

Trump, Migration, and Agriculture

Philip Martin

Farmers hoped that President Trump would provide them with a new guest worker program. After two years, farmers are responding to higher labor costs by embracing labor-saving mechanization and hiring more workers under the current H-2A program.

The U.S. is *the* country of immigration, with 4% of the world's people and almost 20% of the world's 260 million international migrants. The number two country of immigration, Germany, has 12 million migrants, a fourth of the almost 48 million foreign-born U.S. residents. The U.S. stands alone among industrial countries in having almost a quarter of its immigrants, over 11 million, unauthorized.

Immigration Reform and Control Act and Mexico-U.S. Migration

The U.S. tried to curb illegal migration with the Immigration Reform and Control Act (IRCA) of 1986 that legalized 2.7 million unauthorized foreigners, 70% Mexicans. IRCA imposed federal penalties or sanctions on employers who knowingly hired unauthorized workers in a bid to discourage them from entering the U.S. to seek higher-wage jobs. However, a proliferation of false documents among unauthorized workers, combined with IRCA's explicit warning that employers should not discriminate in checking the validity of worker documents, attracted more unauthorized foreigners to U.S. jobs.

During the 1990s, illegal immigration surged and legal immigration reached current levels of a million a year. After 2000, there were several efforts to deal with persisting illegal immigration that involved efforts to re-enact a revised

version of IRCA. After the House in 2005 approved an enforcement-only bill to deal with unauthorized foreigners, a bipartisan group of senators developed a Comprehensive Immigration Reform Act (CIRA) that was approved by the Senate in 2006, and another bipartisan CIRA that was approved by the Senate in 2013. These CIRA proposals rested on a three-pronged stool: more enforcement to deter illegal migration, including more fencing on the Mexico-U.S. border, a path to legal status for most unauthorized foreigners in the U.S., and new guest worker programs.

The House did not approve CIRA. The immigration stalemate in Congress prompted President Barack Obama to grant legal work and residence permits to some unauthorized foreigners. The Deferred Action for Childhood Arrivals (DACA) program created in 2012 allowed unauthorized foreigners who were brought into the U.S. before the age of 16, and who graduated from U.S. high schools, to obtain renewable work and residence permits. In 2014, Obama went further with the Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA), which would have granted work and residence permits to unauthorized foreigners with legal children in the United

States. DACA was implemented and currently protects about 690,000 unauthorized foreigners; DAPA was blocked by court injunctions and not implemented.

Candidate Donald Trump made reducing illegal immigration and deporting unauthorized foreigners central themes of his quest for the presidency in 2015–16. President Trump issued three executive orders dealing with migration during his first week in office. The first set in motion plans to reduce illegal entries by building a wall on the Mexico-U.S. border and adding more Border Patrol agents. The second aimed to increase deportations from the U.S. by doubling the number of Immigration and Customs Enforcement (ICE) agents and persuading states and cities to cooperate with ICE. The third reduced refugee admissions and restricted the entry of foreigners from particular countries.

Each of these executive orders was challenged. With the stock of unauthorized foreigners in the U.S. falling (Figure 1), Mexico refused to pay for and Congress did not appropriate \$25 billion to construct the border wall. The stock of unauthorized foreigners is estimated by comparing U.S. and foreign

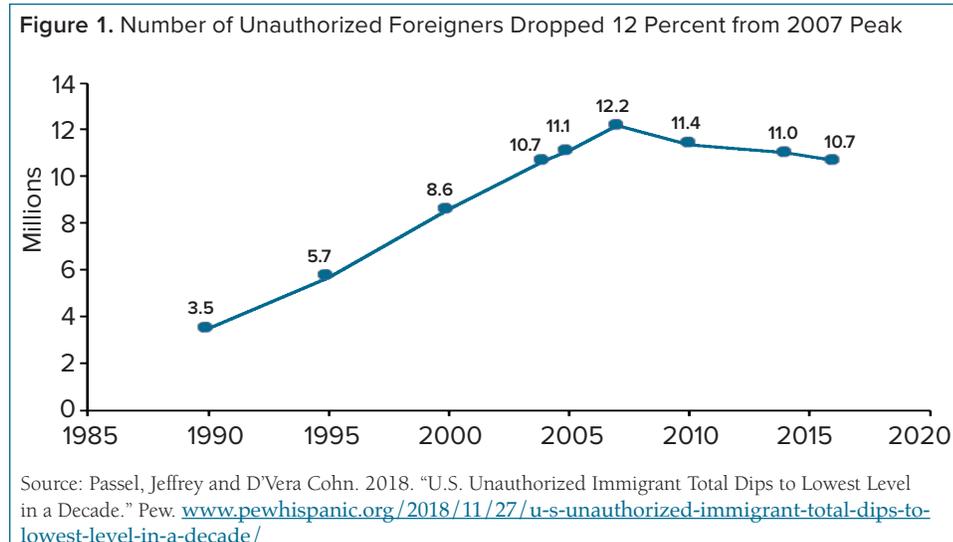
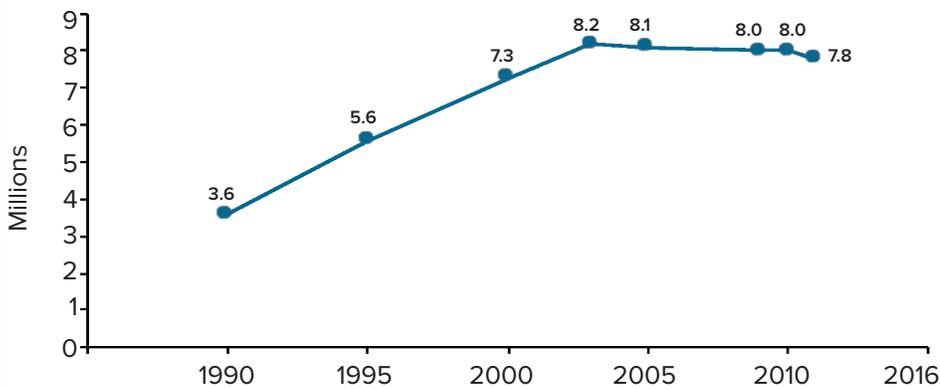


Figure 2. Number of Unauthorized Workers Dropped 5 Percent Between 2007–2016



Source: Passel, Jeffrey and D'Vera Cohn. 2018. "U.S. Unauthorized Immigrant Total Dips to Lowest Level in a Decade." Pew. www.pewhispanic.org/2018/11/27/u-s-unauthorized-immigrant-total-dips-to-lowest-level-in-a-decade/

census data and adjusting for foreigners who legalize their presence in the U.S., leave the U.S., or die. Efforts to penalize sanctuary states and cities that refuse to cooperate with ICE by holding unauthorized foreigners convicted of U.S. crimes have been blocked by court injunctions. The revised travel ban was upheld by the U.S. Supreme Court in June 2018, and refugee admissions have been reduced sharply.

Trump and Migration

After almost two years in office, President Trump has changed the conversation on migration in several important ways. First, migration has become much more partisan. CIRA proposals were bipartisan, including the 2007 proposal brokered by Senators Edward Kennedy (D-MA) and John McCain (R-AZ) and the 2013 proposal negotiated by four Republican and four Democratic senators. Since taking office, Trump's migration actions have appealed primarily to the populist wing of the Republican party that wants to reduce all types of migration into the U.S., while the Republican-leaning U.S. Chamber of Commerce supports the legalization of unauthorized foreigners and more guest workers.

The Democratic party is also becoming more divided on immigration. Voices that once urged limits on migration to

protect U.S. workers, such as Senator Bernie Sanders (I-VT), have been superseded by Democrats who call for the legalization of unauthorized foreigners and the abolition of ICE, the agency that detects and removes unauthorized foreigners from the interior of the United States.

Second, legal immigration continues at pre-Trump levels of a million a year, but illegal Mexico-U.S. migration has slowed to a trickle. Instead of solo Mexican men arriving at the U.S. border, unauthorized border entries today are often Central American families who apply for asylum, citing domestic and gang violence in El Salvador, Guatemala, and Honduras.

The Border Patrol's mission is to prevent unauthorized entries. Central American families who enter illegally often seek out Border Patrol agents to request asylum. U.S. law does not allow children under 18 to be held in jails, so many Central American adults arrive with children and are released while they wait several years for hearings on their asylum applications. The current backlog of cases in immigration courts is almost 800,000, including 200,000 asylum cases.

Over 75% of Central Americans pass credible fear tests, meaning that they can convince a U.S. Citizenship and Immigration Services (USCIS) asylum

officer that they fear persecution at home and thus are allowed to ask an immigration judge to be recognized as a refugee. However, less than 10% of Central Americans who file asylum applications after being apprehended are recognized as refugees and allowed to settle legally in the United States. The asylum application and appeal process can take three to five years, time that some applicants use to work in the United States.

The Trump administration criticized so-called catch-and-release policies that involve apprehending Central Americans who enter the U.S. illegally, apply for asylum, and then are released. First, the Department of Homeland Security (DHS) in May-June 2018 began to prosecute all adults who entered the U.S. illegally. Since children cannot be jailed, over 2,500 children were separated from their parents, some of whom were deported while their children were in shelters operated by or for the U.S. government. This child-separation policy produced a backlash and was soon ended, perhaps explaining why the number of so-called family units of parents and children from Central America rose to record levels in fall 2018.

Second, Attorney General Jeff Sessions in July 2018 reversed a 2016 grant of asylum to an El Salvadoran woman who was a victim of domestic violence, concluding that fleeing domestic or gang violence is generally not grounds to receive asylum in the United States. Sessions explicitly found that violence committed by persons who are not associated with a government is not a basis for being recognized as a refugee. A federal judge in December 2018 has temporarily blocked the Sessions guidance to immigration judges from going into effect.

In September 2017, Trump ended DACA and asked Congress to find a solution for unauthorized foreigners brought to the U.S. as children.

Congress did not act, but federal courts issued injunctions that have so far preserved DACA. Trump ended Temporary Protected Status (TPS) for many of the 320,000 foreigners from 10 countries who had the right to live and work in the U.S. when he took office. However, a federal judge issued an injunction in October 2018 that temporarily blocks the withdrawal of TPS from 263,000 Salvadorans, 59,000 Haitians, 5,000 Nicaraguans, and 1,000 Sudanese.

Other Trump administration efforts are aimed at legal immigration. President Trump supported the Reforming American Immigration for Strong Employment, or RAISE Act, introduced in 2017 to reduce the number of immigrant visas issued by half, from a million to 500,000, and to reduce refugee admissions to 50,000 a year. U.S. law has long denied immigrant visas to foreigners likely to become a “public charge,” and DHS proposed regulations in fall 2018 that would consider in-kind benefits, such as the receipt of food and housing benefits rather than only cash payments, as reasons to consider foreigners to be public charges and deny them immigrant visas, drawing challenges from several states.

Agriculture and Migration

Over half of U.S. crop workers, and 60% of California farm workers, are unauthorized. Figure 1 shows that there was a 12% drop in the number of unauthorized foreigners between 2007 and 2016, while Figure 2 shows that there was only a 5% drop in the number of unauthorized workers, suggesting that those with jobs stayed in the United States.

Currently, unauthorized farm workers are aging and settling in one place with families that often include U.S.-born children, reducing follow-the-crop migration and the flexibility of the hired farm workforce. The “fresh blood” in the farm workforce are H-2A

guest workers, almost all of whom are from Mexico and most of whom are a decade younger than typical 40-year old unauthorized workers.

The slowdown in unauthorized Mexico-U.S. migration since the 2008–09 recession increased farmer complaints of labor shortages and what they call a “bureaucratic” H-2A guest worker program that requires farm employers to provide housing to temporary foreign workers. However, rising state minimum wages as well as new health care and overtime pay obligations mean that farmers face higher labor costs regardless of immigration regulations, prompting a new interest in labor-saving mechanization.

There are numerous efforts to develop machines to replace workers in fruit and vegetable commodities. Most advanced are precision planting machines that facilitate the use of mechanical rather than hand weeders, since GPS devices tell the machine where plants should be, allowing the machine to remove weeds between rows and between plants. Many farmers plant new orchards and vineyards to facilitate the pruning of trees and vines mechanically. Mechanical harvesters often require more planning and investment, such as dwarf trees to reduce how far mechanically harvested fruit falls into a catching device. Machines are being developed to harvest even soft fruits such as strawberries; estimates of when these harvesters will be commercially viable depend on the cost and availability of hand workers.

New hand workers are mostly H-2A visa holders. In order to be certified to employ H-2A guest workers, farmers must try and fail to find U.S. workers to fill jobs generally lasting less than 10 months, provide free and approved housing to H-2A workers, and pay them a super minimum wage called the Adverse Effect Wage Rate (AEWR) of \$13.18 an hour in California in 2018,

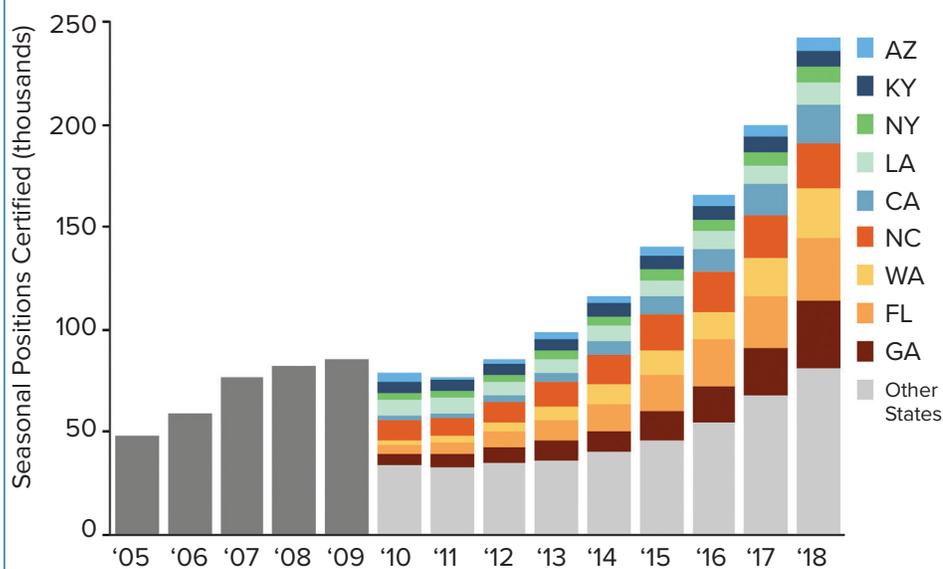
when the state’s minimum wage was \$11.

Farmers have sought an alternative to these H-2A recruitment, housing, and AEWR requirements for decades, and won a Replenishment Agricultural Program (RAW) in IRCA that was not implemented because there were no labor shortages. RAW workers could have been in the U.S. or abroad, could be hired without failed efforts to recruit U.S. workers, and would not have been housed by employers or paid the AEWR. In turn, RAW workers would have been free to “float” from one farm job to another rather than being tied to one farm by a contract as are H-2A workers.

After the election of Mexican President Fox and U.S. President Bush in 2000, farm worker advocates negotiated the Agricultural Jobs, Opportunity, Benefits and Security Act (AgJOBS) with farm employers. AgJOBS would legalize unauthorized farm workers and make it easier for farm employers to hire guest workers by reducing required minimum wages; it would also end the requirement that farmers provide housing to guest workers. AgJOBS was included in the CIRA bills approved by the Senate in 2006 and 2013.

Rep. Bob Goodlatte (R-VA) proposed a new H-2C program in the Agricultural Guestworker Act of 2018 to allow all farm employers, including those offering year-round livestock and dairy jobs, to attest that they need guest workers, and to pay them at least 115% of the federal or state minimum wage. Farm employers would not have to provide housing to H-2C workers, who would pay their own way from their countries to U.S. farm jobs. H-2C workers could change employers in the U.S., and could remain in the U.S. to do farm work for up to three years, after which they would have to stay in their home countries at least 60 days before returning to the United States.

Figure 3. H-2A Workers Certified by State, FY 2005–2018



Note: Dark gray bars represent aggregates where individual State-level are not identified.

Source: USDA, Economic Research Service using data from U.S. Department of Labor.

Goodlatte’s bill was opposed by farm worker advocates who decried fewer protections for U.S. and foreign workers and divided farm employers. The American Farm Bureau Federation and most dairy associations supported the Goodlatte bill, but the National Council of Agricultural Employers and the Western Growers Association opposed it, primarily because the Goodlatte bill limited the number of H-2C visas to 450,000 a year, including 40,000 for workers employed in meat and poultry processing. The Goodlatte bill was not enacted.

President Trump’s Virginia vineyard employs H-2A farm guest workers, and his hotels employ H-2B seasonal nonfarm guest workers, so many farm employers expected Trump to make it easier for employers to access low-skilled guest workers. However, there were no major changes to the H-2A and H-2B guest worker programs during Trump’s first two years despite his promise in April 2018 that “For the farmers, OK, it’s going to get good. We’re going to let your guest workers come in...they’re going to work on your farms ... but then they have to go out.”

The H-2A program has been

expanding rapidly under current regulations, more than tripling over the past decade, so that over 240,000 farm jobs were certified to be filled with H-2A workers in FY18, up 20% from FY17 (Figure 3). The top five H-2A states of Georgia (13%), Florida (12%), Washington (10%), North Carolina (9%), and California (8%) accounted for 52% of the jobs certified in FY18.

Over 90% of H-2A workers are from Mexico, and over 10% of jobs certified to be filled with H-2A workers were in berries. The Department of State issues H-2A visas, and the number of jobs per visa issued has been declining, perhaps reflecting the fact that many H-2A workers are employed by custom harvesters and employer associations who move them from farm to farm.

What’s Next?

President Trump made reducing illegal immigration a priority. Major migration issues today include the fate of programs such as DACA, what to do about Central Americans who apply for asylum, and whether to build a wall on the Mexico-U.S. border. In December 2018, there was a partial shutdown of the federal government, the third in Trump’s first two years as

president, because Congress failed to include \$5 billion for the border wall in bills that fund DHS and other federal agencies. Meanwhile, Mexico agreed to issue humanitarian visas to Central Americans who enter the U.S. illegally and apply for asylum in the U.S., so that Central American asylum seekers would wait in Mexico for U.S. decisions on their cases.

Farm guest worker issues have been pushed into the background by the debates over the wall, caravans of Central Americans, and the fate of DACA. Rising labor costs due to fewer new, unauthorized workers and higher minimum wages are encouraging farmers to make labor-saving management changes such as changing crops and investing in labor-saving machines. More California farmers would like to employ H-2A workers, but many are frustrated by the lack of affordable housing for guest workers.

California farmers face higher labor costs, rising competition from imported fresh fruits and vegetables, and ever-lower costs of robots and other labor-saving devices. What is unknown is whether the Trump administration will urge Congress to make major changes to the H-2A program or propose new guest worker programs that could make guest workers more attractive than mechanization. There is a great deal of uncertainty about policies that affect labor costs, frustrating farmers who want clearer signals on the likely evolution of labor costs.

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Author’s Bio

Philip Martin is an emeritus professor in the ARE department at UC Davis. He can be contacted by email at plmartin@ucdavis.edu.