The Outlook for Agricultural Labor in the 1990s

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INTRODUCTION

The farm labor outlook for the 1990s will continue to depend largely on federal government policies. Seasonal farm employment stabilized in the 1970s and early 1980s because expanded acreages and yields of labor-intensive commodities added enough jobs to offset those lost to mechanization and imports. Today, the seasonal farm workforce in fruit and vegetable agriculture consists primarily of immigrant workers who find farm jobs with the help of intermediaries such as bilingual farm labor contractors (FLCs), crew bosses, and first-line supervisors.[1]

During the 1980s, an abundance of workers, a reduction in real wages, a decline in union activity, and the substitution of intermediary

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[1] A first-line supervisor usually works year-round and is responsible for hiring a harvest crew.

employers such as FLCs for farm owners or managers who hired workers directly comprised the major trends in the seasonal farm labor market. Some of these trends also affected nonfarm labor markets. On the eve of the Immigration Reform and Control Act of 1986 (IRCA), the seasonal farm labor market was moving toward an intermediary or labor contractor system. FLCs employing illegal aliens sometimes replaced or reduced the wages and benefits of settled domestic[2] farmworkers.

Policymakers expected IRCA to reduce the supply of new immigrant farmworkers and to make existing workers more aggressive by granting them legal status. However, IRCA has muddied the waters by attracting too many applicants to the farmworker legalization program. Consequently, IRCA generally has not altered the oversupply of farm labor that set the tone for the 1980s farm labor market.

The early 1990s promise a continued ample supply of farmworkers, making the outlook bleak for flourishing unions and strict enforcement of labor laws. The cost and availability of labor likely will remain nonobstacles to the continued expansion of labor-intensive agriculture. Indeed, the need for seasonal farm labor may increase as fresh fruit and vegetable consumption expand.

This Article briefly reviews the contradictory governmental policies toward the farm labor market, the cycles of relative labor shortage and surplus to which the policies contribute, and the effects of these labor market cycles. The Article then shifts to the Immigration Reform and Control Act of 1986 (IRCA), a major governmental policy statement that will affect the farm labor market in the 1990s. In the late 1980s, IRCA has caused exactly the opposite initial effects that many observers predicted. Instead of fewer and more aggressive workers pushing up wages, the farm labor market has witnessed a greater than usual surplus of workers since 1986. In concluding, this Article notes that nonlabor market factors such as trade patterns, biological and technological developments, and marketing strategies may influence the farm labor market during the 1990s as much as immigration reform and union efforts that policymakers usually expect to affect labor supply and demand.

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[2] Domestic workers may work legally in the United States. These workers include U.S. citizens, legal (greencard) immigrants, nonimmigrant aliens (H-2A workers), and since 1986, temporary legal residents (SAWs).

I. Farm Labor Shortages in Historical Perspective

History is littered with erroneous predictions about farm labor. Farm employers and their political allies, fearing the loss of a particular group of seasonal workers, often have predicted drastic adjustments in response to a lack of immigrant workers. In the 1880s, after fruit and vegetable production became profitable in California and Congress banned Chinese immigration, farm publications predicted dramatic labor market adjustments.[3]

Farmers who depended on Chinese migrant workers in the 1880s acknowledged their inability to hire unskilled white workers expecting stable, permanent employment for only three to four months each year. In 1883 to 1884, the California Bureau of Labor Statistics issued a report attributing the small number of unskilled white workers in California to farmers' ability to hire "sufficient numbers [of Chinese] during the busiest seasons of the year."[4] Farm employers agreed that:

> The departure of these people [Chinese] will imply a new domestic policy for many of the farmers . . . [who must develop] [d]iversified industry that will give some employment all the year round. . . . The change should not be viewed as a calamity. It may be inconvenient at first, but after a few years no doubt the places now held by the Chinese will be filled by a more desirable laboring population.[5]

Policymakers have predicted similar adjustments in response to changing labor supply. In 1964, U.S. Senator Kuchel asserted that the end of the bracero program[6] in that year would "mean a cutback in planting which will have a great effect not only on the agricultural economy of my State and other States but [also] on industries related to

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[3] One commentator stated that:

> The [fruit] crop of the present year [1883], although deemed a short one, taxed the labor capacity of the State to the utmost to fit and prepare it for shipment to the world's market. If such was the situation this year, what will it be when the numerous young orchards now just coming into bearing will be producing full crops? The labor is not now in the country to handle such an increase in production. Will the demand for labor to meet and handle this increase of production be responded to when made? If so, where from? Not from China, for the Chinese are debarred from coming here. From the older states of the Union? The laborers of those older States are as well or better paid than similar laborers are paid here.

Senate Comm. on Education and Labor, Violations of Free Speech and the Rights of Labor, S. Rep. No. 1150, 76th Cong., 2d Sess., pt. 3, at 230 (1942).

[4] 1883-1884 Cal. St. Bureau Lab. Statistics, First Biennial Rep. 10.

[5] S. Rep. No. 1150, *supra* note 3, at 231.

[6] The "bracero program" generally describes programs under which Mexican workers came to the United States between 1962 and 1964 to perform farmwork.

that economy such as transportation, food packaging, and food distribution."[7] Senator Kuchel argued that the government would not and should not encourage unemployed Americans to replace braceros.[8]

Braceros comprised about one-sixth of California's peak hired farm workforce of 368,000 in the early 1960s. Mexican bracero workers comprised eighty-five percent of the tomato harvesters in the early 1960s. Tomato growers argued that "the use of braceros is absolutely necessary for the survival of the tomato industry. . . . [I]t is the consensus of opinion among tomato growers that without Mexican National help we would have to discontinue operations."[9] In 1961, farmers employed a peak 43,700 workers to harvest 182,000 acres of California tomatoes.[10] In 1987, a peak 25,000 workers harvested 243,000 acres of tomatoes.[11] Instead of disappearing, California tomato production increased after the end of the bracero program because eliminating braceros accelerated harvest mechanization.

One should recognize history when predicting the 1990 farm labor market. The issues are familiar. The farm labor market remains an economic and social problem because seasonal labor needs, the abundance of immigrant workers seeking these seasonal jobs, and the key roles that intermediaries such as FLCs play to match workers and jobs generate uncertainty for employers and low-incomes for farmworkers. Farmers worry about an insufficient supply of seasonal workers that will result in the loss of a crop and an entire year's income, a concern that generally has proven unfounded. Instead, so many workers seek farm jobs that many seasonal workers have been unable to earn poverty-level incomes.

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[7] 110 CONG. REC. 23,641 (1964).

[8] Senator Kuchel stated:

> Let us not take fellow human beings and offer them only a few months of work in the fields of California . . . . Does it make sense to encourage a nomadic way of life for even domestic farmworkers . . . with all the hardships that such instability and constant uprooting mean[] to their families and especially their children.

Id. at 23,642.

[9] CAL. SENATE FACT FINDING COMM. ON LABOR & WELFARE, CALIFORNIA'S FARM LABOR PROBLEMS 105 (1961).

[10] DIVISION OF AGRICULTURAL SCIENCES, UC BERKELEY, SEASONAL LABOR IN CALIFORNIA AGRICULTURE 30 (1963).

[11] *See* CAL. EMPLOYMENT DEV. DEP'T FARM LAB. REP. 881A (1987).

II. Governmental Policies and Farm Labor Market Cycles

Government policies dealing with the seasonality of farm employment and the low earnings of seasonal workers have contradicted one another. On one hand, the federal government has promoted a cheap food policy. This policy has persuaded politicians and consumers that radical changes in the farm labor market could increase food costs. For example, in 1983 the California Farm Bureau predicted that if employer sanctions prevented employers from hiring illegal aliens and farmers from replacing immigrant workers, acreages and supplies of fresh fruits and vegetables would decrease. This would lead to "increased prices for perishable crops, especially berries, cherries, apricots and other soft fruits."[12] On the other hand, pangs of guilt over the low wages and poor working conditions of domestic farmworkers, caused in part by the availability of immigrant workers, still exist. Thus, the federal government excludes farmworkers from general labor laws, limiting their ability to engage in self-help activities, but provides them with special education, health, housing, and legal services to remedy their low earnings. In effect, these services subsidize low farm wages. This federal tendency to exclude farmworkers from basic labor laws and then to offer them unique protections and services has a long history.[13]

These contradictory governmental policies toward farm labor have produced cycles of relative labor shortage and surplus, with their attendant impacts on the farm labor market. Each of the last four decades has witnessed distinct farm labor market developments, due in large measure to the relative abundance of seasonal farmworkers. During the 1950s, the availability of nonfarm jobs pulled, and low farm prices and wages pushed farmers, their families, and white, black, and hispanic workers out of agriculture. Mechanizing and importing bracero farmworkers filled in part of the labor vacuum. During the 1960s, the end of the bracero program and a strong nonfarm economy accelerated mechanization, raised farm wages, and gave fledgling farmworker unions a chance to gain a foothold in California. In many respects, the early 1970s represented a high water mark for farmworker unions because of the relative scarcity of labor. Farmworker strikes and boycott activities raised farm wages and became everyday events. In 1975, Cali-

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[12] Chase, *California Growers Rail Against Efforts To Stem Flow of Illegal Aliens*, Wall St. J., Aug. 4, 1983, at A1, col. 1.

[13] For example, farmworkers remain excluded from the National Labor Relations Act, *see* 29 U.S.C. § 152(3) (1982), but the federal government regulates in great detail the employment of farmworkers through the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. §§ 1801-1872 (1982 & Supp. V. 1987).

fornia enacted the pro-worker Agricultural Labor Relations Act (ALRA).

The ALRA did not live up to the expectations of its supporters. The ALRA did not lead to a substitution of union hiring halls for FLCs, to higher wages and fringe benefits for most farmworkers, nor to the development of a "construction-style"[14] labor market in agriculture. Importantly, the ALRA failed to transform the farm labor market because illegal aliens began entering the United State in large numbers in the late 1970s. Most of these unskilled illegal aliens did not speak English. As the supply of illegal workers increased, FLCs staged a comeback as low-cost and sometimes union-busting entities. Farm wages rose throughout the United States in 1981 when Congress raised the federal minimum wage to $3.35 per hour. However, farm wages then stagnated as the ample supply of undocumented workers made further wage increases unnecessary.

On the eve of the 1990s, the farm labor market has experienced a decade of ample workers, stable wages, few union pressures, and largely ineffective enforcement of most farm labor laws. As a result, already polarized farmer and farmworker representatives have become even more strident. Unable to exert economic pressure in the labor market, farmworker advocates have begun pressuring farmers through campaigns exposing the dangers of pesticides in foods. Farmers have handled union activities in the fields, but remain uncertain about how to respond to alleged dangers that their farming practices pose for consumers.

III. Immigration Reform and Seasonal Farm Labor

Agriculture entered the immigration reform debate relatively late but won some significant victories during the negotiations that produced IRCA. During the early 1980s, agricultural advocates argued that they had developed a special need for and dependence on immigrant workers, but no consensus in Congress existed that farmers should have a special immigrant worker program. However, farmers persuaded the House of Representatives to include the Panetta-Morrison guestworker program[15] in House-passed immigration reforms in 1984 and to include

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[14] Construction-style labor markets offer high wages for seasonal jobs and maximum unemployment insurance benefits when no work is available. Unionized food processing jobs often contain construction-style characteristics.

[15] The Panetta-Morrison guestworker program would have required the Attorney General to establish monthly and annual limits on the number of P-visas the government could issue to nonimmigrants to work in any of 10 agricultural labor markets in

a similar Wilson guestworker program[16] in the Senate immigration reform bill in 1985. These programs clearly indicated that farmers could exact a special immigrant worker program as their price for accepting immigration reform.

The last-minute compromises satisfying polarized farmer and farmworker interests included the Special Agricultural Worker (SAW) program and the Replenishment Agricultural Worker (RAW) program. The SAW program permitted illegal aliens who worked at least ninety days in Seasonal Agricultural Services (SAS) to become legal U.S. residents. If newly legalized SAWS left agriculture, RAW allowed farmers to import replacement immigrants to avoid labor shortages.

A. The Special Agricultural Worker (SAW) Program

The SAW program has proven an anomaly in recent federal legislation because it favored farmworkers over nonfarmworkers. Eligibility for SAW legal status depended primarily on an alien's short-term employment history. Legal status for nonfarm aliens required, *inter alia*, continuous U.S. residence since 1982. Applicants for SAW legalization faced fewer hurdles in proving that they qualified for legal U.S. residence. First, an applicant could apply for the SAW program by simply submitting an affidavit from an employer attesting to the number of SAS days worked. The burden of proof then shifted to the Immigration and Naturalization Service (INS) to disprove the alien's claim. Second, SAWs possessed more rights and freedoms during their one or two year temporary U.S. residence status than did nonfarm aliens. Finally, a SAW's temporary status becomes "permanent resident alien" (PRA) almost automatically. Nonfarm or general legalization applicants have to demonstrate some knowledge of English and U.S. history to become a PRA. Converting from temporary to PRA status runs from December 1, 1989, through November 30, 1991.

The last-minute nature of the SAW program, the easy requirements for legalization, and the broad definition of qualifying SAS employment led to highly speculative predictions about the number of SAWs. Policymakers often repeated a U.S. Department of Agriculture (USDA) estimate that 350,000 illegal aliens worked in agriculture in the early 1980s. This number became the ceiling for Group I SAWs.[17]

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the United States. *See* H.R. 1510, 98th Cong., 2d Sess. (1984).

[16] The Wilson guestworker program would have admitted up to 350,000 "free agent" aliens to work in U.S. agriculture. *See* S. 1200, 99th Cong., 1st Sess. (1985).

[17] Group I SAWs performed at least 90 days of SAS work in each year ending May 1, 1984, 1985, and 1986. Group II SAWs, by contrast, performed only 90 days of SAS

Anticipating fraudulent applications, the INS expected that 800,000 applications, fifty percent, would be fraudulent. Surprisingly, however, 1.3 million aliens applied for SAW status, suggesting that either policymakers underestimated the number of illegal aliens working in agriculture or that many more workers than expected filed fraudulent applications.

SAWs consist primarily of young Mexican men (eighty-two percent), median age twenty-eight, who applied for legal status in California. While forty-two percent were married, relatively few spouses applied for legal status. Over two-thirds of the SAW applicants worked most recently in fruits and vegetables. Although Mexicans filed the largest number of fraudulent SAW applications, the proportion of fraudulent applications appears especially high for Haitian, Indian, and Pakistanian applicants. Throughout the country, the number of SAW applicants exceeded by two or more the estimated number of migrant farmworkers.

Eligibility for SAW legalization hinged primarily on whether the applicant worked at least ninety days in Seasonal Agricultural Services (SAS). SAS involved fieldwork in perishable commodities. To qualify as a SAW, the program required each illegal alien to have performed or supervised at least ninety days of fieldwork related to planting, cultivating, growing, and harvesting perishable fruits and vegetables of every kind and other USDA defined perishable commodities from May 1, 1985, through May 1, 1986. First the USDA and then the courts stretched the definition of "other perishable commodities" to include virtually all edible plants and many nonedible plants, such as cotton, Christmas trees, cut flowers, and Spanish reeds.[18] Fieldworkers in-

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work in the year ending May 1, 1986. There were 77,000 Group I applicants and almost 1.3 million Group II SAW applicants.

[18] The USDA defined other perishable commodities to include those with "critical and unpredictable" demands for seasonal labor. For example, the USDA excludes milk and other livestock activities because their demand for labor is predictable. The USDA excluded cotton until a federal judge in Texas declared cotton a "fruit," stated that Congress intended to legalize unauthorized aliens who worked in cotton, and permitted cotton growers to employ RAW workers. *See* National Cotton Council v. Lyng, Civ. No. CA-5-87-0200-C (N.D. Tex. 1988). However, farmers failed to prove that hay fed is a perishable commodity. *See* Texas Farm Bureau v. Lyng, 697 F. Supp. 935 (E.D. Tex. 1988). The USDA held that hay production is not subject to "critical and unpredictable labor demands," and thus, is not SAS. *Id.* at 941. Farmworker advocates accepted a USDA determination that "laying or planting" sod around new homes and businesses was landscaping and not agriculture, but successfully argued that illegal aliens who "cultivated" the perishable commodity sod are eligible for the SAW program. Thus, sod farms can employ RAW workers.

cluded hand-or-machine-operators involved with SAS commodities, supervisors of fieldworkers and equipment operators, machine mechanics, and crop duster pilots. These broad definitions of "other perishable commodities" and "fieldwork" permit a variety of aliens, including illegal alien investor-managers of farms and their illegal alien employees, to qualify for U.S. residence.

Because many aliens filed fraudulent SAW applications, the SAW program did not reflect the total number of farmworkers or the proportion who were illegal aliens. The evidence of fraud appeared in various forms. Some applicants claimed preposterous fact situations. For example, some applicants asserted that they picked watermelons from trees. INS officials discovered that a number of employers sold employment affidavits for ten or twenty times too many workers. Finally, as previously noted, aggregate farm employment and production data indicated far fewer farmworkers than SAW applicants.

Farm production data, as well as fraudulent applications, painted a picture of widespread SAW fraud. The USDA estimated that production conditions in 1985 required 800 million hours of managerial and field labor to produce all fruits, nuts, and vegetables in the United States. SAW applicants claimed almost 700 million of these personhours, yet USDA statistics indicated that family workers performed a significant share of the fruit and vegetable work. Illegal aliens may have performed as little as one-fourth of the fruit and vegetable work.[19] Similarly, Census of Agriculture (COA) data suggest widespread fraud. For example, disaggregating COA "wages paid" data demonstrates that the 1.2 million seasonal fruit and vegetable farmworkers, representing the universe from which most SAW applicants are drawn, performed on average less farm work than necessary to qualify for the SAW program.[20]

The eligibility of aliens employed in sugar cane in 1985 through 1986 remains disputed. In August 1988 the USDA revised its definition of eligible commodities, but excluded sugar cane as neither a vegetable nor a perishable commodity. However, the USDA includes sugar beets as SAS. A 1989 trial judge upheld the USDA's decision to exclude sugar cane as not "arbitrary and capricious." Northwest Forest Workers Ass'n v. Lyng, 688 F. Supp. 1 (D.D.C. 1988), *rev'd on reh'g*, Northwest Forest Workers Ass'n v. Yuetter, Civ. No. 87-1487 (D.D.C. 1989). Farmworker advocates are currently appealing the decision. Northwest Forest Workers Ass'n v. Yuetter, Civ. No. 89-5123 (D.C. Cir. 1989).

[19] The 1.3 million SAW applicants claimed an average of about 100 seven hour days of work, or 910 million personhours. Although SAS included other crops in the fruits and vegetables category, three-fourths, or almost 700 million, of the SAW applicants had their last jobs in fruits and vegetables.

[20] For example, 72,000 U.S. fruit, vegetable, and horticultural specialty (FVH)

California data revealed that illegal aliens fraudulently filed about 500,000 SAW applications. Over 700,000 aliens applied for SAW status in California, but California's comprehensive Unemployment Insurance (UI) records indicated that fewer than 200,000 workers performed enough work in 1985 to qualify for SAW status. Thus, even if illegal aliens comprised *all* 200,000 workers, up to 500,000 fraudulent applications remained.[21] Surveys of workers and employers indicated that illegal aliens comprised less than half of the seasonal workers. For example, a 1983 survey of workers reported one-fourth of the seasonal fieldworkers were undocumented, one-half had established greencard status, and one-fourth were U.S. citizens.[22] Surveys indicated that California employers consistently estimated that illegal aliens comprised fewer than half of their seasonal employees.[23]

One cannot determine the extent of SAW fraud, but widespread agreement exists among the INS staff, farm employers, farmworker advocates, and farm labor specialists that many ineligible aliens filed SAW applications. The SAW legalization system enabled almost every worker, eligible or not, to file an application. The government designed this system for the stereotypical illegal alien, the alien who received her salary in cash from an employer who did not maintain employment records. If the employer maintained records, people expected them to be unavailable to workers. Congress enacted the SAW legalization requirements with this stereotype in mind, making it difficult for the INS to bring eligible workers into the SAW program and to exclude ineligible workers.

Courts interpreting congressional intent of the SAW program generally have held that Congress intended the INS to ensure that all eligible

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farms reported hiring 1.2 million workers for less than 150 days and 279,000 for more than 150 days in the 1982 COA. These FVH workers received wages of $2.8 billion or $30 per day. This sum exceeded what more-than-75-day workers averaged in the 1983 Current Population Survey. The more-than-150-day workers received $6,000 each for 200 days of work, or $1.7 billion. This leaves $1.1 billion for 1.2 million seasonal workers, or an average of $935 each, implying 31 days of farmwork. This data suggest that most of the seasonal workers that fruit and vegetable farmers reported to the COA cannot qualify for the SAW program.

[21] The failure of employers to report their employees to UI authorities may explain some of the discrepancy. Further, aliens applying in California could have performed SAS work in other states. However, these factors cannot explain such a large gap between SAW applications and employment data.

[22] This survey of 1,283 California workers during the summer of 1983 appears in R. MINES & P. MARTIN, A PROFILE OF CALIFORNIA FARMWORKERS (1986).

[23] *See* Rosenberg & Perloff, *Initial Effects of the New Immigration Law on California Agriculture*, CAL. AGRIC., May-June 1988, at 28.

SAW applicants qualify, even if INS procedures and regulations enabled some ineligible applicants to become legal residents. For example, a federal judge struck down an INS plan requiring SAW applicants to provide documentation in addition to a letter from an employer. The judge ruled that Congress intended that employer letters suffice to prove qualifying employment.[24] Settling this case prompted the INS to drop a plan requiring additional documents from SAW applicants submitting letters from employers who allegedly sold employment histories.[25] Thus, courts forced the INS to develop other means to determine which applicants performed qualifying farmwork. By the end of 1989, the SAW program granted provisional legal status to over one million applicants.

B. The Replenishment Agricultural Worker (RAW) Program

In the debates preceding IRCA, farm employers argued that many newly legalized SAWs would quit performing farmwork, leaving the employers with insufficient labor. The employers then would face the choice of hiring illegal aliens and risking fines or watching their crops rot for lack of labor. To avoid such a quandary, farmers obtained a Replenishment Agricultural Worker (RAW) program to admit immigrant workers after October 1, 1989, to prevent farm labor shortages.

Like the SAW program, the RAW program represented a compromise between farm employer and farmworker interests. Farm employers wanted a "free agent" RAW program so that they would not have to ask a government agency to certify the unavailability of U.S. workers. Instead, RAWs could live and work where they wished. To assure that the RAW program increased the supply of farmworkers, Congress required RAWs to perform at least ninety days of farm (SAS) work annually.

Farmworker advocates also sought to avoid a contractual "guestworker" program.[26] Positively, a contractual program could pro-

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[24] United Farmworkers v. INS, No. 5-87-1064 (E.D. Cal. June 15, 1989).

[25] By December 1989, the INS detected problems in about 700,000 SAW applications. The sale of employment histories is problematic because INS regulations permit a SAW applicant to support an application filed on an I-700 form with only an affidavit from an employer, filed on an I-705 form. For example, some employers reported 20 employees to UI authorities and issued 200 or more I-705 affidavits.

[26] A contractual guestworker program requires the employer to notify a government agency such as the Employment Service that it wants alien workers. Further, the employer must prove to the agency that American workers are not available at a government-mandated package of wages and benefits.

vide an opportunity to argue against foreign workers as unnecessary to fill vacant jobs to limit the number of such workers. Negatively, however, if contractual workers were admitted, farmworker advocates feared that the workers would depress U.S. wages and working conditions. Further, contractual workers may not be amenable to unionization because of fear of deportation and of not being selected next year if they displeased their employers. Thus, the "free agent" nature of the RAW program appealed to farmworker interests as a way to minimize employers' potential abuse of workers and the negative effects that imported workers may have on domestic farmworkers. Farmers preferred the free agent RAW program because they could hire foreign workers without requesting a government agency to certify the unavailability of Americans to fill vacant jobs.

RAW workers receive temporary U.S. residence visas similar to those that SAWs receive. Thus, a RAW can live and work anywhere in the United States. After three years, a RAW can apply for a greencard to become a PRA. To maintain lawful RAW status during the three years of temporary U.S. resident status, the RAW must perform at least ninety days of farmwork annually. To become a U.S. citizen, the RAW must perform at least ninety days of farmwork annually for five years.

The RAW program is an anomaly in contemporary immigration policies because no contracts exist. The H-2A temporary worker program[27] and most European guestworker programs are contractual. These programs require employers with job vacancies to offer domestic workers at least a government-established package of wages, housing, and transportation arrangements. If the government certifies that domestic workers are not available to fill the vacant jobs at the mandated minimum wages and benefits, the employer may recruit foreign workers bound by contract to fill the particular job vacancy for a specified time period.

During the bracero program, most European countries and the United States required employers to obtain government certification that domestic workers were unavailable before employers could hire

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[27] *See* 8 U.S.C. § 1101(a)(15)(H)(ii)(a) (1988). The H-2A program, a nonimmigrant program, derives its name from alien farmworker "H-2A" visas. It admits temporary foreign workers for temporary U.S. farm jobs if the U.S. Department of Labor certifies or agrees with the employer requesting H-2A visas that unemployed able, willing, and qualified American workers are not and will not be available to fill the job vacancy for which the employer is requesting the H-2A worker. The government certified 19,445 H-2A jobs in the 12 months ending June 30, 1988, and 30,223 in the year ending June 30, 1989.

foreign workers. The government's purpose for this requirement was to limit foreign workers to job vacancies for specific time periods. Congress required this certification process to avoid selecting immigrants and potential citizens on the basis of temporary or seasonal job vacancies in unskilled labor markets. Congress assumed that temporary and seasonal foreign workers would not become permanent residents.

By contrast, the RAW program grants legal status to illegal aliens in the United States or abroad who performed some U.S. farmwork. Congress developed a complex two-part formula to determine how many RAW visas to issue annually. Applicants for RAW visas must have completed at least twenty days of U.S. farmwork as illegal aliens. The program groups the applicants first by domestic or foreign location, and second by whether the applicants are spouses or unmarried children of legalized aliens.[28] The INS then draws a sufficient number of applicants at random from these pools to satisfy the shortage number,[29] beginning with workers in the United States with legal U.S. relatives.

While the INS had more time to plan for the RAW program than for the SAW program, many of the SAW program problems are likely to recur.[30] Obtaining legal U.S. immigrant status is a substantial prize. During the SAW program, entrepreneurs offered aliens false documentation and "training" in how to behave as a farmworker. Congress promulgated many SAW program regulations,[31] but the INS enjoyed some discretion in planning the RAW program. The INS dropped the SAW rule that applicants must provide documentation of their U.S. farmwork experience. Under the RAW program, the INS requires that applicants simply assert that they performed the qualifying farmwork, and then INS examiners determine the credibility of the claims. The INS hopes that this assertion and examination process will reduce document fraud, even though it may generate a flurry of interest in per-

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[28] RAW applicants must have performed at least 20 days of U.S. farmwork (not just SAS) during any 12-month consecutive period between May 1, 1985, and November 30, 1988. RAW applicants registered for the program by mailing a form I-807 to the INS between September 1 and November 30, 1989. By December 1989, about 625,000 aliens, 90% of them illegal aliens already in the United States, had registered for the RAW program.

[29] *See infra* notes 33-34 and accompanying text.

[30] Many of the 700,000 pending SAW applicants may have filed for the RAW program. The SAW applicants do not know whether they will receive SAW status. Thus, they have an incentive to apply for the RAW program as insurance.

[31] Under the SAW program, the burden of proof rested with the INS to disprove the applicant's claim. By contrast, under the RAW program, the burden of proof rests with the RAW applicant to make a credible claim.

forming or learning about farmwork.

To date, the RAW program has generated more interest in determining priority for RAW visas than in determining the number of RAWs, due in part to the complexity of the process. Congress provided two separate formulas to determine the number of RAWs and specified the smaller result of these calculations as the number of RAW visas available for each year between fiscal years 1990 and 1993. The space devoted to these formulas demonstrates their complexity. IRCA includes nine pages outlining the RAW calculations. By contrast, the entire SAW program spans six pages.

The RAW program requires two separate calculations. First, IRCA establishes a ceiling based on the number of SAWs to determine the maximum number of RAWs after October 1, 1989. Through a second calculation, Congress predicts whether an SAS labor shortage will exist in fiscal year 1990. The smaller of these two numbers controls RAW admissions. For example, if the ceiling calculation indicates a maximum admittance of 160,000 RAWs but the shortage calculation predicts a necessity of only 50,000 RAWs, Congress will issue only 50,000 RAW visas for that year. The USDA and the U.S. Department of Labor (DOL) determine how many RAW visas to issue annually by calculating the lesser of:

1. *Absolute Ceiling*=
Ninety-five percent of approved SAWs less (SAWs performing at least fifteen days of work plus or minus the change in H-2A workers)

2. *Shortage Calculation*=

$$\frac{\text{Persondays Needed less Persondays Available}}{\text{Average Persondays Worked}}$$

The absolute ceiling formula is straightforward. INS approval of eighty to ninety percent of all SAW applications will provide at least one million approved SAWs. The absolute ceiling becomes 950,000 (ninety-five percent of one million) minus the number of SAWs who performed at least fifteen days of SAS work[32] in the previous fiscal year (say 490,000) and plus or minus the change in the number of H-2A temporary alien workers employed in SAS (say 10,000 if H-2A admis-

[32] Farm employers will provide data of employees who work at least 15 days of SAS work. Beginning October 1, 1988, farmers must complete employment verification or I-9 forms for all newly hired workers. They also must note which workers have INS numbers in the A90 million series and then report quarterly the names, A-numbers, and days worked of all such workers on an ESA-92 form. The Census Bureau will analyze these data to determine how many SAWs are staying in SAS agriculture and how many days they will work. By December 1989, about 100,000 U.S. agricultural employers had filed ESA-92 reports and indicated that SAWs worked for them.

sions rise from 20,000 to 30,000). In this example, the absolute ceiling on the number of RAWs is 950,000 - (490,000 + 10,000) or 450,000.

The shortage calculation is more complex.[33] Three federal agencies each estimate one of three components to the calculation. The USDA estimates the demand or need for labor in SAS. The DOL determines the supply or availability of labor. The Bureau of the Census analyzes the quarterly ESA-92 reports filed by farm employers to determine the average number of days that SAWs worked in agriculture. For example, assume that the USDA determines 180 million persondays worked last year and expects no changes in the need for farm labor for next year. If the DOL determines that about twenty percent of the farmworker persondays available to farmers exit each year as workers leave agriculture and that entering workers will not replace these lost persondays, then the expected personday shortage becomes twenty percent of 180 million or 36 million persondays.

The DOL calculates this shortage in terms of persondays. It converts the figure into people or RAW visas by dividing the predicted shortage of farm labor by the average persondays worked. If SAW workers average ninety days of work, a shortage of 36 million persondays translates into a need for 400,000 RAWs. In this example, the absolute ceiling permitted the entry of 450,000 RAWs and a shortage calculation of 400,000. Since the lower number controls RAW admissions, only 400,000 could be admitted.

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[33] Farm labor analysts have long recognized the difficulty of estimating the demand for and supply of farmworkers. In 1951, the President's Commission on Migratory Labor noted that:

> It is more difficult to estimate prospective labor supply than to estimate farm labor needs. The difficulty arises from the fact that basically agriculture must rely not upon its own hired labor supply, but upon whatever is left over from other employments. Moreover, this is true largely because agriculture does not compete on equal terms with other major industries for its labor supply. Agricultural employment is largely accepted only by those who cannot find nonfarm jobs or farms of their own. Consequently, when nonfarm employment is stagnant, as in the thirties, agriculture has too many workers; when industrial jobs are easy to get, workers tend to leave farm employment and there is a farm labor shortage. To know the perspective farm labor supply, it is first necessary to know the expected level of nonfarm employment.

PRESIDENT'S COMMISSION ON MIGRATORY LABOR, MIGRATORY LABOR IN AMERICAN AGRICULTURE 32 (1951).

C. Local Requests and Controversy

In January 1990, the USDA and the DOL announced the shortage number for fiscal year 1990 at zero.[34] This number indicates that employers may not rely on the RAW program during its four year life to flood the labor market and to spread sufficient workers to fields. Instead, a handful of RAWs will encourage employers facing "labor shortages" to seek contractual H-2A workers or to make emergency requests for RAW workers to guarantee a workforce. The two agencies that calculated the RAW shortage number (the USDA and the DOL) have twenty-one days to respond to emergency employer requests for additional RAWs.

To persuade the USDA and the DOL to issue RAW visas to cope with a local labor shortage emergency, requesting farmers must demonstrate an unforseen labor shortage leading to lost crops unless the government issues RAW visas. If the USDA and the DOL find a local labor emergency, they ask the INS to issue a certain number of RAW visas. The INS has up to 120 days to convert the mostly illegal aliens already in the United States into RAW workers. Surprisingly, the new RAW workers have no obligation to work for the requesting employers. The lags inherent in this emergency RAW procedure clarify that the RAW program cannot cope with genuine labor shortages.

This scenario indicates that the alien worker issue will shift from a national to a local issue. The localization of foreign worker requests raises a fundamental question about a farmer's responsibility to plan for a seasonal workforce when planting a crop that requires seasonal harvesters. If a manufacturing firm builds a plant in a remote area and asks for governmental permission to import alien workers at the federal minimum wage or some higher wage, most legislators likely will reject the request. These legislators will require a manufacturer to consider the availability of a workforce before building a plant in a remote area.

Because land is immobile, some distinguish agriculture. However, fewer differences exist than appear at first blush. Farmers used to grow fruits and vegetables near population centers (hence, New Jersey is the Garden State), but lower land costs, the availability of labor, and better storage facilities encouraged production to shift further from consumption centers. The federal government traditionally has validated decisions, for example, to plant fruit trees in remote locations by permitting employers subsequently facing labor shortages to employ immigrant farmworkers.

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[34] 55 Fed. Reg. 39 (1990) (to be codified at 7 C.F.R. § 1(e)).

Since the government has allowed farmers who planted labor-intensive crops in remote areas to hire immigrant workers, landowners, bankers, processors, and others who invest in orchards or vineyards expect that the government will continue to make seasonal workers available at "reasonable costs." "Reasonable costs" mean wages low enough to harvest the crop and to keep the farmers in business. "Reasonable costs" do not necessarily indicate wages high enough to induce Americans to work seasonally in remote areas. The government usually has assured farmers that they can hire immigrant workers, if "reasonable efforts" cannot attract enough American workers. This ensures endless litigation over the definitions of "reasonable efforts."

Pragmatically, local requests for farmworkers are problematic because data on local farm labor markets are scanty. Thus, impartial observers cannot easily resolve requests for H-2A or RAW workers from farm employers in one county or area. The data needed to determine whether employers made reasonable efforts to find American workers are unavailable. The failure of Congress to resolve an employer's responsibility to obtain workers and the focus on a single national shortage number instead of local determinations leave the United States ill-equipped to handle the local requests for foreign workers that may arise in the 1990s.

IV. The Initial Effects of Immigration Reform and Control Act (IRCA) on Farm Labor

Agriculture was the major "special case" industry in IRCA. In addition to the SAW and RAW programs, farm employers producing perishable crops were exempt from sanctions and fines for knowingly hiring illegal aliens until December 1, 1988. Other employers faced sanctions after June 1, 1987. Congress included these special agricultural provisions in IRCA to provide additional time for farm employers to adjust to a legal workforce.

The adjustments by farmers to IRCA have been slow. A February 1989 California survey found that few farm employers changed their employment practices because of IRCA.[35] Farm employers reported that almost half their seasonal employees (employed less than 150 days on their farms) in 1988 were SAWs.[36] This suggests that about half the

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[35] *See* Martin & Taylor, *The Initial Effects of Immigration Reform on Farm Labor in California*, Cal. Agric., Jan.-Feb. 1990, at 24.

[36] During the summer of 1988, these SAWs probably included illegal aliens. Respondents listed U.S. citizens and legal PRA immigrants and termed all remaining workers SAWs.

seasonal workforce was undocumented in previous years. The other half included about one-fourth legal immigrant workers and one-fourth U.S. citizens.

Farm employers reported that only one-third of their 1987 seasonal workers returned in 1988. Although season-to-season turnover is always high, the SAW program may have increased turnover by legalizing so many rural workers. Subsequently, many of these workers may move to fill the labor shortages in urban labor markets. If the farm workforce shrinks, farm employers may have to change their employment or production practices to adjust to a smaller legal farm workforce.

Fewer than one-fifth of the respondents to the California survey reported plans to change how they produce their major commodities in a way that would affect their labor needs. No correlation existed among dependence on SAWs, turnover, and planned changes. For example, berry farmers experienced an above average percentage of SAWs and a very high turnover, yet none of the berry respondents planned to make changes that would affect their labor needs. The employers that planned labor-saving changes expected to prune less, to use more machines, or to plant fewer acres to reduce their employment by five to ten percent.

The farmers that responded to the survey represented the commercial fruit and vegetable farms that hire seasonal workers in California. Respondents averaged fifty-three employees in 1988, including forty-six seasonal workers. The average hourly wage that farmers paid seasonal workers after California raised its minimum wage to $4.25 per hour on July 1, 1988, just exceeded $5 per hour, an increase of eight percent between 1987 and 1988.[37] About half the responding employers increased the hourly wages they paid on July 1, 1988. Only one-third raised the piece-rate wages[38] they offered to workers who, for example, harvested oranges for $12 per bin.

Farm employers provided data to calculate both hourly wages and total labor costs. In the 1988 nonfarm economy, payroll taxes for social security and unemployment insurance, for example, averaged nine percent, and employee benefits such as health insurance averaged eighteen percent of total labor costs. California farm employers reported payroll taxes of sixteen percent and employee benefits at seven percent of total labor costs. Seasonal workers received few employee benefits. Payroll

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[37] The California minimum wage increased 27% on July 1, 1988.

[38] A piece-rate involves paying a wage per unit of work: for example, $12 per bin of oranges picked. Piece-rate workers are guaranteed the minimum wage.

taxes averaged nineteen percent and employee benefits two percent of total labor costs.

Asked how they would respond to a smaller workforce, many farm employers reported that they would hire more workers through FLCs rather than raise wages, offer more employee benefits, mechanize, or change cropping patterns. In 1987, about one-third of California agricultural workers earned some of their wages through FLCs. FLC employment has been increasing. FLCs not only match seasonal workers and jobs, but also introduce immigrant workers into the U.S. farm labor market and often house and transport them. If a shrinking workforce means fewer workers at a farm when employers need them, rising recruitment costs may encourage farm owners and managers to turn to FLCs. Since FLCs often employ illegal alien workers, the proportion of farm employment that FLCs handle may indicate IRCA's effectiveness in agriculture. So far, FLC activities suggest that IRCA has not reduced the influx of immigrant farmworkers.

A 1988 General Accounting Office (GAO) survey of employees reached similar conclusions.[39] About forty percent of the farm employers surveyed reported at least half of their 1987 seasonal workforce as unauthorized. The employers expected a farm labor shortage in 1988 or 1989, but planned no efforts to adjust to a smaller farm workforce.[40] For example, farm employers informed GAO of their intent not to offer new or additional housing, travel money, or more employee benefits to attract workers. Further, they did not intend to change their recruitment practices.[41]

V. Nonlabor Influences on Farm Labor

Farm labor analysts often focus their attention too narrowly on union activities, immigration reforms, and labor laws directly affecting the farm labor market. Other nonlabor factors also influence the farm labor market and may be as important as immigration reforms to affect the farm labor market in the 1990s. Such nonlabor factors include changes in fruit and vegetable production and slower U.S. workforce growth.

The United States experienced stable farm employment during the 1970s and 1980s because expanded acreages, higher yields, and new crops created additional jobs to replace those lost to mechanization. La-

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[39] *See* GAO, Immigration Reform: Potential Impact on West Coast Farm Labor (1989).

[40] *Id.* at 4.

[41] *Id.*

bor-intensive crops such as broccoli and grapes doubled in acreage. Yields of strawberries doubled, and crops such as avocados expanded as their consumption spread throughout the United States. Labor-saving mechanization during the 1970s and 1980s often involved handling harvested crops in bulk bins, substituting herbicides and precision planting for hand-weeding and hand-thinning fields, and mechanically harvesting crops such as wine grapes at night to improve the quality of the harvested grapes.

Many of the currently hand-harvested crops defy easy mechanical harvesting because they do not ripen uniformly. The most common "shake-and-catch" devices damage fragile fruit as it falls from trees. Retailers prefer to buy fruit at one price rather than pay different prices for hand- and mechanically-harvested crops. However, advances in biogenetics currently expedite the ability to develop desired traits, such as uniform-ripening a dwarf tree to reduce the distance a fruit must fall or a firm crop that can be mechanically handled into a plant. Advances in electronics and materials sciences have improved the capacity of machines to differentiate between ripe and unripe fruit and to harvest mechanically crops with minimal damage. As fresh fruit and vegetable consumption and prices rise, retailers may extend fledgling two-tiered pricing systems to expedite mechanical harvesting. To expedite harvesting and to extend storage life many retailers already offer higher priced vine ripened tomatoes and lower priced tomatoes picked green. Farmers could extend such two-tiered pricing to hand- versus machine-harvested apples, lettuce, and citrus.

Land-grant universities actively involved in fruit and vegetable mechanization during the 1950s and 1960s do not conduct much research that may ultimately mechanize more fruit and vegetable harvests.[42] For example, after Congress terminated the bracero program in 1964, Governor Pat Brown and other liberal Democrats appropriated money to the University of California (UC) budget for research because they did not want to persuade the state's urban hispanics and blacks to replace braceros as seasonal workers in the fields.

The UC and other land-grant universities contributed significantly to expedited mechanization in a variety of crops, but the quintessential symbol of the land-grant contribution was the mechanical tomato harvester that researchers developed at the University of California, Davis. Farmers that harvested and processed tomatoes for catsup and tomato paste products employed about forty percent of the braceros in Califor-

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[42] *See* Brown, *Fruit and Vegetable Mechanization*, in MIGRANT LABOR IN AGRICULTURE: AN INTERNATIONAL COMPARISON 195, 202 (P. Martin ed. 1984).

nia during the early 1960s. The UC breakthrough came when plant scientists developed a uniformly-ripening and firmer tomato, and engineers devised a machine to cut the tomato plant, to separate the tomatoes from the plant, and to sort out the bad tomatoes in the field. Thus, processors could use all the tomatoes that twenty-five ton trucks hauled to the processing facility. This mechanical system required both farm and processing investments. To gain acceptance of the system, the UC developed a procedure to test a small sample of tomatoes from each load. The stakes were high for both sides because each load that the system accepted or rejected on the basis of a sample was worth $1,200 or more.

The UC and other land-grant researchers largely had abandoned fruit and mechanization research by 1979 when the California Agrarian Action Project (CAAP) filed suit to limit or impose an outside review on mechanization research at publicly supported institutions. CAAP charged that "the basic policy goal" of the UC mechanization research is to develop "machines and other related technology in order to reduce to the greatest extent possible, the use of labor as a means of agricultural production."[43] CAAP acknowledged that the damages caused by mechanization research "are difficult to ascertain or compute."[44] Consequently, CAAP asked that mechanization research cease until the university could create a fund to assist and retain farmworkers equal to the sum earned from agricultural license and royalty payments.

A careful review of CAAP's five allegations, namely that publicly-funded mechanization research displaces farmworkers, eliminates small farmers, hurts consumers, impairs the quality of rural life, and impedes collective bargaining, indicates that the evidence does not support the charges.[45] For example, the mechanical tomato harvester eliminated tomato harvesting jobs for Mexicans, but created jobs sorting tomatoes on the machines for American workers. In 1987, a California superior court agreed with CAAP and ordered the UC to develop a planning procedure to ensure that all rural residents — farmworkers, small farmers, and large farmers — benefit from Hatch Act funded re-

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[43] California Agrarian Action Project v. Regents of the Univ. of Calif., No. 516427-5, at 8 (Super. Ct. Sept. 4, 1987), *rev'd*, 210 Cal. App. 3d 1245, 258 Cal. Rptr. 769 (1989).

[44] *Id.* at 19.

[45] Martin & Olmstead, *The Agricultural Mechanization Controversy*, 227 SCIENCE 601, 601-06 (1985).

search.[46] In 1989, a California appellate court overturned the superior court decision.[47]

CAAP lost the legal war, but won the battle. A combination of farmer disinterest in mechanization due to the ample supply of labor and less funding shifted the UC research interests elsewhere. Farmers grow commercially fifty fruit and seventy vegetable crops in the United States, but only twelve are major crops. The fruits include citrus, grapes, apples, peaches, plums, prunes, and pears. The vegetables include potatoes, sweet corn, tomatoes, green peas, snap beans, and lettuce. Machines harvest most of the vegetables except lettuce, but fewer than one-fourth of the fruits, except prunes.[48] Currently, no large-scale efforts exist to mechanize the harvest of these crops.[49]

Analysts project that the U.S. workforce during the 1990s will grow by about 1.3 million annually, down sharply from 3 million annually during the 1970s. The number of sixteen to twenty-four year olds will decline during the 1990s and will increase competition among employers, schools, and the military for this shrinking pool of young persons. Slower workforce growth will affect farm employers if immigration reforms reduce the availability of immigrant workers and fewer teenagers or housewives become available to work seasonally.

Two contradictory workforce trends complicate predicting how farmers will fare in competition for young workers. At first blush, farmers must raise wages to compete with restaurants, business and health service firms, and retail stores for workers interested only in seasonal or part-time employment. In many urban areas, entry-level wages for part-time workers already amount to $5 to $6 per hour, well above the

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[46] *See* California Agrarian Action Project v. Regents of the Univ. of Calif., 210 Cal. App. 3d 1245, 1248, 258 Cal. Rptr. 769, 770-71 (1989).

The Hatch Act of 1887 provides federal funds to land-grant universities to conduct research that benefits rural residents. 7 U.S.C. § 361(a)-(i) (1988).

[47] California Agrarian Action Project v. Regents of the Univ. of Calif., 210 Cal. App. 3d 1245, 258 Cal. Rptr. 769 (1989). The California Supreme Court denied review. *See* Minutes of the Supreme Court, 1989 California Official Reports, Official Advance Sheet, No. 27, at 16 (San Francisco, Sept. 6, 1989).

[48] The harvest of raisin grapes probably ranks as the single most labor-intensive activity in California agriculture. This harvesting requires 60,000 workers for four to six weeks to cut bunches of grapes from 250,000 acres of vines, lay them on paper trays to dry, turn them, and pick up the trays. A recent status report on mechanizing this harvest noted that "[i]ndustry funding for mechanical research has been practically nil." Kirkpatrick, *Raisin Wranglers*, CAL. FARMER, Oct. 21, 1989, at 8. The raisin industry contributed significant funds to lobby for continued access to immigrant workers.

[49] *See* Brown, *supra* note 42, at 197-200.

federal minimum wage. However, some unemployed workers lack the basic skills necessary for such jobs. During the 1990s, a surplus of unskilled workers and a shortage of skilled workers may exist. Farm labor analysts traditionally have considered seasonal fruit and vegetable employment as unskilled work. If farmers want to employ unemployed urban workers, they must rebuild the links to urban labor markets abandoned in the 1970s. Further, they may have to offer housing and other amenities. A recent survey of unemployed, nonfarm rural workers indicated that forty percent would do farmwork at $6 per hour, offering up to 800,000 additional U.S. farmworkers for three months.[50] However, to employ these workers, farmers would have to make a variety of adjustments in a labor market geared toward uncomplaining recent immigrants.

Agriculture remains curiously absent from the widespread discussions over employer adjustments required due to the slower growing workforce of the 1990s. One reason for agriculture's disinterest is that entry-level farmworkers have become so overwhelmingly immigrant that farm employers do not feel affected by U.S. workforce trends. Unlike the 1950s when rising nonfarm unemployment kept hired workers in agriculture, almost no relationship exists today between the U.S. unemployment rate and the availability of hired farmworkers.[51]

CONCLUSION

Farm labor analysts consider the farm labor market unsatisfactory because it leaves many workers in poverty, leaves farmers uncertain as to the availability of seasonal labor to harvest crops, and leaves society with a guilty conscience and backdoor immigrant workers. For decades, people have recognized the unsatisfactory nature of the farm labor market and the search for solutions. The solution that various study commissions most often prefer is decasualizing or employing fewer seasonal farmworkers for longer periods.[52] However, a surplus of available farmworkers usually has overloaded the market. Thus, farm employers have had little incentive to decasualize seasonal labor markets and to employ fewer workers for longer periods. Caught between the conflicting demands of saving family farmers and maintaining low food prices, policymakers also face pressure to reduce farmworker poverty and abuse. Policymakers have responded by essentially trying to push water

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[50] Personal conversation with Mark Dynarski; Mathematica, Oct. 1989.

[51] Thompson & Martin, *The Interaction Between Farm and Nonfarm Labor Markets* (May 1989) (University California, Davis mimeo).

[52] *See* PRESIDENT'S COMMISSION ON MIGRATORY LABOR, *supra* note 33.

uphill. Policymakers have encouraged or tolerated an influx of immigrant farmworkers and simultaneously tried to enforce labor laws, to encourage unionization, and to offer American farmworkers assistance to leave agriculture.

This policy has increasingly fragmented the farm labor market. Facing union pressure, labor shortages, and enforcement activities, farmers decasualized some labor markets. However, when these pressures abated, farm labor markets often reverted to casual operations in which intermediaries recruited and supervised vulnerable immigrant workers. As a result, one can find a farm labor market satisfying every stereotype. For example, a few construction-style seasonal labor markets exist, permitting workers to earn high wages when they work and to collect unemployment insurance benefits when they do not. In the more common casual labor market, bilingual forepersons and FLCs "pass-the-word" when they need workers. The immigrant workers that FLCs hire become dependent to varying degrees on the intermediaries who hired them. Extreme excess-labor situations arise when too many workers are available and forepersons charge workers for jobs, transportation, or equipment.

While one readily can find examples of such labor markets and variations on them, one cannot determine the relative importance of each labor market and why certain labor markets shrink and others expand. The 1980s witnessed an apparent resurgence of the intermediary and immigrant worker system, largely because the system offers lower costs and risks to farm owners and managers. Unions could alter this cost-risk ratio by encouraging farm operators to "gain control" of their supervisors and workers, but union activity has been decreasing. Tougher labor law enforcement that would hold farm operators jointly responsible for the violations that FLCs and forepersons commit also could alter the cost-risk ratio. If immigration enforcement reduces the availability of vulnerable workers, intermediaries might not offer their current cost advantages. Instead, they might introduce farm operators to the risk of fines and the loss of workers during a critical harvest.

Farm owners in the intermediary-run farm labor market largely escape responsibility for recruiting and managing seasonal workers. As long as farmers persuade the government to provide a large pool of immigrant workers, they can turn actual recruitment and supervision of farmworkers over to intermediaries and avoid responsibility for potential abuses. In other words, farmers do not have to successfully manage seasonal farmworkers on an individual level as long as the supply of labor is ample.

This description of the dynamics of the farm labor market suggests

that analysts can crudely measure the excess supply of labor by the volume of farm labor intermediary activity. Three options might reduce the number of intermediaries: labor law enforcement, unions, and guestworkers. Effective labor law enforcement would reduce the economic advantages of intermediaries. However, the history of labor law enforcement against farm labor intermediaries suggests the *raison d'etre* of many FLCs and forepersons, namely their ability to evade effective enforcement. Unions can force farm operators to consider farmworkers' interests more directly, but the inability of unions to control the labor supply limits their organizing and bargaining power and persistence. Paradoxically, effective border enforcement and a contractual guestworker program might reduce the importance of intermediaries. If officials enforced the work guarantees, housing, and wage standards of such a program, farm operators would have to decasualize the labor market by forming associations to contract for guestworkers and to spread them across farmer-members in a manner that minimizes unemployment.

Commercial fruit and vegetable growers have assumed that an ample supply of immigrant farmworkers will remain available. In the early 1990s, little reason exists to believe that the number and characteristics of farmworkers will soon change. A surplus of immigrants for seasonal farmwork should be available for the foreseeable future. If immigrants who intend to work only temporarily on farms dominate the farm workforce, the farm labor market will generate little pressure from within for higher wages and improved working conditions. As farm wages and working conditions fall further below nonfarm labor market standards, workers with options will quit farmwork and fulfill the prophecy that "Americans won't do seasonal farmwork."

Consequently, in the long-run, government will become the central arbiter of the structure and functioning of the farm labor market. If government opens the border gates, the farm labor market will become even more isolated. If government closes the border gates, a series of adjustments will begin and likely will lead to a smaller and more mechanized fruit and vegetable agriculture. A half-open gate, the most likely scenario, will generate some isolation, some mechanization, and a generally unsatisfactory farm labor market.