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IMMIGRATION AND FARM LABOR: WHAT NEXT?

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Over half of the hired workers employed on U.S. crop farms have been unauthorized for the past two decades (NAWS). The presence of a million or more unauthorized farm workers increases the risk that stepped up enforcement of current laws or the enactment of new federal or state laws barring employers from hiring unauthorized workers could increase labor costs.

Major policy options include the status quo; enforcement only; enforcement and guest worker changes; and enforcement, legalization and new guest worker programs. Each of these has different implications for labor-intensive agriculture.

Some 75,000 to 100,000 U.S. farm jobs are certified to be filled by legal foreign "guest workers" each year. Proposals in Congress would make this "H-2A" guest worker program more employer friendly by modifying housing requirements and reducing the special minimum wage known as the Adverse Effect Wage Rate, which would likely increase the number of legal guest workers available. In addition, President Obama and Democratic leaders support comprehensive immigration reform, a triangle that includes more enforcement of immigration laws, legalization of most unauthorized foreigners, and guest worker programs modified to be more employer-friendly.

The most likely outcome is the status quo, with more federal enforcement and new state laws making it harder to hire and retain unauthorized workers. This means more workers circulating, as employers fire workers who used false documents to get hired, and more use of labor contractors and other intermediaries willing to absorb the risk of enforcement and fines. Some employers may invest in housing to hire legal H-2A guest workers, but more are likely to take a wait-and-see attitude, continuing to hire unauthorized workers until federal or state actions force changes.

Hired Farm Labor

Farmers reported $26 billion in expenditures for workers hired directly and brought to their farms by contractors in the 2007 Census of Agriculture. Expenditures on hired labor rose slower than expenditures on fertilizer, gasoline and other inputs, so that labor's share of farm production expenses fell from 17% in 2002 to 14% in 2007.

Farm labor expenditures are concentrated in three interrelated ways: by commodity, geography, and size of farm. Just over a fifth of the 2.2 million U.S. farms in 2007 reported labor expenditures. However, the 36,000 that each paid $100,000 or more for hired labor accounted for 75% of direct-hire farm labor expenses. Similarly, the 11,000 farms that had contract labor expenses of $50,000 or more in 2007 accounted for 77% of the total.

About two-thirds of farm labor expenditures were paid by crop farmers. Within the crop sector, most farm labor expenditures were paid by producers of fruits, berries and nuts, vegetables, potatoes and melons, and horticultural specialties such as greenhouse and nursery crops—so called FVH commodities. Large FVH farms, which accounted for half of all direct-hire farm labor expenses and 70% of contract labor expenses, are concentrated in California—which accounted for almost a quarter of farm labor expenses—and Florida, Texas, and Washington—states that accounted for another 15%.

Data on the number and distribution of hired farm workers are not collected by the federal government. One way to estimate the number of hired farm workers is to divide farm labor expenditures by average hourly earnings in order to estimate hours worked. Dividing total labor expenses of $26.4 billion by the annual average earnings of hired farm workers in 2007, $10.21 an hour, finds that the number of full-time equivalent jobs (2,000 hours a year) was 1.2

million. Similar calculations indicate 1.2 million FTE jobs in 2002 (Rural Migration News, 2009). It should be noted that more than 1.2 million workers are employed for wages on farms sometime during a typical year, since peak employment is larger than average employment and some workers try farm work and quit. Analysis of unemployment insurance data in California, a state that requires all employers paying $100 or more in quarterly wages to enroll, showed that there were at least two individuals employed for each year-round job slot indicating either seasonality or turnover (Khan,Martin and, Hardiman, 2004). If this two-to-one ratio between workers and year-round jobs holds for the United States , there are 2.4 million hired farm workers, the number of hired farm workers estimated by USDA analysis of Current Population Survey data in the 1980s (Oliveira, 1989).

The United States Department of Labor's National Agricultural Workers Survey (NAWS) obtains data on the characteristics of workers employed on crop farms. Between 1,500 and 3,000 workers a year are interviewed at work with the permission of their employer. A total of 56,000 workers have been interviewed over the past two decades (1989-2009). Two thirds of employers agreed to allow their workers to be interviewed, and over 90% of the workers, offered $20, agreed to answer NAWS questions.

The NAWS, the only federal survey that determines the legal status of respondents, reported that about half of crop workers have been unauthorized since the mid-1990s. The NAWS also found that most crop workers were not follow-the-crop migrants, meaning that they moved from a U.S. home base to work for wages on a crop farm at least 75 miles away. The NAWS found that a third of crop workers are migrants, but almost all moved from a home in Mexico to a farm job in the United States while few followed the crops within the United States. USDA, by contrast, defined migrant farm workers as those who crossed county or state lines and stayed away from a U.S. home overnight to do farm work for wages, found about 10% of the workers were migrants.

About two-thirds of hired workers on crop farms were born in Mexico and 30% were U.S. citizens. The share of U.S. crop workers from west central Mexico has been falling, while the share from southern Mexican states such as Guerrero, Oaxaca, and Chiapas has been rising. Among foreign-born farm workers, the share who have been in the United States for more than a decade has been rising, which explains why the average age of farm workers increased to 36 in 2008. The share of foreign-born workers in the United States for less than four years peaked at almost 50% in the late 1990s.

About half of crop workers have less than seven years of (Mexican) schooling, but the average years of schooling has risen from seven to eight over the past decade. A third of crop workers speak no English and another third speak a little English. Over 60% of crop workers are married, and almost all married farm workers are parents. A quarter of crop worker families are mixed, meaning that families include members with legal and unauthorized status, mainly unauthorized parents and U.S.-born children.

The NAWS interviews workers who are primarily employed in the production of FVH crops: 35% work in fruits and nuts, 23% in vegetables, and 20% in horticulture—almost 80% in FVH commodities. Workers reported average wages of $9 an hour in 2009, about $1.50 an hour less than the average $10.50 reported by employers. After being flat between 2003 and 2008, real wages reported by workers to NAWS rose in 2009 despite the recession.

Immigration Reform

The United States is a nation of immigrants. Immigration is widely believed to serve the U.S. national interest, as immigrants better themselves while enriching the United States (Martin and Midgley, 2006).

The major immigration issue for the past quarter century has been what to do about illegal immigration.The United States had 40 million foreign-born residents in 2010, including 11 million, almost 30%, who were illegally present. Public opinion polls find widespread dissatisfaction with illegal immigration, showing that most Americans believe the federal government should do more to reduce illegal immigration.

Disagreement over what to do about illegal migration has stymied immigration reform. The election of Presidents Vicente Fox in Mexico and George W. Bush in the United States in 2000 prompted speculation that there would be comprehensive immigration reform. Mexico's then Foreign Minister Jorge Castaneda laid out a four-pronged immigration agenda in June 2001 that included legalization, a new guest-worker program, reducing border violence and exempting Mexico from visa quotas. He concluded: "It's the whole enchilada or nothing." Fox was visiting Bush and pressing for this "whole enchilada" immigration reform just before the September 11, 2001 terrorist attacks.

The U.S. Congress tackled illegal immigration in 2005, 2006, and 2007, at the height of the housing boom when many employers complained of labor shortages. The Republican-controlled House approved an enforcement-only bill in December 2005 that would have required all employers to participate in a federal program now called E-Verify that

allows employers to check the legal status of new hires. The House bill also called for hiring more Border Patrol agents and building a fence along a third of the 2,000 mile Mexico-U.S. border. It would also have defined "illegal presence" in the United States as a felony, making it harder for unauthorized workers to become legal guest workers and immigrants in the future.

Reaction against this so-called “Sensenbrenner bill” culminated in a “Day Without Immigrants” boycott (May 1, 2006) that saw some meatpacking plants, home building companies, and restaurants close for the day. These demonstrations were cited by the Democratic-controlled Senate as it approved the Comprehensive Immigration Reform Act (CIRA) in May 2006. Like the Sensenbrenner bill, CIRA would have required employers to check all new hires and added fences and Border Patrol agents. However, instead of defining unauthorized foreigners as felons, CIRA would have allowed them to earn a legal immigrant status. CIRA, whose supporters included Senators Edward Kennedy (D-MA) and John McCain (R-AZ), would have created a new guest worker program, but was not acted on by the House.

When the Senate tackled immigration reform again in 2007, it was unable to approve a revised version of CIRA despite the active support of President Bush. Republicans who opposed “amnesty” and Democrats who feared that more guest workers would hurt U.S. workers combined to defeat CIRA. In response, the Bush administration stepped up raids of workplaces thought to have unauthorized workers, such as the one at Agriprocessors in Postville, Iowa that resulted in the arrest of almost 400 workers in May 2008.

The Department of Homeland Security (DHS) worked with the Social Security Administration (SSA) to identify suspects. Evidence included no-match letters that SSA sends to employers identifying workers whose name and number do not match SSA records. The letters informed employers they would be considered to have knowingly hired unauthorized workers if they continued to employ no-match employees.

President Obama supported comprehensive immigration reform during the campaign in 2008, but stepped up enforcement to prove to skeptics that the federal government could reduce illegal migration. During Obama’s first four years in office, the Mexico-U.S. fence was extended to a third of the border and more Border Patrol agents were hired. These enforcement efforts and the U.S. recession combined to reduce apprehensions of illegal foreigners just inside the U.S. border to 327,600 in FY11, the lowest number since the early 1970s.

Obama’s interior enforcement strategy has been more controversial. DHS stopped workplace raids and launched I-9 audits that involve checking the forms completed by newly hired workers and their employers. These so-called silent raids have DHS agents telling employers which of their employees appear to be unauthorized; employers are to notify these employees and ask them to clean up the discrepancies in their records or to terminate them. For example, Gebbers Farms in Brewster, Washington wound up terminating 550 workers in 2010, almost half of its workers, after an I-9 audit.

Beginning with Arizona, more states have been enacting laws that require employers to use the federal government’s E-Verify system to check the legal status of new hires and to have state and local police check the legal status of persons they encounter during traffic stops and other interactions. The United States Supreme Court, which upheld Arizona's Legal Arizona Workers Act in May 2011 requiring employers to participate in E-Verify, is expected to rule soon on Arizona’s Support Our Law Enforcement and Safe Neighborhoods Act (SB 1070) enacted in 2010.

Other states followed Arizona, enacting laws to reduce illegal immigration by requiring employers to participate in E-Verify and to have police check the legal status of persons they encounter. In 2011, Alabama, Georgia, Indiana, South Carolina and Utah enacted such laws. The United States Department of Justice sued four states to block these laws from going into effect, arguing that they were an unconstitutional infringement on the federal government’s authority to establish immigration policy. Federal judges blocked implementation of most sections of the immigration control laws of Arizona, Georgia and South Carolina, but not those of Alabama.

Implications for Agriculture

Farm employers and worker advocates have been active participants in the immigration reform debate. During the first attempt to deal with illegal migration in the Immigration Reform and Control Act (IRCA) of 1986, farm employers and worker advocates eventually agreed on a compromise that legalized unauthorized farm workers who had completed at least 90 days of farm work in 1985-86 and made employer-friendly changes to the then agricultural guest worker program, whose name was changed from H-2 to H-2A.

Farm labor costs were expected to rise after enactment of IRCA as farmers raised wages to retain legalized workers or built housing to employ H-2A guest workers. Instead, illegal immigration continued and unauthorized workers used

false documents to get hired. Since employers do not have to determine the authenticity of the documents, they were not liable if the workers were later found to be unauthorized.

There were few complaints of farm labor shortages in the 1990s. Farm employers, aware that an increasing share of their workers was unauthorized, pushed for more employer-friendly changes to the H-2A program but President Clinton threatened to veto any new guest worker program, and none was enacted.

After the 2000 elections, worker advocates and farm employers agreed to urge passage of IRCA and a guest worker package in the Agricultural Jobs, Opportunity, Benefits and Security Act (AgJOBS). AgJOBS would have allowed current unauthorized farm workers who continue to do farm work to "earn" regular immigrant status for themselves and their families. It would also have made employer-friendly changes in the H-2A program by allowing employers to pay a housing allowance to guest workers rather than provide housing. The housing allowance, which would add $1 to $2 an hour to labor costs, would be offset by reducing the Adverse Effect Wage Rate (AEWR) that must be paid to H-2A guest workers.

Despite bipartisan support, AgJOBS has not been enacted and there are few prospects for approving any major immigration reforms until after the 2012 elections. Meanwhile, farmers who are aware that (1) potentially half of their workers might be unauthorized, (2) federal I-9 audits can remove a large share of these workers, and (3) more states are enacting laws requiring employers to use E-Verify, express worries about obtaining new and replacement workers.

Farm employer mandatory participation in E-Verify without employer-friendly changes to the H-2A guest worker program, are predicted to mean labor shortages and crop losses. Even before state laws in Alabama and Georgia went into effect in 2011, farmers in both states complained of too few farm workers to complete harvests as workers left these states or did not arrive because they feared E-Verify and police "harassment."

The year 2011 was a record year for net farm income, but detailed production and sales data are not yet available to determine the extent of crop losses due to labor shortages. As farmers contemplate the future, they face three major labor options:

1. Status quo and enforcement. The status quo means that about half of crop workers remain unauthorized; that federal I-9 audits and state laws disrupt employment and hiring unevenly; and that farm employment shifts to those willing to absorb the risk of enforcement and investing in housing for H-2A guest workers.

   Unauthorized workers fired after I-9 audits or not hired because their employer participates in E-Verify typically remain in the United States and move to another employer. Therefore, tightening enforcement is likely to promote worker circulation that limits employer training of workers and worker advancement on particular farms.
2. Enforcement and guest workers. More federal and state enforcement could be coupled with new guest worker programs. House Republican supporters of mandatory E-Verify have proposed two new guest worker programs (Rural Migration News, 2011).

   The American Specialty Agriculture Act (ASSA, HR 2847) would admit up to 500,000 foreign farm workers a year with H-2C visas who could stay in the United States 10 months before leaving for at least two months. Farm employers could attest that they will provide housing or give vouchers to guest workers that enable them to find their own housing. The super minimum AEWR wage would be replaced with a requirement to pay at least the federal or state minimum or prevailing wage.

   The Legal Agricultural Workforce Act (LAWA, HR 2895) would grant an unlimited number of 10-month W-visas to foreigners who could move from one farm employer to another. USDA would determine the number of W-visas to be issued on a monthly basis, and farmers would post jobs on an Electronic Job Registry to determine if U.S. workers were available. The employer's share of Social Security and Federal Unemployment Insurance taxes would be used to administer the program, and the worker's share of Social Security taxes would be refunded in the country of origin. W-visa workers would pay their own transportation to the United States and the cost of their U.S. housing.
3. Comprehensive immigration reform. More enforcement, legalization of unauthorized foreigners, and new guest worker programs could change the farm labor landscape. More enforcement would make it harder for unauthorized workers to enter the United States and discourage the employment of those who enter illegally. Legalization of unauthorized workers in the past increased their mobility in the U.S. labor market, encouraging some to leave farm work for construction, meatpacking, and other jobs that offer higher wages and less seasonal work. New guest worker programs could mean that almost all new entrants to the farm work force are born outside the United States, but it is hard to predict the cost of employing them.

Farm Labor: Uncertain Crossroads

The past quarter century has been marked by a rising tide of immigrant workers in U.S. agriculture. As federal and state enforcement efforts accelerate, farm employers warn of labor shortages and crop losses without employer-friendly guest worker programs.

The federal government is stepping up internal enforcement, and more states are following Alabama, Arizona and Georgia in enacting laws that crack down on illegal migration. This puts farm labor at an uncertain crossroads. During the early 1960s, when there were similar fears of crop losses due to labor shortages at the end of the Bracero program, a wave of labor-saving mechanization and wage increases spurred by unionization narrowed gaps between farm labor demand and supply (Martin, 2010). During the late 1980s after IRCA, similar fears proved unfounded as illegal immigration continued and workers used false documents to get jobs.

Given the policy uncertainties, many farmers are hedging their bets. Most oppose the enactment of state laws penalizing unauthorized workers and employers and federal laws requiring use of E-Verify to check new hires without an employer-friendly guest worker program. Some employers are investing in housing so that they can employ H-2A guest workers, and some are investing in mechanical aids to enlarge the pool of available workers and increase productivity, while others expect labor-saving mechanization. History is unlikely to repeat itself and flood the farm labor market with new workers, as in the late 1980s. However, it is not clear whether and how fast farm labor costs under status quo and immigration reform scenarios will change.

For More Information

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