supra* Part VI.A.

²³⁵ See *supra* text accompanying notes 54-56.

²³⁶ See discussion *supra* Part VI.A.

²³⁷ See discussion *supra* Part VI.A.

²³⁸ See discussion *supra* Part I.

²³⁹ See discussion *supra* Part V.

²⁴⁰ J.D. Candidate, San Joaquin College of Law, May 2015. Many thanks to you, brave reader, for taking the time to read this Comment. I hope you are left contemplating what it is you can do for the agricultural workers in your own community. This Comment would not have been possible without the support, encouragement, and challenges from the following people:

The SJALR Board—Sally, Jarrett, Corina, and Sarah. Thank you for pushing me and for being overjoyed when I completed this labor of love. My faculty advisor, Professor Jeffrey Purvis, thank you for your constant support and unwavering faith in what this Comment was meant to say. Angelica, thank you for always being there for me through this process and knowing what I needed to hear so well. Wes, thank you for introducing me to this topic and then do my own thing with it. Kristina, thanks for always checking in and actually wanting to read this Comment. Friends and family, thank you for bearing with my unavailability and my inability to talk about anything but the plight of the agricultural worker when I was available. My amazing husband, Brad, I really could not have done this without your love, support, and the occasional frustration of challenging my views on law, agriculture, and humanity. Lastly, to the One who put this topic in my path, thank You for giving me this opportunity to practice doing justice, loving mercy, and walking humbly.