

# NO HABLO INGLES: MONOLINGUAL SPANISH FARMWORKERS EXPOSED TO “ECONOMIC POISON” WITH LITTLE PROTECTION<sup>1</sup>

## I. INTRODUCTION

Strawberries, apples, peaches, nectarines, spinach, and celery are some of the most popular fruits and vegetables to consume during the hot summer months.<sup>2</sup> Yet, these fruits and vegetables have the highest amount of pesticide residue compared to other produce.<sup>3</sup>

Many consumers are unaware that in order for suppliers to deliver fruits and vegetables at a reasonable cost, farmworkers have to apply millions of pounds of pesticides each year to maintain and increase manufacture yields.<sup>4</sup> Consequently, pesticides play an essential part in California’s agricultural production.<sup>5</sup> According to the California Department of Pesticide Regulation, the annual use of pesticides reported varies each year ranging from 158 million pounds, as reported in 2009, to 196 million pounds, as reported in 2005.<sup>6</sup> With the millions of pounds of pesticides that are applied, it is not surprising the California legislature describes pesticides as an economic poison.<sup>7</sup>

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<sup>1</sup> CAL. GOV’T CODE § 862(a)(1) (2016) (using the term “economic poison” as a synonym for pesticide).

<sup>2</sup> See generally Lexi Petronis & Maria Carter, *The Top 14 Foods to Eat in the Summer*, WOMAN’S DAY (Jun. 2, 2016), <http://www.womansday.com/health-fitness/nutrition/advice/g866/top-summer-foods/> (listing the top 14 foods that are consumed during summer); see also Pallavi Srivastava, *7 Best Fruits to Eat in Summers*, LIFEHACKER INDIA (Apr. 21, 2014), <http://www.lifehacker.co.in/jugaad/7-Best-Fruits-To-Eat-In-Summers/articleshow/34056184.cms>.

<sup>3</sup> *Executive Summary*, EWG, <https://www.ewg.org/foodnews/summary.php> (last visited Jun. 25, 2016).

<sup>4</sup> See Mary Cabrera, Comment, *Legal Remedies for Victims of Pesticide Exposure*, 1 KAN. J.L. & PUB. POL’Y 113, 113 (1991); See also Lisa Peck Lindelef, Comment, *California Farmworkers: Legal Remedies for Pesticide Exposure*, 7 STAN. ENTTL. L.J. 72, 72-73 (1988).

<sup>5</sup> See Lindelef, *supra* note 4, at 72, 73.

<sup>6</sup> *Summary of Pesticide Use Report Data- 2013*, CALIFORNIA DEPARTMENT OF PESTICIDE REGULATION, <http://www.cdpr.ca.gov/docs/pur/pur13rep/13sum.htm> (last visited Oct. 3, 2016).

<sup>7</sup> See CAL. GOV’T CODE § 862(a)(1) (2016).

Exposure to this economic poison is hazardous to each individual's health and the environment.<sup>8</sup> Studies have demonstrated these hazards, by showing that pesticides can cause nervous system damage, cancer, sterility, and birth defects.<sup>9</sup> The public has not shown the same concern for the agricultural farmworkers who are exposed to the chemicals on a daily basis.<sup>10</sup> Many studies have demonstrated that agricultural farmworkers are more likely to develop cancer—such as brain cancer, prostate cancer, non-Hodgkin's lymphoma, and leukemia—when compared to other labor industries.<sup>11</sup> Agricultural farmworkers are exposed to pesticides when they are applying or mixing the pesticides and when they are planting or harvesting the produce.<sup>12</sup> The farmworkers' families are also at risk because pesticides remain on the farmworkers' clothes and their families are inadvertently exposed to the pesticides.<sup>13</sup>

In 2005, three children born to Florida migrant workers had severe birth defects.<sup>14</sup> The parents of the children all worked in the same field where they were exposed to pesticides.<sup>15</sup> There is a correlation between the birth defects and pesticide exposures as evidenced by one of Ag Mart's representative who acknowledged the dangers of the pesticides used.<sup>16</sup> The child who was born without arms and legs is

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<sup>8</sup> See CAL. GOV'T CODE § 862(a)(1) (2016); Samantha Jakuboski, *The Dangers of Pesticides*, SCITABLE (July. 25, 2011), [http://www.nature.com/scitable/blog/green-science/the\\_dangers\\_of\\_pesticides](http://www.nature.com/scitable/blog/green-science/the_dangers_of_pesticides).

<sup>9</sup> Jakuboski, *supra* note 8; Susan Kegley, Stephan Orme, & Lars Neumeister, HOOKED ON POISON: PESTICIDE USE IN CALIFORNIA 1991-1998, at 6 (2000).

<sup>10</sup> See Keith Cunningham-Parmeter, *A Poisoned Field: Farmworkers, Pesticide Exposure, and Tort Recovery in an Era of Regulatory Failure*, 28 N.Y.U. REV. L. & SOC. CHANGE 431, 432-33 (2004).

<sup>11</sup> See Margaret Reeves, Anne Katten, & Martha Guzman, *Fields of Poison 2002 California Farmworkers and Pesticides*, CALIFORNIANS FOR PESTICIDE REFORM (2002), [http://www.ufw.org/white\\_papers/report.pdf](http://www.ufw.org/white_papers/report.pdf).

<sup>12</sup> See *id.*

<sup>13</sup> *Pesticide Safety*, FARMWORKER JUSTICE, <https://www.farmworkerjustice.org/content/pesticide-safety> (last visited Dec. 11, 2016).

<sup>14</sup> John Lantigua, *Why was Carlitos born this way?*, MY PALM BEACH POST (Mar. 13, 2005), <http://www.mypalmbeachpost.com/news/carlitos/> (stating one child was born without arms and legs, the other was missing portions of her jaw, and the other child had a missing nose and ambiguous genitalia).

<sup>15</sup> *Id.*

<sup>16</sup> See *Carlos Herrera-Candelario v. Ag-Mart*, No. Confidential, 2008 WL 941855 (2008).

Carlos Herrera-Candelario, known as Carlitos.<sup>17</sup> His parents, Francisca Herrera and Abraham Candelario, took action and filed suit against Ag-Mart Produce Inc., alleging the company's pesticide practices had caused their son's birth defects.<sup>18</sup> Their claims also included the failure of the company to properly train their workers and the company's negligent ignorance of pesticide labels.<sup>19</sup>

Francisca Herrea, Carlitos' mother, claimed that while pregnant and working in the fields as a tomato picker she was exposed to toxic pesticides causing Carlitos to sustain severe birth defects.<sup>20</sup> Mr. Andrew Yaffa, the attorney for the family, argued that his clients, as well as hundreds of other immigrant workers, have been exposed to various kinds of pesticides causing birth defects and pesticide poisoning.<sup>21</sup> Mr. Yaffa also stated Ag-Mart used pesticides that have been established to cause birth defects since the 1970s.<sup>22</sup> Ag-Mart has since stopped using five of the six pesticides that are known to cause birth defects, perhaps in response to the filing of these claims.<sup>23</sup>

As a result of these three incidents, the Collier County Health Department and the Florida Department of Agriculture and Consumer Services conducted two separate investigations to determine whether there was a connection between the pesticides exposure and the birth defects.<sup>24</sup> The departments found no correlation between the two, yet Mr. Yaffa questioned the studies' findings and obtained expert

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<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> Katy Torralbas, *Parents of child born without limbs settle with tomato grower*, NAPLES DAILY NEWS (Mar. 24, 2008), <http://archive.naplesnews.com/news/local/parents-of-child-born-without-limbs-settle-with-tomato-grower-ep-402118684-344577062.html>.

<sup>20</sup> See *Carlos Herrera-Candelario*, 2008 WL 941855 (2008).

<sup>21</sup> Associated Press, *Ag-Mart sued over birth defects, Immigrants whose son was born without limbs sue the produce company they worked for picking tomatoes*, TAMPA BAY TIMES (Mar. 2, 2006), [http://www.sptimes.com/2006/03/02/State/Ag\\_Mart\\_sued\\_over\\_bir.shtml](http://www.sptimes.com/2006/03/02/State/Ag_Mart_sued_over_bir.shtml).

<sup>22</sup> See *Carlos Herrera-Candelario*, 2008 WL 941855 (2008) (at the deposition, an Ag-Mart representative acknowledged the dangers of the pesticides that were used).

<sup>23</sup> Colleen Jenkins, *Lifelong care for limbless boy, 3, approved*, TAMPA BAY TIMES, (Apr. 16, 2008), <http://www.tampabay.com/news/courts/civil/lifelong-care-for-limbless-boy-3-approved/460186>; see also Thomas W. Krause, *Farmworker Family's Ag-Smart Settlement Amount 'Significant'*, TAMPA BAY TIMES (Apr. 16, 2008), <http://www.tbo.com/news/breaking-news/2008/apr/16/farmworker-family-ag-mart-pesticide-settlement-si-ar-158484/>.

<sup>24</sup> See *Ag-Mart sued over birth defects, Immigrants whose son was born without limbs sue the produce company they worked for picking tomatoes*, *supra* note 21.

witnesses to prove and testify otherwise.<sup>25</sup> In 2008, the Hillsborough Circuit Judge approved a confidential settlement agreement that provided plaintiffs with a significant amount of money to pay for the care of Carlitos.<sup>26</sup>

According to the National Center for Farmworker Health, Inc., the National Agricultural Workers Survey from 2007 to 2009 showed that seventy percent of farmworkers spoke little to no English, while the remaining thirty percent could speak English well.<sup>27</sup> In a study conducted in 1998, eighty-four percent of the study's participants stated that Spanish was their predominant language while only one-tenth spoke or read English.<sup>28</sup> Thus, farmworkers inability to understand the warning of pesticide labels written in English put them at greater risk when compared to those farmworkers who are able to understand the English labels.<sup>29</sup>

Farmworkers play an essential part in society, but their jobs are intense and dangerous.<sup>30</sup> They work hard to put food on society's tables, and as a result, they are exposed to deadly chemicals that are used to control weeds, fungus, and insects threatening crops.<sup>31</sup> In doing so, farmworkers are putting their own individual health and the health of their family at risk.<sup>32</sup> In particular, farmworkers are more likely to suffer from pesticide poisoning, which is known to cause short-term health issues like headaches, vomiting, abdominal cramps,

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<sup>25</sup> *Id.*; Jenkins, *supra* note 23 (Mr. Yaffa's experts did not testify because a settlement was entered outside of court).

<sup>26</sup> Jenkins, *supra* note 23.

<sup>27</sup> *Facts About Farmworkers*, NATIONAL CENTER FOR FARMWORKER HEALTH, INC. (Aug. 2012), [http://www.ncfh.org/uploads/3/8/6/8/38685499/fs-facts\\_about\\_farmworkers.pdf](http://www.ncfh.org/uploads/3/8/6/8/38685499/fs-facts_about_farmworkers.pdf) (stating that 35% of farmworkers confirmed that they could not speak English, 27% stated they could speak a little English, 8% could speak English somewhat, and 30% said they could speak English well).

<sup>28</sup> *See Findings from the National Agricultural Workers Survey (NAWS) 1997-1998 A Demographic and Employment Profile of United States Farmworkers*, U.S. DEPARTMENT OF LABOR OFFICE OF THE ASSISTANT SECRETARY FOR POLICY OFFICE OF PROGRAM ECONOMICS (Mar. 2000), [https://www.doleta.gov/agworker/report\\_8.pdf](https://www.doleta.gov/agworker/report_8.pdf).

<sup>29</sup> *See generally* Letter from National Latina Institute for Reproductive Health to Katie H. Weyrauch, U.S. Environmental Protection Agency (June 27, 2011) (on file with the U.S. Environmental Protection Agency).

<sup>30</sup> Ed Zuroweste & Amy Liebman, *Expose List of the toxic pesticides*, TIMES UNION (Jun. 20, 2016), <http://www.timesunion.com/tuplus-opinion/article/Expose-list-of-the-toxic-pesticides-8334905.php>.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

blurring of vision, sweating, weakness or fatigue, and insomnia, as well as long-term illnesses like asthma, Parkinson's disease, cancer, and even death.<sup>33</sup> Thus, it is imperative for farmworkers to understand and know what chemicals they are exposed to in order to protect themselves, their families, and the environment.<sup>34</sup> Unfortunately, the majority of farmworkers in contact with pesticides are unable to read the labels, which are typically written in English.<sup>35</sup> Pesticide labels convey important information for protecting the environment and human health.<sup>36</sup> With the amount of pesticide usage reported from 2000 to 2007, and the increase in Spanish farmworkers in the United States, the EPA should require the manufacturers and agricultural employers to provide bilingual labeling on the sections that convey important details regarding safety and environmental information.<sup>37</sup>

This Comment will explore the inherent issue that farmworkers are facing because of their inability to read, heed, and comprehend the pesticide labels, as well as having access to the labels.<sup>38</sup> Part II provides background information on the history of pesticide regulation, pesticide protections, and the process of granting

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<sup>33</sup> *Exposed and Ignored, How Pesticides Are Endangering Our Nation's Farmworkers*, FARMER JUSTICE, <http://www.farmworkerjustice.org/sites/default/files/aExposed%20and%20Ignored%20by%20Farmworker%20Justice%20ingles%20compressed.pdf> (last visited Sept. 18, 2016); *OSH Answers Fact Sheets*, CANADIAN CENTRE FOR OCCUPATIONAL HEALTH AND SAFETY, [http://www.ccohs.ca/oshanswers/chemicals/pesticides/health\\_effects.html](http://www.ccohs.ca/oshanswers/chemicals/pesticides/health_effects.html) (last updated Nov. 14, 2016) (a noninclusive list of the symptoms and side effects).

<sup>34</sup> See generally Zuroweste, *supra* note 30 (stating it is essential for farmworkers to know what pesticides they encountered to allow their clinicians to provide the best care upon their arrival at the exam rooms).

<sup>35</sup> Letter from Farmworker Justice, et al., to Richard P. Keigwin, Jr., Dir. Of Pesticide Re-evaluation Div., and to Katie Weyrauch, Environmental Protection Agency (Jun. 28, 2011) (on file with the Environmental Protection Agency); see also Letter from Ramon F. Levy to Katie Weyrauch, Environmental Protection Agency (Jun. 27, 2011) (on file with the Environmental Protection Agency).

<sup>36</sup> Farmworker Justice, *supra* note 35, at 1, 2, 7; *Bilingual pesticide labeling Talking Points*, Migrant Clinicians Network, [http://www.migrantclinician.org/files/u1/docs/eoh/bilingual\\_label\\_talking%20points\\_5102011.doc](http://www.migrantclinician.org/files/u1/docs/eoh/bilingual_label_talking%20points_5102011.doc) (last visited Dec. 11, 2016).

<sup>37</sup> See Environmental Protection Agency, *Pesticide News Story: EPA Release Report Containing Latest Estimates of Pesticide Use in the United States*, (Feb. 17, 2011) [http://www.epa.gov/oppfead1/cb/csb\\_page/updates/2011/sales-usage06-07.html](http://www.epa.gov/oppfead1/cb/csb_page/updates/2011/sales-usage06-07.html) (stating that 1.1 billion pounds of pesticide usage was reported in the United States from 2000 to 2007); See also Farmworker Justice, *supra* note 35, at 7.

<sup>38</sup> Farmworker Justice, *supra* note 35, at 7.

registration or licenses for pesticide use. It will also provide background information regarding the Workers Protection Standard (“WPS”), and the employers’ duty to follow the WPS.<sup>39</sup> Part III will address the debate over the need for bilingual labeling and the revisions to the WPS that will become effective in January 2017, as well as drawing parallels with other laws and regulations that require employers and businesses to keep the parties informed by placing posters in a conspicuous place and in a language common to the workers.<sup>40</sup> Part IV will provide recommendations for eliminating pesticide exposure and pesticide related injuries and promoting a healthier and safer working environment for the farmworkers. It will also display that pesticide handlers need to have the warning labels in Spanish to better protect themselves, their families, and the environment because if the pesticide labeling information is also on a poster the rest of the farmworkers would be protected, allowing them to read and heed the warnings.<sup>41</sup> Finally, Part V will conclude the importance of providing bilingual labeling and the failure to address the problem will result in an increase in pesticide exposure, which can be prevented if protective measures are used.

## II. BACKGROUND

The Environmental Protection Agency (“EPA”) estimates between ten and twenty thousand cases of pesticide poisoning among

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<sup>39</sup> *What is the Worker Protection Standard*, NATIONAL PESTICIDE INFORMATION CENTER, Worker Protection Standard, <http://npic.orst.edu/reg/wps.html> (last visited July 9, 2016); *How to Comply with The Worker Protection Standard For Agricultural Pesticides What Employers Need to Know*, ENVIRONMENTAL PROTECTION AGENCY (Sept. 2005), [http://agr.wa.gov/pestfert/chemfert/agassistwsda/2006/10-13\\_2006WPSManual.pdf](http://agr.wa.gov/pestfert/chemfert/agassistwsda/2006/10-13_2006WPSManual.pdf); 40 C.F.R. § 170.122 (2016).

<sup>40</sup> *See How to Comply (current regulations until January 2, 2017)*, COLORADO STATE UNIVERSITY, [http://www.colostate.edu/dept/DIS/Worker%20Protection/how\\_to\\_comply.html](http://www.colostate.edu/dept/DIS/Worker%20Protection/how_to_comply.html) (last visited Sept. 21, 2016).

<sup>41</sup> *See generally* Farmworker Justice, *supra* note 35, at 2; *see also* 29 U.S.C.A. § 1831(b) (2016); *see also* 29 U.S.C.A. § 1821(b) (2016) (referencing the posting requirements imposed upon employers); *see also* 29 U.S.C.A. § 1821(g) (2016) (indicating that the documents must be given in Spanish or in a language common to the workers).

agricultural farmworkers each year.<sup>42</sup> However, this data is likely underestimated because many cases of pesticide poisoning go unreported.<sup>43</sup> Gina McCarthy, the EPA Administrator, stated that from the data obtained, each year there are approximately three thousand incidents of pesticide exposures that could have potentially been prevented.<sup>44</sup> She believes there is widespread underreporting in regards to these incidents.<sup>45</sup> Ms. McCarthy stated that the unreported pesticide exposure incidents equates to approximately fifteen million dollars annually, a combined figure of annual lost wages and medical bills.<sup>46</sup> If more protective measures were put in place, these types of incidents would be entirely preventable.<sup>47</sup> Such risks can be reduced if we have measures in place that allow farmworkers to read and heed the warnings on pesticides.<sup>48</sup>

*A. History of Pesticide Regulation and Protections, and the Process of Granting Registration or Licenses*

The EPA regulates pesticides at the national level under the Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA”) and the Federal Food, Drug, and Cosmetic Act.<sup>49</sup> FIFRA was first enacted in 1947, and has been continuously amended by Congress since 1972.<sup>50</sup> FIFRA was enacted to establish measures for registering pesticides

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<sup>42</sup> *Pesticide Illness & Injury Surveillance*, CENTERS FOR DISEASE CONTROL AND PREVENTION, <http://www.cdc.gov/niosh/topics/pesticides/> (last updated Sept. 23, 2016).

<sup>43</sup> Reeves, *supra* note 11.

<sup>44</sup> Todd Fitchette, *EPA revises 1992 Ag Worker Protection Standards*, THE WESTERN FARM PRESS (Sep. 29, 2015), <http://westernfarmpress.com/government/epa-revises-1992-ag-worker-protection-standards>.

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> *Id.* (referring to the comment made by Ms. McCarthy where she stated, “[m]any of the most common types of incidents can be prevented if we adjust our standards to be more protective.”).

<sup>48</sup> *See generally* Farmworker Justice, *supra* note 35, at 2 (stating that Spanish labeling will only improve the health and safety of farmworkers and the environment).

<sup>49</sup> *Laws and Regulations*, ENVIRONMENTAL PROTECTION AGENCY, <http://www.epa.gov/pesticides/regulating/laws.htm> (last visited Aug. 2, 2015).

<sup>50</sup> *Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and Federal Facilities* <https://www.epa.gov/enforcement/federal-insecticide-fungicide-and-rodenticide-act-fifra-and-federal-facilities> (last visited Feb. 15, 2017).

with the United States Department of Agriculture and to establish labeling provisions.<sup>51</sup>

Currently, FIFRA gives the EPA authority to regulate the sale, use, and distribution of pesticides to preserve the environment and to provide protection to human health.<sup>52</sup> The EPA may also review and register pesticide usage, and cancel or suspend the registration of a pesticide if the EPA finds that the continued usage of that pesticide would pose unreasonable risks to the human health and the environment.<sup>53</sup> To determine whether pesticides pose unreasonable risks to human health and the environment, FIFRA has a complex registration process in which it uses scientific, legal, and administrative procedures in making its assessments.<sup>54</sup>

Before deciding whether to grant a registration or license for a pesticide, the EPA examines the ingredients of the pesticide, the crops and site(s) to which the pesticides will be applied, the amount of pesticide to be used, the timing of pesticide use, the frequency of use, the storage of the pesticides, and the pesticide disposal practices.<sup>55</sup> Additionally, the EPA requires companies to provide the EPA with data to see if the pesticide meets established guidelines to aid the EPA in making its risk assessment.<sup>56</sup> The EPA has developed and implemented a four-step process, based upon the National Academy of Sciences assessment paradigm, to assist them with assessing the potential harm of a pesticide.<sup>57</sup> This assessment considers hazards identification, exposure assessment, dose-response assessment, and risk characterizations.<sup>58</sup> The EPA reviews the information submitted

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<sup>51</sup> *Id.*

<sup>52</sup> *Basic Information about Pesticide Ingredients*, ENVIRONMENTAL PROTECTION AGENCY, <https://www.epa.gov/ingredients-used-pesticide-products/basic-information-about-pesticide-ingredients> (last visited Aug. 2, 2015); *Summary of the Federal Insecticide, Fungicide, and Rodenticide Act*, ENVIRONMENTAL PROTECTION AGENCY, <https://www.epa.gov/laws-regulations/summary-federal-insecticide-fungicide-and-rodenticide-act>, (last visited Aug. 2, 2015).

<sup>53</sup> *Laws and Regulations*, *supra* note 49; *Summary of the Federal Insecticide, Fungicide, and Rodenticide Act*, *supra* note 52.

<sup>54</sup> *About Pesticide Registration*, ENVIRONMENTAL PROTECTION AGENCY, <https://www.epa.gov/pesticide-registration/about-pesticide-registration#registration> (last visited Sept. 11, 2016).

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*; *The NRC Risk Assessment Paradigm*, ENVIRONMENTAL PROTECTION AGENCY, <https://www.epa.gov/fera/nrc-risk-assessment-paradigm> (last updated Feb. 5, 2016).

<sup>58</sup> *The NRC Risk Assessment Paradigm*, *supra* note 57.

by the manufacturers on the risks to human health, the environment, and the possibility for pesticide remains on food.<sup>59</sup>

In 2005, the EPA published the *Citizen's Guide to Pest Control and Pesticide Safety* booklet emphasizing the importance of reading and understanding pesticide labels.<sup>60</sup> The guide provides in relevant part,

[T]he pesticide label is your best guide to using pesticides safely and effectively. *The directions on the label are there primarily to help you achieve "maximum" benefits – the pest control that you desire – with "minimum" risk. Both depend on following label directions and correctly using the pesticide . . . Read the label before mixing or using the pesticide each time, and read the label before storing or disposing of the pesticide . . . Use of any pesticide in any way that is not consistent with label directions and precautions is illegal. It may also be ineffective, and even worse, dangerous.*<sup>61</sup>

While the EPA expresses the importance of reading and understanding the labels, the EPA fails to recognize the majority of agricultural farmworkers in this country are monolingual Spanish speakers with limited English skills.<sup>62</sup> Currently, the EPA only requires pesticide labels to appear in the English language with one exception in regard to certain pesticide products.<sup>63</sup>

The only statement required to be printed in Spanish, "If you do not understand the label, find someone to explain it to you in detail," which is insufficient as this label fails to explain the risk to agricultural farmworkers.<sup>64</sup> As it stands, the pesticide labels are not working for the majority of agricultural farmworkers because the safety information and hazard precautions are only in English.<sup>65</sup> Therefore, it

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<sup>59</sup> *About Pesticide Registration*, *supra* note 54.

<sup>60</sup> *Citizen's Guide to Post Control and Pesticide Safety*, ENVIRONMENTAL PROTECTION AGENCY, [https://www.epa.gov/sites/production/files/2014-04/documents/citizens\\_guide\\_to\\_pest\\_control\\_and\\_pesticide\\_safety.pdf](https://www.epa.gov/sites/production/files/2014-04/documents/citizens_guide_to_pest_control_and_pesticide_safety.pdf) (last visited July 19, 2016) (emphasis added except as to the phrases "before mixing or using" and "each time" which were italicized in the original); Farmworker Justice, *supra* note 35, at 2.

<sup>61</sup> *Citizen's Guide to Post Control and Pesticide Safety*, *supra* note 60.

<sup>62</sup> Farmworker Justice, *supra* note 35, at 2, 9.

<sup>63</sup> 40 C.F.R. § 156.206(e) (2016) (the exceptions are further discussed in Part III, section C of this comment); Farmworker Justice, *supra* note 35, at 2.

<sup>64</sup> 40 C.F.R. § 156.206(e) (2016); Farmworker Justice, *supra* note 35, at 12.

<sup>65</sup> *Exposed and Ignored, How Pesticides Are Endangering Our Nation's Farmworkers*, *supra* note 33.

“obscure[s] safety information from most farmworkers.”<sup>66</sup> Even so, recognizing the danger inherent in the work, the EPA established the WPS to provide protection to agricultural farmworkers and handlers.<sup>67</sup>

### *B. What is the Worker Protection Standard?*

The WPS is a regulation established by the EPA to protect agricultural farmworkers and pesticide handlers from illness or injury as a result of occupation exposures to pesticides.<sup>68</sup> The WPS requires employers to provide protective equipment, safety training, information on restrictions on the time limit to re-enter an area after pesticides are applied, and other protections to prevent injuries to workers.<sup>69</sup> The workers are classified as agricultural workers and/or pesticide handlers.<sup>70</sup>

An agricultural worker is anyone who is involved in the production of the agricultural plant.<sup>71</sup> Pesticide handlers are those employed by an agricultural or commercial pesticide establishment which uses pesticides.<sup>72</sup> In addition, pesticide handlers are responsible for tasks which include mixing, loading, applying, or transferring pesticides.<sup>73</sup>

Under the WPS, employers are required to notify workers and handlers if pesticides were recently applied within the past thirty days, or if a restricted-entry interval is in place.<sup>74</sup> The WPS mandates

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<sup>66</sup> *Id.*

<sup>67</sup> *Agricultural Worker Protection Standard (WPS)*, ENVIRONMENTAL PROTECTION AGENCY, <https://www.epa.gov/pesticide-worker-safety/agricultural-worker-protection-standard-wps> (last visited Sept. 18, 2016).

<sup>68</sup> *Worker Protection Standard: What is the Worker Protection Standard*, *supra* note 39.

<sup>69</sup> *Id.*

<sup>70</sup> *Id.* (referring to pesticide handler and agricultural workers under the WPS); *see generally Definition of a Pesticide Handler under the Worker Protection Standard*, ENVIRONMENTAL PROTECTION AGENCY, <https://www.epa.gov/pesticide-worker-safety/definition-pesticide-handler-under-worker-protection-standard> (last visited Sept. 21, 2016) (identifying the difference between pesticide handlers and agricultural workers under the WPS).

<sup>71</sup> *How to Comply with The Worker Protection Standard For Agricultural Pesticides What Employers Need to Know*, *supra* note 39.

<sup>72</sup> *Definition of a Pesticide Handler under the Worker Protection Standard*, *supra* note 70.

<sup>73</sup> *Id.* (identifying the difference between pesticide handlers and non-pesticide handlers).

<sup>74</sup> *How to Comply with The Worker Protection Standard For Agricultural Pesticides What Employers Need to Know*, *supra* note 39; 40 C.F.R. § 170.122 (2016).

employers display three specific sets of information regarding the pesticides used.<sup>75</sup> First, the employer must provide specific information regarding the pesticide(s) that was applied.<sup>76</sup> This includes the product's name, area and location to be treated, the EPA registration number, list of active ingredients, date and time when the pesticide will be applied, and restricted-entry interval for the pesticide.<sup>77</sup> Second, emergency information, including the phone number, address, and name of the nearest medical facility, must be made available.<sup>78</sup> This information must be in a central location where all workers can have access to the information.<sup>79</sup> Finally, employers are required to display a safety poster that advises workers of their rights and protection under federal rules, precautionary warnings, and the requirements for safety training.<sup>80</sup> The employer may use the poster provided by the WPS or they may create their own.<sup>81</sup> If an employer decides to create its own poster, the poster must convey the same message as the WPS safety poster developed by the EPA.<sup>82</sup>

Moreover, under the WPS, only pesticide handlers and early-entry workers have access to labeling information while handling tasks.<sup>83</sup> If handlers or early-entry workers cannot understand the label, the employer must convey the safety information in the label to them in a way they can understand.<sup>84</sup> This is an issue because supervisors and

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<sup>75</sup> *How to Comply with The Worker Protection Standard For Agricultural Pesticides What Employers Need to Know*, *supra* note 39.

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*; 40 C.F.R. § 170.122 (2016).

<sup>78</sup> *How to Comply with The Worker Protection Standard For Agricultural Pesticides What Employers Need to Know*, *supra* note 39; *Agricultural Worker Protection Standard (WPS) - Comparison of the New Protections to The Existing Protections*, ENVIRONMENTAL PROTECTION AGENCY (Oct. 2015), <https://www.epa.gov/sites/production/files/2015-09/documents/comparison-chart-wps.pdf>.

<sup>79</sup> *How to Comply with The Worker Protection Standard For Agricultural Pesticides What Employers Need to Know*, *supra* note 39.

<sup>80</sup> *Id.* (The list is a summary of the requirements set forth under the "Criteria for Pesticide Safety Poster").

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

<sup>83</sup> *Definition of a Pesticide Handler under the Worker Protection Standard*, *supra* note 70 (see also footnote 73 which identifies the tasks associated with pesticide handlers).

<sup>84</sup> *See Requirements for Access to Pesticide Labeling Information*, ENVIRONMENTAL PROTECTION AGENCY, <https://www.epa.gov/pesticide-worker-safety/requirements->

safety trainers have stated that it is difficult for them to translate certain phrases into Spanish for the workers, and without a universal translation, there is room for inconsistencies among differing farms.<sup>85</sup>

### III. LEGAL ANALYSIS

According to the National Agricultural Workers Survey, eighty-one percent of farmworkers reported Spanish as their native language, and fifty-three percent reported that they could not read, speak, or write in English.<sup>86</sup> Between 2006 and 2008, a study conducted in Washington State showed that only twenty-nine percent of pesticide handlers reported being able to read in English, but almost all of the participants were able to read in Spanish.<sup>87</sup> The study indicated farmworkers who are unable to read in English showed a higher rate of pesticide exposures compared to those who can read English.<sup>88</sup>

The farmworkers' inability to understand pesticide-warning labels puts them at greater risk than those workers who can understand the labels.<sup>89</sup> The ongoing debate between farmworker advocates and pesticide manufacturers over pesticides label requirements has been widely recognized in the agricultural industry.<sup>90</sup>

#### *A. The Debate Over Whether to Require Pesticide Registrants to Provide Pesticide Labels in Both English and Spanish*

##### *I. Arguments in Support of Bilingual Labeling*

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access-pesticide-labeling-information (last visited Sept. 21, 2016); *How to Comply (current regulations until January 2, 2017)*, *supra* note 40.

<sup>85</sup> Farmworker Justice, *supra* note 35, at 6.

<sup>86</sup> *The National Agricultural Worker Survey*, DEPARTMENT OF LABOR, <http://www.doleta.gov/agworker/report9/chapter3.cfm#language> (last updated Jan. 11, 2010).

<sup>87</sup> See Jonathan N. Hofmann, Harvey Checkoway, Ofelio Borges, Flor Servin, Richard A. Fenske & Matthew C. Keifer, *Development of a Computer-Based Survey Instrument for Organophosphate and N-Methyl-Carbamate Exposure Assessment Among Agricultural Pesticide Handlers*, ANN OCCUP HYG 54 (6): 640, 645 (2010).

<sup>88</sup> National Latina Institute for Reproductive Health, *supra* note 29.

<sup>89</sup> *Id.*

<sup>90</sup> See generally *Labeling Requirements for Pesticides and Devices: Request to Require Labeling of Pesticides in Spanish and English*, REGULATIONS.GOV, <https://www.regulations.gov/document?D=EPA-HQ-OPP-2011-0014-0001> (last visited Sept. 13, 2016) (showing that in response to the petition the EPA received from the farmworker advocates, the EPA accepted public comments regarding the need for bilingual labeling).

Farmworker interest groups filed a petition with the EPA requesting the EPA to require pesticide labeling to be in English and Spanish.<sup>91</sup> In turn, the EPA conducted a survey seeking the public's opinion on the petition.<sup>92</sup> Supporters included the Farmworker Justice, Migrant Clinician Network, Farmworker Association of Florida, and other farmworkers groups, environmental health groups, and nurses around the country, all of whom submitted comments to the EPA in support of bilingual labeling.<sup>93</sup>

Supporters argue pesticide labels communicate important information critical to protecting the environment and human health.<sup>94</sup> The supporters reason that because farmworkers are overwhelmingly monolingual Spanish speakers with minimal English skills, farmworkers are unable to read and comprehend the importance of what the pesticide labels communicate.<sup>95</sup> This includes the precautionary and warning statements, instructions for storage and disposal, first aid instructions, exposure symptoms, re-entry intervals, personal protective equipment, and other information on how to safely handle and use the pesticides.<sup>96</sup> Pesticide handlers must be able to read and understand pesticide labels in order to properly handle, dispose, and store the toxic chemicals they are using.<sup>97</sup> The handlers' inability to read and understand the dangers of the pesticides they are exposed to puts them at great risk for pesticide exposure.<sup>98</sup>

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<sup>91</sup> *Id.*; Farmworker Justice, *supra* note 35, at 1.

<sup>92</sup> *Labeling Requirements for Pesticides and Devices: Request to Require Labeling of Pesticides in Spanish and English*, *supra* note 90.

<sup>93</sup> *Id.*; Farmworker Justice, *supra* note 35, at 1, 19.

<sup>94</sup> Farmworker Justice, *supra* note 35, at 2; *Ways to Obtain Assistance on Pesticide Labeling Issues*, ENVIRONMENTAL PROTECTION AGENCY, <https://www.epa.gov/pesticide-labels/ways-obtain-assistance-pesticide-labeling-issues> (last updated Mar. 8, 2016); Letter from Lariza Garzon, National Farm Worker Ministry, to Katie H. Weyrauch, U.S. Environmental Protection Agency (May 11, 2011) (on file with the U.S. Environmental Protection Agency).

<sup>95</sup> Farmworker Justice, *supra* note 35, at 1, 7, 9; *Bilingual pesticide labeling Talking Points*, *supra* note 36.

<sup>96</sup> Farmworker Justice, *supra* note 35, at 3; Garzon, *supra* note 94.

<sup>97</sup> Jeannie Economos, *Bilingual Pesticide Labels: Farmworkers Deserve No Less*, PHYSICIANS FOR SOCIAL RESPONSIBILITY (Aug. 24, 2011), <http://www.psr.org/environment-and-health/environmental-health-policy-institute/responses/bilingual-pesticide-labels.html>.

<sup>98</sup> Farmworker Justice, *supra* note 35, at 4; National Latina Institute for Reproductive Health, *supra* note 29; *Exposed and Ignored, How Pesticides Are Endangering Our Nation's Farmworkers*, *supra* note 33.

Another argument in support of Spanish language pesticide labeling is farmworkers will have the ability to refer back to the label if they have any questions.<sup>99</sup> The ability for the workers to read and understand the labels in an emergency situation is invaluable because the workers will be able to read, understand, and follow the instructions.<sup>100</sup> Currently, the EPA places a burden on the employers and farmworkers to provide their own translations.<sup>101</sup> Translating specific label information is challenging because the owners and supervisors are not bilingual, and therefore, they are unable to translate the important information provided on the labels.<sup>102</sup> Other means of translation, such as through the internet are ineffective because computers are not readily available to many farmworkers.<sup>103</sup> Furthermore, it would be burdensome for owners and supervisors to have to rely on computers for translating the labels because Spanish translation requires high proficiency in both languages, and often, the owners and supervisors are not proficient in both languages.<sup>104</sup> By providing Spanish labeling, the workers would not be dependent on their employers or coworkers in emergency situations, for they would be able to read and understand the labels themselves.<sup>105</sup>

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<sup>99</sup> Farmworker Justice, *supra* note 35, at 5.

<sup>100</sup> *Id.*; Garzon, *supra* note 94.

<sup>101</sup> Farmworker Justice, *supra* note 35, at 12; Garzon, *supra* note 94.

<sup>102</sup> *Exposed and Ignored, How Pesticides Are Endangering Our Nation's Farmworkers*, *supra* note 33.

<sup>103</sup> See generally Jose R. Padilla and David Bacon, *Protect Female Farmworkers*, THE NEW YORK TIMES (Jan. 19, 2016),

[https://www.nytimes.com/2016/01/19/opinion/how-to-protect-female-farmworkers.html?\\_r=0](https://www.nytimes.com/2016/01/19/opinion/how-to-protect-female-farmworkers.html?_r=0) (discussing the issues of farmers filing complaints online when many of them do not have access to computers).

<sup>104</sup> See generally Padilla, *supra* note 103 (discussing the issues of farmers filing complaints online when many of them do not have access to computers); see also *The Difficulties Involved in Spanish-English Translation*, OMNIGLOT, <http://www.omniglot.com/language/articles/spanishenglishtranslation.htm> (last visited Dec. 11, 2016; see also Farmworker Justice, *supra* note 35, at 5 (noting the difficulties supervisors run into when having to translate the labels from English to Spanish).

<sup>105</sup> Farmworker Justice, *supra* note 35, at 5, 18; see generally 40 C.F.R. § 156.206(e) (imposing a burden on employees to find a translator when they don't understand the label. "If you do not understand the label, find someone to explain it to you in detail.").

Manufacturers already produce Spanish labeling when selling pesticides internationally.<sup>106</sup> Many manufacturers currently prepare and routinely translate labels into other languages, including Spanish, for international buyers; therefore, Spanish labeling domestically can be easily applied at a minimal additional cost to the manufacturers.<sup>107</sup>

## *2. Fallacies of the Failing Arguments Against Bilingual Pesticide Labeling*

While there are a number of supporters for bilingual pesticide labeling, others in the agricultural industry are resistant to this labeling on the grounds of the cost, language variations, label crowding, complication of the pesticide registration process, the lack of resources available, and non-applicator farmworkers never see the pesticide labels.<sup>108</sup> Ms. Bonnie M. Rabe, Director of the New Mexico Department of Agriculture, submitted a comment to the EPA opposing the proposed bilingual pesticide labeling.<sup>109</sup> Ms. Rabe argued that there would be an increase in cost because pesticide labeling would necessitate an increase in training of inspectors and staff within the pesticide program in order to uphold the efficiency of the pesticide program as it stands.<sup>110</sup> The total costs would include the additional costs of adding translation services because of the numerous dialects of Spanish spoken, as well as hiring staff who are proficient in Spanish

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<sup>106</sup> See generally Farmworker Justice, *supra* note 35, at 4 (noting that Spanish labeling is required when Restricted Used Pesticides are exported to Puerto Rico); see also Garzon, *supra* note 94.

<sup>107</sup> Letter from Nichelle Harriott, Research Associate with Beyond Pesticides, to Office of Pesticide Programs (OPP) (June 27, 2011), (on file with the U.S. Environmental Protection Agency).

<sup>108</sup> Economos, *supra* note 97; Letter from Beth L. Law, Assistant General Counsel and Vice President for International Affairs to Office of Pesticide Programs (OPP), (June 28, 2011), (on file with the U.S. Environmental Protection Agency); Letter from Steven E. Dwinell, Asst. Dir., Florida Department of Agricultural and Consumer Services, to Katie H. Weyrauch, U.S. Environmental Protection Agency (June 24, 2011), (on file with the U.S. Environmental Protection Agency); Letter from Jerry Hedlof, Commercial Application to Miss Weyrauch (April 8, 2011), (on file with the U.S. Environmental Protection Agency).

<sup>109</sup> Letter from Bonnie M. Rabe, Dir. Div. of Agricultural and Environmental Services, submitted to the U.S. Environmental Protection Agency (June 27, 2011), (on file with the U.S. Environmental Protection Agency).

<sup>110</sup> *Id.*

to keep up with bilingual pesticide labeling, but as discussed previously, these costs are relatively minimal.<sup>111</sup>

Another argument against bilingual labeling is that requiring pesticide labels to be in English and Spanish will complicate pesticide regulation; causing an overload to state and federal agencies due to the lack of resources available to create the labels.<sup>112</sup> Ms. Rabe emphasized that bilingual labeling will create label crowding because it would double the length of the labeling, which makes reading the labels less desirable.<sup>113</sup>

Those in opposition to bilingual labeling argue that only pesticide applicators actually see the labels, thus, bilingual labeling does not protect the other farmworkers who are exposed to the pesticides.<sup>114</sup> In a comment submitted to the EPA, Mr. Jerry Hedlof, a commercial applicator opposed to bilingual pesticide labeling, stated non-pesticide applicators, such as the farmers and their family members, are the ones who never get to see the pesticide labels.<sup>115</sup> Thus, warning signs with pictures and graphics are more suitable for non-pesticide handlers.<sup>116</sup> However, for monolingual Spanish pesticide handlers, labels that are only in English put the pesticide handlers, the farmworkers and their families, as well as the environment at risk.<sup>117</sup>

### *B. The EPA Announces New Rules to Protect Farmworkers From Pesticides*

Such harmful exposure is likely what prompted the EPA to announce its new rules to protect farmworkers from pesticides.<sup>118</sup> On September 28, 2015, the EPA announced new rules governing the use of pesticides to protect farmworkers through the WPS.<sup>119</sup> Most of the

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<sup>111</sup> *Id.*; see generally Farmworker Justice, *supra* note 35, at 16 (indicating the industry costs for bilingual labeling would not be unreasonable).

<sup>112</sup> Dwinell, *supra* note 108.

<sup>113</sup> Rabe, *supra* note 109.

<sup>114</sup> Hedlof, *supra* note 108.

<sup>115</sup> *Id.*

<sup>116</sup> *Id.*

<sup>117</sup> Economos, *supra* note 97.

<sup>118</sup> See Dan Charles, *EPA Announces New Rules to Protect Farmworkers From Pesticides*, NPR VALLEY PUBLIC RADIO, (Sept. 28, 2015), <http://www.npr.org/sections/thesalt/2015/09/28/444220963/epa-announces-new-rules-to-protect-farmworkers-from-pesticides>.

<sup>119</sup> Lisa M. Campbel & Lisa R. Burchi, *EPA Publishes Worker Protection Standard Final Rule*, PESTICIDE LAW AND POLICY BLOG (Nov. 2, 2015),

revisions will become effective on January 2, 2017, to allow agricultural employers time to prepare for the latest provisions.<sup>120</sup> The new rules will require farm owners to provide annual training to notify farmworkers of the mandatory protections available to them.<sup>121</sup> This training includes instructions on how to reduce take-home exposure from the chemicals and other safety topics.<sup>122</sup> The revised rules will also provide farmworkers with personal protective equipment; require buffer zones to protect farmworkers from over exposure to pesticides; forbid children under the age of eighteen to handle pesticides; and require no-entry signs to be placed on fields where hazardous pesticides are used.<sup>123</sup>

Farmworkers and their advocates approve such changes, including Ms. Virginia Ruiz, the Director of Occupational and Environmental Health at Farmworker Justice. Ms Ruiz stated, “we’ve been fighting for more than [twenty] years [for] some of these improvements.”<sup>124</sup> In addition, Arturo Rodriguez, president of United Farm Workers, called the changes “a dream come true.”<sup>125</sup> However, the new regulation does not go as far as advocates have hoped.<sup>126</sup>

The new regulations do not require the manufacturers or employers to translate their safety information into Spanish.<sup>127</sup> With eighty-one percent of farmworkers being monolingual Spanish speakers, it is imperative that farmworkers understand the important safety information contained in the pesticide labels.<sup>128</sup> Even so, under the new rules, this is not required.<sup>129</sup>

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<http://pesticideblog.lawbc.com/entry/epa-publishes-worker-protection-standard-final-rule>.

<sup>120</sup> *Revision to the Worker Protection Standard*, ENVIRONMENTAL PROTECTION AGENCY, [https://www.epa.gov/pesticide-worker-safety/revisions-worker-protection-standard#when last visited Sept. 21, 2016](https://www.epa.gov/pesticide-worker-safety/revisions-worker-protection-standard#when%20last%20visited%20Sept.%2021,%202016)).

<sup>121</sup> *Id.*

<sup>122</sup> *Id.* (noting the current rules require training once every five years).

<sup>123</sup> *Id.*; Elizabeth Grossman, *6 Things to Know About the EPA’s New Pesticide Rules*, CIVIL EATS (OCT. 7, 2015), <http://civileats.com/2015/10/07/6-things-to-know-about-the-epas-new-pesticide-rules/>.

<sup>124</sup> Charles, *supra* note 118.

<sup>125</sup> Grossman, *supra* note 123.

<sup>126</sup> Charles, *supra* note 118.

<sup>127</sup> *Id.*

<sup>128</sup> See generally *The National Agricultural Worker Survey*, *supra* note 86 (identifying the percentage of monolingual Spanish farmworkers).

<sup>129</sup> See Charles, *supra* note 118.

Ms. McCarthy, the EPA Administrator, stated, “we depend on farmworkers every day . . . they deserve fair, equitable working standards with strong health and safety protections.”<sup>130</sup> While Ms. McCarthy acknowledged that we depend on farmworkers, the EPA decided not to implement bilingual labeling on the grounds that there is little evidence to support the notion that bilingual labeling would actually improve farmworkers’ safety.<sup>131</sup>

Ironically, the EPA still encourages farm owners to display the safety information in a way that farmworkers can understand.<sup>132</sup> By not requiring pesticide manufacturers to require bilingual labeling, monolingual Spanish farmworkers are still at great danger of pesticide exposure and farm owners are thus, ill equipped to comply with the encouragement to display the information in a way farmworkers can understand.<sup>133</sup> If farm owners are to heed the EPA’s encouragement, the EPA should give them the tools to do so, namely bilingual labels.<sup>134</sup> Their inability to understand the chemicals they are being exposed to, as well as not knowing what chemicals are being applied, puts farmworkers’ health at risk.<sup>135</sup> In order for farmworkers to get the proper medical attention and treatment, when needed, it is imperative for the workers and subsequently their medical providers to know which chemicals are in the pesticides.<sup>136</sup>

For full protection, it is imperative for farmworkers to know and understand how to use the pesticides and how to protect themselves from pesticide exposures.<sup>137</sup> Pesticides are dangerous chemicals and

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<sup>130</sup> Carey Gillam, *New Federal Rules Will Better Protect Farmworkers From harmful Pesticides*, THE HUFFINGTON POST (Jan. 3, 2017), [http://www.huffingtonpost.com/entry/epa-farmworkers-pesticides\\_us\\_5609a0ebe4b0af3706dd66d9](http://www.huffingtonpost.com/entry/epa-farmworkers-pesticides_us_5609a0ebe4b0af3706dd66d9).

<sup>131</sup> Charles, *supra* note 118.

<sup>132</sup> *Id.*

<sup>133</sup> See generally Sharon H., *Positives and Pitfalls of EPA’s Pesticide Ruling*, CENTER FOR HEALTH, ENVIRONMENT & JUSTICE, <http://chej.org/2015/10/11/positives-and-pitfalls-of-epas-pesticide-ruling/> (last visited Feb. 17, 2017) (explaining the need to having bilingual labeling).

<sup>134</sup> See generally Farmworker Justice, *supra* note 35, at 6 (Stating that farmworkers “rely on bilingual supervisors to translate safety materials...they often do not go through all of the label material, such as symptoms of exposure”).

<sup>135</sup> See Zuroweste, *supra* note 30.

<sup>136</sup> See *id.*

<sup>137</sup> See *Pesticide Safety*, *supra* note 13 (stating that the current labeling system is inadequate and does not give the farmworkers the necessary tools to protect themselves).

their labels convey important information for protecting the environment and human health.<sup>138</sup>

*C. Pesticide Labels Are Only Required to be in English, with Limited Exceptions*

The Code of Federal Regulations, commonly known as the C.F.R., is the codification of the permanent and general regulations used by agencies to help enforce the law.<sup>139</sup> Under 40 C.F.R. § 156.10 addresses the labeling requirements enforced by the EPA.<sup>140</sup> This regulation governs the language to be used, pesticide product's name, signal word, ingredient statement, first aid statements, and disposal statements.<sup>141</sup> It also includes precautionary statements that has phrases as "Hazards to Humans," "Environmental Hazards," and "Physical Chemical Hazards."<sup>142</sup> The regulations also provide directions for use and storage of the chemicals.<sup>143</sup> The pesticide labels must appear in English; however, the EPA may require or the manufacturer may propose the labeling to be in additional languages if they feel the need to protect the public.<sup>144</sup> When the labeling contains other languages, the labeling must contain a "true and accurate translation" of the English text.<sup>145</sup>

Spanish pesticide labeling is only mandatory if the EPA considers the chemicals to fall under category toxicity levels I and II.<sup>146</sup> There are four toxicity categories, ranging from toxicity level I having the highest toxicity level through toxicity level IV, having the lowest

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<sup>138</sup> Farmworker Justice, *supra* note 35, at 7; *see generally* Edward Group, *Effects of Pesticides*, GLOBAL HEALING CENTER LIVING HEALTHY (Mar. 7, 2014), <http://www.globalhealingcenter.com/natural-health/effects-of-pesticides/> (referring to the dangers of pesticide exposure).

<sup>139</sup> *About the Code of Federal Regulations*, NATIONAL ARCHIVES, <http://www.archives.gov/federal-register/cfr/about.html> (last visited Sept. 22, 2016).

<sup>140</sup> 40 C.F.R. § 156.10 (2016).

<sup>141</sup> *Id.* at §§ 156.10(a)(3), (j)(2)(i)(A), (i)(2)(ix).

<sup>142</sup> *Id.* at §§ 156.10 (a)(1)(vii); *Label Review Manual*, ENVIRONMENTAL PROTECTION AGENCY (July 2011), <https://www.epa.gov/sites/production/files/2014-07/documents/lrm-chap1-18.pdf>.

<sup>143</sup> 40 C.F.R. §§ 156.10(i)(2)(ix), (i)(1)(i).

<sup>144</sup> *Id.* at § 156.10(a)(3).

<sup>145</sup> *Pesticide Registration Notice (PR) 98-10: Notifications, Non-Notifications and Minor Formulations Amendments*, ENVIRONMENTAL PROTECTION AGENCY (Oct. 22, 1998), <https://www.epa.gov/sites/production/files/2014-04/documents/pr98-10.pdf>.

<sup>146</sup> 40 C.F.R. § 156.206(e) (2016); Farmworker Justice, *supra* note 35, at 12.

toxicity, but is still dangerous.<sup>147</sup> Toxicity level I chemicals are the most toxic because when the chemicals come into contact with an individual's eyes it can cause irreversible damage to the eye tissue and/or serious physical vision decay.<sup>148</sup> On the other hand, category II chemicals are moderately toxic and they can cause severe eye and skin irritation.<sup>149</sup> Pesticide products that fall under Categories I and II, must include the following warning in English and in Spanish: "*Si Usted no entienede la etiqueta, busque a alguien para que se la explique a Usted en detalle*" (which translates to "If you do not understand the label, find someone to explain it to you in detail").<sup>150</sup> Current EPA regulations recognize the prevalence of monolingual Spanish speakers in the agricultural industry, but do little to protect them.<sup>151</sup>

This warning places a heavy burden on farmworkers to find someone who can read and translate the label.<sup>152</sup> It also places the burden on the farm owners because they would have to find someone to provide the necessary translation.<sup>153</sup> Pesticides, regardless of the category of their toxicity levels, are inherently toxic chemicals.<sup>154</sup> Due to the health hazards, necessary first aid actions in case of exposure, and directions for safe handling must all be in a language that farmworkers understand.<sup>155</sup> As it stands, pesticide labels do not communicate this information to the monolingual farmworkers because of the lack of translation.<sup>156</sup>

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<sup>147</sup> 40 C.F.R. §156.62.

<sup>148</sup> *Id.*

<sup>149</sup> *Id.*

<sup>150</sup> *Id.* at §156.206(e) (emphasis added).

<sup>151</sup> Letter from Margaret Reeves and Kathryn Gilje to Katie H. Weyrauch, U.S. Environmental Protection Agency (June 8, 2011) (on file with the U.S. Environmental Protection Agency).

<sup>152</sup> Farmworker Justice, *supra* note 35, at 12.

<sup>153</sup> Reeves, *supra* note 151; *Exposed and Ignored, How Pesticides Are Endangering Our Nation's Farmworkers*, *supra* note 33.

<sup>154</sup> See Farmworker Justice, *supra* note 35, at 3.

<sup>155</sup> Farmworker Justice, *supra* note 35, at 7, 8; Reeves, *supra* note 151; see generally Margaret Reeves's, *Bilingual pesticide labels: It's about time!*, PESTICIDE ACTION NETWORK NORTH AMERICA, Jun. 9, 2011, <http://www.panna.org/blog/bilingual-pesticide-labels-its-about-time> (reiterating the fact that the majority of America's farmworkers are monolingual Spanish speakers who are unable to comprehend the pesticide warnings that are only in English).

<sup>156</sup> Farmworker Justice, *supra* note 35, at 2.

The chemicals these farmworkers are exposed to are dangerous and even deadly.<sup>157</sup> It is imperative for the farmworkers to know what chemicals they are exposed to and what they need to do to protect themselves.<sup>158</sup> A solution to this is to make it mandatory for farm owners to include the pesticide information on a workplace poster and post it in a noticeable place.<sup>159</sup> This would allow all farmers to know what chemicals they are exposed to and what they need to do to protect themselves.<sup>160</sup>

#### *D. Posting Requirements Imposed Upon Employers Under MSPA*

In California, employers are required to post a variety of state and federal notices at the workplace.<sup>161</sup> The purpose of these notices is to inform employees of their legal rights and to provide information on how to report any violation of those rights.<sup>162</sup> Some of the federal notices include (1) “Employee Rights Under the Fair Labor Standards Act”; (2) “Equal Employment Opportunity Is The Law”; and (3) “Uniformed Services Employment and Reemployment Rights Act”.<sup>163</sup> A few of the required state notices include the (1) “California Minimum Wage Order”; (2); “Payday Notice”; (3) “California Law Prohibits Workplace Discrimination and Harassment”; and (4) “Notice to Employees: Injuries Caused By Work.”<sup>164</sup> Under the Migrant and Season Agricultural Worker Protection Act (“MSPA”), additional postings and written disclosures are required for employers who hire migrant or seasonal workers.<sup>165</sup>

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<sup>157</sup> *OSH Answers Fact Sheets*, *supra* note 33.

<sup>158</sup> *Zuroweste*, *supra* note 30.

<sup>159</sup> *See generally* 29 U.S.C.A. § 1821(b) (2016) (referring to the posting requirements imposed on employers when hiring agricultural employers or contractors. The poster must be in a conspicuous place to inform workers of their rights); *see also* 29 U.S.C.A. § 1831(b).

<sup>160</sup> *See generally* 29 U.S.C.A. §§ 1821(b), 1831(b) (referring to the posting requirements that informs the workers of their rights to better protect themselves).

<sup>161</sup> Lisa Guerin, J.D., *Which Posters Do Employers Have to Post at the Workplace in California?* NOLO, <http://www.nolo.com/legal-encyclopedia/which-posters-do-employers-have-post-the-workplace-california.html> (last visited Sept. 25, 2016) (on both state and federal employment laws).

<sup>162</sup> *Id.*

<sup>163</sup> *Id.* (This is a noninclusive list. There are five federal notices that are required to be posted at the site of employment and only three are listed above).

<sup>164</sup> *Id.* (This is a noninclusive list. There are twelve notices that apply specifically to California law, and only four are listed above).

<sup>165</sup> 29 U.S.C.A. §§ 1821(a), (b), 1831(a), (b).

Congress enacted MSPA in 1983.<sup>166</sup> The purpose of MSPA is to provide protections to agricultural workers.<sup>167</sup> This goal is accomplished by establishing employment standards for housing, transportation, wages, disclosures and recordkeeping.<sup>168</sup> An employer's failure to comply with MSPA can result in penalties and potential employee lawsuits.<sup>169</sup>

Under MSPA, each agricultural employer, agricultural association, and farm labor contractor that employs seasonal or migrant agricultural workers are required to disclose certain information to the farmworkers.<sup>170</sup> MSPA and its congressional record highlight the importance of providing written information to workers because it is the only effective method to ensure that workers are fully informed before entering their place of employment.<sup>171</sup> In *Villalobos v. North Carolina Growers*, 252 F. Supp. 2d 1 (2002), the court noted that the legislative history behind MSPA clearly confirmed the statute's meaning "that it was purposefully engineered to grant each and every worker an independent and individual right to receive a written ratification of all of the material terms and conditions of employment and to be intelligibly and comprehensively appraised of his or her prospective working arrangements."<sup>172</sup>

The court recognized that full and understandable written disclosures are important, especially for those workers who are "physically unable to verify the conditions of employment before accepting an offer and who must undertake their relocation in reliance of an employer's representations, this right is imperative and unqualified."<sup>173</sup> To maximize the humanitarian goal set forth in MSPA and the

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<sup>166</sup> 29 U.S.C.A. § 1801 (2016) (also known as Public Law 97-470).

<sup>167</sup> *Id.*; *Migrant and Seasonal Agricultural Protection Act (MSPA)*, DEPARTMENT OF LABOR, <https://www.dol.gov/whd/mspa/> (last visited Sept. 2, 2016).

<sup>168</sup> *Migrant and Seasonal Agricultural Protection Act (MSPA)*, *supra* note 167.

<sup>169</sup> *Id.*; 29 U.S.C.A. § 1854(a) (2016).

<sup>170</sup> *See* 29 U.S.C.A. §§ 1821(a), 1831(a)(1)(A)-(H) (indicating that at the time of recruitment, the employers are required to disclose in writing the pay rate, information on place of employment, period of employment, information on housing and transportation, length of employment, the crops and types of activities, information on any additional benefits that will be provided, information on the costs involved, information regarding strikes or interruption of operation if it exist at time of recruitment, and detailed information regarding State worker's compensation insurance, if provided).

<sup>171</sup> H.R. REP. NO. 97-885, at 15 (1982).

<sup>172</sup> *Villalobos v. North Carolina Growers Ass'n, Inc.*, 252 F. Supp.2d 1, 9 (2002).

<sup>173</sup> *Id.* at 10.

congressional statement, courts have required agricultural employers to disclose the information in English, as well as in a language and manner understandable to the workers.<sup>174</sup>

Under MSPA, all non-exempt farm labor contractors, agricultural employers, and agricultural associations are required to place a poster in a conspicuous place setting forth the rights and protections provided to the workers.<sup>175</sup> The disclosures and information provided to the workers must be written in English, Spanish or another language common to the workers who are not able to understand or read in English.<sup>176</sup>

This seems logical because the majority of agricultural workers speak Spanish and very little English.<sup>177</sup> Therefore MSPA saw the necessity of having that information in Spanish, while the EPA has not, but should.<sup>178</sup> The EPA does not make it mandatory for manufacturers or employers to provide bilingual labeling.<sup>179</sup> As a result, agricultural workers, their families, and the environment have been harmed because of the workers' inability to understand the safety information contained in the pesticide labels.<sup>180</sup>

#### *E. Your Right to Know -- California Proposition 65*

Other laws follow the same pattern when English is not the primary language or when dangerous chemicals are used.<sup>181</sup> For instance, the voters of California approved an initiative known as Proposition 65, the Safe Drinking Water and Toxic Enforcement Act of 1968.<sup>182</sup> Voters passed Proposition 65 to protect people from health threats

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<sup>174</sup> *Id. citing De La Fuente v. Stokely-Van Camp, Inc.*, 713 F.2d 225, 239 (7th Cir. 1983) (stating that “disclosure, when pertinent, should be written in understandable Spanish”).

<sup>175</sup> 29 U.S.C.A. § 1831(b) (2016); 29 U.S.C.A. § 1821(b) (2016); 29 U.S.C.A. § 1803(a)(1)-(G)(i) (2016) (noting that the exemptions include family and small business, common carriers, non-profit organizations, some farm labor contractors, agricultural associations, and providers of migrant housing. The list is not exclusive).

<sup>176</sup> 29 U.S.C.A. § 1831(f) (2016).

<sup>177</sup> *See Facts About Farmworkers*, *supra* note 27.

<sup>178</sup> *See* 29 U.S.C.A. § 1831(f); *see also* 29 U.S.C.A. § 1821(g).

<sup>179</sup> 40 C.F.R. § 156.10(a)(3) (2016).

<sup>180</sup> Farmworker Justice, *supra* note 35, at 1.

<sup>181</sup> *Proposition 65 in Plain Language*, OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT (Feb. 1, 2013), <http://oehha.ca.gov/proposition-65/general-info/proposition-65-plain-language>; FAM. CODE, § 1615 (c)(3) (2016).

<sup>182</sup> *Proposition 65 in Plain Language*, *supra* note 181.

posed by dangerous chemicals.<sup>183</sup> The law entitles Californians to know when they are being exposed to chemicals that are toxic.<sup>184</sup> Proposition 65 mandates the State issue a list of chemicals that are known to cause birth defects, other reproductive harm or cancer.<sup>185</sup> Proposition 65 states, “[n]o person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the State to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individuals . . .”<sup>186</sup>

Proposition 65 imposes a requirement for businesses to warn Californians when its products or activities exposes individual to toxic chemicals.<sup>187</sup> It also prohibits businesses from knowingly releasing the listed chemicals into drinking water.<sup>188</sup> This disclosed information allows Californians to make informed decisions to protect themselves from exposures to the chemicals.<sup>189</sup> Businesses must provide a clear and reasonable warning prior to knowingly or intentionally exposing the chemicals to any individuals.<sup>190</sup> A clear and reasonable warning is one that gets the warning message to the individuals prior to exposure.<sup>191</sup>

The warning can be in the form of posters, labels on the products, newspaper publications, or notices distributed to tenants.<sup>192</sup> The standard language for the warning reads, “WARNING: This product contains a chemical known to the State of California to cause cancer and birth defects or other reproductive harm.”<sup>193</sup> Proposition 65 tells businesses, “Don’t expose us to any [listed] chemicals without first giving us a clear warning.”<sup>194</sup> Proposition 65 allows Californians to

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<sup>183</sup> Clifford Rechtschaffen, *The Warning Game: Evaluating Warnings Under California's Proposition 65* (1996) 23 Ecology L.Q. 303, 305.

<sup>184</sup> *Frequently Asked Questions*, OFFICE OF THE ATTORNEY GENERAL, <https://oag.ca.gov/prop65/faqs-view-all> (last visited Aug. 8, 2016).

<sup>185</sup> *Proposition 65 in Plain Language*, *supra* note 181.

<sup>186</sup> CAL. HEALTH & SAFETY CODE § 25249.6 (West 1987).

<sup>187</sup> Rechtschaffen, *supra* note 183, at 303, 305.

<sup>188</sup> *Proposition 65 in Plain Language*, *supra* note 181.

<sup>189</sup> *Id.*

<sup>190</sup> *Id.*

<sup>191</sup> See 27 CAL. CODE REG. § 25601(a),(c),(d) (2016).

<sup>192</sup> *Proposition 65 in Plain Language*, *supra* note 181.

<sup>193</sup> Trenton H. Norris, *Consumer Litigation and FDA-Regulated Products: The Unique State of California* (2006) 61 Food & Drug L.J. 547, 549.

<sup>194</sup> Rechtschaffen, *supra* note 183, at 318.

decide for themselves whether to encounter these risks.<sup>195</sup> Agricultural farmworkers should be able to make the same informed decisions because they are repeatedly exposed to dangerous chemicals when working in the fields.<sup>196</sup> Whether or not farmworkers speak English, they deserve the right to be protected.<sup>197</sup> This is another example of how farmworkers should be informed when handling pesticides because they are the ones who handles it.<sup>198</sup>

### G. California Translation Act

The California Translation Act (“CTA”) was enacted in 1976 to provide information and protection for Californians because such a large percentage of California population speaks Spanish.<sup>199</sup> The purpose of CTA is to allow consumers who speak other languages to have an opportunity to read and understand the contract before the contract is signed.<sup>200</sup> The translation of the contract must be disclosed prior to the execution of the contract.<sup>201</sup> If a trade or business fails to provide the translation, the consumer may rescind the contract.<sup>202</sup>

The CTA applies broadly to various types of contracts and it is designed to deal with consumer transactions in which the consumer is deemed to be vulnerable because the consumer did not speak

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<sup>195</sup> *Id.* at 314; *Proposition 65 in Plain Language*, *supra* note 181 (“Proposition 65 requires businesses to notify Californians about significant amounts of chemicals in the products they purchase, in their homes or workplaces, or that are released into the environment. By providing this information, Proposition 65 enables Californians to make informed decisions about protecting themselves from exposure to these chemicals.”).

<sup>196</sup> *See generally* Reeves, *supra* note 11; *see also* Rechtschaffen, *supra* note 183, at 317 (stating “[w]orkers of color and low-wage workers are more likely than the rest of the population to work in jobs with higher exposure to toxic chemicals.”).

<sup>197</sup> Farmworker Justice, *supra* note 35, at 17.

<sup>198</sup> *See generally Exposed and Ignored, How Pesticides Are Endangering Our Nation’s Farmworkers*, *supra* note 11 (noting that farmworkers and handlers are exposed to pesticides when working in the fields).

<sup>199</sup> CAL. CIV. CODE § 1632(a)(1) – (3) (2016); *Foreign Language Translation of Consumer Contracts: Legal Guide K-4*, CALIFORNIA DEPARTMENT OF CONSUMER AFFAIRS (May 2016), [http://www.dca.ca.gov/publications/legal\\_guides/k-4.shtml](http://www.dca.ca.gov/publications/legal_guides/k-4.shtml) (this also applies when the contract is negotiated in Chinese, Tagalog, Vietnamese and Korean).

<sup>200</sup> *Foreign Language Translation of Consumer Contracts: Legal Guide K-4*, *supra* note 199.

<sup>201</sup> *Id.*

<sup>202</sup> *Id.*; CAL. CIV. CODE § 1632(k) (2016).

English.<sup>203</sup> Generally speaking, if a translator acted as the intermediary and the contract was negotiated in English, then translation is not required of the actual document, but if there was no translator present, and the contract was negotiated in another language, the seller must then must provide the consumer with a written translation of the contract in the same language of the negotiations.<sup>204</sup> Additionally, at the time any contract is formed, a notice of the consumer's rights that appraises consumers of their rights must also be conspicuously displayed in the language used during negotiation.<sup>205</sup> This statute protects California consumers whenever there is a contract negotiated in another language—which differs significantly from farmworkers who do not have such protections, even though farmworkers are repeatedly exposed to the deadly chemicals while working in the fields, and there is arguably a greater need for understanding.<sup>206</sup>

The CTA recognizes that California is a diverse state and “[t]he number of Californians who speak languages other than English as their primary language at home has increased dramatically.”<sup>207</sup> With eighty-one percent of farmworkers reporting Spanish as their native language, the EPA should adopt the concept of the CTA and make it mandatory for agricultural employers to provide the safety precaution and warning in a language common to the workers and display the

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<sup>203</sup> CAL. CIV. CODE, § 1632 (b)(2)-(7) (2016); *Foreign Language Translation of Consumer Contracts: Legal Guide K-4*, *supra* note 199 (the exclusive list is, “Credit sale contracts involving consumer goods and services of all kinds, including automobile purchases and leases; Virtually all loans or other extensions of credit for use primarily for personal, family or household purposes, except loans secured by real property; Consumer loans secured by real property, if arranged by a real estate loan broker, or made by a personal finance company; Contracts for the rental, lease or sublease of apartments or other dwellings (including mobile homes) for a period longer than one month. (Month-to-month and week-to-week rental contracts are not covered); Contracts involving the payment of fees or charges for legal services furnished by lawyers; Reverse mortgages; and Mortgage foreclosure consulting contracts”); Yuriko Mary Shikai, *Applying the California Translation Act to Consumer*, LOS ANGELES LAWYERS (Sept. 2012), <https://www.lacba.org/docs/default-source/lal-back-issues/2012-issues/september-2012.pdf>.

<sup>204</sup> *See Foreign Language Translation of Consumer Contracts: Legal Guide K-4*, *supra* note 199 (requiring the notice of the consumer's right be located at the place where the contract was negotiated, i.e. at a car dealership or at the bank while obtaining a personal loan).

<sup>205</sup> *Id.*

<sup>206</sup> Shikai, *supra* note 203.

<sup>207</sup> CAL. CIV. CODE, § 1632(a)(2) (2016).

notice in a conspicuous place.<sup>208</sup> Farmworkers, like the rest of Californians, are entitled to understand what they are agreeing to come into contact with in the course of their employment.<sup>209</sup> They have the right to refuse to work unless it is safe to do.<sup>210</sup> The EPA has recognized that agricultural workers “are working with pesticides at their greatest concentration and strengths, and thus face greater risks of pesticide poisoning.”<sup>211</sup> A farmworkers faces a greater of risk of injury because they cannot read or understand the labels because it is written only in English.<sup>212</sup> To protect the workers, the EPA should follow the requirements outline in the CTA.<sup>213</sup>

#### IV. RECOMMENDATIONS FOR BILINGUAL PESTICIDE LABELING

There exists a serious risk of harm to pesticide handlers, farmworkers, their families, and the environment when manufacturers continue to provide the safety and warning precautions labels in only English.<sup>214</sup> Pesticides are inherently dangerous chemicals.<sup>215</sup> Rachel Carson demonstrated this in her 1962 publication, the *Silent Spring*, which raised public awareness regarding the effects of pesticide on our health and the environment.<sup>216</sup> She focused on the dangers of dichlorodiphenyltrichloroethane (“DDT”), which is an organochlorine insecticide that was first developed in the 1940s.<sup>217</sup> In her book, Rachel Carson described in great detail the inherent dangers of DDT and concluded the benefit of using DDT does not substantially

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<sup>208</sup> See generally *The National Agricultural Worker Survey*, *supra* note 86.

<sup>209</sup> See generally Georgia Legal Services Program, *Farmworkers’ Rights*, *Georgia Legal Aid*, GEORGIALEGALAID (Aug.

2005), <http://www.georgialegalaid.org/resource/farmworkers-rights?lang=EN> (indicating some of the farmworkers’ rights under the law of Georgia.).

<sup>210</sup> *Id.*

<sup>211</sup> Farmworker Justice, *supra* note 35, at 4, 5.

<sup>212</sup> *Id.*

<sup>213</sup> See CAL. CIV. CODE § 1632 (2016).

<sup>214</sup> Farmworker Justice, *supra* note 35, at 13, 14.

<sup>215</sup> See *The Problem with Pesticides*, TOXICS ACTION CENTER, <http://www.toxicsaction.org/problems-and-solutions/pesticides> (last visited Sept. 19, 2016).

<sup>216</sup> *Id.*

<sup>217</sup> See *DDT – A Brief History and Status*, ENVIRONMENTAL PROTECTION AGENCY, <https://www.epa.gov/ingredients-used-pesticide-products/ddt-brief-history-and-status> (last updated Nov. 22, 2016).

outweigh the benefits to the human life and the environment.<sup>218</sup> As a result of the public concern, the EPA banned the use of DDT because of the adverse environmental effects and the potential risk to human health.<sup>219</sup>

Additional studies have shown that exposure to pesticides can cause short-term health conditions, such as nausea and headaches to chronic issues like reproductive harm, cancer, and even death.<sup>220</sup> The impact of the deadly chemicals on the environment arises because the pesticides can get into the water systems and pollute the air.<sup>221</sup>

Reading the label is the most important factor for users of pesticides because the failure to follow the instructions and the inability to understand the warnings and safety precautions are dangerous.<sup>222</sup> The EPA should at the very least require manufacturers to translate the section that addresses safety and environmental information so that labels would not be too large, but still address the main concerns of bilingual labeling.<sup>223</sup> This section includes the directions for use, the safety and precautionary statements, all information on first aid, all information on the proper protective equipment, and the appropriate time to re-enter the field after pesticides have been applied.<sup>224</sup> Additionally, the EPA should require employers to post the information in a conspicuous place setting forth the safety and environmental information.<sup>225</sup> The EPA should also require employers to provide the information in writing in a language common to the workers.<sup>226</sup> This should not create additional problems for employers because under the MSPA, employers are already required to disclose

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<sup>218</sup> See *The Story of Silent Spring How a courageous woman took on the chemical industry and raised important questions about humankind's impact on nature*, NATURAL RESOURCES DEFENSE COUNCIL (Aug. 13, 2015), <https://www.nrdc.org/stories/story-silent-spring>.

<sup>219</sup> *DDT – A Brief History and Status*, *supra* note 217.

<sup>220</sup> See *The Problem with Pesticides*, *supra* note 215.

<sup>221</sup> *Id.*

<sup>222</sup> Farmworker Justice, *supra* note 35, at 2.

<sup>223</sup> *Id.* at 7.

<sup>224</sup> *Id.*

<sup>225</sup> See generally 29 U.S.C.A. § 1821(b) (2016); see also 29 U.S.C.A. § 1831(b) (2016) (referring to the posting requirements imposed on employers under MSPA).

<sup>226</sup> See generally 29 U.S.C.A. § 1821(g) (2016); see also 29 U.S.C.A. § 1831(f) (2016) (referring to the form and language requirements under MSPA).

certain information in writing, as well as, posting the farmworker's rights on a poster and hanging it in a conspicuous place.<sup>227</sup>

Requiring precautionary safety instructions and warnings in English and Spanish can and would reduce the impact and frequency of harm to humans and the environment due to pesticide.<sup>228</sup> The following recommendations provide options available to protect the agricultural farmworkers, their families, the general public, and the environment.

*A. Spanish Labeling of Only the Sections Containing Essential Safety and Environmental Details*<sup>229</sup>

There are various safety, health, and environmental benefits to requiring manufacturers to provide Spanish labeling on the sections containing essential safety and environmental information.<sup>230</sup> The warnings would include information on first aid, the appropriate protective clothing and other gear to wear when handling or applying the pesticides, the time to re-enter the field once the chemicals have been applied, exposure symptoms, and directions for use, storage, disposal, and safe-handling.<sup>231</sup> Pesticide labels provide critical information on how to properly apply the chemicals, as such pesticide applicators and handlers need to read and understand the labels before they can apply the pesticide because they contain safety information the user needs to know in order to minimize potential harm.<sup>232</sup>

The cost of protecting human life and the environment far outweigh the costs for manufacturers to provide bilingual labeling that can protect those directly and vicariously exposed to pesticides.<sup>233</sup> These costs would not be unreasonable because this is something which is already being done for certain products, such as when pesticides fall under the EPA's toxicity categories I and II, when Restricted Use Pesticides are sold in the United States territory, Puerto Rico, and

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<sup>227</sup> See generally § 1821(a)(1)-(8); see also § 1821(b) (referring to the posting requirements imposed upon employers); see also § 1831(b).

<sup>228</sup> Farmworker Justice, *supra* note 35, at 7.

<sup>229</sup> *Id.*

<sup>230</sup> *Id.* at 7, 13.

<sup>231</sup> *Id.* at 15.

<sup>232</sup> *Id.* at 13; See Susan Donaldson & Melody Hefner, *Understanding Pesticide Labels*, UNIVERSITY OF NEVADA COOPERATIVE EXTENSION, <https://www.unce.unr.edu/publications/files/nr/2011/fs1138.pdf> (last visited Aug. 10, 2016).

<sup>233</sup> See generally Farmworker Justice, *supra* note 35, at 16, 17 (noting the cost for requiring bilingual labeling would not be unreasonable).

when total release foggers (“bug bombs”) are used indoor.<sup>234</sup> Just as how such labeling in required dealing with Puerto Rico, these requirements should be applied here, since majority of our farmworkers are Spanish speakers.<sup>235</sup> In addition to bilingual labeling, another step to provide adequate protection to all of those affected by pesticides would be to implement a poster requirement upon employers.

### *B. Implementing the Poster Requirement Imposed Upon Employers*

Under MSPA, agricultural employers and other agricultural associations are required to keep a poster posted in a conspicuous place which explains the protections and rights available to workers.<sup>236</sup> The poster outlines the farmworkers rights, which include their right to be paid on time and receive information in writing and in Spanish.<sup>237</sup> The poster requirement under MSPA is a requirement that can be implemented here to better protect the pesticide handlers, other agricultural farmworkers, their families, and the environment.<sup>238</sup> By following the posting requirements set forth under the MSPA, agricultural employers would be required to display the safety and

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<sup>234</sup> See *id.* at 4, 16, 17 (noting that bilingual labeling is already being done where manufacturers exports pesticides to Mexico and other Latin American Markets); see also *Safety Precautions for Total Release Foggers*, ENVIRONMENTAL PROTECTION AGENCY, <https://www.epa.gov/safepestcontrol/safety-precautions-total-release-foggers> (last updated Aug. 30, 2016) (noting that release foggers or bug bombs are “pesticide products containing aerosol propellants that release their contents at once to fumigate an area).

<sup>235</sup> Farmworker Justice, *supra* note 35, at 1, 16, 17.

<sup>236</sup> *Migrant and Seasonal Agricultural Worker Protection Act (MSPA) Poster English/Spanish Version*, DEPARTMENT OF LABOR, <https://www.dol.gov/whd/regs/compliance/posters/mspaensp.htm> (last updated April 1983) (noting that farm labor contractors are also subject to the poster requirement under MSPA).

<sup>237</sup> See *Notice Migrant and Seasonal Agricultural Worker Protection Act*, DEPARTMENT OF LABOR, <https://www.dol.gov/whd/regs/compliance/posters/mspaenspbw.pdf> (last updated April 1983) (the list is not inclusive).

<sup>238</sup> See generally 29 U.S.C.A. § 1821(b) (2016) (referring to the posting requirements imposed on employers when hiring agricultural employers or contractors. The poster must be in a conspicuous place to inform the workers of their rights); see also 29 U.S.C.A. § 1831(b) (2016).

environmental information in Spanish and in a conspicuous place.<sup>239</sup> Thus, the poster would include precautionary and warning statements, direction for use, exposure symptoms, the appropriate personal protective equipment to wear when handling pesticides and while working in the fields after the applications of the pesticides, information regarding re-entry intervals, as well as instructions on how to safely handle the chemicals.<sup>240</sup>

The poster will have to be displayed in a conspicuous place at the farm that is readily accessible to the farmworkers.<sup>241</sup> This will help reduce pesticide exposures because all farmworkers will have access to the information to protect themselves and their families.<sup>242</sup> It will also help protect our environment because the farmworkers will be handling the pesticides appropriately because they are able to read and understand the label.<sup>243</sup>

## V. CONCLUSION

Farmworkers play an essential role in everyone's lives because they work hard to put food on our table.<sup>244</sup> Their job is difficult with little pay and often times, dangerous when repeatedly faced with deadly chemicals.<sup>245</sup> In order to protect farmworkers, it is imperative we provide them with information they will need to protect themselves.<sup>246</sup> Therefore, it is recommended the EPA require the manufacturers to provide bilingual labeling on the sections of the pesticide label which

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<sup>239</sup> See generally 29 U.S.C.A. § 1831(b) (2016); see also 29 U.S.C.A. § 1831(b); 29 U.S.C.A. § 1821(b) (2016).

<sup>240</sup> See generally Farmworker Justice, *supra* note 35, at 3, 7 (recommending the EPA require Spanish translation on parts that convey essential environmental and safety precaution).

<sup>241</sup> See generally § 1831(b) (2016); see also § 1821(b) (requiring the posters to be in a conspicuous place); see generally *Frequently Asked Questions (FAQs)*, DEPARTMENT OF LABOR, <http://webapps.dol.gov/dolfaq/go-dol-faq.asp?faqid=537> (last visited Sept. 25, 2016) (listing the types of posters that are required to be posted in a conspicuous place).

<sup>242</sup> See generally Farmworker Justice, *supra* note 35, at 13, 14 (referring to the fact that if farmworkers are able to read the labels they can better protect themselves, and in turn be able to protect their families and the environment).

<sup>243</sup> *Id.*

<sup>244</sup> See Maisie Ganzler, *Got Food? Thank a Farmworker This Week*, THE HUFFINGTON POST (May 23, 2015), [http://www.huffingtonpost.com/maisie-greenawalt/got-food-thank-a-farmwork\\_b\\_6924724.html](http://www.huffingtonpost.com/maisie-greenawalt/got-food-thank-a-farmwork_b_6924724.html).

<sup>245</sup> See *id.*

<sup>246</sup> Farmworker Justice, *supra* note 35, at 17.

contains the safety warnings and precautionary statement.<sup>247</sup> By not requiring manufacturers to provide bilingual labeling, farmworkers and their families are suffering from needless injury and environmental damage because of the EPA's failure to require bilingual labeling.<sup>248</sup> Perhaps, if bilingual labeling was in place, Carlitos and the other children would not have sustained severe injuries leading to lifetime impairments.<sup>249</sup> Bilingual labeling is necessary because majority of farmworkers do not speak or read in English.<sup>250</sup> Their inability to have access to the pesticide labels and the ability to read and understand the labels put their health at risk and this is a problem that can be fixed.<sup>251</sup>

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<sup>247</sup> *Id.* at 7, 18.

<sup>248</sup> *Id.* at 1.

<sup>249</sup> *See generally id.* (Farmworkers are suffering from these needless injuries because they are unable to read the labels).

<sup>250</sup> *See* Facts About Farmworkers, *supra* note 27; *see also* Farmworker Justice, *supra* note 35, at 1, 2, 17.

<sup>251</sup> Farmworker Justice, *supra* note 35, at 17.

<sup>252</sup> J.D. Candidate, San Joaquin College of Law, 2018. This comment is the result of the love and support I received from my friends and family, especially from my parents, Hoa and Lang Nguyen, my husband Cuong Bui, and our children Caileigh and Caleb Bui. I would like to thank Robert and Marcie Howk for their words of wisdom and continuous support. I wish to extend a thank you to the San Joaquin Agricultural Law Review Board for assisting me in preparing this article. A special thank you to Allison Ryan and Professor Christine Goodrich for advising me throughout this process. Last but certainly not least, I would also like to thank my niece Heylii Nguyen for sacrificing countless hours to care for her cousins.