

President Trump and U.S. Migration after 100 Days

Philip Martin

President Trump issued four executive orders dealing with immigration since taking office January 20, 2017, setting in motion plans to build a wall on the 2,000 mile Mexico–U.S. border, increase deportations, reduce refugee admissions, and protect U.S. workers. These executive orders signaled a new era in migration policy that emphasizes enforcement against unauthorized foreigners and protections for U.S. worker.

President Trump issued 30 executive orders in his first 100 days in office. Many lay out ambitious goals, but most request that agencies review programs and provide options to achieve the president's goal to "make America great again." For example, after issuing the border and interior enforcement executive orders, President Trump said: "Beginning today, the United States of America gets back control of its borders," an ambitious goal that may require years to persuade Congress to appropriate the necessary funds, construct a wall, and hire agents to detect and remove unauthorized foreigners.

The Border Security and Immigration Enforcement Improvements (BSIEE) executive order, issued January 25, 2017, asserts that "border security is critically important to the national security of the United States" and directs the Department of Homeland Security (DHS) to plan for the construction of a wall on the 2,000-mile Mexico–U.S. border, and develop "a strategy to obtain and maintain complete operational control of the southern border," defined as the "prevention

of all unlawful entries." A third of the Mexico–U.S. border is currently fenced to prevent the unauthorized entry of people and vehicles.

The BSIEE executive order requires DHS to add 5,000 Border Patrol agents "as soon as practicable" to the current 20,000. It also instructs DHS to detain unauthorized foreigners who are apprehended rather than releasing them until they appear in court to explain why they should be allowed to remain in the United States. It allows DHS to use expedited removal procedures to deport unauthorized foreigners detected anywhere within the U.S. if they have been in the U.S. less than two years and cannot make credible claims that they need protection from persecution in their country of citizenship. The BSIEE executive order requires all federal agencies to report on the U.S. aid they provided to the government of Mexico over the past five years.

The Enhancing Public Safety in the Interior of the United States (EPS) executive order, also issued January 25, 2017, tackles sanctuary cities and cooperation between federal and state and local law enforcement agencies. State and local police in sanctuary cities do not hold persons arrested for certain crimes at the request of DHS so that these foreigners can be placed in federal custody. Without defining sanctuary, the EPS executive order requires DHS to designate "sanctuary" jurisdictions, and a follow-up implementation memo requires state and local governments to certify by June 30, 2017, that they are in compliance with a 1996 federal law requiring them to cooperate in immigration enforcement or risk loss of U.S. Department of Justice grants.

The EPS authorizes DHS to resume so-called 287(g) agreements that involve federal immigration agents training state and local police officers to detect unauthorized foreigners and to hold

them for federal agents. The EPS emphasizes that DHS should focus on the detection and removal of unauthorized foreigners convicted of U.S. crimes. However, it also makes more unauthorized foreigners priorities for removal, including those arrested but not convicted of U.S. crimes as well as any other unauthorized foreigners encountered while searching for criminals. The EPS directs DHS to add 10,000 U.S. Immigration and Customs Enforcement (ICE) agents to the current 10,000 to detect and remove unauthorized foreigners inside the United States.

In the first two months under President Trump, arrests of removable foreigners away from the border were 21,400, including 5,400 who did not have criminal records in the United States. Most of these arrests have not yet led to more removals, since many of those arrested have an opportunity to ask an immigration judge to allow them to remain in the United States. The EPS instructs DHS to detain more of those arrested and waiting for trials before immigration judges.

The third executive order, Protecting the Nation from Terrorist Attacks by Foreign Nationals (PNTAFN), was issued January 27, 2017, and prompted chaos and controversy. The PNTAFN executive order suspended the entry of nationals of Iran, Iraq, Sudan, Syria, Libya, Somalia, and Yemen; halted refugee admissions for 120 days and reduced refugee admissions from 110,000 to 50,000; and called for "extreme vetting" of some foreigners seeking visas to enter the United States.

The PNTAFN executive order led to chaos at airports, as immigrants and visitors with valid visas were denied entry to the United States. Thousands protested what they called President Trump's Muslim ban, and several states sued, prompting a federal judge to enjoin PNTAFN implementation, a

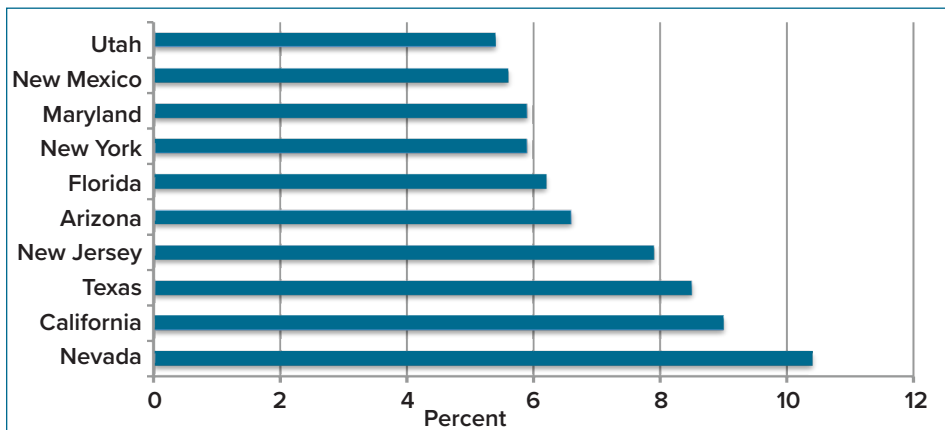


Figure 1. Share of Unauthorized Workers by State, 2014

Source: Passel and Cohn, 2016

decision upheld on appeal. President Trump issued a new executive order on March 6, 2017, that bars the issuance of new visas to nationals of six countries (not Iraq) but permits green-card holders from these countries to travel in and out of the United States. This executive order was blocked by two federal judges who cited the president’s campaign pledges to stop Muslim immigration as reasons why the order was unconstitutional religious discrimination; these decisions are being appealed.

The Buy American and Hire American (BAHN) executive order, issued April 18, 2017, directs federal agencies that deal with guest workers—the Departments of Labor, Justice, Homeland Security, and State—to study existing guest worker programs and recommend changes “to protect the interests of U.S. workers in the administration of our immigration system, including through the prevention of fraud or abuse.” The U.S. has a dozen visas that permit foreigners to work temporarily in the U.S., but the focus of the BAHN executive order is on the H-1B program.

The H-1B program makes it easy for most U.S. employers to hire college-educated foreigners to fill U.S. jobs that normally require college degrees. Most employers are not required to try to recruit U.S. workers before being certified to hire H-1B foreigners, and

most employers may legally replace U.S. workers with H-1B workers. The major protection for U.S. workers is a cap on the number of H-1B visas, 65,000 a year plus 20,000 for foreigners with master’s degrees. Employers requested 200,000 or more H-1B visas in recent years, and 35–50% went to so-called body shops, which are typically outsourcing firms that do some of a firm’s IT work in the U.S. with H-1B workers and send the rest to India.

U.S. employers must agree to pay H-1B workers at least the prevailing wage for the occupation. There are four wage levels in the H-1B program, ranging from entry-level to experienced. Over half of H-1B visas go to entry-level workers who are paid relatively low wages, and over 80% are in the two lowest wage levels.

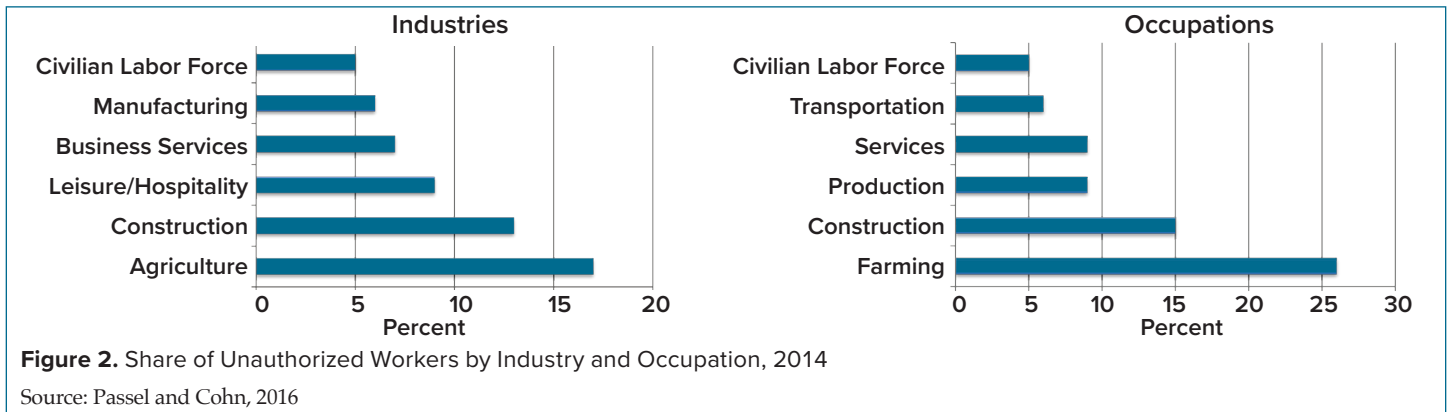
U.S. employers often say that they need to “raise the cap” on the number of H-1B visas in order to hire the world’s “best and brightest” workers and stay competitive in a globalizing world, but some research finds that the easy availability of H-1B workers depressed the wages of similar U.S. workers and discourages U.S. students from working in IT. The BAHN executive order instructs DHS to ensure that H-1B visas go to the most-skilled or highest-paid foreign workers, ending the current practice of selecting those who get H-1B visas by lottery.

Immigrants and Immigrant Workers

The United States has 20% of the world’s 244 million international migrants and perhaps half of the unauthorized foreigners in industrial countries. The 43 million foreign-born U.S. residents in 2014 were almost one-seventh of the 320 million residents, and the 26 million foreign-born workers were one-sixth of the 160 million U.S. workers. Foreign-born workers have a higher labor force participation rate, 65%, than U.S.-born workers, although they earn less—an average \$680 a week in 2015 versus \$835 a week for U.S.-born workers.

President Trump’s executive orders deal primarily with the 11 million unauthorized foreigners, including eight million who are in the U.S. workforce, making 5% of all U.S. workers unauthorized. There are three salient facts about unauthorized foreigners. First, two-thirds have been in the U.S. at least a decade, and 40% of the 10 million unauthorized adults live in families with U.S.-born and U.S. citizen children. Second, most newly arrived unauthorized foreigners arrived legally, as with tourist visas, and did not leave, and most of these new unauthorized foreigners are not Mexicans. Third, apprehensions at the Mexico–U.S. border are at their lowest levels in decades, and most of those apprehended just inside the U.S. border are non-Mexicans.

Unauthorized workers are concentrated by geography, industry, and occupation, so stepped-up enforcement is likely to have different effects by state and sector. California had the most unauthorized workers in 2014, some 1.7 million, followed by 1.1 million in Texas and 600,000 in New York. However, the share of workers who are unauthorized is highest in Nevada, over 10%, followed by about 9% in California and Texas (Figure 1).



Employers sometimes say they would go out of business without unauthorized workers, suggesting that such workers are critical to business survival. However, most employers assert that the workers they hire present documents that show they are legally authorized to work in the U.S., so employers do not know they are violating laws against employing unauthorized workers when particular workers are hired.

Employers may enroll in E-Verify to check worker documents. E-Verify is a mostly voluntary DHS internet-based system that checks data submitted to employers by newly hired workers against government databases to determine whether new hires are legally authorized to work in the United States. Over 600,000 employers were enrolled in E-Verify at the end of 2016, including 88,000 in Georgia, one of 20 states that require some or all of their employers to participate in E-Verify.

Non-participating employers complete I-9 forms for newly hired workers that involve workers providing identity and work authorization documents to employers. Both employers and new hires sign documents stating that they completed this verification process, and DHS may audit these I-9 forms. DHS audited 1,300 employers in FY16 and made 239 arrests of unauthorized workers at their workplaces, suggesting a very low risk of detection for employers and workers who do not participate in E-Verify.

Data on where unauthorized foreigners work is collected in household surveys that may not detect unauthorized foreigners in non-standard housing, and should be treated as lower-bound estimates. Agriculture and farming are at the top of lists of unauthorized workers as a share of all workers employed in particular industries and occupations. (Figure 2). One-sixth of those employed in agriculture, and a quarter of those with farming occupations, are believed to be unauthorized based on household survey data.

Construction employs an average seven million workers, versus two million in agriculture. A seventh of those in construction are unauthorized, suggesting there are as many unauthorized construction as farm workers. Leisure and hospitality employ almost 16 million workers, so 9% unauthorized would mean 1.4 million unauthorized workers, which is more than the one million in construction work. Of the 20 million workers employed in business services, 7% are unauthorized—meaning there are as many unauthorized janitors and temp workers as there are unauthorized hotel maids and food-service workers.

More specialized surveys find higher shares of unauthorized workers in particular sub-sectors. For example, the National Agricultural Worker Survey (NAWS) interviews 2,000 to 3,000 crop workers each year, and finds that half are not authorized to work in the U.S. About 70% of crop workers were born outside the U.S., usually in Mexico,

and 70% of foreign-born workers are unauthorized, making half of all crop workers unauthorized.

Over 1.1 million unauthorized farm workers were legalized in 1987–88 under the Special Agricultural Workers program, and these SAWs were one-third of crop workers in the early 1990s. However, most quickly left agriculture for nonfarm jobs and were replaced by unauthorized workers, whose share of crop workers has been about 50% since the mid-1990s (See Figure 3).

Agriculture is unusual because it is the industry that is widely considered the source of unauthorized Mexico–U.S. migration via the Bracero program, and farmer and worker advocates were the only group to propose an industry-specific plan to legalize unauthorized farm workers and make it easier to hire legal guest workers. Between 1942 and 1964, over 4.5 million Braceros were admitted to the U.S., giving one to two million rural Mexicans experience working in the U.S., and making them willing to return illegally in the 1970s as U.S. farm wages soared and the Mexican peso was devalued.

The Immigration Reform and Control Act (IRCA) of 1986 allowed 1.1 million unauthorized farm workers to become immigrants under the Special Agricultural Worker program (SAW) and eased employer requirements to hire H-2A guest workers, but illegal migration surged, SAWs left agriculture, and the H-2A program shrank. The

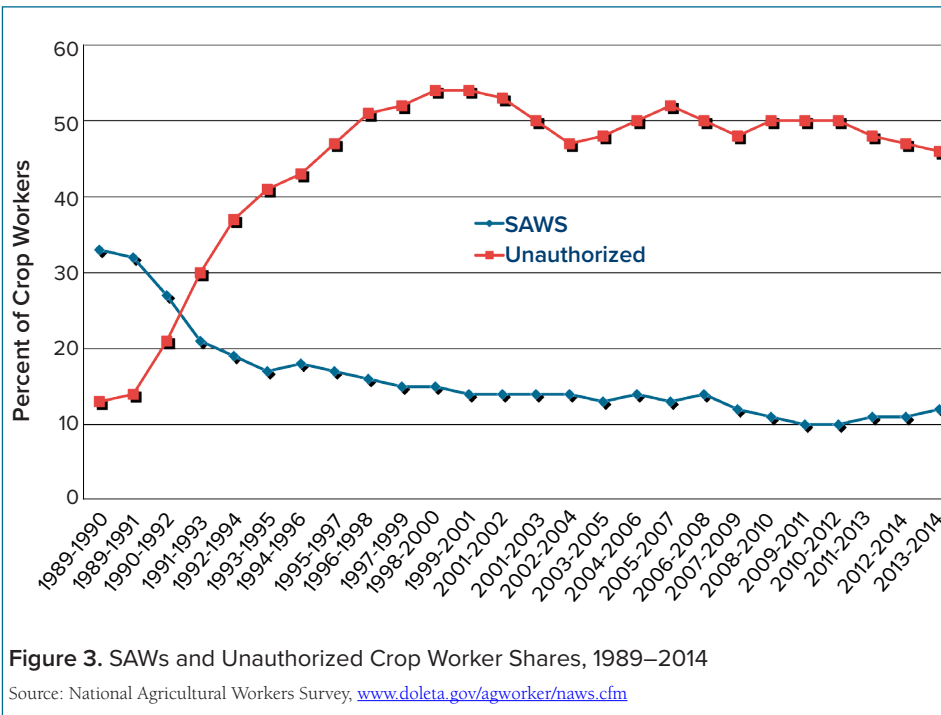


Figure 3. SAWs and Unauthorized Crop Worker Shares, 1989–2014

Source: National Agricultural Workers Survey, www.doleta.gov/agworker/naws.cfm

Agricultural Job Opportunity Benefits and Security Act (AgJOBS), negotiated between workers and employers in 2000 and included in all comprehensive immigration reform proposals since, would repeat the IRCA approach of legalizing unauthorized farm workers and making it easier to hire guest workers in the future. Under AgJOBS, worker exits are to be slowed by a requirement that they continue to do farm work up to five years in order to earn an immigrant status.

On April 25, 2017, President Trump issued the Promoting Agriculture and Rural Prosperity in America (PARPA) executive order. The PARPA did not mention immigration or labor, but called for recommendations from federal agencies within 180 days on how to “ensure access to a reliable workforce and increase employment opportunities in agriculture-related and rural-focused businesses,” making it almost certain that there will be options offered to change the H-2A and H-2B guest worker programs.

President Trump and Immigration

Donald Trump struck a chord with disaffected whites in areas that have

shrinking manufacturing and mining sectors, appealing for their support with promises to restrict the free trade that can lead to closed factories and the types of immigration that can put downward pressure on wages. The president’s attacks on Mexico, a country he accused of stealing U.S. jobs and sending drugs and crime to the U.S. via migration, were expected to ensure that the first-time candidate for public office would be defeated by more experienced rivals in the Republican primary and in the general election.

President Trump defied the elite consensus and became president by winning in six states that voted for President Obama in 2012, including Florida and midwestern states. Many polls find wide gaps between elite and mass opinion on immigration, trade and globalization, generally, with elites welcoming globalization while masses prefer protection from outsiders. The Chicago Council on Foreign Relations has several times found that 50–60% of Americans see immigration as a “critical threat” to the U.S., while less than 15% of opinion leaders see immigration as a threat. There is a similar gap between elites and masses on the virtues of free trade.

Over two centuries ago, George Washington, the first U.S. president, asserted that “the bosom of America is open to receive not only the Opulent and respectable Stranger, but the oppressed and persecuted of all Nations and Religions.” Donald Trump, the 45th president, has changed America’s migration message to the world, questioning the virtues of immigration in the 21st century. President Trump wants the U.S. to make a U-turn in many areas, from immigration and trade to climate change. After 100 days, President Trump has continued the America-first rhetoric that got him elected, but is only at the beginnings of his journey to change U.S. immigration policies.

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For additional information, the author recommends:

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