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# *Harvest of Confusion: Immigration Reform and California Agriculture*

Philip L. Martin<sup>1</sup>  
*University of California, Davis*

Agriculture was a major stumbling block to immigration reform, largely because Congress was unwilling to assign explicit priorities to the competing goals of protecting American workers and admitting supplemental immigrant farmworkers. This article describes the Special Agricultural Worker or SAW legalization program that generated 700,000 applications in California and the hypothetical calculations required to determine whether Replenishment Agricultural Workers or RAWs will be admitted to the United States to do farmwork. The paper concludes that immigration reform did not resolve the century-old debate over agriculture's "need" for alien workers; instead, SAWs and RAWs have contributed to the harvest of confusion on farm labor.

*Anyone who has a solution does not comprehend the problem, and anyone who comprehends the problem does not have a solution.*

Agriculture came to the immigration reform debate relatively late, but agriculture won some of the most significant victories during the negotiations which produced the Immigration Reform and Control Act (IRCA) of 1986. Agricultural interests argued during the early 1980s that they had developed a special need for and dependence on immigrant workers (Farm Labor Alliance 1986), but the original Simpson-Mazzoli immigration reform proposal did not include a new immigrant worker program for agriculture. However, after farmers persuaded the House of Representatives to include a guestworker program sponsored by Representative Leon Panetta (D-CA) and Representative Sid Morrison (R-WA) in House-passed immigration reforms in 1984,<sup>2</sup> and a similar program offered by Senator

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<sup>1</sup> Professor of Agricultural Economics at University of California, Davis. I am indebted to Elizabeth Midgley, Richard Mines, David North and Ed Taylor for helpful comments. California's Employment Development Department provided the data on which the paper is based, and the paper was prepared under the auspices of the Urban Institute's Program for Research on Immigration Policy.

<sup>2</sup> The Panetta-Morrison program would have created a new class of P-visas for alien farmworkers. The Panetta-Morrison proposal amended HR1510 (Section 214) to permit producers of perishable commodities who did not employ H-2 workers to hire nonimmigrant workers who held "P" visas issued by the INS. Under the Panetta-Morrison program, the Attorney General

Pete Wilson (R-CA) in the Senate immigration reform bill in 1985,<sup>3</sup> it became clear that farmers could exact some sort of special immigrant worker program as their price for accepting immigration reform.

The last-minute compromises which satisfied polarized farmer and farmworker interests were the Special (SAW) and Replenishment (RAW) Agricultural Worker programs. The SAW program permitted illegal aliens who had done at least 90 days of work in Seasonal Agricultural Services (SAS) to become legal U.S. residents. If newly-legalized SAWs left agriculture, RAW immigrants could replace them.

This paper summarizes the century-old debate over the need<sup>4</sup> for immigrant farmworkers, the SAW program included in IRCA, and the complex calculations necessary to determine whether RAW workers will be admitted. It concludes that IRCA has not resolved the perennial issue of whether supplemental alien workers should be admitted to do U.S. farmwork.

### *THE IMMIGRANT FARMWORKER ISSUE*

The U.S. Department of Agriculture collects reams of statistics on all aspects of agriculture, including monthly reports on catfish production and an annual report on wool and mohair production. However, the responsibility for finding out who does farmwork is shared with several other federal agencies. Each agency uses different definitions and data collection procedures, and the result is a harvest of confusion about who works on the nation's farms (Martin, 1988).

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would have established monthly and annual quotas on the number of P-workers admitted to each agricultural region of the United States. Only employers who had filed applications with the Attorney General promising, *inter alia*, to make a good faith effort to recruit American workers and to pay wages which do not adversely affect the wages of similarly employed U.S. workers could have employed P-visa alien farmworkers. The *New York Times* described the passage of the Panetta-Morrison amendment in the House of Representatives in June 1984 as one of the top political stories of the year.

<sup>3</sup> The Wilson guestworker program, accepted during Senate debate on S1200 (Section 217) in 1985, would have permitted the Attorney General to admit up to 350,000 temporary farmworkers annually for three years for employers who produced perishable commodities. The Attorney General would have granted "O" visas to alien farmworkers which would have permitted them to work for any employer of perishable commodities who had been certified to employ such workers within one of ten agricultural regions. Senator Alan Simpson (R-Wyo.), after reviewing the streamlined H-2 program and a three year transition program already included in the bill at the behest of Western farmers, concluded that "I honestly do not know what more we could have done to meet the needs of Western growers," and he opposed the Wilson guestworker program as an attempt to "legalize the *status quo* of illegal labor in agriculture." *Congressional Record* September 12, 1985, p. S11326.

<sup>4</sup> IRCA (PL 99-603) discusses the "determination of need" for immigrant farmworkers and the "determination of supply" of U.S. workers. There is no well-defined procedure to determine the "need" for labor, only the demand for labor, *i.e.*, only employer willingness to employ labor at particular wage rates, benefit costs, and working condition arrangements.

The major sources of farm employment data indicate that immigrant workers are a small part of the U.S. farm workforce. The USDA farm labor data which receives the most attention suggests that farmers and their families do about two-thirds of all U.S. farmwork and that hired workers do the remaining one-third (USDA, Farm Labor). Census Bureau data report that the farmers are mostly non-Hispanic whites, and they suggest that a majority of the hired workers are also white U.S. citizens (Oliveira and Cox, 1988).<sup>5</sup>

Even though federal employment data suggest that immigrant workers play a small role in U.S. agriculture, the farmers who rely on them have traditionally argued that without immigrant workers they would go out of business. Growers have made the argument that immigrant workers were needed to establish and maintain a viable agriculture since significant crop production began in California and other western states during the 1870s, and successive waves of Chinese, Japanese, Filipino, and Mexican immigrants were made available to western farmers (Fuller, 1940). Many of the crops which once relied on immigrant workers, such as cotton, have been mechanized and today U.S. citizens and settled legal immigrants are most of the hired workers on such farms.

The illegal aliens that immigration reforms were meant to curb were employed primarily on fruit and vegetable farms and by horticultural speciality operations that produce flowers and nursery products. Only 75,000 such operations reported hiring labor in the 1987 Census of Agriculture, a small fraction of the 818,000 farms that hired labor in that year, but many of these farm surveys reported that 80 to 90 percent of workers were immigrants (Mines and Martin, 1986). The dependence of this relative handful of farms on illegal alien workers and their traditional reliance on such workers explains why western growers 'demanded a guarantee that they could continue to have access to immigrant workers based in Mexico after employer sanctions made it unlawful to hire illegal aliens. Finding a formula which would reduce illegal immigration and guarantee western farmers continued access to their traditional workforce was, in Senator Alan Simpson's words, ". . . the toughest nut to crack" to enact the Immigration Reform and Control Act of 1986.

IRCA imposed penalties on farmers and other employers who knowingly hire illegal alien workers, created a general program to legalize aliens who had been living in the United States illegally since January 1, 1982 and made special provisions for agricultural workers. A separate Special Agricultural

<sup>5</sup> Generally, in states where farm operators outnumber hired workers, as in the midwest, the hired workers are from the same ethnic group as the farm operators or employers. Where hired workers outnumber operators, as in California, hired workers tend to be minorities and the operators or employers tend to be white.

Worker or SAW legalization program offered U.S. residence rights to farmworkers; the contractual H-2A temporary alien farmworker program was streamlined to make it easier for farm employers to use and a new Replenishment Agricultural Worker or RAW program was created to admit immigrant farmworkers if these special provisions caused a labor shortage.

The special agricultural provisions of IRCA were the price extracted by farmers which permitted the immigration reform law to be enacted. The goals of these special agricultural provisions are not transparent; however, they included legalizing the farm workforce and the hope that a farm workforce which was legally working in the United States would be better able to demand higher wages and protect itself from abuses. These goals have not been achieved. Fraud in the SAW legalization program produced a huge surplus of labor which made it hard for workers to demand wage increases and the enforcement of employer sanctions, which was delayed for many farmers until December 1, 1988, has been too limited to generate many observable changes in farm labor markets that can be attributed to immigration reform. Instead, the apparent failure of IRCA's special agricultural provisions to achieve even the limited goals of legalizing and protecting the farm workforce means that the immigrant farmworker issue will be debated again in the 1990s.

At first glance, the alien farmworker issue appears simple: How much should farmers raise wages and improve working conditions in order to attract American workers? If "reasonable" adjustments still leave a gap between the number of farm jobs offered and the number of farmworkers available, should the government open the border gates to immigrant farmworkers, or should public policies promote mechanization, imports, or other labor-saving efforts?

The two extremes are clear. If farmers were denied access to alien workers, farm wages would presumably rise and set in motion a chain of reactions, such as more mechanization, more imports, and more careful management of fewer and more expensive hired workers. Fruit and vegetable prices might rise and competition from imported commodities could put some U.S. farmers out of business. Alternatively, if the border gates for immigrant workers were opened wide, farm wages would presumably stagnate or decline and U.S. workers with other job or welfare options would be more apt to quit doing farmwork. The resulting vacuum would be filled by more alien farmworkers. Ready access to immigrant workers helps to hold down food prices and helps to ensure that current growers can remain in business.

The alien farmworker issue is complex because Congress refuses either to ban or to freely allow the entry of alien farmworkers. Instead, it has set the border gate ajar. This partially open gate is supposed to be opened and

closed to reconcile the conflicting goals of protecting American farmworkers and satisfying the labor needs of growers. Balancing these conflicting objectives requires detailed labor market calculations in a market for which the data are lacking. The resultant confusion makes it impossible to determine exactly what role alien workers have played in the farm labor market and difficult to predict how more or fewer alien workers will affect tomorrow's agriculture.

### THE SAW PROGRAM

IRCA created two distinct legalization programs: a general (I-687) program which granted legal status on the basis of U.S. residence and the SAW farmworker (I-700) program, which granted legal status on the basis of where and how long an illegal alien worked in the United States. Illegal alien farmworkers found it easier to achieve legal status than nonfarm residents (North and Portz, 1988). A SAW could have entered the United States as recently as early 1986 and then left after doing 90 days of farmwork, while legal status for nonfarm aliens required, *inter alia*, continuous U.S. residence since 1982.

Applicants for SAW legalization faced fewer hurdles to qualify for legal U.S. residence; an applicant could apply for the SAW program with only an affidavit from an employer attesting to the number of SAS days worked. In the SAW program, the burden of proof was placed on the Immigration and Naturalization Service (INS). If the INS wished to disprove the alien's claim, it had to assemble evidence that the alien did not work the qualifying number of days; this proved to be a time-consuming procedure, since most SAW applicants submitted only a letter from a farm employer asserting that the applicant had done 90 or more days of work between May 1, 1985 and April 30, 1986. SAWs also have more rights and freedoms during their one or two year temporary U.S. residence status, and this temporary status is converted to permanent resident alien (PRA) status almost automatically, while nonfarm or general legalization applicants must demonstrate some knowledge of English and U.S. history to become PRA's.

The last-minute formulation of the SAW program, the easier requirements for legalization, and the elastic definition of qualifying SAS employment made predictions about the number of SAWs highly speculative. One often repeated number was a USDA estimate that 350,000 illegal aliens were employed in agriculture in the early 1980s, and this number became the ceiling for Group 1 SAWS.<sup>6</sup> The major surprise of the SAW program was that 1.3 million aliens applied for SAW status, or almost

<sup>6</sup> Group I SAWs did at least 90 days of SAS work in each of the years ending in May 1, 1984, 1985, and 1986. Group II SAWs, by contrast, did 90 days of SAS work only in the year ending May 1, 1986. Over 90 percent of all SAW applicants were in the Group II category.

three-fourths as many as applied for the general legalization program, even though it was widely asserted that only 15 to 20 percent of the undocumented workers in the United States were employed in agriculture.

Eligibility for SAW legalization hinged primarily on whether the applicant did at least 90 days of qualifying work in Seasonal Agricultural Services. SAS was defined by commodity (perishable) and activity (fieldwork). SAW applicants were illegal aliens who performed or supervised fieldwork during the 12 months ending May 1, 1986 related to planting, cultural practices, cultivating, growing, and harvesting "perishable" fruits and vegetables of every kind and "other perishable commodities." The definition of "perishable commodity" was stretched first by USDA and then by courts to include virtually all plants grown for human food (except sugar cane) and many nonedible plants, such as cotton, Christmas trees, cut flowers, and Spanish reeds.<sup>7</sup> Fieldworkers include all of the paid hand- or machine-operator workers involved with these SAS commodities, the supervisors of field workers and equipment operators, mechanics who repair machinery and pilots who spray crops. These elastic definitions of "perishable" and "fieldwork" mean that a variety of aliens could have qualified for legal U.S. residence, including an illegal alien investor-manager of a farm and the illegal aliens employed there.

The SAW legalization program began on June 1, 1987 amidst concerns about farm labor shortages in Oregon and Washington. During the first nine months of the SAW program, there were about 10,000 SAW applications per week, but in April 1988, SAW applications jumped to over 30,000 a week. Because the unexpected surge in SAW applications occurred after most plans for studying the newly legalized alien population had been made, SAWs were omitted from the INS funded effort to obtain data on newly legalized aliens.<sup>8</sup>

<sup>7</sup> Cotton was excluded until a federal judge in Texas declared that cotton was a "fruit" and thus Congress meant to legalize unauthorized aliens who had worked in cotton and to permit cotton growers to employ RAW workers. However, farmers failed to prove that the hay fed to cattle is a perishable commodity; USDA argued that hay production is not subject to "critical and unpredictable labor demands," and is thus not SAS. Farmworker advocates accepted a USDA determination that "laying or planting" sod around new homes and businesses was landscaping, not agriculture, but they successfully argued that illegal aliens who had "cultivated" the perishable commodity sod should be eligible for the SAW program and thus sod farms could employ RAW workers.

The eligibility of aliens employed in sugar cane in 1985–86 remains in dispute. USDA in August 1988 revised its definition of eligible commodities, but excluded sugar cane as neither a vegetable nor a perishable commodity (sugar beets are included as SAS). An initial 1989 court decision upheld USDA's decision, *i.e.*, it held that the USDA decision to exclude sugar cane was not "arbitrary and capricious."

<sup>8</sup> The Westat Survey of newly legalized aliens, funded by about \$15 of the \$185 legalization fee, includes only pre-1982 or general legalization applicants.

The SAW program attracted almost 1.3 million applicants<sup>9</sup> before ending on November 30, 1988, including 700,000 in California (INS, Provisional Legalization Statistics, 1989). SAW applicants are mostly young Mexican men (Table 1). Their median age is 28, and half are between 20 and 29. Since SAWs had to be employed in 1985–86 to qualify, there are no SAWs under 15, compared to 7 percent of the general legalization applicants. Over 80 percent of all SAW applicants are male, and 41 percent are married. In a few limited surveys, SAWs who had an average 5 years of education earned between \$30 and \$35 daily for 100 days of farmwork in 1985–86.

TABLE 1  
GENERAL AND SAE LEGALIZATION APPLICANTS

Characteristic	General or Pre-1982 <sup>a</sup>	SAW <sup>b</sup>
Median Age	31	28
Age 15 to 44 (%)	82	91
Male (%)	57	82
Married (%)	41	42
From Mexico (%)	70	82
Applied in California (%)	54	53
Total Applicants	1,768,300	1,302,800

Source: INS, Provisional Legalization Statistics, January 9, 1990

<sup>a</sup> Persons filing I-687 legalization applications

<sup>b</sup> Persons filing I-700 legalization applications

Most SAW applicants worked as illegal aliens in 1985–86 in fruits and vegetables. INS data report only the last job done by a SAW, but since most applicants reported just one job in 1985–86, this is not a serious deficiency. Some 69 percent of all SAW applicants had their last job in fruit and vegetable production, versus 77 percent in California (Table 2). In comparison to labor expenditures, illegal aliens who applied for SAW status in California were overrepresented in fruits and vegetables and underrepresented in horticultural specialties such as flowers; *i.e.*, over three-fourths of the SAWs had their last job in fruits and vegetables, but only 58 percent of California's labor expenditures were made by fruit and vegetable farms. Even though it has been widely reported that illegal aliens were a large fraction of the horticultural specialties workforce, which

<sup>9</sup> An additional 65,000 farmworkers received legal status under the general or pre-1982 legalization program.



TABLE 2  
SAW APPLICANTS AND COA LABOR EXPENDITURES BY U.S. RESIDENCE,  
COMMODITY, AND MEXICAN ORIGIN

Commodity <sup>a</sup>	United States	Percent Distribution	From Mexico	Percent Mexican	Labor Expend <sup>b</sup> (\$1,000)	Percent Distribution
Cash Grains	63,693	5	32,384	51	1,193,992	15
Field Crops	79,430	7	72,325	91	1,574,645	19
Vegetables & Melons	351,695	30	291,359	83	1,235,083	15
Fruits & Tree Nuts	453,129	39	388,505	86	2,101,863	26
Hort Specialties	38,306	3	33,946	89	1,754,969	21
General Crop and Other SAW	176,289	15	140,318	80	344,308	4
Total	1,162,542	100	958,837	82	8,204,860	100

Commodity <sup>a</sup>	Applied in California	Percent Distribution	Percent of US SAWs	From Mexico	Percent Mexican	Labor Expend <sup>b</sup> (\$1,000)	Percent Distribution
Cash Grains	9,498	1	15	8,458	89	37,966	1
Field Crops	30,387	5	38	28,090	92	225,990	8
Vegetables & Melons	169,257	26	48	156,202	92	568,315	19
Fruits & Tree Nuts	326,149	51	72	294,260	90	1,157,048	39
Hort Specialties	19,690	3	51	18,813	96	481,542	16
General Crop and Other SAW	90,517	14	51	81,837	90	527,721	18
Total	645,498	100	56	587,660	91	2,998,582	100

Source: Special tabulation of I.N.S. Provisional Legalization Statistics, May 12, 1989 and census of Agriculture, 1987.

<sup>a</sup> This is the commodity last worked by SAW applicants; most applicants listed only one commodity or job on their I-700 applications

<sup>b</sup> The hired farm labor and contract labor expenditures of farmers who derived 50 percent or more of their revenues from these crops.

includes nursery and flower products and mushrooms, only 3 percent of the United States and California SAW applicants had their last job with farmers who produced such commodities.

SAW applicants include about 100,000 persons who applied for SAW status at a U.S. port of entry. This border entry program aptly illustrates the problem of designing programs for stereotypical migrant and seasonal farmworkers. Farmers complained that many of their seasonal workers had returned to Mexico just before IRCA was enacted in November 1986. Farmers attributed alleged labor shortages during the spring of 1987 to the fact that many of their "regular" workers were in Mexico and could not get back into the United States nor to a U.S. consulate in Mexico in order to apply for legal status under the SAW program because all records of their qualifying employment were in the United States.

The border entry program established in response to these farmer complaints permitted aliens to come to a U.S. port of entry, make a "credible" claim that they did farmwork in 1985-86, assert that the documentation to support this claim was in the United States and then be admitted to the United States for 90 days to do farm or nonfarm work while obtaining their employment documentation. As word of this border entry program spread, long lines formed at the U.S. ports of entry, as truck drivers, clerks, and others became aware of this low-cost program for a three-month work visa. INS inspectors reported that many of the border applicants knew little about farmwork; among those who claimed, for example, to have picked strawberries or watermelons in the United States were some who, when asked to describe what they did, said that they were given ladders to climb strawberry and watermelon trees. There was no penalty on the alien for making such a claim; aliens denied entry simply withdrew their applications and, if they were persistent, tried on another day or at another port of entry.

Entrepreneurs soon emerged on the Mexican border to rent farmworker clothing to SAW applicants and to teach them how to present themselves to INS examiners. Long lines of applicants formed, the INS added staff, and many aliens who had never done farm work undoubtedly talked their way into the United States. However, the INS got more sophisticated along with the applicants. Agents began calling the employers for whom aliens claimed to have worked, and as the program wound down in 1988 only 10 percent of the several hundred border applicants interviewed each day were admitted to the United States.

### *SAW Workers in California*

By early 1990, the INS had reviewed about 43 percent of the SAW applications and approved 94 percent of them, suggesting that the SAW program may grant legal status to almost 1.2 million aliens who claimed to have done

a significant amount of farmwork in 1985–86, including over 650,000 in California. Farmers, farmworker advocates and policy makers have a keen interest in the behavior of these newly-legalized SAWs. Will most SAWs continue to do farmwork or will their newly-acquired legal status encourage them to seek nonfarm jobs? Will the married men among them keep their families abroad or bring them to the United States? Finally, many newly legalized SAWs earned \$3,000 to \$5,000 annually for 15 to 25 weeks of work and returned to Mexico for the winter months but will they now remain in the United States and draw public assistance instead of leaving the United States when their seasonal jobs end?

There are no data on which to base answers to these questions on mobility, family unification and public assistance. The best proxy data available on this substantial group of newly legalized residents are 1985 employment and earnings data from California's unemployment insurance (UI) files. These UI data include the names, social security numbers, and earnings and weeks worked of virtually all persons employed in the state. California UI authorities provided data from which a 5 percent random sample of all workers who were reported at least once by a crop, livestock, or agricultural services employer in 1985 was drawn.

The UI data are the best available count of the people employed on California farms. However, UI data have several shortcomings for analyzing the farm workforce. First, all UI data are collected from employers and they are asked only for the names, social security numbers, weeks worked and wages earned of persons employed by them; no demographic or legal status data are requested. Second, not everyone employed on California farms has a farmworker occupation: about one-third of the unemployed workers claiming UI benefits on the basis of work done on California farms have nonfarm occupations such as clerk or mechanic. Third, the UI data are based on the social security numbers (SSNs) that workers give to employers, and some use more than one. If a substantial proportion of workers used several SSNs, then the UI data inflate the number of workers and lower the average earnings and weeks worked calculated from the data.<sup>10</sup> Finally, some employers may not report (all of) their workers or wages: the number of workers, wages, and weeks reported by farm employers is not verified unless workers file UI benefit claims.

California farm employers who produced the crops which were included in the USDA definition of Seasonal Agricultural Services reported 806,000

<sup>10</sup> Many newly-legalized SAWs obtain new SSNs because INS staff did not encourage legalization applicants to keep their old SSNs and in some cases encouraged them to obtain new SSNs. According to the Social Security Administration, about 60 percent of all SAW applicants obtained new SSNs. Of this 60 percent, about 80 percent got new SSNs and 20 percent got re-issued SSNs.

workers to UI authorities in 1985. The characteristics of workers employed on these SAS farms were very similar to those of all workers employed on California farms (Table 3). SAS workers include a substantial fraction of low earners. About one-seventh are migrants, defined as having at least two farm employers in two counties, and one-quarter are seasonal workers, defined as earning \$1,000 to \$12,500 and having 5 to 30 weeks of work reported by farm employers. About 58 percent of California SAS workers earned less than \$1,000 in 1985 from all of their SAS jobs, and two-thirds earned less than \$4,000 (Table 4). The low earners averaged just \$267 for 2.3 weeks of SAS work these workers received only 6 percent of all SAS earnings and contributed 13 percent of all SAS weeks worked. Most of these lowest-earning workers had one short job on a farm and then dropped out of the California workforce. Some are apparently people who "try" farmwork, quit after two weeks and then return to being a student, housewife, or being unemployed, a profile consistent with the hired worker data obtained from the December, Current Population Survey.<sup>11</sup>

How many of these SAS workers qualify for the SAW legalization program, which requires illegal alien workers to have done at least 90 days of fieldwork in SAS commodities between May 1, 1985, and May 1, 1986? The UI data do not permit a direct translation of these qualifying requirements to estimate the number of potential SAWs. However, these requirements can be approximated with 1985 UI earnings and weeks data by assuming that January through April employment patterns were similar in 1985 and 1986.

One time-worked conversion approximates the SAW 90-day work requirement with UI data on weeks worked. Since IRCA requires at least 90 days of qualifying work, the UI data can isolate persons who had at least 18 weeks of work with an SAS employer in 1985 (18 five-day weeks is 90 days). The SAW program permits year-round illegal aliens to apply if they did or if they supervised fieldwork, but it does not offer legal status to persons employed on farms who did not do farmwork, such as clerks and accountants.

Since the UI data cannot isolate persons employed on farms by what job they did, this analysis approximated the universe of potential SAW applicants by including all persons who were reported by SAS employers to have done 18 to 40 weeks of work in 1985.<sup>12</sup> The inclusion of all persons who

<sup>11</sup> Supplementary questions were attached to the December Current Population Survey in 1981, 1983, 1985, and 1987, and about 1,500 U.S. households reported that someone in the household did farmwork for wages during the past year. Of the estimated 2.5 million hired workers employed on farms in 1985, about 58 percent did less than 75 days of farmwork; only 1.1 million did 75 or more days of farmwork (Oliveira and Cox, 1988).

<sup>12</sup> Some fieldworkers in SAS commodities find year-round employment on SAS farms, but most do not. One sample of SAW applicants reported an average 94 days worked; the most days worked in 1985-86 was 162.

TABLE 3  
WORKERS EMPLOYED ON CALIFORNIA FARMS IN 1985

Characteristic	All Workers	SAS Workers
Workers	905,860	806,000
Farm Earnings (\$)	2.8 billion	2.2 billion
Average (\$)	3,088	2,756
Farm Weeks	10.5 million	8.7 million
Average	11.6	10.8
Less than \$1,000 in Total Earnings	373,780 (40%) <sup>a</sup>	349,760 (43%) <sup>a</sup>
Average Farm Earnings (\$)	255	250
Average Farm Weeks	2.3	2.2
Migrant Workers <sup>b</sup>	112,640 (12%)	110,680 (14%)
Average Farm Earnings (\$)	3,408	3,346
Average Farm Weeks	17.2	17.1
Seasonal Workers <sup>b</sup>	252,400 (28%)	224,660 (28%)
Average Farm Earnings (\$)	3,259	3,221
Average Farm Weeks	15.4	15.4
\$12,500 to \$19,999 Workers	108,700 (12%)	45,540 (6%)
Average Farm Earnings (\$)	9,868	9,145
Average Farm Weeks	28.6	25.3
\$20,000 or More Workers	50,620 (6%)	41,780 (5%)
Average Farm Earnings (\$)	13,600	11,956
Average Farm Weeks	22.4	20.5

Source: Special Tabulation of 1985 Quarterly Employer Reports to the California Employment Development Department, 1989.

<sup>a</sup> Percent of all farm or SAS workers; percentages do not sum to 100 percent because not all of the \$1,000 to \$12,500 workers satisfied the definitions of migrant (at least two farm jobs in two counties) or seasonal (\$1,000 to \$12,500 and 5 to 30 weeks of farmwork).

<sup>b</sup> There were 301,560 migrant and seasonal workers employed on California farms and 272,660 on SAS farms.

accumulated 18 to 40 weeks of SAS work brings in a few workers with nonfarm occupations, such as seasonal clerical or marketing staff, but their inclusion should offset any excluded year-round SAW-eligible workers.

Workers who accumulate 18 to 40 weeks of SAS work are one group from which California SAW applicants are drawn. About 115,000 workers accumulated 18 to 40 weeks of work with California SAS employers in 1985.

TABLE 4  
CALIFORNIA WORKERS EMPLOYED IN SEASONAL AGRICULTURAL SERVICES IN 1985

Distribution by SAS Earnings	SAS Workers	Per-cent	SAS Earnings	Per-cent	SAS Weeks	Per-cent	Ave Earns	Ave Weeks
Less than \$1000	467,260	58	\$124,725,820	6	1,098,000	13	\$267	2.3
1000 to 3999	187,680	23	\$406,023,460	19	2,329,540	28	\$2,163	12.4
4000 to 7499	72,580	9	\$400,414,980	19	1,831,800	22	\$5,517	25.2
7500 to 12,499	42,560	5	\$412,440,120	19	1,553,240	19	\$9,691	36.5
12,500 to 19,999	23,640	3	\$365,334,300	17	983,640	12	\$15,454	41.6
More than 20,000	12,280	2	\$414,198,160	20	595,460	7	\$33,729	48.5
Total	806,000	100	\$2,123,136,840	100	8,391,680	100	\$2,634	10.4

Distribution by SAS Weeks

18 to 40 SAS Weeks	114,980	14	\$706,179,120	33	3,103,280	37	\$6,142	27.0
3 to 40 SAS Weeks	408,640	51	\$1,178,851,820	56	5,418,600	65	\$2,885	13.3
3 to 17 SAS Weeks	293,660	36	\$472,672,700	22	2,315,320	28	\$1,610	7.9

Source: Special tabulation of 1985 Quarterly Employer Reports to the California Employment Development department, 1987.

This table is based on a five percent random sample of the 1,199,920 workers (social security numbers) reported at least once by a California farm employer in 1985. Farm employers have SIC codes for crops (01), livestock (02), and selected ag services (071, 072, and 076).

SAS workers had at least one job with an employer who had an SIC code of 011, 0132, 0133, 0134, 016, 017, 018, 0191, 071, 0721, 0722, 0729, or 076.

They averaged \$6,100 for 27 weeks of SAS work. Only half of these 18- to 40-week SAS workers had more than one farm employer in 1985, suggesting that many SAW applicants will need to list just one employer to satisfy the 90-day work requirement.

The maximum number of people who would qualify for SAW status can also be approximated by isolating the workers who had sufficient qualifying earnings from SAS employers in 1985. It is hard to translate SAS earnings into days of farm work, especially because a day of farm work for the SAW

program is defined as one hour or more. However, the SAW program permits applicants who lack detailed employment records to estimate their days worked on the basis of earnings; *e.g.*, some SAW applicants claimed 100 days of qualifying work on the basis of 1985 earnings of \$4000, an hourly wage of \$5, and an average 8 hours of work a day.

Assuming a (conservative) \$30 daily wage, SAS workers would have had to earn at least \$2,700 from SAS employers in 1985 to qualify for SAW status. The universe of potential SAWs based on earnings data should include about one-half of the workers who earned \$1,000 to \$3,999 from SAS employers in 1985 (93,840 workers), all of the \$4,000-to-\$7,499 group (72,580), and one-half of the \$7,500-to-\$12,500 group (21,280), or a total of 187,700 workers employed on California farms appear capable of satisfying the SAW eligibility requirements on the basis of earnings.

The data reported by SAS employers to UI authorities in 1985 indicate that California's potential SAW applicant pool is 115,000 to 188,000 workers. Of course, not all of these potential SAWs were illegal aliens: a September 1987 survey of farm employers found that employers believed 42 percent of their seasonal workers were illegal aliens who would apply for the SAW program (Martin and Luce, 1988). Applying this percentage to the UI data yields 48,000 to 78,000 SAW-eligible workers. A 1983 survey of field workers reported even fewer illegal aliens: about 25 percent of the workers interviewed were clearly illegal, 50 percent had green cards or permanent resident alien status (the validity of these green cards was not established) and 25 percent were U.S. citizens (Mines and Martin, 1986). The data are sketchy, but it is unlikely that more than half of the 90-day-plus workers in California in 1985-86 were illegal aliens.

### *SAW Fraud*

These employment data indicate that the SAW program generated three to four times as many applicants as there would have been even if all California farmworkers employed in perishable commodities were illegal aliens. The INS suspects widespread fraud, but it has not yet completed its determinations of which SAW applicants actually worked in 1985-86 as they claimed.<sup>13</sup>

If the INS eventually approves 80 to 90 percent of all SAW applications, then about 600,000 aliens who filed SAW applications in California would become legal U.S. residents. This number is considerably greater than the less than 100,000 suggested by the analysis of UI data. The clear implication is that either California's UI system includes only a small fraction of the

<sup>13</sup> In October 1989, the INS had 1.27 million SAW applications logged into its system. The INS had made final determinations in 521,500 cases, and approved 93 percent of them. At least 100,000 aliens whose applications were recommended for denial were appealing the denial, usually by hiring private attorneys.

state's agricultural workers, or there were a substantial number of fraudulent SAW applications filed.

Farm production data support the UI data and suggests that fraud rather than underestimating farm employment explains the discrepancy between actual and expected SAW applications. Every year, the USDA estimates the number of hours needed to produce various types of crops, and in 1985 USDA estimated that 813 million man-hours of hired, operator and unpaid family labor were used to produce U.S. fruits, nuts and vegetables and 2.2 billion hours were used to produce all U.S. crops. If 1.3 million SAW applicants claim an average 100 days worked, they are claiming 130 million man days or, at an average of 7 hours a day, 910 million man-hours of work. Since three-fourths of the SAW applicants had their last job producing fruits and vegetables, three-fourths of 910 million means there were 682 million man-hours of illegal alien labor used in fruits and vegetables, or that 84 percent of all U.S. fruit and vegetable work (not workers) was done by illegal alien workers. This is implausible given the large number of U.S. citizen and legal immigrant workers and the fact that many of the family-operated farms growing fruits and vegetables use U.S. citizen family labor.

California production data also cast doubt on the legitimacy of many SAW applications. These data indicate that production of all crops in the Pacific states of California, Oregon and Washington required 490 million hours of work. However, the 750,000 SAW applicants in these states claimed to have done more than 490 million hours of work, implying that all crop work in the Pacific states was done by illegal aliens.

These UI and production data suggest that half to two-thirds of the SAW applications may be fraudulent. This conclusion is only suggestive. The UI data may underestimate the number of people eligible to be SAWs if a substantial number of illegal alien workers used several social security numbers in 1985 to accumulate SAS weeks and earnings, making the earnings cut-off too strict. The use of multiple social security numbers by one individual would reduce the total number of potential SAWs, since people rather than social security numbers were eligible for amnesty. In one sample, about 20 percent of the SAW applicants reported that they had used more than one (usually two) SSNs in 1985-86 (Martin, Luce and Newsom, 1988).

The SAW-eligible universe may also be larger than suggested by the UI data if SAW applications filed in California included qualifying work done in other states such as Oregon and Washington. Although only 2 percent of the California SAW applicants in one sample reported that they did work outside of California, studies of particular farmworker networks report that 20 to 30 percent of the workers employed primarily in California also worked in other states (Reichert and Massey, 1984). However, the number



of SAW applications still exceeds the number that would be expected based on farm production data.

Fraud is associated with the SAW program because the number of applicants is too large in light of UI and farm production data, because many individual applicants made preposterous claims, and because of the widespread selling of employment histories by farm labor contractors and other farm employers. The preposterous claims include SAW applicants who claimed to have climbed trees to pick strawberries. It is hard to determine how many affidavits from employers which asserted that the SAW applicant worked for them are fraudulent. SAW applicants, eager to gain legal status, proved willing to pay several hundred dollars for such letters from employers, and the business of selling false employment histories mushroomed. The INS alleges that some farm employers and farm labor contractors sold hundreds of such histories. However, the INS has been unable to prove widespread fraud, in part because the process of comparing, for example, the number of employees reported to unemployment insurance or tax authorities and the number of employment letters issued to SAW applicants is time-consuming and limited by confidentiality rules.

In addition to the false claims of aliens who had not done farmwork, there were SAW applicants who exaggerated the amount of qualifying work they had done. The SAW program requires applicants to have done at least 90 days of farmwork in 1985–86, and this is a very high hurdle for most seasonal farmworkers to jump. Few harvesting activities last 90 days in one area. Instead, picking seasons are typically three to ten weeks, up to about 60 days, so that most valid SAW applications should list more than one employer. SAW applications are confidential, but INS staff report that the typical SAW application lists only one 90-day-plus activity with one employer, a claim that must usually be false because most activities do not continue for 90 days on one farm and U.S. crop employers report hiring relatively few workers for 90 days or more.<sup>14</sup> Thus, many workers who claim to have done 90 days of farmwork are presenting work histories that cannot be correct. These ineligible workers may have done some farmwork and thus be familiar with the activity they did, but they probably did not do the required 90 days of work.

The extent of SAW fraud is impossible to determine, but there is widespread agreement among INS staff, farm employers, farmworker advocates,

<sup>14</sup> For example, 72,000 U.S. fruit, vegetable, and horticultural specialty (FVH) farms reported hiring 1.2 million workers for less than 150 days and 279,000 for more than 150 days in the 1982 Census of Agriculture (COA). These FVH workers were paid \$2.8 billion; at an average daily wage of \$30 (what more-than-75-day workers averaged in the 1983 CPS), the more-than-150-day workers received \$6,000 each for 200 days of work or \$1.7 billion. This leaves \$1.1 billion to be distributed among 1.2 million seasonal workers, or an average \$935 each, implying 31 days of farmwork. Such data suggest that most of the seasonal workers reported by fruit and vegetable farmers to the COA cannot qualify for the SAW program.

and farm labor specialists that there are more SAW applications than can be valid. The problem with designing a generous legalization program and minimizing fraud is that the stereotypical illegal alien farmworker is a vulnerable worker paid in cash by an employer who does not maintain employment records or maintains records but refuses to provide them to workers. SAW legalization requirements were written with this stereotype in mind, forcing the INS to accommodate the competing goals of getting eligible workers into the SAW program and keeping ineligible workers out.

Court decisions interpreting Congressional intent regarding how the SAW program should operate have generally held that Congress wanted the INS to ensure that all eligible SAW applicants qualify, even if INS procedures and regulations to maximize participation in the SAW program enable some ineligible applicants to become legal U.S. residents. For example, an INS plan to require SAW applicants to provide some other type of documentation in addition to a letter from an employer was overturned by a federal judge who ruled that Congress meant such letters to be sufficient proof of qualifying employment.<sup>15</sup> The settlement of this case also caused the INS to drop a plan to require additional documents from all SAW applicants who submitted letters from employers alleged to have sold employment histories; the INS was left to develop other means to establish which of the applicants had done qualifying farmwork.

### *THE RAW PROGRAM*

The effect of the inclusive SAW program has been to grant provisional legal status to 1.3 million applicants, or more than the total U.S. hired farm workforce which did 75 or more days of farmwork as estimated by the Current Population Survey. Since many of these SAW applicants appear not to have done farmwork, and because in the late 1980s there appear to be shortages of labor in nonfarm labor markets and surpluses of labor in farm labor markets, SAWs should be abandoning farmwork or not entering it.

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

Like the SAW program, the RAW program was a compromise between farm employer and farmworker interests. Farm employers wanted a free agent RAW program so that they would not have to ask a government

<sup>15</sup> *United Farmworkers of America vs. INS*, No. 5-87-1064-JFM (E.D. California June 15, 1989).

agency to certify the unavailability of U.S. workers; instead, the border gates would be opened and RAWs would become free agents to live and work where they wish. However, in order to assure that the RAW program increases the supply of farmworkers, RAWs must do at least 90 days of farm (SAS) work annually.

Farmworker advocates also wanted to avoid a contractual guestworker program. On the one hand, a contractual program gave them an opportunity to argue that foreign workers were not needed, thus limiting the number of such workers. However, if contractual workers were admitted, farmworker advocates believed that they would depress U.S. wages and working conditions and not be amenable to unionization because they would fear deportation or run the risk of not being selected next year if they displeased their employer. The free agent nature of the RAW program thus appealed to farmworker interests, as a way to minimize the potential abuse of workers by employers and the negative effects of imported workers on domestic labor markets.

RAW workers will receive temporary U.S. residence visas similar to those issued to SAWs. This means that a RAW will be able to live and work anywhere in the United States and, after three years, a RAW can apply for a greencard to become a PRA. In order to remain a lawful RAW during this three years of temporary U.S. resident status, the RAW must do at least 90 days of farmwork annually. In order to become a U.S. citizen, the RAW must do at least 90 days of farmwork annually for five years.

The RAW program is an anomaly in contemporary immigration policies. The H-2A temporary worker program<sup>16</sup> and most European guestworker programs are contractual; that is, they require an employer with a job vacancy to seek domestic workers by offering at least a government-established package of wages, housing and transportation arrangements. If the government certifies that domestic workers are not available to fill the vacant job offered by the employer at these mandated minimum wages and benefits, the employer is permitted to recruit foreign workers who are bound by contract to fill the particular job vacancy for a specified time period. The agricultural nonimmigrant program is called the H-2A program because the alien farmworkers are admitted to the United States with H-2A visas.

The United States during the *Bracero* program and most European governments required such a certification procedure in order to protect domestic workers by limiting foreign workers to bona fide job vacancies for

<sup>16</sup> The H-2A program is a nonimmigrant program which admits temporary foreign workers for temporary U.S. farm jobs if the U.S. Department of Labor certifies or agrees with the employer who is requesting H-2A visas that unemployed able, willing, and qualified American workers are not and will not be available to fill the job vacancy for which the H-2A worker is requested [INA Section 101(a)(15) (H)(ii)(a)].

specific time periods. The reason for certification is simple: governments do not want to select immigrants and potential citizens on the basis of temporary or seasonal job vacancies in unskilled labor markets, so they assume that temporary and seasonal foreign workers will not become permanent residents.

The RAW program, by contrast, legalizes illegal aliens in the United States or abroad who did some U.S. farmwork. The number of RAW visas issued annually is determined by a complex two-part formula. Applicants for RAW visas must have done at least 20 days of U.S. farmwork as illegal aliens, and then they are grouped first according to whether they are in the United States or abroad, and then whether they are spouses or unmarried children of aliens who were legalized under the SAW or general legalization programs.<sup>17</sup> Sufficient applicants are drawn at random from these pools, beginning with the in-the-United States and with-U.S.-relatives group, to curb any labor shortage.

The INS had more time to plan for the RAW than the SAW program, but many of the SAW program problems are likely to recur.<sup>18</sup> Obtaining legal U.S. immigrant status is a substantial prize, and during the SAW program entrepreneurs offered aliens false documentation and training in how to behave as a farmworker. Many of the SAW program regulations were promulgated by Congress,<sup>19</sup> but the INS had some discretion to plan the RAW program, and INS dropped the SAW rule that applicants must provide documentation of their U.S. farmwork experience. Under the RAW program, applicants simply asserted that they did the qualifying farmwork on their applications and then, if selected, INS examiners will determine the credibility of their claims. The INS hopes that this assertion and examination process will reduce document fraud.

### *RAW PROGRAM CALCULATIONS*

The RAW program has so far generated more interest among interest groups in who will get priority for RAW visas than in determining how many

<sup>17</sup> RAW applicants must have done at least 20 days of any kind of U.S. farmwork (not just SAS) during any 12-month consecutive period between May 1, 1985 and November 30, 1988. About 664,000 RAW applicants registered for the program by mailing a form I-807 to INS between September 1 and November 30, 1989. Most of the RAW registrants 89 percent are already in the United States and will simply have their status converted from illegal alien to temporary resident alien if they are selected to be RAWs. Of the 548,000 RAW registrants already in the United States, 15 percent had close relatives who were SAWs.

<sup>18</sup> One potential problem is that many of the SAW applicants whose cases are pending may file for the RAW program. These applicants do not yet know whether they will receive SAW status, so they have an incentive to apply for the RAW program as insurance.

<sup>19</sup> Under the SAW program, the burden of proof was on the INS to disprove the applicant's claim. Under the RAW program, by contrast, the burden of proof is on the RAW applicant to make a credible claim.

RAWs there will be. Part of the reason for the lack of interest in determining the number of RAWs is the complexity of the process. Congress specified two separate formulas to determine the number of RAWs, and said that the smaller number produced by these calculations is the number of RAW visas that can be issued in each of the four fiscal years 1990–1993. The complexity of these formulae is evident in the space devoted to them. IRCA includes nine pages that outline the calculations needed to determine the number of RAWs. The SAW program, by contrast, is covered in six pages.

The RAW program requires two separate calculations. First, an *absolute ceiling* based on the number of SAWs is established to determine the maximum number of RAWs who can be admitted in FY 1990, for example. Then a second *shortage calculation* is made to predict whether there will be a shortage of labor in SAS in FY 1990. The smaller of these two numbers controls RAW visas for the year. For example, if the ceiling calculation indicates that a maximum 160,000 RAWs can be admitted but the shortage calculation predicts that only 50,000 RAWs will be needed, then only 50,000 RAWs will be admitted.

The two calculations can be summarized as follows:

*Absolute Ceiling*

1. 95 percent of (Approved SAWs – SAWs doing at least 15 days of SAS work  $\pm$  change in H-2A workers)

The annual number of RAW visas  
is the lesser of:

*Shortage Calculation*

2. 
$$\frac{\text{Mandays Needed} - \text{Mandays Available}}{\text{Average Mandays worked}}$$

The absolute ceiling formula is straightforward. If the INS approves 80 to 90 percent of all SAW applications, there will be at least one million approved SAWs. The absolute ceiling is then 950,000 (95 percent of 1 million) minus the number of SAWs who did at least 15 days of SAS work<sup>20</sup>

<sup>20</sup> Data for this more-than-15-day SAWs will come from farm employers. Beginning October 1, 1988, farmers must complete employment verification or I-9 forms for all newly-hired workers; note which of these workers have INS numbers in the A90 million series; and then report the names, A-numbers, and days worked of all such workers on an ESA-92 form. These data will be analyzed to determine how many SAWs are staying in SAS agriculture and how many days they are employed.

in the previous fiscal year (for example, 490,000) and plus or minus the change in the number of H-2A temporary alien workers employed in SAS (for example, 10,000 if H-2A admissions rise from 20,000 to 30,000). In this example, the absolute ceiling on the number of RAWs is 950,000 – (490,000 + 10,000) or 450,000.<sup>21</sup>

The shortage calculation is more complex. There are three components to the shortage formula, and each is estimated by a different federal agency. USDA estimates the demand or need for labor in SAS, DOL determines the supply or availability of labor, and the Bureau of the Census analyzes the quarterly ESA-92 reports filed by farm employers to determine the average days worked by SAWs. For example, assume that USDA determines there were 180 million mandays worked last year and no changes in the need for farm labor are expected for next year.<sup>22</sup> If DOL determines that about 20 percent of the farmworker mandays available exit each year as workers leaving agriculture, and that entering workers will not replace these lost mandays, then the expected manday shortage is 20 percent of 180 million or 36 million mandays.<sup>23</sup>

This shortage is calculated in terms of mandays. It is converted into people or RAW visas by dividing the shortage by the average mandays worked. If SAW workers average 90 days of work, then a shortage of 36 million mandays translates into 400,000 RAWs. In this example, the absolute ceiling permitted the entry of 450,000 RAWs and the shortage calculation 400,000. Since the lower calculation controls RAW admissions, only 400,000 could be admitted.

There are a variety of actual and potential problems with these formulae. Both the ceiling and the shortage formula are based on inadequate data. The ceiling formula, for example, depends on the number of approved SAWs but, because of apparent fraud in the SAW program, the number of approved SAWs may not reflect the “base amount” of illegal alien labor available to agriculture in 1985–86. Second, farmers may not report accurately the number of SAWs employed by them; the relative trickle of these

<sup>21</sup> On January 2, 1990, USDA and DOL announced that the absolute RAW ceiling for FY 1990 was 336,000. This apparently represents an estimate of 124,000 for the number of SAWs who did at least 15 days of SAS work in FY 1989: 95 percent of 490,000 approved SAWs in 465,000, and there was little change in H-2A admissions. *Federal Register* January 2, 1990, p. 39.

<sup>22</sup> USDA reportedly estimated a significant increase in the need for farm labor in FY 1990 based on (1) crop losses due to labor shortages reported by a sample of farmers in FY 1989 and (2) the trend increase in crop acreage and production in FY 1990. These calculations were not made public.

<sup>23</sup> DOL estimated that about 4.7 percent of the SAS mandays available in FY 1989 would not be available in FY 1990 based on exits from the National Agricultural Worker Survey in FY 1988 and FY 1989. DOL estimated that the days worked by new entrants and continuing farmworkers increased by 14.4 percent, so that on balance the days available to SAS agriculture in FY 1990 would increase by 9.7 percent.

required quarterly reports suggests that many farmers are not reporting their SAW employees or that SAWs have left agriculture. If the apparently low number of SAWs is due to employer underreporting, then RAWs may be admitted even if there is no real “need” for them.

The shortage formula also relies on data of dubious quality. USDA must first estimate the mandays worked in SAS during the previous year based on four weekly snapshots that are assumed to be typical employment weeks, so that the sample data can simply be expanded by 13 to get the total labor needed. Then USDA must make several hypothetical determinations, such as how many additional mandays of labor would have been necessary to prevent crop losses due to labor shortages, as opposed to crop losses due to bad weather or low prices. Finally, USDA must estimate how many more or fewer mandays of labor will be needed next year because of changes farmers plan to make by mechanizing, changing their personnel practices, or increasing or decreasing production. Regardless of how well USDA estimates the mandays actually worked in agriculture, it is clear that subjective judgments will be required to adjust this manday need estimate for labor shortages and other changes.

DOL has a similarly herculean estimation task which is open to subjective judgments. DOL must estimate how many mandays of farmwork are lost each year because of exits from the farm workforce, how many additional mandays are available from new entrants or current farmworkers who work more days, and then how many more mandays would be available if U.S. workers were attracted to farmwork by improved wages and working conditions. DOL is imitating USDA in taking four snapshots of the farm workforce to determine, *inter alia*, for how long the persons interviewed have been doing farmwork and how many days of work they do. These data from persons who were interviewed doing farmwork will be combined with survey and other data to determine how many mandays of labor are available to agriculture.

The USDA and DOL shortage calculations are based on survey data from a handful of farmers and workers and subjective interpretations. The third part of the shortage calculation—the average mandays worked by SAWs, is on paper the simplest and most objective. However, this number may have an unexpected impact on the number of RAW visas issued. The USDA and DOL calculations indicate how many additional mandays of labor will be needed, and the average days worked factor calculated by the Census Bureau will be used to convert these mandays into RAWs. In the absolute ceiling, only SAWs who did at least 15 days of SAS work count or block the entry of a RAW. This means that if most SAWs do just 15 days of work, then these 15-day workers will reduce the number of RAWs under the absolute ceiling. However, in the shortage calculation, if SAWs average just 15 days of work, then each 15 days

of anticipated shortage permits the entry of one more RAW. In this way, the absolute ceiling may indicate that few RAWs can be admitted while the shortage calculation can indicate the need for more RAWs.

### *THE RAW SHORTAGE NUMBER AND EMERGENCY REQUESTS*

The shortage number for FY 1990 was announced to be zero on January 2, 1990, largely because DOL reported that enough new workers entered the workforce in FY 1989 and continuing workers did more days of farmwork to more than make up for exits from the farm workforce. If 1988–89 trends in farm labor demand and supply continue, and there is no reason to assume that they will change, then it appears unlikely that the RAW program will supplement the U.S. farm workforce during its scheduled four-year life. Instead, it appears that U.S. agriculture is again becoming dependent on illegal alien workers, so that if the INS actively enforces employer sanctions, farm employers will once again feel threatened by labor shortages. According to one observer, “Where the INS has conducted vigorous enforcement by looking at the validity of documentation, it has created chaos. If that type of enforcement occurs, then there will clearly be a labor shortage.”<sup>24</sup> If such observations prove to be valid, then the SAW program failed to legalize the farm workforce.

Even if the SAW program does not provide U.S. agriculture with a legal workforce, there are two reasons why the RAW program is unlikely to provide large numbers of additional immigrant farmworkers to U.S. agriculture: first, the shortage calculations seem unlikely to indicate a significant shortage, and second, most RAW workers are already in the United States. Although the details of how the shortage calculation were made are not public, enough is known to make it unlikely that these calculations will indicate a shortage of farm labor in the early 1990s. The USDA calculations which rely on trends in acreage and production trends will be hard-pressed to demonstrate that more labor is needed to grow traditionally labor-intensive crops such as fruits and vegetables because the estimated total hours of farmwork to produce such crops has been declining or stable during the 1980s,<sup>25</sup> and there were very few crop losses due to labor shortages reported. The DOL survey of farmworkers includes a high proportion of the year-round workers least likely to leave agriculture, making it probable that entries into farmwork will continue to offset exits.

<sup>24</sup> Jim Holt, quoted in *The Grower*, Vol. 22, No. 12, December 1989, p. 16.

<sup>25</sup> For example, in 1982 USDA estimated that 778 million hours were required to produce vegetables (328) and fruits and nuts (450), or one-third of the 2.4 billion hours of work on U.S. crops were for fruits and vegetables. Fruit and vegetable and total crop hours declined during the 1980s, e.g., to 2.2 billion in 1984, and 2.1 billion hours in 1986, when the USDA reporting format changed (USDA, ERS).



If the shortage calculation indicates no national shortage of farm labor, then the major immigrant farm labor issue is likely to be local employer requests to USDA and DOL to certify that conditions in their area have led to an unforeseen labor shortage that will result in crop losses unless a certain number of RAW visas are issued immediately. These employer requests for emergency RAWs must be decided by USDA and DOL within 21 days, and then, if USDA and DOL approve the request, INS will begin to contact persons who registered for the RAW program by mail to ask them to come to an INS office, be examined to determine whether they qualify for RAW visas, and then issue RAW visas to them. Since INS has 120 days to convert these illegal aliens who are mostly already in the United States into RAW workers, and because these RAW workers are under no obligation to go to work for the employer who made the emergency request for them, it is clear that the RAW program will be unlikely to cope with emergency labor shortages.

Since the RAW program will not deliver alien workers to employers at the time and place requested, employers seeking supplemental alien workers are likely to turn to the H-2A contractual worker program. The H-2A program, modified by IRLA to be more "workable" for farm employers, requires farmers who want entry visas for foreign farmworkers to go through a certification process in which American workers are recruited by being offered at least a stipulated package of wages, hours of work and accommodation arrangements. Only if American workers cannot be attracted and the entry of the alien workers does not adversely affect U.S. workers, will the employers receive H-2A visas for the foreign workers that they recruit.

The H-2A program delivers workers to employers at the time and place desired, but at the cost to employers of certification; *i.e.*, at the cost of satisfying the U.S. government that American workers are not available. The controversy in the H-2A program has been over these certification requirements. Farmers argue that American workers are not available, so that they should not be required to go through an expensive search for workers which will be fruitless in any event. Farmworker advocates, on the other hand, argue that farmers prefer docile aliens to potentially more aggressive American workers, so that they make at best a *pro forma* search for American workers. Most reviews of the certification procedure conclude that the U.S. Department of Labor is unable to ensure that employers make an honest effort to recruit American workers (GAO, 1988). For example, since an employer is not required to hire the Americans who may show up in response to recruitment, DOL needs a follow-up procedure to determine whether the employer refused to hire the American worker for a valid reason. DOL has no effective procedure to do such a follow-up.

The H-2A certification issue illustrates the fundamental question raised by agriculture's century-long quest for immigrant workers: what responsi-

bility does a farmer have to plan for a seasonal workforce when he or she plants a crop which will require seasonal harvesters? If a manufacturing firm builds a plant in a remote area, and then asks for government permission to import eager alien workers at the federal minimum or some higher wage, most Americans are likely to reject the request on the assumption that a manufacturer should think about getting a workforce before siting a plant.

Agriculture is assumed to be different because land is immobile. But there are fewer differences than appear at first blush. Fruits and vegetables used to be grown near population centers (the reason why New Jersey is called the Garden State), but lower land costs, the availability of labor and better storage facilities encouraged production to occur further and further from consumption. The federal government has traditionally validated producers' decisions—for example, to plant fruit trees in remote locations—by permitting employers who subsequently faced labor shortages to employ immigrant farmworkers.

Since government in the past made immigrant workers available to farmers who planted labor-intensive crops in remote areas, the expectations of landowners, bankers, processors and others who invest in orchards or vineyards are based on the expectation that government will once again make workers available at "reasonable costs." Reasonable costs have come to mean wages low enough to get the crop harvested and keep the farmers in business, not wages high enough to induce Americans to work in the remote area. The basic question of who has the responsibility to ensure that any crops planted can be harvested has not been resolved. Instead, government has assured farmers that, if "reasonable" efforts cannot attract enough workers, immigrant workers will be available, ensuring endless litigation over what efforts are reasonable.

## *CONCLUSION*

The SAW and RAW programs were attempts primarily to legalize the farm workforce, with (perhaps) a secondary goal of encouraging farmers to become more efficient employers of a smaller and more expensive workforce. As with many previous attempts to make farm labor policy, these immigration reforms have had the opposite effects intended: there were widespread reports of new or first-time unauthorized workers in 1988 and 1989, and the surplus of legal and illegal workers rivaled the worker surpluses in California during the 1930s. The enormous number of SAW applications, continuing illegal immigration and the uncertainties of RAW calculations mean that the size, composition and cost of the farm workforce of the 1990s cannot be predicted accurately.

There are three generally accepted propositions about immigration reform and farmworkers. First, the number of SAW applications is too large

by a factor of two or more, and this substantial fraud means that at least some nonqualified aliens will become immigrants. Second, the fraud in the SAW program and the broad definition of Seasonal Agricultural Services means that RAW program calculations probably will not reflect the operation of the seasonal fruit and vegetable labor markets associated with illegal immigration. For example, fraudulent SAWs might "leave agriculture" by not beginning to do farmwork, inflating "exits" from agriculture beyond those common for 90 day-plus workers. Similarly, RAW calculations may be influenced strongly by the activities of paid family and other hired workers on Midwestern grain and field crop farms. Third, the RAW green card program breaks new ground in agriculture's century-long quest for immigrant workers: instead of immigrant workers bound by contract to fill a particular job vacancy, free-agent RAWs are "probationary immigrants" who need to do only a limited amount of farmwork to remain in the United States.

The SAW and RAW programs promise several legacies, including large numbers of immigrants, new immigration networks, and a test of the need for labor certification or the proper degree of governmental control over supplemental immigrant farmworkers. Together the SAW and RAW programs may generate more immigrants than the 1.7 million aliens legalized under the general or pre-1982 program, a result not expected during the immigration reform debates when it was widely asserted that illegal aliens were 80 percent nonfarm workers and 20 percent farmworkers. The RAW program might also generate new immigration networks because it ties priority for RAW visas to both family unity and U.S. farmwork experience criteria, so the RAW program may encourage illegal immigration in order to obtain the farmwork experience needed for a RAW visa.

The RAW program was intended to be short lived, but its socioeconomic impacts may be long-term. The Bracero program was extended until 1964 despite plans to terminate it after World War II ended. The RAW program might similarly have an extended life. Finally, the RAW program will operate alongside the contractual H-2A program, which requires employers to have their need for foreign workers certified before temporary H-2A visas are granted. Having a free agent program operate alongside a certification program may provide an interesting test of the desirability of government controls over immigrant workers.

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