



# NOURISHING CHANGE:

Fulfilling the Right to Food in the United States



International Human Rights Clinic  
nyu school of law

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Cover photo: Peter DaSilva/The New York Times/Redux. People select produce at the Lutheran Social Services food pantry, which receives produce from the Farm to Family program, in San Francisco, December 2012. Farm to Family receives surplus and unwanted produce donations from farmers in exchange for a tax break and handling fee.

The black and white photographs in this briefing paper were taken by Barbara Grover for The New Face of Hunger, a project of MAZON: A Jewish Response to Hunger, and are used with express permission from MAZON: A Jewish Response to Hunger. All black and white photographs © 2013 MAZON: A Jewish Response to Hunger.

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The International Human Rights Clinic (IHRC) at New York University (NYU) School of Law provides high quality, professional human rights lawyering services to community-based organizations, nongovernmental human rights organizations, and intergovernmental human rights experts and bodies. The Clinic partners with groups based in the United States and abroad. Working as researchers, legal advisers, and advocacy partners, Clinic students work side-by-side with human rights advocates from around the world. The Clinic is directed by Professor Smita Narula, Associate Professor of Clinical Law and Faculty Director of the Center for Human Rights and Global Justice at NYU School of Law. Susan Hodges is Clinic Administrator.

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**MELISSA**

New York City Food Pantry Customer

I'm 62 years old. I'm a U.S. citizen,  
and I have a bachelor's degree.

I used to be a substance abuse counselor, but the program went bankrupt a few years ago. They stopped paying all of their employees.

I originally found out about [the food pantry] from my work. I remember referring people to this place. I never thought I would be the one coming here. I started coming to the food pantry because after I lost my job it was harder to get all I needed.

I live with my daughter and her three children. They receive food stamps, but we recently had to get recertified. My daughter's two sons are no longer eligible [because they are too old]. We don't know yet how much they will reduce the benefits.

I don't participate in food stamps because I don't want to cause problems for my daughter or my grandchildren. We all live in the same house.

I don't know what I would do without [this food pantry]. I come to the food pantry once a month and I usually have to wait about 45 minutes. My Social Security also helps me feed myself, but inflation is really bad. My rent has increased, the food prices have increased, and subway prices have increased. I do not have a retirement fund. When my firm went bankrupt, I had to spend my retirement money to pay the rent. Now there is nothing.



## EXECUTIVE SUMMARY

**The United States is facing a food security crisis:** One in six Americans lives in a household that cannot afford adequate food. Of these 50 million individuals, nearly 17 million are children. Food insecurity has skyrocketed since the economic downturn, with an additional 14 million people classified as food insecure in 2011 than in 2007.

For these individuals, being food insecure means living with trade-offs that no one should have to face, like choosing between buying food and receiving medical care or paying the bills. Many food insecure people also face tough choices about the quality of food they eat, since low-quality processed foods are often more affordable and accessible than fresh and nutritious foods.

Food insecurity takes a serious toll on individuals, families, and communities and has significant consequences for health and educational outcomes, especially for children. Food insecurity is also enormously expensive for society. According to one estimate, the cost of hunger and food insecurity in the United States amounted to \$167.5 billion in 2010.

The U.S. government's predominant response to food insecurity involves a series of programs known as Domestic Nutrition Assistance Programs ("DNAPs") that provide food and nutrition services to low-income Americans. Millions benefit from these programs: The Supplemental Nutrition Assistance Program (SNAP), formerly known as the Food Stamp Program, serves approximately 1 in 11 Americans each month, while more than half of infants born in the United States receive nutrition benefits through the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC).

Yet DNAPs fail to adequately address the needs of the 50 million Americans who live in food insecure households. First, eligibility requirements

may be drawn too narrowly, thereby excluding many food insecure individuals from receiving benefits. Second, eligible participants face numerous administrative barriers to participation, such as complicated application and renewal processes. And third, the benefits provided through DNAPs may not be sufficient to meet participants' food-related needs.

The limitations of government nutrition assistance programs are reflected in Americans' increasing reliance on private "emergency" food providers, like food pantries, which many now turn to as a routine source of food. Yet private entities are themselves struggling in the face of the economic downturn and a growing demand for assistance.

Food insecurity in the United States is not the result of a shortage of food or of resources; it is the result of poverty and of policies and programs that fail to prioritize the needs of low-income Americans. Despite the magnitude of the problem, and its far-reaching implications, eradicating food insecurity has not been a political priority. Instead of addressing critical gaps in food assistance, the U.S. government is considering severe funding cuts and other reforms to DNAPs that could strip millions of Americans of crucial support, exacerbate already alarming rates of food insecurity, and push families into deeper crisis.

The time is ripe for a new approach to the problem. A *human rights* approach to food shifts the focus from food assistance as charity to adequate food as a human right. The *right to food* is a universally recognized norm that calls on governments to ensure that all people have access to food that is safe and nutritious, meets their dietary needs, and is appropriate to their cultural backgrounds.

Adopting a human rights approach to food offers the U.S. government a roadmap for addressing the root causes of food insecurity while empowering

those who are least able to provide for themselves. Particularly in times of economic crisis, when governments face resource constraints and must manage trade-offs between various goals, the human rights framework signals to governments that they must *prioritize* the needs of the most vulnerable and ensure that peoples' basic needs and fundamental rights are fulfilled.

This briefing paper proceeds in four parts. **Part I** addresses the scope, causes, and consequences of food insecurity in the United States. **Part II** assesses the U.S. government's response to food insecurity through an analysis of the four largest government nutrition assistance programs, namely SNAP, WIC, the National School Lunch Program (NSLP), and the School Breakfast Program (SBP). Part II also looks at Americans' increasing reliance on emergency food providers, such as food pantries, to make up for the shortcomings of government nutrition assistance programs. **Part III** introduces the human right to adequate food and describes governments' obligations to ensure its fulfillment. Part III also illustrates how a human rights approach is consonant with long-standing American values that recognize the government's role in ensuring freedom from want. **Part IV** applies the human rights framework to the problem of food insecurity in the United States and offers key recommendations to help fulfill the right to adequate food for all Americans.

Specifically, Part IV calls on the U.S. government to adopt a holistic and multi-faceted national strategy for fulfilling the right to adequate food. This national strategy should address the root causes of food insecurity and related problems like obesity. It must aim to ensure that food is *accessible*, both physically and economically; that food is *adequate*, meaning safe, nutritious, and culturally appropriate; and that food is *available* to purchase or that people have the means to produce it themselves.

As part of this national strategy the government must take immediate steps to strengthen

the existing food safety net. DNAPs should be reformed to ensure that these vital programs reach all who are food insecure, and in a manner that empowers beneficiaries to claim their rights with dignity. In particular, we recommend that the U.S. government:

- Revise SNAP's eligibility requirements to ensure that the program reaches all food insecure households;
- Increase SNAP benefits to allow beneficiaries to purchase a sufficient amount of nutritious food;
- Maintain SNAP as an entitlement program and convert WIC from a block grant to an entitlement program;
- Develop and enhance strategies to increase participation in school meals programs and ensure that children have access to nutritious meals when not in school;
- Prioritize efforts to streamline DNAP application, certification, and verification processes;
- Launch a public awareness program to help remove stigma from DNAP participation and deliver benefits in a manner that helps reduce stigma;
- Continue to monitor and improve the nutritional changes made to WIC, the NSLP, and the SBP and fund nutrition education programs, which can also play an important role in promoting dietary improvements.

A human rights approach to food issues in the United States suggests a new way forward: one that prioritizes the basic needs of all Americans, ensures support for a robust social safety net, comprehensively tackles the root causes of food insecurity, and fulfills the right to adequate food for all.

## METHODOLOGY

This briefing paper is the result of extensive research on food issues in the United States, conducted over the course of a year by the International Human Rights Clinic (IHRC) at NYU School of Law. The briefing paper draws on IHRC's expertise in the area of international human rights law generally, and on the right to food in particular. This briefing paper also reflects IHRC's interviews with some of the nation's leading food policy experts and anti-hunger advocates. These interviews were carried out to facilitate our understanding of the principal challenges to addressing food insecurity in the United States. The briefing paper does not necessarily reflect the views of the individuals and institutions cited.

The briefing paper also offers the personal testimonies of food pantry customers and food insecure individuals to illustrate both the depth and impact of the food security crisis. The testimonies of New York City food pantry customers were collected by IHRC at the West Side Campaign Against Hunger in February 2013. The names of these customers have been changed in order to protect their identities. The remaining testimonies and photos of food insecure individuals and families were taken by Barbara Grover for The New Face of Hunger, a project of MAZON: A Jewish Response to Hunger.

## THE NEW FACE OF HUNGER

In 2012, the organization Mazon: A Jewish Response to Hunger began an initiative documenting who in America is hungry today and why. These are some of the stories they uncovered.



**Emery in his front yard,**  
Brandon,  
Mississippi

I was working for a gentleman in home renovations and when his business was hit by the recession, he started paying me late. Then he just stopped paying me altogether. Being unemployed has cut our household income in half, and my wife and I are having to make decisions every day on how to allocate what little monies we have: are we going to eat or are we going to pay the light bill? We never lived extravagantly, but there are no luxuries now, no more vacations. We are fighting to hold on to what little we still have.

In the six years since we bought our house, this month is the first time that the mortgage wasn't paid on time. I had to borrow from one place to give to another. I pawned the title to my truck to supplement income. We don't qualify for mortgage assistance or food stamps.

That's frustrating because you hear about all these programs to help people like us, but then they tell you you're not eligible. I'm not out to shirk my responsibility or take something that's not mine, but I just don't want to keep sliding further down.

Choices have to be made. We've changed how we feed ourselves. I like fish a lot, but now we can't afford it. What we buy is limited to more processed foods. Last night for dinner, I ate some crackers and cheese and some kind of, shall we say, processed meat. There are many times that instead of making myself a salad, I'll have ramen noodles. Granted, ramen is full of sodium and other things that aren't good for you, but it's just basic sustenance and you can buy a case of them for a dollar and change.



**Jessica with her family in their trailer,** Pine Ridge Reservation, South Dakota

My husband thought about going to college, but it seemed like a nowhere situation in today's economy. So many of our friends are coming out of college and go right into the food stamp line because they can't get jobs. So my husband, a 4.0 student, decides against college and ends up as a dishwasher. And we end up on food stamps.

We're not "in the system" because we don't want to pay for our food or don't want to work. But it's a numbers game of being able to pay our bills and feed ourselves. My husband's job is actually a high paying job here, but he doesn't earn enough to make ends meet. When he got a fifty-cent raise, earning about \$20 extra a month, our food stamps were cut by \$75 a month. How does that make sense—lowering our food stamps more than his salary increase?

We've learned to be savvy with our food stamps. We use our food stamps on healthy food rather than buying cheaper, instant things or junk food. And plan ahead. Still, there are times when all we have left to eat is ramen. It's a little depressing, but at least we have ramen.

I'd love to get off food stamps. I'd really like to be able to just go to the store and buy everything we need and not have to say, 'Well, we don't really need that right now.' But the only way we can get ahead—get off food stamps—is if we find some real economic stability.

What keeps me going is that I'm just stubborn, and I love my parents, my husband and my son. So what am I going to do? Lay down in the middle of the floor and starve to death?

“What does hunger look like in America? Hunger in America looks like hard choices.”

**HANNAH LUPIEN**

West Side Campaign Against Hunger<sup>1</sup>

## PART I

### FOOD INSECURITY IN THE UNITED STATES: SCOPE, CAUSES, AND CONSEQUENCES

**In 2011, 50 million people** in the United States lived in “food insecure” households, meaning they could not afford to provide adequate food for themselves or their families.<sup>2</sup> Of those, 17 million people lived in households that were classified as having “very low food security” — they often had to skip meals, reduce the size of their meals, or even go without eating for an entire day.<sup>3</sup>

Being food insecure means having to make trade-offs that no one should have to face, like choosing between buying food or receiving medical care, paying for heat, or paying one’s mortgage.<sup>4</sup> For the millions affected, it also means routinely worrying about how to feed themselves and their families.<sup>5</sup>

The problem of food insecurity in the United States is not new, but it has gotten worse since the economic downturn. Between 2007 and 2011, the number of people who could not afford adequate food grew by nearly 14 million.<sup>6</sup> Increases in food insecurity have been paralleled by increased participation in programs like the Supplemental Nutrition Assistance Program (SNAP). Twenty

million more people participated in SNAP in 2012 than in 2007, for a total of 46 million people.<sup>7</sup>

Black and Hispanic households,<sup>8</sup> households with incomes below the poverty guidelines, and households with children, particularly those headed by a single parent, are especially hard hit, experiencing food insecurity at rates well above the average.<sup>9</sup> Food insecurity affects a broad range of Americans,<sup>10</sup> including working Americans and families with incomes above the U.S. poverty guidelines. In fact, 1 in 10 individuals above the U.S. poverty guidelines is food insecure.<sup>11</sup>

Despite its prevalence, food insecurity remains largely invisible in the United States.<sup>12</sup> This may in part be due to the fact that popular perception of food issues tends to focus on obesity, leading to the assumption that Americans eat too much, rather than too little.<sup>13</sup> Food insecurity and obesity, however, “can co-exist in the same individual, family, or community.”<sup>14</sup> Studies demonstrate that food insecurity is strongly correlated with rates of obesity, suggesting that the two problems are





Customers wait in line outside the St. Columbanus and St. Geladius Food Pantry, Chicago, December 2010. Many people who participate in SNAP must also rely on food pantries, as SNAP benefits are often insufficient to address a family's food-related needs. (Photo by Joe Wigdahl Photography, courtesy of the Greater Chicago Food Depository)

closely connected.<sup>15</sup> As Eric Olsen of the hunger-relief charity Feeding America has noted, “Hunger and obesity can be flip sides of the same coin.”<sup>16</sup>

The Food Research and Action Center explains that a lack of economic and physical access to healthful foods can make people vulnerable to both food insecurity and obesity.<sup>17</sup> Food insecure families, for example, face difficult trade-offs between purchasing low-cost, poor quality food and higher-cost healthful foods. Three dollars today will buy 3,767 calories of processed food such as soda and chips but only 312 calories of fresh fruits and vegetables.<sup>18</sup> For families whose resources are stretched thin, purchasing a sufficient amount of healthful food may not be economically possible. According to the U.S. Department of Agriculture (USDA), 95% of households classified as having very low food security reported that they could not afford to eat balanced meals.<sup>19</sup>

Moreover, low-income families may face difficulties physically accessing supermarkets and grocery stores that carry a greater variety of fresh and nutritious foods. The USDA estimates that 23.5

million people live in low-income neighborhoods that are more than one mile from a supermarket or large grocery store.<sup>20</sup> The time and transportation costs associated with reaching supermarkets from these so-called “food deserts” can make it particularly difficult for low-income households to obtain healthful foods, further increasing their risk of obesity.<sup>21</sup>

Food insecurity takes a serious toll on individuals, families, and communities and has significant consequences for health and educational outcomes. These consequences are especially acute for children. Between 1999 and 2011, the number of children living in food insecure households increased by 37%, for a total of 16.6 million children.<sup>22</sup> Children

In 2011,

**50  
MILLION**

people in the U.S. lived in food insecure households.

The cost of hunger in the United States was

**\$167.5  
BILLION**

in 2010.

born into food insecure families may not receive adequate nutrition, including in the prenatal period, placing them at risk of serious health problems and an increased risk of hospitalization.<sup>23</sup> Food insecure children also struggle to learn at the same rate as their food secure peers and are likely to continue having trouble in school.<sup>24</sup>

According to a report by Feeding America on the economic impact of food insecurity, children who experience chronic hunger are also significantly more likely to experience behavioral problems and are more likely to need mental health counseling.<sup>25</sup> Moreover, all of these possible problems connected with food insecurity increase the chance that children will drop out of high school, potentially decreasing their lifetime earning potential.<sup>26</sup>

Food insecurity is also enormously expensive for society. According to the Center for American Progress, the cost of hunger and food insecurity in the United States amounted to \$167.5 billion in 2010.<sup>27</sup> This “hunger bill” — which the Center suggests is a conservative estimate<sup>28</sup> — includes the costs of treating illnesses and other medical conditions related to food insecurity, the impact of hunger on educational outcomes and lifetime earning potential, and the costs of running charity-based emergency food programs.<sup>29</sup> It does not include the significant costs of treating obesity-related medical conditions.<sup>30</sup> Overall, the Center for American Progress estimates that it would cost the U.S. government about half the amount of the “hunger bill” — or \$83 billion — to extend SNAP to all food insecure households.<sup>31</sup>

Food insecurity in the United States — one of the wealthiest countries in the world<sup>32</sup> — is not the result of a shortage of food or of resources; it is the result of poverty and of policies that fail to prioritize the needs of low-income Americans. In 2011, more than 46 million Americans lived in poverty, a nearly 50% increase since 2000.<sup>33</sup> Nearly 22 million Americans are currently either unemployed or underemployed, which represents an 85% increase since 2006.<sup>34</sup> Stagnating real wages<sup>35</sup> and rising healthcare costs,<sup>36</sup> among other factors, are also squeezing household budgets and forcing families to make tough choices about their food.

The government has failed to adequately address the increase in poverty and food insecurity in the United States and has instead overseen a weakening of the social safety net in recent years. Social assistance programs have not responded to rising needs and are continually threatened with deep budget cuts.<sup>37</sup> The next section focuses on the U.S. government’s predominant response to food insecurity — a series of nutrition assistance programs that supplement low-income Americans’ ability to purchase food. As explained below, these programs are vital to millions of Americans but fall short in several key respects.



“Our government is the strongest and most effective instrument for helping the American community. The government needs to fulfill its role of protecting the most vulnerable.”

**ABBY LEIBMAN**

MAZON: A Jewish Response to Hunger<sup>38</sup>

## PART II

# THE FOOD SAFETY NET: NUTRITION ASSISTANCE PROGRAMS AND THEIR SHORTCOMINGS

**The U.S. government’s response** to the pressing problem of food insecurity has largely focused on the provision of food and nutrition services to low-income Americans. This section provides an overview of key government programs, as well as their shortcomings, and explains how these programs work in parallel with charitable institutions like food pantries to address food insecurity in the United States. For millions of people, reliance on non-governmental emergency food providers has become the new normal, a development that is simply unsustainable for these institutions and, most importantly, for individuals experiencing food insecurity.

### A. Domestic Nutrition Assistance Programs

U.S. domestic nutrition assistance programs (“DNAPs”) are operated by two federal agencies—the U.S. Department of Agriculture’s Food and Nutrition Service (USDA-FNS) and the Department of Health and Human Services’ Administration on Aging (HHS-AOA)—as well as dozens of state and local agencies.<sup>39</sup>

The bulk of nutrition assistance is provided through four programs, which combined make up more than 90% of all government expenditures on DNAPs.<sup>40</sup> These are:

- The Supplemental Nutrition Assistance Program (SNAP);
- The National School Lunch Program (NSLP);
- The School Breakfast Program (SBP); and
- The Special Supplemental Nutrition Program for Women, Infants, and Children (WIC).

These programs, which are vitally important to millions of Americans,<sup>41</sup> fall short in three key respects. First, eligibility requirements may be drawn too narrowly, thereby excluding many food insecure people from receiving benefits. Second, eligible participants face numerous administrative barriers to participation, such as complicated application and renewal processes. And third, the benefits provided through DNAPs may not be sufficient to meet the food needs of the people who do qualify.



The San Francisco and Marin Food Bank, November 2012. Food banks receive and store food products—procured from both public and private sources—and then distribute those items to food pantries or soup kitchens. (© 2012 Irvin Lin)

### 1. Supplemental Nutrition Assistance Program

The Supplemental Nutrition Assistance Program (SNAP), formerly known as the Food Stamp Program, is the largest DNAP in the United States.<sup>42</sup> SNAP provides eligible low-income individuals with monthly benefits that can be used to purchase food at qualifying stores. Millions benefit from SNAP, which serves approximately 1 in 11 Americans each month.<sup>43</sup> According to a study by the Center on Budget and Policy Priorities, SNAP kept 4.7 million people out of poverty in 2011, including 2.1 million children.<sup>44</sup> In 2012, SNAP provided \$74.6 billion in benefits and increased the food purchasing power of over 46 million individuals.<sup>45</sup>

SNAP is an entitlement program, meaning that the U.S. government is committed to covering all eligible persons regardless of the cost.<sup>46</sup> SNAP eligibility is based primarily on a household's

income and assets. In order to qualify for SNAP, a household must have:

- a) a monthly gross income at or below 130% of the federal poverty guidelines<sup>47</sup> (\$2,422/month for a family of four);
- b) a monthly net income at or below 100% of the poverty guidelines (\$1,863/month for a family of four); and
- c) \$2,000 or less in assets.<sup>48</sup>

Some households may also be categorically, or automatically, eligible for SNAP benefits based on eligibility for other government assistance programs, which allows these households to bypass SNAP's gross income and asset requirements.<sup>49</sup>

SNAP's financial eligibility requirements, however, may be drawn too narrowly, leaving some food insecure households outside their scope.<sup>50</sup> In 2011, for example, one in four households with

“They tell you to eat more healthy but they don’t make it easy. Fruits and vegetables are expensive; junk food is cheap.”

DEBRA, NEW YORK CITY FOOD PANTRY CUSTOMER

gross incomes between 130% and 185% of the federal poverty guidelines (or between \$29,965 and \$42,642 for a family of four) were classified as food insecure but exceeded SNAP’s income eligibility requirements.<sup>51</sup> Although some of these households may have been categorically eligible for SNAP, these numbers suggest that SNAP may not be reaching all families that are struggling with food insecurity.

In addition, SNAP excludes or limits the benefits offered to certain individuals even if they meet income eligibility requirements. For example, able-bodied adults without dependents are generally restricted to receiving SNAP benefits for three months in a three-year period, unless they are working or participating in a recognized work program.<sup>52</sup> Moreover, many non-citizens who may otherwise be financially eligible are restricted from accessing SNAP benefits.<sup>53</sup>

Even those who qualify for SNAP face barriers to participation. These barriers vary from state to state but include issues such as lengthy and non-uniform applications, burdensome verification requirements, inconvenient office locations and hours, and short recertification periods.<sup>54</sup> According to the USDA, 28% of people who are eligible for SNAP do not participate in the program,<sup>55</sup> often as a result of these issues.<sup>56</sup> Although the government has made some progress in reducing administrative barriers in recent years — such as adopting simplified reporting for SNAP<sup>57</sup> and eliminating fingerprinting as part of the application process<sup>58</sup> — further reforms are needed to ensure that these benefits reach all eligible individuals.<sup>59</sup>

Finally, SNAP benefits are insufficient to address a family’s food-related needs. As a case in point, a family of four entitled to the maximum benefit receives approximately \$668 in assistance per month.<sup>60</sup> This amount translates to roughly \$1.90

per meal for each individual in the household.<sup>61</sup> Indeed, the benefits are so low that families often run out of funds well before the end of the month.<sup>62</sup>

With such limited benefits, SNAP participants’ ability to purchase nutritious food is significantly constrained.<sup>63</sup> Highly processed foods may offer a cheaper and easier way of receiving calories than more nutritious and expensive options, such as fruits and vegetables.<sup>64</sup> Though concerns about the adequacy of the American diet are not restricted to those receiving government benefits,<sup>65</sup> SNAP participants are not financially able to make the same choices that many other Americans make.<sup>66</sup>

As noted by a New York City food pantry customer and recipient of SNAP benefits, “They tell you to eat more healthy but they don’t make it easy. Fruits and vegetables are expensive; junk food is cheap.”<sup>67</sup> U.S. Congressman Jim McGovern, who spent a week purchasing food on a SNAP budget, reached a similar conclusion: “No organic foods, no fresh vegetables, we were looking for the cheapest of everything... It’s almost impossible to make healthy choices on a food stamp diet.”<sup>68</sup>

## 2. National School Lunch and School Breakfast Programs

The National School Lunch Program (NSLP) and the School Breakfast Program (SBP) are the second and fourth-largest DNAPs, with budgets of \$11.6 billion and \$3.3 billion, respectively.<sup>69</sup> These

A family of four entitled to the maximum SNAP benefit receives roughly

**\$1.90**

per person per meal.

**JULIA**

New York City Food Pantry Customer

## I live with my daughter and my 18-year-old grandson.

Last year, I lost my job because of illness. When my daughter also got sick, I came to the food pantry because I needed to support her. I've been coming here regularly for under a year. Being here to me is almost like giving up. I don't feel quite comfortable here, but I don't have a choice.

I've been in the United States since I was 10 years old. I went to school here and did one year of college. I have problems with my identification because of the way I came to the United States, so those problems make it really difficult to apply for [government] programs. The process is also really difficult and humiliating. Why do they step on people when they're down when they're there to lift them up?

You don't get much [at the food pantry], but it helps, especially with my grandson. I pick up food

for him. I sometimes make sure that I only use a certain amount of food for today, so I can make sure that I have enough for tomorrow. I don't skip meals, but I need to be really careful. I eat very little, so it doesn't really affect me, but my grandson is 18 and he's going to college. I want to make sure that he's eating right.

I don't know if it's good for my self-esteem to come [to a food pantry], but I have to do something. [Coming here] is like beating yourself up and taking your self-esteem and stepping all over it. Going back 10 years—I never thought I'd find myself in a place like this.

I'm hoping I can let go of this [and stop coming to the food pantry] before Christmas. I'd really like to be finished with all of this. Afterwards, I'd like to volunteer. I'd like to help out and not be helped.

programs provide free or reduced-price breakfasts and lunches to millions of school children.<sup>70</sup> The NSLP provides lunch to 31.6 million children daily,<sup>71</sup> while the SBP provides breakfast to 12.8 million children.<sup>72</sup>

The federal government reimburses schools that participate in either program for each meal served.<sup>73</sup> Students whose household incomes are at or below 130% of the poverty guidelines are eligible for free breakfast and lunch, while reduced price meals are available to students whose household incomes are between 130% and 185% of the poverty guidelines.<sup>74</sup>

The school meals programs have real potential to address childhood hunger and ensure good

nutrition.<sup>75</sup> The NSLP has fairly high participation rates among enrolled students certified to receive free or reduced-price lunch.<sup>76</sup> Participation rates, however, decline between elementary and high school.<sup>77</sup> In fact, 36.1% of high school students certified to receive free meals do not participate in the lunch program.<sup>78</sup> SBP participation lags even further behind. According to the Food Research and Action Center, only about half of the low-income students who received free or reduced-price lunch also received school breakfast in 2011–12, even though more than 90% of schools that participate in the NSLP also offer school breakfast.<sup>79</sup>

Moreover, children who receive lunch and breakfast during the school year may have diminished

access to food during summer breaks and other school holidays. The government has, in part, attempted to make up for this shortfall through summer nutrition programs,<sup>80</sup> but the reach of these programs is limited. The Food Research and Action Center found that summer nutrition programs only served 1 in 7 children who participated in the NSLP in July 2011.<sup>81</sup>

The U.S. government has introduced a number of policies in recent years to facilitate participation in the NSLP and the SBP. For example, all school districts are required to implement direct certification programs that automatically enroll students in the NSLP or the SBP if their families are enrolled in SNAP, eliminating the need for a separate paper application.<sup>82</sup> Although direct certification is a more efficient way to enroll eligible students into the program, the Food Research and Action Center notes that additional improvements in data matching and notification are needed, as direct certification does not reach approximately 30% of eligible children.<sup>83</sup>

Additionally, a new federal option called Community Eligibility allows participating schools to provide free meals<sup>84</sup> to all of their students without a separate application process as long as at least 40% of their students are certified for free meals. Direct certification and Community Eligibility both aim to reduce barriers to participation and increase enrollment in the NSLP and the SBP. Continued monitoring is necessary to ensure that these policies achieve their goals. Further research is also needed to better understand the factors that hinder student participation in the NSLP and the SBP.<sup>85</sup>

School meals programs also provide important opportunities to promote healthy diets among children.<sup>86</sup> The NSLP and the SBP have long been criticized for not providing sufficiently nutritious foods to children. In 2010, however, passage of the federal Healthy, Hunger-Free Kids Act significantly overhauled the nutritional standards for the NSLP and the SBP. The new requirements include

increased availability of fruits, vegetables, and whole grains; reduced fat content for milk; reductions in saturated fat and sodium; minimized trans fat; specific calorie limits by grade level; and the availability of tofu as a meat alternative.<sup>87</sup> Students must also take a fruit or vegetable at each meal.<sup>88</sup>

Some experts continue to express concern that agricultural commodities, including many processed foods<sup>89</sup> provided to school meals programs through the USDA, could contribute to poor nutrition in schools.<sup>90</sup> In fact, commercial agriculture played a significant role in lobbying Congress to ensure that the USDA did not place limitations on the amount of white potatoes that could be served in school lunches and to ensure that tomato paste on pizza would continue to qualify as a “vegetable” under the new nutrition guidelines.<sup>91</sup> Although commodity foods are an important part of the existing school meals programs, additional research and monitoring is required to ensure that their use does not compromise nutritional standards in schools.

### **3. Special Supplemental Nutrition Program for Women, Infants, and Children**

The Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) provides food packages, breastfeeding support, and nutrition education to low-income women and their young children.<sup>92</sup> WIC is the third-largest DNAP with a budget of \$6.6 billion in FY 2012.<sup>93</sup> The WIC program has tremendous reach: Each month, it serves about 9 million women, children, and infants,<sup>94</sup> and each year it serves more than half of all infants born in the United States and more than one quarter of children below the age of five.<sup>95</sup>

In order to qualify for WIC, an applicant must: be a woman who is pregnant,<sup>96</sup> post-partum,<sup>97</sup> or breastfeeding,<sup>98</sup> or be an infant or child up to the age of five; meet income eligibility requirements;<sup>99</sup> and be certified as a “nutritional risk” by a health



professional.<sup>100</sup> WIC benefits are distributed in the form of checks, vouchers, or debit cards (EBT cards) that may be used to purchase specific foods each month.<sup>101</sup> WIC offers seven different food packages based on the age of the child and whether or not the mother is breastfeeding.<sup>102</sup>

The content of WIC food packages was recently revised in order to improve both their nutritional value and cultural appropriateness.<sup>103</sup> These reforms — which are seen as a positive step forward<sup>104</sup> — included introducing new whole grain products into the program;<sup>105</sup> lowering the fat content of available dairy products; and reducing the quantity of juices that a participant can purchase. Additionally, the program introduced fixed-value vouchers that WIC participants can use to purchase fruits and vegetables, in addition to their previous benefits.<sup>106</sup> However, these vouchers do not account for variations in fruit and vegetable prices across the country and as a result have varying levels of purchasing power.<sup>107</sup>

Between 1999 and 2009, WIC enrollment grew by 24%.<sup>108</sup> In 2009, however, only 61% of eligible women and children participated in the program,<sup>109</sup> and enrollment actually declined between 2009 and 2011.<sup>110</sup> This decline is particularly surprising given the dramatic increases in SNAP enrollment in recent years along with rising rates of food insecurity.<sup>111</sup> But unlike SNAP, WIC is not an entitlement program.<sup>112</sup> Instead, WIC is administered as a block grant to states and Congress appropriates funds for the program each year.<sup>113</sup> The federal government does not guarantee that it will provide sufficient funding to cover all eligible persons and thus the program does not automatically grow when need increases.<sup>114</sup>

In recent years, Congress has limited appropriations for WIC despite rising need for food assistance,<sup>115</sup> and proposed budget cuts have raised concerns that WIC will not be able to provide benefits to all eligible persons in the future.<sup>116</sup> This development is especially troubling given the important role WIC plays in supporting maternal and child health in the United States.

## B. Emergency Food Providers



















**“The emergency food system is no longer an emergency — people have come to rely on their local food banks out of ongoing necessity. Working class families and community college students are increasingly relying on emergency food providers. How do we move from charity to change?”**

— Alison Cohen, *WhyHunger*<sup>117</sup>

As shown above, DNAPs are limited in their reach, do not provide sufficient benefits to those who are deemed eligible, and may be inadequate to fulfill the nutritional needs of food insecure Americans. As a result, many individuals end up turning to a network of charitable emergency food providers, including food banks, food pantries, soup kitchens, and shelters. Emergency food providers rely on a combination of public and private support to provide prepared and unprepared food to those in need.<sup>118</sup>

Although originally intended to provide short-term emergency food supplies,<sup>119</sup> emergency food providers are increasingly used as a routine source of food by many food insecure Americans.<sup>120</sup> According to Feeding America, whose network constitutes about 80% of all emergency food providers in the United States,<sup>121</sup> food pantries have “become a staple for many people — those that need the extra help to make it through the month on a more consistent basis.”<sup>122</sup> In 2009, 37 million individuals relied on emergency food providers associated with Feeding America — a 46% increase since 2005.<sup>123</sup>

The U.S. government gives critical support to emergency food providers, but government contributions are limited and do not expand based on need. For example, The Emergency Food Assistance Program (TEFAP), run through the USDA, donates commodity foods such as canned fruits and vegetables, meat, and fruit juice to state agencies, which in turn supply emergency food organizations.<sup>124</sup> TEFAP provides about one quarter of the food distributed through the Feeding America network.<sup>125</sup> Much of TEFAP

3 Day Shopping List 1 point = 1 pound = 1 can No substitutions! <b>ONE (1) PERSON</b>		La Guía de Compras Tres Días 1 punto = 1 libra = 1 lata ¡No sustituciones! <b>UNA (1) PERSONA</b>	
Cereal 1 box 	Pasta 1 pound 	Cereal 1 caja 	Pasta 1 libra 
Rice 1 pound 	Bread 1 bag 	Arroz 1 libra 	Pan 1 funda 
Protein (beans, meat, fish) 3 points 		Proteína (habichuelas, carne, pescado) 3 puntos 	
Vegetables 3 points 		Vegetales 3 puntos 	
Fruits 3 points 		Frutas 3 puntos 	
Milk and Dairy 3 points 		Leche y Productos Lácteos 3 puntos 	
Extra 1 item 		Extra 1 cosa 	

A handout from a New York City-based food pantry explaining how much food customers are allowed to take home. The limitations of DNAPs are reflected in Americans' increasing reliance on private "emergency" food providers, which many now turn to as a routine source of food. (Photo courtesy of the West Side Campaign Against Hunger)

food, however, is purchased at the discretion of the Secretary of Agriculture and, depending on the state of the agriculture market, can vary significantly in quantity and variety.<sup>126</sup> As Kate MacKenzie of the New York City-based food rescue organization City Harvest notes,

The origins of the TEFAP program were to provide a market to distressed farmers, not necessarily to feed people. Currently, when there is surplus food, the government buys it. Conversely, when there are rising rates of hunger, the government does not send more food. That doesn't seem to be balanced.<sup>127</sup>

Even with various forms of government support, emergency food providers are extremely limited in their ability to provide adequate, nutritious food for all those in need. As more individuals turn to these services for support, it is increasingly clear that emergency food providers cannot make up for the shortcomings of government nutrition assistance programs.<sup>128</sup>

### C. A Climate of Stigma Surrounding Food Assistance

As described above, people facing food insecurity rely on a combination of public and private assistance to secure food for themselves and their families. Although DNAPs and emergency food providers offer essential support to millions of Americans, recipients of food assistance often endure a sense of stigma that has been reinforced by the current political climate.

American political discourse often paints recipients of food assistance as perpetually dependent on government handouts and undeserving of assistance.<sup>129</sup> In reality, employment rates among SNAP participants are high. According to the Center on Budget and Policy Priorities, among SNAP households with at least one working-age, non-disabled adult, more than half had a member who worked while receiving SNAP benefits.<sup>130</sup> More than 80% of these households had a member who worked in the year before or after receiving SNAP benefits.<sup>131</sup>

“I’m afraid of not having help [from food pantries] anymore. Sometimes people say [food pantries] will be over because of the crisis and so many people asking for food. [But] places like this are necessary. I need some minimum security.”

LUISA, NEW YORK CITY FOOD PANTRY CUSTOMER

Furthermore, many of these programs are targeted at individuals who cannot work because they are children, are elderly, or have a disability.<sup>132</sup> No less than two-thirds of households participating in SNAP include a child, an elderly person, or a person with a disability.<sup>133</sup> Yet two in five eligible non-participants cite stigma as a reason for forgoing SNAP benefits.<sup>134</sup> Joel Berg of the New York City Coalition Against Hunger explains the differences in popular perception of government programs as follows:

Social Security has near 100% take-up rate. There are a very small number of people who don’t take Social Security when they’re eligible for it. On the other hand, up to one third of eligible people don’t take SNAP benefits. Why is there so little uptake? SNAP is still seen as something that you didn’t earn. Most of the public confuses it with cash assistance. The people who get food stamps pay income tax, sales tax, property taxes, or more on rent so that their landlords can pay more in property taxes...they’re also paying into the system.<sup>135</sup>

Additionally, government programs are at times designed and implemented in ways that separate those receiving assistance from those who are not, often in stigmatizing ways. Schools operating the NSLP, for example, often have separate lines for students receiving school lunches under the program, making it obvious which students need financial assistance.<sup>136</sup> A Santa Cruz, California-based student described the set-up as follows:

There was [] a separate door for [students provided with lunch] to go to, to receive their lunch, and they had to eat in the cafeteria because the school dishes and trays were not allowed outside. The system for free or reduced lunches made the students who received them stand out, it divided the high school.<sup>137</sup>

Stigma surrounding the NSLP has been cited as a reason why participation rates decline between elementary school and high school.<sup>138</sup> People who use emergency food providers also report feeling separated and stigmatized because they cannot afford to shop in grocery stores.<sup>139</sup> Indeed, individuals who visit emergency food providers often have to wait in long lines, sometimes outside.<sup>140</sup>

The stigma attached to being a food aid recipient also actively disempowers food insecure Americans from participating in the political process and raising their concerns. This lack of empowerment is reflected in the fact that the current political system does not prioritize the needs of food insecure Americans: Despite the importance of DNAPs for millions of people, funding for these programs is routinely on the chopping block.

#### D. Threats to the U.S. Food Safety Net

**“[W]hen you burn enormous holes in the fabric of the social safety net: people either fall through or cling to the remaining parts... [they] don’t disappear just because we slash the programs they rely on. They still struggle to get by.”**  
— Bryce Covert, *The Nation*<sup>141</sup>

At this writing, DNAPs are threatened with significant budget cuts and other proposed changes that could push millions of Americans into deeper crisis. In the last decade, DNAPs—and SNAP in particular—have increasingly provided essential support to low-income Americans. Federal spending on SNAP has increased nearly 400% since 2000, reaching \$78.43 billion in 2012.<sup>142</sup> At the same time, participation in other federal programs that benefit low-income Americans,



such as Temporary Assistance for Needy Families (TANF),<sup>143</sup> has actually declined.<sup>144</sup> The result, according to Joel Berg, has been to place a “greater burden on the Supplemental Nutrition Assistance Program to not only fight hunger but also to serve as the nation’s largest antipoverty program.”<sup>145</sup>

Despite unprecedented levels of need, SNAP funding cuts are scheduled for November 2013 and will reduce benefits by \$14 billion.<sup>146</sup> At this writing, the Farm Bill—which funds SNAP and which expired in 2012—was being renegotiated in Congress. Both the House and Senate versions of the new Farm Bill contain dramatic cuts to SNAP: Over a period of ten years, the Senate bill would cut SNAP funding by \$4.1 billion,<sup>147</sup> while the House bill would cut it by almost \$21 billion.<sup>148</sup> Among other changes, the House bill seeks to limit categorical eligibility<sup>149</sup> in a manner that would cut nearly 2 million people per year from SNAP, and cause an estimated 210,000 children to lose automatic eligibility for free school meals.<sup>150</sup>

SNAP funding is also under threat in the ongoing Congressional budget process. In March 2013, the House approved a budget resolution for FY 2014 that would turn SNAP into a block grant, meaning that, like WIC, the government would no longer guarantee that all eligible persons would receive benefits.<sup>151</sup> Instead, the number of beneficiaries would depend on the amount of money Congress appropriated for the program. The House has proposed \$135 billion in cuts to SNAP, an almost 18% reduction, over 10 years.<sup>152</sup>

To achieve the deep cut proposed by the House, Congress would either have to impose stricter eligibility barriers that would cut 12–13 million individuals from the program or reduce the already low benefits by \$50 a person.<sup>153</sup> The same House budget resolution proposes huge tax cuts for the wealthiest Americans: Those in the top 0.1 percent of income (earning \$3.3 million or more) would get an average tax cut of \$1.2 million.<sup>154</sup>

WIC, too, is in a precarious position. WIC is not an entitlement program and has therefore not

expanded to address growing need in recent years.<sup>155</sup> In addition, the program faces budget cuts that stand to exclude thousands of women and children from receiving benefits. On March 1, 2013, automatic spending cuts went into effect after Congress failed to reach a deal on the debt ceiling limit, resulting in a cut of \$333 million to WIC.<sup>156</sup> Experts estimated that this change would cut about 600,000 women and children from WIC.<sup>157</sup> A continuing resolution to fund the federal government through September 30, 2013 passed a few weeks later and restored \$250 million to the program, but the shortfall still threatens thousands of women’s and children’s access to WIC benefits.<sup>158</sup>

\* \* \*

As described above, public and private food assistance programs represent a critical but insufficient response to the problem of food insecurity in the United States. Food insecurity has become the norm for many Americans, and the extent of the problem is far greater than these programs can currently address.

Instead of addressing these gaps in assistance and ensuring that these vital programs are able to reach and better serve those who are food insecure, the U.S. government is proposing severe funding cuts and other reforms to DNAPs. These cuts threaten to deprive millions of families of much-needed benefits and exacerbate already alarming rates of food insecurity.

As the above discussion makes clear, the time is ripe for a new approach, one that prioritizes and empowers all people who struggle to access adequate and nutritious food. In short, it is time for the United States to embrace the human right to food. The next section explains what a human rights approach entails and how it should inform the government’s current response to food insecurity in the United States.

## THE NEW FACE OF HUNGER



Tiffany and her daughters in the living room, Jackson, Mississippi

I know a lot of people look down on it, but I am on disability and food stamps now because I'm under doctor's orders not to work while I undergo medical treatment. If I didn't get help, we'd be homeless and I wouldn't be able to feed my girls. I've always known how to manage my money, but now I come up short every month. I juggle things, like the light bill and putting gas into the car, so I can pay the essentials — rent and car insurance. But feeding three girls isn't easy.

My food stamps are depleted after maybe two and a half weeks. That's when our cupboards become bare and there isn't anything left in the deep freezer. I start to worry about where our next meal is coming from.

The first thing my daughters do when they come home from school is look in the refrigerator and say, 'Well, Mom, we don't have this, we don't have that.' I hear those words and I feel like I'm not providing for my children. Where I live, we are only allowed to go to the food pantries every three months. I get vegetables and bread there, but not meat. Not having meat is difficult for my girls. I make sure they always have something to eat — many times it's canned goods.

I know there are a lot of people worse off than us, and I get upset that some people tend to waste food and take it for granted. Children, if you're listening, when parents cook you a nice meal, try to eat everything on your plate, because there are people out there right now who would love to be in your position — like my children and me.



John outside of his home, Canton, Michigan

I feel bad when my mom tries to buy me some food and I say, 'Mom if you're not getting yourself something than I'm not getting anything.' And she says, 'Yes you are.' And I say, 'No I'm not.' It makes me feel sad that my parents sometimes feed us kids and not themselves.

I'm ten years old, and at about my age, kids want to help care for their family a little bit more. I wish I could get a little paper route so I could bring home a check because sometimes we have a little bit of trouble paying the rent and getting enough food.

There was a period, before we got food stamps, when I was so hungry that it hurt a little bit in my stomach and kind of made me out of breath. I didn't tell

my friends about our situation. It was a private thing. I got really bad grades in school then, and I was used to getting good grades. If I'm hungry in school, I can't focus a lot and I don't understand the lesson.

I'm glad that the school I'm in now can provide us breakfast because you need breakfast to get you going in the morning. The school gives us apple slices, bagels and cheese and those little fruit juices. When I don't eat in the morning, it makes me drowsy, and I stare off in space just thinking about lunch. If I didn't get school lunches, I'd be a little disappointed because I might not have enough to eat.

## THE NEW FACE OF HUNGER



**Marilyn at her kitchen table,** Wanblee Pine Ridge Reservation, South Dakota

My life as a senior citizen is probably harder than any other time in my life. Living on a fixed income from Social Security, my husband and I had to adjust from what we used to have to what we have now. We live very simply now—extra stuff is not to be.

My priority is to pay for meds for my husband and myself because we need them to keep alive. That leaves very little money to buy food. I'm not happy we have to give up nourishment for medicine, but we have to do the best we can with the food we acquire. I always try to get things that you can use to stretch a meal. The problem is that the things you can stretch aren't really good for me.

It's a sad situation when you don't have the money to buy fresh food to cook up for your meal. I recently bought a few tomatoes for \$2.89. I just wanted some taste to add to the lettuce. I cut them up real small and used a bit at a time. Usually, we just don't consume vegetables unless they are out of a can.

Whoever can help protect these programs, please do, because while we are just two people, I know there are a whole lot of other people out there who are also hungry.



**John in the park with his family,** Baton Rouge, Louisiana

Until recently, my wife, my 18-month-old daughter and I were doing just fine. I paid my bills and had a decent job. We decided to move to Baton Rouge when I was promised a job. I had an understanding with the owner: he'd pick us up at the Greyhound station and put us up in an apartment until I got a few paychecks tucked away. But he never showed up at the bus station, and so we became homeless.

After a few days of living on the streets, we got into homeless shelters. My wife and daughter were put in one shelter and I in another. During the night, my daughter wakes up screaming, wanting me. During the day, my wife and I worry about what we are going to feed her. We get snack bags from the shelter with things like M&Ms and Cheez-its, but my daughter has started to refuse to

eat the stuff. She is losing weight, and I know that isn't healthy. I can tell that she is hungry because she sleeps a lot. She grabs her teddy bear and just falls asleep in my lap.

We've looked into low-income housing and applied for food stamps, but it seems that it's one step forward, two steps back. My wife and I have applied for work at different places, but nothing has come through. I am starting to think that the system is designed to keep you down.

It kills me to see my wife and daughter hungry. It didn't take us long at all to get left at a bus station, but it is going to take a while to get back to where we were — happy.



“Human rights do not begin after breakfast. But without breakfast, few people have the energy to make full use of their rights.”

**MICHAEL POSNER**

Then-Assistant Secretary of State for Democracy, Human Rights, and Labor, March 2011<sup>159</sup>

### **PART III**

## **THE HUMAN RIGHT TO FOOD: A NEW WAY FORWARD**

**With food insecurity at a high point**, a new approach to food is desperately needed. A human rights approach to food offers a way forward by shifting the focus from food assistance as charity to adequate food as a human right. Adopting a human rights approach to food offers the U.S. government a roadmap for addressing the root causes of food insecurity while also ensuring adequate food for all.

The right to food recognizes individuals as *rights holders*, not simply recipients of government or private assistance.<sup>160</sup> The human rights framework also acknowledges that governments are *duty bearers*<sup>161</sup> that have a responsibility to ensure that the right to food is progressively realized for all individuals under their jurisdiction.<sup>162</sup>

Under the international human rights framework, all people have the right to an adequate standard of living for themselves and their families, including the right to adequate food.<sup>163</sup> At minimum, governments must ensure the right to be free from hunger.<sup>164</sup> The right to adequate food, however, does not simply mean that people must receive a “minimum ration of calories or . . . nutrients.”<sup>165</sup>

Governments must also ensure that people have access to food that is safe and nutritious, meets their dietary needs, and is appropriate to their cultural backgrounds.<sup>166</sup>

Specifically:

**Food must be *accessible* to individuals, both physically and economically.**<sup>167</sup>

- *Economic accessibility* means that individuals must be able to afford food for an adequate diet without having to forgo or compromise other basic needs, such as education, healthcare, and adequate housing.<sup>168</sup>
- *Physical accessibility* means that food must be accessible to all people, including physically vulnerable persons who may struggle to go out to get food, such as the elderly, persons who are ill, or persons with disabilities, among others.<sup>169</sup> Access to food must also be guaranteed for victims of natural disasters and for people who live in remote areas or other areas that are far from grocery stores and markets.<sup>170</sup>



Eleanor Roosevelt—former First Lady of the United States and the first chair of the U.N. Commission on Human Rights—holding a poster of the Universal Declaration of Human Rights, November 1949. (UN Photo)

**Food must be *adequate* to satisfy an individual’s dietary needs and must be nutritious, safe, and culturally appropriate.**<sup>171</sup>

- Determining whether food is adequate must take into account each person’s dietary needs, based on their age, living conditions, health conditions, occupation, and sex, among others.<sup>172</sup> Energy-dense, low-nutrient foods, which may contribute to obesity and other illnesses, are examples of inadequate food.<sup>173</sup>

**Food must be *available* to purchase in stores or people must have the means to produce their own food.**<sup>174</sup>

As part of their obligations, governments must take steps to respect, protect, and fulfill the right to food.<sup>175</sup> *Respecting* the right to food means refraining from enacting laws, policies, or programs that would interfere with people’s ability to exercise their right to food.<sup>176</sup> *Protecting* the right to food means ensuring that third party actors such as corporations do not interfere with people’s

ability to exercise their right to food.<sup>177</sup> *Fulfilling* the right to food means actively facilitating people’s access to adequate food by developing policies and programs that empower people to feed themselves and their families.<sup>178</sup> In situations where people are unable to provide food for themselves, the government must implement effective social programs that directly provide adequate food to those in need.<sup>179</sup>

Applying the human rights framework to the issue of food insecurity in the United States shifts the focus from *individual* or *private* efforts to the government’s responsibility to ensure that people are actually empowered to provide for themselves and their families. The rights-based approach to food demands *accountability* from duty bearers for failures to fulfill the obligations described above.<sup>180</sup>

Particularly in times of economic crisis when governments face resource constraints and must manage trade-offs between various goals, the human rights framework signals to governments

that they must *prioritize* the needs of the most vulnerable and ensure that people’s basic needs and fundamental rights are fulfilled.<sup>181</sup> Moreover, governments must ensure these rights in a *non-discriminatory manner*<sup>182</sup> and must empower people to obtain food in ways that respect their *dignity* and autonomy.<sup>183</sup> Governments must also ensure that people have the opportunity to *participate* in policy decisions that affect their right to food.<sup>184</sup>

Finally, the rights-based approach recognizes that all human rights are *indivisible* and *interdependent*, and that the failure to realize one right will inevitably affect the realization of others.<sup>185</sup> Indeed, the failure to realize the right to food has profound repercussions for people in many other areas of life, such as education, health, and productivity. As described in Part I, these consequences are particularly stark for children.<sup>186</sup>

The human right to adequate food is not new, nor is it foreign to the United States. The right to food is manifested in long-standing American traditions that value the role of government in empowering and supporting individuals and families to meet their basic social and economic needs. The inclusion of the right to food in the Universal Declaration of Human Rights and, later, in the International Covenant on Economic, Social and Cultural Rights (part of the “International Bill of Rights”) was inspired in part by President Franklin Delano Roosevelt’s commitment to ensuring Americans’ “freedom from want” in the wake of the Great Depression.<sup>187</sup>

The Obama administration itself has recognized the importance of rights-based approaches to achieving social and economic freedoms. In a prominent speech in 2011, Michael Posner, then-Assistant Secretary of State for Democracy, Human Rights, and Labor, reaffirmed the United States’ commitment to providing food to those in need and emphasized “the interdependence of all rights and . . . the need for accountability and transparency in their implementation, through the democratic participation of the people.”<sup>188</sup>

Embracing a rights-based approach to food represents a renewal of important national values and promises to advance the United States’ commitment to ensuring that the most basic needs of all Americans are met. Fulfilling the right to food also has cumulative benefits for individuals, and for society as a whole, particularly in the areas of health and education.

The following section recommends the development of a national strategy to help fulfill the right to adequate food. It also provides detailed recommendations for strengthening America’s existing food safety net.



“Food impacts the quality of life,  
which is fundamentally about justice.”

ALISON COHEN  
WhyHunger<sup>189</sup>

## PART IV RECOMMENDATIONS

### A. Develop a National Strategy for Realizing the Right to Adequate Food

In order to fulfill the right to adequate food for all Americans, the U.S. government must develop a comprehensive *national strategy* to ensure that people have access to food that is safe and nutritious, meets their dietary needs, and is appropriate to their cultural backgrounds.<sup>190</sup> This national strategy should:

- Address all aspects of the food system, including the production, processing, marketing, distribution, and consumption of food;
- Address issues in the areas of health, education, employment, and social assistance that affect the realization of the right to adequate food;<sup>191</sup>
- Be informed by a comprehensive and systematic identification of policies and other factors that contribute to food insecurity and undermine the realization of the right to adequate food;<sup>192</sup> and
- Be formulated and implemented through a participatory process,<sup>193</sup> which strengthens input from food insecure communities, sets verifiable benchmarks to monitor progress toward the full

realization of the right to adequate food,<sup>194</sup> and clearly delineates the responsibilities of public officials at the federal, state, and local levels.<sup>195</sup>

The national strategy should seek to ensure that:

**Food is *accessible* to individuals, both physically and economically.**<sup>196</sup>

- *Economic accessibility* can be guaranteed, for example, by ensuring that the minimum wage or social assistance programs adequately assist people to meet the cost of nutritious food without having to forgo or compromise on other basic needs.<sup>197</sup>
- Current social assistance levels are insufficient to ensure that low-income Americans can access the basic goods and services required for an adequate standard of living, including the right to food, and must be improved.<sup>198</sup> Examples of social assistance programs include, but are not limited to, programs that provide housing assistance; jobs and education assistance; and health and nutrition assistance. Attention must also be given to tax policies, to help improve the availability of resources for such programs.

- The minimum wage should at least be a “living wage” that provides an income allowing individuals to support themselves and their families.<sup>199</sup>
- The government must also take immediate steps to strengthen the food safety net. (See below for more detailed proposals in relation to this recommendation).<sup>200</sup>
- *Physical accessibility* must be improved for people living in so-called food deserts—low-income neighborhoods where residents live far from retailers that offer affordable and healthy food.<sup>201</sup> Access to food must also be guaranteed for victims of natural disaster.<sup>202</sup>

**Food is *adequate* to satisfy an individual’s dietary needs and is nutritious, safe, and culturally appropriate.**<sup>203</sup>

- As noted above, energy-dense, low-nutrient foods, which may contribute to obesity and other illnesses, are examples of inadequate food.<sup>204</sup> The U.S. government should develop and advance strategies to tackle the problem of obesity in America, including through measures that improve physical and economic access to healthful food.<sup>205</sup> (See below for additional proposals in relation to this recommendation).<sup>206</sup>

**Food is *available* to purchase in stores or people have the means to produce their own food.**<sup>207</sup>

- Although not the focus of this briefing paper, the U.S. government should consider reforming agricultural policies to support more sustainable and decentralized food systems<sup>208</sup> and subsidize the production of nutritious and healthful foods.<sup>209</sup>

**B. Strengthen the Food Safety Net**

A national strategy is essential to ensuring a holistic and comprehensive approach to fulfilling the right to food. At the same time, the government must take immediate steps to strengthen

the existing food safety net. In particular, the government must reform DNAPs to help ensure that these vital programs reach all who are food insecure. Furthermore, it should ensure that these programs are operated in a manner that empowers beneficiaries to claim their rights with dignity.<sup>210</sup> To achieve these goals, the government should:

**ENSURE THAT FOOD INSECURE AMERICANS CAN CLAIM THEIR RIGHTS BY:**

**Revising SNAP’s eligibility requirements to ensure that the program reaches all food insecure households.**

- Income- and asset-based eligibility requirements should be expanded to ensure SNAP reaches all food insecure households. As noted above, many food insecure households do not meet SNAP’s financial eligibility requirements.<sup>211</sup>
- Eligibility requirements that exclude low-income individuals who are otherwise financially eligible for SNAP should likewise be revised to ensure SNAP reaches all food insecure households. As noted above, able-bodied adults without dependents and many non-citizens are automatically excluded or restricted in their access to SNAP benefits, regardless of their level of need.<sup>212</sup>

**Ensuring that SNAP and WIC continue to serve all eligible persons. In particular, the government should:**

- Ensure that SNAP remains an entitlement program, and is not converted into a block grant, which would limit enrollment based on the amount of funding provided to states, instead of guaranteeing benefits to all qualifying applicants.<sup>213</sup>
- Convert WIC from a block grant to an entitlement program to ensure states do not have to place eligible women and children on wait lists.
  - In the interim, the government should maintain federal funding for WIC at a level that will cover all eligible persons.

**Enhancing strategies to ensure that children have access to nutritious meals when not in school.**

- Summer can be an especially difficult time for children who usually rely on school meals programs.<sup>214</sup> Possible strategies include: expanding funding for and increasing awareness of existing summer nutrition programs<sup>215</sup> and increasing SNAP or WIC benefits over the summer for families with school-age children.<sup>216</sup>

**IMPROVE ACCESS TO DNAPS AND EMPOWER BENEFICIARIES TO CLAIM THEIR RIGHTS WITH DIGNITY BY:**

**Prioritizing efforts to streamline DNAP application, certification, and verification processes.**

- The Food Research and Action Center has proposed numerous measures that could be taken to improve the process for DNAP beneficiaries, including: eliminating face-to-face interviews during the application stage and the recertification phase for targeted households; encouraging joint applications for government benefits; minimizing the need for reapplication by reopening denied applications when missing paperwork is subsequently provided; and improving direct certification processes.<sup>217</sup>

**Developing strategies to increase participation in school meals programs.**

- Access to nutritious and affordable meals in school can have significant benefits for children's health and wellbeing but increasing student participation in these programs has proven to be a challenge.<sup>218</sup> In order to help increase participation, the U.S. government should:
  - Encourage states to enact policies and programs that have proven successful in increasing participation in school meals programs. Possible policies include: enacting laws that require all schools or schools with a certain proportion of low-income students to participate in the SBP, a policy that has been adopted by about half of states;<sup>219</sup> requiring in-classroom or "grab and go"

breakfasts;<sup>220</sup> and funding universal school breakfast and lunch programs, at least in school districts with high rates of eligible children.<sup>221</sup>

**Delivering benefits in a manner that helps reduce stigma.**

- The manner in which benefits are delivered is an important part of ensuring that DNAP beneficiaries can claim their rights with dignity. For example, the use of EBT cards (which operate like debit cards) for SNAP and WIC benefits reduces the stigma associated with traditional DNAP vouchers.<sup>222</sup> As part of the Healthy, Hunger-Free Kids Act, the USDA has introduced a draft rule that requires state WIC agencies to fully transition from a voucher system to EBT cards by 2020.<sup>223</sup> Additional progress is needed so that more vendors are able to accept SNAP and WIC EBT cards, including farmers' markets.<sup>224</sup>

**Launching a public awareness program to help remove stigma from DNAP participation and illustrate the important role that these programs play in supporting American families.**

- One example of such an initiative is the SNAP Alumni Project, a non-governmental campaign connected to the 2013 documentary *A Place At the Table*. Through pictures and stories of former SNAP recipients, the SNAP Alumni Project "champions successful Americans—citizens who once received food stamps and are now leaders in the arts, government, business, sports and education."<sup>225</sup>

**ENHANCE DNAP BENEFITS TO HELP ENSURE ACCESS TO ADEQUATE FOOD BY:**

**Increasing SNAP benefits to allow beneficiaries to purchase sufficient and more nutritious food.**

- The Food Research and Action Center has suggested that current standards for SNAP benefits should be studied, revised, and replaced to more adequately address the needs of recipients.<sup>226</sup>

### **Expanding existing financial incentives to purchase healthful food.**

- The federal Healthy Incentives Pilot Program, for example, gives SNAP participants \$0.30 back for every \$1 spent on fruits and vegetables, effectively subsidizing the cost of these purchases.<sup>227</sup> The government should consider expanding this program or instituting similar initiatives across the country.
- Similarly, the USDA's Fresh Fruit and Vegetable Program (FFVP) reimburses a limited number of participating elementary schools for fresh fruits and vegetables served to children in school.<sup>228</sup> Although the FFVP has been expanded significantly since its creation in 2002, its reach could be broadened to include middle schools and high schools.<sup>229</sup>

### **Continuing to monitor and improve the nutritional changes made to WIC, the NSLP, and the SBP.**

- Recent nutritional changes instituted as part of the Healthy, Hunger-Free Kids Act are a step in the right direction,<sup>230</sup> but concerns remain

about the quality of food offered through all three programs, as well as the influence of corporate agriculture lobbies on the programs' nutrition-based decisions.<sup>231</sup> These nutrition reforms should therefore be closely monitored to ensure that WIC, the NSLP, and the SBP all provide adequate nutrition to beneficiaries.

### **Funding nutrition education programs, which can also play an important role in promoting dietary improvements.**

- The SNAP Nutrition Education (SNAP-Ed) program reimburses state agencies for up to 50% of the cost of providing SNAP-Ed programs.<sup>232</sup> Though the Healthy, Hunger-Free Kids Act of 2010 provided up to \$375 million in funding for SNAP-Ed in FY 2011,<sup>233</sup> this funding was recently reduced by more than \$100 million for FY 2013.<sup>234</sup> This program, as well as existing federal programs to promote nutrition education in schools<sup>235</sup> and through WIC clinics,<sup>236</sup> should be strengthened.

## **CONCLUDING REMARKS**

As this briefing paper makes clear, food insecurity is a widespread problem with serious and far-reaching consequences for millions of Americans. Yet despite its magnitude and implications, addressing food insecurity has not been a political priority. A human rights approach suggests a new way forward: one that prioritizes the basic needs of all Americans; supports a robust social safety net; comprehensively tackles the root causes of food

insecurity; and ensures the availability, accessibility, and adequacy of food for all. This approach is consonant with American values, including the U.S. government's longstanding commitment to uphold human rights. Now is the time to act on these values and ensure that strong policies and programs are in place to secure the right to adequate food for all.

## THE NEW FACE OF HUNGER



**Rhonda on  
her front porch,**  
Zion City,  
Louisiana

If my mom was still able to work, we'd probably be doing fine. She's a certified nurse and used to have a good-paying job. But a C-section left her with lots of medical problems, and she's not allowed to work. My dad lost his good-paying job and now works in the back at Krispy Kreme Donuts. I had to postpone college to help out my parents, but I've been looking for a job for six months and can't find one. So we've become six people living on one income—my parents, my younger brother and sister, and my baby and me.

It's hard for us, but somehow we get by. There are months when my parents ask us to choose between having the lights on and running water, so our neighbor lets us take buckets of water from his house. We can't put off paying my mom's medical bills, so we struggle to get enough to eat—especially since

losing our food stamps the last time my mom was in the hospital. She couldn't get the paperwork in on time and every time she tries to reapply, something goes wrong. It makes a big difference that we get canned food and packs of noodles once a month from a food pantry. That's pretty much what we eat since we can't afford fresh foods from the stores around here (they have really high prices).

I'm like the backup parent, the person my little brother and sister lean on most of the time. At home, they come to me a lot and say, 'Sissy, you know, I'm hungry.' So I make sure they eat breakfast and lunch at the school programs.

I still want to go to college and become a nurse. Then I'll be able to get a good job and help out my parents with the bills.



## SOURCES

- 1 Interview with Hannah Lupien, Food Policy Strategist, West Side Campaign Against Hunger in N.Y.C., NY (Feb. 13, 2013).
- 2 ALISHA COLEMAN-JENSEN ET AL., USDA, HOUSEHOLD FOOD SECURITY IN THE UNITED STATES IN 2011 AT 16 (2011) [hereinafter USDA, HOUSEHOLD FOOD SECURITY], available at <http://www.ers.usda.gov/media/884525/err141.pdf>. The U.S. Department of Agriculture (USDA) calculates its household food security statistics on the basis of an annual survey that asks one adult in each household about experiences and behaviors in the past year that are indicative of food insecurity. The estimated number of people living in food insecure households is also based on this survey. The USDA defines food insecurity as “limited or uncertain availability of nutritionally adequate and safe foods or limited or uncertain ability to acquire acceptable foods in socially acceptable ways.” *Food Security in the U.S.: Measurement*, USDA, <http://www.ers.usda.gov/topics/food-nutrition-assistance/food-security-in-the-us/measurement.aspx> (last visited Mar. 12, 2013). Food insecure persons may also experience hunger. The term “hunger” is generally used to describe the physiological experience of not having sufficient food to eat. David H. Holben, *The concept and definition of hunger and its relationship to food insecurity*, 3 (Background paper prepared for the Panel to Review U.S. Department of Agriculture’s Measurement of Food Insecurity and Hunger, 2005).
- 3 USDA, HOUSEHOLD FOOD SECURITY, *supra* note 2, at 5–6 (According to the USDA, among survey participants identified as having very low food security, 97% reported an adult in the household cutting the size of or skipping meals, 65% reported being hungry, and 27% reported not eating for a whole day in the past twelve months due to lack of economic access to food.).
- 4 FEEDING AMERICA, HUNGER IN AMERICA 2010 AT 167 (2010) [hereinafter FEEDING AMERICA, HUNGER IN AMERICA 2010], available at [http://feedingamerica.issuelab.org/resource/hunger\\_in\\_america\\_2010\\_national\\_report](http://feedingamerica.issuelab.org/resource/hunger_in_america_2010_national_report) (According to a Feeding America study based on interviews with 62,000 clients in the Feeding America network, food pantry clients or their families reported having to choose at least once in the previous 12 months between: paying for food and paying for utilities or heating fuel (49.2%); paying for food and paying for rent or mortgage (40.6%); paying for food and paying for medicine or medical care (36%); paying for food or paying for transportation (35.1%); paying for food and paying for gas for a car (38.1%).).
- 5 See *Definitions of Food Security*, USDA, <http://www.ers.usda.gov/topics/food-nutrition-assistance/food-security-in-the-us/definitions-of-food-security.aspx#UUF5MBnRaXQ> (last visited Apr. 27, 2013) (citing calculations conducted by the USDA Economic Research Service using data from the 2011 Current Population Survey Food Security Supplement). According to the USDA, 91% of people with low food security and 98.5% of people with very low food security worried that food would run out; nearly 81% of people with low food security and nearly 97% with very low food security reported running out of food; and nearly 74% of people with low food security and 95% of people with very low food security reported not being able to afford a balanced meal. For exact percentages, see the chart data in Excel format. *Id.*
- 6 USDA, HOUSEHOLD FOOD SECURITY, *supra* note 2, at 6.
- 7 See *Supplemental Nutrition Assistance Program Participation and Costs*, USDA, <http://www.fns.usda.gov/pd/SNAPsummary.htm> (last visited Apr. 27, 2013) [hereinafter *SNAP Participation and Costs*]; see also Margaret Andrews & David Smallwood, *What’s Behind The Rise in SNAP Participation*, AMBER WAVES (Mar. 1, 2012), available at <http://www.ers.usda.gov/amber-waves/2012-march/what%E2%80%99s-behind-the-rise-in-snap-participation.aspx> (noting that “declining economic conditions are a major factor” in the rise in SNAP participation, and adding that “economic factors alone do not fully explain the growth in SNAP participation. Changes in SNAP policies, some of them associated with the 2002 and 2008 Farm Acts, have made benefits easier to apply for, available to more people, and more generous.”).
- 8 See ALISHA COLEMAN-JENSEN ET AL., HOUSEHOLD FOOD INSECURITY IN THE UNITED STATES IN 2011: STATISTICAL SUPPLEMENT 3, n.3 (2012), available at

- <http://www.ers.usda.gov/media/884603/apn-058.pdf> (providing a breakdown of statistics by race/ethnicity). The U.S. government disaggregates its data on food insecurity by the race or ethnicity of households. Households are asked to identify as white/non-Hispanic, black/non-Hispanic, Hispanic, or “other.” The USDA notes that the term “Hispanic” includes people of all races. *Id.*
- 9 USDA, HOUSEHOLD FOOD SECURITY, *supra* note 2, at 10.
  - 10 The term “Americans,” as used in this briefing paper, is meant to include both nationals and non-nationals who reside in the United States.
  - 11 USDA, HOUSEHOLD FOOD SECURITY, *supra* note 2, at 11 (2011) (author’s own calculations based on available data. Calculated by dividing the number of food insecure people over 100% of the poverty guidelines by the number of people above 100% of the poverty guidelines.).
  - 12 See, e.g., JON COOK & KAREN JENG, FEEDING AMERICA, CHILD FOOD INSECURITY: THE ECONOMIC IMPACT ON OUR NATION 26 (2009) [hereinafter FEEDING AMERICA, CHILD FOOD INSECURITY], *available at* <http://feedingamerica.org/SiteFiles/child-economy-study.pdf> (referring to childhood food insecurity as an “invisible epidemic”).
  - 13 See CHERYL D. FRYAR ET AL., PREVALENCE OF OVERWEIGHT, OBESITY, AND EXTREME OBESITY AMONG ADULTS: UNITED STATES, TRENDS 1960–1962 THROUGH 2009–2010 at 1 (2012), *available at* [http://www.cdc.gov/nchs/data/hestat/obesity\\_adult\\_09\\_10/obesity\\_adult\\_09\\_10.pdf](http://www.cdc.gov/nchs/data/hestat/obesity_adult_09_10/obesity_adult_09_10.pdf) (noting that the incidence of obesity in the United States has more than doubled since the 1960s); ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT, OBESITY UPDATE 2012 at 2 (2012), *available at* <http://www.oecd.org/els/health-systems/49716427.pdf> (noting that the United States now has the highest obesity rates in the world).
  - 14 FOOD RESEARCH & ACTION CENTER, HUNGER AND OBESITY? MAKING THE CONNECTIONS I (2010) [Hereinafter FOOD RESEARCH & ACTION CENTER, HUNGER AND OBESITY?], *available at* <http://www.frac.org/pdf/Paradox.pdf>.
  - 15 See Liping Pan et al., *Food Insecurity is Associated with Obesity among US Adults in 12 States*, 112 J. ACAD. NUTRITION & DIETETICS 1403, 1404–06 (2012). A study comparing the obesity rates of food secure and food insecure adults concluded that there was a significant correlation between food insecurity and obesity in each of the 12 states where the study was conducted. While the obesity rate among food secure adults was 25.2%, the obesity rate among food insecure adults was 35.1%. Within certain sub-groups, such as women, non-Hispanic blacks, and adults with higher educational attainment, there was an even stronger correlation between food insecurity and obesity. *Id.*
  - 16 Telephone Interview with Eric Olsen, Senior Vice President of Government Relations and Public Policy, Feeding America (Nov, 5, 2012).
  - 17 FOOD RESEARCH & ACTION CENTER, HUNGER AND OBESITY?, *supra* note 14, at 1.
  - 18 A PLACE AT THE TABLE (Participant Media 2012). A Place at the Table is a documentary film released in 2012 that highlights the problems of food insecurity and hunger in the United States.
  - 19 USDA, HOUSEHOLD FOOD SECURITY, *supra* note 2, at 5.
  - 20 MICHELE VER PLOEG ET AL., USDA, ACCESS TO AFFORDABLE AND NUTRITIOUS FOOD: MEASURING AND UNDERSTANDING FOOD DESERTS AND THEIR CONSEQUENCES: REPORT AND CONGRESS at iii (2009) [hereinafter USDA, FOOD DESERTS], *available at* [http://www.ers.usda.gov/media/242675/ap036\\_1\\_.pdf](http://www.ers.usda.gov/media/242675/ap036_1_.pdf). USDA also found that segregation by race and segregation by income inequality were the leading predictors of whether a household would have low, medium, or high access levels to large grocery stores. *Id.* at 44. It is important to note that distance from supermarkets or grocery stores does not in and of itself mean that a person has *inadequate* food access. A person may live more than a mile from a supermarket but still able to access a sufficient amount of quality food for a healthy diet. *Id.* at 5.
  - 21 See *id.* at 52–54 (citing numerous studies showing that greater access to supermarkets is positively associated with healthier food intakes and reduced risk of obesity).
  - 22 JOEL BERG, CENTER FOR AMERICAN PROGRESS, HOW PRESIDENT OBAMA CAN REVERSE AMERICA’S WORSENING HUNGER METRICS 5 (2013) [hereinafter BERG, REVERSE AMERICA’S WORSENING HUNGER METRICS], *available at* <http://www.americanprogress.org/wp-content/uploads/2013/02/HungerReport-6.pdf> (noting that “[t]he increase in child food insecurity was less than the overall increase in food insecurity,

- likely because of the great efforts parents go through to shield their children from hunger, as well as assistance provided by the Department of Agriculture’s child nutrition and nutrition-assistance programs.”). Joel Berg’s calculations are based on data from USDA, HOUSEHOLD FOOD SECURITY, *supra* note 2.
- 23 See FEEDING AMERICA, CHILD FOOD INSECURITY, *supra* note 12, at 12 (noting that adequate prenatal nutrition is critical for normal fetal development). For very young children (0–3 years), food insecurity significantly increases their chances of having “fair/poor” health ratings (as opposed to “excellent/good” health ratings) and increases the probability of hospitalization. *Id.* at 15.
  - 24 For example, a study found that “kindergartners from food insecure homes not only entered school with lower math scores, but also learned less over the course of the school year.” *Id.* at 22 (citing Joshua Winicki & Kyle Jemison, *Food Insecurity and Hunger in the Kindergarten Classroom: Its Effect on Learning and Growth*, 21 CONTEMPORARY ECON. POL’Y 145 (2003), available at <http://naldc.nal.usda.gov/download/14599/PDF>). Another study found that third graders who had been food insecure in kindergarten had lower reading and math scores than third graders who had not been food insecure in kindergarten. FEEDING AMERICA, CHILD FOOD INSECURITY, *supra* note 12, at 22 (citing Edward A. Frongillo et al., *Food Stamp Program Participation Is Associated with Better Academic Learning among School Children*, 136 J. NUTRITION 1077 (2006)).
  - 25 See FEEDING AMERICA, CHILD FOOD INSECURITY, *supra* note 12, at 23 (citing Ronald E. Kleinman et al., *Hunger in Children in the United States: Potential Behavioral and Emotional Correlates*, 101 PEDIATRICS e3 (1998)).
  - 26 See FEEDING AMERICA, CHILD FOOD INSECURITY, *supra* note 12, at 23 (“When human capital deficits (e.g., health problems, including those correlated with food insecurity) interfere with cognitive development, achievement of school readiness, learning or academic achievement, they can impact educational attainment and reduce one’s earning capacity. Reduced earning capacity, in turn, reduces that person’s lifetime earnings, and their economic contribution to the social and economic systems.”).
  - 27 DONALD S. SHEPARD ET AL., CENTER FOR AMERICAN PROGRESS, HUNGER IN AMERICA: SUFFERING WE ALL PAY FOR 12–13 (2011), available at [http://www.americanprogress.org/wp-content/uploads/issues/2011/10/pdf/hunger\\_paper.pdf](http://www.americanprogress.org/wp-content/uploads/issues/2011/10/pdf/hunger_paper.pdf).
  - 28 See *id.* at 5–6 (describing their methodology).
  - 29 See *id.* at 6–9. These costs do not include the \$94 billion that the federal government spent in 2010 on domestic nutrition assistance programs (DNAPs) like SNAP. *Id.* at 1.
  - 30 See Erik A. Finkelstein et. al., *Annual Medical Spending Attributable To Obesity: Payer- And Service-Specific Estimates*, 28 HEALTH AFF. w822, w822 (2009), available at <http://content.healthaffairs.org/content/28/5/w822.full.pdf+html> (estimating that obesity accounts for \$147 billion in preventable medical care costs each year). It is important to note that these cost are associated with obesity more generally, and not obesity amongst food insecure individuals specifically. See *id.* at w823 (explaining the study’s methodology).
  - 31 SHEPARD ET AL., *supra* note 27, at 2 .
  - 32 *Country Comparison: GDP*, CIA WORLD FACTBOOK, <https://www.cia.gov/library/publications/the-world-factbook/rankorder/2001rank.html> (last visited Apr. 27, 2013) (noting that, in 2012, the United States had the highest gross domestic product (GDP) in the world).
  - 33 CARMEN DENAVAS-WALT ET AL., U.S. CENSUS BUREAU, INCOME, POVERTY, AND HEALTH INSURANCE COVERAGE IN THE UNITED STATES: 2011 at 50 (2012), available at <http://www.census.gov/prod/2012pubs/p60-243.pdf> (based on author’s own calculations). In 2011, the poverty threshold for a family of three was \$17,916 in annual earnings. *Poverty Thresholds*, U.S. CENSUS BUREAU [hereinafter *Poverty Thresholds*], available at <http://www.census.gov/hhes/www/poverty/data/threshld/> (last visited, Apr. 30, 2013) (click on “2011” for poverty thresholds for different family sizes and characteristics).
  - 34 *22 million Americans Are Unemployed or Underemployed*, NPR (April 4, 2013, 10:00 AM), <http://www.npr.org/blogs/money/2013/04/04/175697813/23-million-americans-are-unemployed-or-underemployed> (citing the Bureau of Labor Statistics) (percentage increase based on author’s own calculations). Statistic is based on the Bureau of Labor Statistics’ “broader unemployment” or “U-6” statistic. See *Table A-15. Alternative Measures of Labor Underutilization*, U.S. DEP’T OF LABOR, BUREAU OF LABOR STATISTICS, <http://bls.gov/webapps/legacy/cpsatab15.htm> (last visited Apr. 30, 2013) (“U-6



- [is the] [t]otal unemployed, plus all persons marginally attached to the labor force, plus total employed part time for economic reasons, as a percent of the civilian labor force plus all persons marginally attached to the labor force.”).
- 35 Michael Greenstone & Adam Looner, *The Uncomfortable Truth About American Wages*, N.Y. TIMES, <http://economix.blogs.nytimes.com/2012/10/22/the-uncomfortable-truth-about-american-wages/> (last visited Apr. 27, 2013) (“When we consider all working-age men, including those who are not working, the real earnings of the median male have actually declined by 19 percent since 1970. This means that the median man in 2010 earned as much as the median man did in 1964—nearly a half century ago.... Since 2000, the earnings of the median woman have fallen by 6 percent.”). The U.S. government has also failed to raise the federal minimum wage to a living wage standard. See, e.g., *House Republicans Unanimously Vote Down Minimum Wage Increase*, HUFFINGTON POST (Mar. 13, 2013, 6:25 PM), [http://www.huffingtonpost.com/2013/03/15/gop-minimum-wage-increase\\_n\\_2884912.html](http://www.huffingtonpost.com/2013/03/15/gop-minimum-wage-increase_n_2884912.html) (describing how a proposal to increase the minimum wage to \$10.10/hour over the next two years was recently defeated in Congress). The current federal minimum wage (set at \$7.25 per hour) is woefully inadequate for covering Americans’ basic needs. In 2012, for example, 3.6 million earned at or below the federal minimum wage. For these 3.6 million Americans, working full time earning the minimum wage would result in an annual income \$15,080, placing them near or below poverty if they have one or more dependents. *Poverty Thresholds*, *supra* note 33 (click on “2011” for poverty thresholds for different family sizes and characteristics). Annual salary based on author’s calculations assuming a 40-hour work-week for 52 weeks a year.
- 36 Jessica Dickler, *Family Health Care Costs Exceed \$20,000 This Year*, CNN MONEY, (Mar. 29, 2012, 12:55 PM), <http://money.cnn.com/2012/03/29/pf/healthcare-costs/index.htm> (“Last year, workers’ out-of-pocket costs rose 9.2% to \$3,280 for a typical family of four....”).
- 37 See *infra* part II.D.
- 38 Telephone Interview with Abby Leibman, President and CEO, MAZON: A Jewish Response to Hunger (Nov. 6, 2012).
- 39 See generally RANDY ALISON AUSSENBERG & KIRSTEN J. COLELLO, CONG. RES. SERV., DOMESTIC FOOD ASSISTANCE: SUMMARY OF PROGRAMS (2012), available at [www.fas.org/sgp/crs/misc/R42353.pdf](http://www.fas.org/sgp/crs/misc/R42353.pdf).
- 40 See *id.* at 7–15. The total annual expenditure on DNAPs is approximately \$105 billion. The spending on the four largest programs is approximately \$98 billion. (Author’s own calculations, by aggregating FY 2012 spending).
- 41 See USDA, BUILDING A HEALTHY AMERICA: A PROFILE OF THE SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM 12 (2012) [hereinafter USDA, BUILDING A HEALTHY AMERICA], available at <http://www.fns.usda.gov/ora/MENU/Published/snap/FILES/Other/BuildingHealthyAmerica.pdf> (noting that 33% of individuals who are enrolled in DNAPs receive benefits from two of the four major programs, 20% receive benefits from three of the four programs, and 6% receive benefits from all four programs).
- 42 See AUSSENBERG & COLELLO, *supra* note 39, at 7.
- 43 *USDA Food Stamp Program: Food Stamps Make America Stronger*, USDA, <http://www.fns.usda.gov/cga/FactSheets/SNAP.htm> (last updated Nov. 27, 2012).
- 44 *Policy Basics: Introduction to the Supplemental Nutrition Assistance Program (SNAP)*, CENTER ON BUDGET & POLICY PRIORITIES, <http://www.cbpp.org/cms/index.cfm?fa=view&id=2226> (last updated Mar. 28, 2013).
- 45 *SNAP Participation and Costs*, *supra* note 7.
- 46 *10 Facts You Should Know About SNAP*, USDA, <http://www.fns.usda.gov/snap/outreach/Translations/English/10facts.htm> (last updated Apr. 11, 2012).
- 47 The federal poverty guidelines are the version of the federal poverty measure used for administrative purposes such as determining financial eligibility for certain federal programs like SNAP. The federal poverty guidelines are a simplified version of the poverty threshold, which is updated each year by the U.S. Census Bureau and used primarily for statistical purposes. *Further Resources on Poverty Measurement, Poverty Lines, and Their History*, DEPT OF HEALTH & HUMAN SERVICES, <http://aspe.hhs.gov/poverty/contacts.cfm#g> (last visited Apr. 30, 2013).
- 48 *Supplemental Nutrition Assistance Program: Eligibility*, USDA, <http://www.fns.usda.gov/snap/>

- applicant\_recipients/eligibility.htm#Resources (last visited Apr. 27, 2013). Net income is calculated by subtracting deductions allowed by SNAP from gross income. *See* MARK STAYER ET AL., USDA, CHARACTERISTICS OF SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM HOUSEHOLDS: FISCAL YEAR 2011 at 5 (2012) [hereinafter USDA, CHARACTERISTICS], available at <http://www.fns.usda.gov/ora/MENU/Published/snap/FILES/Participation/2011Characteristics.pdf> (summarizing eligible deductions for SNAP). Household assets are generally liquid resources, such as cash or resources easily converted into cash, although some non-liquid resources are included. *See id.* at 6 (defining “resources”).
- 49 *See generally* GENE FALK & RANDY ALISON AUSSENBERG, CONG. RES. SERV., THE SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM: CATEGORICAL ELIGIBILITY I (2012), available at [www.fas.org/sgp/crs/misc/R42054.pdf](http://www.fas.org/sgp/crs/misc/R42054.pdf) (offering a detailed explanation of categorical eligibility).
- 50 SNAP’s income eligibility requirements are under-inclusive in part because they are based on the federal poverty guidelines, which far underestimate the cost of living and do not adjust for variations in cost of living between states and between rural and urban areas. *See* D. Stanley Eitzen & Maxine Baco Zinn, SOCIAL PROBLEM 183 (10TH ED. 2006) (citing studies concluding that the federal poverty guidelines underestimate the needs of low-income Americans); *see also Measuring Poverty in The United States*, NATIONAL CENTER FOR CHILDREN IN POVERTY, [http://www.nccp.org/publications/pub\\_876.html](http://www.nccp.org/publications/pub_876.html) (last visited, Apr. 14, 2013) (explaining that the current poverty measure is based on outdated assumptions about family expenditures); JOANNE F. GUTHRIE ET AL., CAN FOOD STAMPS DO MORE TO IMPROVE FOOD CHOICES? 4 (2007), available at [http://www.ers.usda.gov/media/448684/eib29\\_awaiticle\\_1\\_.pdf](http://www.ers.usda.gov/media/448684/eib29_awaiticle_1_.pdf) (“About 17 percent of food stamp participants live in areas where the ‘cost of enough food’ is 10 percent above the national average or higher.”).
- 51 USDA, HOUSEHOLD FOOD SECURITY, *supra* note 2, at 11 (author’s own calculations, calculated by taking the number of food insecure households between 130–185% of the federal poverty guidelines and dividing by all households between 130–185% of the federal poverty guidelines). Some households over 130% of gross income may qualify for SNAP due to categorical eligibility and the exclusion of the gross income requirement for households with elderly or disabled individuals. These households are still subject to the net-income requirement. *See* FALK & AUSSENBERG, *supra* note 49, at 12.
- 52 *See SNAP: Able-Bodied Adults Without Dependents (ABAWDS)*, USDA, <http://www.fns.usda.gov/snap/rules/memo/PRWORA/abawds/abawdspage.htm> (last visited Apr. 28, 2013). Individuals are exempt from this provision if they are: under 18 or 50 years of age or older, responsible for the care of a child or incapacitated household member, medically certified as physically or mentally unfit for employment, pregnant, or already exempt from the work requirements of the Food Stamp Act. *Id.* The American Recovery and Reinvestment Act of 2009 also suspended the three-month limitation for receiving SNAP benefits from April 2009–September 2010. *See* USDA, BUILDING A HEALTHY AMERICA, *supra* note 41, at 25.
- 53 Currently the following groups of non-citizens are eligible for SNAP benefits if they meet other eligibility requirements: lawful permanent residents who have lived in the United States for five years; children under the age of eighteen; refugees, asylees, or individuals granted a stay of deportation; women and children petitioning for legal permanent resident status under the Violence against Women Act (VAWA) who have resided in the country for at least five years; members of the U.S. Armed forces, former members of the U.S. Armed Forces, and dependents of current and former service members; those receiving disability benefits; and those with forty quarters of work history. Undocumented immigrants are currently excluded from participating in SNAP. *See* USDA, CHARACTERISTICS, *supra* note 48, at 7; CENTER FOR PUBLIC POLICY PRIORITIES, IMMIGRANT BENEFITS UPDATE No. 202 (2003), available at <http://www.cppp.org/files/3/PP202.pdf> (noting that women and children petitioning for legal status under VAWA are eligible to apply for SNAP benefits).
- 54 *See* FOOD RESEARCH & ACTION CENTER, ACCESS AND ACCESS BARRIERS TO GETTING FOOD STAMPS: A REVIEW OF THE LITERATURE 27–34, 44–47, 48–51, 56–61 (2008) [hereinafter FRAC, ACCESS BARRIERS], available at <http://frac.org/wp-content/uploads/2009/09/fspaccess.pdf> (synthesizing numerous studies on barriers to accessing SNAP).

- 55 USDA, BUILDING A HEALTHY AMERICA, *supra* note 41, at 13. Many of these people actually qualify for substantial benefits: Nearly 58% of eligible nonparticipants would qualify for a monthly benefit of more than \$100 and nearly 35% would qualify for more than \$200. *Id.* at 14.
- 56 See SUSAN BARTLETT & NANCY BURNSTEIN, ABT ASSOCIATES INC., FOOD STAMP PROGRAM ACCESS STUDY: ELIGIBLE NONPARTICIPANTS 26–27 (2004), available at <http://naldc.nal.usda.gov/download/45670/PDF> (noting a number of reasons why eligible individuals chose not to participate in SNAP, including: having to answer personal questions (26%), filling out too much paperwork (40%); taking too much time away from work (22%); and difficulties getting to the food stamp office (13%)).
- 57 Simplified reporting procedures allow states to certify beneficiaries for six months, rather than three months, and hold recipients accountable for reporting to the SNAP office only when their incomes exceed 130 percent of the poverty guideline. Andrews & Smallwood, *supra* note 7. By 2010, all 50 states had adopted the simplified reporting option. USDA, BUILDING A HEALTHY AMERICA, *supra* note 41, at 32.
- 58 In 2008, four states—Arizona, California, New York, and Texas—required SNAP applicants to have their fingerprints taken as part of the application process. FRAC, ACCESS BARRIERS, *supra* note 54, at 68. Today, only Arizona continues to require fingerprinting as part of the SNAP application process. See Mark Dunlea, *Fingerprinting to be Abolished for SNAP Applicants*, FOOD SYSTEMS NETWORK NYC (June 2, 2012), <http://www.foodsystemsnyc.org/node/2232> (discussing New York’s decision to eliminate fingerprinting as a requirement for accessing SNAP benefits); CATHY ROBERTS & KRISTIN BROWN LILLEY, EMPIRE JUSTICE CENTER, TIME TO LEAVE FINGERPRINTS BEHIND: FAIR HEARINGS IN NYC SHOW HOW UNFAIR FINGER IMAGING IS FOR NEW YORKERS 4 (2011), available at <http://www.empirejustice.org/assets/pdf/publications/reports/time-to-leave-finger-prints.pdf> (noting that California and Texas eliminated their finger-imaging requirement for SNAP applicants). In California, researchers found that abolishing the finger-imaging requirement would increase the state’s SNAP enrollment by 7% while decreasing its administrative costs by about 13%. CAROLINE DANIELSON & JACOB ALEX KLERMAN, PUBLIC POLICY INSTITUTE OF CALIFORNIA, CALIFORNIA’S FOOD STAMP PROGRAM: PARTICIPATION AND COST CHALLENGES FOR THE STATE 15 (2011), available at [http://www.ppic.org/content/pubs/report/R\\_911CDR.pdf](http://www.ppic.org/content/pubs/report/R_911CDR.pdf); see also Will Evans, *Study Supports Bill to End Fingerprints for Food Stamp Recipients*, CALIFORNIA WATCH, <http://californiawatch.org/dailyreport/study-supports-bill-end-fingerprints-food-stamp-recipients-12736>, (Sept. 23, 2011).
- 59 USDA, BUILDING A HEALTHY AMERICA, *supra* note 41, at 27 (giving examples of SNAP modernization efforts taken by some states).
- 60 USDA, CHARACTERISTICS, *supra* note 48, at 9.
- 61 USDA, BUILDING A HEALTHY AMERICA, *supra* note 41, at 19.
- 62 LAURA CASTNER & JULIETTE HENKNE, BENEFIT REDEMPTION PATTERNS IN THE SUPPLEMENTAL NUTRITION PROGRAM: FINAL REPORT at xxvii (2011), available at <http://www.fns.usda.gov/ora/MENU/Published/snap/FILES/ProgramOperations/ARRASpendingPatterns.pdf> (“On average, SNAP households have less than one-quarter of their benefits left by the middle of the month.”).
- 63 FOOD RESEARCH & ACTION CENTER, REPLACING THE THRIFTY FOOD PLAN IN ORDER TO PROVIDE ADEQUATE ALLOTMENTS FOR SNAP BENEFITS I–4 (2012) [hereinafter FRAC, REPLACING THE THRIFTY FOOD PLAN], available at [frac.org/pdf/thrifty\\_food\\_plan\\_2012.pdf](http://frac.org/pdf/thrifty_food_plan_2012.pdf) (“[SNAP’s] most important weakness is that benefits are not adequate to get most families through the whole month, let alone to allow them to buy the foods needed for a quality diet. Benefits are inadequate, in part, because they are based on the U.S. Department of Agriculture’s (USDA) impractical Thrifty Food Plan. The Thrifty Food Plan [includes the following weaknesses]: [] impractical lists of foods; lacks the variety called for in the Dietary Guidelines for Americans; unrealistically assumes adequate facilities and time for food preparation; unrealistically assumes food availability; unrealistically assumes food affordability; unrealistically assumes adequate, affordable transportation; underestimates food waste; is exacerbated in its inadequacy by SNAP benefit calculations; costs more than the SNAP allotment in many parts of the country; and ignores special dietary needs.”); see also NOEL BLISARD ET AL., USDA, LOW-INCOME HOUSEHOLDS’ EXPENDITURES ON FRUITS AND

- VEGETABLES at i (2004), *available at* [http://www.ers.usda.gov/media/880443/aer833\\_002.pdf](http://www.ers.usda.gov/media/880443/aer833_002.pdf) (finding that “[o]n average, low-income households spent \$3.59 per capita per week on fruits and vegetables in 2000 while higher income households spent \$5.02—a statistically significant difference.”).
- 64 Marion Nestle, *Strategies to Prevent Childhood Obesity Must Extend Beyond School Environments*, 39 AM. J. PREVENTATIVE MEDICINE 280, 280 (2010), *available at* [http://www.foodpolitics.com/wp-content/uploads/AJPM\\_101.pdf](http://www.foodpolitics.com/wp-content/uploads/AJPM_101.pdf) (noting that “‘junk foods,’ [have] poor nutritional quality relative to calories” and “fresh foods appear to be more expensive because they are.”).
- 65 USDA, REPORT OF THE DIETARY GUIDELINES ADVISORY COMMITTEE ON THE DIETARY GUIDELINES FOR AMERICANS, 2010 at I (2010), *available at* <http://www.cnpp.usda.gov/Publications/DietaryGuidelines/2010/DGAC/Report/2010DGACReport-camera-ready-Jan11-11.pdf> (“On average, Americans of all ages consume too few vegetables, fruits, high-fiber whole grains, low-fat milk and milk products, and seafood and they eat too much added sugars, solid fats, refined grains, and sodium.”); *see id.* at 6 (“Poor dietary intake has been linked to excess body weight and numerous diseases and conditions. . . . Even if the overweight/obesity epidemic resolves, the problems of chronic disease would continue to be a major health problem because poor-quality diets, even in the absence of overweight/obesity, increase the risk some of our most common chronic diseases.”).
- 66 USDA, *Diet Quality of Low-Income and Higher Income Americans in 2003–2004 as Measured by the Healthy Eating Index—2005*, 1 (2008), *available at* <http://www.cnpp.usda.gov/Publications/NutritionInsights/Insight42.pdf> (“Although the average [Healthy Eating Index—2005] total scores of the low-income and higher income populations were not significantly different, important differences were found in several component scores. People in low-income families had significantly lower component scores for Total Vegetables, Dark Green and Orange Vegetables and Legumes, and Whole Grains than did higher income families.”); *see also* FRAC, REPLACING THE THRIFTY FOOD PLAN, *supra* note 63, at 1–4; Elizabeth Frazao et al., *Food Spending Patterns of Low-Income Households: Will Increasing Purchasing Power Result in Healthier Food Choices*, in CAN FOOD STAMPS DO MORE TO IMPROVE FOOD CHOICES? *supra* note 49, at 17; but *see* USDA, FOOD EXPENDITURES AND DIET QUALITY AMONG LOW-INCOME HOUSEHOLDS AND INDIVIDUALS (summary) (2010), *available at* [www.fns.usda.gov/.../FoodExpendDietQuality\\_Summary.pdf](http://www.fns.usda.gov/.../FoodExpendDietQuality_Summary.pdf) (noting that increasing SNAP benefits may not necessarily lead to healthier food purchases).
- 67 Interview with Debra, food pantry customer in N.Y.C., NY (Feb. 28, 2013).
- 68 Lyndsey Layton, *Lawmakers Find \$21 a Week Doesn't Buy a Lot of Groceries*, WASH. POST (May 16, 2007), <http://www.washingtonpost.com/wp-dyn/content/article/2007/05/15/AR2007051501957.html>.
- 69 AUSSENBERG & COLELLO, *supra* note 39, at 10.
- 70 USDA, THE FOOD ASSISTANCE LANDSCAPE: FY 2012 ANNUAL REPORT 3–4 (2013) [hereinafter USDA, THE FOOD ASSISTANCE LANDSCAPE], *available at* [http://www.ers.usda.gov/media/1060737/eib-109\\_single-pages.pdf](http://www.ers.usda.gov/media/1060737/eib-109_single-pages.pdf). In FY 2012, 59% of the lunches served were free and 9% were reduced price. Students who pay the full price for the remaining 32% of school lunches also receive slightly subsidized meals through this program. *Id.*; *see also* KATHERINE RALSTON ET AL., USDA, THE NATIONAL SCHOOL LUNCH PROGRAM: BACKGROUND, TRENDS, AND ISSUES I (2008) [hereinafter USDA, NSLP: BACKGROUND, TRENDS, AND ISSUES] (noting that the NSLP “subsidiz[es] full-price lunches to a small extent”).
- 71 USDA, THE FOOD ASSISTANCE LANDSCAPE, *supra* note 70, at 3.
- 72 *Id.* The vast majority of children participating—over ten million students—receive either free or reduced price breakfast. *Id.* at 4.
- 73 The NSLP reimbursed participating school food authorities for the lunches they served at the following rates for the 2012–2013 school year: \$2.86 (free lunch); \$2.46 (reduced-price lunch); \$0.27 (paid lunch). USDA, *National School Lunch Program*, 2 (2012) [hereinafter USDA, *National School Lunch Program*], *available at* <http://www.fns.usda.gov/cnd/lunch/AboutLunch/NSLPFactSheet.pdf>. In addition to cash reimbursements, the USDA donates so-called “entitlement” commodities to schools for the NSLP at a value of 22.75 cents for each meal served. The USDA also purchases bonus commodities at its discretion and makes them available to schools, but those amounts vary according to the market, as bonus commodities are only purchased to balance out agricultural surplus. *Id.*; *see also* USDA, NSLP: BACKGROUND, TRENDS, AND ISSUES, *supra* note 70, at 19. The SBP reimbursed



- participating school food authorities for the breakfasts they served at the following rates for the 2012–2013 school year: \$1.55 (free breakfast); \$1.25 (reduced price breakfasts); and \$0.27 (paid breakfast). USDA, *The School Breakfast Program*, 2 (2012) [hereinafter USDA, *The School Breakfast Program*], available at <http://www.fns.usda.gov/cnd/breakfast/AboutBFast/SBPFactSheet.pdf>.
- 74 USDA, *National School Lunch Program*, *supra* note 73, at 2; USDA, *The School Breakfast Program*, *supra* note 73, at 2.
- 75 USDA, NSLP: BACKGROUND, TRENDS, AND ISSUES, *supra* note 70, at 1 (“Although schools are not required to offer NSLP meals, 94 percent of schools, both public and private, choose to participate in the program.”).
- 76 USDA, SCHOOL NUTRITION DIETARY ASSESSMENT STUDY–IV, VOLUME I: SCHOOL FOODSERVICE OPERATIONS, SCHOOL ENVIRONMENTS, AND MEALS OFFERED AND SERVED 2.2 (2012) [hereinafter USDA, SCHOOL NUTRITION DIETARY ASSESSMENT], available at [http://www.fns.usda.gov/Ora/menu/Published/CNP/FILES/SNDA-IV\\_Vol1Pt1.pdf](http://www.fns.usda.gov/Ora/menu/Published/CNP/FILES/SNDA-IV_Vol1Pt1.pdf) (noting that on an average day in the school year 2009–2010, 79% of students certified to receive free lunch and 73% of students certified to receive reduced price lunch participated, as compared to 48% of students not certified to receive school meal benefits).
- 77 *Id.* at 2.6. On an average day in the school year 2009–2010, 84.2% of elementary students certified for free meals, and 63.9% of high school students certified for free meals participated in the NSLP. In that same period, 77.7% of elementary students certified for reduced-price meals and 59.1% of high school student certified for reduced-price meals participated in the program. *Id.* at 2.6. See also *infra* part II.C. (noting that stigma is one reason why students do not participate in school meals programs).
- 78 USDA, SCHOOL NUTRITION DIETARY ASSESSMENT, *supra* note 76, at 2.6.
- 79 FOOD RESEARCH & ACTION CENTER, SCHOOL BREAKFAST SCORECARD: SCHOOL YEAR 2011–12 at 4 (2013) [hereinafter FRAC, SCHOOL BREAKFAST SCORECARD], available at [http://frac.org/pdf/Scorecard\\_SY2011–2012.pdf](http://frac.org/pdf/Scorecard_SY2011–2012.pdf). There is also significant variation among states in the proportion of low-income children who receive both school lunch and school breakfast: In New Mexico, for instance, about 70% of low-income students receiving school lunch also received school breakfast, while in Utah only about 34% received both. *Id.* at 8. The USDA also reports lower SBP participation rates; on an average day in the school year 2009–2010, only 45.4% of elementary students and 31.8% of high school students certified for free breakfast participated in the SBP. The numbers are even lower for student certified to receive reduced-price breakfast: During the same time period, 30.5% of elementary school students and 20.5% of high school students certified to receive reduced-price breakfast participated in the SBP. USDA, SCHOOL NUTRITION DIETARY ASSESSMENT, *supra* note 76, at 2.6.
- 80 Two federal programs provide funding for summer meals: the NSLP and the Summer Food Service Program (SFSP). Schools that participate in the NSLP during the school year may also provide meals to students during the summer via the “Seamless Summer Option.” Schools serve free meals to children in low-income areas and are reimbursed at the NSLP “free” rate. See *Seamless Summer Option: An Opportunity For Schools*, USDA, [http://www.fns.usda.gov/cnd/seamless\\_summer.htm](http://www.fns.usda.gov/cnd/seamless_summer.htm) (last visited Apr. 28, 2013). The Summer Food Service Program also allows school districts, local government agencies, camps, and private nonprofit organizations to provide free meals and then be reimbursed. See *Summer Food Service Program: Frequently Asked Questions*, USDA, <http://www.fns.usda.gov/cnd/summer/FAQs.htm> (last visited Apr. 28, 2013).
- 81 FOOD RESEARCH & ACTION CENTER, HUNGER DOESN’T TAKE A VACATION: SUMMER NUTRITION STATUS REPORT 2012 at 2–3 (2012) [hereinafter FRAC, HUNGER DOESN’T TAKE A VACATION], available at [http://frac.org/pdf/2012\\_summer\\_nutrition\\_report.pdf](http://frac.org/pdf/2012_summer_nutrition_report.pdf).
- 82 USDA, NSLP: BACKGROUND, TRENDS, AND ISSUES, *supra* note 70, at 4. Children from households participating in Temporary Aid to Needy Families (TANF), SNAP, or the Food Distribution Program on Indian Reservations (FDPIR) are also automatically eligible for free lunches, as are homeless, runaway, and migrant children. *Id.*
- 83 FOOD RESEARCH & ACTION CENTER, FRAC FACTS: DIRECT CERTIFICATION FOR FREE SCHOOL MEALS I (2010) [hereinafter FRAC FACTS], available at [http://frac.org/newsite/wp-content/uploads/2010/05/direct\\_cert\\_facts.pdf](http://frac.org/newsite/wp-content/uploads/2010/05/direct_cert_facts.pdf).



- 84 FRAC, SCHOOL BREAKFAST SCORECARD, *supra* note 79, at 10–11. The program was piloted in Illinois, Kentucky, and Michigan during the 2011–2012 school year, with positive results. All three states saw greater increases in school breakfast participation among low-income children than the national average—up 15.9% in Illinois, 8.4% in Kentucky, and 13.1% in Michigan. Michigan also saw an increase in overall school lunch participation, which is notable since enrollment went down for most states and for the country as a whole. *Id.* at 10. The District of Columbia, New York, Ohio, and West Virginia were added to the program in the 2012–2013 school year, and another four states will be added in the 2013–2014 school year. Community eligibility will be available nationwide beginning in the 2014–2015 school year. *Id.* at 11.
- 85 See NATIONAL RESEARCH COUNCIL OF THE NATIONAL ACADEMIES, COMMITTEE ON NATIONAL STATISTICS, USING AMERICAN COMMUNITY SURVEY DATA TO EXPAND ACCESS TO THE SCHOOL MEALS PROGRAMS 22 (2012), *available at* <http://www.fns.usda.gov/Oral/menu/Published/CNP/FILES/CNSTAT.pdf> (“Although [the 1994 USDA study] may no longer be true in light of incentives (such as the allocation of funds in other programs using the school lunch eligibility percentage) and processes (such as direct certification) for certifying as many eligible students as possible for free meals, more recent estimates are not available.”). At least one researcher suggests that some families whose children are eligible for a reduced price lunch are not participating because they cannot afford even the \$0.40 cost of a reduced-price meal. JANET POPPENDIECK, FREE FOR ALL: FIXING SCHOOL FOOD IN AMERICA 183–85 (2010) (citing assertions by school officials that, especially toward the end of the month, eligible children cannot afford reduced price lunches and are going hungry and calculating expenses for a hypothetical student living in Pennsylvania whose single parent’s income would make the student eligible for a reduced price lunch to conclude that the family would be hard pressed to afford the reduced price lunch on a regular basis).
- 86 See Alexandra Sifferlin, *Stricter School Lunch Standards Lead to Lighter Kids*, TIME (Apr. 11, 2013), <http://healthland.time.com/2013/04/11/strict-school-meal-standards-lead-to-lighter-kids/> (noting that many experts criticized the nutritional standards of the NSLP prior to enactment of the Healthy, Hunger-Free Kids Act and that many schools did not even comply with the previous USDA nutritional requirements for the NSLP).
- 87 FOOD RESEARCH & ACTION CENTER, HEALTHIER SCHOOL MEALS: A SUMMARY OF THE NEW USDA STANDARDS FOR SCHOOL BREAKFAST AND LUNCH (2012), *available at* [http://frac.org/pdf/school\\_meal\\_nutrition\\_rule\\_summary.pdf](http://frac.org/pdf/school_meal_nutrition_rule_summary.pdf).
- 88 *Id.* Specifically, the new rule more than doubles fruit and vegetable requirements, including specific requirements of the green and red/orange vegetable subgroups. *Id.*
- 89 The USDA subsidizes the production of commodities, which include meats, cheeses, and canned products, and allows schools to purchase these goods at a cheaper rate than would otherwise be available. Commodity foods make up just under a fifth of the food in the NSLP. USDA, NSLP: BACKGROUND, TRENDS, AND ISSUES, *supra* note 70, at 16–25. Some commodities offered to schools include fresh foods, while others are processed. FOOD ACTION & RESEARCH CENTER, COMMODITY FOODS AND THE NUTRITIONAL QUALITY OF THE NATIONAL SCHOOL LUNCH PROGRAM: HISTORICAL ROLE, CURRENT OPERATIONS, AND FUTURE POTENTIAL 8–9 (2008), *available at* <http://frac.org/wp-content/uploads/2009/09/commodities08.pdf>. See also LUNCH MATTERS: HOW TO FEED OUR CHILDREN BETTER, THE STORY OF THE BERKELEY SCHOOL LUNCH INITIATIVE, CHEZ PANISSE FOUNDATION 15, 24 (2008) (explaining that commodity foods typically arrive as pre-made unhealthful options like ‘tater tots’ and noting that “[this] creates an environment where it’s very difficult to make an argument for spending more on meals made from fresh, seasonal, and local ingredients.”).
- 90 See Sifferlin, *supra* note 86 (quoting Marion Nestle, “a nutrition professor at New York University and advocate for improving food in schools, [who argues that] ‘the food industry cannot make significant changes on its own. Food companies are beholden to stockholders and returns to investors. We can’t count on consumer demand. It’s up against the billions of dollars spent on food marketing, advertising, and lobbying. It’s government’s role to level the playing field.’”).
- 91 See Ron Nixon, *Congress Blocks New Rules on School Lunches*, N.Y. TIMES (Nov. 15, 2011), <http://www.nytimes.com/2011/11/16/us/politics/>

- congress-blocks-new-rules-on-school-lunches.html (“The [proposed] rules . . . would have cut the amount of potatoes served and would have changed the way schools received credit for serving vegetables by continuing to count tomato paste on a slice of pizza only if more than a quarter-cup of it was used. . . . In a statement, the Agriculture Department expressed its disappointment with the decision. ‘While it is unfortunate that some in Congress chose to bow to special interests, U.S.D.A. remains committed to practical, science-based standards for school meals that improve the health of our children. . . .’”); Mark Bittman, *Finally, Good News About School Lunches*, OPINIONATOR BLOG, N.Y. TIMES (Jan. 31, 2012, 9:00 PM), <http://opinionator.blogs.nytimes.com/2012/01/31/finally-good-news-about-school-lunches/> [hereinafter Bittman, *Good News About School Lunches*] (“Lobbyists for the potato industry made a fuss and the Senate stepped in to make sure that didn’t happen, and that concession is integrated into the new rules: Potatoes will still be unlimited. Similarly, you might remember that Congress and industry worked together to make sure that the tomato paste on pizza would continue to qualify it as a vegetable.”).
- 92 *About WIC: WIC’s Mission*, USDA, <http://www.fns.usda.gov/wic/aboutwic/mission.htm> (last visited Apr. 27, 2012).
- 93 DANIEL M. GELLER ET AL., USDA, NATIONAL SURVEY OF WIC PARTICIPANTS II: PARTICIPANT CHARACTERISTICS REPORT 22 (2012), *available at* <http://www.fns.usda.gov/ora/menu/Published/WIC/FILES/NSWP-II.pdf> [hereinafter USDA, PARTICIPANT CHARACTERISTICS REPORT]; USDA, NUTRITION PROGRAM FACTS: THE SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS AND CHILDREN I (2011) [hereinafter USDA, NUTRITION PROGRAM FACTS: WIC], *available at* <http://www.fns.usda.gov/wic/WIC-Fact-Sheet.pdf>.
- 94 According to USDA, an average of 8,961,000 people participated in WIC in each month of 2011. *wic Program Participation and Costs*, USDA, <http://www.fns.usda.gov/pd/wisummary.htm> (Nov. 9, 2012). The majority of WIC participants are infants (24%) and children (52%). Pregnant, breastfeeding, and non-breastfeeding post-partum women make up just under a quarter of the program (24%). USDA, PARTICIPANT CHARACTERISTICS REPORT, *supra* 93, at ix.
- 95 *About WIC: WIC at a Glance*, USDA, <http://www.fns.usda.gov/wic/aboutwic/wicataglance.htm> (last visited Jan. 19, 2013) [hereinafter *WIC at a Glance*]; *see also* Michael Martinez-Schiferl, *Half of All Infants Receive WIC*, METRO TRENDS BLOG (May 3, 2012), <http://blog.metrotrends.org/2012/05/infants-receive-wic/>.
- 96 For purposes of program eligibility, “pregnant” women are those who are currently pregnant or who have given birth to an infant within the past six weeks. *How to Apply: WIC Eligibility Requirements*, USDA, <http://www.fns.usda.gov/wic/howtoapply/eligibilityrequirements.htm> (last visited Dec. 2, 2012) [hereinafter *WIC Eligibility Requirements*].
- 97 For purposes of program eligibility, the post-partum period is up to six months after the birth of an infant or the end of the pregnancy. *Id.*
- 98 The eligible breastfeeding period is up to the child’s first birthday. *Id.*
- 99 In order to meet the income requirements, an applicant’s income must fall at or below 185% of the federal poverty guidelines. USDA, NUTRITION PROGRAM FACTS: WIC, *supra* note 93. A WIC applicant who participates or has a family member who participates in another social assistance program — namely, SNAP, Medicaid, or Temporary Assistance for Needy Families (TANF) — automatically meets the income requirements for WIC. *Id.*
- 100 *Id.* Each state has its own list of WIC nutrition risk criteria, and beneficiaries must meet at least one of these conditions. *WIC Eligibility Requirements, supra* note 96. Certification may be provided by a doctor, nurse, or nutritionist, who must, at a minimum, check the applicant’s height and weight and undertake blood work to check for anemia. In some states, the assessment is provided at the WIC clinic free of charge, though applicants can provide certification from other health care professionals, such as their personal physician. *Id.*
- 101 USDA, NUTRITION PROGRAM FACTS: WIC, *supra* note 93, at 3.
- 102 *WIC Food Packages: Maximum Monthly Allowances*, USDA, <http://www.fns.usda.gov/wic/benefitsand-services/foodpkgallowances.HTM> (last visited Dec. 15, 2012). The first three packages provide different amounts of baby formula and baby food for infants depending on whether they are fully formula fed, partially breastfed, or fully breastfed. The other four

packages provide different amounts of food for children and pregnant, post-partum, and breastfeeding women. These packages include: juice, milk, breakfast cereal, cheese, eggs, fruits and vegetables, whole wheat bread, canned fish, and legumes or peanut butter.

- 103 Special Supplemental Nutrition Program for Women, Infants and Children (WIC): Revisions in the WIC Food Packages; Interim Rule, 7 CFR Part 246 (2007) [hereinafter WIC Interim Rule], *available at* <http://www.fns.usda.gov/wic/regspublished/wicfoodpkginterimrulepdf.pdf>. States were required to begin implementing the new package in 2009. State-level implementation began during the notice-and-comment period. The interim rule comment period ended on Feb. 1, 2010. The final rule is currently in clearance. *Benefits and Services: Background: Revisions to the WIC Food Program*, USDA, <http://www.fns.usda.gov/wic/benefitsandservices/revisionstofoodpkg-background.htm> (last visited Dec. 5, 2012).
- 104 See Tatiana Andreyeva et al., *Positive Influence of the Revised Special Supplemental Nutrition Assistance Program for Women, Infants and Children Food Packages on Access to Healthy Foods*, 112 J. ACAD. NUTRITION & DIETETICS 850, 856–57 (2012), *available at* [http://www.yaleruddcenter.org/resources/upload/docs/what/economics/InfluenceRevisedWic\\_JADA\\_6.12.pdf](http://www.yaleruddcenter.org/resources/upload/docs/what/economics/InfluenceRevisedWic_JADA_6.12.pdf) (finding that the introduction of the new WIC package in Connecticut greatly increased the availability of healthy foods in WIC stores and actually narrowed the gap between WIC stores in high and low income areas in terms of the availability of healthy foods. In particular, the availability of whole-grain products in WIC and non-WIC convenience and grocery stores improved, as did the availability of fruits and vegetables.). See also ALTARUM INST., *EARLY OUTCOMES: IMPACT OF THE NEW WIC FOODS*, *available at* [http://www.calwic.org/storage/5-WIC-Policy-Brief-FINAL\\_2.pdf](http://www.calwic.org/storage/5-WIC-Policy-Brief-FINAL_2.pdf) (2010) (noting that studies conducted in inner-city Philadelphia, northern Illinois, and small stores in Colorado, New Hampshire, Pennsylvania, and Wisconsin also found that availability of WIC-approved food items improved after the change, including whole grains, fruits, and vegetables); but see ALTARUM INST., *PROCEEDINGS OF THE WIC FOOD PACKAGE EVALUATION SYMPOSIUM 3* (2010), *available at* [http://www.altarum.org/files/pub\\_resources/WIC%20Food%20Pkg%20Eval%20Symposium%20Proceedings-022411-FIN.pdf](http://www.altarum.org/files/pub_resources/WIC%20Food%20Pkg%20Eval%20Symposium%20Proceedings-022411-FIN.pdf) (noting that in Wisconsin, there was a decrease in full redemption of WIC checks six months after the new package was introduced. This decrease has been attributed to low redemption of checks for whole grains, beans, and peanut butter, but after 12 months of implementation, it appeared that redemption rates were rising again.).
- 105 States have the option of providing brown rice, whole grain tortilla, and three types of whole grains in their WIC packages. According to one USDA study, these options have been widely implemented. Out of 90 WIC state agencies, Indian Tribal Organizations (ITOs), and territories surveyed, 81 authorized brown rice, 74 authorized tortillas, and 39 allowed all three types of whole grains. USDA, *WIC FOOD PACKAGES POLICY OPTIONS STUDY SUMMARY* (2011), *available at* [http://www.fns.usda.gov/ora/menu/Published/WIC/FILES/WICFoodPackageOptions\\_Summary.pdf](http://www.fns.usda.gov/ora/menu/Published/WIC/FILES/WICFoodPackageOptions_Summary.pdf).
- 106 Andreyeva et al., *supra* note 104, at 851. Vouchers provide a maximum of \$6/month for each child beneficiary and \$10/month for each adult female beneficiary. *WIC Food Packages: Maximum Monthly Allowances*, *supra* note 102.
- 107 EPHRAIM LEIBTAG & AYLIN KUMCU, USDA, *THE WIC FRUIT AND VEGETABLE CASH VOUCHER: DOES REGIONAL PRICE VARIATION AFFECT BUYING POWER?* 9–12 (2011), *available at* <http://www.ers.usda.gov/media/127579/eib75.pdf> (explaining that the 20 most commonly purchased fruits and vegetables cost between 30% and 70% more in the highest priced markets compared to the lowest priced markets. This information suggests that WIC recipients in the higher priced markets have diminished purchasing power than others in the program and raises concerns that these persons may not receive as many health benefits from the program.).
- 108 BERG, *REVERSE AMERICA'S WORSENING HUNGER METRICS*, *supra* note 22, at 8.
- 109 USDA, *PARTICIPANT CHARACTERISTICS REPORT*, *supra* note 93, at xi–xii (noting that, according to a nationwide study of WIC participants, factors that deterred eligible women from enrolling in WIC included a lack of knowledge about the program; perceived problems applying for benefits; services “taking too long”; and inconvenient transportation to or limited hours at WIC clinics).
- 110 BERG, *REVERSE AMERICA'S WORSENING HUNGER METRICS*, *supra* note 22, at 8.

- 111 *See supra* part I.
- 112 *WIC at a Glance, supra* note 95.
- 113 *Id.*
- 114 If funding is not provided to cover all eligible participants, states may institute waitlists for applicants. ZOË NEUBERGER, CENTER ON BUDGET POLICIES & PRIORITIES, WILL WIC TURN AWAY ELIGIBLE LOW-INCOME WOMEN AND CHILDREN NEXT YEAR? I (2011), *available at* <http://www.cbpp.org/files/9-19-11fa.pdf>. Other factors, including administrative and other barriers to participation, may also account for the decline in enrollment. USDA, PARTICIPANT CHARACTERISTICS REPORT, *supra* note 93, at xi–xii (noting that, according to a nationwide study of WIC participants, factors that deterred eligible women from enrolling in WIC included a lack of knowledge about the program; perceived problems applying for benefits; services “taking too long”; and inconvenient transportation to or limited hours at WIC clinics). Recent changes in the administration of the WIC program may help to boost enrollment rates. In particular, the Healthy, Hunger-Free Kids Act allows states to certify children for WIC for up to one year. Prior to the Act, children had to be recertified at six-month intervals. *Highlights: Healthy, Hunger-Free Kids Act of 2010*, FOOD RESEARCH & ACTION CENTER, <http://frac.org/highlights-healthy-hunger-free-kids-act-of-2010/> (last visited Jan. 20, 2013). States, however, are not required to adopt this certification option. WIC Interim Rule, *supra* note 103.
- 115 BERG, REVERSE AMERICA’S WORSENING HUNGER METRICS, *supra* note 22, at 8.
- 116 *See infra* part II.D.
- 117 Interview with Alison Cohen, Director of Programs, WhyHunger, in N.Y.C., N.Y. (Nov. 5, 2012).
- 118 Food banks receive and store food products, then distribute those items to food pantries or soup kitchens, both of which directly serve their customers. Food pantries provide non-prepared food items to customers, while soup kitchens offer prepared meals; emergency shelters often serve prepared meals as well but have other primary purposes, such as providing residences for the homeless. FEEDING AMERICA, HUNGER IN AMERICA 2010, *supra* note 4, at 10, 13. Most food pantries allow customers to visit once or twice a month and to take a specified amount of food corresponding to the size of the person’s family. Interview with Hannah Lupien, *supra* note 1.
- 119 FEEDING AMERICA, FOOD BANKS: HUNGER’S NEW STAPLE 3 (2011) [hereinafter FEEDING AMERICA, HUNGER’S NEW STAPLE], *available at* [http://feedingamerica.org/hunger-in-america/hunger-studies/-/media/Files/research/HungerNewStapleFullReport\\_FINAL.ashx?.pdf](http://feedingamerica.org/hunger-in-america/hunger-studies/-/media/Files/research/HungerNewStapleFullReport_FINAL.ashx?.pdf).
- 120 *Id.*
- 121 FEEDING AMERICA, HUNGER IN AMERICA 2010, *supra* note 4, at 8.
- 122 FEEDING AMERICA, HUNGER’S NEW STAPLE, *supra* note 119, at 3.
- 123 FEEDING AMERICA, HUNGER IN AMERICA 2010, *supra* note 4, at 58, 60; *see also* FEEDING AMERICA, HUNGER’S NEW STAPLE, *supra* note 119, at 7 (noting that 54% of these customers visited a food pantry six or more months out of the year and 36% visited monthly).
- 124 TEFAP makes commodity foods available to state distributing agencies, based on the number of unemployed persons and the number of individuals with incomes below the poverty guidelines in that state. States typically distribute the food to local agencies, such as food banks. In turn, food banks distribute the food to organizations like food pantries that provide food directly to customers. *The Emergency Food Assistance Program: Frequently Asked Questions*, USDA, [http://www.fns.usda.gov/fdd/programs/tefap/tefap\\_faqs.htm](http://www.fns.usda.gov/fdd/programs/tefap/tefap_faqs.htm) (last visited Apr. 28, 2013); *see also* JOE RICHARDSON & DONNA V. PORTER, CONG. RES. SERV., THE EMERGENCY FOOD ASSISTANCE PROGRAM AND EMERGENCY FEEDING NEEDS (summary) (2001), *available at* <http://congressionalresearch.com/RL30164/document.php> (explaining that “federal support [through TEFAP] consists of: (1) “entitlement” food commodities bought specifically for the program . . . (2) annual appropriations for grants to help cover distributing agencies’ food distribution costs . . . and (3) to the extent they are available, discretionary donations of “bonus” commodities from federal inventories of foods acquired in support of the agricultural economy.”). Additional governmental programs at the federal, state, and local level also provide support to emergency food providers. *See, e.g.,* USDA, Commodity Supplemental Food Program: Fact Sheet, 1 (2012), *available at* <http://www.fns.usda.gov/fdd/programs/csfp/pfs-csfp.pdf>; *Where Our Food Comes From*, FOOD BANK FOR NEW YORK CITY, <http://www.foodbanknyc.org/index.cfm?objectid=CD6F976D-0782-C57B->



- 78A2AA3420B43284 (last visited Apr. 28, 2013) (noting city and state government funding support for the Food Bank for New York City). Moreover, donations to emergency food providers are tax deductible, representing another form of government support. See *FAQs*, FEEDING AMERICA, <http://feedingamerica.org/ways-to-give/faqs.aspx#{D116C425-373F-4D85-AD15-5DC39E23C2EB}> (last visited Apr. 28, 2013).
- 125 FEEDING AMERICA, HUNGER'S NEW STAPLE, *supra* note 119, at 3.
- 126 *The Emergency Food Assistance Program (TEFAP)*, FEEDING AMERICA, <http://feedingamerica.org/Home/how-we-fight-hunger/advocacy-public-policy/policy-center/federal-anti-hunger-programs-and-policies/the-emergency-food-assistance-program.aspx> (last visited Apr. 22, 2013) (explaining that because food prices were high in 2012, the USDA purchased fewer commodities from farmers and as a result, emergency food providers received fewer commodities; and noting that “97 percent of the Feeding America food banks receiving TEFAP commodities experienced a decline in TEFAP deliveries in 2012 . . . at a time when food banks are experiencing elevated need due to ongoing unemployment and reduced wages”); Interview with Hannah Lupien, *supra* note 1 (noting that TEFAP “bonus” commodities can vary in variety and quantity depending on the state of the agriculture market and that “bonus” commodities can comprise a significant amount of the food available from TEFAP).
- 127 E-mail from Kate MacKenzie, Director, Policy & Government Relations, City Harvest, to Authors (Apr. 26, 2013, 12:38 PM) (on file with authors).
- 128 In 2008, for instance, nearly one in four food pantries associated with Feeding America were forced to reduce the quantity of food they distributed in order to provide food to all of their customers. FEEDING AMERICA, HUNGER IN AMERICA 2010, *supra* note 4, at 346.
- 129 During the 2012 elections, for example, politicians repeatedly disparaged people on programs like SNAP. Republican Congressional candidate Gabriela Saucedo Mercer of Arizona posted the following message on her Facebook page: “A lesson in irony: The Food Stamp Program . . . is actually proud of the fact it is distributing the greatest amount of free meals and food stamps ever . . . . Meanwhile, the National Park Service . . . asks us to ‘Please Do Not Feed the Animals.’ Their stated reason for the policy is because the animals will grow dependent on handouts and will not learn to take care of themselves. This ends today’s lesson.” Brady McCombs, *Political notebook: Candidate Eats Quote Over Food Stamps, Animals*, ARIZONA DAILY STAR (July 22, 2012, 12:00 AM), available at [http://azstarnet.com/news/local/govt-and-politics/elections/political-notebook-candidate-eats-quote-over-food-stamps-animals/article\\_f62dod49-fe66-551f-96b5-30dd6e96bb28.html](http://azstarnet.com/news/local/govt-and-politics/elections/political-notebook-candidate-eats-quote-over-food-stamps-animals/article_f62dod49-fe66-551f-96b5-30dd6e96bb28.html). Earlier, Republican Minnesota State Rep. Mary Franson used the same language in a speech that was broadcast online. Leigh Owens, *Mary Franson, Minnesota State Representative, Compares Food Stamp Recipients to Wild Animals*, HUFFINGTON POST (Mar. 6, 2012, 12:50 PM), [http://www.huffingtonpost.com/2012/03/06/mary-franson-minnesota-food-stamp-recipients-wild-animals\\_n\\_1322366.html](http://www.huffingtonpost.com/2012/03/06/mary-franson-minnesota-food-stamp-recipients-wild-animals_n_1322366.html). At a fundraiser for his presidential campaign, Republican candidate Mitt Romney famously commented that, “There are 47 percent of the people who will vote for the president no matter what. All right, there are 47 percent who are with him, who are dependent upon government, who believe that they are victims, who believe the government has a responsibility to care for them, who believe that they are entitled to health care, to food, to housing, to you-name-it. That’s an entitlement.” Steve Mullis, *Leaked Video Shows Romney Discussing ‘Dependent’ Voters*, NPR (Sept. 17, 2012, 7:34 PM), <http://www.npr.org/blogs/itsallpolitics/2012/09/17/161313644/leaked-video-purports-to-show-romney-discuss-dependent-voters>. The country later learned that Romney’s own father had received “welfare relief” as a child. Frank James, *Welfare Wasn’t Always a Dirty Word In The Romney Family*, NPR (Sept. 19, 2012, 2:01 PM), <http://www.npr.org/blogs/itsallpolitics/2012/09/19/161409916/welfare-wasnt-always-a-dirty-word-in-the-romney-family>. Similar sentiments were voiced during Senate discussions around funding for the 2012 Farm Bill. Republican Senator Jeff Sessions asked on the Senate floor: “Is the benefit going to the right people? Is the money being expended wisely? Is it helping people become independent? Is it encouraging people to look for ways to be productive and be responsible for their families? Or does it create dependency on a series of government programs?” Igor Volsky, *Senate Republicans Attempt to Raid Food Stamps in Farm Bill*, THINK PROGRESS (June 19, 2012, 3:13 PM), <http://thinkprogress.org/economy/2012/06/19/502366/replicans-raid-food-stamps-would-reduced-average-monthly-benefit-by-90/>.



- 130 Ed Bolen, *Three Facts: What SNAP Means for Families and Communities*, CENTER ON BUDGET & POLICY PRIORITIES (Mar. 18, 2013, 3:30 PM), <http://www.offthechartsblog.org/three-facts-what-snap-means-for-families-and-communities/>.
- 131 *Id.*
- 132 USDA, BUILDING A HEALTHY AMERICA, *supra* note 41, at 25.
- 133 *SNAP (Food Stamps): Facts, Myths, and Realities*, FEEDING AMERICA, <http://feedingamerica.org/how-we-fight-hunger/programs-and-services/public-assistance-programs/supplemental-nutrition-assistance-program/snap-myths-realities.aspx> (last visited Apr. 22, 2013).
- 134 BARTLETT & BURNSTEIN, *supra* note 56, at 26.
- 135 Interview with Joel Berg, Executive Director of the New York City Coalition Against Hunger, in N.Y.C., NY (Oct. 24, 2012).
- 136 POPPENDIECK, *supra* note 85, at 194.
- 137 *Id.*
- 138 *Id.* at 191 (citing stigma as the reason for the decreased participation of high school students in the NSLP and referencing interviews with food service directors, parents, and children); *see also Federal School Nutrition Programs*, NEW AMERICA FOUNDATION, <http://febp.newamerica.net/background-analysis/federal-school-nutrition-programs> (last visited Apr. 29, 2013) (“Because free and reduced price lunch is an opt-in program at the majority of schools, researchers believe that high school students are greatly under-represented in school lunch program enrollment. High school students may refuse to enroll in FRPL due to a perceived stigma attached to the program.”).
- 139 Interview with Julia, food pantry customer in N.Y.C., NY (February, 28, 2013).
- 140 Interviews with Cecilia, Debra, Luisa, and Melissa, food pantry customers in N.Y.C., NY (Feb. 28, 2013); *Lines at Local Food Pantry*, WASH. POST (Nov. 14, 2012), [http://www.washingtonpost.com/local/lines-at-a-local-food-pantry/2012/11/21/15f226c8-3266-11e2-9cfa-e41bac906cc9\\_gallery.html#photo=4](http://www.washingtonpost.com/local/lines-at-a-local-food-pantry/2012/11/21/15f226c8-3266-11e2-9cfa-e41bac906cc9_gallery.html#photo=4) (showing images of lines at a food pantry).
- 141 Bryce Covert, *This is What Happens When You Rip a Hole in the Safety Net*, THE NATION (Mar. 28, 2013, 2:33 PM), *available at* <http://www.thenation.com/blog/173567/heres-what-happens-when-you-rip-hole-safety-net>.
- 142 *SNAP Participation and Costs*, *supra* note 7 (based on author’s own calculations). The increase is due, in part, to high unemployment, changes in the program’s eligibility requirements, and temporary increases in benefit levels introduced by the American Recovery and Reinvestment Act. *See* Andrews & Smallwood, *supra* note 7; BERG, REVERSE AMERICA’S WORSENING HUNGER METRICS, *supra* note 22.
- 143 TANF was created under the U.S. government’s welfare reform legislation of 1996 and replaced the former welfare programs known as Aid to Families with Dependent Children (AFDC), the Job Opportunities and Basic Skills Training (JOBS) program, and the Emergency Assistance (EA) program. Welfare reform converted welfare from an entitlement program to a block grant administered by states. *Temporary Assistance for Needy Families (TANF) Overview*, U.S. DEP’T OF HEALTH & HUM. SERV., <http://www.hhs.gov/recovery/programs/tanf/tanf-overview.html> (last visited Apr. 28, 2013).
- 144 BERG, REVERSE AMERICA’S WORSENING HUNGER METRICS, *supra* note 22, at 6 (“During the same 1999–2011 time period, income assistance—formally known as Temporary Assistance to Needy Families—actually declined by 2.4 million people, a 36 percent drop.... This low level of income assistance during deep recession hampered the ability of low-income Americans to pay for housing, transportation, and food.”); *see also* Covert, *supra* note 141.
- 145 BERG, REVERSE AMERICA’S WORSENING HUNGER METRICS, *supra* note 22, at 6.
- 146 This reduction in benefits comes from the termination of a temporary increase in SNAP benefits that was part of the economic stimulus package. *See* Healthy, Hunger-Free Kids Act of 2010, Pub. L. No. 111-296, 124 Stat. 3183 § 442 (terminating the increase on Oct. 31, 2013); Education Jobs and Medicaid Assistance Act of 2010, Pub. L. No. 111-226, 124 Stat. 2389 § 203 (terminating the increase on Mar. 31, 2014); American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115 § 101 (creating a 13% temporary increase in SNAP benefits). *See also* David Rodgers, *One-Two Punch Hits Food Stamps*, POLITICO (Apr. 6, 2010, 11:07 AM), <http://www.politico.com/news/stories/0810/40739.html>; Patrick M. Tigue, *An Important (and Imperfect) Child Nutrition Reauthorization Passes*, COMMUNITY CATALYST BLOG, <http://blog.communitycatalyst.org/index.php/2010/12/08/>

- an-important-and-imperfect-child-nutrition-reauthorization-passes/ (last visited Apr. 30, 2012).
- 147 Ned Resnikoff, *House Committee OKs Massive Cuts to Food Stamps in Farm Bill*, MSNBC (May 17, 2013, 3:09 PM), <http://tv.msnbc.com/2013/05/17/house-agriculture-committee-approves-massive-cuts-to-food-stamps/>.
- 148 CENTER ON BUDGET AND POLICY PRIORITIES, HOUSE AGRICULTURE COMMITTEE FARM BILL WOULD CUT NEARLY 2 MILLION PEOPLE OFF SNAP (2013), *available at* <http://www.cbpp.org/files/5-13-13fa.pdf>. The Federal Agriculture Reform and Risk Management Act of 2013 (House bill), was approved by the House Agriculture Committee on May 15, 2013 by a vote of 36 to 10. *The Federal Agriculture Reform and Risk Management Act of 2013*, THE HOUSE AGRICULTURE COMMITTEE, <http://agriculture.house.gov/farmbill>, (last visited May 19, 2013). The Agriculture Reform, Food and Jobs Act of 2013 (Senate bill), was passed by the Senate Committee on Agriculture, Nutrition and Forestry on May 14, 2013 by a vote of 15 to 5. Eric Holt Gimenez, *Farm Bill Fiasco: What Now?*, HUFFINGTON POST (May 14, 2013, 8:33 PM), [http://www.huffingtonpost.com/eric-holt-gimenez/farm-bill-fiasco-what-now\\_b\\_3275934.html](http://www.huffingtonpost.com/eric-holt-gimenez/farm-bill-fiasco-what-now_b_3275934.html).
- 149 CENTER ON BUDGET AND POLICY PRIORITIES, *supra* note 148. States currently have the option to extend categorical eligibility to households that are eligible to receive *non-cash* services through Temporary Assistance for Needy Families (TANF). This option, called “broad-based” categorical eligibility, may allow SNAP to reach individuals who would not otherwise be eligible under the income eligibility requirements. The House bill would restrict categorical eligibility to only households receiving cash-assistance, eliminating “broad-based” categorical eligibility. See FALK & AUSSENBERG, *supra* note 49, at 2–5 (explaining “broad-based” categorical eligibility).
- 150 CENTER ON BUDGET AND POLICY PRIORITIES, *supra* note 148.
- 151 The economic downturn has shown the importance of maintaining SNAP as an entitlement program. Twenty million more people participated in SNAP in 2012 than in 2007. See *SNAP Participation and Costs*, *supra* note 7.
- 152 *Executive Summary*, LEGISLATIVE DIGEST, <http://www.gop.gov/bill/113/1/hconres25> (last visited Apr. 22, 2013) [hereinafter LEGISLATIVE DIGEST] (describing how the bill would eliminate categorical eligibility for food stamps, eliminate the LIHEAP loophole, convert SNAP into a block grant beginning in 2019, and place a five year time limit on participation, saving \$135 billion); Stacy Dean, *Ryan Budget’s SNAP Cuts Even Deeper Than We Thought*, CENTER ON BUDGET & POLICY PRIORITIES (Mar. 19, 2013, 9:00 AM), <http://www.offthechartsblog.org/ryan-budgets-snap-cuts-even-deeper-than-we-thought/>. This resolution builds on the cuts proposed by the House Agriculture Committee in 2012 that would cut SNAP benefits by \$16 billion over 10 years. Resnikoff, *supra* note 147.
- 153 Dean, *supra* note 152 (“Put another way, the maximum SNAP benefit would be set at just 73 percent of the Thrifty Food Plan, the Agriculture Department’s estimate of the minimum amount a family needs to afford a bare-bones, nutritionally adequate diet.”).
- 154 Howard Gleckman, *House GOP Would Need \$5.7 Trillion in Tax Hikes to Offset Ryan Rate Cuts*, TAX POLICY CENTER, URBAN INSTITUTE & BROOKINGS INSTITUTE (March 15, 2013, 10:40 AM), <http://taxvox.taxpolicycenter.org/2013/03/15/house-gop-would-need-5-7-trillion-in-tax-hikes-to-offset-ryan-rate-cuts/>.
- 155 See *supra* part II.A.3.
- 156 See Jonathan Weisman & Annie Lowrey, *Finance Bill, Nearing Senate Passage, Would Protect Some Favored Programs*, NY TIMES (Mar. 19, 2013), <http://www.nytimes.com/2013/03/20/us/politics/senators-plan-would-spare-vital-programs-from-federal-cuts.html?pagewanted=all>.
- 157 *Fact Sheet: Examples of How the Sequester Would Impact Middle Class Families, Jobs and Economic Security*, THE WHITE HOUSE (Feb. 8, 2013), <http://www.whitehouse.gov/the-press-office/2013/02/08/fact-sheet-examples-how-sequester-would-impact-middle-class-families-job>.
- 158 See Weisman & Lowrey, *supra* note 156.
- 159 Michael H. Posner, Assistant Secretary, Bureau of Democracy, Human Rights, and Labor, Address to the American Society of International Law (Mar. 24, 2011), *available at* <http://www.state.gov/j/drl/rls/rm/2011/159195.htm>.
- 160 The right to adequate food was first recognized in the Universal Declaration of Human Rights (UDHR). Universal Declaration of Human Rights art. 25(1), G.A. Res. 217 (III) A, U.N. GAOR, U.N. Doc. A/RES/217(III) (Dec. 12, 1948) [hereinafter UDHR] (“Everyone has the right to a standard of living

adequate for the health and well-being of himself and of his family, including food....”). It was subsequently enshrined in the International Covenant on Economic, Social and Cultural Rights (ICESCR). International Covenant on Economic, Social and Cultural Rights art. 11, Dec. 16, 1966, 993 U.N.T.S. 3 [hereinafter ICESCR] (“1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food....; 2. The States Parties to the present Covenant, [recognize] the fundamental right of everyone to be free from hunger....”).

161 The U.S. signed the ICESCR on October 5, 1977 but has not ratified the Covenant. See *International Covenant on Economic, Social and Cultural Rights*, U.N. TREATY COLLECTION, [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-3&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4&lang=en) (last visited Apr. 27, 2013). As a signatory to the Covenant, however, the United States is obligated to refrain from acts that would “defeat the object and purpose” of the treaty. Vienna Convention on the Law of Treaties art. 18, May 23, 1969, 1155 U.N.T.S. 331; see also Posner, *supra* note 159 (affirming the United States’ commitment not to defeat the object and purpose of the ICESCR). Moreover, the right to food is a widely recognized norm of international human rights law. See Olivier De Schutter, U.N. Special Rapporteur on the right to food, *Right to food*, <http://www.srfood.org/index.php/en/right-to-food> (last visited Apr. 27, 2013) [hereinafter De Schutter, *Right to food*] (noting that the right to food is recognized in numerous international human rights treaties, regional human rights instruments, national constitutions, as well as non-binding international instruments). Furthermore, the fundamental right to be free from hunger, the minimum core content of the right to adequate food, has arguably become part of customary international law. See Smita Narula, *The Right to Food: Holding Global Actors Accountable Under International Law*, 44 COLUM. J. TRANSNAT’L L. 691, 777–96 (2006) (arguing that the right to be free from hunger may have achieved customary status under international law).

162 Committee on Economic, Social & Cultural Rights, *General Comment No. 12: The right to adequate food*, ¶ 14, U.N. Doc. E/C.12/1999/5 (1999) [hereinafter ESCR Committee, *General Comment No. 12*] (“Every State is obliged to ensure for everyone *under its jurisdiction* access to the minimum essential food which is

sufficient, nutritionally adequate and safe, to ensure their freedom from hunger.”) (providing an authoritative interpretation of the right to food and States parties’ obligations under the ICESCR, emphasis added). States’ obligations under the ICESCR must be implemented in a non-discriminatory manner. ICESCR, *supra* note 160, art. 2(2) (“The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”). States’ obligations under the ICESCR extend to nationals and non-nationals alike. Although the ICESCR permits *developing* countries to determine the extent to which they can guarantee economic rights to non-nationals, this exception is not available to developed countries like the United States. *Id.* art. 2(3) (“Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals.”). In addition, the United States is a States Party to the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), which requires States to ensure economic and social rights without distinction as to national origin. International Convention on the Elimination of All Forms of Racial Discrimination art. 5(e), Mar. 7, 1966, 660 U.N.T.S. 195 [hereinafter ICERD] (ratified by the United States on Oct. 21, 1994). This obligation includes “[r]emov[ing] obstacles that prevent the enjoyment of economic, social and cultural rights by non-citizens” and “[e]nsur[ing]...the right of non-citizens to an adequate standard of physical and mental health.” Committee on the Elimination of Racial Discrimination, *General Recommendation No. 30: Discrimination Against Non Citizens*, ¶¶ 29, 36, U.N. Doc. HRI/GEN/1/Rev.9 (Vol. II) (2004).

163 See ICESCR, *supra* note 160, art. 11(1). Under the ICESCR, States are obligated to take steps to progressively realize the right to food, to the maximum of their available resources. ICESCR, *supra* note 160, art. 2(1). However, States must fulfill the minimum core content of the right to food immediately, meaning that they must “take the necessary action to mitigate and alleviate hunger.” ESCR Committee, *General Comment No. 12, supra* note 162, ¶ 6. Furthermore, under the ICESCR, States must refrain from taking

- regressive measures that undermine current enjoyment of the right to food. Such measures may only be taken when they are duly justified in light of the fulfillment of the full range of economic and social rights enshrined in the ICESCR and “in the context of the full use of the maximum available resources.” Committee on Economic, Social & Cultural Rights, *General Comment No. 3: The nature of States parties obligations*, ¶ 9, U.N. Doc. E/1991/23 (1990).
- 164 See ICESCR, *supra* note 160, art. 11(2) (“The States Parties to the present Covenant, [recognize] the fundamental right of everyone to be free from hunger...”); ESCR Committee, *General Comment No. 12, supra* note 162, ¶ 17 (noting that it is a violation of the ICESCR for a state to fail to fulfill the “minimum essential level required to be free from hunger”).
- 165 De Schutter, *Right to food, supra* note 161.
- 166 ESCR Committee, *General Comment No. 12, supra* note 162, ¶ 8 (“The Committee considers that the core content of the right to adequate food implies: The availability of food in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture...”).
- 167 *Id.* ¶ 13.
- 168 *Id.* (“Economic accessibility implies that personal or household financial costs associated with the acquisition of food for an adequate diet should be at a level such that the attainment and satisfaction of other basic needs are not threatened or compromised.”).
- 169 *Id.*
- 170 *Id.*; see also OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS, THE RIGHT AND ADEQUATE FOOD: FACT SHEET NO. 34 at 3 [hereinafter FACT SHEET NO. 34], available at <http://www.srfood.org/images/stories/pdf/otherdocuments/factsheet34en1.pdf>; ESCR Committee, *General Comment No. 12, supra* note 162, ¶ 6 (“States have a core obligation to take the necessary action to mitigate and alleviate hunger as provided for in paragraph 2 of article 11, even in times of natural or other disasters.”).
- 171 *Id.* ¶¶ 9, 11.
- 172 FACT SHEET NO. 34, *supra* note 170, at 3.
- 173 *Id.*
- 174 ESCR Committee, *General Comment No. 12, supra* note 162, ¶ 12.
- 175 *Id.* ¶ 15.
- 176 *Id.* (“The obligation to *respect* existing access to adequate food requires States parties not to take any measures that result in preventing such access.”).
- 177 *Id.* (“The obligation to *protect* requires measures by the State to ensure that enterprises or individuals do not deprive individuals of their access to adequate food.”).
- 178 *Id.* (“The obligation to *fulfil* (facilitate) means the State must pro-actively engage in activities intended to strengthen people’s access to and utilization of resources and means to ensure their livelihood, including food security.”).
- 179 *Id.* (“Finally, whenever an individual or group is unable, for reasons beyond their control, to enjoy the right to adequate food by the means at their disposal, States have the obligation to *fulfil* (provide) that right directly.”); see also Molly D. Anderson, *Beyond food security to realizing food rights in the US*, 29 J. RURAL STUDIES, 113, 119–20 (2013), available at <http://www.sciencedirect.com/science/article/pii/S074301671200079s4> (discussing the obligations of the United States to respect, protect, and fulfill the right to food).
- 180 See Office of the High Commissioner for Human Rights, *Principles and Guidelines for a Human Rights Approach to Poverty Reduction Strategies*, ¶ 24, U.N. Doc. HR/PUB/06/12 (2006) [hereinafter *Principles and Guidelines for a Human Rights Approach to Poverty Reduction Strategies*], available at <http://www.ohchr.org/Documents/Publications/PovertyStrategiesen.pdf> (noting that “[r]ights imply duties, and duties demand accountability.”).
- 181 ESCR Committee, *General Comment No. 12, supra* note 162, ¶ 28 (“Even where a State faces severe resource constraints, whether caused by a process of economic adjustment, economic recession, climatic conditions or other factors, measures should be undertaken to ensure that the right to adequate food is especially fulfilled for vulnerable population groups and individuals.”); see also *Principles and Guidelines for a Human Rights Approach to Poverty Reduction Strategies, supra* note 180, ¶ 22, (noting that the human rights framework protects against policy trade-offs that might be harmful to the poor by requiring States to immediately fulfill a minimum level of rights and by cautioning against “any trade-off that leads to the retrogression of a human right from its existing level of realization”).



- 182 See *supra* note 162.
- 183 See UDHR, *supra* note 160, art. 1 (“All human beings are born free and equal in dignity and rights.”).
- 184 International Covenant on Civil and Political Rights art. 25(a), Dec. 16, 1966, 999 U.N.T.S. 171 (ratified by the United States on June 8, 1992) (recognizing the right of every citizen “without any of the distinctions mentioned in article 2 [race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status] and without unreasonable restrictions: (a) To take part in the conduct of public affairs, directly....”); see also U.N. Human Rights Council, Olivier De Schutter, *Report Submitted by the Special Rapporteur on the Right to Food*, ¶ 39, U.N. Doc. A/HRC/16/49 (Dec. 17, 2010) (arguing that “[p]articipation of food-insecure groups in the policies that affect them should become a crucial element of all food security policies....”).
- 185 See OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS, FREQUENTLY ASKED QUESTIONS ON A HUMAN RIGHTS-BASED APPROACH TO DEVELOPMENT COOPERATION 2 (2006), available at <http://www.ohchr.org/Documents/Publications/FAQen.pdf>.
- 186 See *supra* part I.
- 187 See Philip Alston, *Putting Economic, Social, and Cultural Rights Back on the Agenda of the United States*, 3 (Center for Human Rights & Global Justice, NYU School of Law, Working Paper No. 09–35, 2009) (citing CASS R. SUNSTEIN, *THE SECOND BILL OF RIGHTS: FDR’S UNFINISHED REVOLUTION AND WHY WE NEED IT MORE THAN EVER* (2004)), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1397703](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1397703) (but noting that the United States has a mixed history with regard to economic and social rights under international law and has at times undermined the development of these rights).
- 188 Posner, *supra* note 159.
- 189 Interview with Alison Cohen, *supra* note 117.
- 190 See ESCR Committee, *General Comment No. 12, supra* note 162, ¶ 21 (calling for the “adoption of a national strategy to ensure food and nutrition security for all, based on human rights principles that define the objectives, and the formulation of policies and corresponding benchmarks. [The national strategy] should also identify the resources available to meet the objectives and the most cost-effective way of using them.”).
- 191 See ESCR Committee, *General Comment No. 12, supra* note 162, ¶ 25.
- 192 *Id.* ¶ 22 (“The [national] strategy should be based on a systematic identification of policy measures and activities relevant to the situation and context, as derived from the normative content of the right to adequate food....”).
- 193 In many states and localities, for example, Food Policy Councils have served as important forums for citizens to influence food policies at the local and regional levels. See ALETHEA HARPER ET AL., *FOOD FIRST, FOOD POLICY COUNCILS: LESSONS LEARNED* (2009), available at [https://www.foodfirst.org/sites/www.foodfirst.org/files/pdf/Food\\_Policy\\_Councils\\_Report\\_full\\_final.pdf](https://www.foodfirst.org/sites/www.foodfirst.org/files/pdf/Food_Policy_Councils_Report_full_final.pdf) (discussing the successes and challenges experienced by Food Policy Councils across the United States).
- 194 See ESCR Committee, *General Comment No. 12, supra* note 162, ¶ 29 (calling for verifiable benchmarks and recommending the adoption of a “framework law as a major instrument in the implementation of the national strategy concerning the right to food. The framework law should include provisions on its purpose; the targets or goals to be achieved and the time-frame to be set for the achievement of those targets; the means by which the purpose could be achieved described in broad terms, in particular the intended collaboration with civil society and the private sector and with international organizations; institutional responsibility for the process; and the national mechanisms for its monitoring, as well as possible recourse procedures. In developing the benchmarks and framework legislation, States parties should actively involve civil society organizations.”).
- 195 See *id.* ¶ 22 (calling for a coordinated approach between different levels of government to “ensure that related policies and administrative decisions are in compliance with” States’ obligations to ensure the right to adequate food); see also U.N. Human Rights Council, Olivier De Schutter, *Report of the Special Rapporteur on the Right to Food: Mission to Canada*, ¶ 69(a), U.N. Doc. A/HRC/22/50/Add.1 (Dec. 24, 2012), [hereinafter De Schutter, *Mission to Canada*], available at [http://www.srfood.org/images/stories/pdf/officialreports/20121224\\_canadafinal\\_en.pdf](http://www.srfood.org/images/stories/pdf/officialreports/20121224_canadafinal_en.pdf) (making a similar recommendation in the context of assessing obstacles to the realization of the right to food in Canada).



- 196 See ESCR Committee, *General Comment No. 12*, *supra* note 162, ¶ 13 (noting that accessibility includes both physical and economic accessibility).
- 197 FACT SHEET No. 34, *supra* note 170, at 2–3; *see also* De Schutter, *Right to Food*, *supra* note 161 (noting that “the right to food consequently requires States to ensure that wage policies or social safety nets enable citizens to realize their right to adequate food.”).
- 198 See De Schutter, *Mission to Canada*, *supra* note 195, ¶ 35 (raising similar concerns in the context of assessing obstacles to the realization of the right to food in Canada).
- 199 See ICESCR, *supra* note 160, art. 7(a) (stating that workers should be provided with remuneration which enables “a decent living for themselves and their families....”).
- 200 See *infra* part IV.B.
- 201 See *supra* part I (discussing issues related to “food deserts”). See Press Release, DEP’T OF HEALTH & HUM. SERV., Obama Administration Details Healthy Food Financing Initiative (Feb. 19, 2010), *available at* <http://www.hhs.gov/news/press/2010pres/02/20100219a.html> (detailing one such initiative—the Healthy Food Financing Initiative (HHFI)—which aims to “bring grocery stores and other healthy food retailers to underserved urban and rural communities across America....”); *Healthy Food Financing Initiative*, DEP’T OF HEALTH & HUM. SERV., <http://www.acf.hhs.gov/programs/ocs/resource/healthy-food-financing-initiative-o> (last visited Apr. 30, 2013) (describing how HHFI “[t]hrough a range of programs at the U.S. Departments of Agriculture (USDA), Treasury, and Health and Human Services (HHS)...will expand the availability of nutritious food, including developing and equipping grocery stores, small retailers, corner stores, and farmers markets selling healthy food.”); *see also* USDA, FOOD DESERTS, *supra* note 20, at 103–11 (highlighting programs and policies that could reduce the effects of limited access to affordable and nutritious food across the country); *Food Desert Locator: About the Locator*, USDA, <http://www.ers.usda.gov/data-products/food-desert-locator/about-the-locator.aspx#Defined> (last visited Apr. 30, 2013).
- 202 Access to food proved particularly problematic in the aftermath of Hurricane Sandy in New York City. See *Regarding Emergency Planning and Management During and After the Storm: Disaster Management and Hunger Response: Hearing Before the n.y.c. Council Committee on Public Safety 1* (Jan. 2013) (statement of Joel Berg, Executive Director, New York City Coalition Against Hunger), *available at* <http://www.nyccah.org/files/testimony-city-council-post-sandy.pdf> (noting that after Hurricane Sandy, “evacuation plans did not adequately address the unique challenges in communicating with low income populations. Evacuation plans did not adequately protect supplies of food and water at soup kitchens and food pantries. Non-profit groups who are ‘second responders’—tasked with providing help soon after a storm—were themselves hampered by lack of adequate post-storm *infrastructure* and communications. There was an unacceptable delay in food relief reaching some of the hardest-hit, low-income neighborhoods. Some of the food distributed immediately after the storm was unsuited to many of the people in need.”); *see also* NEW YORK CITY COALITION AGAINST HUNGER, THE PERPETUAL STORM: HUNGER BEFORE AND AFTER HURRICANE SANDY 18 (2012), *available at* [http://www.nyccah.org/files/NYCCAH\\_2012hungerreport.pdf](http://www.nyccah.org/files/NYCCAH_2012hungerreport.pdf) (describing a survey of New York City emergency food providers conducted after Hurricane Sandy, which reported that “since the storm, over 60 percent of [responding agencies] reported an increase in the number of people requesting food”. Furthermore, it noted that “almost 75 percent [of providers] were forced to close or limit their hours of operation” after the storm and non-affected providers were indirectly affected by gas shortages and the need to serve more customers.).
- 203 ESCR Committee, *General Comment No. 12*, *supra* note 162, ¶ 8.
- 204 FACT SHEET No. 34, *supra* note 170, at 3.
- 205 The U.S. government should, for example, consider building off the recommendations of the U.S. Childhood Obesity Task Force as they relate to these issues. See Press Release, Childhood Obesity Task Force Unveils Action Plan: Solving the Problem of Childhood Obesity Within a Generation, <http://www.whitehouse.gov/the-press-office/childhood-obesity-task-force-unveils-action-plan-solving-problem-childhood-obesity-> (May 11, 2010).
- 206 See *infra* part IV.B.
- 207 ESCR Committee, *General Comment No. 12*, *supra* note 162, ¶ 12. See *also infra* part IV.B.
- 208 See U.N. Human Rights Council, Olivier De Schutter, *supra* note 184, ¶ 44 (recommending, *inter alia*, that States “support[] decentralized participatory research

- and the dissemination of knowledge about the best sustainable agricultural practices.... [and] improve[] the ability of producers practicing sustainable agriculture to access markets...”; De Schutter, *Mission to Canada*, *supra* note 195, ¶¶ 23, 28 (noting, in the context of assessing obstacles to the fulfillment of the right to food Canada, that “[l]ocal food systems can deliver considerable health and ecological benefits.... [and can] benefit local farmers, with strong multiplier effects on the local economy” and recommending that greater attention be paid to developing local food systems); *see generally* RENÉE JOHNSON ET AL., CONG. RES. SERV., *THE ROLE OF LOCAL FOOD SYSTEMS IN U.S. FARM POLICY* (2013), *available at* <http://www.nationalaglawcenter.org/assets/crs/R42155.pdf> (discussing the concept of “local food markets” and current and proposed federal programs and initiatives to encourage such markets).
- 209 *See* MIKE RUSSO, U.S. PIRG EDUCATION FUND, *APPLES TO TWINKIES: COMPARING TAXPAYER SUBSIDIES FOR FRESH PRODUCE AND JUNK FOOD 1–2* (2012), *available at* [http://www.uspirg.org/sites/pirg/files/reports/Apples%20to%20Twinkies%20vUS\\_2.pdf](http://www.uspirg.org/sites/pirg/files/reports/Apples%20to%20Twinkies%20vUS_2.pdf) (“Between 1995 and 2011, \$18.2 billion in tax dollars subsidized four common junk food additives — corn syrup, high fructose corn syrup, corn starch, and soy oils (which are processed further into hydrogenated vegetable oils). Healthier agricultural products receive very little in federal subsidies. Since 1995, taxpayers spent only \$637 million subsidizing apples, which is one of the few fresh fruits or vegetables that have a significant federal subsidy.”); *see also* Mark Bittman, *Don’t End Agriculture Subsidies, Fix Them*, *NY TIMES* (Mar. 1, 2011, 8:53 PM), <http://opinionator.blogs.nytimes.com/2011/03/01/dont-end-agricultural-subsidies-fix-them/> (arguing that U.S. farm subsidy policies should be reformed to support small and medium size farmers that produce fruits and vegetables); EWG Farm Subsidies, *United States Summary Information*, <http://farm.ewg.org/region.php> (last visited Apr. 27, 2013) (noting that since 1995 the United States has spent over a quarter trillion dollars on farm subsidies).
- 210 *See* sources cited *supra* note 164 and accompanying text.
- 211 *See* sources cited *supra* note 50 and accompanying text; DONALD S. SHEPARD ET AL., *supra* note 27, at 2 (estimating that extending SNAP to all food insecure households would cost the U.S. government \$83 billion a year, about half the cost of hunger in the United States); *see also* JOEL BERG, CENTER FOR AMERICAN PROGRESS, *DOING WHAT WORKS TO END U.S. HUNGER: FEDERAL FOOD PROGRAMS ARE EFFECTIVE, BUT CAN WORK EVEN BETTER 13* (2010), *available at* [http://www.americanprogress.org/wp-content/uploads/issues/2010/03/pdf/dww\\_hunger.pdf](http://www.americanprogress.org/wp-content/uploads/issues/2010/03/pdf/dww_hunger.pdf) (recommending increasing the gross income eligibility requirements to 185% of the poverty guidelines).
- 212 *See* sources cited *supra* notes 52–53 and accompanying text.
- 213 *See supra* part II.D. (discussing threats to the food safety net in the United States). The House of Representatives has passed a resolution to turn SNAP into a block grant beginning in 2019; impose a five-year time limit on participation; and eliminate broad-based categorical eligibility and the LIHEAP loophole. *LEGISLATIVE DIGEST*, *supra* note 152.
- 214 *See supra* part II.A.2.
- 215 FRAC, *HUNGER DOESN’T TAKE A VACATION*, *supra* note 81, at 2–4 (noting new outreach efforts required by the 2010 Healthy, Hunger-Free Kids Act as contributing to increased participation and describing successful state-specific policies to increase outreach).
- 216 This particular strategy proved successful in a federal pilot project. *See* ABT ASSOCIATES INC., USDA, *SUMMER ELECTRONIC BENEFITS TRANSFER FOR CHILDREN (SEBTC) DEMONSTRATION: EVALUATION FINDINGS FOR THE PROOF-OF-CONCEPT YEAR 1–5* (2012), *available at* [http://www.fns.usda.gov/Ora/menu/Published/CNP/FILES/SEBTC\\_Year1Findings.pdf](http://www.fns.usda.gov/Ora/menu/Published/CNP/FILES/SEBTC_Year1Findings.pdf). The pilot project provided Summer Electronic Benefits for Children (SEBTC) at five pilot sites in summer 2011. The benefits were provided to households with children who were already certified to receive free or reduced-price school meals and were equivalent to approximately \$60 per month per child, the combined cost of receiving free lunches and breakfasts through the NSLP and the SBP. These benefits were provided monthly through existing EBT card systems for SNAP or WIC participants. At the five sites, the SEBTC program reduced very low food security for participating children by 20%. This program was expanded to 14 sites in summer 2012. *Id.*
- 217 For more information on these policy proposals as well as other proposals for improving beneficiaries’ access to SNAP, *see* FOOD RESEARCH & ACTION CENTER, *SMART CHOICES IN HARD TIMES: STRATEGIES FOR STATES, COMMUNITIES, AND ADVOCATES TO REDUCE HUNGER, STIMULATE THE ECONOMY, AND*

- SUSTAIN RECOVERY 18–23 (Feb. 2010), *available at* [http://frac.org/newsite/wp-content/uploads/2010/05/smartchoices\\_2010.pdf](http://frac.org/newsite/wp-content/uploads/2010/05/smartchoices_2010.pdf); *see also* FRAC FACTS, *supra* note 82.
- 218 *See supra* part II. For example, eating breakfast has many benefits for children, including improving academic performance, reducing behavioral problems, and improving children’s diet and eating habits. FOOD RESEARCH & ACTION CENTER, HOW TO EXPAND PARTICIPATION IN SCHOOL BREAKFAST: ISSUE BRIEFS FOR CHILD NUTRITION REAUTHORIZATION, No. 6 at 1 (2010), *available at* [http://frac.org/newsite/wp-content/uploads/2010/04/cnr06\\_breakfast.pdf](http://frac.org/newsite/wp-content/uploads/2010/04/cnr06_breakfast.pdf).
- 219 FRAC, SCHOOL BREAKFAST SCORECARD, *supra* note 79, at 9. Some states offer extra money to schools for each breakfast that the school serves. Others offer money for the start-up costs of beginning a breakfast program or for increased participation. FOOD RESEARCH & ACTION CENTER, WHY OFFER SCHOOL BREAKFAST FREE TO ALL CHILDREN? 2 (2009), *available at* [http://frac.org/wp-content/uploads/2009/09/universal\\_sbp.pdf](http://frac.org/wp-content/uploads/2009/09/universal_sbp.pdf).
- 220 FRAC, SCHOOL BREAKFAST SCORECARD, *supra* note 79, at 5 (“Moving breakfast out of the cafeteria and making it part of the school day reduces...barriers and results in tremendous gains in participation.”).
- 221 WHY OFFER SCHOOL BREAKFAST FREE AND ALL CHILDREN?, *supra* note 219, at 2; POPPENDIECK, *supra* note 84, at 260–295.
- 222 Some states have experimented with projects that combine SNAP and WIC benefits on one EBT card. Although some technical barriers to the “one-card concept” exist, this approach offers a promising way of simplifying the receipt of government benefits. *See generally* USDA, EBT “ONE-CARD” TECHNICAL AND PROGRAMMATIC CONSIDERATIONS (2011), *available at* <http://www.fns.usda.gov/wic/ebt/EBT-OneCardConcept-TechnicalConsiderations-05-10-11.pdf> (explaining the technical and programmatic challenges of implementing the one-card concept).
- 223 Memorandum from Debra R. Whitford, Director, Supplemental Food Programs Division, USDA, to Regional Directors, Supplemental Food Programs Division, USDA & WIC State Agency Directors, WIC Policy Memorandum # 2011-3, Implementation of WIC-Related Electronic Benefit Transfer (EBT) (Mar. 22, 2011), *available at* <http://www.fns.usda.gov/wic/policyandguidance/wicpolicymemos/2011-3-ImplementationofWICRelatedEBTProvisions-PL111-296.pdf>.
- 224 Farmers’ markets are increasingly eligible to accept SNAP benefits, with over 1,600 farmers’ markets accepting SNAP benefits in 2010. However, redemption at farmers’ markets only accounted for .01% of all SNAP redemption in 2010. USDA, BUILDING A HEALTHY AMERICA, *supra* note 41, at 36.
- 225 *SNAP Alumni Project*, A PLACE AT THE TABLE, <http://www.takepart.com/place-at-the-table/snap-alumni> (last visited, Apr. 27, 2013).
- 226 *See* FRAC, REPLACING THE THRIFTY FOOD PLAN, *supra* note 63, at 8 (recommending the use of the so-called “low-cost food plan” instead of the so-called “thrifty food plan” to improve the adequacy of SNAP benefits).
- 227 USDA, 2011 REPORT TO CONGRESS I (2011), *available at* <http://www.snapttohealth.org/snap-innovations/snap-and-hip/>. Another example is a New York City program called Health Bucks, which is funded by the New York City Health Department. SNAP participants receive a \$2 coupon, redeemable for fruits and vegetables at NYC farmers’ markets, for every \$5 in SNAP benefits spent at the farmers’ market. NYC HEALTH, NEW YORK CITY HEALTH DEPARTMENT FARMERS’ MARKET PROGRAMS 2 (2012), *available at* <http://www.nyc.gov/html/doh/downloads/pdf/cdp/farmers-market-report-11.pdf>. The USDA estimates that a 10% reduction in the price of fruits and vegetables could increase consumption of fruits and vegetables by as much as 5.2% and 4.9%, respectively. DIANSHENG DONG & BIING-HWAN LIN, USDA, FRUIT AND VEGETABLE CONSUMPTION BY LOW-INCOME AMERICANS: WOULD A PRICE REDUCTION MAKE A DIFFERENCE? at iii (2009), *available at* <http://www.ers.usda.gov/media/185375/err70.pdf>.
- 228 Elementary schools with a high percentage of students already receiving free and reduced-price meals through the NSLP are eligible to participate in the FFVP. Priority is given to schools with a high percentage of students receiving free and reduced-price meals. Participating schools must submit claims on a monthly basis for fresh fruits and vegetables served to children in school. They are reimbursed at minimum \$50 per student per year and at maximum \$75 per student. USDA, FRESH FRUIT & VEGETABLE PROGRAM: A HANDBOOK FOR SCHOOLS 4, 7 (2010), *available at* <http://www.fns.usda.gov/cnd/FFVP/handbook.pdf>.

- 229 The FFVP was created as a pilot program in four states and one Native American Tribal Organization in 2002. The 2008 Farm Bill authorized the program nationwide and increased funding for the FFVP to \$40 million in FY 2009, with increases of up to \$150 million. *Id.* at 2.
- 230 Bittman, *Finally, Good News About School Lunches*, *supra* note 91 (“The guidelines are imperfect (what isn’t?) but worth celebrating: this is the single most significant improvement the Obama administration has made in the realm of food.”); see sources cited *supra* note 104.
- 231 Bittman, *Finally, Good News About School Lunches*, *supra* note 91.
- 232 *About SNAP-Ed*, USDA, <http://www.csrees.usda.gov/nea/food/fsne/about.html> (last visited Dec. 11, 2012). See generally Elizabeth Frazao et al., *Nutrition Information: Can it Improve the Diets of Low-Income Households?*, in *CAN FOOD STAMPS DO MORE TO IMPROVE FOOD CHOICES?*, *supra* note 50 (noting both the potential of nutrition education programs and the difficulties the programs face in changing diets).
- 233 USDA, *BUILDING A HEALTHY AMERICA*, *supra* note 41, at 24.
- 234 Arthur Delaney, *Dairy Cliff Dodged Thanks To Small Food Stamps Cut*, HUFFINGTON POST (Jan. 1, 2013, 10:12 PM), [http://www.huffingtonpost.com/2013/01/02/dairy-cliff-food-stamps\\_n\\_2398650.html](http://www.huffingtonpost.com/2013/01/02/dairy-cliff-food-stamps_n_2398650.html).
- 235 These programs include the Farm to School Program, The School Day Just Got Healthier, and Team Nutrition. USDA, *The USDA Farm to School Program*, available at [http://www.fns.usda.gov/cnd/F2S/pdf/F2S\\_USDA.PDF](http://www.fns.usda.gov/cnd/F2S/pdf/F2S_USDA.PDF) (“Every year, USDA awards up to \$5 million in grants to help schools connect with local producers and teach kids where their food comes from.”); *The School Day Just Got Healthier*, USDA, <http://www.fns.usda.gov/cnd/healthierschoolday/default.htm> (last visited Apr. 27, 2013) (“The School Day Just Got Healthier Toolkit is a collection of resources including brochures, fact sheets, FAQs, fliers, school lessons, templates and much more, to help prepare everyone for the changes to school meals [occurring as a result of the Healthy, Hunger-Free Kids Act of 2010] this school year.”); *Team Nutrition*, USDA, <http://www.fns.usda.gov/tn/> (last visited Apr. 27, 2013) (“Team Nutrition is an initiative of the USDA Food and Nutrition Service to support the Child Nutrition Programs through training and technical assistance for foodservice, nutrition education for children and their caregivers, and school and community support for healthy eating and physical activity.”).
- 236 See VICTOR OLIVEIRA & ELIZABETH FRAZAO, USDA, *THE WIC PROGRAM: BACKGROUND, TRENDS, AND ECONOMIC ISSUES* 7 (2009), available at <http://www.ers.usda.gov/media/159295/err73.pdf> (noting that WIC agencies are required to provide two nutrition education sessions to beneficiaries during every six month period, but WIC beneficiaries are not required to participate in these sessions).







**The United States is facing a food security crisis:** Today, one in six Americans lives in a household that cannot afford adequate food. Being food insecure means living with trade-offs that no one should have to face, like choosing between buying food and receiving medical care or paying the bills. In order to make ends meet, food insecure individuals must often turn to a network of publicly or privately run food and nutrition assistance programs. These programs provide crucial support but fail to adequately address the needs of the 50 million Americans who are food insecure.

Food insecurity in the United States is not the result of a shortage of food or of resources; it is the result of poverty and of policies that fail to prioritize the needs of low-income Americans. Instead of addressing critical gaps in food assistance, the U.S. government is considering serious funding cuts to nutrition assistance programs that could exacerbate already alarming rates of food insecurity and push millions of Americans into deeper crisis.

*Nourishing Change: Fulfilling the Right to Food in the United States* argues that the U.S. government must adopt a new approach to the problem: one that shifts the focus from food assistance as charity to access to adequate food as a human right. This approach requires the U.S. government to prioritize the basic needs of all Americans; support a robust social safety net; comprehensively tackle the root causes of food insecurity; and ensure the availability, accessibility, and adequacy of food for all.

*Nourishing Change* draws on IHRC's expertise in the area of international human rights law generally and on the right to food in particular. This briefing paper reflects IHRC's interviews with some of the nation's leading food policy experts and anti-hunger advocates and features the personal testimonies of food pantry customers and food insecure individuals to illustrate both the depth and impact of the food security crisis. The briefing paper concludes with key policy recommendations to help fulfill the right to adequate food for all Americans.

## INTERNATIONAL HUMAN RIGHTS CLINIC

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