



# Federal Administration Escalation in Enforcement and Congressional Stalemate on Immigration Policy:

Impacts on California Farmworkers, Employers, and Communities

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# Developments in Immigration Policy and Enforcement Since Last year: Bad News!

- This year-- a more threatening storm over the past 12 months as the administration broadens its war against California's immigrants, communities, and institutions.
- Obvious impacts on supply of farm labor! But we need to look beyond at the "big picture"
- "Labor Supply" is not simply a neatly-defined variable. To assess policy impact on labor market dynamics we also need to understand the family lives of more than 750,000 California farmworkers and 600,000 of their family members (more than half are US citizen children)
- Dynamic impacts—hitting a wide swath of businesses, community institutions, and service providers throughout CA agricultural counties. Negative financial impacts for all.
- The stakes are critical for everyone in rural communities, not just FW's and agribusiness.



## Developments in Congress: Not surprising to see more bad news!

- Stalemate and no progress toward agriculture-friendly immigration policy
- Worrisome simplistic political framing of immigration policy debate as simply supply-demand and wages (massive influx of guestworkers vs. higher hourly wages )
- Policy analysis and solutions must be based on diligent consideration of real-world dynamics of social life, community life, and labor market rather than ideological fantasy or opportunistic posturing.
- Finally to wind up—a few reflections on the current prospects for innovative solutions: moving beyond 75 years of immigrant advocate-agribusiness tinkering with details of a dysfunctional guestworker program.

# Escalation in the war against immigrants: ICE targeting farmworkers and California agribusiness

- ***Madera***-- Radio Bilingue interview with a *mayordomo* who had been stopped around 3AM (and released), who saw another farmworker van intercepted near Madera, and 8-10 farmworkers being questioned
- ***Bakersfield*** Californian ICE agents setting up pre- dawn checkpoints on Highway 223, the main artery between the farmworker communities of Lamont and Arvin, where they've captured field hands on their way to work. Racial profiling— Mexican-origin driver (legal) questioned re having given any rides to FW's.
- ***Taft***, Californian a group of five farmworkers stopped on their way to work by an unmarked SUV, driver with documentation, but the rest detained
- ***Manuel Cunha and others***, I-9 audits targeting agricultural employers "Up to 10 agribusiness employers in the state's San Joaquin Valley... These ICE audits have had nothing but a chilling, damaging effect," Apparent focus on packinghouses. Reports from Bee Citrus, Fowler, and Stanislaus County.
- Numbers of detentions modest—but far-reaching ripples....and ongoing....

# Politicized Enforcement of Immigration Law

- Escalation in 2018—retaliation against California state government? ICE Acting Director Homan after SB 54 was signed by Gov. Brown: *"California better hold on tight"*.
- Homan says the new approach is still to arrest identified "criminals" but evidence shows not. Profiling is not overtly racial (but IS socioeconomic-- based on clothing/"look" or vehicle driven, time of day on road, places where immigrants gather)
- Deception about detentions at schools-ICE web FAQ: *"ICE officers and agents may carry out an enforcement action at a sensitive location without prior approval from a supervisor in exigent circumstances related to national security, terrorism, or public safety, or where there is an imminent risk of destruction of evidence material to an ongoing criminal case."*
- Late February, 2018 statement from ICE spokesman James Schwab on detention of 4 men who had stopped at a Merced Circle K to get coffee , *"All ICE operations are targeted and lead-driven...and we do not conduct indiscriminate operations."*
- Early March, 2018 Schwab resigns from ICE saying he could no longer remain in his job after agency officials made false and misleading public statements about operation "Keep Safe."

# ICE Escalation: “Business as Usual”? Or Escalation In the War Against Undocumented Immigrants?

- *Washington Post* reports more than a doubling in non-criminal arrests in 2017—nationally up to 37,734 during the year.
- By October, 2017 on the average, 51 percent of the daily population in detention were marked as “non-criminal,” (*National Immigration Justice Project*, March, 2018).
- The dramatic increase in collateral arrests of non-criminal immigrants lacking legal status highlights increase in vulnerability from the 13% of undocumented FW’s who previously fell into ICE enforcement priorities 1-2 or recent arrivals (in U.S. <2 yrs.) subject to expedited removal. Now the threat extends to the 87% who simply lack status.
- Detentions in San Joaquin Valley in 2018—40% increase in January, 115% increase in February compared to same period in prior year.
- Is escalation in ICE enforcement and shift in tactics part of efforts to run up the numbers making it easier for ICE to simulate efficacy, “success”? (FY18 budget up 10% but negotiations are underway for FY19)
- Or is ICE escalation really more street theater? Amplification of perceived Signaling piggy-backed on news coverage of detentions and word-of-mouth?

# Maybe “street theater”? If so, it works....

- ICE Director Thomas Homan has said that immigrants who have entered the U.S. illegally “should be afraid.”
- Expanding the scope of the population perceiving itself at risk—from deportable felons to entire undocumented population, including legal permanent residents
- Amplifying magnitude of perceived risk—Frightening populations works. The more personally threatening the outcome the greater the differential between actual and perceived risk.
- Structural characteristics of Mexican immigrants’ social networks (many nodes, dense pathways, reliance on “weak ties” for job search”) make them particularly vulnerable to manipulation via media coverage of ICE street theater
- Some police strategists believe that high-visibility policing has a particularly high impact on crime and ICE considers immigrants without legal status criminals.
- But the strategy is perverse. Being an undocumented immigrant living in a rural community and working as a farmworker is not “criminal behavior”. It’s a politically-defined situation—impossible to change (arbitrary criminalization—based on Trump rhetoric).
- Agricultural employers’ criminality? Same story

# Expanding the Psychological War: Targeting Legal Low-Income Immigrant Families

- DHS/USCIS draft regulations on admissibility of family members revise interpretation of what might make a person a “public charge”—from “primarily dependent” on federal programs to anyone “who is likely at any time to use or receive one or more public benefits.”
- Prospective determinations of admissibility now includes factors considered negative such as: limited-English, having a medical condition, and use by any family member (including the 80% of MSFW children who are US citizens) of: Medicaid/Medic-Cal, CHIP, WIC, SNAP, and others.
- Potentially affects about one-third of CA MSFW's (both naturalized and green card) who have a pending petition for admission of a family member). Half have HH incomes <125% LLSIL. Half have used a means-tested program. Three-quarters of FW families w/ children used WIC.
- DHS's draft NPRM admits “*The action has the potential to erode family stability and decrease disposable income of families and children because the action provides a strong disincentive for the receipt or use of public benefits by aliens, as well as their household members, including U.S. children.*”
- Reports of drop-off in farmworker use of health services based on early rumors about draft regulations, including the possibility of green-card holders being deportable based on use.

# Another Anti-immigrant Weapon: Census 2020 Question on Citizenship

- **Labor market impact uncertain**—but the Q. adds to aggregate burden of fear, contributes to “hunkering down”.
- **March 26 Memo from Sec. of Commerce Ross** OKs DOJ request to add the Q. although Bureau research shows extreme apprehension among immigrants, likely non-response.
- **WSJ, April 3** Ross proposes to overcome sample bias from non-response by matching census responses to administrative records to “correct” falsified answers . Untenable!
- **Data from the proposed question** Not viable for analysis of citizen voting-age population (CVAP) as alleged. Flow of ~730,000 naturalizations per year makes a single “snapshot” of citizen/non-citizen mix instantly inaccurate. CA and 11 states sue.
- **Overall California Impact** Loss of one Congressional seat and annual loss of more than \$900 million in census-driven federal revenue for social, education, and other programs.
- **California impact greatest in rural counties** where the lowest proportion of foreign-born have naturalized (those w/ least education, limited in English—farmworkers)

# Round 1 in the Congressional Stalemate: H.R. 3711-The Legal Workforce Act

- Salvo from the hardcore anti-immigrants—Lamar Smith, co-sponsored by Congressman Goodlatte (VA), Labrador (ID). September 8, 2017
- Delayed phase-in of mandatory E-verify for smaller employers. Still longer delay for agricultural employers—30 months. Purportedly a concession to agriculture.
- Prelude to an orchestrated fanfare?
- Op-ed from Goodlatte. September 6, 2017 announcing that he will soon introduce the Agricultural Guestworker (AG) Act.
- Goodlatte's office press release frames the proposal as a long-awaited solution to agricultural labor shortages.

# Round 2 in the Congressional Stalemate: H.R. 4092-The Agricultural Guestworker (AG) Act

- September-October 2017. H-2C guestworkers authorized for year-round work. Visa portability within agriculture.
- Extends term for initial visa to 36 months and, after initial touchback, renewals for up to 18 months and periodic touch-backs to maintain illusion of seasonality.
- Fanfare! The pig-in-lipstick gambit- Would agriculture “buy” the sleight-of-hand?
- H-2C option for current unauthorized farmworkers to secure employment authorization but without a pathway to LPR status or citizenship. But no provisions to protect unauthorized spouses or undocumented minor children of H-2C workers or to provide them employment authorization.
- No analysis of impacts on female farmworkers temporarily out of labor force due to childbearing or child care responsibilities who would not qualify for H-2C.
- Allows admission of up to 450,000 guestworkers per year.
- But also—some low-visibility provisions. A delay of 2 years to implement. And H-2C “at will” employment conditional on implementation of mandatory E-verify.

# The AG Act from the perspective of MSFW advocates and farmworkers: problematic to say the least

- Bracero-style provisions for withholding 10% of H-2C workers' wages until they return to their country of origin (including the long-term settled workers)
- No requirements for employers to provide housing for guestworkers despite housing crunch in remote areas as well as major areas such as the Salinas Valley
- Transfer of regulatory enforcement from USDOL to USDA
- Mandatory arbitration to resolve labor disputes
- Bars LSC-funded organizations from representing H-2C workers
- Weakens already-illusory requirement of positive recruitment by requiring only attestation
- Labor law violations by association members would not disqualify the association from future visa petitions

# Round 3 in the Congressional Stalemate: H.R. 4760-Securing America's Future Act (SAFA)

- Introduced January 10, 2018 by the same anti-immigrant representatives: Goodlatte, Labrador, with addition of McSally (AZ), and McCaul (TX), and Sensenbrenner (WI)
- Presented as a solution to protection for Dreamers/DACA recipients (3-year employment authorization) but unacceptable to them because it lacks a pathway to citizenship
- Doubles down against immigrants—restrictions on legal immigration, criminalization of unlawful presence, increases in interior enforcement
- Incorporates provisions of AG Act but-- déjà vu—a core provision is still mandatory E-verify.
- Tom Nassif, Western Growers, “Continuing to work with him is a dead end....The only thing we can do is prevent the Goodlatte bill from being passed and hope that we can present a bill that works for all of agriculture.”
- Bryan Little, California Farm Bureau Federation “We don't think it's a solution that fixes our problem in California”
- UFW-“Taking agriculture back to the '40's...”

# Congressman Goodlatte's Coda or Swan Song? More Perspectives on the SAFA Gambit

- CIS—"A worthy compromise..."
- Numbers USA "would end chain migration..."
- DHS Secretary Nielsen "...reflects many of the policy principles and priorities identified by DHS's frontline personnel which the Administration has advocated for this past year"
- Sarah Huckabee Sanders, ""...addresses the principles that we laid out and is something that we would support"
- Carlos Cubelo-"reads as if it was drafted by Steve Bannon."
- The Heritage Foundation, "Rather than removing illegal immigrants who have no legal right to remain in the U.S., it rewards law breaking with temporary legal status and work authorization"
- Alex Nowrasteh (Cato Institute) "The House's terrible immigration framework"
- National Sustainable Agriculture Coalition (re the Ag Act provisions), "...comprehensive immigration reform is necessary to develop a path to legalization for existing undocumented immigrants, and allow for an annual influx of legal immigration (at all skill levels) that adequately serves the needs of American industries including farming. "

# Expediency and Compromise Have Failed: Why Not “Think Outside the Box”?

- Several of us who had done extensive research on Mexico-U.S. migration and farm labor supply, and farmworker settlement in rural U.S. communities began intensive exploration of alternatives to H-2A. We developed a detailed policy framework in 2016.
- We shared our analysis and proposal with fellow researchers, policy analysts, H-2A litigators, immigrant advocates, and several “think tanks” and agribusiness advocates in 2016. We were told our proposal was interesting, maybe even promising, but not politically viable. And we agreed.
- The National Sustainable Agriculture Coalition agreed with us that the long-term viability of U.S. agriculture would be impossible without sustainable agricultural communities. They opposed the AG Act in Fall, 2017
- February, 2018 we convened talks with others who saw the bill’s terrible compromises were not a solution. We think there’s no reason we shouldn’t keep on trying.
- Colleagues from the divided worlds of agribusiness and immigrant policy advocacy will continue to discuss how to move forward during the rest of 2018, preparing for 2019.

# Key Considerations Underlying our North American Agricultural Visa Proposal (NAAV)

- The genuine shortage of agricultural labor can't be adequately addressed by raising hourly wages. Few workers who have grown up in the U.S. want to do farmwork.
- The current labor shortage will continue to worsen as the IRCA-legalized workforce ages, border control intensifies, and potential new *migrantes'* worries about the anti-Mexican political environment escalates.
- There IS need for admissions of foreign-born workers—but not for an uncapped guestworker program which would destabilize communities. Attrition in the farm labor force (from death, disability, occupational migration) can be well estimated. It is unlikely that more than 130,000 admissions per year would be needed.
- The costs of the H-2A bureaucracy represent a real burden to agribusiness—particularly to smaller producers. And the benefits to guestworkers are largely illusory. Public \$ would be better spent on more effective enforcement of existing worker protections.
- Review of the trade-offs between labor mobility and access to year-round employment vs. H-2A benefits show that newly-admitted foreign-born workers would end up ahead economically and that their employers might save up to 40% in labor costs.

# A Weakening Rationale for H-2A: Progress Toward Solutions and Unfounded Fears

- There's little need for foreign workers admitted only for peak season work. Year-round worker availability is important for many ag sub-sectors (e.g. dairy, nursery). California workers averaged 205 days of FW/year in 2013-2014.
- Still there are peaks and troughs in labor demand, but they're not entirely simultaneous. Strategic deployment of labor is very helpful—extensive use of FLC's move crews from one crop to another in California. Associations serving as H-2A employers of record in NC and WA use a similar approach with some success.
- There is no rationale for linking a newly-admitted foreign worker to a single employer. Visa portability and a pathway to citizenship allows more efficient deployment of the labor force (less frictional unemployment).
- The fear of post-legalization exodus of FW's is unfounded—few of the currently unauthorized farmworkers have easy access to non-farmwork jobs. Relatively few want to leave farmwork.
- Newly-admitted workers might reasonably be required to work some number of days in agriculture each year for a period of time (e.g. 4-6 years as in the AgJobs proposal) but be free to work for non-agricultural employers also.

## NAAV Provisions which Serve to Stabilize the Farm Labor Force and Local Economies

- ***Undocumented FW's in the U.S.*** need access to permanent legal status and citizenship and legalization options for their spouses and minor children. If these provisions are absent and if “touchback” provisions are included, the yield of employment-authorized FW's will be miniscule.
- ***Newly-admitted foreign workers*** also need access to permanent legal status and citizenship and be allowed to bring their spouses and minor children with them.
- ***Employer investments recruiting, training, and retaining newly-admitted workers will have a better chance of paying off.*** Settlement contributes to labor force stability and local community well-being (more \$ circulating locally, less seasonal swings in local community economy).
- ***Visas for newly-admitted foreign-born workers would be dual-intent visas*** allowing newly-admitted workers to travel back and forth to their hometowns and settle in the U.S. or not. Some of newly-recruited foreign-born workers will inevitably be “target earners” who use U.S. earning to set up hometown businesses.
- Analysis of levels of return migration and flow into non-agricultural industries can provide input about appropriate level of admissions in successive years.

# Moving Toward A Viable Solution

- The obvious barrier to progress is anti-immigrant sentiment (even though there are few jobs US workers actually want that foreign-born workers could take from them).
- Nonetheless, a new policy framework could include provisions designed to actually make farmwork more attractive to U.S. workers (e.g. extended UI for the seasonally-unemployed).
- Agribusiness could strategically deploy some of their savings from burdensome H-2A requirements to augment worker fringe benefits—e.g. vacation pay, sick leave, enhanced health insurance coverage, employer-provided child care to recruit more women with children.
- There is agreement between progressive agricultural employers and housing advocates that availability of housing is a problematic issue. Innovative private-public sector strategies might well be designed to increase community-wide inventory of affordable housing (as opposed to mandated requirements to provide housing only to guestworkers).
- Politically, the situation is clear-cut. There is a genuine overlap in the interests of labor-intensive agriculture and immigrant advocates, blocked by hysterical opposition from right-wing nativists. Efforts toward “compromise” propel us toward imaginary solution which are not viable.
- There’s no alternative to joining forces to advance a “California solution” which might include other leading labor-intensive agricultural production states. The November, 2018 elections will make it clear whether there’s any hope for innovation. We can at least try to prevail.

# Thank you!

- A summary bibliography is available from Ed Kissam ([edkissam@me.com](mailto:edkissam@me.com))
- Related in-depth discussion papers are available on the WKF Fund website <http://www.wkfamilyfund.org>