

Immigration Reform: Implications for Agriculture

Philip Martin¹

Abstract

About half of U.S. farm workers are not authorized to work in the United States. Pending immigration reforms aim to prevent the entry and employment of more unauthorized foreigners, but they differ on what to do about unauthorized workers already in the United States. These unauthorized workers are not likely to disappear overnight, and agricultural adjustments to a legal work force are likely to be determined by enforcement patterns, the structure of new guest worker programs, and the speed at which current farm workers find nonfarm jobs.

Introduction

About 95,000 foreigners a day arrive in the United States. Over 90,000 are nonimmigrant tourists and business visitors as well as foreign students and workers welcomed at airports and border crossings daily. Another 3,000 are immigrants who have been invited to become permanent residents of the United States, and up to 2,000 are unauthorized foreigners, usually Mexicans who evade border controls plus some foreigners who entered legally, say as tourists, but did not leave as required.

Is the arrival of 30 million nonimmigrants, a million immigrants, and 500,000 to 700,000 unauthorized foreigners a year something to be welcomed or feared? There is no single answer, which helps to explain American ambivalence about immigration. On the one hand, presidents often remind Americans that the motto *e pluribus unum*—from many, one—signifies a willingness to welcome foreigners seeking opportunity while strengthening the United States with new blood and ideas. On the other hand, Americans have worried since the days of the founding fathers about the potential economic, political, and cultural changes caused by immigration.

Opinion polls consistently find that most Americans want the U.S. government to take additional steps to prevent illegal migration. A December 2005 Washington Post-ABC News poll reported that 80% of Americans think the federal government should do more to reduce illegal immigration, and 56% agree that unauthorized migrants hurt the United States more than they help it (Balz 2006). In December 2005, the House approved the Border Protection, Antiterrorism, and Illegal Immigration Control Act (H.R. 4437) on a 239 to 182 vote. President Bush commended the bill (Bush 2005), saying: "I applaud the House for passing a strong immigration reform bill... I urge the Senate to take action on immigration reform so that I can sign a good bill into law."

If eventually enacted into law, H.R. 4437 would require U.S. employers within two years to submit Social Security and other data on newly hired workers to government agencies by telephone or computer. If the data submitted do not match that in government records, employers are to notify workers to correct the problem within 30 days, or the worker could no longer be employed. Employers would have six years to verify the legal status of their current employees. H.R. 4437 also cracks down on unauthorized foreigners in the United States by making "illegal presence" in the country a felony, which may make it hard for such persons to eventually become legal immigrants. The bill introduces penalties on those who support or shield illegal migrants, which could affect churches and other migrant support groups.

¹ The author is Professor, Department of Agricultural and Resource Economics, University of California, Davis.

Perhaps the most controversial item in H.R. 4437 is a provision that calls for building 700 miles of additional fencing along the Mexico-U.S. border. There are already about 50 miles of fencing on the border, and H.R. 4437 would extend this fencing to over a third of the 2,000 mile Mexico-U.S. border.

Even though President Bush has been calling for a guest worker program since his election in 2000, H.R. 4437 does not include one. Rep. Tom Tancredo (R-CO), chair of the 90-member House immigration reform caucus, explained the absence of a guest worker program by saying: "Our borders must be secured and our laws must be enforced before any guest worker plan can go into effect." (Quoted in Bush and Congress: Action? 2006. Migration News. Volume 13. Number 2. January. Web site: http://migration.ucdavis.edu/mn/more.php?id=3155_0_2_0.)

The Senate took up immigration reform in March 2006, and approved the Comprehensive Immigration Reform Act of 2006 (S2611) on a 62 to 36 vote May 25, 2006. CIRA deals with border enforcement in Title 1, calling for 370 miles of additional fencing on the Mexico-U.S. border, interior enforcement in Titles 2 and 3, including a requirement that all U.S. employers check whether new hires are legally authorized to work in the United States, creates a new H-2C guest worker program in Title 4, provides additional immigration visas to reduce the backlog of foreigners waiting for them in Title 5, and allows some unauthorized foreigners to earn immigrant status and eventual citizenship in Title 6.

The CIRA's most controversial provisions deal with enforcement, the new guest worker program and legalization. The CIRA would add 14,000 Border Patrol agents to the current 11,300 over the next five years and increase detention space for apprehended foreigners (for comparison, New York City has about 36,000 police). The CIRA also calls for 370 miles of additional triple-layered fencing, at a cost of \$3 million per mile, and 500 miles of vehicle barriers at a cost of \$1.3 million a mile along the Mexico-U.S. border.

The Senate approved by a 58-40 vote a new verification system to begin 18 months after enactment. Newly hired employees would present a passport or REAL ID driver's license (issued by states after 2008) to employers, who would submit the data to a Department of Homeland Security (DHS) database with Social Security and immigration numbers. DHS would notify employers within three days that the new hire was authorized to work or unauthorized. If there is uncertainty, the worker could be hired until the system is 99% accurate.

Workers deemed unauthorized would have 10 days to challenge the DHS determination, and would be considered legal if DHS did not reconfirm unauthorized status within 30 days. The Senate bill includes a provision requiring DHS to reimburse workers if it makes a mistake, such as saying the worker was not authorized when he was. Employers would face fines of \$20,000 for hiring illegal workers on a first offense, and could face prison terms if they had a pattern of hiring unauthorized workers (the House bill has \$30,000 fines and prison terms up to 30 years). The Senate bill calls for the number of inspectors enforcing employer sanctions laws to increase from 200 to 10,000.

The Senate bill would add an H-2C visa program to a list that currently includes H-1A, H-1B, H-2A, and H-2B. Employers in any U.S. industry could attest that the employment of H-2C migrants "will not adversely affect the wages and working conditions of workers in the United States similarly employed" and not lead to the termination of U.S. workers 90 days before and after the H-2C migrants are employed. Foreigners with job offers from such U.S. employers could pay \$500 and obtain six-year work permits.

U.S. employers would set the process of employing H-2C workers in motion by filing their job vacancies in an electronic job registry, offering at least the minimum or prevailing wage "for the occupational classification in the area of employment, taking into account experience and skill levels of employees" (DOL would calculate prevailing wages for occupations). If U.S. workers are unavailable, the employer would issue job offers to foreigners, who would use them to obtain H-2C visas in their countries of origin. Employers in metropolitan or micropolitan statistical areas with unemployment rates "for

unskilled and low-skilled workers during the most recently completed six-month period [that] averaged more than 11%" could not hire H-2C workers.

The CIRA has three legalization programs to deal with the 11 to 12 million unauthorized foreigners in the United States. The compromise embraced by a majority of Senators divides the nonfarm unauthorized into three groups based on their length of time in the United States. The estimated seven million in the United States at least five years before April 5, 2006 could become "probationary immigrants" by proving they worked in the United States, by paying any back taxes and a \$1,000 fee, and by passing English and background tests. At the end of six years of continued U.S. work, tax payments and another \$1,000 fee, they could apply for green cards or immigrant visas, although they would have to go to the back of the visa queue (total fees were raised to \$3,250 during Senate deliberations).

The estimated three million unauthorized foreigners in the United States for two to five years could receive a three-year Deferred Mandatory Departure status if they satisfied the same fee, tax, and English requirements. In addition, they would have to return to their countries of origin within three years and then re-enter the United States legally. These unauthorized foreigners can apply for readmission before they leave the United States, and the "touchback" requirement can be waived if it would cause "substantial hardship."

Finally, the two million unauthorized foreigners in the United States less than two years would be expected to depart, although they could return legally with H-2C visas. The usual bars on legal re-entry would be waived for these unauthorized foreigners (those illegally in the United States six to 12 months are barred from legal re-entry for three years, and those illegally in the United States more than 12 months are barred from legal re-entry for 10 years).

On a 50-49 vote, the Senate allowed unauthorized foreigners who later become legal immigrants to receive Social Security credit for the work they did while unauthorized if the appropriate taxes were paid. The Senate defeated another amendment, 40-55, which would have delayed legalization and guest worker programs until DHS certified that U.S. borders were secure, and approved the Salazar amendment 79-16, which allows legalization and guest worker programs to go into effect when the President determines that they are in the national interest.

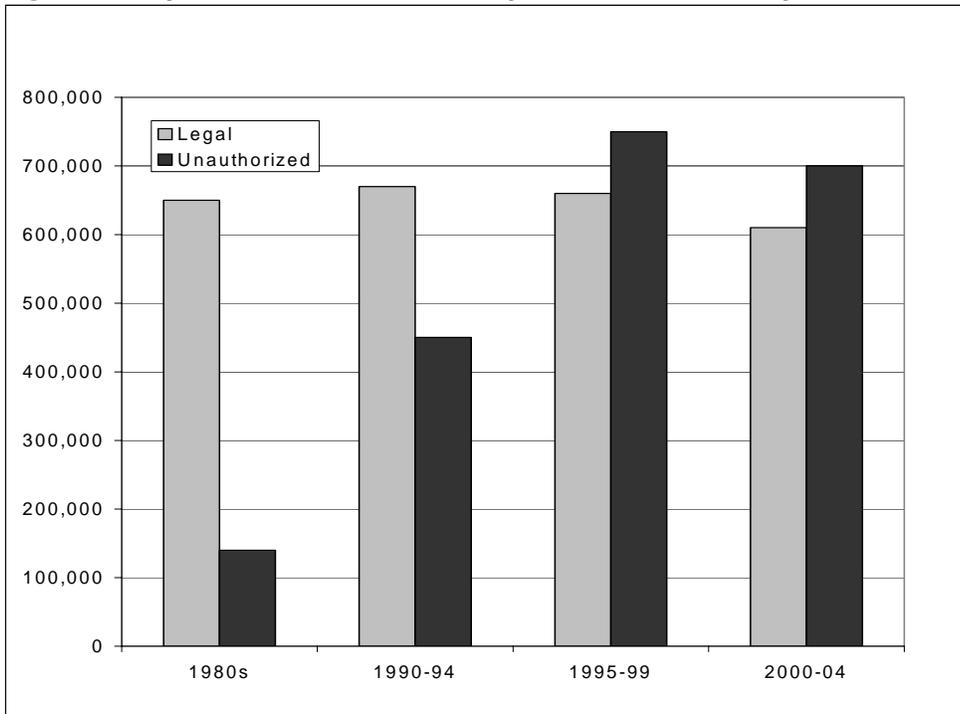
Unauthorized Farm Workers

There were an estimated 10.3 million unauthorized foreigners in the United States in March 2004, a number that has been increasing by over 700,000 a year in the past decade (Passel 2005). In a few recent years, the inflow of illegal migrants exceeded that of legal immigrants (Figure 1), so that almost 30% of the 35 million foreign-born U.S. residents are unauthorized, as are 55% of the 11 million Mexican-born U.S. residents.

Most unauthorized foreigners in the United States are employed, but not in agriculture. Almost two million of the unauthorized are children under 18, and others are housewives or retired, so that seven to eight million unauthorized are in the U.S. labor force of 150 million. Most of these unauthorized workers are between the ages of 18 and 40, and half arrived since 1995.

Most unauthorized workers are employed in the nonfarm economy, in service occupations that range from janitors to restaurant workers, in food processing, meatpacking and other manufacturing, and in construction. However, agriculture may be the only U.S. industry that has more than a million employees and half of its workers unauthorized (U.S. Department of Labor 2005).

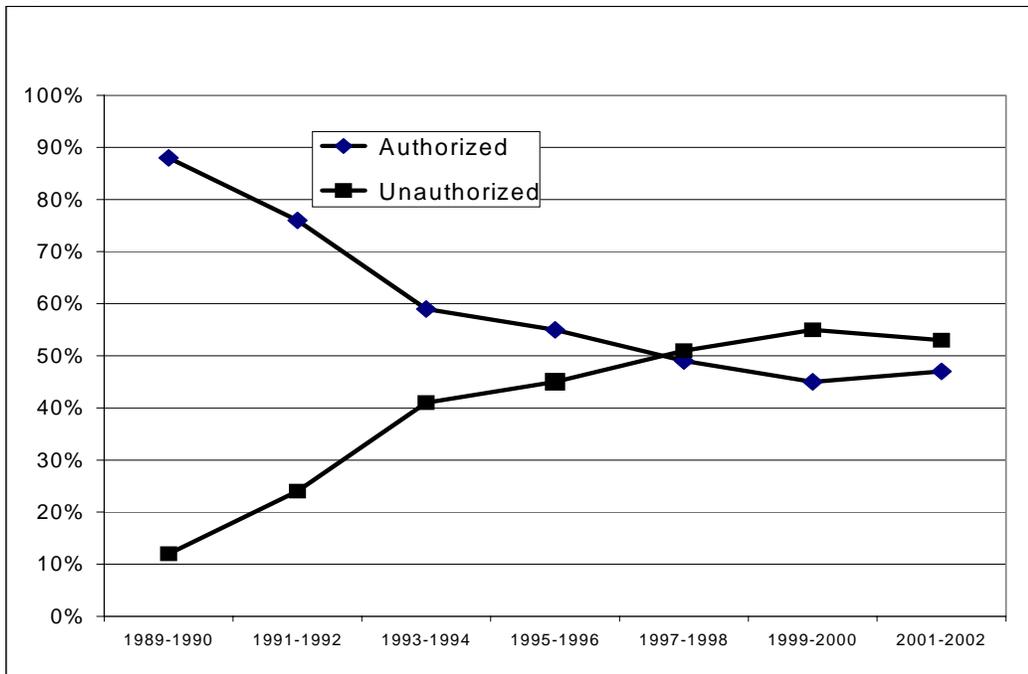
Figure 1. Legal and unauthorized immigration, annual averages, 1980-2004.



Source: Passel (2005).

The U.S. Department of Labor (DOL) has been surveying workers employed on crop farms for the past 15 years, and found that the percentage of unauthorized workers has been above 50% since the late 1990s (Figure 2). In the DOL National Agricultural Workers Survey (NAWS) data, the unauthorized share of the crop work force has stabilized in recent years, perhaps because tougher border enforcement is slowing new entries while the boom in construction and other nonfarm labor markets has drawn more unauthorized seasonal workers out of agriculture.

Figure 2. Authorized and unauthorized crop workers: 1989-2002.



Source: NAWS, www.dol.gov/asp/programs/agworker/naws.htm.

There are no government estimates of unauthorized workers in livestock, but most observers believe that livestock workers are more likely to be legal because a higher share of livestock jobs are year-round and many offer benefits such as housing. One way to put parameters on the number of unauthorized farm workers is to separate workers employed in crops and livestock, and apply different unauthorized percentages to each group.

When the U.S. Department of Agriculture relied on the Current Population Survey to estimate the number of farm workers, there were an estimated 2.5 million farm workers, defined as persons employed for wages on farms sometime during a typical year, including 1.8 million in crops and 700,000 in livestock (Smith and Coltrane 1981).² If 45% of the crop workers and 25% of the livestock workers are unauthorized, there would be almost one million unauthorized U.S. farm workers (Table 1). If the unauthorized percentage is higher, say 2/3 of the crop workers and a third of the livestock workers, there would be about 1.4 million unauthorized farm workers. Finally, if the unauthorized shares are lower, say 35% and 15%, there would be about 700,000 unauthorized farm workers.

Table 1. Estimating unauthorized farm workers.

	Middle	High	Low
Unauthorized % in crops/livestock	45/25	67/33	35/15
Hired workers	2,500,000	2,500,000	2,500,000
Crop workers	1,800,000	1,800,000	1,800,000
Unauthorized %	45	67	35
Unauthorized crop workers	810,000	1,206,000	630,000
Livestock workers	700,000	700,000	700,000
Unauthorized %	25	33	15
Unauthorized livestock workers	175,000	231,000	105,000
Total unauthorized	985,000	1,437,000	735,000

Source: See text.

The number and share of unauthorized workers has traditionally varied by well-known parameters, including size of employer and commodity, with large farm labor contractors (FLCs) providing workers to harvest less-perishable crops such as citrus having some of the highest shares of unauthorized

² Estimates based on other data sources suggest that the hired farm work force remains at this level. The U.S. Census of Agriculture (COA) reports farm labor expenditures but not the number of hours worked. If COA expenditures by crop (NAICS 111) and livestock (NAICS 112) farms are divided by the average hourly earnings of field and livestock workers extracted from quarterly National Agricultural Statistics Service (NASS) Farm Labor Survey reports to estimate hours worked on crop and livestock farms, the total is 2.7 billion hours in 2002, or 1.4 million year-round equivalent jobs of 2,000 hours each.

About 68% of these hours were reported by crop farms, and 32% by livestock farms. In the NAWS, workers had an average of 1.4 farm employers in 12 months of 2001-02, suggesting that COA's 3 million farm jobs were filled by 2.1 million workers. However, NAWS found that 21% of crop workers were employed by farm labor contractors (FLCs), and increasing the worker count by 21% results in an estimate of 2.6 million workers. The NAWS covers only crops. If NAWS data on average employers and FLCs are applied only to crop workers, and we assume that double-counting of livestock workers in the COA is offset by workers brought to livestock farms by contractors, the result is a total 2.7 million farm workers in 2002, from 1.7 million crop workers (68% of 3 million = 2.1/1.43 employers per worker x 1.21 for FLC workers) plus 3 million x 32% or 972,000 livestock workers.

workers (Thilmany 1994; Martin et al. 1995). However, differences between less perishable citrus and more perishable strawberries have been disappearing as unauthorized workers spread throughout agriculture. Indeed, some areas that have more recently begun to hire foreign-born workers, including many midwestern and southeastern states, may have higher shares of unauthorized workers than states that have long relied on unauthorized workers such as California.

Even though almost half of U.S. crop workers may be unauthorized, few farm employers are fined for employing such workers. There are several reasons. First, there is little enforcement of laws against hiring unauthorized workers. In FY04, the government enforcement agency Immigration and Customs Enforcement issued only three notices of intent to fine (NIF) U.S. employers for violations of employer sanctions laws, down from 1,000 to 2,000 NIFs a year in the 1990s (ICE: Worksite Enforcement. 2006. Migration News, Volume 13. Number 2. January). Second, most employers protect themselves from fines of up to \$10,000 by copying the documents presented by newly hired workers.

Federal law requires new hires to present documents to their employers attesting to their identity and right to work. Many unauthorized workers buy drivers' licenses that show identity and immigration visas (green cards) and Social Security numbers that show right to work, documents that can be purchased at swap meets for less than \$100. In the event of an inspection, the worker may be detained if the documents are false, but employers are not fined because they checked worker documents as required. Indeed, in an effort to prevent discrimination, employers can be fined if they demand particular documents from particular employees. Under both the House and Senate bills, internet-based reporting of data on new hires would immediately put the employer on notice that there is a problem with a particular worker, provided that government databases are accurate.

Agriculture's Stake

Agriculture's three major interests in pending immigration reform proposals are currently unauthorized workers, future guest workers, and enforcement. Some farmers fear that hundreds of thousands of currently unauthorized workers will disappear overnight, a highly unlikely scenario.

Although the House bill does not include a guest worker program that legalizes currently unauthorized workers, it includes a two-year phase-in of the internet-based system to verify the legal status of new hires and a six-year phase in of the requirement to verify current employees. Thus, even under a worse-case scenario for farmers worried about "losing" unauthorized employees, there would likely be attrition rather than a sudden disappearance of current workers. The Senate bills, of course, allow currently unauthorized workers to become legal guest workers.

The seasonal farm labor market resembles a revolving door, in the sense the newcomers arrive, are employed for about a decade, and then return to their countries of origin or more often find nonfarm jobs and settle in the United States. If there is 10% annual turnover in a 2.5 million strong farm work force (the estimate of the U.S. hired farm work force used in government publications and academic articles), 250,000 farm workers exit each year and keeping the farm work force stable requires 250,000 new entrants.

Since virtually all new entrants to the farm labor force are born outside the United States, farm employers are very interested in government rules that regulate their access to workers abroad. If stepped up border and interior enforcement slows the influx of unauthorized workers and turnover remains at current levels, farm employers will be interested in far more than the 40,000 legal guest workers a year requested under the current temporary worker program, known as the H-2A program.

The H-2A program is named after the section of law that authorizes it, and presumes that U.S. farmers will normally find sufficient U.S. workers to fill farm jobs. However, farmers anticipating too few U.S. workers can file job orders at their local employment service (ES) offices and ask the U.S. Department of Labor to certify their need for foreign workers. The ES and the farmer are expected to seek U.S.

workers during a mandatory recruitment period. However, since farmers do not request certification until they have found H-2A workers abroad, most do not really want U.S. workers, and recruitment finds few.

The request for H-2A workers alerts unions and advocates, who sometimes sue employers for not hiring U.S. workers who respond to the farmer's ads. In addition, farm employers requesting H-2A workers must offer approved housing, which means that DOL inspectors arrive to check housing. Applying to the government for H-2A workers in areas that often have double-digit unemployment rates tends to bring unwelcome attention to farm employers who may have been operating out of the limelight with unauthorized workers, explaining why many farmers say the H-2A program is "unworkable." Proposals to make the H-2A program more employer-friendly include AgJOBS, discussed below.

The third uncertainty for agriculture is enforcement. Fines or sanctions on employers who knowingly hire unauthorized workers were introduced by the Immigration Reform and Control Act of 1986. The theory was that sanctions would "demagnetize the U.S. labor market" because foreigners would quickly learn that, even if they eluded the Border Patrol, they could not get U.S. jobs. This theory did not work because of the availability of false documents and little enforcement.

A mandatory internet-based verification system could make enforcement easier. For example, if employers learned that the data on a newly hired worker were suspect, but continued to employ the worker after 30 days, there could be a presumption that they knew the worker was unauthorized. Similarly, by having all employers submit data on all newly hired workers, enforcement agencies will be able to spot problem industries, areas, and employers.

AgJOBS

One of the legalization programs in the Senate bill, the Agricultural Job Opportunity, Benefits, and Security Act (AgJOBS), deals only with unauthorized farm workers. As the number of unauthorized farm workers rose in the 1990s, farmers asked Congress to approve a new guest worker program for agriculture that did not require DOL certification or free housing. President Clinton opposed these proposals, issuing a statement June 23, 1995 that said: "I oppose efforts in this Congress to institute a new guestworker or '*bracero*' program that seeks to bring thousands of foreign workers into the United States to provide temporary farm labor."

With illegal migration rising and Clinton threatening a veto, there was little serious effort to get Congress to approve an alternative guest worker program. However, the Senate approved a version of what became AgJOBS as an amendment to an appropriations bill in 1998, showing that farmers were gaining support in their effort to win approval of a non-certification guest worker program (Martin 2005).

After the election of Vicente Fox in Mexico and George W. Bush in the United States in 2000, farm employers and worker advocates reached a compromise to deal with unauthorized farm workers. Farm employers wanted a new guest worker program with two major features, no certification and no housing, while worker advocates wanted a system under which currently unauthorized workers could become immigrants. Before the elections, these talks were at a standstill but, in December 2000 employers and worker advocates reached a compromise: farmers would be allowed to self-certify their need for guest workers and pay a housing allowance to out-of-area workers rather than provide them with housing. Worker advocates won the promise of a path to immigrant status for unauthorized workers and their families. This "earned amnesty" raised the ire of law-and-order members of Congress, and the AgJOBS compromise was not enacted (Martin 2005).

AgJOBS was pushed out of the limelight by the Fox administration, which made improving conditions for Mexicans in the United States its top foreign policy priority. During the spring and summer of 2001 the Mexican government made a four-pronged proposal that included legalization, a guest-worker

program, ending border violence and exempting Mexico from ceilings on immigrant visas. Foreign Minister Jorge Castaneda, reflecting 2001 expectations of a breakthrough, added: "It's the whole enchilada or nothing." (Quoted in Terrorism, Guest Workers. 2001. Rural Migration News. October. Web site: <http://migration.ucdavis.edu/>.) Just before September 11, 2001, Mexican President Fox in Washington D.C. said he expected a comprehensive new immigration agreement before the end of 2001.

The CIRA version of AgJOBS would offer currently unauthorized farm workers a path to immigrant status for themselves and their children and offer farmers easier access to legal guest workers. It would allow up to 1.5 million unauthorized foreigners who did at least 150 days or 863 hours of farm work during the 24-month period ending December 31, 2005 to pay \$500 and obtain blue-card temporary resident status (this employment can be verified with pay stubs, tax filings, contracts, etc., and the legalization program would run for five years). Blue-card holders who perform at least 100 days of farm work each year during the 5-year period beginning on the date of enactment, or at least 150 work days each year in a 3-year period after enactment, could become legal immigrants (a work day is at least 5.75 hours). While in blue-card status, foreigners could also do nonfarm work, travel legally in and out of the United States, and get work authorization for their spouses, who would not have to work in agriculture, as well as legal status for their minor children in the United States.

The blue-card program also reforms the H-2A program, allowing farm employers to attest they need foreign workers, allowing them to pay a housing allowance in lieu of providing housing to out-of-area workers, and freezing the adverse effect wage rate at 2002 levels. In addition, dairy farms would for the first time be able to hire H-2A workers, even though their demand for labor is year round.

Conclusions

As Congress debates immigration reform in 2006, there could be comprehensive reform, dealing with all unauthorized workers in the United States, or piecemeal reform, such as enacting only AgJOBS. If there is comprehensive reform, Congress could mandate enforcement first and allow guest workers or legalization later, as in the House bill, or have new enforcement measures introduced together with guest workers and legalization, as in the Senate bill. In 1986, IRCA had legalization first and enforcement second, an approach absent from the 2006 discussion.

Agriculture has a higher stake in the 2006 debate than it did in the 1986 debate for two reasons. First, labor-intensive agriculture is far larger than it was two decades ago; in the 2002 Census of Agriculture, the value of fruits and nuts, vegetables and melons, and nursery crops was \$43 billion, up from \$18 billion in 1987. Second, there are more unauthorized workers, and they are far more widely dispersed within agriculture and across the United States than in the mid-1980s, so that more farmers would likely be affected.

However, the major change between 1986 and 2006 is that experience has taught what does **not** work. A generous legalization program and weak enforcement, as in the late 1980s, increased illegal immigration and spread unauthorized workers throughout the United States. Two decades later, there may be much tougher enforcement and fewer opportunities for currently unauthorized workers to become legal immigrants.

Farm employers and worker advocates are cooperating to preserve the labor status quo at least temporarily with AgJOBS. However, the guest workers likely to be a larger share of the workforce if AgJOBS was enacted could become a flashpoint, as employers and advocates tangle over their wages and working conditions.

There are alternatives available, including cooperating with government to reduce dependence on foreign workers, as during the 1960s. A combination of government support for mechanization research, restructuring jobs so that more workers can be employed in agriculture longer, and perhaps

allowing U.S. production of some labor-intensive crops to shrink could be better for agricultural competitiveness than legalizing the labor status quo.

References

Balz, D. 2006. Political Splits on Immigration Reflect Voters' Ambivalence, Washington Post, January 3.

Bush, G.W. 2005. News Release. December 16. Web site: www.whitehouse.gov/news/releases/2005/12/20051216-13.html.

Martin, P., W. Huffman, R. Emerson, J.E. Taylor, and R. Rochin. Eds. 1995. Immigration Reform and U.S. Agriculture. Berkeley, Calif.: Division of Agriculture and Natural Resources Publication 3358.

Martin, P. 2005. AgJOBS. New Solution or New Problem. UC Davis Law Review. Volume 38(3):973-991. Web site: www.law.ucdavis.edu/lawreview/.

Passel, J.S. 2005. Estimates of the Size and Characteristics of the Undocumented Population. Web site: <http://pewhispanic.org/files/reports/44.pdf>.

Smith, L.W. and R. Coltrane. 1981. Hired Farmworkers: Background and Trends for the Eighties. Washington, D.C. USDA, ERS, RDR Report 32.

Thilmany, D. 1994. The Effect of Immigration Reform on Farm Labor Markets. Ph.D. Thesis, University of California Davis.

U.S. Department of Labor. 2005. Findings from the National Agricultural Workers Survey (NAWS): A Demographic and Employment Profile of United States Farmworkers. Office of the Assistant Secretary for Policy, Office of Program Economics, Research Report No. 9. Washington, D.C., March.