



**Statement for the Record  
of David Bier of the Cato Institute<sup>1</sup>  
Submitted to Subcommittee on Immigration and Border Security,  
House Committee on the Judiciary  
Markup of  
“Agricultural Guestworker Act”  
October 24, 2017**

The “Agricultural Guestworker Act” (Ag Act) would greatly expand the liberty of Americans to contract with foreign workers through a new temporary work visa program. Foreign agricultural workers allow farms to expand production, lower prices, and raise incomes for most workers in the United States. Government intervention in the labor market inhibits the ability of farmers to plan the planting and harvesting of crops appropriately, leading to a reduction in production at the start of the season or crops rotting at the end. This government-created uncertainty also makes it more difficult for U.S. companies that rely on U.S. agricultural products to expand. At the same time, unnecessary regulations on agricultural guest workers limit their availability, incentivizing illegal immigration.

Excessive regulatory costs and arbitrary limitations on the occupations that H-2A workers may perform limit the use of H-2A temporary worker program. The Ag Act would help to fix these problems and end the regulatory uncertainty. It would provide for a minimum of 500,000 H-2C work visas for farms and related employers as well as streamline regulations for hiring them. The Ag Act also allows some unauthorized immigrants to participate in the program if they qualify, which would reduce some of the uncertainty associated with illegal employment. The committee could improve the legislation by granting current unauthorized workers to receive permanent residency and by allowing future guest workers more time to seek subsequent employment.

### **The Agricultural Guestworker Act Would Increase Farm Production**

Labor costs account for 17 percent of the variable costs for production on U.S. farms.<sup>1</sup> For fruits, vegetables, and nursery products, the price of labor can account for almost half of all variable costs.<sup>2</sup> All else equal, increases or decreases in the supply of labor result in increases or decreases in production. Higher production has many salutary consequences for the United States, including increased returns on investment, lower food prices, and increased employment.<sup>3</sup>

In 2013, a team of economists employed by the U.S. Department of Agriculture (USDA) estimated that a guest worker program that boosted the number of total temporary workers by 156,000 over 15 years would raise production by up to 2 percent annually in certain labor-intensive subsectors.<sup>4</sup> The Agricultural Guestworker Act could actually increase the number of temporary workers further. By contrast, a removal of 5.8 million unauthorized immigrants would decrease agricultural output in certain subsectors by up to 5.4 percent. A similar study found that a 50 percent reduction in foreign workers in the dairy industry would reduce output by 7.9 percent.<sup>5</sup>

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Farmers reduce planted acreage when they cannot hire as many workers as they would like to. As the immigration attorney for one farm put it in March 2017, “You’re either reducing your acreage or you’re going for H-2A.”<sup>6</sup> Farmers who miscalculate end up having crops rot in the field. One study found that California fruit and vegetable farmers had to plow under \$13 million worth of produce in 2016, a threefold increase since 2011, due to unexpected labor scarcity.<sup>7</sup>

### **Machines Cannot Fully Replace Human Laborers**

Over the last several decades, the price of machinery has fallen relative to the wages of farm laborers.<sup>8</sup> This has led many farms to hire fewer workers and shift to machines. Although opponents of opening the international labor market sometimes argue that the shift to machines proves that foreign labor is unnecessary, this is incorrect for several reasons.

Many industries simply cannot mechanize production at this time. Many fruits and vegetables need to be harvested by hand. The USDA has concluded that some of these sectors, such as apples, oranges, and asparagus, that compete internationally would lose market share if labor costs rise.<sup>9</sup> Even in sectors that can adopt machinery, however, USDA concluded that “hand-harvested produce is usually of better quality, since it is hard to replicate the skill and care of hand harvesters.”<sup>10</sup> This means that a scarcity-inducing labor market policy also harms consumers by diminishing quality.

Even if increased labor scarcity induced farmers to replace labor with machines, this would defeat the stated purpose of the tighter labor policy: better wages for U.S.-born farm workers. A major justification for the 1965 termination of the Bracero guest worker program for Mexican farm workers was that it would raise wages for American farmworkers. An excellent recent study, however, found that farm wages in Bracero-heavy areas actually did not rise relative to those in other areas after its cancellation.<sup>11</sup> The authors concluded that farmers responded to the increased labor scarcity with mechanization, not with higher wages.

### **The Ag Act Won’t Harm Americans**

Guest workers rarely displace domestic farmworkers. Another recent study that analyzed data from the North Carolina Growers’ Association (NCGA) proves this point. NCGA advertised 6,500 farm jobs and accepted 90 percent of all applications from U.S. residents, which amounted to just 245 U.S. residents accepting a job in the field out of a total of 500,000 unemployed North Carolinians.<sup>12</sup> Of these, only seven actually finished the growing season. This is compared to 90 percent of the more than 6,000 H-2A workers who finished.<sup>13</sup> This coincides with a study of California vegetable producers that found at most one U.S. resident is displaced from a farm job for every 81 foreign farm workers.<sup>14</sup>

Even though foreign farm workers may displace a tiny percentage of U.S. workers from farms, this does not necessarily do permanent long-run economic damage. Immigrant farm workers enable U.S. workers to move into related industries where higher pay is available. As foreign farm workers have entered, U.S. workers have moved to other industries, which explains their lack of interest in agricultural jobs. Indeed, U.S. workers make up the vast majority of workers in occupations that depend on manual agricultural labor, such as agricultural managers and supervisors, agricultural inspectors, purchasing agents for farm products, and others.<sup>15</sup>

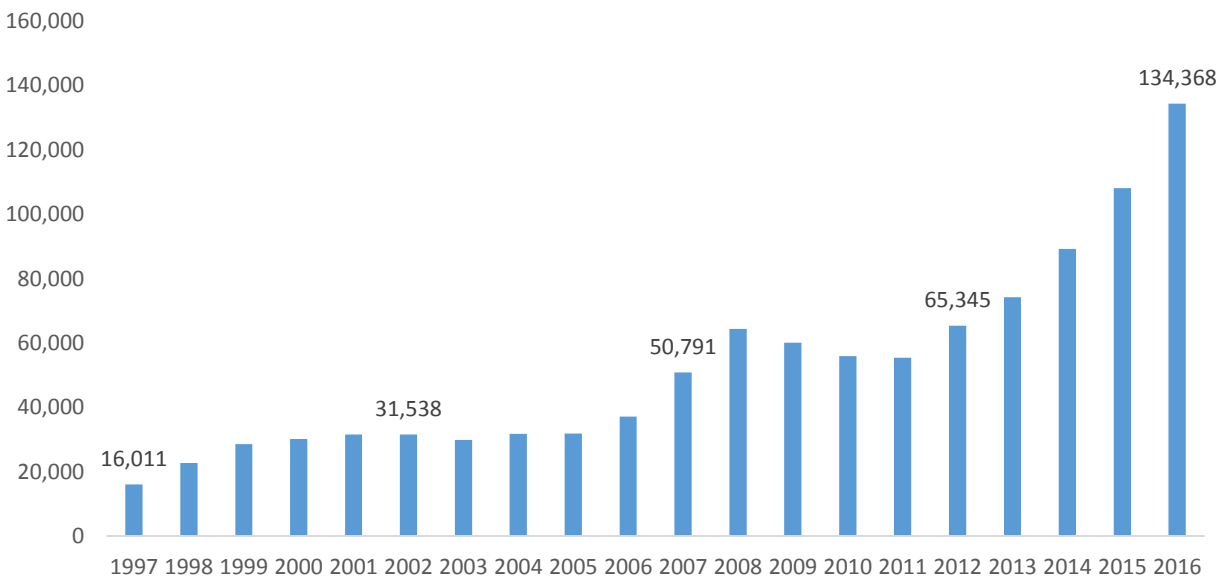
For this reason, increases in the availability of farm labor ultimately benefit U.S. workers elsewhere in the economy. USDA used a general equilibrium model to estimate the effect of removing 5.6 million unauthorized immigrant workers and concluded that about 1 percent of income accruing to natives is dependent on those workers, a disproportionate share of whom work in agriculture.<sup>16</sup>

## The Ag Act Act Would Reduce Illegal Immigration

Employment figures indicate that agricultural workers are currently in high demand, and the Ag Act would help meet the demand. Farm unemployment is usually higher than the national average because the work is often seasonal or temporary, but unemployment in agriculture over the last 12 months is as low as it has been during any period in a decade.<sup>17</sup> August 2016 saw the lowest unemployment rate for that month since before the year 2000, as did February and March 2017. Average unemployment for the last 12 months was the lowest of any 12-month period since 2007.<sup>18</sup>

Few economic sectors in the United States rely more heavily on foreign workers than agriculture, meaning that immigrants are responsible for a large portion of its production. The USDA has found that more than 70 percent of hired crop farmworkers migrated to the United States from other countries.<sup>19</sup> It also found that half of the total lacked proper authorization to live or work in the United States.<sup>20</sup> In addition, another 135,000 foreign workers received H-2A visas in 2016 to come and work as temporary farm workers in the United States.<sup>21</sup> The use of this program has increased substantially over the last two decades, doubling in the last five years alone (Figure 1).<sup>22</sup>

**Figure 1**  
**H-2A Agricultural Visas Issued, FY 1997-FY 2016**



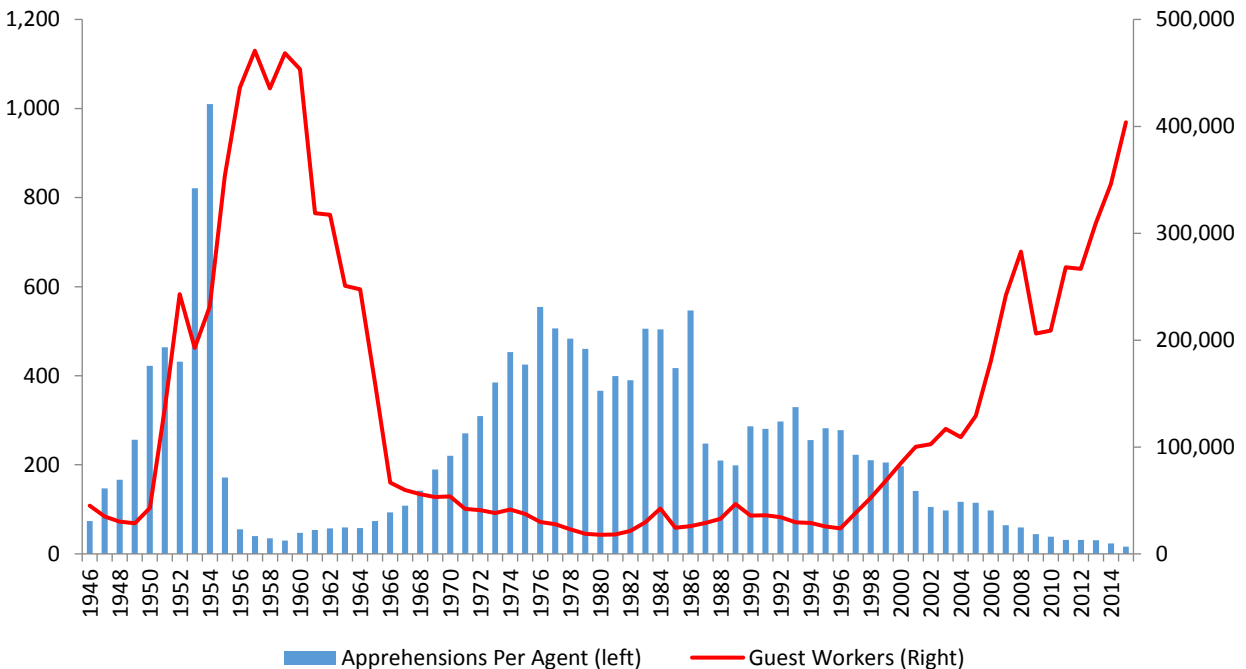
Source: U.S. Department of State.

This increase in the supply of guest workers is beneficial, not only due to the positive economic factors described above, but also because it improves border security. Over the last 60 years, guest worker entries correlate negatively with apprehensions of illegal aliens at the border. Logically this relationship makes sense. As the government has artificially restricted the supply of a service relative to demand, non-legal suppliers rush to fill the market and expand the underground economy. The United States experienced a similar process during alcohol prohibition with bootleggers replacing legitimate liquor producers and sellers. When Congress first enacted immigration quotas in the 1920s, many commenters noted the relationship between these two progressive policies, calling illegal immigration “human bootlegging.”<sup>23</sup>

Figure 2 highlights this relationship for the post-World War II period. The red line is the number of guest workers entering each year. The blue bars represent the number of apprehensions that each border agent made during the year, which is the best measure of total illegal immigration available. Typically, more

apprehensions per agent mean more attempted crossings. As it shows, when illegal immigration first started in the late 1940s, Congress responded to the market, increased the supply of visas, and continued to do so until the supply met demand. Combined with a stricter enforcement policy in the 1950s, the problem nearly evaporated, but it returned dramatically after Congress eliminated the Bracero program in 1965.<sup>24</sup>

**Figure 2: H-2 Entries and Apprehensions of Illegal Aliens per Border Patrol Agent 1946-2015**



Sources: Border Patrol; Immigration and Naturalization Service

In recent years, the number of guest workers entering each year has risen sharply, which again has coincided with a drop in illegal immigration, but the H-2A program still needs reforms. From 2007 to 2011, H-2As represented just 10 percent of farm employment.<sup>25</sup> Although it has doubled in size since then, it is still a small share of the total. The biggest problem is that H-2A workers may not work in any permanent or non-seasonal jobs. This eliminates roughly half of all farm jobs, including in the dairy and livestock industries. H-2A visas are also unavailable for meat and poultry processing. USDA also notes that the inflated wage requirements may discourage some employers from using it.<sup>26</sup> Processing delays may also discourage participation.

The Ag Act addresses these problems. It expands the definition of “agricultural labor or services” to include year-round activities, including dairies, forestry, aquaculture, and meat or fish processing.<sup>27</sup> It eliminates the Adverse Effect Wage Rate—which is entirely artificial creation of the Department of Labor solely for the H-2 programs—and institutes a more realistic wage structure.<sup>28</sup> This new program would have strict and rapid timelines for issuing certifications to employers and visas to workers to prevent costly delays that could result in America’s food supply rotting in the fields.

The Committee could improve the program by granting H-2C workers more than 30 days to find subsequent employment.<sup>29</sup> This would improve their bargaining power and allow them, which guard against the unlikely scenario of them being used as a replacement for U.S. workers. It would also provide U.S. employers with a secondary market of H-2C workers who would not need to travel from abroad.

In a similar vein, the bill would *require* H-2C workers to cover half of all costs of arbitration or mediation over labor disputes with their employers, even if their rights were violated.<sup>30</sup> In combination with another provision allowing H-2C employers to require binding arbitration or mediation, this provision would give employers a reason to prefer H-2C workers to U.S. workers as it would make it prohibitively difficult for foreign workers to claim wages or benefits wrongfully withheld from them. The median fee for arbitration was \$7,138 in 2011.<sup>31</sup> In 2013, the chairman of this committee noted during the markup that it would not be possible for many workers to pay such an amount and agreed to amend the legislation.<sup>32</sup>

An expanded agriculture guest worker program would benefit the U.S. economy and improve border security. Foreign farm workers are in demand and Congress should allow the free market, rather than the black market, to meet that demand. The Ag Act would accomplish these goals.

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<sup>1</sup> Patrick O'Brien; John Kruse; and Darlene Kruse, "Gauging the Farm Sector's Sensitivity to Immigration Reform via Changes in Labor Costs and Availability," WAEES, February 2014, [http://www.fb.org/files/AFBF\\_LaborStudy\\_Feb2014.pdf](http://www.fb.org/files/AFBF_LaborStudy_Feb2014.pdf).

<sup>2</sup> Steven Zahniser, Tom Hertz, Peter Dixon, and Maureen Rimmer, "The Potential Impact of Changes in Immigration Policy on U.S. Agriculture and the Market for Hired Farm Labor: A Simulation Analysis," U.S. Department of Agriculture, Economic Research Service, Economic Research Report Number 135, May 2012, [https://www.ers.usda.gov/webdocs/publications/44981/20514\\_err135\\_1\\_.pdf?v=41219](https://www.ers.usda.gov/webdocs/publications/44981/20514_err135_1_.pdf?v=41219).

<sup>3</sup> See: Zahniser, et al.

<sup>4</sup> Ibid.

<sup>5</sup> Rosson, Parr, Flynn Adcock, Dwi Susanto, and David Anderson, "The Economic Impacts of Immigration on U.S. Dairy Farms," National Milk Producers Federation: Arlington, VA, June 2009, <http://www.nmpf.org/files/le/NMPF%20Immigration%20Survey%20Web.pdf>.

<sup>6</sup> Geoffrey Mohan, "To keep crops from rotting in the field, farmers say they need Trump to let in more temporary workers," *Los Angeles Times*, May 25, 2017, <http://www.latimes.com/projects/la-fi-farm-labor-guestworkers/>.

<sup>7</sup> Kelsey Brugger, "Labor Shortage Leaves \$13 Million in Crops to Rot in Fields," *Independent*, June 22, 2017, <http://www.independent.com/news/2017/jun/22/labor-shortage-leaves-13-million-crops-rot-fields/>.

<sup>8</sup> Sun Ling Wang, Paul Heisey, David Schimmelpfennig, and Eldon Ball, "Agricultural Productivity Growth in the United States: Measurement, Trends, and Drivers," United States Department of Agriculture Economic Research Service: Economic Research Report 189, July 2015, [https://www.ers.usda.gov/webdocs/publications/45387/53417\\_err189.pdf?v=42212](https://www.ers.usda.gov/webdocs/publications/45387/53417_err189.pdf?v=42212).

<sup>9</sup> Linda Calvin and Philip Martin, "The U.S. Produce Industry and Labor: Facing the Future in a Global Economy," United States Department of Agriculture Economic Research Service: Economic Research Report 106, November 2010, [https://www.ers.usda.gov/webdocs/publications/44764/8068\\_err106\\_reportsummary.pdf?v=41056](https://www.ers.usda.gov/webdocs/publications/44764/8068_err106_reportsummary.pdf?v=41056).

<sup>10</sup> Ibid.

<sup>11</sup> Michael A. Clemens, Ethan G. Lewis, and Hannah M. Postel, "Immigration Restrictions as Active Labor Market Policy: Evidence from the Mexican Bracero Exclusion," NBER Working Paper No. 23125, February 2017, <http://www.nber.org/papers/w23125>.

<sup>12</sup> Michael Clemens, "International Harvest: A Case Study of How Foreign Workers Help American Farms Grow Crops – and the Economy," Partnership for a New American Economy and the Center for Global Development, May 2013, <http://www.newamericaneconomy.org/sites/all/themes/pnae/nc-agr-report-05-2013.pdf>.

<sup>13</sup> Ibid.

<sup>14</sup> Devadoss, Stephen, and Jeff Luckstead. "Contributions of Immigrant Farmworkers to California Vegetable Production," *Journal of Agricultural and Applied Economics* 40(3): pp. 879-94, 2008, <http://ageconsearch.umn.edu/bitstream/47265/2/jaae-40-03-879.pdf>.

<sup>15</sup> American Community Survey, 2011-2015

<sup>16</sup> Zahniser, et al.

<sup>17</sup> Bureau of Labor Statistics, "Unemployment Rate - Agricultural and Related Private Wage and Salary Workers," <https://data.bls.gov/pdq/SurveyOutputServlet>

<sup>18</sup> Bureau of Labor Statistics, "Unemployment Rate - Agricultural and Related Private Wage and Salary Workers," <https://data.bls.gov/pdq/SurveyOutputServlet>

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- <sup>19</sup> U.S. Department of Agriculture, "Farm Labor - Background," Tuesday, September 27, 2016, <https://www.ers.usda.gov/topics/farm-economy/farm-labor/background.aspx>.
- <sup>20</sup> Ibid. See also: Jeffrey Passel and D'Vera Cohn, "Size of U.S. Unauthorized Immigrant Workforce Stable After the Great Recession," Pew Research Center, November 3, 2016, <http://www.pewhispanic.org/2016/11/03/industries-of-unauthorized-immigrant-workers/>.
- <sup>21</sup> U.S. Department of State, "Worldwide NIV Workload by Visa Category FY 2016," <https://travel.state.gov/content/dam/visas/Statistics/Non-Immigrant-Statistics/NIVWorkload/FY2016NIVWorkloadbyVisaCategory.pdf>.
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- <sup>24</sup> Alex Nowrasteh, "Guest Worker Visas Can Halt Illegal Immigration," Cato Institute, May 5, 2014, <https://www.cato.org/blog/guest-worker-visas-can-halt-illegal-immigration>.
- <sup>25</sup> Zahniser, et al.
- <sup>26</sup> Zahniser, et al.
- <sup>27</sup> P. 2.
- <sup>28</sup> P. 18.
- <sup>29</sup> P. 24.
- <sup>30</sup> P. 42.
- <sup>31</sup> Alexander Colvin, "An Empirical Study of Employment Arbitration: Case Outcomes and Processes," *Journal of Empirical Legal Studies*, 8(1), February 2011, 1-23, <http://digitalcommons.ilr.cornell.edu/articles/577/>.
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