

**Immigration and Farm Labor:
Policy Options and Consequences**
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Abstract

US farms employ 2.4 million hired workers sometime during a typical year, over half of whom are unauthorized. Hired farm labor is concentrated by commodity, geography, and size of farm. While all producers face risks due to immigration enforcement, large producers of labor-intensive crops in California, Florida, Texas, and Washington are most vulnerable to increased labor costs. The four major immigration policy options would increase enforcement against illegal migration. The status quo of more I-9 audits and state and local laws encourages risk avoidance, including farmers turning to labor contractors and other intermediaries to obtain workers so that liability for violations rests with these middlemen. An enforcement-only approach that requires all employers to use E-Verify to check new hires may result in the circulation of unauthorized workers between employers. Stepped-up enforcement combined with easier access to guest workers should increase the share of farm jobs filled by legal foreign workers from less than 10 percent today. Finally, comprehensive immigration reforms that include more enforcement and legalization could accelerate the exodus of current workers from the farm work force and may increase the employment of guest workers.

Farm Jobs and Workers

There is no single source of data on hired farm workers. The Census of Agriculture (COA), which collects information from farmers on their expenditures for workers hired directly and brought to farms by contractors and other intermediaries, reported \$26 billion in labor expenses in 2007.

Farm labor expenditures are concentrated in three inter-related ways: by commodity, geography, and size of farm. Over half are paid by producers of fruits, berries and nuts, vegetables, potatoes and melons, and horticultural specialties such as greenhouse and nursery crops (FVH). California accounted for quarter of farm labor expenses, and Florida, Texas, and Washington another 15

percent. A fifth of the 2.2 million US farms reported labor expenditures in 2007, but the 36,000 farms that each paid \$100,000 or more for hired labor accounted for 75 percent of direct-hire farm labor expenses, and the 11,000 farms that had contract labor expenses of \$50,000 or more in 2007 accounted for 77 percent of the total.

Farmers report the number of workers they hire directly to the COA, and reported 2.6 million in 2007, including 35 percent or 910,000 who were hired for 150 days or more on their farms. However, the 2.6 million jobs on farms figure does not include workers brought to farms by contractors and double counts a worker reported by two farmers.

The National Agricultural Statistics Service (NASS) surveys farm employers quarterly to obtain employment and earnings data on hired workers (<http://usda.mannlib.cornell.edu/MannUsda/viewDocumentInfo.do?documentID=1063>). No survey was conducted in January 2007, but in April 2007 employers reported 736,000 directly hired workers and 253,000 agricultural service workers, a total of 898,000, in July 2007 they reported 843,000 and 363,000 for a total of 1.2 million, and in October 2007 they reported 806,000 and 316,000 for a total of 1.1 million, suggesting average employment of over a million hired workers.

COA and NASS data suggest about 1.2 million full-time equivalent (FTE) or 2,000 hour-a-year jobs on US farms. If COA labor expenses of \$26.4 billion are divided by NASS's annual average earnings of hired farm workers in 2007, \$10.21 an hour, the estimated number of FTE jobs was 1.2 million in both 2007 and 2002 (Rural Migration News, 2009).

Quarterly Census of Employment and Wage data (www.bls.gov/cew) reinforce the conclusion that average hired worker employment on US farms is about 1.2 million.¹ Between 2001 and 2008, employment in NAICS 11, agriculture, forestry, fishing and hunting, averaged 1.2 million and ranged from a low of a million in January to a high of 1.3 million in July. The number of agricultural establishments paying unemployment insurance (UI) taxes fell from about 100,000 in 2001-02 to 95,000 in 2007-08, while total UI-covered wages rose from \$24 billion to \$30 billion, 25 percent.

There are more than 1.2 million farm workers because of seasonality and turnover. Analysis of unemployment insurance data in California, which requires all employers paying \$100 or more in quarterly wages to enroll, found at least two individuals employed for each FTE job (Khan et al, 2004). Applying this two-to-one ratio between workers and FTE jobs suggests 2.4 million hired farm workers across the US, including 800,000 in California.

Employers report employment and earnings, but not the characteristics of workers. The US Department of Labor's National Agricultural Workers Survey

¹ The Bureau of Labor Statistics estimated that 92 percent of wage and salary farm workers are included in the QCEW (www.bls.gov/cew).

(NAWS) interviews about 2,500 workers a year who are employed on crop farms, and found that two-thirds were born in Mexico and a third are US citizens (a few were born in Central America and other countries). The share of crop workers born in west central Mexican states such as Jalisco and Michoacan has been falling, while the share born in southern Mexican states such as Oaxaca and Chiapas has been rising. Among foreign-born farm workers, the share in the US for more than a decade has been rising, reflecting fewer new entries.²

About half of crop workers have been unauthorized since the mid-1990s. Two-thirds of hired workers on crop farms were born in Mexico and a third are US citizens (a few are born in Central America and other countries). The share of crop workers born in west central Mexican states such as Jalisco and Michoacan has been falling, while the share born in southern Mexican states such as Oaxaca and Chiapas has been rising.

Over 60 percent of crop workers are married, and almost all married farm workers are parents. A quarter of crop worker families are mixed, meaning they include members with legal and unauthorized status, often unauthorized parents with US-born children. Most of the workers interviewed by the NAWS are employed on farms producing FVH crops: 35 percent of workers worked in fruits and nuts, 23 percent in vegetables, and 20 percent in horticulture, or 80 percent are in FVH commodities. Workers reported average wages of \$9 an hour in 2009, about \$1.50 or 17 percent an hour less than the average \$10.50 reported by employers to the NASS.

Immigration Enforcement

The major immigration issue over the past decade is what to do about illegal immigration. The US had 40 million foreign-born residents in 2010, including 11.2 million, almost 30 percent, who were illegally present (Patten, 2012; Passel and Cohn, 2011). Public opinion polls find that most Americans believe the federal government should do more to reduce illegal immigration. A CNN/ORC poll in November 2011 found that 55 percent of respondents supported more government efforts to stop illegal immigration and deport unauthorized foreigners in the US, while 42 percent would offer unauthorized foreigners a path to legal residency (www.pollingreport.com/immigration.htm).

Congress has been unable to agree on how to deal with illegal migration. The Republican-controlled House approved an enforcement-only approach to curb illegal immigration in December 2005, prompting then President George Bush to say that "America is a nation built on the rule of law, and this bill will help us protect our borders and crack down on illegal entry into the United States." The Border Protection, Antiterrorism, and Illegal Immigration Control Act (H.R. 4437) would have required all employers to participate in a federal program now called E-Verify that involves employers submitting worker-provided data via the internet to check the legal status of newly hired workers. The bill also called for

² The share of foreign-born workers who were in the US less than four years peaked at almost 50 percent in the late 1990s, when unauthorized Mexico-US migration was near its peak levels.

more Border Patrol agents and a fence along a third of the 2,000 mile Mexico-US border and would have defined "illegal presence" in the US a felony, making it harder for unauthorized workers to become legal guest workers and immigrants in the future (Migration News, 2006a).

Reaction against the House bill culminated in a "Day Without Immigrants" May 1, 2006 that saw some meatpacking plants, home builders, and restaurants close as workers requested the day off. Demonstrators carrying signs that read "today we march, tomorrow we vote" urged the Democratic-controlled Senate to approve an immigration reform that included a path from unauthorized foreigner to legal immigrant. The Senate in May 2011 approved the Comprehensive Immigration Reform Act (S. 2611), which included a legalization program for unauthorized foreigners, a new guest worker program, and new enforcement efforts against illegal immigration similar to those in the House bill (Migration News, 2006b).

The House did not consider CIRA and, when the Senate tackled immigration reform again in 2007, a revised version of CIRA failed despite the active support of President Bush. The Comprehensive Immigration Reform Act of 2007 (S. 1348) faced opposition from Republicans who opposed "amnesty" for unauthorized foreigners and Democrats who feared that more guest workers would adversely affect US workers. In the end, advocates toward the extremes of the "no borders" and "no migrants" ends of the policy spectrum were more comfortable with the status quo than a complex compromise whose impacts were unclear (Migration News, 2007a).

In response, the Bush administration stepped up the enforcement of laws prohibiting employers from knowingly hiring unauthorized workers. The Social Security Administration was sending no-match letters to employers who submitted data on 10 or more workers whose name and number do not match SSA records. The Department of Homeland Security announced plans to include with these no-match letters a notice advising employers to fire workers who could not clean up their records within 90 days or be presumed to knowingly hire unauthorized workers. Both President Bush and DHS Secretary Michael Chertoff predicted consequences, with Bush saying farmers would ask "Where am I going to get my peach pickers" and Chertoff predicting "some unhappy consequences for the economy" from the DHS notice included with no-match letters. However, a suit filed by employers, unions, and migrant advocates blocked the DHS notices and halted no-match letters (Migration News, 2007b).³

DHS also targeted the meatpacking industry in raids aimed at removing unauthorized workers from jobs. Over 1,000 agents raided six Swift plants December 12, 2006, arresting almost 1,300 of the 7,000 workers employed on the day shift in these plants, 20 percent. Crider Inc, a poultry processor in Stillmore,

³ There are errors in the SSA database most commonly due to name changes with marriage and data entry mistakes. A federal judge cited these errors in issuing an injunction preventing SSA from including the DHS notice with its no-match mailings to prevent "irreparable harm to innocent workers and employers."

Georgia, lost three-fourths of its 900-strong work force when agents mounted a raid on Labor Day weekend in 2006. In the aftermath of these raids, many meatpackers enrolled in E-Verify, the internet-based system that allows employers to check the legal status of newly hired workers.

During the 2008 presidential campaign, Senator John McCain (R-AZ) supported an enforcement-first approach to immigration reform while Senator Barack Obama (D-IL) supported legalization to bring unauthorized foreigners "out of the shadows" and on the path to citizenship. After the election, DHS stopped workplace raids and increased the number of I-9 audits that involve agents checking the forms completed by newly hired workers and their employers. I-9 audits, also known as silent raids, involve agents reviewing records and informing employers which of their employees appear to be unauthorized. Employers are to notify suspect employees and ask them to clean up the discrepancies in their records or terminate them.

Some I-9 audits result in major workforce changes. For example, Gebbers Farms in Brewster, Washington terminated 550 workers after an I-9 audit late in 2009, almost half of its workers, and replaced them with H-2A guest workers in 2010. Despite predictions that the fired Gebbers workers would leave the area, reducing business and school enrollment, the Brewster school district reported that enrollment remained steady and business quickly rebounded to pre-audit levels. La Milpa grocery store owner Esteban Camacho said: "Everything is back to normal. I think most of the people who stayed here wound up working somewhere else. There are a lot of the same people around." (Rural Migration News, 2010).

During the past decade, illegal immigration increased fastest in areas that had not previously had many immigrants, including southeastern states. California has the most unauthorized foreigners, an estimated 2.5 million, followed by Texas with 1.7 million (Passel and Cohn, 2011, p13), but these states also have large numbers of legal immigrants and naturalized US citizens. In states such as Alabama, Arizona, and Georgia, 40 percent or more of foreign-born residents are unauthorized, helping to explain why some of the so-called "new destinations" for migrants enacted state laws aimed at deterring illegal migration. For example, Arizona's Support Our Law Enforcement and Safe Neighborhoods Act (S.B. 1070) makes it a state crime to be an unauthorized foreigner and requires state and local police to check the legal status of persons they encounter during traffic stops and other interactions. Alabama, Georgia, Indiana, South Carolina and Utah enacted similar laws in 2011, but implementation of many provisions of these attrition-through-enforcement laws has been blocked by federal injunctions.

Enforcement and Agriculture

Agriculture was a major stumbling block to enact the Immigration Reform and Control Act (IRCA) of 1986. During the early 1980s, unauthorized farm workers were largely confined to California and other southwestern states, and their distribution reflected the expected losses from enforcement activities that

consisted largely of agents driving into fields and attempting to apprehend workers who ran away. The overall share of unauthorized workers was estimated at 20 to 25 percent in California, with higher shares in less-perishable citrus and lower shares in more-perishable vegetables (Martin et al 1985).

The key enforcement provision of IRCA were employer sanctions, fines and prison sentences for employers who knowingly hired unauthorized workers. To avoid fines, newly hired workers and their employers were to complete I-9 forms that certified that the worker presented, and the employer saw, documents proving identity and the right to work in the US. Farmers were divided about what they wanted to drop their opposition to sanctions. East Coast farmers, including sugar cane growers in Florida and apple growers on the eastern seaboard, demanded relatively minor changes to the then H-2 program that allowed farmers anticipating labor shortages to request certification to employ guest workers. However, western growers who did not have the worker housing required to be certified to hire H-2 workers insisted that they needed a guest worker program that did not require employer-provided housing.

The compromise was the Special Agricultural Worker (SAW) program that eventually allowed 1.1 million unauthorized foreigners to become legal immigrants. The expectation was that labor costs would rise as farm employers raised wages in order to retain newly legalized SAWs or build housing in order to employ H-2A workers under the slightly revised guest worker program. However, labor costs did not rise because illegal immigration continued, and workers presented false documents to employers to satisfy I-9 requirements. Employer sanctions proved ineffective because employers did not have to determine the authenticity of documents presented by newly hired workers.

As the share of unauthorized farm workers rose in the 1990s, farm employers pressed for easier access to guest workers outside the H-2A program, which requires the recruitment of US workers at a US Department of Labor set wage, the Adverse Effect Wage Rate (AEWR) and employer-provided housing. However, President Clinton threatened to veto proposals in Congress for changes in and alternatives to the H-2A program, and none were approved. The election of new presidents in Mexico and the US in 2000 who favored new guest worker programs weakened the confidence of farm worker advocates that they could block a new guest worker program, prompting negotiations with farm employers that yielded the Agricultural Jobs, Opportunity, Benefits and Security Act (AgJOBS).

AgJOBS would repeat the SAW program's approach to unauthorized farm workers with several changes. Currently unauthorized farm workers could legalize their status, but could "earn" a regular immigrant status for themselves and their families only if they continued to do farm work, an effort to prevent an immediate exodus of farm workers for nonfarm jobs. The H-2A program would change as well. If governors certified that there was sufficient nonfarm housing available, employers could pay a housing allowance of \$1 to \$2 an hour to H-2A guest workers rather than provide them with housing. However, to keep labor

costs from rising, this housing allowance would be offset by reducing the AEWR by a similar amount while it was studied.

AgJOBS, which was included in the Senate CIRA bills of 2006 and 2007, was expected to be enacted because of its worker-employer and bipartisan support. However, AgJOBS has not come to a vote, and there is little prospect of AgJOBS being approved as a stand-alone measure in the near term. This means that the major option for farmers to employ legal guest workers is the H-2A program, which remains relatively small, involving about 7,000 farm employers requesting certification to fill 94,200 farm jobs with H-2A workers in FY10 (over 99 percent of employer requests were approved).

Farm employer concern about the availability and cost of farm labor is rising because of federal and state proposals to require all employers to participate in E-Verify, which would presumably inform employers immediately that workers presented false documents to be hired. Federal contractors and all employers in states such as Arizona, Alabama, and Georgia must use E-Verify to check new hires, and the Legal Workforce Act (H.R. 2164) would phase in E-Verify for all US employers over four years. Most farm groups oppose mandatory E-Verify unless it is coupled with a new guest worker program, while most worker advocates oppose E-Verify unless it is coupled with legalization.

All major immigration reform proposals would increase enforcement aimed at deterring unauthorized foreigners from entering the US and finding jobs. The question for agriculture is what might accompany more border agents and fences, mandatory use of E-Verify, and more I-9 audits and workplace raids.

There are four major scenarios. First is the enforcement status quo. Under a status-quo scenario, I-9 audits and more states requiring employers to participate in E-Verify would likely disrupt employment and hiring on a farm-by-farm basis. The responses of farmers to mandatory E-Verify at the state level would likely range from farmers obtaining more workers via contractors willing to absorb the risk of enforcement to investment in housing in order to employ H-2A guest workers.⁴ Neither E-Verify nor I-9 audits remove detected unauthorized workers from the US, prompting speculation that some workers may circulate from farm to farm to take advantage of the periods allowed for suspect workers to correct their records. Some may attempt to become self-employed to avoid the need for I-9 forms.

The second scenario involves a federal law requiring all employers to use E-Verify. Even if farmers were initially exempt from E-Verify (as introduced, H.R. 2164 would have exempted farmers for three years), the prospect that farmers would immediately know the workers they hired were suspected of being unauthorized would likely prompt responses similar to the status quo, that is, a switch to hiring via risk-absorbing contractors, investment in housing and H-2A

⁴ The US Supreme Court upheld Arizona's 2007 Legal Workforce Act that can deny business licenses to employers who knowingly hire unauthorized workers on a 5-3 vote in 2011.

guest workers, and/or more risk-taking by employers. Since Arizona enacted a law mandating participation in E-Verify, no farmer has lost a business license for hiring unauthorized workers.

The third scenario couples more enforcement with new guest worker programs or modifications to the current H-2A program. Most nonfarm employers support H.R. 2164 so that there is one federal law aiming to keep unauthorized workers from being hired rather than multiple state laws. However, farmers insist that they cannot support H.R. 2164 without new guest worker programs, and two proposals are pending in the House. H.R. 2847 would issue up to 500,000 H-2C work visas a year to foreigners who could fill farm jobs for up to 10 months, allow farmers to attest that they are abiding by regulations rather than undergo DOL-supervised certification of their need for foreign workers, permit housing vouchers instead of housing, and eliminate the AEW. H.R. 2895 would allow USDA to determine how many 10-month W-visas to issue, allow W-visa holders to change US employers, and exempt farmers from providing housing to W-visa holders.

The fourth scenario would link more enforcement with the legalization of unauthorized foreigners and new guest worker programs. Legalization in the past increased farm worker mobility in the US labor market, encouraging some farm workers to switch to construction, meatpacking, and other jobs that offer higher wages and less seasonal work. A legalization program could try to require farm workers to continue doing farm work, as proposed in AgJOBS, although the effectiveness of a continued-farm work requirement has not been tested. If new guest worker programs made it easier for farmers to employ legal guest workers, the result could be an exodus of legalized farm workers and their replacement with guest workers, with program rules determining the costs of the transition. If legalized farm workers left quickly, and obtaining replacement workers was costly, there would likely be labor-saving mechanization and management changes.

The Road Ahead

For the past two decades, about half of US crop workers have been unauthorized. Federal and state enforcement efforts may make it more difficult for farm employers to hire and retain unauthorized workers, prompting fears of labor shortages and crop losses or spikes in farm labor costs.

Farmers have experienced sudden changes to the cost and availability of labor in the past. In the mid-1960s, after the end of the 1942-64 Bracero program, employers granted 40 percent wage increases to grape pickers represented by the United Farm Workers union (Martin, 2003). A wave of labor-saving mechanization symbolized by the processing tomato harvester and management changes that ranged from fewer repicks to bulk bins and forklifts in the fields accompanied rising farm wages.

There was expected to be a similar period of labor-saving adjustment in the late 1980s after IRCA introduced employer sanctions on employers who knowingly

hired unauthorized workers. Instead, illegal immigration surged, and unauthorized workers spread throughout US agriculture (Martin, 2009). The share of unauthorized workers, over 50 percent for the past decade, and the fact that they are employed in most commodities, puts agriculture at a unique crossroads.

All immigration reform proposal include more enforcement. The status quo may lead to a gradual tightening of the labor supply and force adjustments on selected producers, but not the prompt systemic changes likely if the federal government requires all employers to use E-Verify and steps up workplace enforcement. More enforcement could be coupled with easier access to guest workers, which could substitute legal for unauthorized workers, or legalization, whose effects depend on the details of the program.

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