

February 25, 2013



**Immigration Reform and Labor Requirements in Manually-Skilled Industries:
A Market-Based Approach**

David Runsten, Policy Director
(dave@caff.org)

Richard Mines, PhD
(rkmines@volcano.net)

Sandra Nichols, PhD
(snichols08@gmail.com)

With the support of the Werner-Kohnstamm Family Fund,
Jo Ann Intili and Ed Kissam trustees

Policy Brief no. 2013-1

Community Alliance with Family Farmers
PO Box 363
Davis, CA 95617
www.caff.org

February 2013

Table of Contents

Executive Summary	i
I. Introduction	1
II. Historical background	4
III. How the undocumented migration system works	5
IV. Failure of the recent attempts at immigration policy reform	6
V. The problems with agricultural guestworker programs	8
V.1. H-2A	9
V.2. Canadian Seasonal Agricultural Worker Program	10
V.3. AgJOBS	12
V.4. American Specialty Agriculture Act	13
V.5. Legal Agricultural Workforce Act	14
V.6. Conclusion to guestworker programs	14
VI. Other proposals for reforming manually-skilled immigration	16
VI.1. Migration Policy Institute Task Force	16
VI.2. Douglas Massey, et al. <i>Beyond Smoke and Mirrors</i>	18
VII. Comprehensive immigration reform: some basic principles	20
VIII. The North American Work Visa Program for Manually Skilled Labor	21
VIII.1. The NAVA Program: A proposal	22
IX. Frequently asked questions	25
X. Conclusion	30
List of works cited	31

Executive Summary

The great failure of the Immigration Reform and Control Act of 1986 (IRCA) was that it did not provide for a continuing legal flow of new immigrants to manually-skilled labor markets. People will keep coming if there is a demand for their labor and what is required is a policy that legalizes and manages this flow in the most efficient and least-cost manner. The research strongly suggests that the net economic impact of immigrant labor is positive, and that employment of U.S. workers is highly complementary to immigrant labor in manually-skilled labor markets.

It has been disappointing to see the recent proposals for agricultural guestworker programs, especially coming from politicians and organizations who claim to want less government involvement in the economy. Guestworker programs are a concern because they are costly and bureaucratic, consistently circumscribe workers' rights, and provide the wrong incentives to both workers and employers, resulting in the continued use of undocumented labor. Guestworker programs will not work for smaller farms, which are widely dispersed and have many different types of labor needs.

The undocumented network migration system has worked well both for agriculture as for other manually-intensive industries in the United States. It is self-recruiting, self-transporting, and self-housing. It is the low-cost, market-based option, and the rational approach to eliminating undocumented labor would be to legalize this undocumented system itself, and allow the labor market, not the government, to allocate immigrant workers.

Undocumented agricultural workers make up a small share of all undocumented workers in the United States, estimated at less than 5%. The need for manually-skilled immigrant labor is not confined to agriculture, and a solution that will discourage the use of undocumented labor in the United States in the future must take this into account. Landscaping, domestic work, the garment industry, food processing, hotels, restaurants, roofing, drywall, laundry services, car washes, these are just a few of the many industries employing this immigrant labor force. For this reason our proposal addresses the needs of all manually-skilled labor markets, not just agriculture.

We propose a North American visa program for manually skilled workers (NAVA) that would be part of a larger comprehensive immigration reform that we assume would also address requirements for highly educated workers, alter country quotas, reform family reunification, and eliminate guestworker programs. The NAVA program assumes that all undocumented adults and their dependents in the United States as of the cut-off date would be issued a green card or some type of provisional visa, such as our W visa, or deported for violent crimes committed. This legalization of the undocumented would be a one-time event dependent on comprehensive immigration reform to improve the legal entry of migrants so as to avoid a repeat of the 1986 experience.

February 25, 2013

1. The NAVA program would initially apply to the countries of North America, including Mexico, the Caribbean, and Central America. These countries account for 75% of the undocumented currently in the United States. This pilot program could be extended to other countries if the program is successful or if more workers are needed.
2. The basic element of the program is the creation of a W visa category, a temporary work visa for manually skilled workers, good for 5 years, which would allow a non-U.S. citizen to reside in the United States and seek employment from any qualified employer in the United States.
3. The W visa would be the first work authorization document to be biometrically secure. Combined with some form of E-verify to check the list of individuals authorized to possess such a visa, it could become both reliable and protective of the privacy of individuals. The work identification program would apply to all jobs of 72 hours or more.
4. W visa holders could come and go from the United States.
5. W visa holders would have full labor rights but would not be eligible for government transfers. However, a means of providing health care under the new federal law would need to be developed. They would be eligible to receive other insurance payments from funds that they and their employers paid into, including social security, disability, workman's compensation, and unemployment insurance. They could have driver's licenses.
6. There would be strict workplace law enforcement consistent across all states with respect to minimum wage, overtime, healthy workplaces and other labor law provisions.
7. A fee would be charged to workers for documents, which would be used to defray some of the costs implied by the reform. In addition, the undocumented in the United States could be additionally fined for having ignored immigration laws, however, they would not be required to return to their countries of origin in order to apply for a visa—a waste of time and money for them and their employers.
8. At the same time as the undocumented in the United States were issued visas or green cards, a program would be created to issue W visas to a group of new manually-skilled immigrant workers each year, the number to be determined quarterly by a commission, and based on business cycle numbers, unemployment data, and job openings. Some have suggested 200,000 or more per year when the economy is growing well. These would be allocated to the North American sending countries according to a formula based on such factors as the number of immigrants from that country in the United States and the population of the country. The commission would be composed of labor and business representatives, academics, federal employees in charge of government labor market surveys, and elected officials. Regular studies would be conducted to provide the information needed by this commission.
9. The visas would be issued by United States embassies and consulates in an attempt to prevent fraud, corruption, and extortion of migrants by intermediaries. Workers would apply individually and could present letters from U.S. employers, but this would not be required. They would need to demonstrate an upbringing and/or work

- history that qualified them to be considered “manually skilled,” for example growing up on a farm, being a skilled shoemaker, or having worked in food processing.
10. An aggressive program of enforcement against hiring undocumented workers would be enacted once the legalization documents were issued and the NAVA program implemented, including employer sanctions and E-verify.
 11. Employers would have no special obligation to engage in positive recruitment of domestic workers or engage in any other government hiring requirement. W visa workers would be treated the same as all other American workers.
 12. After 5 years, a W visa holder would face three options:
 - If s/he had worked less than a minimum threshold percentage of time¹ (we propose 40%), then s/he would be ineligible to renew the visa. There should be a provision to allow him/her to apply for a new visa after some period of time.
 - If s/he had worked more than 40% time and could demonstrate that s/he is not “inadmissible,”² s/he would be eligible to apply for another W visa for an additional 5 years. The average farm worker works 50-60% of the year and might fall into this category.
 - If s/he had worked more than (we propose) 75% time, could demonstrate a current full-time job, and could demonstrate that s/he is not inadmissible, then s/he would be eligible to apply for LPR status. S/he could immigrate the immediate family if s/he so chose. S/he would become eligible for certain government transfers, such as food stamps and educational assistance for children. At the end of 10 years from having first received the W visa, s/he and the family would be eligible for all government transfers. Since in our plan all current undocumented workers not issued green cards would be issued 5-year W work visas, many of them would be eligible for LPR status at the end of 5 years, as many of them currently have full-time jobs.
 - An additional provision could be added to allow all W visa holders who continually maintain the visa for 10 years to apply for LPR status. This would provide a clear path to citizenship for all W visa holders.
 - Neither spouses nor minor children currently in the United States would be required to work. Children could apply to extend this provision to the age of 24 in order to attend college.

This approach encourages W visa holders to work in the United States, and rewards them for working more. If you work a minimum amount, you can renew the W visa, so you can keep coming and going from your home country. This enables back and forth migration and encourages people to keep their families in Mexico or other sending country, especially if they have seasonal jobs.

A program would also be developed to support development efforts in migrant sending regions. This was proposed for NAFTA in line with European programs but was not included in the final agreement

¹ This could be averaged over the 5 years.

² The criminal grounds of inadmissibility are incredibly broad and include old, minor convictions or even convictions that have been expunged or vacated. Because under current law waivers for these past mistakes are very limited, immigration reform must increase the availability of waivers of inadmissibility to ensure that deserving individuals can remain with their families and continue employment.

February 25, 2013

The NAVA program is fair to the immigrants because it gives them full labor rights, allows them to change jobs if employers are abusive, gives them access to insurance payments, and permits them to come and go from the country as they like. It is fair to employers because it provides all employers an equal opportunity to access this labor pool and places no additional cost burdens on them just because they have hired immigrants. And it is fair to domestic workers because it removes the exploitable condition of “illegal or undocumented” labor from the country and replaces it with workers who have labor rights, can join unions, cannot be deported because they speak up for themselves, whose numbers are regulated by an independent commission, and who have a potential path to citizenship.

I. Introduction

The appeal of the current undocumented migration system is that it relies on market forces and is, to some extent, self-regulating. Although the U.S. government has created a bureaucracy that attempts to control it through policing, the system itself allows some freedom of employment as workers move among employers. It usually provides its own transportation and housing, and it recruits many of its new workers at minimal cost through village and kinship networks in migrant sending regions. Many among the key stakeholders in these low-wage immigrant labor markets have favored the status quo: U.S. low-wage employers relying on undocumented immigrant labor have found that the uncertain status of the workers increases employers' power; the intermediaries—underground immigrant smugglers as well as the supervisors (*mayordomos*) and farm labor contractors—have made themselves essential to the system's functioning; and even the workers have adapted to the necessity of operating outside of a legal immigration system that makes almost no provision for such workers.

This is a highly efficient, low-cost system of labor supply for manually-skilled labor markets in the United States, which is why it is favored and widely used by employers. The main problem with it for employers is that the U.S. Congress has declared it illegal. At the same time, the U.S. government's criminalization of Mexico-United States migration has created a large underground industry of intermediaries and generated huge profits for immigrant smugglers—in border-crossing (the *coyotes*) and in transporting migrants from border areas to their destinations where they can connect with relatives or employers. The financial costs a migrant incurs in migrating from a sending village in Mexico to an employer in the United States may be as great as a year's wages, and a migrant making rational calculations would have to expect to work in the United States for at least two to three years just to amortize the cost of migration.³ The border is now dangerous on both sides. On the north, the U.S. Border Patrol arrests many would-be migrants, raising the cost of crossing.⁴ On the southern side of the border, according to Mexican immigration officials, violent drug gangs now control the illegal border trade.

It is the height of irony that recent proposals for alternative, legal systems of immigrant agricultural labor supply⁵—put forward by legislators who supposedly want to reduce government intervention in the economy—are heavily bureaucratic systems that run the risk of perpetuating the use of undocumented labor due to their high cost, both to employers participating in the programs and to the taxpayers. Whether run by the US

³ The current lack of a managed system means the federal government is essentially issuing a "license to print money" to immigrant smugglers. Payments to immigrant smugglers for border-crossing, transportation within the United States, and delivery to the final destination continues to increase. Costs range from \$500 for migrants with trusted village coyotes to \$6,000 or more for inexperienced ones. Total "package" cost gets higher when interest (often at up to 10% per month) is included. Assuming an illegal migration flow of, say, 200,000 per year, that is about \$1 billion contributed to immigrant/drug smuggling networks (which the recent research shows are to some extent merging). This cost not only discourages migration but it also encourages migrants who make it over to remain in the United States.

⁴ Doug Massey's data show that though apprehension rates have risen, virtually everyone gets across eventually. See Passel 2011.

⁵ For example, Rep. Lamar Smith's American Specialty Agriculture Act (HR 2847) or former Rep. Dan Lungren's Legal Agricultural Workforce Act (HR 2895).

February 25, 2013

Department of Labor or the US Department of Agriculture, they would be high-overhead, ineffective enterprises subject to endless political argument. The true costs of such bureaucratic guestworker programs include both direct financial costs and indirect costs stemming from their slow, plodding functioning in a business environment where both workers and employers are motivated to move very rapidly to reach employment agreements.

The great failure of the Immigration Reform and Control Act of 1986 (IRCA) was that it did not provide for a continuing legal flow of new immigrants to manually-skilled labor markets. It and the subsequent laws of the 1990s created an immigration policy in denial that issued 5,000 visas a year⁶ to “unskilled” immigrants in the face of a flow of hundreds of thousands of such immigrants per year.⁷ People will keep coming if there is a demand for their labor and what is required is a policy that legalizes and manages this flow in the most efficient and least-cost manner. The research strongly suggests that the net economic impact of immigrant labor is positive, and that employment of U.S. workers is highly complementary to immigrant labor in manually-skilled labor markets.⁸ IRCA and subsequent investments in border control over the past decades have not been cost-effective, in part because rational policy would be to manage, rather than “control” the influx of Latin American immigrants into these labor markets.

In this paper, we critique the various agriculture-specific guestworker programs that have been proposed, based on many years of research into Mexican migration and the farm labor market. We reject the idea that workers should be tied to specific employers or to specific industries, as in a guest worker program such as the Bracero Program. Employees should have the right to change employers. Furthermore, requiring employers to provide housing built to Federal standards, transportation from country of origin, or to recruit domestic workers for jobs they do not want drives up costs and discriminates against small employers who only need a few workers and cannot comply with regulations designed for large employers.⁹ This would have the effect of simply reproducing the employment of undocumented immigrants as both employers and immigrants evade the system. Even the alleged beneficiaries, the “guestworkers,” do not secure the benefits they are presumed to receive, as they are typically required to pay under-the-table costs for transportation and bribes to be recruited.¹⁰ Furthermore, the requirement of advertising for local workers is almost entirely *pro forma*, since employers, who prefer foreign workers, can just drive away unwanted local workers.¹¹

⁶ Referring to legal immigration numbers outside of the existing guestworker programs. H-2A also admitted about 50,000 agricultural workers temporarily in recent years and H-2B a similar number outside of agriculture.

⁷ Doris Meissner, Deborah W. Meyers, Demetrios G. Papademetriou, Michael Fix, *Immigration and America's Future: A New Chapter*. Report of the Independent Task Force, Spencer Abraham and Lee H. Hamilton, co-chairs. Washington DC: Migration Policy Institute, September 2006.

⁸ Heidi Shierholz, *Immigration and Wages: Methodological advancements confirm modest gains for native workers*. Washington DC: Economic Policy Institute, Briefing Paper 255, February 2010. We discuss this in more detail in section IX of this paper.

⁹ Though the majority of workers work for large employers, the majority of employers are small farmers.

¹⁰ Although there is some experience with H-2A recruitment managed by a collaboration between a worker and employer association (FLOC and the North Carolina Growers' Association) which has probably reduced the worker exploitation that characterizes guestworker programs, there is no clear-cut evidence that hidden payments have been eliminated entirely.

¹¹ See US GAO 1988

Finally, such programs require heavy government involvement and the expansion of government bureaucracies, an expensive and undesirable policy outcome.

We discuss an alternative approach to immigration reform for manually-skilled labor markets, such as agriculture, but one that relies on migrant networks and market mechanisms. Solving the full range of problems presented by undocumented immigration requires a comprehensive immigration reform, of which our proposal would be a small part, and we do not detail all of the reforms that would be required.

Though the focus of this paper is the agricultural sector, it is important to remember that undocumented agricultural workers make up a small share of all undocumented workers in the United States. Jeff Passel estimated they were only 3.8% of the undocumented in 2008 (Table 1). Because the data he uses grossly underestimate the number of agricultural workers, it is likely that their share is higher.¹² But even if it were several times higher, it is still small relative to many other sectors of the economy. The need for manually-skilled immigrant labor is not confined to agriculture, and a solution that will discourage the use of undocumented labor in the United States in the future must take this into account. Landscaping, domestic work, the garment industry, food processing, hotels, restaurants, roofing, drywall, laundry services, car washes, these are just a few of the many industries employing this immigrant labor force. For this reason our proposal addresses the needs of all manually-skilled labor markets, not just agriculture.

Table 1
Employment by Industry Sector of Undocumented Immigrants, 2008

Industry Sector	Share of Undocumented Workers (%)
Construction	21.2
Leisure and Hospitality	16.7
Manufacturing	13.4
Professional and Business Services	13.3
Wholesale and Retail Trade	11.5
Other services	6.7
Education and health services	6.1
Agriculture, Forestry, Fishing, Hunting	3.8
Transportation and utilities	3.5
Financial activities	2.7
Information	0.9
Mining	0.2

Source: Passel and Cohn, 2009

¹² See Gabbard, Kissam and Martin 1993; Kissam 2012 for discussions of farmworker undercounts in census-based data. Kissam estimates that farmworkers' share of the undocumented is at least 4.2%.

II. Historical background

The end of the Bracero Program in 1965 ushered in a new era of labor relations in labor-intensive agriculture in the United States. A large number of green cards were issued to former Braceros in the 1960s, and the program itself had experienced significant desertion, forming the nucleus for future network migration from Mexico. Wages rose and union organizing developed throughout the 1970s, basically ending with the UFW-Teamsters agreement in 1978. Some crops that had been heavy users of Braceros had already mechanized before the program ended (cotton and sugar beets) and mechanization was applied to others where feasible (processing tomatoes).

But the production of labor-intensive fruits, vegetables, and horticultural crops has continued to grow,¹³ and this has been made possible by the continuing migration from rural Mexico, the Caribbean, and Central America. Farm labor is physically demanding and careers are often short, leading to constant turnover in the farm labor force. Seeking to avoid unionization, by the 1980s the use of farm labor contractors and undocumented immigrants was well established. The Immigration Reform and Control Act of 1986 legalized about 1.1 million undocumented farm workers (the Special Agricultural Workers or “SAWs”),¹⁴ but it provided no legal mechanism for continued immigration into these labor markets.¹⁵ As a result, the undocumented population began to grow again, until it accounted for over half of the crop farmworkers in the United States,¹⁶ and much higher percentages in the West.

The notion that agriculture requires only seasonal labor is mistaken. Agriculture has many full-time, year-round jobs that are currently filled by immigrants, such as in dairy or nurseries. A program that does not allow for year-round work, or ongoing promotion of production workers into supervisory jobs, will not satisfy the needs of the industry. A program that does not allow or encourage long-term relationships between employers and their workers is particularly harmful to small producers (who must rely on workers who can perform a wide range of tasks, some of which require substantial investments in training) and to very large producers managing complex operations.

On the other hand, most of agriculture does not require an industry-specific program. Workers enter agricultural employment in the United States after growing up in a rural area of Mexico or Central America; working in agriculture is often their only experience and many farm workers will say that it is all they know how to do. The undocumented labor market encompasses many industries and occupations, with agriculture only a small portion.¹⁷ Though there may be certain isolated areas of the United States that would

¹³ Philip Martin and J. Edward Taylor, *Ripe with Change: Evolving Farm Labor Markets in the United States, Mexico, and Central America*. Washington DC: Migration Policy Institute. February 2013

¹⁴ Philip Martin, “Hired Farm Workers,” *Choices*, v 27 no 2, 2nd quarter 2012

¹⁵ One exception was the early post-IRCA family unity program, the 245(i) provisions, which briefly allowed some farmworker family members to legalize despite the provisions of IIRIRA. These were relatively small and weren't employment oriented provisions, although in some respects they were known to have labor market implications, as the farmworker family members were expected to and often did go to work in agriculture.

¹⁶ US Dept of Labor, National Agricultural Worker Survey

¹⁷ See Table 1

February 25, 2013

have difficulty accessing labor without a special program, the undocumented network migration system (which does not send workers solely to agriculture) has created a labor market that has adequately filled agricultural jobs across the country for 50 years, and legalizing this migration system would provide agricultural employers with an adequate and legal labor force. The wage in agriculture in Mexico is still around \$5.00-7.00 a day as compared to over \$10.00 an hour in the United States, so with a legal system of immigration for such workers the United States would easily compete for such labor with Mexico.

III. How the undocumented migration system works

Migration is a cumulative phenomenon. At first individuals leave the village¹⁸ in a scattershot fashion seeking employment. When good employment opportunities are found, subsequent migration from the village tends to focus on those locations. Village social networks are self-recruiting insofar as they are seeking to find their people jobs and can call up more workers from the village. They are self-transporting insofar as they utilize travel routes and border crossing arrangements that earlier villagers have already developed. They also often house themselves, insofar as newcomers arrive at existing houses or apartments occupied by earlier village migrants and tend to cluster in destination sites.¹⁹ Over time the village builds social capital that allows newcomers to find jobs and function in a foreign country.

At the height of undocumented immigration from Mexico in the 1990s—before the border was militarized—one could go to the 7-11 in Chandler, Arizona, and watch cars being filled for travel to all corners of the country. These collective “taxis,” completely normal for rural Mexicans without cars, were a market response to the travel requirements of a group arriving across the border that did not know its way around the United States and would just as soon avoid official transport. One could not help but be struck by the impression of people just going to work, like any other carpool arrangement.

All of this functioning of undocumented network migration occurs at minimal cost to employers in the United States. Is it any wonder that a bureaucratic agricultural guestworker program like H-2A would raise labor costs by 40 percent and be shunned by most agricultural employers?

The advantages of current undocumented migration networks, for both employers and workers, is that reliance on social system dynamics provides a transactional framework that is flexible, dynamic, and cost-effective. The freedom that the non-formal system of migration networks affords both employers and workers in the binational labor market is prized by both. The worker can leave an abusive employer and the employer can,

¹⁸ We use the term “village” here to represent a place of origin of migrants where people are related through kinship or other ties. It could well be a part of a larger city. For more extended discussions of the functioning of migration networks, see Mines 1982, Massey, et al. 1987, and Nichols 2002.

¹⁹ In California, farmers tore down most of the on-farm worker housing after the Migrant and Seasonal Agricultural Worker Protection Act was passed in the 1970s, an unintended consequence of that law.

February 25, 2013

without cause, fire any worker for any reason, although informal social networks do have some built-in sanctions against behavior which violates shared social norms.

The primary disadvantage of the status quo for the employer is the risk of costs stemming from sanctions, while the primary disadvantage for workers is both the risk of deportation and that undocumented employment leaves them vulnerable to employer abuse in the form of mistreatment by supervisors, sub-standard working conditions, and having their labor rights violated by payment of sub-minimum wages, non-payment of wages, or fraudulent accounting; and in this system the transaction costs collected by the labor market intermediaries are usually borne by the workers.²⁰

This is not a perfect system, mainly because it is not legally sanctioned, but with free mobility of labor, villagers who only work seasonally or are laid off will return to the village to await further employment, because it is much cheaper to be in Mexico. In the United States, we expect workers to adjust to the labor market; the government provides unemployment assistance or training assistance but workers must move to the jobs. The current migration system would fulfill this function naturally through a smoothly functioning kinship-based system of social networks, but the U.S. government has created huge obstacles by both militarizing the border and refusing to legalize the migrants, and it is to this policy failure that we now turn.

IV. Failure of the recent attempts at immigration policy reform

The dysfunctional immigration system that we have now—the large numbers of undocumented immigrants (estimated at over 11 million) and the negative impacts on low-wage labor markets—is the direct result of Congressional policies. The policies put in place over the past 25 years are the source of the problem; they are failed laws that must be changed for the system to function properly.

As Douglas Massey and his collaborators have argued:

“The 1986 Immigration Reform and Control Act (IRCA) ushered in a new era of restrictive immigration policies and repressive border controls that transformed what had been a well-functioning, predictable system into a noisy, clunking, dysfunctional machine that generated a host of unanticipated outcomes that were in neither country’s interests. These errors were compounded by additional legislation passed in 1990 and 1996 that reduced Mexican access to legal visas, militarized key sectors of the Mexico-U.S. border, and penalized legal but noncitizen immigrants... Even as they sought to restrict the movement of workers across the Mexico-U.S. border, U.S. authorities were constructing a framework to integrate North American markets to facilitate the cross-border movement of goods, capital, commodities, and information, a vision that became reality with the implementation of the North American Free Trade Agreement (NAFTA) in 1994. ... These contradictory policies did not succeed in slowing down either documented or undocumented migration from Mexico; if anything, they

²⁰ See Centro del Derecho del Migrante’s report *Recruitment Revealed*, Washington, DC 2013

February 25, 2013

encouraged more of both. They did, however, create a black labor market for Mexican labor, lower the wages of legal U.S. residents, increase U.S. income inequality, and worsen conditions in U.S. labor markets. At the same time they pushed migrants decisively away from seasonal, circular migration toward permanent settlement and transformed Mexican immigration from a regional phenomenon affecting a handful of U.S. states into a broad social movement touching every region of the country. The hapless intervention of U.S. authorities into the complicated machinery of North American migration offers a textbook example of how ill-conceived policies cannot only fail to achieve their manifest goals but unleash a host of unintended consequences and amplify them to the fullest.”²¹

Or as the Migration Policy Institute put it:

“In 1986... Congress enacted legislation that for the first time made it illegal for employers to hire immigrants who were not authorized to work. Combined with border control and legalization of the illegal population that had been in the country for at least five years, the goal was to “wipe the slate clean” for effective immigration control. In practice, the legislation failed to solve the problem of illegal immigration. Employer enforcement has proven difficult, in large part because fraudulent documents became readily available, and the legislation did not mandate a reliable way for employers to verify the legal status of those they were hiring. Serious efforts to strengthen border enforcement did not begin until a decade later... those who were here for less than five years stayed and became the nucleus of today’s unauthorized population. The 1986 law did not anticipate the deep changes in labor markets, demographics, and the pace of globalization that were just ahead.”²²

It would be possible to control undocumented immigration at the workplace, but this would have to be done in a comprehensive manner. It is crucial that in another attempt at comprehensive immigration reform, at “wiping the slate clean,” that we do not create incentives for workers or employers to continue with undocumented employment. Instituting a program such as E-verify without first legalizing the undocumented would remove too many workers, decimate industries such as agriculture, and thereby create incentives for continued employment of the undocumented. Implementing E-verify without creating a reliable and secure employment authorization card would similarly fail due to the problems with the existing database and widespread use of stolen and fraudulent documents.²³ And trying to create a new agricultural guestworker program will lead us back to abuse of workers, excessive bureaucracy, and will disadvantage small farmers unable to pay for the bureaucratic overhead.

²¹ Douglas S. Massey, Jorge Durand, and Nolan J. Malone, *Beyond Smoke and Mirrors: Mexican Immigration in an Era of Economic Integration*, New York: Russell Sage Foundation, 2002.

²² Meissner et al. 2006

²³ Bill Keller, “Show Me Your Papers,” *New York Times*, July 1, 2012.

February 25, 2013

V. The problems with agricultural guestworker programs

The Bracero Program was ended in 1965 due to a decade of stagnant wages, reports of substandard housing and the closing of hundreds of Bracero labor camps, and its use to break strikes and impede farmworker organizing. Because the program was rightly criticized after World War II as highly bureaucratic, it was essentially turned over to employer associations in 1954, which made it difficult for the government to properly oversee implementation.

The Bracero Program did not stop undocumented migration: “It has been estimated that almost 5 million illegal workers entered the United States during the 22 years the Bracero Program lasted.”²⁴ Desertion from the program was common.²⁵ The program worked for certain groups of growers in specific crops organized in employer associations who could provide housing and transportation, but it could never fill the broader demand for labor, even when it accounted for half a million workers. In addition, the flow of undocumented north in the 1942-1964 period responded not only to demand from U.S. employers but also to a variety of push factors such as droughts, low agricultural prices, and political strife.

The existing H-2A program accounts for a much more meager share of farm labor than the Bracero Program did; a more liberal agricultural guestworker program would account for a larger share but would not eliminate the demand for labor outside of it, and so would not solve the problem of undocumented migration.

In the normal policy discourse, everyone puts forward his guestworker program as not repeating the Bracero Program. The Abraham-Hamilton task force had this to say about these programs:

"The Task Force has concluded that bracero-like guest-worker programs do not match workers with employers in ways that uphold the nation's values and interests. Bracero-like guest-worker status circumscribes the labor and other rights of workers, which, in turn, undermines the interests of US workers. Such programs also explicitly foreclose integration, even as the workers often remain in the country, leading to the likelihood of such workers and their families living for long periods at the margins of the economy and society."²⁶

If we look at the existing agricultural guestworker programs in North America we find many of the same problems and complaints that characterized the Bracero Program. In

²⁴ Jorge Durand, *The Bracero Program: A Critical Appraisal*, *Migración y Desarrollo*, Second Semester, 2007

²⁵ See for example Richard Mines, *Developing a Community Tradition of Migration to the U.S.*, UC San Diego, 1982. Most of the Braceros later became undocumented in the period before 1965 from the village in Zacatecas studied in this monograph.

²⁶ Meissner et al. 2006. Unfortunately the task force then went on to devise temporary worker programs that did in fact circumscribe the rights of workers and would provide incentives to workers and employers to evade the legal system. See the discussion below in section VI.1.

February 25, 2013

the following section we examine the H-2A program, the Canadian Seasonal Agricultural Worker Program, and several similar legislative proposals in the U.S. Congress: AgJOBS, the American Specialty Agriculture Act (HR 2847), and the Legal Agricultural Workforce Act (HR 2895).

V.1. H-2A

The H2 program began in the 1940s as a small program to bring in Jamaican workers to the sugar and apple industries of the East Coast. It gradually evolved into a wider program to supply workers to vegetables, tobacco, potatoes and other crops in many regions of the United States. In 1986, it changed its name to the H-2A program. The H-2A program has been widely criticized as overly bureaucratic and costly. It only applies to jobs that last less than 10 months, and its provisions include:

- Submit request 60-75 days ahead of need
- Document a search, including advertising, for qualified U.S. workers and accept any that apply²⁷
- Create a contract ahead of recruitment that specifies wages, hours, weeks of employment, place, crop, task
- Pay for transportation from and to country of origin
- Provide housing and have it inspected
- Provide transportation to fields
- Provide 3 meals a day for \$12 or provide access to a kitchen
- Guarantee at least 35 hours a week
- Guarantee at least ¾ of contract work time
- Provide workers' compensation insurance
- Provide all tools and equipment
- Pay by the hour at the highest of (California example):
 - Federal minimum wage—\$7.25
 - California minimum wage--\$8.00
 - Prevailing wage--\$8.70 (example Madera, California, lowest skill group)
 - California Adverse Effect Wage--\$10.24
- Pay all U.S. workers this wage as well

Some of the problems with the H-2A program that have been noted by researchers and worker advocates include:

- Program not well supervised, rules not always followed; involvement of states means that enforcement is uneven from state to state
- Workers pay recruiters in Mexico and other countries to get included and must work as directed in order to pay back this fee
- Required hourly wages not always paid due to piecework requirements
- Contract season sometimes extended past actual harvest season, causing workers to leave and pay their own transportation home
- Workers have no rights, can't change jobs, if complain run risk of deportation

²⁷ This system has always been pro forma since employers can "drive away" unwanted local workers.

February 25, 2013

On the other hand, growers and their representatives also complain about the program:

- Long lead time to get workers and they do not always appear on time due to the bureaucracy
- Costs maybe 40% more than hiring undocumented workers²⁸
- Accounts for less than 3% of agricultural labor force (about 55,000 workers in 68,000 placements in 2011)
- Employers often sued by worker advocates because the many detailed rules make it difficult to comply with positive recruitment requirements

So neither the worker advocates nor the employers think the program works effectively. Both sides fault the various government agencies involved, three Federal agencies and the state agencies. No one thinks it could be expanded to deal with all required immigrant labor. In Congressional testimony, the only people favoring the program are the H-2A contractors who live off it.²⁹ Doing away with the H-2A program would end all this quarreling and litigating. That won't suddenly fix abuses in the farm labor market, but the H-2A program is currently such a small percentage of the labor market that it is scandalous the amount of resources devoted to it. An exchange between Rep. Zoe Lofgren and Jane Oates of the U.S. Department of Labor in a Congressional hearing suggests the solution:

“Ms. Lofgren: ... We had the former chairman of the Committee, Bruce Morrison, saying we ought to trust the market rather than the regulations. And if we gave some stature to these employees so that they were not in a position to be abused, that is likelier to protect them than an army of enforcers. You will never have enough enforcers out in the field to protect against that. Isn't that correct?”

Ms. Oates: That is exactly right. I mean, our average over the past few years in terms of Wage and Hour, as I said, our enforcement arm, is about 131 investigations a year.”³⁰

V.2. Canadian Seasonal Agricultural Workers Program

Canada has operated an agricultural guestworker program since 1966, the Seasonal Agricultural Workers Program (SAWP), which began with an agreement with Jamaica, and was later expanded to include a variety of Caribbean countries as well as Mexico. Very recently, a separate agreement with Guatemala was created for Quebec, and British Columbia also became eligible to use the SAWP. For 20 years the program operated with a quota of about 4,000 workers per year. In 1987, the program was turned over to grower-run non-profit organizations and the quota removed, leading to increased numbers of migrant workers. In recent years, about 25,000 workers have been involved, usually employed for 17-20 weeks, but some as long as 8 months.

²⁸ Although H-2A employers do not have to pay unemployment insurance or social security, the adverse effect wage rate is often significantly higher than the going agricultural wage in low-wage regions and the transportation, housing, and bureaucracy requirements were estimated to add \$2.00 an hour to the cost of labor in North Carolina. U.S. Congress 2011.

²⁹ US Congress 2011

³⁰ Ibid.

February 25, 2013

“Employers request workers through [the grower non-profits] Foreign Agricultural Resource Management Services (FARMS) (Ontario), Fondation des Entreprises en Recrutement de la Main-d’œuvre Agricole Étrangère (FERME) (Quebec and New Brunswick), and Western Agricultural Labor Initiative (WALI) (British Columbia and Alberta) with the approval of Human Resources and Social Development Canada. Migrant sending countries select and screen workers. Workers and employers sign a contract that outlines respective rights and obligations and length of employment that generally ranges between 3 to 8 months. Workers that win the approval of employers are "named" and requested back on the farms. A "named" worker is entitled to additional rights that are not granted to "unnamed" or new workers to the program.

“New SAWP participants are sent to the same farm for the first 2 years. Thereafter, s/he may be relocated to another farm if they are not requested by their original employer. Workers are sent home as soon as their contracts expire. They have to report back to their home countries with evaluation forms from their employers. A negative report can result in suspension from the program. Workers also have to report the treatment they received from their Canadian employers. Most migrant farmworkers prefer to provide a neutral report to avoid delays.”³¹ If a worker ends up at a farm where he is treated well and paid properly, then he can return for decades.

Various studies³² of the Canadian program have shown that it suffers from the usual afflictions of such agricultural guestworker programs: insufficient oversight by authorities, including lack of coordination between federal and provincial governments; workers isolated on farms; complaints of having to work long hours; examples of substandard housing; workers afraid to complain out of fear of being deported at their own expense; lack of appeals process; disputed right to unionize; having to pay unemployment insurance that they can’t collect on. In short, workers are subject to a form of indentured servitude and can either accept the conditions or go home. They are tied to one employer and are not free to seek alternative employment.³³ Just as with the Bracero Program, the experience could be good or bad, but the worker is denied the basic right to quit and find another job.

This program is sometimes held up as a model for the United States because it historically has a very high rate of success in returning workers to their countries of origin (about 98%), but the small number of workers involved and the short season make it difficult to understand how it can be generalized to the U.S. hired agricultural labor force of 2.4 million or the likely immigrant agricultural labor force of 1.5 million, at least half of whom are undocumented.³⁴ Also, because it is constructed as a series of bilateral agreements between the Canadian government and migrant sending country governments, it requires a great deal of administrative time from all of the governments

³¹ Justice for Migrant Workers, “The Seasonal Agricultural Worker Program”,

<http://www.justicia4migrantworkers.org/bc/pdf/sawp.pdf>. This evaluation requirement is specific to Mexico.

³² For example the research of Kerry Preibisch or the various studies for the North-South Institute project

³³ While theoretically possible to switch employers, it is apparently very difficult. Preibisch 2010.

³⁴ Phil Martin (Martin 2012) estimates 2.4 million as the true number of hired workers in US agriculture, i.e. everyone who does some agricultural work in a year. ETA/DOL says 1.4 million crop workers and 900,000 livestock workers. The NAWS indicates that 75% of seasonal agricultural workers are foreign-born and about half are undocumented.

February 25, 2013

but particularly from the sending countries, who have to recruit and supervise their workers.

In fact, the Canadian government created another program in 2002 “to allow employers to access international migrants in jobs designated as ‘low skill’, now known as the Pilot Project for Occupations Requiring Lower Levels of Formal Training (National Occupational Classification C and D)... The initiative was a policy response to increasing employer demand for oil, gas, and construction workers during the expansion of Canada’s economy in the early 2000s and reflected problems with federal immigration policy that resulted in a back-log in the processing of landed immigrant applications and, overall, a human capital model focused on educated workers in higher status occupations.”³⁵ Any Canadian employer can now directly seek “low-skilled” workers from any place in the world. While work permits for these workers can be up to 24 months, a worker who completes four years of work has to wait out a subsequent four years before returning. About 10,000 workers are now brought into Canadian agriculture and food processing through this program, and in 2007 the workers came from 75 different countries. Thailand and the Philippines have emerged as important sending countries, but the program has been plagued with bad publicity.

The need of employers to recruit directly around the world has given rise to an industry of intermediaries who often charge high fees to workers in their home countries. The consequent need of migrants to pay these fees (as much as \$10,000) no matter what happens in Canada, combined with legal permission to work for only one employer as well as the limits on legal length of stays, has created an increasing number of desertions from the program and a growing undocumented labor force that has been estimated in the hundreds of thousands. The existence of these (largely Asian) undocumented workers has presented Canadians with their first experience with high-profile immigration raids. Farm groups running the SAWP worry that public opinion may turn against the importation of any such workers.

Some lessons for the United States could be: (1) demand for manually-skilled labor expands with the economy, and it is not just agriculture that needs such workers—an immigration policy that is just focused on highly educated immigrants will not satisfy this demand; (2) if immigration policies do not provide the correct incentives for both employers and workers the result is undocumented labor; (3) programs need to be designed to avoid labor contracting intermediaries to the extent possible; and (4) a highly controlled guestworker program like the SAWP is likely possible only on a small scale, requires a great deal of undesirable bureaucracy, and will always be under attack from domestic labor interests.

V.3. AgJOBS

AgJOBS, the Agricultural Job Opportunities, Benefits and Security Act, is a proposed immigration law focused on agriculture. The AgJOBS compromise was reached through negotiations between the United Farm Workers (UFW), major agricultural employers,

³⁵ Preibisch 2010 and 2012. The rest of this discussion is from the same papers.

February 25, 2013

and key federal legislators. If enacted, AgJOBS would (1) create an “earned adjustment” program, allowing many undocumented farmworkers and agricultural guestworkers to obtain temporary immigration status with the possibility of becoming permanent residents, and later citizens, of the United States, and (2) revise the existing agricultural guestworker program, the H-2A program.

Some of the provisions of AgJOBS include:

1. Legalizes undocumented farmworkers and recent H-2A guestworkers, they obtain a “blue card” if:
 - Worked in U.S. agriculture for at least 150 days in a defined recent two-year period
 - Not a criminal (as defined)
 - Pay application fee and fine of \$100
2. Blue card workers can earn Green card by:
 - Working 100 days a year in agriculture for five years
 - Working 100 days in agriculture one year and 150 days for the subsequent three years
 - Working 150 days in agriculture a year for three years
 - Pay application fee, \$400 fine, income taxes
3. Family and minor children of blue card holders residing in the United States would be legalized
4. Makes changes to H-2A:
 - May be able to pay workers’ rent rather than provide housing
 - Makes downward adjustments to Adverse Effect Wage Rate (AEWR)
 - Workers gain access to U.S. courts
 - Goat herders, sheep herders, and dairy workers could apply for green card after 3 years of work under H-2A

V.4. American Specialty Agriculture Act (HR 2847)

Representative Lamar Smith introduced a bill in the last session of Congress that would have substituted for the H-2A program by creating an H-2C program. Some of its provisions:

- Administered by USDA instead of DOL
- Workers still limited to ten months in the United States, with a required period abroad
- Would still require positive recruitment of U.S. workers
- Farmers would still have to pay transport costs to and from farm
- Could substitute housing vouchers in place of providing worker housing
- No meal requirement
- Only have to guarantee 50% time to workers
- Pay the prevailing wage, not the higher AEWR
- Could be used by agricultural associations as well as individual farms

V.5. Legal Agricultural Workforce Act (HR 2895)

Representative Dan Lungren introduced a bill before he was defeated in 2012 that was supported by the California Farm Bureau Federation. It was also a seasonal agricultural labor program, and did not contemplate the legalization of the current undocumented labor force. Some of its provisions included:

- Administered by USDA
- Would issue 10-month “W” visas to a number of workers each year determined by USDA
- Employers enroll in program and provide information about their labor needs
- Employers can request specific “W” workers
- “W” workers must be continuously employed in agriculture with enrolled employers, but can move among those employers
- Employers deposit the equivalent of Social Security and Federal UI withholdings to cover expense of program
- Employees’ social security withholdings deposited in trust fund to be paid upon their return home
- “W” workers not eligible for federal financial assistance
- All labor laws apply
- H-2A would continue to exist

V.6. Conclusion to guestworker programs

The AgJOBS bill has not passed in over 10 years of trying. What is the justification for creating a more liberal guestworker program for only agricultural workers, who are such a small part of the undocumented? Agriculture competes at present for workers in the broader labor market and has done so successfully since the Bracero Program ended in 1965. Only very recently has declining immigration from Mexico, driven by the combination of weak labor demand in the U.S. and escalating costs of crossing the border, led to some localized labor shortages in agriculture.³⁶

While AgJobs at least would open the possibility of legalization for some undocumented agricultural workers, the other proposals don’t even address the issue, they merely liberalize the H-2A program. It is hard to understand these proposals when both farm employers and worker advocates constantly deplore the H-2A program, if for different reasons. If the government can’t manage a program for 50,000 workers, imagine the bureaucratic nightmares of a program for a million workers.

Farmers have many different needs for labor: farms with animals need year-round workers; some direct-market farms (at least in California) operate year-round with intensive vegetable harvesting; and many farms that grow fruits need labor for only a short harvest. It is impractical to attempt to manage all of this through a government-run, command-and-control guestworker program. Smaller farms and farms in more distant

³⁶ CA Farm Bureau Federation, *Walking the Tightrope: CA Farmers Struggle with Employee Shortages*, Agricultural Employment Survey Results, Sacramento, 2012. The Farm Bureau found 500 farmers that reported they were short on labor in 2012, particularly in raisin grapes and tree fruit with high short-season harvest requirements.

February 25, 2013

regions that only need a few workers won't be able to meet all the requirements or afford the price premium.³⁷ Instead we will just create the same incentives as in the Bracero Program for workers to desert the program and for farmers to hire them without authorization.

Our goal should be to give everyone a legal document, to eliminate undocumented labor once and for all. If workers have a work visa, have full labor rights, can come and go as they choose and can work for any employer, then guestworker programs are unnecessary and all the problems associated with them are avoided. E-verify and employer sanctions would no longer be feared, and the militarization of the border would no longer be an obstacle to the proper functioning of the agricultural labor market.

Trapping workers in agriculture is counterproductive both for the workers as for the employers. The legal farm labor force is aging rapidly and the overall labor force is also aging. Agriculture is hard work and careers are necessarily short as the number of jobs for irrigators, tractor drivers, or supervisors is limited. Legalization will mean that some workers move into other sectors for permanent jobs, but this reflects the gradual movement out of agriculture that is the historical pattern. The idea that all legalized agricultural workers will move to another sector of the economy is mistaken. Fifteen years after the 1986 legalization of agricultural workers (the SAW program), SAWs still constituted a quarter of the seasonal agricultural labor force.³⁸

Furthermore, the NAWS data show that farm jobs on average are becoming more stable over time. Farmworkers are working more weeks per year and staying longer with each employer. This stabilization of the labor force will mean fewer farmworkers will leave in search of a job that can sustain them. And farmworkers often move back and forth between farm labor and non-farm labor. According to the NAWS, in the 2007-2009 period, 23 percent of authorized and 15 percent of undocumented crop farmworkers held a non-farm job sometime in the 12-month period prior to being interviewed.

On the other hand, there is an under-appreciation of the skills that many of these agricultural workers possess. Lack of formal education does not mean unskilled.³⁹ There are many occupations where the United States has relied on immigrants to bring the needed skills. Shoemakers were a good example, as the country never trained indigenous shoemakers. Agricultural workers have been imported into California from China, Japan, the Philippines, the Punjab, Mexico, and a number of other countries. In this paper we have used the term "manually-skilled" to emphasize the type of skills that such immigrants possess, even if they have low levels of formal education.

³⁷ Of course some remote regions with short season labor requirements may fear being left without a more expensive option like H-2A. If Congress decides to leave the H-2A program in place for this purpose, then we would recommend leaving stringent rules in place and capping the annual number of workers at some low level, such as 10,000 annually, to discourage its use in mainstream agricultural regions.

³⁸ National Agricultural Worker Survey. See the discussion in section IX below for more detail.

³⁹ Natasha Iskander and Nichola Lowe, *The Politics of Skill: Rethinking the Value of "Low-Skilled" Immigrant Workers*. Washington DC: Immigration Policy Center. March 2012

VI. Other proposals for reforming manually-skilled immigration

VI. 1. *Migration Policy Institute Task Force*

The Migration Policy Institute (MPI) set up a task force in 2005—the Independent Task Force on Immigration and America’s Future—to develop recommendations for comprehensive immigration reform in collaboration with the Woodrow Wilson Center and the Manhattan Institute. It was chaired by Spencer Abraham, a former Secretary of Energy and Senator from Michigan, and Lee Hamilton, a former Congressman from Indiana. Their influential report was issued in September 2006.⁴⁰

We briefly summarize their proposals relevant to manually-skilled workers such as farmworkers, especially those that parallel our own proposed plan.

The MPI proposal envisions legalizing the existing undocumented:

Earned path to permanent legal status for unauthorized immigrants currently in US: “the lessons of IRCA suggest that the legalization process should be simple, with an eligibility date that is as recent as possible. Requiring applicants to provide elaborate documentation of their history in the United States invites misrepresentation. Rather, the ideal process would involve registration for work eligibility in the United States, accompanied by a background security check and payment of a substantial fine for illegally entering the United States. During subsequent years, legalizing immigrants would be required to demonstrate a knowledge of English, steady employment, payment of taxes, and good moral character in order to earn lawful permanent residence and, ultimately, citizenship. Those applying for legal status should be permitted to travel to and from the United States.”

The MPI proposal addresses farmworkers and other manually-skilled workers under two visa categories [emphasis added as underlining]:

Under their temporary categories (which include visitors, students, diplomats, etc.) they have a “Seasonal and short-term workers” (W) visa, where workers would be admitted for less than a year, sponsored by an employer for a truly short-term job, able to come and go from United States, but cannot bring their family. “This approach is the best way to encourage circular migration for large numbers of workers from Mexico and other nearby countries who work in agriculture or limited duration occupations and assignments.”

Under their Provisional category, they have a Provisional (P) visa. “This category provides for applicants of all skill levels who have employer sponsors. Provisional

⁴⁰ Doris Meissner, Deborah W. Meyers, Demetrios G. Papademetriou, Michael Fix, *Immigration and America’s Future: A New Chapter*. Report of the Independent Task Force, Spencer Abraham and Lee H. Hamilton, co-chairs. Washington DC: Migration Policy Institute. September 2006.

February 25, 2013

visa holders would work in permanent or year-round jobs and transition into permanent residence after three years if they qualify and so choose. Provisional visas would be issued to workers with extraordinary ability, workers in jobs that require a BA or more, and workers in low- and semi-skilled jobs who currently have no real chance for legal immigration.” Workers would be able to bring dependent family members. Employers would be pre-certified. Fees would be charged. Workers could change jobs after a while and would have all labor protections as U.S. workers. To adjust to permanent status a worker would have to have his employer vouch for him, speak English, and pass a background check.

So the MPI proposal essentially divides the manually-skilled workers into two groups, one where workers are alone and come for less than a year and another where workers can be accompanied by their families, work year-round, and potentially transition to LPR status. However, in both cases workers are “sponsored” by an employer and tied to that employer at least initially.

They assert the need to protect the interests of U.S. workers, but they acknowledge that the current system of certification doesn’t work. Therefore, they propose to: **“Replace existing case by case labor certification system with one that provides for pre-certified employers, designates shortage occupations for blanket certifications, and uses a streamlined individual certification process for non-shortage occupations.”** If an employer uses a lot of temporary or provisional workers, he could get pre-certified. Otherwise he would have to apply to DOL every time, attest that he is not replacing striking workers, that prevailing wages will be paid, that he is attempting to recruit domestic workers, and he would have to pay substantial fees to encourage him to hire domestic workers. For permanent workers he would have to apply to DOL. So while they imagine streamlining the process, it is still the same government-run bureaucratic process, and a worker is at least initially tied to an employer.

The MPI proposal does allow workers to change employers and grants them full labor rights: **“Temporary and provisional workers would have the right to change employers without jeopardizing their immigration status and have worker protections that are comparable to those of similarly employed U.S. workers.”**

- “To reduce the potential for exploitation, workers must be able to change employers after an initial period of several months, as long as the new employer is pre-certified and is within the industry or occupation for which the worker was originally sponsored [emphasis added]. For valid cause, workers would be allowed to change employers earlier.”
- “Temporary and provisional workers should have the same labor rights and protections as similarly employed U.S. workers.”

Finally, the MPI proposal acknowledges the increasing economic integration of North America and the need to consider migration and development in that context: **“Engage Mexico and Canada in longer-term initiatives directed at management of labor flows in the context of regional economic interdependence, growth, and security.”** They envision a program to support economic development in migrant sending regions

February 25, 2013

but are skeptical that this will reduce migration any time soon, since development usually leads to increased migration.⁴¹

In summary, then, the MPI proposal would legalize the undocumented and set up a somewhat streamlined process through DOL to admit temporary and provisional workers under two types of work visas. It legalizes the stock and provides for a continuing flow, rectifying the fatal error of IRCA. However, it would rely on employers to sponsor workers, and though workers could change employers, they would be confined to the industry where they were initially sponsored. This is a de facto guestworker program and cedes most of the power to the employers. Though workers would have labor rights, they would have very little mobility in the labor market. It denies certain realities of manually-intensive labor markets, where workers shift jobs among sectors for a variety of reasons, and it would therefore create incentives for workers to desert the program and for employers who could not afford such a program to hire these deserters, setting up a new cycle of undocumented labor.

The MPI proposal also envisions a commission that sets targets for immigration for “shortage occupations.” This is modeled on Britain’s Independent Migration Advisory Committee and the experience of that commission shows that being too specific about workers and jobs just leads to political fighting.⁴² Far better to confine such a commission to setting targets for broad types of workers and allowing the labor market to function.

VI.2. Douglas Massey, et al. *Beyond Smoke and Mirrors*

Professor Douglas Massey, a sociologist at Princeton, has for many years conducted research on Mexican immigration with Jorge Durand, a professor in Mexico. Ten years ago they wrote a book, *Beyond Smoke and Mirrors*, which analyzed the failures of US immigration policy and proposed alternatives. The book focuses only on Mexican migration. They argue that Mexico has a special relationship with the United States and should be treated differently than most countries in the world. It is not a question of whether the countries will integrate but rather how they will integrate. They deplore that Mexico is only given 20,000 legal immigrants per year, the same as many small countries that have fewer direct relations. They attribute the large amount of undocumented migration to this lack of legal means to migrate. They believe this should be increased to at least 60,000.

They also propose a program of work visas:

“To a great extent, Mexicans seek permanent resident visas because it is the only door left open to them. If another option were available—such as a temporary worker visa—more people would opt for it. Evidence of the desire of Mexicans to return home is abundant. Rather than making it more difficult for migrants to come and go, a more

⁴¹ Massey, et al. make a similar point. However, the Asencio Commission in the 1980s concluded that this was the only long-term solution to migration pressures.

⁴² Philip Martin and Martin Ruhs, “Labor Shortages and U.S. Immigration Reform: Promises and Perils of an Independent Commission,” *IMR*, v 45 no 1, New York: Center for Immigration Studies, Spring 2011

February 25, 2013

enlightened policy would facilitate it by creating a visa that permits Mexicans to enter, live, and work in the United States without restriction for a period of two years. The visa would be renewable once in the lifetime of the migrant, but only after he or she had returned home for at least a year [emphasis added]. The visas would be distributed by a binational agency managed by the U.S. and Mexican governments, to which aspiring migrants would apply directly, thus getting employers and middlemen out of the self-serving business of labor recruitment and limiting the possibilities for corruption.

“To ensure the labor rights of migrants, visas would not be tied to specific employers or jobs but issued directly to the migrants themselves. A work visa tied to a particular job leaves the migrant vulnerable to exploitation. Under such circumstances, that person cannot exercise the worker’s most fundamental right: the right to withdraw his or her labor. Granting visas to migrants themselves and permitting them to change jobs would not only prevent unscrupulous employers from exploiting migrants but would make it difficult for them to use immigrants to lower wages of natives or cut corners with respect to occupational, safety, and health regulations. This policy would also leave migrants free to participate in unions, and they might be more willing to report violations of their labor rights.” (p. 159)

They recommend issuing 300,000 such visas each year. They would charge a \$300 fee for each visa. They would also regularize the status of the undocumented in the United States. They would use the money from fees and from increased taxes paid by migrants to cover costs at the state and local levels of immigrant integration.

They would also use funds to support development in sending regions of Mexico. They support replicating the types of transfers from the European Union to Spain and Portugal.

- A binational insurance agency to allow migrants to purchase insurance
- A binational development bank to support local infrastructure in Mexico
- Support for rural banking services in Mexico.⁴³

The Massey, et al. proposal is filled with good ideas. They would legalize the stock of undocumented and provide for a continuing flow of 300,000 per year, thus avoiding the fatal flaw of IRCA. They empower the workers by giving them the work visas directly and allowing them to find their own jobs wherever they can. They give workers full labor rights and understand that tying workers to employers is a form of indentured servitude.

Massey and his collaborators understand that for many Mexicans, a work visa that would allow them to explore the U.S. labor market—what in Mexico is called *aventurando*—would be sufficient. Many Mexican immigrants stay in the United States less than five years and then return to Mexico.

Getting intermediaries out of the system will save everyone a lot of money and improve the human rights of migrants, but involving the Mexican government in the process of

⁴³ They also believe that the United States should do away with the right to immigrate siblings. And they think if the United States were more willing to issue tourist visas to the parents of immigrants that fewer of them would be permanently immigrated to the United States.

February 25, 2013

issuing U.S. visas does not seem helpful and is likely to increase the possibility of corruption.

However, from the point of view of U.S. employers, their proposal for a two-year visa is unworkable, as most employers seek workers for longer periods due to training costs. In fact, interviews with employers who hire Mexican immigrants repeatedly demonstrate that one of the characteristics of the population that employers find attractive is the loyalty of the workers. In our proposal we extend the time of the visa. If Mexican workers return to Mexico after a couple of years and do not continue to work, we simply make the visa non-renewable.

VII. Comprehensive immigration reform: some basic principles

Comprehensive immigration reform is absolutely necessary to end the problems associated with having undocumented workers in the United States, and our proposed program for low-wage labor will not work without it. It is not our intention to detail what such comprehensive reform should look like. The Migration Policy Institute⁴⁴ has provided one such proposal, and we agree with many elements of it, although our proposal here for low-wage labor markets differs from their plan, as we discussed, which persists in requiring “temporary” and “provisional” workers to be tied to particular employers and industries and managed by a federal bureaucracy.

Everyone in the country needs legal papers. The goal should be to eliminate all incentives for employment of undocumented workers. This requires the legalization of the existing undocumented and a sufficient annual influx of legal immigrants at all skill levels. If everyone is legal, then there should be no opposition to employer sanctions or E-verify. However, not everyone needs to be a U.S. citizen or a Legal Permanent Resident. There can be a transitional period for many immigrant workers, where they determine whether they want to remain in the United States. We do support an eventual path to citizenship for those who fit into the U.S. labor market.

Some of the principles of immigration reform that we would suggest include:

1. Legalization of all current undocumented individuals
2. Path to citizenship for those who continue to work in the United States
3. Gradual implementation of an E-verify system after legalization of undocumented
4. Enforcement of employer sanctions, which should not be used to obstruct union organizing
5. Secure biometric identity cards
6. All workers have full labor rights, including right to change jobs and work for any employer
7. Enforcement of labor law standards
8. No industry-specific guestworker programs

⁴⁴ Meissner et al. 2006

February 25, 2013

9. Quarterly quotas of different worker types set by a commission⁴⁵
10. Minimize role of federal government after issuance of visas, rely on labor markets
11. Fees are charged to immigrants to cover the costs of the programs
12. Support development programs in migrant-sending countries to encourage options to emigration
13. Support training programs to help workers returning to their countries of origin

VIII. The North American work visa (NAVA) program for manually skilled labor

Our approach to providing a legal immigrant labor force for agriculture and other manually-skilled industries in the United States is developed in the context of NAFTA. When NAFTA was being debated in the early 1990s, the Mexican government was afraid to include labor mobility in the discussion, fearing that it would torpedo the trade agreement. As a result, while NAFTA likely increased migration to the United States from Mexico as the Mexican economy was restructured—dislocating workers in sectors that had been protected and subsidized, such as certain parts of agriculture—the agreement provided no orderly or legal way for this migration to occur.⁴⁶

There has always been a significant return flow of migrants going back to Mexico. In the years 2006 to 2009 there were estimated to be about 450,000 returning annually to Mexico.⁴⁷ Between 2005 and 2010, Pew estimated zero net Mexico-U.S. migration; that is, 1.4 million Mexicans moved to the US and 1.4 million Mexicans (including 300,000 U.S.-born children) moved to Mexico.⁴⁸

Not only is there a constant return flow, studies of Mexican migrants show that many remain in the United States less than 5 years. There would be significantly more circular migration if this flow were legalized, something that is impeded now by the high cost of crossing the border. Certain sectors of agriculture in the East and Midwest rely more on migrants from the Caribbean and Central America, but the dynamics are similar.

Given that about half of US farm workers admit to being undocumented immigrants,⁴⁹ and since the United States currently admits only 5,000 “unskilled” immigrants on work visas of a year or longer,⁵⁰ we propose a program based on academic research that will

⁴⁵ It is actually possible to figure out what core set of “foundation skills” is required for a broad range of jobs—using DOL’s O*Net system, which Aguirre International developed. And it is possible to relatively affordably screen potential immigrants to make sure they meet some minimum set of basic skills standards. Since our focus is on manually-skilled work, it will be different than measures of formal education.

⁴⁶ It would be more correct to attribute these changes not only to NAFTA but instead to the broader reforms of the Mexican economy instituted by the Salinas administration, including the opening to world trade.

⁴⁷ Data from population surveys taken in the U.S. and Mexico indicate that in recent years there has been a large flow of migrants back to Mexico, but the size of the annual return flow appears to be stable since 2006. Mexico’s National Survey of Employment and Occupation estimates that 433,000 Mexican migrants returned home from February 2008 to February 2009. For the same period in 2007-2008, 440,000 did, compared with an estimated 479,000 from February 2006 to February 2007.

⁴⁸ Philip Martin, *Migration News*

⁴⁹ US Dept of Labor, National Agricultural Worker Survey. Estimates by agricultural employers put this percentage much higher, at least in California.

⁵⁰ Center for Rural Affairs, “Piecemeal Approaches to Immigration Reform Misguided,” Lyons, NE, 2010
www.cfra.org

legalize and regularize the flow of low-wage workers into the United States from Mexico, Central America and the Caribbean and that does not discriminate against small employers.

VIII.1. *The NAVA Program: A Proposal*

The North American visa program for manually skilled workers would be part of a larger comprehensive immigration reform that we assume would also address requirements for highly educated workers, alter country quotas, reform family reunification, and eliminate guestworker programs.⁵¹ The NAVA program assumes that all undocumented adults and their dependents in the United States as of the cut-off date would be issued a green card or some type of provisional visa, subject to grounds of deportation if convicted of criminal conduct.⁵² This legalization of the undocumented would be a one-time event dependent on comprehensive immigration reform to improve the legal entry of migrants so as to avoid a repeat of the 1986 experience.

1. The NAVA program would initially apply to the countries of North America, including Mexico, the Caribbean, and Central America. These countries account for 75% of the undocumented currently in the United States.⁵³ This pilot program could be extended to other countries if the program is successful or if more workers are needed.
2. The basic element of the program is the creation of a W visa category, a temporary work visa for manually skilled workers, good for 5 years, which would allow a non-U.S. citizen to reside in the United States and seek employment from any qualified employer in the United States.
3. The U.S. Embassies regularly issue 5-year and 10-year tourist visas, and this program would assign the U.S. government the same role in issuing work visas.
4. The W visa would be the first work authorization document to be biometrically secure. Combined with some form of E-verify to check the list of individuals authorized to possess such a visa, it could become both reliable and protective of the privacy of individuals. The work identification program would apply to all jobs of 72 hours or more.
5. W visa holders could come and go from the United States.
6. W visa holders would have full labor rights but would not be eligible for government transfers. However, a means of providing health care under the new federal law would need to be developed.⁵⁴ They would be eligible to receive other insurance payments from funds that they and their employers paid into, including social

⁵¹ Our W visa program could also be adapted to high tech workers, because the H-1B program suffers from the same afflictions as agricultural guestworker programs. The current 500,000 H-1B workers are indentured to specific employers and are dragging down the wages of all tech workers. Ross Eisenbrey, "America's Genius Glut," *New York Times*, February 7, 2013

⁵² How this is done is obviously a major issue but it is not the focus of our proposal. Nevertheless, we include it because the legalization of the current undocumented is a precondition to creating a functioning legal program for manually skilled immigrants.

⁵³ Passel and Cohn 2009

⁵⁴ For example, assure their right to buy insurance on the state health exchanges by defining them as "lawfully permanent" for the Affordable Care Act.

security, disability, workman's compensation, and unemployment insurance. They could have drivers licenses.

7. There would be strict workplace law enforcement consistent across all states with respect to minimum wage, overtime, healthy workplaces and other labor law provisions.
8. A fee would be charged to workers for documents, which would be used to defray some of the costs implied by the reform. In addition, the undocumented in the United States could be additionally fined for having ignored immigration laws,⁵⁵ however, they would not be required to return to their countries of origin in order to apply for a visa—a waste of time and money for them and their employers.
9. At the same time as the undocumented in the US were issued visas or green cards, a program would be created to issue W visas to a group of new manually-skilled immigrant workers each year, the number to be determined quarterly by a commission, and based on business cycle numbers, unemployment data, and job openings. Some have suggested 200,000 or more per year when the economy is growing well. These would be allocated to the North American sending countries according to a formula based on such factors as the number of immigrants from that country in the United States and the population of the country. The commission would be composed of labor and business representatives, academics, federal employees in charge of government labor market surveys, and elected officials. Regular studies would be conducted to provide the information needed by this commission.⁵⁶
10. The visas would be issued by United States embassies and consulates in an attempt to prevent fraud, corruption, and extortion of migrants by intermediaries. Workers would apply individually and could present letters from U.S. employers, but this would not be required. They would need to demonstrate an upbringing and/or work history that qualified them to be considered “manually skilled,” for example growing up on a farm, being a skilled shoemaker, or having worked in food processing.
11. An aggressive program of enforcement against hiring undocumented workers would be enacted once the legalization documents were issued and the NAVA program implemented.
 - Employer sanctions—if employers break the rules, they would lose their licenses to conduct business in a consistent way across all states—have already passed in several states.
 - Regulate closely 3rd party hiring (e.g. farm labor contractors) to stop the effective avoidance of employer sanctions by the indirect hiring of the undocumented.
 - Create a joint enforcement program with Mexico and other governments to combat the abuses of recruitment activities⁵⁷
 - The focus of border enforcement would be on drugs or terrorists and not on workers. The proximate availability of a legal work visa combined with employer sanctions would discourage undocumented migration, and this would lead to lower federal costs at the border.

⁵⁵ We suggest a maximum of \$250-\$500 per year for 3-5 years

⁵⁶ The MPI task force proposed to create a “Standing Commission on Immigration and Labor Markets” to set numerical levels for all immigrant categories. It would be funded by fees charged for visas and would start at 1.5 million immigrants per year total. The idea of the commission is good, but its focus on specific job categories is not.

⁵⁷ Centro del Derecho del Migrante 2013

12. Employers would have no special obligation to engage in positive recruitment of domestic workers or engage in any other government hiring requirement. W visa workers would be treated the same as all other American workers.
13. After 5 years, a W visa holder would face three options:
 - If s/he had worked less than a minimum threshold percentage of time⁵⁸ (we propose 40%), then s/he would be ineligible to renew the visa. There should be a provision to allow him/her to apply for a new visa after some period of time.
 - If s/he had worked more than 40% time and could demonstrate that s/he is not “inadmissible,”⁵⁹ s/he would be eligible to apply for another W visa for an additional 5 years. The average farm worker works 50-60% of the year and might fall into this category.
 - If s/he had worked more than (we propose) 75% time, could demonstrate a current full-time job, and could demonstrate that s/he is not inadmissible, then s/he would be eligible to apply for LPR status. S/he could immigrate the immediate family if s/he so chose. S/he would become eligible for certain government transfers, such as food stamps and educational assistance for children. At the end of 10 years from having first received the W visa, s/he and the family would be eligible for all government transfers. Since in our plan all current undocumented workers not issued green cards would be issued 5-year W work visas, many of them would be eligible for LPR status at the end of 5 years, as many of them currently have full-time jobs.
 - An additional provision could be added to allow all W visa holders who continually maintain the visa for 10 years to apply for LPR status. This would provide a clear path to citizenship for all W visa holders.
 - Neither spouses nor minor children currently in the United States would be required to work. Children could apply to extend this provision to the age of 24 in order to attend college.

This approach encourages W visa holders to work in the United States, and rewards them for working more. If you work a minimum amount, you can renew the W visa, so you can keep coming and going from your home country. This enables back and forth migration and encourages people to keep their families in Mexico or other sending country, especially if they have seasonal jobs. Of course if a worker joins street corner labor markets and works off the books he is never going to make the minimum.

A program would also be developed to support development efforts in migrant sending regions. This was proposed for NAFTA in line with European programs but was not included in the final agreement. The commission regulating the numbers of visas would also contract for research in both the United States and the migrant sending countries in order to evaluate the functioning of the program and any problems with extortion of workers in their home countries.

⁵⁴ This could be averaged over the 5 years.

⁵⁹ The criminal grounds of inadmissibility are incredibly broad and include old, minor convictions or even convictions that have been expunged or vacated. Because under current law waivers for these past mistakes are very limited, immigration reform must increase the availability of waivers of inadmissibility to ensure that deserving individuals can remain with their families and continue employment.

February 25, 2013

To summarize our proposal:

- Legalize the undocumented, charge them fees—just give them W work visas or in some cases green cards and then evaluate the situations of those with W visas
- Set up to admit legally a group of manually-skilled workers every year, issuing them work visas good for 5 years
- Number admitted adjusted quarterly by a commission
- No special recruitment of U.S. workers, no AEW, just the labor market
- Workers can change jobs, work for any employer, come and go from United States, have all labor rights, can have drivers licenses, can collect on insurance payments (UI, SS, WC, SDI), but not welfare
- At the end of 5 years, the worker can apply for another 5-year visa or for a green card, depending on his/her work history
- Move toward secure documents for everyone, E-verify, employer sanctions
- The costs of the program to the states will be identified and covered by the federal government in part from the fees charged to the immigrants
- Path to citizenship through green card at 5 years or 10 years.

IX. Frequently Asked Questions

Won't issuing work visas to the undocumented immigrants reward illegal behavior through a form of amnesty and won't this just encourage more illegal migration?

A program of legal immigration for manually-skilled labor will not work without first legalizing the existing undocumented workers in the United States. As we have discussed, the 1986 IRCA legalization failed to provide for subsequent migration and so the undocumented labor force accumulated over the last 25 years. It was a policy failure. But such legalization is still a precondition to fixing the problem.

As former Secretary of Labor Ray Marshall has argued:

“The most common objection to allowing long-time unauthorized immigrants to become authorized residents and earn citizenship is that it rewards unauthorized behavior. It is true, of course, that the immigrants’ behavior was unauthorized, but the law was so poorly constructed and haphazardly enforced that unauthorized immigrants have many co-conspirators. These include Congress, which passed a seriously flawed law and failed to adequately fund an effective enforcement strategy; businesses that hired workers with clearly fraudulent documents and, along with members of Congress, pressured officials not to enforce immigration laws; banks that issued credit cards to unauthorized immigrants; the IRS, which gave them taxpayer ID numbers; the public, which sympathized with hardworking immigrants who seemingly did little, if any, harm and purportedly only took jobs natives wouldn’t take; various sympathetic support groups, who thought immigrants deserved the right to seek the American dream; labor unions—formerly among the staunchest opponents of immigrant worker programs—who now actively organize and protect unauthorized workers; and public officials in Mexico, who emphasize both the immigrants’ constitutional right to migrate and

February 25, 2013

America's dependence on unauthorized immigrants and have adopted measures, like photo ID cards, that facilitate unauthorized immigrants' ability to work and live in the United States. Given numerous co-conspirators, it would be hard to assign culpability only to the immigrants."⁶⁰

So let us acknowledge that the laws did not work, levy fines on the undocumented if some punitive action is necessary to move on, and legalize everyone. By providing a legal mechanism for low-wage workers to enter the country going forward and by actively enforcing prohibitions on hiring undocumented workers, we can vastly diminish undocumented migration. Only by removing incentives to hire undocumented workers can we hope to gain control over immigration.

Won't all the farm workers leave agriculture if they are legalized?

Agricultural interests have argued that comprehensive immigration reform must include guest worker provisions that would periodically admit foreign-born workers to work only in agriculture because of their fear that the current farm labor force would, once legalized, immediately go to work in other sectors of the economy. The evidence for this perceived need is based on analyses of NAWS data from 1989 to the present that purport to show that there was a massive exodus of legalized immigrant workers ("SAWs") post-IRCA; it is unfortunately based on flawed analyses of the underlying NAWS data.⁶¹

In actuality, about one-third of the farmworkers who had been legalized under IRCA moved out of fieldwork within the first 5 years; however, some of them moved upward within agriculture—into employment as supervisors, managers, and farm labor contractors, or into technical jobs as mechanics, equipment operators, and pesticide applicators. Looking at the NAWS data on the labor market behavior of the farmworkers legalized under IRCA, it appears that over the 20-year period after being legalized about 1.9% per year of the SAWs left agriculture, by no means a massive exit. Moreover, a portion of the SAWs—who were on average 29 years old when legalized under IRCA—who are now in their late 40's and early 50's actually "exited" agriculture because they died or became disabled. Standard demographic tables show that in the two decades after turning 30, about 4% of any cohort of workers similar to the legalized farmworkers (male Hispanics) will have died and that 6% will have become permanently disabled. Federal policy is not a means to address this issue, except perhaps by requiring agricultural employers to improve working conditions and improve their workers' access to health insurance.

Martin and Taylor also failed to note an important fact about immigrant integration, namely that a portion of the US citizen labor force currently working in farm work is made up of SAWs—about 17% of them successfully naturalized over the years (although the English-language requirements made it difficult for many to do this). They

⁶⁰ Ray Marshall, *Getting Immigration Reform Right*, EPI Briefing Paper #186, Washington DC: Economic Policy Institute, March 15, 2007.

⁶¹ Martin 2012; Martin and Taylor 2013

February 25, 2013

also ignore that many of the current green card holders (a very large group) were also SAWs when first admitted.

Agricultural industry proposals regarding guest workers involve special pleading for agriculture as unique, calling on policymakers to enact sector-specific provisions in order to solve an anticipated labor problem that very probably will not materialize. In fact, the typical undocumented farmworker who would achieve legal status under a new immigration reform will find it even more difficult than the IRCA-era SAWs did to find employment in other sectors of the economy, because their limited English (93% speak no English, 6% "a little") and their limited education (62% have less than 12 years of schooling) will make it difficult for them to access better jobs than those they have in agriculture. Labor market dynamics will tend to keep them working in agriculture much more effectively than questionable federal requirements mandating that they work in a particular sector of the labor market.

Of course there will be impacts on the current farm labor force stemming from legalization, but they will be gradual and manageable. Given the nature of the 21st century labor market in the United States, we project that the result of legalizing farmworkers is likely to be that about one out of five (20%) of the newly-legalized leave agriculture during the first 5 years. Subsequently, the attrition rate among legalized farmworkers is likely to be only 1% per year—or about two-thirds of what it was after IRCA.

Proactive efforts by agricultural employers to provide upward career pathways in agriculture, or improvements in working conditions to reduce injuries and illness so as to reduce "exits" due to morbidity or mortality, can gradually make the demographics of the farm labor force approximate that of the overall labor force. New admissions of foreign-born workers may be a necessary or desirable feature of future policy, but there is no reason to anticipate the need for massive infusions of foreign-born labor into agriculture. As noted previously, agricultural workers are a small share of the undocumented and agriculture has successfully recruited from the normal migrant flow for 50 years. Some mild labor shortage is likely beneficial for the agricultural labor market, encouraging innovation. Our proposal rewards employers with multi-year visa workers who can develop higher productivity.

And as a reasonable means of shifting from the costly, bureaucratic, flawed H-2A program to a more market-driven contemporary one, there is no reason for the foreign workers who are admitted to be artificially constrained in terms of where they work. These newly-admitted "manually skilled" foreign workers should have access to any segment of the US labor market where there is need for workers willing to work long hours for low pay. And if a legal workforce can access education and eventually improve their labor market mobility and incomes, well, isn't that what we hope for in America?

Won't the continued use of immigrant labor take jobs from Americans and drive down wages?

This is a much-studied question where the results have changed over time as the sophistication of the analysis has improved. It turns out that earlier estimates of the impact on native-born workers that showed large negative effects were mistaken because they had assumed among other things that immigrants and natives with similar educational levels were perfect substitutes for one another, which is not the case. For many reasons immigrants are actually complements to native-born workers. Though at some point immigrants take over jobs previously held by the native-born—whether through attrition or through conscious employer policies—their overall effect, even on those native-born workers, is positive because the economy grows and evolves to make the groups complements to one another.

New estimates of the impact of immigration on wages show that from 1994 to 2007 immigration raised the wages of U.S.-born workers relative to foreign-born workers by a small amount but lowered the relative wages of earlier immigrants by almost 5%.⁶² In other words, the group most impacted by immigration is earlier immigrants. This outcome is true for all educational groups, even for the group of U.S. workers without a high school degree who would seem to be in most direct competition with the large amount of immigration from Mexico.⁶³ The exception to this result occurred in the states with the highest amount of immigration, California and Texas, where native-born men without a high school education, in particular the middle-aged, did experience a negative impact from immigration, even though native-born women did not.

In the case of agriculture, the extreme difficulty farm employers have in getting native-born workers to take and keep agricultural harvesting jobs at prevailing wages when immigrants are not available⁶⁴ suggests that we have largely passed the point where immigrants are competing with U.S.-born workers for such jobs. The positive recruitment requirements of a guestworker program such as H-2A are largely a sham. Employers can be required to list all jobs with the Employment Service, providing information to domestic workers who want to apply, but requiring employers to “recruit” domestic workers has proven to be a costly, fruitless, and unenforceable exercise.⁶⁵ A study done for the U.S. Department of Labor over 20 years ago interviewing U.S. workers applying for unemployment benefits found that they were not interested in agricultural jobs at a wage below three times the minimum wage, or what would now be around \$25 an hour. It is unrealistic to think that agricultural employers could more than double wages and still be competitive in the world market. Immigrants in agriculture are highly

⁶² This discussion is based on Shierholz 2010

⁶³ U.S.-born workers without a high school degree are now only about 5% of the U.S. workforce, so it is not the sizeable group it once was.

⁶⁴ For some recent examples in Georgia and Colorado see Greg Asbed and Sean Sellers, “The High Cost of Anti-Immigrant Laws,” *The Nation*, October 11, 2011, and Kirk Johnson, “Hiring Locally for Farm Work is No Cure-All,” *New York Times*, October 5, 2011.

⁶⁵ Testimony by Carol House at the California Board of Food and Agriculture in August 2012 showed that of 35,000 domestic workers referred to growers by state employment departments nationally in 2010, 68% rejected the jobs outright and 27% either didn't show up for work or left before it was done.

February 25, 2013

complementary to U.S.-born workers, since the immigrants generally have low levels of formal education and do not speak English.

Won't having a Commission set immigration numbers be too bureaucratic or political to be workable?

The commission idea has been criticized by employer groups as “unworkable”⁶⁶ because of imagined bureaucratic delays that would not allow for rapid responses to labor requirements. While it is true that it would be extremely difficult to assess labor needs in specific industries,⁶⁷ a commission could be charged with simply setting quarterly targets for large classes of visas. If we abolish guestworker programs, then setting a target for a class of visa like the W visa for manually-skilled workers would not be difficult, as commission staff could monitor job openings and unemployment rates across a large set of jobs and industries that employ such workers. These targets would doubtless improve over time with experience.

Of course there is nothing preventing employers from recruiting workers from the sending countries and having them apply for W visas under the commission model. If employers pursued this through the village networks represented by their current immigrant employees, then they would have the best chance of having the supply of labor needed. For example, agricultural employers could identify villages that had workers in U.S. agriculture and write letters for new immigrants from such villages that their current employees recommended. Recognizing the distinct origins of their labor force and involving themselves in the realities of village network migration would be an improvement over just assuming that thousands of workers will just appear for a particular harvest.

Agricultural employers could also recruit agricultural labor in northwest Mexico. Although Martin and Taylor argue that demand for hired labor in Mexican agriculture is rising and real wages are rising faster in Mexican agriculture than in U.S. agriculture, it is hard to believe that if Mexican agricultural workers had access to legal visas to work in the United States that a significant number would not leave jobs in Mexico paying US\$6.00 a DAY for jobs in the United States paying \$10.00 an HOUR.

⁶⁶ Steven Greenhouse, “Business and Labor Unite to Try to Alter Immigration Laws,” *New York Times*, February 7, 2013.

⁶⁷ Martin and Ruhs 2011

X. Conclusion

The U.S. government often issues tourist visas for 5 or 10 years, wishes the foreign visitor a safe trip, and logs his entry into the country (it could do a better job tracking exits). It doesn't force tourists to go only to San Francisco or follow them around on their journeys. The same principle should be applied to immigrant workers. Give them a 5 year visa, wish them good luck finding work, and keep track of them through entrances and exits and employment records. The U.S. government is not well suited to managing labor markets and all workers in the country should be treated equally.

Such a program is fair to the immigrants because it gives them full labor rights, allows them to change jobs if employers are abusive, and permits them to come and go from the country as they like. It is fair to employers because it provides all employers an equal opportunity to access this labor pool and places no additional cost burdens on them just because they have hired immigrants. And it is fair to domestic workers because it removes the exploitable condition of "illegal or undocumented" labor from the country and replaces it with workers who have labor rights, can join unions, cannot be deported because they speak up for themselves, whose numbers are regulated by an independent commission, and who have a potential path to legal residency and citizenship.

Immigration reform is essential and gives us the opportunity to remove the problems associated with undocumented immigration: no more migrants crossing Arizona deserts or dying in them, no unlicensed drivers, no fear among migrants of authorities or of reporting crimes, no uncertainty for businesses about whether their labor force will be removed. However, we have to give both the migrants and the employers the correct incentives in order to avoid continued undocumented migration and employment. A guestworker program that is unworkable from the point of view of smaller employers and undesirable from the point of view of workers will not resolve the problems. Let us legalize the village network migration system that has functioned well over the past 40 years and move forward with a completely legal and documented labor force.

It has been shown time and again that immigration lifts all boats, that immigrants, especially manually-skilled immigrants, are largely complementary to domestic workers, expanding the economy and increasing tax revenue to support Social Security and other government programs. The United States should acknowledge the increasing integration of North America and create a flexible North American work visa to solve the problem of undocumented migration and to supply the labor needed by U.S. agriculture and other manually-intensive industries at the least possible cost and with the least government involvement.

February 25, 2013

List of Works Cited

Greg Asbed and Sean Sellers, "The High Cost of Anti-Immigrant Laws," *The Nation*, October 11, 2011.

"Asencio Commission" *Unauthorized Migration: An Economic Development Response*. Washington DC: Commission for the Study of International Migration and Cooperative Economic Development, 1990.

Maxwell Brem, *Migrant Workers in Canada: A review of the Canadian Seasonal Agricultural Workers Program*. Policy Brief. Ottawa: The North-South Institute. 2006. Contains a list of North-South Institute studies of the program.

CA Farm Bureau Federation, *Walking the Tightrope: CA Farmers Struggle with Employee Shortages*, Agricultural Employment Survey Results, Sacramento, 2012

Center for Rural Affairs, *Piecemeal Approaches to Immigration Reform Misguided*, Lyons, NE, 2010
www.cfra.org

Centro del Derecho del Migrante, *Recruitment Revealed*, Washington, DC, 2013

Jorge Durand, "The Bracero Program: A Critical Appraisal," *Migración y Desarrollo*, Second Semester, 2007

Susan Gabbard, Edward Kissam, & Philip Martin "The impact of migrant travel patterns on the undercount of Hispanic farm workers. In *Proceedings of the Bureau of the Census Research Conference on Undercounted Ethnic Populations*. Richmond, VA: Bureau of the Census. 1993.

Steven Greenhouse, "Business and Labor Unite to Try to Alter Immigration Laws," *New York Times*, February 7, 2013.

Justice for Migrant Workers, "The Seasonal Agricultural Worker Program",
<http://www.justicia4migrantworkers.org/bc/pdf/sawp.pdf>

Natasha Iskander and Nichola Lowe, *The Politics of Skill: Rethinking the Value of "Low-Skilled" Immigrant Workers*. Washington DC: Immigration Policy Center. March 2012

Kirk Johnson, "Hiring Locally for Farm Work is No Cure-All," *New York Times*, October 5, 2011.

Bill Keller, "Show Me Your Papers," *New York Times*, July 1, 2012.

Edward Kissam, "An Evaluation of Census 2010 Coverage in Rural Areas of California with High Concentrations of Immigrants", *Proceedings of the "Survey Research with Hard-to-Reach Populations" Conference*, American Statistical Association, November, 2012.

Ray Marshall, *Getting Immigration Reform Right*, EPI Briefing Paper #186, Washington DC: Economic Policy Institute, March 15, 2007.

Philip Martin, *Migration News*

Philip Martin, "Hired Farm Workers," *Choices*, v 27 no 2, 2nd quarter 2012

Philip Martin and Martin Ruhs, "Labor Shortages and U.S. Immigration Reform: Promises and Perils of an Independent Commission," *IMR*, v 45 no 1, New York: Center for Immigration Studies, Spring 2011

Philip Martin and J. Edward Taylor, *Ripe with Change: Evolving Farm Labor Markets in the United States, Mexico, and Central America*. Washington DC: Migration Policy Institute. February 2013

February 25, 2013

Douglas S. Massey, Rafael Alarcon, Jorge Durand, Humberto González, *Return to Aztlan: The Social Process of International Migration from Western Mexico*, Berkeley: University of California Press, 1987

Douglas S. Massey, Jorge Durand, and Nolan J. Malone, *Beyond Smoke and Mirrors: Mexican Immigration in an Era of Economic Integration*, New York: Russell Sage Foundation, 2002.

Doris Meissner, Deborah W. Meyers, Demetrios G. Papademetriou, Michael Fix, *Immigration and America's Future: A New Chapter*. Report of the Independent Task Force, Spencer Abraham and Lee H. Hamilton, co-chairs. Washington DC: Migration Policy Institute. September 2006.

Richard Mines, *Developing a Community Tradition of Migration to the U.S.*, Center for US-Mexican Studies, UC San Diego, 1982

Sandra Nichols, *Saints, Peaches, and Wine: Mexican Migrants and the Transformation of Los Haro, Zacatecas and Napa*, California, PhD Dissertation, University of California, Berkeley, 2002

Jeffrey S. Passel and D'Vera Cohn, *A Portrait of Unauthorized Immigrants in the United States*. Washington D.C.: Pew Hispanic Center. April 2009.

Jeffrey S. Passel, *New Patterns in US Immigration, 2011: Uncertainty for Reform*. Presentation at the University of California in DC Conference on Immigration Reform: Implications for Farmers, Farm Workers, and Communities, Washington, DC, 12-13 May 2011.

Kerry Preibisch, "Pick-Your-Own Labor: Migrant Workers and Flexibility in Canadian Agriculture." *International Migration Review*. v 44, no 2, Summer 2010, pp 404-441.

Kerry Preibisch, "Migrant Workers and Changing Work-place Regimes in Contemporary Agricultural Production in Canada." *International Journal of Agriculture and Food*. v 19, no 1, pp 62-82.

Heidi Shierholz, *Immigration and Wages: Methodological advancements confirm modest gains for native workers*. Washington DC: Economic Policy Institute, Briefing Paper 255, February 2010.

US Congress, House of Representatives, Committee on the Judiciary, Subcommittee on Immigration Policy and Enforcement. *H-2A Visa Program: Meeting the Growing Needs of American Agriculture?* Hearing. April 13, 2011.

US Department of Labor, *National Agricultural Worker Survey*. Various reports and analyses.

US General Accounting Office, *The H-2A Program: Protections for US Farmworkers*. PEMD 89-3. Washington DC: GAO. October 1988.