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## Immigration Reform: What Does It Mean for Agriculture?

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About 5% of U.S. residents and 7% of California residents are foreigners believed to be illegally in the United States (Passel and Cohn, 2009). Over half of the hired workers employed on U.S. and California crop farms have been unauthorized for the past decade, a period during which unauthorized workers spread from crop farms to dairies and other livestock operations throughout the United States (NAWS).

In most industrial countries, 5 to 15% of residents were born abroad; the United States is near the high end of this range, with 39 million foreign-born residents in 2008, almost 13% of the 305 million U.S. residents (OECD, 2009). However, the United States is unique in having over 30% of its foreign-born residents unauthorized. The estimated 12.5 million unauthorized foreigners in 2008 were equivalent to the population of the fifth most populous state, Pennsylvania.

President Obama met with 30 Congressional leaders on June 25, 2009 to begin “an honest discussion about the issues” involved in comprehensive immigration reform, which has three major elements: legalization for some of unauthorized foreigners in the United States; a secure ID to make future employment of unauthorized workers more risky for their employers; and a framework to deal with “future flows” of migrant workers. In Mexico in August 2009, Obama said he remained committed to comprehensive immigration reform, but that it would have to wait until 2010 so that Congress can deal with health care, energy and reform of financial regulation.

This article explores the implications of comprehensive immigration reform for farm employers, farm workers, and rural communities. After a brief review of immigration patterns, we turn to the role of foreign-born workers in U.S. agriculture, outline the major reform proposals, and assess their likely impacts.

### Immigration

In 1970, the 10 million immigrants in the United States were less than 5% of U.S. residents; by 2010, the 40 million immigrants are likely to be 13% of U.S. residents. The largest single source of immigrants is Mexico—a third of foreign-born U.S. residents were born in Mexico. Most Mexican-born U.S. residents arrived since 1990, and a few numbers highlight the dramatic growth. In 1970, when Mexico’s population was about 50 million, there were less than 750,000 Mexican-born U.S. residents. By 2010, when Mexico expects 110 million residents, there are likely to be 13 million Mexican-born U.S. residents, meaning that more than 10% of those born in Mexico will have moved to the United States.

There are three major subgroups among the foreign born. About 14 million are naturalized U.S. citizens, including California Governor Arnold Schwarzenegger. Another 14 million foreign-born U.S. residents are legal immigrants who have not yet become naturalized U.S. citizens and temporary visitors such as foreign students and guest workers, many of whom stay in the United States several years and some of whom become immigrants. Finally, there are 12 million unauthorized foreigners, including seven million or 60% Mexicans. Unauthorized foreigners, almost all of whom were born in Mexico, are over half of the hired workers on U.S. crop farms.

Between 2003 and 2007, when the U.S. unemployment rate was mostly below 5%, the number of unauthorized foreigners in the United States increased by about 500,000 a year, including 300,000 Mexicans (Passel and Cohn, 2009). During this period of low U.S. unemployment rates, Mexican and other unauthorized foreigners spread from California and other traditional migrant destinations throughout the United States. In 1990, California had 42% of the estimated 3.5 million unauthorized for-

eigners in the United States, and the six states with the most unauthorized foreigners had 80% of the total. By 2008, California's share had fallen to 22% of 12 million unauthorized foreigners, and the same six states had only 60% of the total.

Many of the "new growth states" for unauthorized foreigners are in the Midwest and Southeast. Unauthorized workers, but relatively few legal immigrants, were attracted to these states by jobs in farming, meatpacking, and construction and often lower

living costs. By 2008, over half of the foreign-born residents in states such as Colorado, Indiana, and North Carolina were unauthorized.

There are about eight million unauthorized foreigners in the U.S. labor force, meaning that 5% of U.S. workers are unauthorized (Passel and Cohn, 2009). Most are employed in service jobs ranging from food preparation to janitorial services, but these occupations have so many employees that the unauthorized are less than 15% of all employees. Unauthorized

foreigners loom larger in two farm-related occupations, farm worker and meat packer, where about half and a quarter of production workers, respectively, are believed to be unauthorized.

### Farm Labor

There are two major types of labor employed on farms: farmers and family members whose earnings from farm work reflect the difference between farm revenue and expenses, and hired workers who are paid on hourly, piece rate or other bases. Both types of farm labor have declined over the past half century due to labor-saving changes in farm production, but the decline in family labor has been most pronounced. In 1950, there were an average three farmers and family members for each hired worker; today, there are two farmers and family members for each hired worker.

Most U.S. farms do not hire any labor—less than a quarter of the 2.2 million farms enumerated in the 2007 Census of Agriculture reported expenditures for hired workers. Hired labor expenditures are concentrated in three major ways: by commodity, geography, and size of farm. Farms producing fruits and nuts, vegetables and melons, and horticultural specialties such as greenhouse and nursery crops (FVH crops) accounted for over half of the \$26.4 billion in total farm labor expenditures in 2007, including almost \$22 billion for workers hired directly and \$4.5 billion for contract labor expenditures.

Most hired farm workers were born abroad, and almost all new farm workers were born outside the US. The supply of U.S. farm workers depends on U.S. farm wages remaining significantly above wages in workers' countries of origin, primarily Mexico. However, most foreign-born workers do not stay in the seasonal farm work force, so that the U.S. farm labor market resembles a revolving door, absorbing newcomers from abroad and retaining them for less than a decade.

Figure 1. Unauthorized Share of Foreign-born Residents by State, 2008

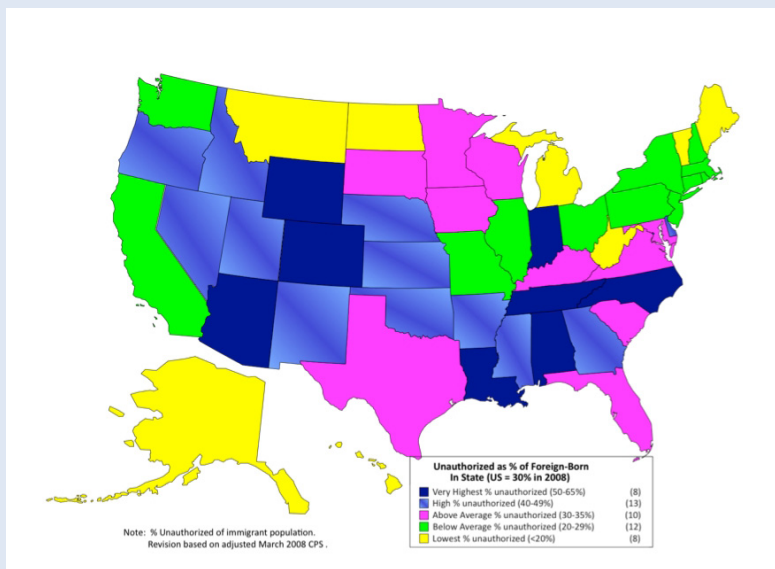
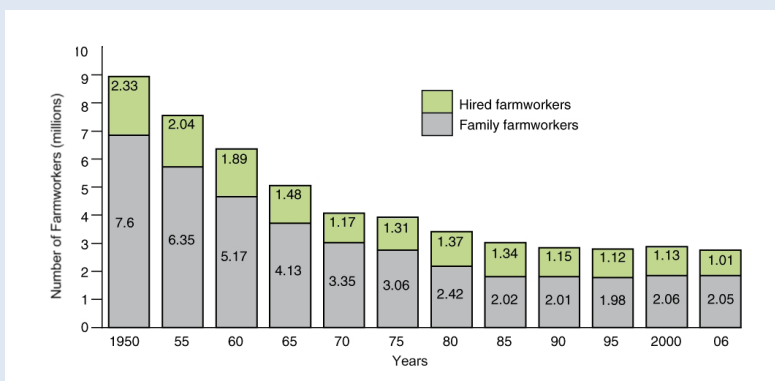


Figure 2. Farmers, Family Members and Hired Workers Employed on Farms, 1950–2006



Source: Kandel, 2008, p13

The National Agricultural Worker Survey (NAWS) finds a sixth of farm workers are newcomers, or in the United States less than a year, equivalent to 100% turnover every six years. In most industries, turnover is costly for employers, who must invest in the recruitment, screening and training of replacement workers. However, agriculture minimizes the costs normally associated with high labor turnover in several ways, including hiring crews of workers via bilingual intermediaries and developing wage systems that keep labor costs stable even if worker productivity varies. For example, crew pushers or slow-moving conveyor belts in the field can set a productivity standard for workers paid hourly wages, and workers who do not earn enough at the employer-set piece rate are normally not retained. There are no longitudinal data that track farm workers over time, nor studies to prioritize the steps that employers could take to induce seasonal farm workers to remain in the farm work force longer.

The NAWS paints a picture of a Spanish-speaking farm work force with little education employed about two-thirds of the year on FVH farms. These hired workers earned an average \$8 an hour in 2006, half the \$16 average hourly earnings of U.S. production workers. Earning half as much for two-thirds as many weeks of work means that farm workers had annual earnings that averaged only a third of the \$34,000 of nonfarm production workers. Most crop workers rented housing away from the farm where they worked and reported receiving no employment-related benefits from farm employers such as health insurance or pensions.

The combination of relatively low wages and seasonal work reduces the appeal of farm work to most U.S. workers. This means that those attracted to the farm work force are workers whose alternative U.S. job options are limited by lack of English, education, and other factors. The reliance on newcomers to be seasonal

workers is not new. The commercial farms that evolved in the western United States in the late 19th century depended on newcomers with few alternatives to fill seasonal farm jobs. In California, Chinese migrants were followed by Japanese and Filipino newcomers, Dust Bowl refugees in the 1930s, and Mexicans since the Bracero Program began in 1942. The children of these workers educated in the United States rarely follow their parents into the fields, helping to explain the keen interest of farm employers in immigration policy.

### **Immigration Reform**

The United States has been debating what to do about the growing number of unauthorized foreigners for almost two decades, a period in which the number of unauthorized foreigners almost quadrupled and illegal migrants spread throughout the country. There are two contending approaches: enforcement-and-attribution, and comprehensive immigration reform.

The House under Republican leadership in December 2005 approved the Border Protection, Antiterrorism, and Illegal Immigration Control Act on a 239-182 vote. It called for mandatory screening of newly hired as well as existing employees to ensure that all workers are legally authorized, more fencing along the Mexico-U.S. border, and legal and policy changes to make life more difficult for unauthorized foreigners, such as making “illegal presence” in the United States a felony and encouraging state and local police to be trained to check the immigration status of persons they encounter. The House bill, considered an enforcement-and-attribution approach to illegal migration, did not include a guest worker or legalization program, under the theory that enforcement should be proven effective before additional migrant workers arrive legally and before the government perhaps legalizes some of the unauthorized foreigners in the United States.

Then President Bush issued a statement expressing strong support for the House enforcement- and-attribution approach: “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 (Bush and Congress: Action?, 2006 ). Migrant advocates decried the House bill, and their protests culminated in mass rallies May 1, 2006. Unauthorized migrants were encouraged to demonstrate their economic importance by refusing to work, and some meatpacking plants closed for the day. Perhaps not coincidentally, beef, chicken and pork prices were at three-year lows, and provided another reason for closing the plants May 1, 2006.

The Senate under Democratic leadership took a “comprehensive approach” to immigration reform in May 2006, approving the Comprehensive Immigration Reform Act (CIRA) on a 62-36 vote. The CIRA included many of the same enforcement provisions that were in the House bill, such as a requirement that employers use an internet-based system to check the legal status of newly hired and current employees and more fencing on the Mexico-U.S. border. However, CIRA also offered a path to legal immigrant status for unauthorized foreigners in the United States at least two years and a new guest worker program with a “market mechanism” to adjust the number of visas available. If employers requested all available visas before the end of the year, the number of visas available would rise for the following year. The House did not consider the Senate bill.

In May-June 2007, the Senate again considered comprehensive immigration reform with the active encouragement of President Bush. However, the Senate’s 2007 bill was “tougher” on illegal migration by, for example, not allowing the entry of additional guest workers until the president certified that stepped-up

enforcement had reduced unauthorized migration. One provision would have required unauthorized foreigners seeking legalization to leave the United States and re-enter legally, a “touchback” requirement that migrant advocates said would deter migrants fearful of not being allowed back into the United States. The bill stalled when majority Democrats could not secure the 60 votes needed to stop debate.

### **Agricultural Provisions**

U.S. farm employers may obtain legal guest workers under the H-2A program by obtaining certification from the U.S. Department of Labor (DOL) that two conditions are satisfied: (1) there are not sufficient workers who are able, willing, and qualified, and who will be available at the time and place needed, to perform the labor or services involved in the employer petition and, (2) that the employment of the alien in such labor or services will not adversely affect the wages and working conditions of workers in the United States similarly employed.

DOL certifies over 95% of employer requests to hire H-2A workers, granting permission to fill 94,000 farm jobs with H-2A workers in FY08, up from less than 50,000 a year in the late 1990s. Nonetheless, the H-2A program is often described by employers as broken and bureaucratic, and by worker advocates as unable to achieve the goal of protecting U.S. workers. Employers often cite as problems the requirement that they must apply for foreign workers at least 45 days before they expect to employ them, must try to recruit U.S. workers, and must provide both foreign- and out-of-area U.S. workers with free and approved housing.

Both Senate bills included a special legalization and guest worker program for agriculture, the Agricultural Job Opportunity Benefits and Security Act or AgJOBS (Rural Migration News). The major provisions

of AgJOBS, including legalization for unauthorized farm workers and employer-friendly changes to the H-2A guest worker program, were negotiated by farm employers and farm worker advocates in December 2000, just before President Bush took office.

AgJOBS echoes the agricultural provisions of IRCA in 1986, which legalized then illegal farm workers and gave farmers easy access to guest workers in the event of farm labor shortages. However, only the agricultural legalization provisions of IRCA took effect; a flood of unauthorized foreigners in the late 1980s made it unnecessary to implement the new guest worker provisions (Martin, 1994).

The current version of AgJOBS, introduced in May 2009 by Senator Dianne Feinstein (D-CA), would allow up to 1.35 million unauthorized farm workers who did at least 150 days of farm work in the 24-month period ending December 31, 2008 to apply for Blue Card probationary status. Unauthorized farm workers would present evidence of their qualifying farm work and pay application fees and \$100 fines to obtain Blue Card visas with personal biometric data, which would allow them to live and work legally in the United States for five years. The unauthorized family members of Blue Card holders in the United States could obtain a “derivative” probationary legal status that would allow them remain in the United States and obtain work permits.

Blue Card holders could earn an immigrant status for themselves and their family members before their Blue Cards expired by continuing to do farm work. There are three continued-farm-work options: (1) performing at least 150 days (a day is at least 5.75 hours) of farm work a year during each of the first three years after enactment; (2) doing at least 100 days of farm work a year during the first five years after registration; or (3)

doing at least 150 days of farm work in any three years, plus 100 days in a fourth year (for workers who do not do 150 days in each of the first three years).

Legalization, the major goal of farm worker advocates, is offset in AgJOBS by changes to the H-2A guest worker program, the major goal of farm employers. The H-2A program allows farm employers to request certification from the U.S. Department of Labor to have foreign workers admitted “temporarily to the United States to perform agricultural labor... of a temporary or seasonal nature.” DOL certified 94,000 farm jobs to be filled with foreign workers in FY08, up from 77,000 in FY07.

AgJOBS would make three major employer-friendly changes to the H-2A program. First, attestation would replace certification, effectively shifting control of the border gate from the U.S. Department of Labor to employers. After making assertions (assurances) to DOL that they have vacant jobs, are paying at least the minimum or prevailing wage, and will comply with other H-2A requirements, employer job offers would be reviewed for “completeness and obvious inaccuracies” and normally approved within seven days. Foreign H-2A workers would arrive and go to work, and DOL enforcement of employer assurances would respond to complaints of violations of H-2A regulations.

Second, rather than provide the free housing to H-2A and out-of-area U.S. workers as is currently required, AgJOBS would allow farm employers to pay a housing allowance of \$1 to \$2 an hour, depending on local costs to rent two-bedroom units that are assumed to house four workers. State governors would have to certify that there is sufficient rental housing for the guest workers in the area where they will be employed in order for H-2A employers to pay a housing allowance rather than provide free housing.

Third, the Adverse Effect Wage Rate, the minimum wage that must be paid to legal guest workers, would be frozen at 2008 levels and studied. The AEW is currently the annual average earnings of field and livestock workers reported by employers to the National Agricultural Statistics Service four times a year and reported in Farm Labor (<http://usda.mannlib.cornell.edu/MannUsda/viewDocumentInfo.do?documentID=1063>)

If Congress failed to enact a new AEW within three years, the AEW would be adjusted on the basis of the three-year change in the Consumer Price Index, eventually rising with the CPI up to 4% a year.

If AgJOBS is enacted, the H-2A program would change to allow dairies to hire legal guest workers. Currently, only employers offering seasonal farm jobs may hire H-2A workers, although sheep and goat herders have been allowed to work in the United States continuously with H-2A visas for up to three years as an exception. Under AgJOBS, dairy workers would be added to this exception. Some H-2A program requirements would not change, including a requirement that employers reimburse H-2A workers for their transportation and subsistence costs if they complete their work contracts, that employers continue to hire U.S. workers who request jobs until half of the work period is completed, and that employers guarantee work to H-2A workers for at least three-quarters of the contract period they specify.

AgJOBS could presage a major change in the farm labor supply. Legalized farm workers may seek to fulfill their farm work requirement quickly, temporarily increasing the labor supply. As unauthorized farm workers legalize and leave farm work, replacement H-2A workers may cost farmers an additional \$1 to \$2 an hour because of the housing allowance.

## Implications for Agriculture

The hired farm workers who do most of the work on large fruit, vegetable, and specialty crop farms are mostly unauthorized foreigners, raising risks in a subsector of agriculture that already faces higher-than-average production and marketing risks. The seasonal farm labor market has evolved to match immigrant workers with short-term jobs on farms, often by relying on bilingual intermediaries such as crew leaders and labor contractors who speak both English and Spanish to organize crews of workers and move them from farm to farm. If current trends continue, the farm workers of tomorrow are growing up today somewhere outside the United States.

Over 30% of all foreign-born U.S. residents are unauthorized, and the United States has been debating what to do about them for over a decade. President Obama and most Democrats support comprehensive immigration reform, which entails both new enforcement mechanisms such as a secure worker identification card to make it harder for unauthorized foreigners to fill U.S. jobs and legalization for many of the unauthorized foreigners in the US. AgJOBS, a special legalization and revised guest worker program for farm workers and farm employers, is a component of comprehensive immigration reform.

Immigration, along with health care, energy, and financial regulation, is one of the complex and controversial issues that President Obama has promised to tackle. As with health care, the United States is among the highest spenders among OECD countries on immigration control and has some of the worst outcomes, with the highest share of unauthorized among foreign-born residents. As with energy, the long-term implications of immigration reform are hard to predict. Finally, as with financial regulation, economic interests are jockeying to protect their interests.

The status quo means uncertainty for farm employers, farm workers, and the communities they share. Despite risk-absorbing labor intermediaries that shield many farm employers from the risk of fines in the event of enforcement, employers may have to raise wages if enforcement removes unauthorized workers, as in meat-packing. Farm workers unsure of their future in the United States minimize investments in human capital, meaning that several hundred thousand newcomers who have not finished high school move into rural and agricultural areas each year. Finally, rural communities that may not have experienced large-scale immigration for a century are grappling with integrating some of the neediest newcomers arriving in the United States at a time of recession and budget uncertainties.

These risks and challenges should make immigration reform relatively straightforward. However, the federal government has little credibility on immigration reform, especially because the 1986 reform increased rather than reduced unauthorized migration and spread unauthorized workers throughout agriculture and the United States. AgJOBS, endorsed by most farm employer and worker groups, has been unable to overcome opposition from those who favor enforcement-and-attrition rather than legalization.

There is general agreement that the current immigration system is “broken” and that reform is urgently needed. However, the status quo persists because it is the second-best solution for advocates who cannot achieve their first-best option. Advocates may prefer legalization, but the status quo allows unauthorized foreigners to establish “equities” and “roots” in the United States, including via U.S.-born children, that they hope will lead to eventual legalization. Advocates who oppose legalization prefer the status quo in the hope that current enforcement efforts will eventually lead to “self deportation.”

In the meantime, those at the core of illegal migration, unauthorized migrants themselves and their employers, may prefer the status quo to some elements of reform. Most migrants are able to get the higher wage jobs they seek, and most U.S. employers find workers to fill their vacant jobs. Unless immigration reform “legalizes the status quo,” both employers and migrants have little incentive to offer support.

These considerations mean that immigration reform is likely to remain a distant dream, especially during the recession. Meanwhile, newcomers will continue to arrive in rural and agricultural areas, filling seasonal farm jobs and giving immigrants their first experience in the U.S. labor market. The farm labor market is likely to remain a revolving door, admitting newcomers and later sending them on to nonfarm labor markets. The status quo represents a large-scale experiment for rural America, testing whether the famed engine of economic mobility will be able to fill farm jobs and assure that ex-farm workers and their children find the economic opportunity that drew them to the United States.

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