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EMERGING OUTCOMES IN CALIFORNIA AGRICULTURE FROM THE IMMIGRATION REFORM AND CONTROL ACT OF 1986

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Emerging Outcomes in California Agriculture from the Immigration Reform and Control Act of 1986

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INTRODUCTION

Anyone who still doubts that the pen is mightier than the sword has been insulated from the swirls of activity touched off by the signing of the Immigration Reform and Control Act of 1986 (IRCA). This monumental, complex amendment to the Immigration and Nationality Act addresses issues of border control, status of aliens in the United States without legal authority, labor supply and demand, employment practices, civil rights, social services, and administration of the law itself. Its social and economic impacts are already far-reaching.

The new law was passed "to effectively control unauthorized immigration to the United States" (U.S. House of Representatives, 1986, p.1). It is based on beliefs that a sovereign nation needs to control its borders, that U.S. borders are out of control, and that aliens who cross them seek income through employment. Its main thrust is therefore to reduce job opportunities for unauthorized aliens by prohibiting employers from hiring them. IRCA imposes on employers new hiring and record-keeping obligations, backed by a schedule of stiff fines for noncompliance. It also creates mechanisms by which many people who have lived or worked here illegally can acquire legal resident status.

While affecting all employers and employees in the nation, parts of the new law have particular significance for people in agriculture. IRCA contains provisions designed to assist producers of perishable crops in making the transition to a wholly legal workforce. In general, it includes measures that soften and defer the more substantial adjustments it requires.

Does IRCA represent attending to unfinished business or setting out in new directions? To the farm sector, certainly both. The unfinished business explains IRCA's differential attention to agriculture. How far IRCA takes us in new directions will depend on a number of public and private choices.

SPECIAL TREATMENT OF AGRICULTURE

The new law gives special treatment to agriculture in several related ways: (1) Enforcement of sanctions is deferred for a large sector of agricultural employers. (2) One new means for gaining legal resident status is extended only to farm workers. (3) Additional ("replenishment") farm workers may be admitted later and granted legal resident status. (4) A revised visa program for temporarily admitting foreign agricultural workers is specifically codified. (5) Access to agricultural fields by border patrol agents is limited. (6) A special commission is established to report to Congress in five years on the impact of IRCA on agriculture.

Enforcement Deferred

Enforcement of employer sanctions for hiring ineligible workers to perform "seasonal agricultural services" is deferred

1. I am indebted to Norman J. Hetland and John W. Mamer for their invaluable help in preparation of this paper.

until December 1, 1988. While the statute phases in proceedings against all other employers beginning June 1, 1987 (subsequently changed by regulation to July 1), producers of fruits, vegetables, and other perishable commodities get an extra 18 months before facing fines for hiring without documentation.

Special Agricultural Worker Program

Among the three means for obtaining legal resident status (and ultimately citizenship) under IRCA, one is available only to farm workers, including many who could not begin to meet the long residency requirement of the general legalization program. (For a more extensive description of the law's general legalization, special agricultural worker, and green card registry provisions, see Rosenberg, 1987b.) The key eligibility criterion of the special agricultural worker (SAW) program is having been employed for 90 or more "man-days" in "field work" on fruits, vegetables, or other perishables between May 1, 1985, and May 1, 1986. The qualifying work days need not have been continuous, but they must have occurred during the 12-month period specified. Application period for the SAW program runs from June 1, 1987, through November 30, 1988 (coincident with the end of the grace period for SAW employers).

Replenishment Agricultural Worker Program

Aliens, including SAW workers, who obtain temporary or permanent resident status are free to live and work anywhere in the United States. IRCA anticipates SAWs' potential departure from agricultural work by allowing "replenishment agricultural workers" (RAWs) to enter the United States from 1990 to 1993 and obtain legal resident status if farm labor shortages develop. Secretaries of agriculture and labor will be responsible for determining the number of workers, if any, to admit each year by means of a formula that includes the number of workers legalized under the SAW program, changes in perishable crop acreage, and technological developments.

Unlike those who qualify as SAWs, replenishment workers are somewhat tied to farm work. RAWs must work 90 days per year *in seasonal agricultural services* to maintain temporary legal status. After three years, they may obtain permanent resident status and seek employment in any industry. Eligibility for naturalization requires two additional years of employment in seasonal agricultural services.

The H-2A Program

If farmers cannot meet their labor needs through recruitment from the expanded pool of legal residents, they can still be certified to hire nonimmigrant workers from outside the United States for temporary or seasonal work. Most agricultural employers have found the existing H-2 visa program impractical. IRCA creates a new H-2A classification for temporary admission of foreign farm workers and streamlines the process of certifying employers to recruit them. Certification depends on showing that sufficient numbers of qualified workers are not otherwise available and that employment of nonresident aliens would not adversely affect wages and working conditions of other workers in the United States.

Under the new law, employers can apply for certification closer to the time (no more than 60 days before) workers are needed. IRCA directs the Department of Labor to expedite action on employer applications or modified applications that are promptly resubmitted after denial, appeals, and performance failures of domestically recruited workers. It requires certified employers, however, to offer H-2A workers housing, workers compensation insurance, and other terms of employment to be defined by the Secretary of Labor. Until at least June 1990, H-2A employers will also have to hire any qualified U.S. resident who applies during the first 50 percent of the certification period.

Restricted INS Access to Agricultural Property

In the realm of enforcement, IRCA funds more intensive border patrol activity but creates new due process to protect rights of farmers. While it adds some $420 million annually to the Immigration and Naturalization Service (INS) appropriation for inspection at the border and in the interior, it restricts INS Border Patrol access to open agricultural operations. Except within 25 miles of the border or when in hot pursuit of a suspect, INS officers need the property owner's consent or a search warrant before entering fields to question workers.

Commission on Agricultural Workers

Finally, the new immigration law establishes a Commission on Agricultural Workers to report to Congress within five years on the impact of its provisions on agriculture. Among the specific charges of this group is to assess the relationship between agricultural labor management practices and recruitment problems. The law also instructs other government departments to report in coming years on immigration, unauthorized alien employment and employer sanctions, the H-2A program, the general legalization program, and cooperative economic development in the Western Hemisphere.

BACKGROUND

Why does the new law contain these special provisions affecting people in agriculture? Some observers say it is attributable to strong, effective lobbying. But this lobbying had a rational basis. American agriculture has long depended on labor provided by immigrant and alien workers, legal and illegal. Over the last century people from a succession of immigrant groups (Chinese, Japanese, Filipinos, Texas Chicanos, and Mexicans) have performed most of the arduous work in labor-intensive specialty crops (Fuller, 1968).

As Congress debated immigration reform in the 1980s, the distressed Mexican economy and porous southern U.S. border were helping to maintain a tradition: an abundant supply of people coming north to earn in an hour what they might in a day back home. An estimated one million or more Mexicans were entering the U.S. workforce illegally each year. While they would end up in various industries and parts of the nation, many were headed for jobs on commercial farms.

Reliable statistics describing the numbers, earnings, and whereabouts of illegal aliens in agriculture simply do not exist. The elephant is quite large, and we are all so blind. It is clear, however, that agriculture's dependence on foreign-born workers varies considerably across commodity sectors. For example, citrus harvest crews in southern California have consisted largely of recent Mexican immigrants, the majority here without legal right, while corn and soybean farmers in Nebraska tend to employ local U.S. citizens. Sugar cane work in Florida is performed predominantly by legal **non**immigrant aliens with H-2 visas. For analyses of data about who does U.S. farm work, see Pollack (1986), Martin (1987), and Rosenberg (1987a).

Analysis of farm labor expenditures has been used to identify farm locations and commodities in which illegal aliens are *likely* to be most involved (Coltrane, 1984). Hired and contract farm labor is geographically concentrated in a few states. In 1978 California farm operators paid 21.5 percent of all expenditures for such hired labor, Florida 7.2 percent, Texas 6.7 percent, Washington 3.4 percent, and North Carolina 3.2 percent. A total of nearly 70 percent of all expenditures was paid in 17 states. Similarly, farm labor expenses are unevenly distributed across

commodity sectors. Though representing only 13 percent of agricultural production costs overall in the United States, labor expenses were 56.5 percent of costs on farms producing vegetables, melons, tree fruit and nuts, and horticultural specialty products.

Seasonal jobs in this "FVH" (fruit, vegetable, and horticultural specialty) sector are thought to employ the largest numbers of illegal aliens in agriculture (Agricultural Employment Work Group, 1982). Most of these jobs are in the so-called secondary labor market, characterized by low pay, poor working conditions, employment instability, few opportunities for advancement, and stigma for workers with alternatives. They tend to bring down the farm wage averages as compared to wages in other employment (Table 1).

The effects of labor saving mechanization in conveyance, cultivation, and harvest of some crops (e.g., tomatoes, nuts, potatoes) have been offset by those of increased demand for and production of other labor-intensive crops (e.g., broccoli, strawberries, grapes). Derived demand for fruit, vegetable, and horticultural specialty (FVH) workers therefore remains high.

The terms of employment in FVH jobs and the traditional immigrant or alien group occupancy of them have been "chicken and egg" for decades. Their political economic context have been subjects of much public debate and scholarly examination (for example, Runsten and LeVeen, 1981). They remain part of the unfinished business that IRCA addresses.

The Bracero Program

From 1942 through 1964 the Bracero Program institutionalized agriculture's long reliance on foreign-born workers. (Braceros are literally, in Spanish, "stong-armed ones.") To some observers it was and remains today a symbol of all that is wrong with the farm labor scene. Its official purpose was to supplement available U.S. domestic labor with temporary Mexican labor during periods of high demand

Table 1. Average Hourly Farm and Manufacturing (Mfg.) Wage Rates

Year	California Farm	Mfg.	Farm/Mfg.	United States Farm	Mfg.	Farm/Mfg.
	dollars		percent	dollars		percent
1959	1.18	2.53	46.6	.95	2.19	43.4
1963	1.32	2.88	45.8	1.05	2.45	42.9
1967	1.62	3.29	49.2	1.33	2.82	47.2
1971	1.97	4.02	49.0	1.73	3.57	48.5
1975	2.73	5.22	52.3	2.45	4.83	50.7
1979	3.70	7.03	52.6	3.41	6.69	51.0
1983	4.94	9.52	51.9	4.08	8.83	46.2

Sources: U.S. Department of Labor, Bureau of Labor Statistics, *Employment, Hours, and Earnings, States and Areas, 1939-82*, Vol. 1 & II, Bull. 1370-17, Jan. 1984; *Supplement to Employment, Hours, and Earnings, States and Areas, Data for 1980-83*, Bull. 1370-18, Aug. 1984.

for agricultural work. Initially created by the Bracero Agreement of 1942 to relieve one wartime farm labor shortage, the program was further codified in 1951 under Public Law 78 to nominally relieve another.

The 1942 agreement helped assuage hard feelings in the Mexican government over Depression-era displacement of long-time Mexican farm workers by U.S. citizens desperate for jobs of any kind. After the first wartime emergency ended, the program was continued through the Immigration and Nationality Act, which shifted the contractor role from U.S. government to individual farm employer.

Articles later written into P.L. 78 responded to some of the concerns mounting in both Mexico and the U.S. about wages, minumum employment guarantees, housing and meals, occupational insurance, and transportation for braceros. Congress extended the program annually or biannually until its expiration in 1964. For perspectives on the interests affected by Bracero Program extension, see Craig (1971), Turner (1965), and U.S. Department of Labor (1960).

A notable amendment in 1961 provided that bracero wages could be no less than an amount established by the Secretary of Labor to avoid "adverse effect" on local resident workers. The amendment prompted more rigid enforcement of domestic and foreign wage guarantees. Near the end of the program Secretary Willard Wirtz boosted the recommended minimum wage for California workers from $1.00 to $1.40.

Most aliens admitted from 1942 through 1964 to work on U.S. farms were Mexican (Table 2). Nearly 5 million workers overall were contracted to work through the Bracero Program (McElroy and Gavett, 1965). During 1956-1959, with use of the program at its peak, some 450,000 braceros worked on nearly 50,000 farms in 38 states, though their geographical distribution was quite uneven. In 1959 more than three-quarters of the braceros provided their services in Texas and California, 94 percent in those two states plus Arizona, New Mexico, and Arkansas. With increasing mechanization of the cotton harvest, California overtook Texas in 1962 as the leading user of bracero labor.

Table 2. Foreign Agricultural Workers Temporarily Admitted to U.S., 1942-1964

	Total Foreign	Total Mexican	Mexican/ Foreign
	thousands		percent
1942	4.2	4.2	100.0
1943	65.6	52.1	79.4
1944	84.4	62.2	73.6
1945	73.4	49.5	67.4
1946	51.3	32.0	62.4
1947	30.8	19.6	63.8
1948	44.9	35.3	78.7
1949	112.8	107.0	94.9
1950	76.5	67.5	88.2
1951	203.6	192.0	94.3
1952	210.2	197.1	93.8
1953	215.3	201.4	93.5
1954	320.7	309.0	96.4
1955	412.0	398.7	96.8
1956	459.9	445.2	96.8
1957	452.2	436.0	96.4
1958	447.5	432.9	96.7
1959	455.4	437.6	96.1
1960	334.7	315.8	94.4
1961	310.4	291.4	93.9
1962	217.0	195.0	89.8
1963	209.2	186.9	89.3
1964	200.0	177.7	88.9
Total:			
1942-64	4,992.2	4,646.2	93.1

Source: U.S. Dept. of Agriculture, Economic Research Service. *Termination of the Bracero Program: Some Effects on Farm Labor and Migrant Housing Needs*, Agricultural Economic Report No. 77, June 1965.

The distribution of bracero labor across commodities in 1963 is suggested in Table 3, which reports labor of *foreign* workers by commodity (89.3 percent of foreign workers were braceros). The crops to which foreign workers devoted the greatest number of worker-months that year were

tomatoes, citrus, lettuce, other vegetables, cotton, sugar cane, and strawberries. Ranked by ratio of foreign labor to all labor employed, the most bracero-dependent crops were lettuce, sugar cane, cucumbers, melons, tomatoes, citrus, sugar beets, and strawberries.

For more than 15 years such organizations as the Farm Bureau Federation, representing the view of most major growers of these commodities, argued successfully for the continuation of what had originally been a wartime expedient. The reasoning was that U.S. citizens were neither skilled nor willing enough to perform the arduous, seasonal work of specialty agriculture, especially given the terms of employment that producers could afford. Critics countered that braceros were culturally isolated, pliable, easily intimidated, essentially at the mercy of their employers, and thus exploited to keep down both the costs of production and the demands of domestic workers.

With each successive extension, proponents of the Bracero Program faced greater opposition. By 1963, when a final one-year extension was passed, public recognition of inequities under the program finally had its effect on even long-time supporters in Congress. In the words of Representative B. F. Sisk of California, ". . . the time has come to serve notice on the American farmer that he and we combined must come up with an alternative program. . . This is the last time I shall enter the well to ask for an extension. . . We have come to the end of the line" (Turner, 1965). Unfinished business indeed.

Table 3. Foreign Workers in U.S. Seasonal Farmwork, 1963

	Worker-months of foreign labor	Foreign as portion of total labor
	thousands	percent
Tomatoes	80.6	24.9
Citrus	80.3	22.9
Lettuce	72.5	59.3
Other vegetables	71.3	8.5
Sugar cane	46.1	54.0
Cotton	46.1	2.8
Strawberries	43.5	17.3
Cucumbers	31.4	30.8
Sugar beets	29.2	19.4
Melons	20.3	29.5
Other fruits	17.0	2.0
Potatoes	9.4	4.0
Beans	8.5	3.4
All vegetables	273.7	14.6
All fruits	161.1	10.5
Sugar crops	75.3	31.9
Cotton	46.1	2.8
All other crops	122.1	4.4
All farmwork	678.3	8.4

Source: U.S. Dept. of Agriculture, Economic Research Service. *Termination of the Bracero Program: Some Effects on Farm Labor and Migrant Housing Needs*, Agricultural Economic Report No. 77, June 1965.

TOWARD NEW TRADITIONS UNDER IRCA?

The Immigration Reform and Control Act of 1986 offers both new and old directions to deal with this unfinished business. Acknowledging the history and current state of the farm labor market, its designers clearly envisioned something different. The logical destination of the new direction is a legal workforce and labor market much less isolated from those in the rest of our economy.

IRCA hiring sanctions encourage employers who have depended on illegals to alter their recruitment and selection practices. The SAW and RAW programs, together with the deferral of sanctions against producers of perishable commodities, provide some help for farmers wanting to make an orderly transition to legal, resident workers. By no means, however, will they be sufficient for

attracting and retaining capable employees. The personnel management policies of individual employers will weigh heavily in workers' choices to join, stay, and perform effectively in farm operations. In recent years some momentum has already built for rethinking these policies.

The new immigration law joins other regulatory, technological, social, and market forces that have brought increased attention and staff to labor management on the farm. Agricultural employers and supervisors make countless personnel management decisions every day. In a sense they contend with the very same issues that managers in all productive organizations have always faced. They need to get people to perform work that turns raw materials into goods or services that can be sold for at least as much as the whole process costs. In doing so they make decisions about organizational structure, job design, employee recruitment and selection, orientation, work assignment, performance review, discipline, training and development, pay and benefits, complaint and suggestion handling, and safety.

These decisions have become ever more constrained by a growing number of federal, state, and local laws. Some regulations particularly affect agriculture. The Migrant and Seasonal Agricultural Worker Protection Act, California Agricultural Labor Relations Act, Industrial Welfare Commission Orders, and amendments to the Fair Labor Standards Act, Social Security Act, and Federal Insurance Contributions Act have narrowed long-standing gaps between legal rights of farm and nonfarm employees. Other legislation and case law have affected employers throughout the economy. The Federal Pension Reform Act, Equal Employment Opportunity Act, Age Discrimination Act, Occupational Safety and Health Act, and judicial decisions regarding the "at-will" doctrine call for explicit rationality and equity in personnel management decisions across industries.

Much of this regulation exposes employers to embarrassments, fines, back-pay and damage judgements, all of which translate to increased costs. With legal employee protections in place and attorneys advertising their zeal to apply them, workers know more about opportunities and potential rewards for lodging complaints. Employers are being sued not only for their own acts of illegal discrimination, failure to provide safe working conditions, and wrongful discharge, but also for mistreatments at the hands of first-line supervisors and other employees.

Even what is legal, moreover, is not necessarily effective. While laws of the state prescribe penalties for the offending employer, less well codified laws of human and organizational behavior penalize careless labor managers with operational inefficiency. Advances in mechanization, automation, and biotechnology have rendered worker mistakes more costly. Cognitive skills, employee training, sub-par performance, and turnover are all more important in capital-intensive technologies. Replacing strenuous harvest, cultivation, and carrying jobs with machine operation, sorting, and maintenance positions makes it possible for more people to sustain longer careers in farm work. It also invites into the agricultural labor pool people who do not possess the physical strength and stamina required by more manual technologies.

Casual patterns of personnel management in agriculture have provided fertile ground for the growth of real and perceived inequities. Misunderstandings and conflicts often result from such practices as hiring without clearly specifying job duties or presumed qualifications, setting wage rates through an uncoordinated series of individual bargains, and allowing foremen or labor contractors full discretion to recruit, assign work, discipline, discharge, and cope with problems. Some farmers fearful of losing their crops, and workers their job rights, have escalated workplace disagreements to litigation and physical violence.

Farmers who want to get a fair day's output for the pay they provide, who value stability in their work force, and who would rather avoid the trouble of defending their actions before third parties, have designed management policies that go beyond mere compliance with the law. Such policies have different levels of formality and precision, but they all tend to embody at least the principles of equity and fairness. Most common among them, in my view, are those providing for (1) protection from arbitrary treatment (especially with regard to discipline and discharge, grievance procedures, layoff and recall, transfer and promotion, work schedules, and foreman authority), (2) orderly structure of compensation (pay rates and benefits rationalized both internally and with respect to market norms), and (3) rewards for continuity of employment.

Marketplace realities have, however, countered these developments in some farm sectors. Seemingly unrelated events in California agriculture may reflect employer efforts to similarly reduce costs and increase flexibility. Recent decertifications of unions, closures of large companies with union-influenced terms of employment, and growth of labor contractor use are evidence of competition in the product and labor markets. In product markets, abundant domestic supply and increased production abroad have kept prices down and made cost control essential to financial viability. In labor markets, abundant supply has given farmers the opportunity, that many need, to hire people who will work for less.

The H-2A Program

Will enough legal residents be available to meet the demand for farm labor, and will agricultural employers manage to maintain their loyalty? Will so many currently or newly legal resident farm workers be looking for jobs that it will not matter? Answers will be revealed by time. If both are "no," there is always the old direction — the H-2A program.

Like the H-2 program that it adapts specifically for agriculture and like the Bracero Program before it, H-2A is a vehicle for the importation of ***nonimmigrant*** labor. The H-2A visa confers a right dwarfed by those that eligible individuals get through the SAW and general legalization programs. Workers with H-2A visas have only the right to earn wages for performing jobs during defined periods on farms duly certified by the Department of Labor. When the jobs end, they must leave.

Since the Bracero Program ended, the H-2 program has been the only legal means for nonimmigrants to enter the United States for farm employment. In recent years H-2 farm workers, constituting a very small proportion of the agricultural workforce overall, have been most heavily concentrated in Florida sugarcane and northeastern apple harvests. H-2 workers were numerous in Florida vegetables and citrus until the mid-1960s, by which time technological change in cotton production made more residents available to work these other crops. Large-scale legal and illegal immigration since the 1970s has kept labor supply in Florida large enough to keep interest in H-2 more or less confined to the sugarcane industry (Holt, 1984).

Legal and illegal immigration has likewise given fruit, vegetable, and horticultural producers in other states preferable alternatives to H-2 use. FVH growers have generally regarded the H-2 program as cumbersome and unworkable. Citrus producer Peter Martori, an H-2 user for eight years and currently prominent as one of the few farmers certified west of the Mississippi River, has nevertheless been outspoken about his distaste for the burdens of the program (1987). The planning, paperwork, domestic recruitment effort, transportation, and housing that even the "streamlined" H-2A program requires enhance the comparative attractiveness of alternative directions.

EARLY RESPONSE FROM EMPLOYERS

How have agricultural employers reacted to IRCA so far? With varying blends of concern, apprehensiveness, understanding, disgust, relief, and determination to adjust, if my observations in California are representative. On the whole, California agricultural leaders have accepted IRCA and are squarely facing the challenges of living with it. Surely not all growers are pleased with immigration reform. Some are bitter, indignant, defiant. But most realize that this bill, authored by Senator Simpson and Congressman Rodino, is far from the worst legislative outcome they could have met. Representatives from agricultural areas did have a hand in shaping the law.

As public and congressional consensus on the need for new immigration control was building, farmers were making psychological and managerial adjustments. The inevitable legislation brought a surprising measure of relief from protracted uncertainty. IRCA was obviously coming sooner or later. Furthermore, it is but the latest and arguably most profound in a series of new regulations that have been visited upon farm employers over the last two decades. Perhaps agriculture is among the industries best prepared to deal with the new law.

Grower associations have taken much initiative in alerting member employers to IRCA, helping them understand its requirements, and urging them to assist workers through the legalization process. Virtually as soon as IRCA became law, association leaders started speaking about the importance of complying in good faith. Said a Farm Bureau attorney, "Agriculture got a good shake, and we are going to live with it. There is no room for bad apples." At the same time, confidence that the Immigration and Naturalization Service could or would run a successful SAW program was low. "The INS should have the responsibility, but we [in agriculture] can't expect them to carry it. We are the ones who have to make legalization work."

Agricultural groups have been prominent among sponsors of seminars on IRCA for employers and also active in supporting alien worker legalization. Months before the INS began any substantial effort to explain the law to employers and aliens most affected by it, industry associations as well as educational institutions, social service agencies, community and church organizations were getting the word out through public meetings, written notices and interpretations, broadcast media appearances, video and audio tapes, and private consultation. Many farm employers adapted form letters provided by their associations to tell workers about legalization opportunities.

In April 1987 a group of agricultural organizations in California and Arizona announced the formation of a two-state qualified designated entity to help alien farm workers prepare their applications for legal status. Alien Legalization for Agriculture (ALFA) was created by Agricultural Producers, the California Grape and Tree Fruit League, Western Growers Association, and the California Farm Bureau Federation; three other associations participated through cash contributions. By July 19 local offices had opened under the ALFA umbrella.

Agriculture has a threefold interest in facilitating SAW legalization. First, a good many farmers sincerely care about the welfare of the people who work for and with them. They find intrinsic reward in helping erstwhile illegals to take advantage of rights created by IRCA, or to deliver them from the spells of unscrupulous immigration consultants parlaying aliens' fears into huge fees for virtually useless advice on the law. Second, there is some expectation that employers' assistance will generally improve employee

relations on the farm and be reciprocated by worker loyalty. Third, and of great concern to association leaders with industry-wide perspectives, the total number of SAW-legalized workers establishes upper limits for RAW admissions in later years.

CHOICES UNDER THE INFLUENCE OF THE NEW LAW

The effectiveness of the Immigration Reform and Control Act of 1986 in serving its stated purpose will ultimately depend on the choices that employers and aliens make. The law contains a complex of incentives and disincentives designed to influence the human behavior that produces illegal immigration. Its mechanisms will also have impact on the labor markets and perhaps the very structure of American agriculture.

Whether and how to comply with the law's mandates and prohibitions with respect to hiring is only the most obvious set of issues before employers. Employers intending to avoid violations clearly need to inform themselves--and any staff responsible for hiring--about the law, incorporate document checking and the signing of attestation forms into employee selection processes, and adjust personnel record systems. Despite the best intents to obey IRCA, however, shortages of legal labor will increase the incidence of illegal hiring, at least in the short run. Most farmers would much rather face the possibility of fines than the certainty of a year's return from investment dying on the vine, tree, or ground.

Other employer moves, not required by IRCA, may be advantageous within the new regulatory environment. Such responses include (1) assessing the extent of current dependence on unauthorized employees, (2) informing employees about and helping them take advantage of legalization opportunities, and (3) modifying personnel management practices to build greater employee ability and commitment as well as overall workforce stability.

In IRCA's wake farm employers will also have to reconsider such strategic business issues as whether to (1) shift resources into other commodities, locations, or lines of enterprise; (2) invest more or less in mechanization or other technological innovation; and (3) stay in business at all. Some observers claim that if U.S. agriculture cannot import or substitute for labor cheaply enough, retailers will end up importing more product.

The main choice before currently unauthorized aliens is whether to step forward and pursue legal status. Ironically, applying for legalization requires behavior quite different from that which had enabled aliens to remain and work illegally in the United States before the new law was passed. A continued disposition to avoid the authorities is understandable. "Qualified Designated Entities" and other service organizations offering confidential assistance to potential applicants helps them overcome the reluctance to deal with official immigration processes. Adding to this reluctance, however, are concerns that applicants will face (1) separation from their family members who do not independently qualify for legal status, (2) prohibitive charges for or other difficulty obtaining documentation of past employment, and (3) liability for back taxes and repayment of unemployment and disability insurance benefits.

Decisions made by currently and newly legal workers about whether to seek and stay in farm employment will affect the number of agricultural job opportunities that will potentially draw new immigrants across the border--as RAWs, H-2A workers, or illegal entrants. Many undocumented aliens have regarded farm workplaces and employment arrangements as contexts in which they would be safer, i.e., less likely to be detected and deported. Legal residence and

eligibility to work anywhere in the United States releases some of them to look for work in other sectors. A majority, however, can be expected to remain in agriculture because they prefer farm work or experience nonlegal barriers to mobility (e.g., language, education, perception of options).

Workers' occupational choices are, of course, conditioned by the terms of employment available. While labor-intensive farm work is often thought to employ successive waves of immigrants who stay but a few years, some conditions result in greater tenure. Among 482 lettuce harvest workers interviewed in 1982, average length of career in (relatively high paying) lettuce work was nearly 11 years (Rosenberg, 1983). Only 44 percent of respondents, however, expected to remain another 5 years. Lemon harvesters working in a system designed to encourage continuity showed similar commitment to their occupation over time (Mamer and Rosedale, 1980).

Finally, aliens not eligible for legal residence in the United States will continue to face the decision of whether to come to and/or remain in this nation. The new law has, however, changed the costs and benefits attached to their options.

Continuing Uncertainties

All of these decisions are to be made in a context that includes not only IRCA itself but also determinations that the statute left for administering agencies to make. The new law directed the INS and other federal departments to write regulations establishing implementation procedures and defining such key terms as "continuous residence," "seasonal agricultural services," "man-day," and "field work." These regulations are crucial, and some are likely issues for formal challenge.

Even after months of development, final regulations issued in May and June 1987 have been altered in response to court decision, interest group pressure, apparent unworkability, and public outcry. Still several issues remain unclear. We can look for legislative amendments and further litigation to modify IRCA. Although the official public education period ended June 1, 1987, efforts to refine and inform people about IRCA will continue for years. The INS and various parties at interest do not see eye to eye on all points of the new law.

The specific inclusion of Christmas trees, Spanish reeds and tobacco in the list of "other perishable commodities" defining SAW-qualifying work, and the exclusion of animal products, sugar cane and silage, for example, affect thousands of people and farms. While greater absolute numbers of illegal aliens have been employed in fruits, vegetables, and other SAW commodities, the smaller numbers working in "non-SAW" agriculture are often equally important to production. Even two or three undocumented milkers, for example, can be critical to the functioning of an entire dairy. Yet dairy operators, like other non-SAW employers, must face the full force of IRCA unmitigated by the generous SAW program for legalizing current workers.

The operational nature of the grace period for producers of perishable (SAW-eligible) commodities has been a major area of contention. The IRCA statute, as well as early guidelines issued by the INS, implies that growers of fruits, vegetables, and "other perishable commodites" need fear no sanctions until December 1988. "[B]efore the end of the [SAW] application period, the Attorney General shall not conduct any proceeding, nor impose any penalty . . . on the basis of any violation alleged to have occurred with respect to employment of an individual in seasonal agricultural services" (U.S. House of Representatives, 1986, p. 12). INS officials have argued, however, that the deferral of enforcement applies only to the requirement to hire legally eligible workers and *not* to the obligation to complete eligibility verification forms. If so, it would be acceptable in 1987

and 1988 to put ineligible aliens on the farm payroll as long as forms on them were filled out and filed; but the employer could not in such cases honestly sign the standard certification on the I-9 form. Even a limited enforcement deferral would thus be effectively nullified.

Clarification of growers' responsibility for verifying legal status of labor contractor employees will influence the propensity to hire directly. Procedures for implementing the new H-2A requirement to hire domestic workers, even after certification, will affect the popularity and workability of that program, as will the way the secretaries of labor and agriculture use the law's formula to determine the number of replenishment workers to admit each year. Validity of the need for H-2 workers in Florida sugar cane has been seriously questioned (U.S. House of Representatives, 1983), and methods for certifying the domestic labor shortages prerequisite to H-2A visa approval will surely be scrutinized by both employer and labor groups.

Another set of uncertainties pertains not to interpretation of the law but rather the performance of government agencies under it. Whether state employment services take on the task of verifying work authorization of individuals they refer, will affect the use that employers make of them. The vigor and ingenuity with which the INS and Department of Labor enforce hiring rules and labor standards will surely affect tendencies of employers to comply as well as workers to exercise their rights. Enforcement of the long-standing prohibition against hiring of illegal aliens by registered farm labor contractors (FLCs) has been unsuccessful by most any measure (Vaupel and Martin, 1986). From 1980 through 1983, an annual average of only 173 FLCs of the 15,000 to 18,000 registered in the United States were cited for hiring undocumented workers.

CONCLUSION: AWAITING OUTCOMES

The Immigration Reform and Control Act of 1986 addresses a national dilemma that has been developing for more than two decades. Previous legislative neglect has permitted patterns of dependence on unauthorized immigration. An informal mobilization of alien workers has met many employers' needs to get short-term tasks accomplished at low cost. A study of the Ventura County, California, citrus labor market concludes that an increased flow of illegal immigrants has depressed wages and benefits for harvest workers (Mines and Martin, 1984). Farmers have generally not had to offer wage premiums to recruit workers for most seasonal agricultural jobs, even though they require skill, stamina, schedule flexibility, and often geographic mobility.

Any alteration of a situation to which so many people have adjusted is bound to cause discomfort and meet resistance. The complexity of the new law reflects its makers' efforts to meet the diverse interests of several groups. While the forces that produced immigration reform legislation were inexorable, the impacts of the new law are far from certain.

Some empirical questions on the emerging research agenda are: Will employers refrain from hiring unauthorized aliens? What will distinguish those who do from those who do not? How will agricultural employers alter their personnel management practices to attract and retain employees in an agricultural labor market less isolated from other labor markets? What benefits will employers realize from assisting aliens in the legalization process? How many aliens will really step forward and apply for legal status? How many and which aliens legalized as special agricultural workers will move to employment outside agriculture? Will farm

labor union organizing increase or decrease? Will the flow of new immigrants illegally crossing the border diminish? What will aliens already here but ineligible for legal status do? Will efforts to mechanize labor-intensive farm operations be accelerated?

The new law is certainly not the sole factor determining answers to these questions. Employer sanctions for hiring unauthorized workers will tend to reduce employment opportunities that "pull" aliens across the border. On the other hand, the new law does not treat the primary "push" factor, the dearth of earnings opportunities in Mexico. Expanded employment opportunities in the nonfarm sector of the U. S. economy might attract unauthorized aliens to this country directly, or indirectly by bidding legal workers away from agricultural jobs.

In summary:

- There is considerable basis for the special treatment of agriculture in the new immigration law.
- Within agriculture IRCA will have its largest absolute impact on employers and workers producing fruits, vegetables, and horticultural specialties. Its relative effects in some parts of "non-SAW" agriculture, however, may be even more significant.
- IRCA is the most recent of many regulatory shocks to agriculture over the past two decades.
- Most of the agricultural establishment is trying its best to make the new law work.
- IRCA comes at a time when farmers are more than normally motivated to control costs. Agricultural employers want to operate legally, but they want even more to operate viably.
- Newly legalized farm workers will not necessarily leave agriculture. Many prefer agricultural occupations or have non-legal obstacles to mobility to other employment sectors.
- IRCA will likely have secondary effects on farm labor management practices, investment in new production technology, commodity enterprise selection, and consumer prices for food and fiber.

Will agriculture's dependence on foreign labor remain at its traditionally high level? To what extent will farmers need to use the "fallback" recruitment mechanism and contract with guest workers? Will even the streamlined H2A program be operationally workable for employers? Will it effectively protect both the resident workforce and aliens with H2A visas against the kind of conditions that led to the termination of Public Law 78? Even if farm workers have strong arms, will they have to be braceros?

The Immigration Reform and Control Act of 1986 can be viewed as a brave social experiment with no precedent. Through responses of employers and aliens it will yield an array of outcomes, private as well as public, social as well as economic, long as well as short term. We must await most of these outcomes, but choices made now and along the way will determine them.

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