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Immigration Reform: What Does It Mean for Agriculture?

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Immigration, along with health care, energy, and financial regulation, are the four major domestic issues targeted for reform by President Obama. However, the immigration status quo is likely to persist because it is the second-best option for advocates who cannot achieve the immigration reforms they want.

Also in this issue

President Obama met with 30 Congressional leaders June 25, 2009 to begin "an honest discussion about the issues" involved in immigration reform. The major issue is what to do about unauthorized foreigners. According to Passel and Cohn, about 5% of U.S. residents and 7% of California residents were foreigners believed to be illegally in the United States in 2008.

About two-thirds of the 12 million unauthorized foreigners are in the U.S. labor force, meaning that 5% of U.S. workers are not legally authorized to work here. Most of the eight million unauthorized workers are in nonfarm jobs in sectors that include construction, manufacturing sectors such as meat packing, and services such as food preparation and cleaning. However, the estimated one million unauthorized foreigners employed in agriculture are over half of the hired farm work force, and the share of unauthorized workers may be climbing as they spread from seasonal jobs on crop farms to year-round jobs in dairies and other livestock operations.

This article reviews immigration patterns, foreign-born workers in agriculture, and the major reform proposals. The concluding section assesses the possible impacts of the status quo, which is likely to persist.

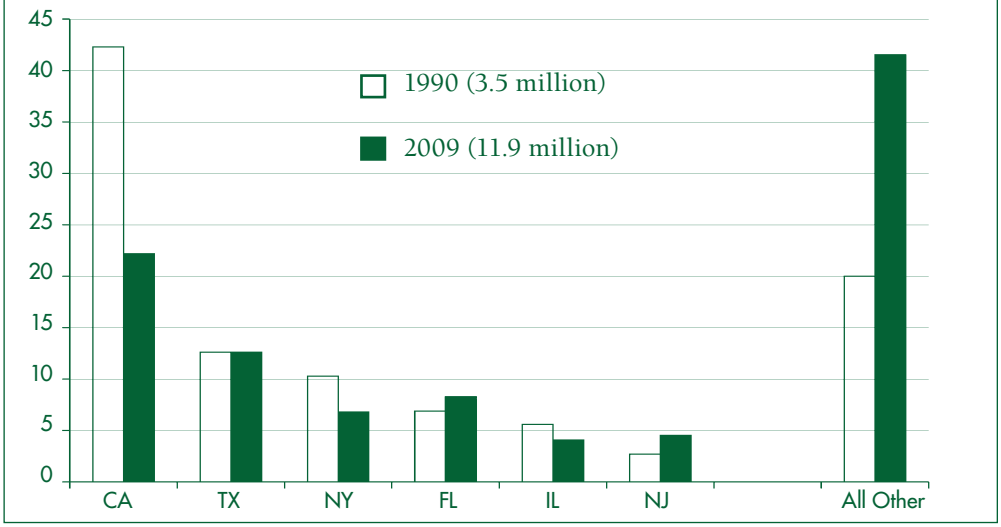
Immigration Trends

In 1970, the 10 million immigrants (foreign-born residents) 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. Another 14 million are legal immigrants who have not yet become naturalized U.S. 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 a year. Mexican and other unauthorized foreigners spread

Figure 1. Share of Unauthorized Foreigners, Selected States, 1990 and 2008



from California and other traditional migrant destinations throughout the United States. In 1990 California had 42% of the estimated 3.5 million unauthorized foreigners 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 (Figure 1).

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, meat packing 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 (Figure 2).

Farm Labor

There are two major types of labor employed on farms: farmers and family members, and hired workers 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 across the United States; today, there are two farmers and family members for each hired worker; the shift from farmer and family labor to hired workers was even more pronounced in California.

Most U.S. and California farms do not hire any labor—less than a quarter of the 2.2 million U.S. farms enumerated in the 2007 Census of Agriculture reported expenditures for hired workers; 35% of California farms reported hiring labor. Farms producing fruits and nuts, vegetables and melons, and horticultural specialties such as greenhouse and nursery crops (FVH crops), accounted for over half of U.S. and California farm labor expenditures in 2007.

Most hired farm workers are immigrants, and almost all new farm workers are immigrants. The supply of 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.

The National Agricultural Worker Survey (NAWS) found that a sixth of farm workers are newcomers, or living in the United States less than a year, equivalent to 100% turnover every six years. 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, which may explain the keen interest of farm employers in immigration policy.

Immigration Reform

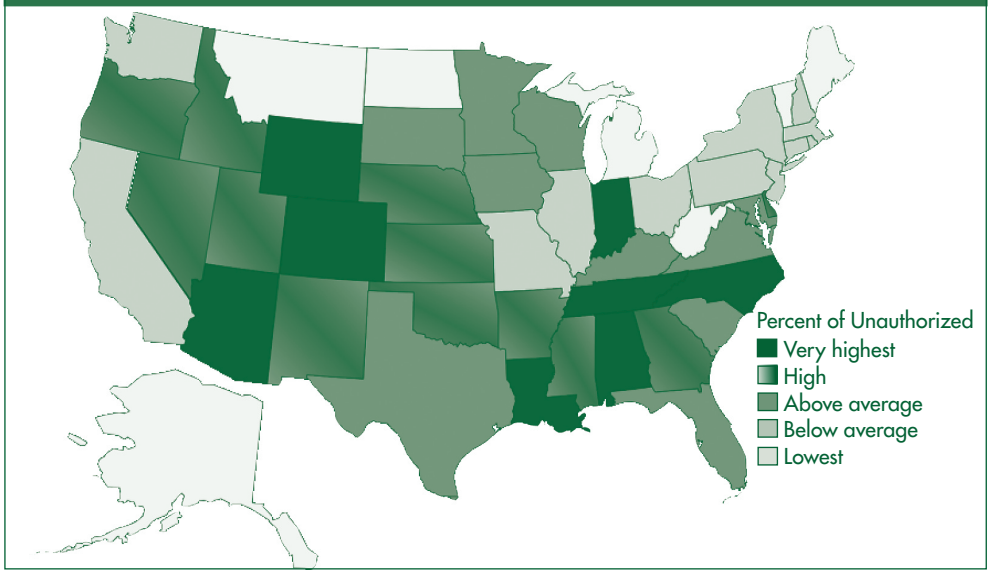
The United States has been debating what to do about the growing number of unauthorized foreigners for almost two decades, a period in which the number of unauthorized foreigners almost quadrupled and illegal migrants spread throughout the country. There are two contending approaches: enforcement-and-attrition,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

The House, under Republican leadership in December 2005, approved the Border Protection, Antiterrorism, and Illegal Immigration Control Act. 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-attrition approach to illegal migration, did not include a guest worker or legalization program. These provisions were included 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.

The Senate 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 living 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.

In May–June 2007, the Senate again considered comprehensive immigration reform. 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.

Figure 2. Share of Unauthorized Foreign-Born Residents by State, 2008



Both Senate bills included a special legalization and guest worker program for agriculture, the Agricultural Job Opportunity Benefits and Security Act (AgJOBS). 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.

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. 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.

Legalization, the major goal of farm worker advocates, is balanced 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 (DOL) 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 DOL to employers. After making 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. Third, the Adverse Effect Wage Rate (AEWR), the minimum wage that must be paid to legal guest workers, would be frozen at 2008 levels and studied. If Congress failed to enact a new AEWR within three years, the AEWR 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. 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 employers guarantee work to H-2A workers for at least three-quarters of the contract period they specify.

Implications for California

The immigration 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 agricultural areas each year. Finally, the cities in which most settle must grapple 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 reforms, especially because 1986 reforms 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 non-farm 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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For additional information, the author recommends:

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