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## OPINION:

### Trump, Migration, and Agriculture

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#### Abstract

*The US is the country of immigration, with almost 20 per cent of the world's 260 million international migrants. The number two country with international migrants, Germany, has 12 million, a fourth as many as the almost 48 million foreign-born US residents (UN DESA, 2017). The US stands alone among industrial countries in having a quarter of its immigrants, almost 11 million, unauthorised (Passel and Cohn, 2018). President Trump made reducing illegal immigration a priority. Major migration issues today include the fate of programs such as DACA, what to do about Central American families who apply for asylum, and whether to build a wall on the Mexico-US border. In December 2018-January 2019, there was a partial shutdown of the federal government, the third in Trump's first two years as President, because Congress failed to include \$5 billion for the border wall in bills that fund DHS and other federal agencies. Meanwhile, Mexico agreed to issue humanitarian visas to Central Americans who enter the US and apply for asylum, so that Central American asylum seekers may wait in Mexico for US decisions on their cases.*

**Keywords:** Donald Trump; migration policy; United States; agriculture; illegal migration.

#### IRCA and Mexico-US Migration

The US is *the* country of immigration, with almost 20 per cent of the world's 260 million international migrants. The number two country with international migrants, Germany, has 12 million, a fourth as many as the almost 48 million foreign-born US residents (UN DESA, 2017).<sup>1</sup> The US stands alone among industrial countries in having a quarter of its immigrants, almost 11 million, unauthorised (Passel and Cohn, 2018).

The US tried to curb illegal migration with the Immigration Reform and Control Act of 1986 that legalised 2.7 million unauthorised foreigners, 70 per cent Mexicans (Chishti et al., 2011). IRCA imposed federal penalties or sanctions on employers who knowingly hired unauthorized workers in a bid to discourage them from entering the US to seek higher-wage jobs. However, a proliferation of false documents among unauthorized workers, combined with IRCA's explicit warning that employers should not discriminate in checking the validity of worker documents, attracted more unauthorised foreigners to US jobs.<sup>2</sup>

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<sup>1</sup> UN DESA considers persons born in Puerto Rico who move to the mainland US to be international migrants. The US Census does not, and estimated 44 million foreign-born US residents in 2017.

<sup>2</sup> Chishti et al, 2011 note widespread fraud in the Special Agricultural Workers program and the lack of new guest worker programs as reasons for increased illegal immigration after IRCA, asserting: "IRCA's greatest failing was that it did not anticipate the dynamic nature of the country's immigration need. Thus, the law provided no legal avenues for

During the 1990s, illegal immigration surged, and legal immigration reached current levels of a million a year. After 2000, there were several Congressional efforts to deal with persisting illegal immigration that were revised versions of IRCA. After the House in 2005 approved an enforcement-only bill to deal with unauthorised foreigners, a bipartisan group of senators developed a Comprehensive Immigration Reform Act that was approved by the Senate in 2006 (Migration News, 2006), and the Senate approved another bipartisan CIRA in 2013 (Migration News, 2013a). These CIRA proposals rested on a three-pronged stool: more enforcement to deter illegal migration, including more fencing on the Mexico-US border, a path to legal status for most unauthorised foreigners in the US, and new guest worker programs.

The House did not approve CIRA, opting instead for incremental or piecemeal immigration reforms that were to begin with more enforcement (Migration News, 2013b). The immigration stalemate in Congress prompted President Barack Obama to grant legal work and residence permits to some unauthorised foreigners. The Deferred Action for Childhood Arrivals program, created by executive order in June 2012, allowed unauthorised foreigners who were brought into the US before the age of 16, and who graduated from US high schools, to obtain renewable work and residence permits.<sup>3</sup>

In November 2014, Obama went further with the Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA), which would have granted work and residence permits to unauthorised foreigners with legal children in the US.<sup>4</sup> DACA was implemented and currently protects about 690,000 unauthorised foreigners under courts orders, but DAPA was blocked by court injunctions and not implemented.

Candidate Donald Trump made reducing illegal immigration and deporting unauthorised foreigners central themes of his quest for the presidency in 2015-16. President Trump issued three executive orders dealing with migration during his first week in office (Martin, 2017). The first set in motion plans to reduce illegal entries by building a wall on the Mexico-US border and adding

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increased employment-based immigration, especially for low-skilled workers. This failing, combined with a high demand for low-skilled workers in a growing economy, led to a surge in the unauthorized population in the 1990s and in the early 2000s. By 2007, the U.S. unauthorized population had reached a new peak of 12 million people.”

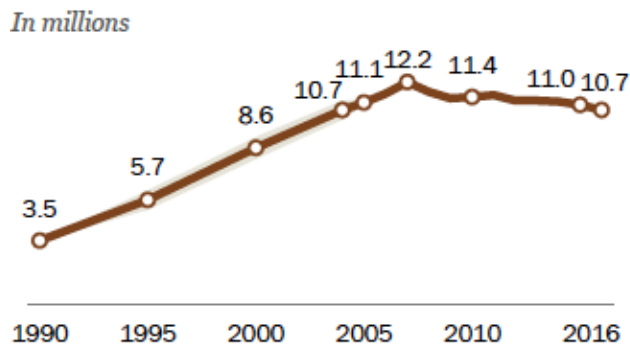
IRCA *did* include a new guest worker program called the Replenishment Agricultural Workers program, which could be implemented if there were labor shortages. There were no labor shortages due to the influx of unauthorized foreigners, so RAW expired without being used (Martin, 1994). The “labor shortages” cited by Chishti et al came a decade after IRCA legalization, when there were already over eight million unauthorized foreigners in the US.

<sup>3</sup> Those eligible for DACA status had to have lived illegally in the US at least five years and be under 31 on June 15, 2012, be enrolled in school, have a high school diploma, or be honorably discharged veterans. DACA recipients may not have been convicted of US felonies or three misdemeanors. Obtaining DACA work and residence permits cost applicants \$465, and entitled DACA recipients to Social Security numbers and driver's licenses in most states as well as professional certificates and financial aid for college (Migration News, 2012).

<sup>4</sup> After the Republicans took control of Congress in November 2014 elections, President Obama said he would “fix as much of our immigration system as I can on my own, without Congress.” The DAPA program would have allowed an estimated four million unauthorized foreigners whose children are US citizens or legal permanent residents, and who have lived in the US at least five years, to apply for renewable three-year deportation deferrals and work permits (Rural Migration News, 2015).



**Figure 1. Number of unauthorized foreigners dropped 12% from 2007 peak**



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

more Border Patrol agents, the second aimed to increase deportations from the US by doubling the number of Immigration and Customs Enforcement agents and persuading states and cities to cooperate with ICE, and the third reduced refugee admissions and restricted the entry of foreigners from particular countries.

Each of these executive orders was challenged. With the stock of unauthorised foreigners in the US falling (Figure 1), Mexico refused to pay for and the Congress did not appropriate \$25 billion to construct the border wall. Efforts to penalise sanctuary states and cities that refuse to cooperate with ICE by holding unauthorised foreigners convicted of US crimes for ICE agents

were blocked by court injunctions. The US Supreme Court upheld the revised travel ban in June 2018, and refugee admissions were reduced sharply.

## Trump and Migration

After almost two years in office, President Trump has changed the conversation on migration in several important ways. First, migration has become much more partisan. CIRA proposals were bipartisan, including the 2006 proposal brokered by Senators Edward Kennedy (D-MA) and John McCain (R-AZ) and the 2013 proposal negotiated by four Republican and four Democratic senators. Since taking office, Trump’s migration actions have appealed primarily to the populist wing of the Republican party that wants to reduce all types of migration into the US, while the Republican-leaning US Chamber of Commerce supports the legalization of unauthorized foreigners and more guest workers, a Main Street versus Wall Street divide within the Republican party.<sup>5</sup>

The Democratic party is also more divided on immigration. Voices that once urged limits on migration to protect US workers, such as Senator Bernie Sanders (I-VT), have been superseded by Democrats who call for the legalisation of unauthorised foreigners and the abolition of ICE, the agency that detects and removes unauthorized foreigners from the interior of the US (Beinart, 2017).<sup>6</sup> Many Democrats echo employers to assert that the presence of low-skilled migrant workers does not adversely affect similar US workers.

Second, legal immigration continues at pre-Trump levels of a million a year, but illegal Mexico-US migration has slowed to a trickle. Instead of solo Mexican men slipping across the

<sup>5</sup> Main Street is considered to be the average American consumer, while Wall Street includes financial market participants.

<sup>6</sup> Beinart emphasizes that pro-immigration activists and pro-H-1B tech firms combined to convince Democrats that a “growing Latino population gave the party an electoral edge.” Leading Democrats downplayed any negative impacts of more immigrants, citing research that concluded that more immigrants “kick” similar US workers up the job ladder by increasing competition at the bottom. Oxford’s Paul Collier asserted that “social scientists have strained every muscle to show that migration is good for everyone.”



border to work in the US, unauthorised border entries today are often Central American families who apply for asylum, citing domestic and gang violence in El Salvador, Guatemala, and Honduras.

The Border Patrol's mission is to prevent unauthorised entries. Central American families who enter illegally often seek out Border Patrol agents to request asylum. US law does not allow children under 18 to be held in jails, so many Central American adults arrive with children and are released while they wait several years for hearings on their asylum applications. The current backlog of cases in immigration courts is almost 800,000, including 200,000 asylum cases.<sup>7</sup>

Over 75 per cent of Central Americans pass credible fear tests, meaning that they convince a USCIS asylum officer that they fear persecution at home, but less than 10 per cent of Central Americans who file asylum applications after being apprehended are recognised as refugees and allowed to settle legally in the US. The asylum application and appeal process can take three to five years, time that some applicants use to work in the US.

The Trump Administration criticised catch-and-release policies that involve apprehending Central Americans, allowing them to apply for asylum, and then releasing them into the US. To discourage Central Americans from coming to the US, the Department of Homeland Security in May-June 2018 began to prosecute all adults who entered the US illegally. Since children cannot be jailed, over 2,500 children were separated from their parents, some of whom were deported while their children were in shelters operated by or for the US government. This child-separation policy produced a backlash and was soon ended. Meanwhile, the number of so-called family units of parents and children from Central America rose to record levels in Fall 2018 (Pierce et al., 2018).

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

Trump in September 2017 ended DACA and asked Congress to find a solution for unauthorised foreigners brought to the US as children. Congress did not act, but federal courts issued injunctions that have so far preserved DACA. Trump ended Temporary Protected Status (TPS) for many of the 320,000 foreigners from 10 countries who had the right to live and work in the US when he took office. However, a federal judge issued an injunction in October 2018 that maintained TPS for 263,000 Salvadorans, 59,000 Haitians, 5,000 Nicaraguans and 1,000 Sudanese (Pierce et al., 2018).

Other Trump Administration efforts are aimed at legal immigration. President Trump supported the Reforming American Immigration for Strong Employment or RAISE Act that was introduced in 2017. RAISE would, inter alia, reduce the number of immigrant visas issued by half, from a million to 500,000, and reduce refugee admissions to 50,000 a year.

US law has long denied immigrant visas to foreigners likely to become a "public charge." DHS proposed regulations in Fall 2018 that would consider in-kind benefits, such as the receipt of food and housing benefits rather than only cash payments, as reasons to consider foreigners likely to become public charges, which could lead to them being denied immigrant visas.<sup>8</sup> Several states

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<sup>7</sup> There were 809,000 cases pending in immigration court in December 2018. Three-fourths involved citizens of Mexico, Guatemala, El Salvador, and Honduras. [http://trac.syr.edu/phptools/immigration/court\\_backlog/](http://trac.syr.edu/phptools/immigration/court_backlog/)

<sup>8</sup> USCIS regulations define public charges as persons likely to become "primarily dependent on the government for subsistence, as demonstrated by either the receipt of public cash assistance for income maintenance, or institutionalization for long-term care at government expense." ([www.uscis.gov/news/fact-sheets/public-charge-fact-sheet](http://www.uscis.gov/news/fact-sheets/public-charge-fact-sheet)). Capps et al (2018) reviewed immigrants awarded immigrant visas in recent years and found that almost 70 percent had at least one



have sued to block these expanded public charge regulations from taking effect citing dangers to public health from potential migrants not seeking health care.

Trump Administration efforts to reduce unauthorised and legal migration may help to push migration from normal to regime politics. Normal politics involve issues on which there is broad agreement on the ends, but disagreement on the means, such as an agreement that immigration is mutually beneficial for immigrants and Americans but disagreement on exactly who and how many immigrants should be admitted. Regime politics involve disputes over ends, such as whether the US should accept immigrants.

## Agriculture and Migration

Over half of US crop workers, and 60 per cent of California farm workers are unauthorised (Martin, 2018). Figure 1 shows that there was a 12 per cent drop in the number of unauthorized foreigners between 2007 and 2016, while Figure 2 shows that there was a five per cent drop in the number of unauthorized workers, suggesting that those with jobs stayed in the US.

Currently, unauthorised farm workers are ageing and settling in one place with families that often include US-born children, reducing follow-the-crop migration and thus the flexibility of the hired farm workforce. The “fresh blood” in the farm workforce comprises H-2A guest workers, almost all of whom are from Mexico and most of whom are a decade younger than typical 40-year old unauthorised workers (Rural Migration News Blog, 2018).

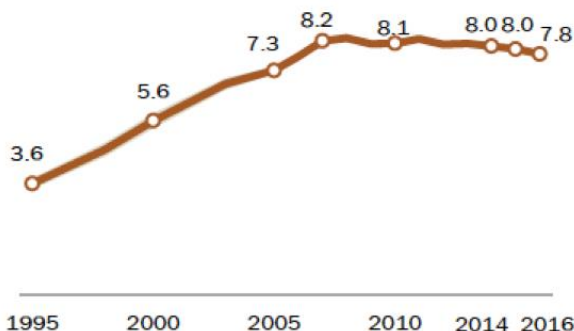
The slowdown in unauthorised Mexico-US migration since the 2008-09 recession increased farmer complaints of labour shortages. More farmers are using what they call a “bureaucratic” H-2A guest worker program to obtain temporary foreign workers, but rising state minimum wages, as well as new health care and overtime pay obligations, mean that farmers face higher labour costs regardless of immigration regulations, prompting new interest in labour-saving mechanisation.

There are numerous efforts to develop machines to replace workers in fruit and vegetable commodities. Most advanced are precision planting machines that facilitate the use of mechanical rather than hand weeders. GPS devices allow the machine to know where plants are located so that the machine can remove weeds between rows and between plants.

Many farmers plant new orchards and vineyards to facilitate the pruning of trees and vines mechanically. Mechanical harvesters often require even more planning and investment, such as

**Figure 2. Number of unauthorized workers dropped 5% between 2007 and 2016**

*In millions*



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

negative factor under the proposed expansion of the public charge test, while 40 percent had an income of at least 250 percent of the federal poverty line, which is weighed positively for those seeking immigrant visas.





dwarf trees to reduce how far mechanically harvested fruit falls into a catching device. Machines are being developed to harvest even soft fruits such as strawberries;<sup>9</sup> estimates of when these harvesters will be viable commercially range from five to 15 years, with diffusion depending on the cost and availability of hand workers (Mohan, 2017; Strong and Hernandez, 2018).

Most new hand workers are H-2A visa holders. In order to be certified to employ H-2A guest workers, farmers must try and fail to find US workers to fill jobs generally lasting less than 10 months, provide free and approved housing to H-2A workers, and pay them a super minimum wage called the Adverse Effect Wage Rate of \$13.18 an hour in California in 2018, when the state's minimum wage was \$11 (Martin, 2014).

Farmers have sought an alternative to these H-2A recruitment, housing, and AEWR requirements for decades, and won a Replenishment Agricultural Program in IRCA that was not implemented because there were no labour shortages. RAW workers could have been unauthorised in the US or abroad, could be hired without failed employer efforts to recruit US workers, and would not have been housed by employers or paid the AEWR. In turn, RAW workers would have been free to “float” from one farm job to another rather than being tied to one farm by a contract as are H-2A workers (Martin, 1994).

After the election of Mexican President Fox and US President Bush in 2000 and fears that they would negotiate a new guest worker program, farm worker advocates agreed with farm employers to support a revised IRCA approach to unauthorised farm workers in the Agricultural Jobs, Opportunity, Benefits and Security Act with (Martin, 2005). AgJOBS would have allowed unauthorised farm workers to earn an immigrant status by continuing to do farm work and made it easier for farm employers to hire guest workers by reducing required minimum wages and ended the requirement that farmers provide housing to guest workers. AgJOBS was included in the CIRA bills approved by the Senate in 2006 and 2013 but not enacted into law.

Rep Bob Goodlatte (R-VA) proposed a new H-2C program in the Agricultural Guestworker Act of 2018 to allow all farm employers, including those offering year-round livestock and dairy jobs, to attest that they need guest workers and to pay them at least 115 percent of the federal or state minimum wage (Rural Migration News, 2018b).<sup>10</sup> Farm employers would not have to provide housing to H-2C workers, who would pay their own way from their countries of origin to US farm jobs. H-2C workers could change employers in the US, and could remain in the US to do farm work for up to three years, after which they would have to return to their home countries for at least 60 days.

Goodlatte's bill was opposed by farmworker advocates who decried reduced protections for US and foreign workers, and it divided farm employers. The American Farm Bureau Federation and most dairy associations supported the Goodlatte bill, but the National Council of Agricultural Employers and the Western Growers Association opposed it, primarily because the Goodlatte bill

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<sup>9</sup> Strawberries grown waist high in tabletop systems produce fruit that is easier for robots to locate, but require up-front costs of \$80,000 an acre, versus \$30,000 an acre to plant conventional strawberries.

<sup>10</sup> Goodlatte's bill, the Agricultural Guestworker and Legal Workforce Act (HR 6417), would have required farmers, as well as all other US employers, to participate in E-Verify, the online service that allows employers to submit documentation provided by newly hired workers to USCIS so that employers know immediately whether the new hire is authorized to work in the US.

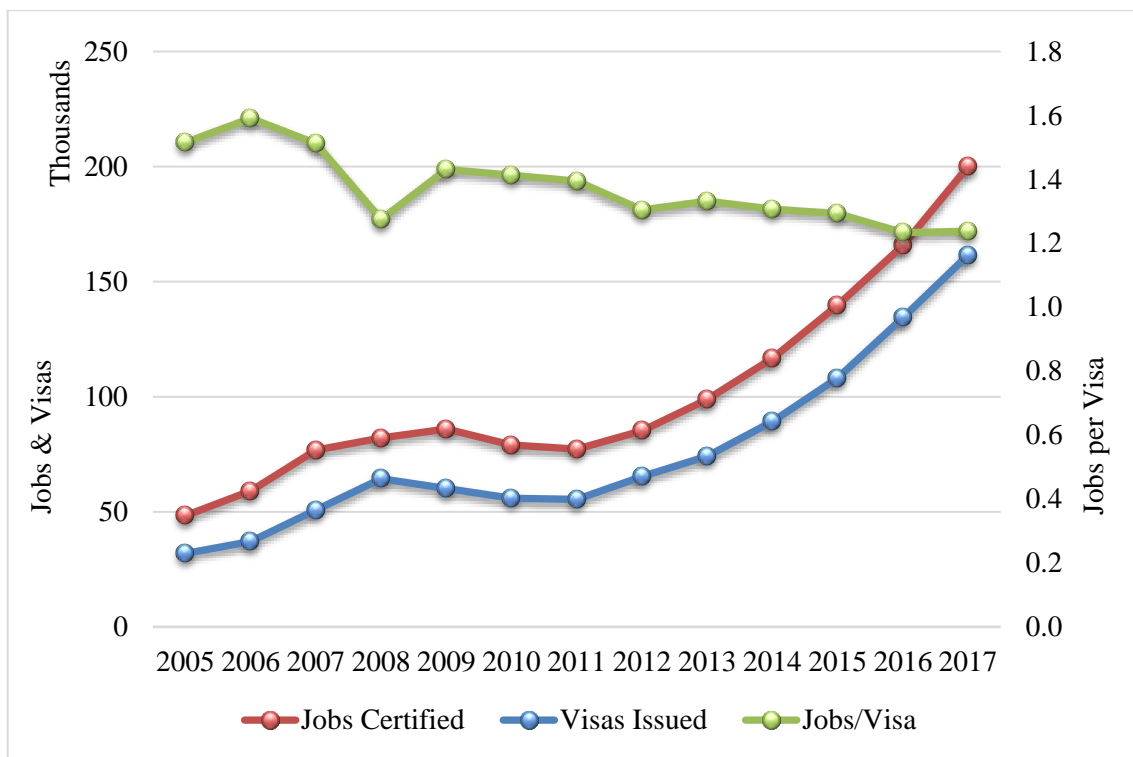


limited the number of H-2C visas to 450,000 a year, including 40,000 for workers employed in meat and poultry processing. The Goodlatte bill was not enacted.<sup>11</sup>

President Trump’s Virginia vineyard employs H-2A farm guest workers, and his hotels employ H-2B seasonal nonfarm guest workers, so many farm employers expected Trump to make it easier for employers to access low-skilled guest workers. However, were no major changes to the H-2A and H-2B guest worker programs during Trump’s first two years despite a Trump promise in April 2018 that “For the farmers, OK, it’s going to get good. We’re going to let your guest workers come in...they’re going to work on your farms ... but then they have to go out.”<sup>12</sup>

The H-2A program has been expanding rapidly, more than tripling over the past decade so that over 240,000 farm jobs were certified to be filled with H-2A workers in FY18, up 20 per cent from FY17 (Figure 3). The top five H-2A states in FY 18 were Georgia (13 percent), Florida (12 percent), Washington (10 percent), North Carolina (9 percent), and California (8 percent), accounting for 52 percent of the US jobs certified (Rural Migration News Blog, 2018).

**Figure 3. H-2A Jobs Certified, Visas issued, and Jobs Per Visa, 2005-17**



Source: US Departments of Labor and State

<sup>11</sup> H-2A workers returning to their previous employers would not count against the cap, and the cap could rise if employers requested all 450,000 visas. Since H-2C visas would be valid for up to three years, there could be over 1.3 million H-2C guest workers in the US after three years if employers requested all available visas.

<sup>12</sup> Quoted in Rural Migration News, 2018a. At Trump’s request, the US Departments of State, Agriculture, Labor, and Homeland Security in May 2018 announced that they were “streamlining, simplifying, and improving the H-2A temporary agricultural visa program.”



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

### **What's Next?**

President Trump made reducing illegal immigration a priority. Major migration issues today include the fate of programs such as DACA, what to do about Central American families who apply for asylum, and whether to build a wall on the Mexico-US border. In December 2018-January 2019, there was a partial shutdown of the federal government, the third in Trump's first two years as President, because Congress failed to include \$5 billion for the border wall in bills that fund DHS and other federal agencies. Meanwhile, Mexico agreed to issue humanitarian visas to Central Americans who enter the US and apply for asylum, so that Central American asylum seekers may wait in Mexico for US decisions on their cases.

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

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

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