AMERICA'S NEW IMMIGRATION LAW: ORIGINS, RATIONALES, AND POTENTIAL CONSEQUENCES

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THE TEMPORARY WORKERS PROVISIONS
OF THE SIMPSON-MAZZOLI BILL:
IMPLICATIONS FOR THE STATE OF FLORIDA*

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Current Policy

The use of temporary foreign labor in the United States is currently governed by section H-2 of the 1952 Immigration and Nationality Act and by administrative regulations developed by the Department of Labor (DOL). This combination of statute and regulation severely restricts the flow of foreign workers legally entering the country. This policy contrasts with earlier post-World War II programs which authorized the temporary employment of several hundred thousand workers per year. During the 1942-1964 period, the Bracero Program with Mexico was the source of most temporary foreign labor, but a contract labor program with the West Indies also brought farmworkers to Florida.

With formal termination of the Bracero Program, the H-2 section remained as the only means for legally admitting foreign contract laborers to the U.S. The DOL, responsible for regulating admissions under H-2, has increasingly interpreted the statute’s provisions as a charge to protect

*This essay analyzes the possible effects on the State of Florida of changes proposed in the federal provisions regulating the use of temporary foreign workers. It is part of the joint Florida International University/University of Florida STAR project (DSRT #81-66, 81-67), “The Impact of Refugees/Immigrants on State Services.” In the project, it falls in the section titled “Policy Issues: Existing and Proposed Federal Policies on Immigration and Refugees.” The objective of the presentations in this section is to review and preview federal policies that affect the flow of immigrants and refugees into Florida and their use of state services.
the interests of domestic workers. In practice the Department will not approve the admission of alien labor unless the petitioner can convincingly demonstrate that no U.S. workers are available for the work in question and that the admission of foreign workers will not adversely affect domestic workers employed in related activities. The principal instruments for implementing these guidelines are the requirements that employers conduct an exhaustive effort to recruit domestic workers and that the DOL set wages ("adverse-effect wage rates") and working conditions. The H-2 regulations and the rigor with which the DOL has enforced them have kept the number of legal temporary workers under 20,000 per year since 1975.

The Florida sugar industry, consistently the largest single user of H-2 labor, provides an example of the effects of temporary-worker policy as currently constituted. The 8,500 West Indian workers annually admitted for five to six months to cut Florida's sugar cane make virtually no use of public services. They enter the country under contract to a specific employer who must, under the terms of the contract, provide each worker with free housing, transportation and subsidized board. Workers also receive medical insurance and coverage under workers' compensation in the case of injury. Perhaps most significantly, DOL regulations assure each participant work and a minimum wage.\(^1\) They therefore cannot possibly become unemployed while in Florida, where in any case they would not qualify for unemployment compensation. To discourage workers from abandoning their jobs in sugar and seeking employment elsewhere (which is forbidden by H-2 regulations), they are bonded and subject to summary return home in the event of poor performance or serious misbehavior, and 23 percent of their wages are withheld to be collected back in the islands at the end of the season. As a result, relatively few workers desert their jobs to become illegal aliens.\(^2\)

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The H-2 program currently constitutes little direct drain on state resources. The only state service involved in the program is the Employment Service, which cooperates with the DOL in the certification process. Even indirect costs appear minimal. Aside from selected incidents of protest in which local law-enforcement officials are called on to intervene, the workers are orderly, hardworking (as might be expected given the regulations and conditions governing their presence in the U.S.), and largely confined to the camps. Employers contend that no U.S. workers are available to harvest Florida's sugar crop, and the certification effort would appear to substantiate this contention, although migrant worker advocate groups claim that the employers systematically discriminate against domestic workers. If the employers are correct, then the program displaces no domestic workers who would then turn to public assistance. The rate of unemployment among farmworkers in the sugar-producing area is quite high, especially following the influx of Haitian refugees, but whether, and under what conditions, these same unemployed would cut cane is another question. Up to this point the U.S. Department of Labor has agreed that they will not.

In summary, current federal policy effectively limits the number of foreign workers who legally enter the U.S. for temporary employment. Florida, the state with the largest number of temporary foreign workers, has experienced little drain on its public services as a result of their presence.

The Reagan Guest-Worker Proposal

In October 1981, President Ronald Reagan submitted to Congress his proposal to reform the Immigration and Nationality Act. Previous administrations had likewise formally proposed comprehensive revision of existing policy, but Reagan's proposal followed the report of the Select Commission on Immigration and Refugee Policy and the sudden influx of Cuban and Haitian refugees in 1980. This time, conditions seemingly would stimulate Congressional action.

Two provisions of the Reagan proposal directly addressed temporary-worker policy. Title VI of his bill called for the establishment of an experimental two-year
program which would admit 50,000 Mexican guest workers per year, a measure which President Reagan justified in these words: "We must ... recognize that both the United States and Mexico have historically benefited from the employment of Mexicans in the United States. A number of our states have special labor needs and we should take these into account." Reagan also argued that the provision would deter illegal migration by providing a legal alternative and that the program could be altered or abolished if it did not work.

The Reagan proposal envisioned a program by states. To qualify for temporary foreign workers, a state would have to submit to the DOL an annual certification of need which specified requirements for Mexican labor by area. Employers would then apply for workers through their state's governor. Approved applications would be processed by U.S. consular offices in Mexico, which would issue temporary work visas for up to one year. Once in the United States, the Mexican guest worker could change employment, but only if a new employer submitted a request and the new job was in an approved state and an approved occupation.\(^3\)

The proposal explicitly guarded against allowing the temporary worker to become a public charge. First, violation of the terms of admission would result in deportation and ineligibility for future participation in the program. Second, participants could not have their immigration status adjusted. Third, the bill would prohibit guest workers from bringing any dependents. Fourth, although required to pay taxes, they could neither receive unemployment compensation nor qualify for a wide range of federal welfare programs.

The other provision of the Reagan immigration reform bill which addressed temporary-worker policy proposed that the existing H-2 temporary-worker program continue to exist along with the Mexican guest-worker program.\(^4\) However, for a variety of reasons the latter ran into consid-


\(^4\) Ibid., pp. 100-103.
erable and widespread opposition; consequently, current legislative proposals contain no formal guest-worker provisions.

**H-2 Provisions in Simpson-Mazzoli**

Early in the current legislative round of immigration reform, the measure jointly authored and sponsored by Senator Simpson of Wyoming and Congressman Mazzoli of Kentucky was substituted for that of the Reagan administration. Although similar in many respects to Reagan's proposal, the Simpson and Mazzoli bills focus their proposals regarding temporary workers on revision of the existing H-2 program.

As originally introduced in 1982, the Simpson-Mazzoli Bill would have converted into statute the administrative rules which the DOL had developed to operate the H-2 program in the years following the termination of the Bracero Program. In committee, however, legislators sympathetic to employer interests succeeded in incorporating other changes which could open up the flow of legal temporary labor through the H-2 channel should other provisions in the proposed legislation effectively cut off the supply of undocumented workers. The Senate rejected an amendment (introduced by Senator Hayakawa) that would have included a large-scale guest-worker program in the bill as well as one (sponsored by Senator Kennedy) that would have retained the H-2 program as it is. The bill that ultimately passed the Senate, however, contained several provisions which could conceivably have affected the number and type of H-2 workers entering the U.S. for temporary employment, and it could ultimately result in a greatly expanded temporary-worker program.

- The Senate-passed bill would have greatly restricted the role of the DOL in the certification process. As originally introduced, the Simpson-Mazzoli Bill would have converted DOL certification from its current advisory status to a mandatory requirement. Eliminating this requirement, as the Senate did, would allow for the possibility that the INS, an agency less sensitive to domestic labor conditions, ignore or overrule DOL recommendations. It would also
give rise to the possibility that the Department of Agriculture gain a greater role in the process. Furthermore, the original Simpson-Mazzoli Bill designated part of the revenue from employers' fees to monitoring compliance with regulations, and it established an annual fund of $10 million to assist the DOL in recruiting domestic workers and monitoring treatment of guest workers. The Senate version deleted both, further diluting the role of the DOL in the temporary-worker program, and it transferred final rulemaking authority from the DOL to the Attorney General.

The bill would have reduced the geographic scope required of employers in their attempts to determine the availability of domestic workers. In order to qualify for H-2 certification, employers would have needed to recruit domestic workers only within their region rather than throughout the country. Given the migratory nature of the domestic work force, it seems reasonable to conclude that a regional labor search would not reach all of the domestic workers potentially available. The test of possible adverse effects on wages and working conditions engendered by the program would therefore be regional rather than national. Moreover, the Senate measure would have reduced the sanctions imposed on employers who violate the terms of certification or of employing temporary workers.

The proposal would have permitted certification of a labor shortage even when domestic workers wanted to work but would not accept the terms of employment offered. This provision would have given employers more control over wages and working conditions, thus lowering current standards for determining the availability of domestic workers. Furthermore, the proposal would have eliminated the requirement that employers hire domestic workers who apply for work at any time during the first half of the harvest season, as they now must do. Instead, this obligation would terminate at the point that H-2
workers departed for the U.S., and such workers could remain in the U.S. for eleven months in any calendar year, rather than the eight months specified by the original Simpson-Mazzoli Bill.

- Finally, and perhaps most importantly, the measure would have allowed grower associations to act as sole employers and to seek certification for more than one crop. This provision represents a radical departure from current DOL practices, which limit certification to one crop. It would have given employers more flexibility in the use of temporary foreign labor by permitting them to shift their H-2 workers from one crop to another and by centralizing the recruitment and certification processing in producer associations, such as the Florida Fruit and Vegetable Association, which represents employers in a variety of crops.

Potential Impacts

Any analysis of the effects of the proposed immigration reforms must take into account the complex and multifaceted nature that they will have. The proposed changes in immigration would, in the first place, affect different sectors in different ways. To the extent that the temporary-labor provisions would assure an inexpensive and dependable labor supply, Florida's agriculturalists and consumers would benefit. The same provisions, however, would probably drive other Floridians out of the labor market. Secondly, the range of issues addressed by the reform bill extend far beyond modifying the H-2 program. The provisions in the bill which address these issues could conceivably affect the availability and need for foreign workers. Florida's agricultural producers who employ seasonal labor maintain, for example, that they would need an expanded H-2 program to help compensate for the loss of undocumented workers resulting from implementation of the employer sanctions section of
Simpson-Mazzoli. Groups representing organized labor and farmworkers hold the opinion that, given the current high rate of unemployment and the influx of Haitians, the supply of domestic workers and eligible refugees would be adequate to replace the current supply of undocumented foreigners.

The forthcoming analysis will not evaluate any of the above positions, but the complex and interrelated nature of these factors, which might affect the impact of temporary workers on state services, should be kept in mind.

**Possible Direct and Indirect Effects**

Advocates on both sides of the issue agree that the Senate-passed revisions in the H-2 regulations would result in the increased utilization of temporary foreign workers, especially in American agriculture. It would seem safe to conclude that enactment of the Senate package would eventually lead in Florida to the use of considerable numbers of H-2 workers in agricultural activities other than the sugar harvest, most likely in the production of citrus and vegetables. How would such a development affect demand for state services?

If we accept the premises of the employers, the change would have little impact, if any; they believe that no significant numbers of domestic workers would be willing to replace the undocumented aliens forced out of the labor force by the threat of sanctions against users of such labor. In such a case, legal foreign workers would replace illegal ones. Assuming that relevant regulations remain unchanged despite the Senate's proposals, there is no reason to expect that an expanded temporary labor force would make proportionally greater direct demands on state services than does the current program. That is, future H-2 workers would not qualify for any state benefit programs, and the law would continue to require that their employers provide for their health and welfare during the

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5. See, for example, the testimony of George Sorn, Manager of the Labor Division of the Florida Fruit and Vegetable Association, in U.S. House of Representatives, Committee on the Judiciary, Subcommittee on Immigration, Refugees, and International Law, Administration's Proposals on Immigration and Refugee Policy (Washington, D.C.: 1981): 88-98.
period of their employment in Florida. The requirement that they return home during the off-season and the current incentives to do so would remain operative. The only state service significantly affected would still be the Employment Service.

If, however, we accept the assumptions of the opponents of an expanded H-2 program, we would have substantial grounds to expect considerable indirect impact on state services. Their scenario begins with the premise that employers prefer foreign workers because of their higher productivity and lower costs. Therefore, easing the requirements for obtaining temporary foreign workers would lead to the displacement of considerable numbers of American citizens and eligible Haitian refugees from the migrant labor stream, especially in citrus and vegetable production. Complete displacement or even reduction in hours worked would lead directly to diminished income, which in turn would lead to increased demand for a wide variety of supplementary services, including financial assistance, unemployment compensation, food stamps, health care and medical services, job training, housing, and legal aid. Federal, local and voluntary agencies, rather than the state, provide many of these services. But to the extent that such groups failed to fulfill these needs, the standard of living of displaced workers and their dependents would deteriorate further, and state and local governments could find themselves forced to provide increased basic survival support and public security.