

Immigration reform and California agriculture

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The U.S. Immigration and Naturalization Service (INS) believes that four to six million aliens are living and working illegally in the United States. Every year, the INS makes almost one million apprehensions of undocumented workers, 90 percent of them Mexicans. Fewer than one million individuals are caught, because some persons are apprehended several times in a year. Even though more illegal aliens appear to be employed outside than inside agriculture (see table), they are often assumed to be only an agricultural problem.

Presidents Ford, Carter, and Reagan established commissions or task forces to study illegal immigration, and every group reached similar conclusions: the 1970s upsurge in illegal immigration can be traced to the termination of the Bracero Program in 1964, which brought almost five million Mexicans to the United States to do farm work, and to the establishment of ethnic communities in the United States, whose residents tell Latin American relatives how to get into the United States, shelter the new arrivals, and find them jobs.

The INS estimates that the illegal alien population is increasing by 500,000 annually. Public disenchantment with the 130,000 Cuban refugees who came to southern Florida in the spring of 1980 and the persistence of illegal immigration have prompted serious efforts to reform immigration law.

The Immigration Reform and Control Act of 1982 (S. 2222 and H.R. 6514) offered by Senator Alan Simpson (Republican, Wyoming) and Representative Romano Mazzoli (Democrat, Kentucky) was debated in the 1982 Congress and passed the Senate by 80 to 19 on August 17, 1982, but had not been acted upon by the House of Representatives at the time of this writing. This article reviews what is known about illegal aliens in California agriculture and outlines how the immigration reform proposals before Congress would affect farmers' employment policies.

Illegal aliens in agriculture

Hired field workers on California farms are overwhelmingly Hispanic. Observers differ on how many of these Hispanic farmworkers are illegal aliens. Some crews have no illegal workers, some contain both legal and illegals, and in some crops and areas harvest crews are 100 percent illegal.

California Employment Development Department (EDD) estimates of farm employment show a remarkable stability in the average number of hired farmworkers employed since 1950. The number of regular farmworkers (employed by one farmer at least 150 consecutive days) decreased at an average rate of only 133 workers per year, to 105,000 in 1981, while employment of domestic seasonal workers increased an

average of 343 per year, to 120,000 in 1981. The net decline in total California farm employment between 1950 and 1980 resulted from 50 percent of the state's farmers and family workers leaving agriculture.

There is no reliable way to determine how many seasonal farmworkers are in the United States illegally, but our calculations put the figure at about 130,000 — 20 percent of the total workforce or 35 percent of the noncasual workforce.

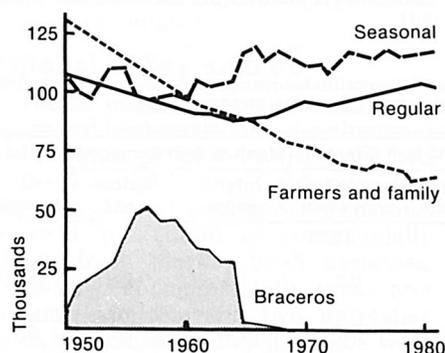
Immigration reform proposals

The Immigration Reform and Control Act of 1982 would affect California farmers in three ways: enforcement reforms, amnesty for resident illegal aliens, and guestworkers.

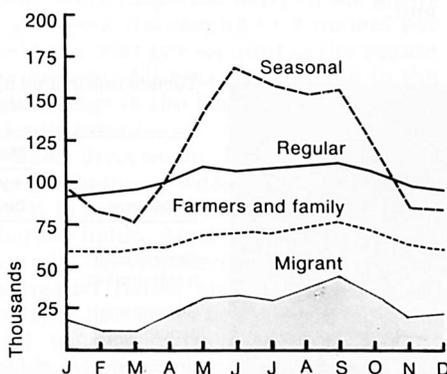
Every immigration study commission recommended fines or sanctions on employers "to close the labor market door" that helps to attract illegal aliens to the United States. The Simpson-Mazzoli bill defines three employer crimes: (1) knowingly hiring, recruiting, or referring illegal aliens for employment; (2) failing to check an applicant's credentials to establish his right to work in the United States; and (3) failing to fire a worker after it is discovered that he is an illegal alien.

Under the Simpson-Mazzoli bill, every newly hired farmworker and his employer would have to sign a federal employment form asserting that the worker is entitled to work in the United States and that the employer has seen federal and state identification documents establishing this right that appear to be genuine. At first, workers and employers would rely on existing identification, but eventually the federal government would have to develop an identification system capable of verifying each person's right to work in the United States. Persons convicted of counterfeiting identification documents could be fined or imprisoned or both.

An employer charged with hiring, recruiting, or referring illegal alien workers would be entitled to a hearing before an immigration appeals officer. An employer who produced signed and dated employment forms would be presumed innocent.



California agricultural employment, 1950-81. "Regular" farmworkers are employed by one employer at least 150 consecutive days. "Seasonal," with one employer less than 150 days. (CEDD Rep 881-X, Jan '82.)



Monthly agricultural employment, 1981. "Migrants" are seasonal workers who stay away from home overnight to do farm work. (CEDD Report 881-M, January 1982.)

Undocumented aliens apprehended, by type of U.S. employment, 1970-1981

Fiscal year	Agricultural workers	Total industrial and other workers	Total workers	Total apprehensions	Employed workers as percent of apprehendees
1970	55,909	73,772	129,681	324,444	40.0
1971	78,713	76,069	154,782	397,517	38.9
1972	85,795	98,208	184,003	478,708	38.4
1973	105,726	125,917	231,643	647,512	35.8
1974	117,071	124,305	241,376	780,819	30.9
1975	114,926	135,462	250,388	756,819	33.1
1976	122,820	136,265	259,085	866,433	29.0
1977	109,046	139,291	248,337	1,033,427	24.0
1978	107,572	125,831	233,403	1,047,687	22.3
1979	113,495	120,251	233,746	1,069,400	21.9
1980	58,205	83,826	142,031	910,361	15.6
1981	82,314	86,055	168,369	975,780	17.3

Source: U.S. Immigration and Naturalization Service form G-23.18 for the years cited.

Employer sanctions would be phased in, first with warnings only, and then with substantial fines. An employer engaging in a "pattern or practice" of hiring illegal aliens would be subject to an injunction, which, if violated, could lead to fines and a jail sentence. All employers would be covered by the employer sanctions law, but those who hire three or fewer workers would not be required to use employment authorization forms.

Amnesty

The Simpson-Mazzoli bill, as passed by the U.S. Senate, would allow any alien who arrived in the United States illegally before January 1, 1977, to apply for immediate immigrant or permanent alien status. Aliens who arrived illegally between January 1, 1977, and January 1, 1980, would have to wait three years to apply for immigrant status. These "temporary residents" could work but could not bring their families to the United States, collect public assistance payments, or receive food stamp benefits. Those who entered the United States illegally after January 1, 1980, could be deported if apprehended.

Some farmers fear that amnesty would encourage illegal farmworkers to flock to California's cities. However, many workers harvesting crops on piece rates earn more than the minimum wage (\$3.35 hourly). Those with fourth and fifth grade educations and no English may receive a better income at \$4 to \$6 an hour for seasonal farm work, when combined with unemployment insurance, than they would earn washing dishes or cleaning hotels year-round. Some farmworkers may quit as soon as the amnesty is publicized, but others are likely to stay in agriculture, especially those without urban friends and relatives and with free or low-cost housing on the farm.

Guestworkers

The Simpson-Mazzoli bill rejects the addition of large numbers of guestworkers but proposes modifications to streamline the current H-2 program that admits temporary foreign workers for temporary U.S. jobs. The H-2 program was enacted in 1952 to allow the emergency admission of unskilled temporary workers. Under the new program, about 15,000 agricultural workers are admitted annually, most to cut sugarcane in Florida and harvest apples along the eastern seaboard. California farmers obtain about 400 sheepherders, and Arizona citrus farmers import about 800 workers annually under the H-2 program.

Farmers criticize the administration of the H-2 program. Under current regu-

lations, each farmer must convince the Department of Labor that American workers are not available and that the farmer's only recourse is to get alien workers. To obtain visas that admit alien farmworkers, farmers must first try to recruit and hire domestic farmworkers by offering to pay an above-minimum-wage Adverse Effect Wage Rate. In addition, farmers requesting H-2 workers must offer free housing and work guarantees.

Under the Simpson-Mazzoli proposal, 80 days before workers are needed a farmer would request work visas for aliens, asserting that (1) there are not sufficient qualified workers in the area to fill the jobs that would be taken by the aliens and (2) employment of these aliens would not adversely affect "similarly employed" domestic farmworkers. At least 20 days before the need date, the Department of Labor would have to issue certification to admit alien farmworkers or cooperate with the employer to ensure that qualified American workers are available when needed. All H-2 workers would receive translated contracts that specify wages and piece rates, housing and subsistence arrangements, and guarantees that work will be available for at least three-fourths of the contract period.

If the domestic workers referred to a farmer turn out not to be qualified for farm work, and the employer can prove they are not, the Department of Labor must issue certification to admit H-2s "expeditiously." An association would be able to request certification for a group of farmers, but both farmer-members and the association would be liable if H-2 contracts were violated.

The Simpson-Mazzoli bill would require the Department of Labor to analyze the H-2 program and suggest ways to improve the timeliness of certification decisions, protections for American workers, and cooperation between farmers and the employment service. The Simpson-Mazzoli H-2 reforms seek

"to balance more precisely" the goals of protecting U.S. farmworkers and ensuring farmers timely access to workers.

The effects of these reforms will depend on the number of alien workers requested by California farmers, the day-to-day determinations of who is a qualified worker, and the exact way in which farmers and the employment service assume joint responsibility to recruit American workers for farm jobs.

Farmers' organizations are still jockeying with labor representatives to define the local tests for worker availability and adverse impact (whether farmers must search within daily commuting distance, 150 miles, "normal" commuting, statewide, or nationwide), the role of the U.S. Department of Agriculture in certification, and the rules governing the use of H-2s during strikes. There is no legal ceiling on the number of H-2 workers that could be admitted, so these modifications may permit the evolution of a large alien worker program for agriculture.

The convincing 80 to 19 Senate vote and strong Reagan Administration support fueled speculation that the House of Representatives would enact immigration reform legislation in September 1982. However, opposition to amnesty, farmers' concerns that the H-2 modifications did not go far enough to ensure a labor supply, and other considerations slowed the bill's progress in the House. Congress recessed for the November 1982 elections and was not expected to enact immigration reform during its post-election lame-duck session.

Immigration reform is likely sometime within five years. California agriculture, concerned about the cost and availability of labor, must be prepared to adjust to sometimes drastic changes in its supply of hired farmworkers.

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