COMMENT

Thank You for "Taking Our Jobs": The Importance of Integrating the Migrant Farmworker into the United States

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I. INTRODUCTION

The fields were fruitful, and starving men moved on the roads.

—John Steinbeck, *The Grapes of Wrath*

John Steinbeck's 1939 novel, *The Grapes of Wrath*, depicted domestic laborers toiling in fields. Today, it is foreign labor that overwhelmingly tends our nation's farms. Each year, three to five million migrant farmworkers plant, cultivate, harvest, and pack this country's fruits, vegetables, and nuts.[1] Close to three-fourths of all hired farmworkers in the United States are immigrants and about

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* Candidate for J.D., 2013, University of Wyoming College of Law. Most importantly, I thank my parents, Marcia and Vince, and sister, Carmelle. My accomplishments are significantly due to their constant love, support, and advice. I thank the Colorado Legal Services Migrant Farm Worker Division for providing me my first glimpse at the plight of migrant farmworkers and Professor Suzan Pritchett for further fostering my interest in immigration law. I thank the *Wyoming Law Review* Editorial Board for their hard work and insightful additions and suggestions. Finally, I thank my law school friends; especially those who have shared with me not only the basement study carrels these past three years but also their knowledge and humor.

[1] *Farmworkers in the United States*, MIGRANT HEALTH PROMOTION (2012), http://www.migrant-health.org/index.php?option=com_content&view=article&id=38&Itemid=30 (last visited Dec. 5, 2012); *Farmworker Health Factsheet: Demographics,* NAT'L CTR. FOR FARMWORKER HEALTH, INC., 1 (2012), *available at* http://www.ncfh.org/docs/fs-Migrant%20Demographics.pdf.

half are unauthorized.[2] Immigrant workers, from the skilled to the unskilled, are an essential component of our country's current and future economy. Therefore, continued immigration is not only inevitable, but also necessary.

In 2010, the agricultural industry directly contributed $132.6 billion to the United States' Gross Domestic Product (GDP), or 0.9% of total GDP.[3] Moreover, farming accounts for one percent of the total national workforce.[4] These low percentages do not accurately depict the true value that the agricultural sector plays in our country.[5] Agriculture is one of the largest sectors in our economy and is comprised of industries related to farming, "including feed, seed, fertilizer, machinery, food processing, manufacturing, and exporting."[6] Despite the significant value of agriculture and our reliance on foreign labor, Congress has been unable to establish meaningful, comprehensive immigration reform regarding the H-2A visa to benefit migrant farmworkers.[7]

The H-2A visa authorizes employers who anticipate a shortage of domestic workers to hire non-immigrant foreign workers to perform agricultural labor or services of a temporary or seasonal nature.[8] This visa is one of the more contro-

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[2] Andrew Wainer, *Farm Workers and Immigration Policy*, BREAD FOR THE WORLD INST. 12, 2 (Dec. 2011), *available at* http://www.bread.org/institute/papers/farm-workers-and-immigration.pdf; Philip Martin, *Migration and U.S. Agricultural Competitiveness*, UNIV. CAL. DAVIS, 15 (Aug. 24, 2012), http://migration.ucdavis.edu/rs/files/2012/9/ciip/martin-migrants-ag-cgp-japan-us.pdf (stating fifty-five percent of the foreign-born workers are unauthorized).

[3] Donald D. Kim et al., *Annual Industry Accounts: Advance Statistics on GDP by Industry for 2011*, BUREAU OF ECONOMIC ANALYSIS, 14–15 (May 2012), http://www.bea.gov/scb/pdf/2012/05%20May/0512_industry.pdf.

[4] Kathryn L. Lipton et al., *The Food and Fiber System: Contributing to the U.S. and World Economies*, U.S. DEP'T OF AGRIC. 1 (July 1998), http://naldc.nal.usda.gov/download/36812/PDF.

[5] Stacy McCland, *Immigration Reform and Agriculture: What We Really Want, What We Really Need, and What Will Happen if They Leave?*, 10 BARRY L. REV. 63, 74 (2008).

[6] Lipton et al., *supra* note 4.

[7] *Making the Case for Comprehensive Immigration Reform*, AM. IMMIGRATION LAWYERS ASS'N, 9, http://shusterman.com/pdf/comprehensiveimmigrationreformresourceguide.pdf; *Immigration Reform & Farmworkers*, FARMWOKER JUSTICE, http://farmworkerjustice.org/advocacy-and-programs/agjobs (last visited Nov. 10, 2012).

[8] Immigration and Nationality Act of 1952 (INA) § 101(a)(15)(H)(ii)(a), 8 U.S.C. § 1101(a)(15)(H)(ii)(a) (2006); STEPHAN H. LEGOMSKY & CRISTINA M. RODRIGUEZ, IMMIGRATION AND REFUGEE LAW AND POLICY 250 (5th ed. 2009); *Employment Law Guide: Work Authorization for Non-U.S. Citizens: Temporary Agricultural Workers (H-2A Visas)*, U.S. DEP'T OF LABOR, http://www.dol.gov/compliance/guide/taw.htm (last updated Sept. 2009). In fact, according to a prepared statement of Senator Larry E. Craig, a U.S. Senator from the State of Idaho, "[t]he current H-2A Agricultural Guest Worker Program is profoundly broken. The failure to fix or replace this program means that the federal government is completely ignoring the growing needs of a significantly changed agricultural labor market." *Meeting the Workforce Needs of American Agriculture, Farm Workers, and the U.S. Economy: Hearing on 106–530 Before the Subcomm. on Immigration of the*

versial non-immigrant visas due to significant disagreement over its functionality.[9] Citizens and permanent residents argue it authorizes low-skilled foreign nationals to work in the same labor market, effectively "taking" jobs otherwise available to them.[10] Growers contend the visa's difficult restrictions and requirements make it impractical to use, which often results in growers hiring undocumented workers.[11] Finally, foreign workers and advocates maintain the visa lacks adequate protections, leaving workers open to targeted abuse and exploitation.[12]

Although disagreement exists regarding the visa's feasibility, people on all sides of the immigration debate agree the current immigration system is inadequate and needs revision. This comment proposes that the 2011 Agricultural Job Opportunities, Benefits, and Security Act (AgJOBS) offers a solution that will adequately address most of these issues. Specifically, AgJOBS affords undocumented farmworkers a pathway to obtain legalization, while simultaneously giving growers the steady workforce their crops require. This comment discusses the background of the H-2A visa and describes AgJOBS and its particular initiatives. The analysis then explains why AgJOBS earned legalization is the best answer in resolving the immigration debate in the agricultural workforce sector.

Comm. on the Judiciary United States Senate, 106th Cong. 128–29 (1999), *available at* http://www.gpo.gov/fdsys/pkg/CHRG-106shrg65020/pdf/CHRG-106shrg65020.pdf [hereinafter *Immigration Hearing*].

[9] Siskind Susser Bland, *The ABC'S of Immigration–H-2A Visas for Temporary Agricultural Workers*, http://www.visalaw.com/00jul2/12jul200.html (last visited Nov. 10, 2012) (commenting the H-2A visa "is one of the most controversial, with growers claiming its restrictions make it impractical and farmworker advocates claiming that it does not provide sufficient protections for US workers and leaves foreign workers open to abuse and mistreatment").

[10] Brianna Lee, *The U.S. Immigration Debate*, COUNCIL ON FOREIGN RELATIONS (June 25, 2012), http://www.cfr.org/immigration/us-immigration-debate/p11149 (stating some citizens "contend that undocumented workers take jobs that would otherwise be held by American workers, while others argue they do work that Americans are unwilling to undertake").

[11] Siskind, *supra* note 9; *Immigration: A Better Farm Worker Fix*, FARMWORKERS FORUM (May 9, 2011), http://farmworkersforum.wordpress.com/2011/05/09/immigration-a-better-farm-worker-fix/ (last visited Aug. 2, 2012) (commenting the H-2A visa requirements "have made the program impractical and left [growers] with little choice but to hire illegal workers or watch their crops rot").

[12] Siskind, *supra* note 9; *see also Recommendations*, S. POVERTY LAW CTR. (Nov. 2010), http://www.splcenter.org/get-informed/publications/injustice-on-our-plates/recommendations (commenting that specifically in regards to female immigrant workers, "[t]he only way to bring a measure of fairness to the system—to truly improve the living and working conditions for immigrant women—is to enact wholesale reforms at the federal level. These include a path to citizenship for the undocumented workers who are feeding our country."). A potential advantage to adopting AgJOBS could be a decrease in the amount of migrant farmworker abuse and exploitation, a discussion of which is beyond the scope of this comment.

II. BACKGROUND

We asked for workers. We got people instead.

—Max Frisch

The background first introduces the migrant farmworker populace to emphasize their presence and the nation's economic need for their labor. Second, it addresses the history of the H-2A visa. Third, it addresses the visa's requirements and provisions. Fourth, it discusses the Immigration Reform Control Act (IRCA) amnesty program, comparing and contrasting it with AgJOBS earned legalization program. Finally, it explores AgJOBS and how its earned legalization program operates.

A. Who is the Migrant Farmworker

The National Agricultural Workers Survey (NAWS), the authoritative source for information collected directly from migrant farmworkers and published by the Department of Labor (DOL), provided a summary revealing the following demographic, language, and education statistics:[13] seventy-two percent of farmworkers were foreign born;[14] thirty-five percent could not speak any English while thirty percent spoke English "well"; the average farmworker had an eighth grade education, while only twenty-eight percent completed grades ten to twelve.[15] Regarding legal status: forty-eight percent of farmworkers did not have legal authorization and thirty-three percent were citizens.[16] Additionally, the study provided wage and benefit statistics showing that twenty-three percent of farmworker families had total family income levels below the national poverty guidelines (earning between $15,000 to $17,499); while individual workers earned an average annual income of between $10,000 to $12,499;[17] farmworkers labored forty-two hours per week and earned an average hourly rate of $7.25;[18]

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[13] *Facts About Farmworkers*, NAT'L CTR. FOR FARMWORKER HEALTH, INC., 1 (Aug. 2012), http://www.ncfh.org/docs/fs-Facts%20about%20Farmworkers.pdf. The NAWS statistics reflect the most recent farmworker demographics 2007–2009 survey results. *Id.*

[14] *Id.* Of the seventy-two percent of foreign-born workers, 94.4% are born in Mexico, 4.2% in Central American countries, and 1.4% elsewhere. *Id.* Furthermore, of the 94.4% of foreign-born workers born in Mexico, 47.7% are from Guanajuato, Jalisco, and Michoacán and another 21.2% percent are from Guerrero, Oaxaca, Chiapas, Puebla, Morelos, and Veracruz. *Id.*

[15] *Id.*

[16] *Id.* at 2.

[17] The federal poverty line in 2009 was $10,830 for an individual and $22,050 for a family of four. *Farm Worker Issues: Low Wages*, NAT'L FARM WORKER MINISTRY/YAYA, 1 (2012), http://nfwm-yaya.org/wp-content/uploads/2011/11/pdf_Low-Wages.pdf.

[18] *Id.* The average hourly wage varies among workers. *Id.* Workers who have worked for the same employer for multiple years earn more than other workers. *Id.* Those who have been with an employer for a year or less earn an average of $6.76 per hour, and those who have been with the same employer for at least six years earn an average of $8.05 per hour. *Id.*

eighty-three percent were paid by the hour while eleven percent were paid by the piece;[19] and six percent were salaried employees.[20]

B. Leading Up to the H-2A Visa Guestworker Program

Early Beginnings. The 1917 Immigration Act waived many immigration requirements for temporary workers.[21] This prompted the first publicly sanctioned foreign worker program, granting workers "temporary" entrance to the United States.[22] Within four years of the Act's passage, more than 72,000 foreign workers lived and worked in this country, primarily performing agricultural work.[23] Between 1900 and 1930, there were over 300,000 legal Mexican workers and close to one million undocumented, non-citizen workers admitted into the country.[24] During the Great Depression "Mexicans [were] scapegoated as the cause of unemployment" and the United States repatriated, or sent home, 345,000 Mexican workers between 1929 and 1932 to provide more work for domestic laborers.[25]

From *Bracero* to the H-2A Visa. The H-2A visa did not become the visa it is today until the 1986 revision of IRCA.[26] However, the notion of attracting foreign nationals to the United States for agricultural work began years before

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[19] *Id.* A "piece rate" is a pay system in which the employee's compensation is based upon the number of units of output, article, job, commodity, etc. produced by the employee. *Piece Rate Pay System Law & Legal Definition*, U.S. LEGAL DEFINITIONS (2012), http://definitions.uslegal.com/p/piece-rate-pay-system/ (last visited Sept. 6, 2012). In the agricultural context, an employer can pay a migrant farmworker by the bucket wherein his wage would be equal to the number of units he produced multiplied by the rate of wage per that unit. *Id.* "Using piece rate as a basis for payment is common in agricultural work when the crop picked is easily weighed and measured. One reason employers prefer this form of payment is because workers are motivated to work faster during a short window of seasonal crop harvesting." *Facts About Farmworkers*, *supra* note 13, at 2.

[20] *Id.*

[21] *See* Immigration Act of 1917, ch. 29, § 3, 39 Stat. 874, 877–78 (repealed 1952).

[22] Vernon M. Briggs Jr., *Guestworker Programs: Lessons from the Past and Warnings for the Future*, CTR. FOR IMMIGRATION STUDIES, 1 (Mar. 2004), http://www.cis.org/articles/2004/back304.pdf; Elizabeth Johnston, *The United States Guestworker Program: The Need for Reform*, 43 VAND. J. TRANSNAT'L L. 1121, 1125 (2010).

[23] Lauren Gilbert, *Fields of Hope, Fields of Despair: Legisprudential and Historic Perspectives on the AgJobs Bill of 2003*, 42 HARV. J. ON LEGIS. 417, 426 (2005); Johnston, *supra* note 22, at 1125.

[24] Kimi Jackson, *Farmworkers, Nonimmigration Policy, Involuntary Servitude, and a Look at the Sheepherding Industry*, 76 CHI.-KENT L. REV. 1271, 1274–75 (2000); Johnston, *supra* note 22, at 1126; James F. Smith, *United States Immigration Policy—A History of Prejudice and Economic Scapegoatism?: A Nation that Welcomes Immigrants? An Historical Examination of United States Immigration Policy*, 1 U.C. DAVIS J. INT'L L. & POL'Y 227, 242 (1995).

[25] Jackson, *supra* note 24, at 1275; Smith, *supra* note 24, at 243.

[26] *See* Immigration Reform and Control Act of 1986 (IRCA), Pub. L. No. 99–603, 100 Stat. 3359, 3411–34 (1986).

IRCA, starting with the *Bracero* Program. Due to the farm labor shortage caused by World War II (WWII), this country sought to fill agricultural jobs with Mexican workers.[27] In an effort to entice Mexican migrant farmworkers to return here during WWII, the United States and Mexico entered into an agreement called the *Bracero* Program.[28] The program began in 1942 and ended in 1964.[29] During the program's operation, Mexican farmworkers could enter the country on a temporary basis to work in agriculture.[30] Shortly after the *Bracero* Program, agricultural labor soon evolved into an immigrant job category because citizens and permanent residents did not return to the fields.[31] Today, according to Princeton University sociologist Doug Massey, "[a]gricultural labor is basically 100 percent an immigrant job category."[32] Often, once immigrants dominate an occupational category, it creates a stigma that is difficult to erase.[33] Essentially, many citizens and permanent residents do not reject these jobs because the work is hard or on account of low wages.[34] Instead, these workers have come to think of the work as beneath them.[35] In other words, it has nothing to do with the job itself.[36] As Phil Glaize of Glaize Orchards of Winchester, Virginia stated,

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[27] Smith, *supra* note 24, at 244; Jackson, *supra* note 24, at 1275.

[28] Alice J. Baker, *Agricultural Guestworker Programs in the United States*, 10 TEX. HISP. J.L. & POL'Y 79, 84 (2004); Smith, *supra* note 24, at 244. The term "bracero" is derived from the Spanish word, "brazo," meaning "arm." Briggs, *supra* note 22. Literally, the term means "one who works with his arms." *Id.*; *Importing Farm Workers: From Bracero to H-2A*, THE 2012 HUNGER REPORT (2012), http://hungerreport.org/2012/full-report/chapters/three/importing-farm-workers (last visited July 4, 2012) [hereinafter *Bracero to H-2A*].

[29] LEGOMSKY & RODRIGUEZ, *supra* note 8, at 377; *Bracero to H-2A*, *supra* note 28. Regardless of the motivation underlying the program's adoption, agreement exists that the program resulted in employee abuses. *Close to Slavery: Guestworker Programs in the United States*, S. POVERTY LAW CTR. (Mar. 2007), http://www.splcenter.org/get-informed/publications/close-to-slavery-guestworker-programs-in-the-united-states.

[30] *Bracero to H-2A*, *supra* note 28; Briggs, *supra* note 22.

[31] *Bracero to H-2A*, *supra* note 28.

[32] John Rutter, *Americans Still Shun Farm Work in Tough Times*, PITTSBURGH POST-GAZETTE (Apr. 10, 2012, 9:41 AM), http://www.post-gazette.com/stories/business/news/americans-still-shun-farm-work-in-tough-times-630711/?print=1; *see also Immigrant Employment: Most Common Jobs*, JOBS IN THE USA, http://www.usa-job.org/immigrant-employment-most-common-jobs.php (last visited Nov. 10, 2012) (stating jobs that non-citizens usually go for are in "things that most people do not want to do, or they are the most hard laborious jobs, thus other people may not want to do them. . . . The most common workforce . . . is the farming and agriculture category.").

[33] Rutter, *supra* note 32.

[34] *Id.*

[35] *Id.*; Elizabeth Dwoskin, *Why Americans Won't Do Dirty Jobs*, BLOOMBERG BUSINESSWEEK (Nov. 9, 2011), http://www.businessweek.com/printer/articles/5207-why-americans-wont-do-dirty-jobs ("[At] a moment when the country is relentless[ly] focused on unemployment, there are still jobs that often go unfilled. These are difficult, dirty, exhausting jobs that, for previous generations, were the first rickety step on the ladder to prosperity. They still are—just not for Americans.").

[36] Rutter, *supra* note 32.

"I am not suggesting that Americans are lazy. I am suggesting that our U.S.-born population has changed dramatically over the years. We are growing older, we are better educated, and we have chosen to live in cities and suburbs."[37]

In response to years of immigration problems, Congress passed the Immigration and Nationality Act (INA) in 1952.[38] The INA is a federal law governing almost all immigration and citizenship issues.[39] Congress established the H-2 visa by incorporating the *Bracero* Program into the INA.[40] The INA made H-2 visas available to all foreign workers, providing legal entry to both agricultural and non-agricultural temporary workers.[41] When Congress passed IRCA, it divided the H-2 guestworker program into two parts, creating the H-2A agricultural guestworker and the H-2B non-agricultural guestworker programs.[42] From the inception of the H-2 visa, and continuing today under the H-2A program, employers have underutilized the visa.[43] According to the United States Department of Agriculture's Farm Labor Survey, the number of H-2A certifications, or filings, constitutes roughly one-tenth of hired farmworkers.[44] This underutilization is due, in part, to growers viewing the procedures associated with the program as far too time consuming to permit harvesting of perishable

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[37] Marian Kromkowski, *Guest Worker Visas: Where Are We and Where Do We Go?*, LEAGUE OF WOMEN VOTERS, 4 (Feb. 1, 2012), http://www.lwvgta.org/issuesactions/D-5-Non-Gov-Full-Text-MK.pdf.

[38] Immigration and Nationality Act of 1952 (INA), ch. 477, 66 Stat. 163 (codified as amended in scattered sections of 8 U.S.C.); *see Immigration and Nationality Act*, U.S. CITIZENSHIP & IMMIGRATION SERV., http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextchannel=f3829c7755cb9010VgnVCM10000045f3d6a1RCRD&vgnextoid=f3829c7755cb9010VgnVCM10000045f3d6a1RCRD (last visited Nov. 10, 2012).

[39] *About Us*, U.S. CITIZENSHIP & IMMIGRATION SERV. (Sept. 12, 2009), http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=2af29c7755cb9010VgnVCM10000045f3d6a1RCRD&vgnextchannel=2af29c7755cb9010VgnVCM10000045f3d6a1RCRD.

[40] *See* INA § 101(a)(15)(H)(ii), 8 U.S.C. § 1101(a)(15)(H)(ii) (2006).

[41] *Id.*

[42] Briggs, *supra* note 22, at 4. The most well-known IRCA provisions include the legalization of undocumented non-citizens having continuous, unlawful presence since 1982, legalization of certain agricultural workers, establishing the I-9 system, instituting sanctions for employers knowingly hiring undocumented workers, and increasing border enforcement. *See* Immigration Reform and Control Act of 1986 (IRCA), Pub. L. No. 99–603, 100 Stat. 3359 (codified as amended in scattered sections of 8 U.S.C.). The H-2A visa should not be confused with the H-2B visa, which permits non-citizens to enter the country to perform non-agricultural work, such as construction. INA § 101(a)(15)(H)(ii)(b), 8 U.S.C. § 1101(a)(15)(H)(ii)(b).

[43] Jackson, *supra* note 24, at 1277. Despite the H-2 visa's underutilization, the limited historical record of its use is full of instances of abuse. *Id.* Growers preferred guestworkers not necessarily because they were cheaper, but because they were more vulnerable, thus allowing the grower to wield absolute control. *Id.*

[44] Steven Zahniser et al., *Immigration Policy Tied to U.S. Agriculture*, WESTERN FARM PRESS, (June 14, 2012), http://westernfarmpress.com/government/immigration-policy-tied-us-agriculture.

crops.[45] The practical effect of the program's underutilization is that growers have opted to hire unauthorized agricultural laborers.[46] Thus, Congress passed IRCA, in part, to establish the H-2A program in response to the increasing numbers of unauthorized migrant farmworkers.[47] Today, the H-2A visa remains the only legal mechanism through which employers may hire agricultural migrant farmworkers.[48]

C. The H-2A Visa

The INA initially classifies all non-citizens by placing them into one of two broad categories.[49] The first categorization places non-citizens into an immigrant class.[50] An immigrant is a non-citizen who has intent to remain, usually permanently, in the country.[51] The second INA categorization places non-citizens into a non-immigrant class.[52] A non-immigrant is a non-citizen who enters the country on a temporary basis and without intent to remain here.[53] The H-2A visa falls within the latter group.[54] Thus, foreign workers who enter the country on the visa (or those who enter the country without authorization but perform agricultural work) cannot become citizens, apply for legal permanent residency, or remain permanently in the United States.[55]

The INA specifically states the H-2A non-immigrant visa classification applies only to non-citizens seeking to perform agricultural labor or services of a temporary or seasonal nature and who have no intent to abandon their foreign

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[45] Kromkowski, *supra* note 37, at 1–2; *see also supra* note 11 and accompanying text.

[46] Kromkowski, *supra* note 37, at 1–2.

[47] Laura C. Oliveira, *A License to Exploit: The Need to Reform the H-2A Temporary Agricultural Guest Worker Program*, 5 SCHOLAR 153, 161–62 (2002); *see generally* Richard E. Blum, *Labor Standard Enforcement and the Results of Labor Migration: Protecting Undocumented Workers After* Sure-Tan*, The IRCA, and* Patel, 63 N.Y.U. L. REV. 1342 (1988) (discussing additional history and reasons behind IRCA's enactment). On November 6, 1986, President Ronald Reagan signed IRCA into law. Jerry Kammer, *The Road to IRCA, June 1986*, CTR. FOR IMMIGRATION STUDIES (June 29, 2011), http://cis.org/Kammer/IRCA-25-Years.

[48] *See* INA § 101(a)(15)(H)(ii), 8 U.S.C. § 1101(a)(15)(H)(ii) (2006).

[49] *See* INA § 201, 8 U.S.C. § 1151; INA § 203, 8 U.S.C. § 1153; INA § 101(a)(15), 8 U.S.C. § 1101(a)(15).

[50] INA § 201, 8 U.S.C. § 1151; INA § 203, 8 U.S.C. § 1153.

[51] INA § 101(a)(15), 8 U.S.C. § 1101(a)(15).

[52] *Id.*

[53] *Id.*

[54] INA § 101(a)(15)(H)(ii)(a), 8 U.S.C. § 1101(a)(15)(H)(ii)(a).

[55] *Id.* An employer may sponsor an employee for permanent resident status. *I Am an Employer: How Do I Sponsor an Employee for U.S. Permanent Resident Status?*, U.S. CITIZENSHIP & IMMIGRATION SERV., 1–2 (Aug. 2008), http://www.uscis.gov/USCIS/Resources/E2en.pdf. However, the application process remains primarily within the control and power of the employer, rather than the individual worker. *See id.*

home residence.[56] A foreign worker may stay in the country for the authorized period stated on the temporary labor certification.[57] The H-2A program does not limit the number of foreign workers an employer may retain so long as the employer and the worker meet the requisite certification checklist.[58] This checklist includes over twenty different regulations with which employers and workers must comply.[59] One of the most significant regulations on the checklist is that the employer must submit a *Temporary Labor Certification Application* to DOL.[60] The application requires employers to certify to DOL there is an unavailability of qualified domestic workers willing to perform the labor the employer requires and that by hiring foreign workers, the employer will not adversely affect the wages and working conditions of workers in the United States similarly employed.[61] The complete H-2A guestworker application process consists of multiple steps.[62]

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[56] INA § 101(a)(15)(H)(ii)(a), 8 U.S.C. § 1101(a)(15)(H)(ii)(a). The INA specifically defines an H-2A visa holder as: "[A non-citizen] having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States to perform agricultural labor or services . . . of a temporary or seasonal nature." *Id.* For definitions of "agricultural labor or services," "agriculture," or "temporary or seasonal nature," refer to 29 C.F.R. § 501.3(b)(1), (b)(2), (b)(3) and (c), respectively.

[57] *H-2A Temporary Agricultural Workers*, U.S. CITIZENSHIP & IMMIGRATION SERV., http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=889f0b89284a3210VgnVCM100000b92ca60aRCRD&vgnextchannel=889f0b89284a3210VgnVCM100000b92ca60aRCRD (last updated July 20, 2012). USCIS has power to extend H-2A classification for qualifying employment in increments of up to one year, the maximum period of stay being three years. 20 C.F.R. § 655.170 (2012) (requesting extensions). After an H-2A non-immigrant has held such status for a total of three years, the non-citizen must depart and remain outside of the country for an uninterrupted period of three months before seeking readmission as an H-2A non-immigrant. 8 C.F.R. § 214.2 (providing further details regarding departure requirements).

[58] Stuart Anderson, *U.S. Immigration Reform Should Focus on Improving the Employment-Based Visa System*, IMMIGRATION REFORM BULLETIN, 2 (Jan. 2011), http://www.cato.org/pubs/irb/irb_january2011.pdf (listing the employment visa quotas).

[59] *See, e.g.*, 20 C.F.R. §§ 655.100–85 (including job offer requirements, offered wage rate, and application filing requirements); 29 C.F.R. §§ 501.0–22 (covering contractual obligations and enforcement).

[60] 20 C.F.R. §§ 655.130–31.

[61] INA § 218(a)(1), 8 U.S.C. § 1188(a)(1) specifically states:

> A petition to import an alien as an H–2A worker . . . may not be approved by the Attorney General unless the petitioner has applied to the Secretary of Labor for a certification that (A) there are not sufficient workers who are able, willing, and qualified, and who will be available at the time and place needed, to perform the labor or services involved in the petition, and (B) the employment of the alien in such labor or services will not adversely affect the wages and working conditions of workers in the United States similarly employed.

Id.; *see also H–2A Temporary Agricultural Workers*, *supra* note 57.

[62] *See generally Employer Guide to Participation in the H–2A Temporary Agricultural Program*, U.S. DEP'T OF LABOR, EMPLOYMENT & TRAINING ADMIN., OFFICE OF FOREIGN LABOR CERTIFICATION (Jan. 2012), http://www.foreignlaborcert.doleta.gov/pdf/h-2a_employer_handbook.pdf [hereinafter *Employer Guide*] (requiring employers to: (1) file a job order with the State Workforce

Each step requires approval before the employer may begin the next phase of the application process.[63] The employer further must provide certain benefits and protections to workers. These requirements include, but are not limited to:

(1) housing and subsistence;[64]

(2) transportation;[65]

(3) three-fourths work guarantee of the work specified in the work contract;[66]

(4) fifty-percent work guarantee;[67]

(5) workers' compensation;[68]

Agency; (2) file an H–2A application with the Chicago National Processing Center, which reviews the application and provides additional instruction for completing the temporary labor certification process; (3) conduct recruitment for U.S. workers; and (4) complete the temporary labor certification process); *see also* 20 C.F.R. §§ 655.151–56 (listing additional requirements with which employers must comply in conducting domestic worker recruitment).

[63] *See Employer Guide*, *supra* note 62, at 2.

[64] INA § 218(c)(4), 8 U.S.C. § 1188(c)(4) ("Employers shall furnish housing in accordance with regulations."); 20 C.F.R. § 655.122(d) (stating "[t]he employer must provide housing at no cost to the H-2A workers and those workers in corresponding employment who are not reasonably able to return to their residence within the same day" and then explaining two ways in which employers may provide housing: (1) employer-provided housing; or (2) rental and/or public accommodations). Housing must be provided at no cost to all guestworkers and to domestic workers who are not within commuting distance and must meet federal and state safety standards. *Id.* Employers must also either provide three meals a day or convenient cooking and kitchen facilities. 20 C.F.R. § 655.122(g) ("The employer either must provide each worker with three meals a day or must furnish free and convenient cooking and kitchen facilities to the workers that will enable the workers to prepare their own meals.").

[65] 20 C.F.R. § 655.122(h) (stating workers who complete half the season must be reimbursed transportation costs for traveling to the place of employment, and full season workers must additionally be reimbursed transportation costs for returning home).

[66] 20 C.F.R. § 655.122(i) (stating the three-fourths work guarantee obliges the employer to guarantee to "offer the worker employment for a total number of work hours equal to at least three-fourths of the workdays to the total period beginning with the first workday after the arrival of the worker at the place of employment or the advertised contractual first date of need"). For example, if a contract were for a ten-week period, during which a normal workweek is specified as six days a week, eight hours per day, the worker would need to be guaranteed employment for at least 360 hours. *Wage and Hour Division*, U.S. DEP'T OF LABOR (Feb. 2010), http://www.dol.gov/whd/regs/compliance/whdfs26.htm#.UHooBI7LDf4.

[67] 20 C.F.R. § 655.203(e) ("From the time the foreign workers depart for the employer's place of employment, the employer will provide employment to any qualified, [eligible domestic] worker who applies to the employer until fifty percent of the period of the work contract . . . has elapsed.").

[68] 20 C.F.R. § 655.122(e) (requiring the employer to provide compensation for all occupation-related injuries).

(6) provide notice to workers of their rights;[69]

(7) keep earning records;[70] and

(8) pay adequate wages.[71]

Regarding "adequate wages," employers must pay H-2A workers at least the highest of: (1) the adverse effect wage rate (AEWR); (2) the prevailing hourly wage rate; (3) the prevailing piece rate; (4) the agreed-upon collective bargaining wage, if applicable; or (5) the federal or state minimum wage in effect at the time the work is performed.[72] Typically, AEWR is the highest rate. For example, Wyoming's 2012 minimum wage was $5.15,[73] the 2012 federal minimum wage was $7.25, and Wyoming's 2012 AEWR was $10.19.[74]

D. IRCA Amnesty

When Congress passed IRCA in 1986, it provided amnesty to the estimated three million immigrants residing in this country without proper authorization at that time.[75] Amnesty, or legalization, in the immigration system means the

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[69] 20 C.F.R. § 655.135(l) ("The employer must post and maintain in a conspicuous location at the place of employment, a poster provided by the Secretary in English, and, to the extent necessary, any language common to a significant portion of the workers if they are not fluent in English, which sets out the rights and protections for workers employed . . . .").

[70] 20 C.F.R. § 655.122(j) ("The employer must keep accurate and adequate records with respect to the workers' earnings . . . .").

[71] 20 C.F.R. § 655.122(l).

[72] *Id.* AEWR is the "minimum [federal] wage rates the Department has determined must be offered and paid by employers to H-2A workers and workers in corresponding employment for a particular occupation and area so that the wages of similarly employed U.S. workers will not be adversely affected." *Labor Certification Process for the Temporary Employment of Aliens in Agriculture in the United States: 2012 Adverse Effect Wage Rates*, FED. REGISTRAR: THE DAILY JOURNAL OF THE U.S. GOV. (Dec. 22, 2011), https://www.federalregister.gov/articles/2011/12/22/2011-32842/labor-certification-process-for-the-temporary-employment-of-aliens-in-agriculture-in-the-united [hereinafter *Labor Certification Process*] (citing 20 C.F.R. § 655.100(b)).

[73] When the Federal minimum wage is higher, it overrides Wyoming state minimum wage. WYO. STATE MINIMUM WAGE (2011–2012,) http://www.minimum-wage.us/states/Wyoming (last visited Oct. 13, 2012). Therefore workers are entitled to federal minimum wage. *Id.*

[74] *Labor Certification Process*, *supra* note 72; *Minimum-Wage by State 2012*, FED. & STATE MINIMUM WAGE RATES, LAWS, & RES. (2012), http://www.minimum-wage.org/wage-by-state.asp (last visited July 10, 2012). In fiscal year 2012, the AEWR minimum required hourly wage ranged from $9.30 (Arkansas, Louisiana, Mississippi) to $10.19 (Wyoming, Montana, Idaho) to $10.43 (Colorado, Nevada, Utah) and, at the highest, $11.61 (Kansas, Nebraska, North Dakota, South Dakota) and $12.26 (Hawaii). *Labor Certification Process*, *supra* note 72.

[75] Natalya Shatniy, *Economic Effects of Immigration: Avoiding Past Mistakes and Preparing for the Future*, 14 SCHOLAR 869, 892 (2012); Donald M. Kerwin, *More than IRCA: US Legalization Programs and the Current Policy Debate*, MIGRATION POL'Y INST., 8 (Dec. 2010), http://www.migra-

United States grants undocumented persons some type of legal status, which makes them no longer subject to removal, or deportation, to their home country.[76] Specifically, IRCA amnesty granted undocumented immigrants a legislative pardon, or a "free pass," to receive temporary resident status.[77] After following certain steps, the individual could then adjust their status to permanent resident and eventually citizenship status.[78] Essentially, amnesty granted those individuals permission to remain in the country without requiring them to provide any type of "consideration" in return—so long as they fell within one of two categories, they received amnesty.[79]

The two groups of people IRCA granted amnesty to included: (1) non-citizens residing in the United States before 1982 (the pre-1982 amnesty); and (2) qualifying agricultural workers (Special Agricultural Worker program, or SAW).[80] When Congress passed IRCA, the Immigration and Naturalization Service estimated that between 1.34 and 2.66 million immigrants qualified for the pre-1982 amnesty.[81] However, slightly fewer than 1.6 million individuals ultimately legalized under the pre-1982 amnesty.[82] Under SAW, IRCA applied to farmworkers who could prove they harvested fruits, vegetables, or other perishable crops in the United States for at least ninety days between May 1985 and May 1986.[83] Estimates at the time indicated 400,000 migrant farmworkers qualified for amnesty under SAW.[84] Commentators stated, however, there was a significant rate of fraud.[85] In fact, *The New York Times* described SAW as "one of

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tionpolicy.org/pubs/legalization-historical.pdf; Steven A. Camarota, *Amnesty Under Hagel-Martinez: An Estimate of How Many Will Legalize If S. 2611 Becomes Law*, CTR. FOR IMMIGRATION STUDIES (June 2006), http://www.cis.org/Hagel-Martinez-S2611-Amnesty; Betsy Cooper & Kevin O'Neil, *Lessons from the Immigration Reform and Control Act of 1986*, MIGRATION POL'Y INST., 4 (Aug. 2005), http://www.migrationpolicy.org/pubs/PolicyBrief_No3_Aug05.pdf.

[76] Camarota, *supra* note 75; *see also* BLACK'S LAW DICTIONARY 36 (3d ed. 2006) (defining "amnesty" as "[a] pardon extended by the government to a group or class of persons, usu. for a political offense").

[77] *Solutions that Work: A Policy Manual for Immigration Reform*, AM. IMMIGRATION LAWYER'S ASS'N., 10 (Mar. 16, 2010), http://www.aila.org/content/fileviewer.aspx?docid=31528&linkid=216406 [hereinafter *Solutions that Work*].

[78] Camarota, *supra* note 75.

[79] *Solutions that Work*, *supra* note 77, at 10.

[80] Cooper & O'Neil, *supra* note 75, at 4.

[81] Camarota, *supra* note 75.

[82] *Id.*

[83] INA § 210(a)(1)(B)(ii), 8 U.S.C. § 1160(a)(1)(B)(ii) (2006) (stating that among other criteria to be eligible for SAW, the worker must have "performed seasonal agricultural services in the United States for at least 90 man-days, during the 12-month period ending on May 1, 1986"); Shatniy, *supra* note 75, at 871; Cooper & O'Neil, *supra* note 75, at 4.

[84] Camarota, *supra* note 75.

[85] *Id.*

the most extensive immigration frauds ever perpetrated against the United States government."[86] As a result, even though an estimated 400,000 farmworkers were originally estimated as eligible to obtain amnesty under SAW, nearly 1.1 million non-citizen farmworkers received SAW amnesty.[87] In other words, approximately 700,000 people fraudulently obtained amnesty through SAW.[88]

In addition to sham applications, other difficulties plagued SAW amnesty. For example, many of the workers who obtained amnesty based on their agricultural work eventually found jobs in other industries.[89] Although agriculture required hundreds of thousands of migrant farmworkers each year, the workers presented with better options often quit.[90] As a result, a need for farm laborers to fill the jobs previously occupied by SAW amnesty workers increased.

IRCA also caused an influx of unauthorized immigrants hoping to receive amnesty.[91] As a consequence, IRCA further increased visa backlog because relatives of newly legalized immigrants under the amnesty then qualified for legal entry into the country.[92] Despite IRCA's flaws, it provided benefits. For example, IRCA increased the number of workers and consumers paying into the tax base, helping to offset certain costs such as healthcare and education.[93]

E. AgJOBS: A Pathway to Earned Legalization

What is AgJOBS.[94] First introduced in Congress in 2000, AgJOBS is a proposed labor-management, immigration law with bipartisan support that would provide the nation with a stable and legal agricultural work force.[95] The

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[86] *Id.* (quoting Robert Suro, *Migrants' False Claims: Fraud on a Huge Scale*, N.Y. TIMES, Nov. 12, 1989, at A1).

[87] *Id.*

[88] *Id.* There was also a significant amount of fraud during the pre-1982 phase of IRCA amnesty, however, it was much more difficult to quantify. *Id.*

[89] Paul Hollis, *Southeast Farm Leaders Ask for Guestworker Program Reforms*, S.E. FARM PRESS (Mar. 12, 2012), http://southeastfarmpress.com/vegetables/southeast-farm-leaders-ask-guestworker-program-reforms.

[90] *Id.*

[91] Cooper & O'Neil, *supra* note 75, at 6.

[92] *Id.*

[93] *Id.*

[94] For the entirety of the AgJOBS proposed bill, *see* Comprehensive Immigration Reform Act, S. 1258, 112th Cong. § 150–53 (2011–2012) (introduced in Senate) [hereinafter *AgJOBS Bill*].

[95] *America Needs AgJOBS, Not Harsh Guestworker Programs*, IMMIGRATION POL'Y CTR. (Jan. 1, 2008), http://www.immigrationpolicy.org/just-facts/america-needs-agjobs-not-harsh-guestworker-programs [hereinafter *America Needs AgJOBS*]. The AgJOBS compromise was reached in 2000 after years of Congressional and labor management conflict resulting in tough negotiations between the United Farm Workers, major agricultural employers, and key federal legislators. *Id.* In 2007,

proposal is a compromise following years of negotiations between "legislative adversaries"—farmworker advocates and growers.[96] Currently, Congress is considering a variety of proposed changes to immigration law relating to foreign-born workers.[97] AgJOBS would reform key parts of the agricultural labor system.[98] The two most significant components of AgJOBS are: (1) reformation of the H-2A visa program; and (2) affording earned legalization to certain groups of agricultural workers.[99]

H-2A Visa Program Reformation. In theory, a reformed H-2A agricultural guestworker program would accomplish two purposes: reinforce the program's status as the nation's only legal source of agricultural foreign labor and potentially give more growers incentive to use the visa.[100] AgJOBS would make significant changes to the H-2A program. First, as discussed above, under the current H-2A program growers must provide workers free housing.[101] AgJOBS, however, allows for an alternative of paying workers a housing allowance based on local rental rates, provided the governor of the state where a farm is located certifies the availability of sufficient rental housing.[102] Second, employers must currently pay agricultural guestworkers the highest of AEWR, the state or federal minimum wage, or the local prevailing wage of their occupation.[103] AgJOBS would roll back AEWR by one-to-two dollars and subject it to review by government and independent commissions.[104] If Congress failed to enact a new AEWR within three years of the

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Senators Kennedy (D.-Mass.), Feinstein (D.-Cali.), and Craig (R.-Idaho) and Reps. Cannon (R.-Utah) and Berman (D.-Cali.) introduced AgJOBS in the 100th Congress. Zahniser et al., *supra* note 44.

[96] *AgJOBS: The Grand Compromise*, THE 2012 HUNGER REPORT (2011), http://hungerreport.org/2012/full-report/chapters/three/agjobs (last visited Sept. 16, 2012) [hereinafter *The Grand Compromise*].

[97] Zahniser et al., *supra* note 44. Some of these proposals create additional opportunities for persons from other countries to work legally in agriculture, while others use different methods to enforce existing immigration restrictions. *Id.*; *see generally Open Congress, for the 112th United States Congress*, http://www.opencongress.org/bill/all (listing proposed immigration bills in the 112th Congress). For example, the Comprehensive Immigration Reform Act of 2011 (S.B. 1258) incorporates many elements of AgJOBS, including changes to the H-2A program that may make it more attractive to prospective employers. Zahniser et al., *supra* note 44.

[98] *The Grand Compromise*, *supra* note 96.

[99] *Id.*

[100] *Id.*

[101] *See supra* note 64 and accompanying text.

[102] *H-2A Re-Engineering, Braceros*, RURAL MIGRATION NEWS (Jan. 2009), http://migration.ucdavis.edu/rmn/more.php?id=1408_0_4_0; *The Grand Compromise*, *supra* note 96; Philip Martin, *Immigration Reform: Implications for Farmers, Farm Workers and Communities*, 5–7 (June 23, 2011), http://migration.ucdavis.edu/cf/files/2011-may/conference-report.pdf.

[103] *See supra* notes 71–74 and accompanying text.

[104] Wainer, *supra* note 2, at 10.

enactment of AgJOBS, the current AEWR would adjust by the three-year change in the Consumer Price Index but capped at a maximum increase of four percent a year.[105] If this happened it would increase the earnings of lower-paid farmworkers, who are working at or near the minimum wage.[106] Third, under AgJOBS, H-2A workers would have some protections comparable to those provided for in the 1983 Migrant and Seasonal Agricultural Worker Protection Act.[107] Finally, attestation would replace labor certification.[108] This would effectively shift the burden and responsibility from DOL to H-2A employers, who would be in charge of making assertions, or assurances, to DOL that they have vacant jobs, are paying at least the minimum or prevailing wage, and will comply with other H-2A requirements.[109]

Earned Legalization: A Two-Step Process. AgJOBS applies only to workers in agriculture and would allow up to 1.35 million unauthorized migrant farmworkers and recent H-2A guestworkers the opportunity to earn temporary legal immigration status with the possibility of becoming legal permanent residents and eventually citizens.[110] Rather than merely legalizing unauthorized farmworkers, the term "earned legalization" means that in order for those qualifying workers to apply for legal status, they must first "earn it" through remaining in agricultural work for a designated period.[111]

Step One: Earning Blue Card Temporary Resident Status. Certain undocumented, foreign workers may be eligible to obtain a Blue Card. Unlike the Green Card,

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[105] *Id.*

[106] *Id.*

[107] Martin, *supra* note 102, at 5–7. The Migrant and Seasonal Agricultural Worker Protection Act (MSAWPA) protects migrant and seasonal agricultural workers by establishing employment standards related to wages, housing, transportation, disclosures, and recordkeeping. *Wage and Hour Division: Fact Sheet #49: The Migrant and Seasonal Agricultural Worker Protection Act*, U.S. DEP'T OF LABOR (last updated July 2008), http://www.dol.gov/whd/regs/compliance/whdfs49.htm#.UHnDWo7LDf4 (last visited Nov. 14, 2012). Foreign workers employed under the H-2A program are not covered under MSAWPA. *Work Authorization for Non-U.S. Citizens: Temporary Agricultural Workers (H-2A Visas)*, U.S. DEP'T OF LABOR (last updated Sept. 2009), http://www.dol.gov/compliance/guide/taw.htm (last visited Nov. 14, 2012). Thus, for example, just as MSAWPA requires an assurance that vehicles used to transport workers meet certain safety standards, employers have to assure this under AgJOBS. *Id.*

[108] Martin, *supra* note 102, at 5.

[109] *Id.*

[110] *Summary of AgJOBS: The Agricultural Job Opportunities, Benefits and Securities Act of 2007*, IMMIGRATION POL'Y CTR. (Jan. 2008), http://www.immigrationpolicy.org/sites/default/files/docs/AgJOBSPolicyBrief1-2008.pdf; *H-2A Re-Revised, AgJOBS*, RURAL MIGRATION NEWS, 2 (Oct. 2009), http://hungerreport.org/2012/full-report/chapters/three/agjobs (last visited Nov. 14, 2012). *See* INA § 316(a), 8 U.S.C. § 1427(a) (2006) (listing requirements to become a citizen after acquiring Green Card status).

[111] Philip Martin, *Immigration Reform & Rural America: Ellis Island to The Ellis Farm* 9 (2001), http://ageconsearch.umn.edu/bitstream/131833/2/PhilipMartin.pdf.

which grants an undocumented person legal permanent residency status,[112] the Blue Card would grant only temporary legal status.[113] To be eligible for Blue Card status, the applicant must: (1) have performed agricultural employment in the United States for at least 863 hours or 150 work days during the twenty-four month period before the act's passage; (2) have applied for such status during the eighteen month application period beginning on the first day of the seventh month that begins after the date of the enactment of the Act; (3) be otherwise admissible;[114] and (4) have not been convicted of any felony or certain misdemeanors.[115] Furthermore, an individual with a Blue Card could work, travel within, enter, and leave the country freely.[116] Additionally, workers would be eligible for unemployment insurance and the earned income tax credit, making a tax refund available to qualifying low-income workers.[117] However, they would not be eligible for means-tested federal benefits such as the Supplemental Nutrition Assistance Program, formerly known as food stamps.[118] Any worker granted Blue Card status could bring his or her spouse and children with them to live in the United States.[119]

Step Two: Earning Green Card Legal Permanent Resident Status. After earning a Blue Card, the person could then earn a Green Card by meeting one of two future-work requirements: (1) working at least five years in agricultural employment in the United States for at least 100 work days per year, during the five year period beginning on the date of the enactment of the Act; or (2) working at least three years in agricultural employment in the United States for at least 150 days per year, during the three year period beginning on the date of the Act's enactment.[120] In addition to the future-work requirement, legalization would primarily be

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[112] *Green Card (Permanent Residence)*, U.S. CITIZENSHIP & IMMIGRATION SERV., http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=ae853ad15c673210VgnVCM100000082ca60aRCRD&vgnextchannel=ae853ad15c673210VgnVCM100000082ca60aRCRD (last updated May 13, 2011).

[113] Kerwin, *supra* note 75, at 6.

[114] *See* INA § 212, 8 U.S.C. § 1182 (outlining a list of different grounds that make a non-citizen inadmissible such as: public health and morals; criminal grounds; political and national security; economic grounds such as incorrect labor certification if the person would be a public charge; or previous removal).

[115] *See AgJOBS Bill*, *supra* note 94; Sen. Dianne Feinstein, *Statements on Introduced Bills and Joint Resolutions*, CAPITOLWORDS, 359–94 (Jan. 1, 2007), http://capitolwords.org/date/2007/01/10/S359-2_statements-on-introduced-bills-and-joint-resolutio/.

[116] *See AgJOBS Bill*, *supra* note 94; Feinstein, *supra* note 115.

[117] *See AgJOBS Bill*, *supra* note 94; Feinstein, *supra* note 115.

[118] *The Grand Compromise*, *supra* note 96.

[119] *See AgJOBS Bill*, *supra* note 94.

[120] *Id.*; Feinstein, *supra* note 115; *America Needs AgJOBS, supra* note 95.

contingent on the worker also paying a fine and application fee and, by the date of adjustment to lawful permanent residency status, establishing payment of income taxes for work performed.[121]

III. ANALYSIS

> It's hard work in the fields, but at the same time, it's also good,
> because it's honorable work. All that produce is going
> to the tables of important people, and so
> that is the importance of the humble farmworker.
>
> —Olga Ramirez, Promotora

The analysis first rebuts the common misconception, specifically in connection with agricultural work, that immigrants "take" citizen jobs. Second, it discusses how IRCA amnesty and AgJOBS earned legalization are different and why AgJOBS earned legalization is desirable. Finally, it highlights the importance of providing a pathway to earned legalization for undocumented and foreign farmworkers.

A. Migrant Farmworkers Do Not "Take Jobs"

Domestic Workers Refuse Farm Work. It is evident that agriculture in the United States unequivocally depends on an immigrant workforce.[122] Domestic workers do not have much interest in farm labor, and it is not difficult to understand why.[123] It is one of the more hazardous occupations in this country, in which workers face continuous exposure to pesticides and regularly suffer from heat exhaustion.[124] As of October 2012, the country's unemployment rate stood at 7.9%.[125] High unemployment coupled with the millions of undocumented people

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[121] *The Grand Compromise*, *supra* note 96. This part of the compromise would mainly affect unauthorized immigrants already living in the country and working in agriculture, many who have already been here for decades. *See also AgJOBS Bill*, *supra* note 94 (requiring further payments of fines, taxes, etc.).

[122] *See supra* notes 1–2 and accompanying text; *infra* notes 129–43, 154 and accompanying text. Since the late 1990s, at least fifty percent of farmworkers have not had legal work authorization. *Take Our Jobs Campaign*, UNITED FARM WORKERS (2010), http://www.takeourjobs.org/ (last visited Aug. 19, 2012) [hereinafter *UFW*].

[123] Wainer, *supra* note 2, at 3.

[124] *Id.* at 5.

[125] *Databases, Tables & Calculators by Subject*, BUREAU OF LABOR STATISTICS, http://data.bls.gov/timeseries/LNS14000000 (last visited Nov. 7, 2012, 12:18:57 PM). The unemployment rate is calculated by the number of people actively looking for a job as a percentage of the labor force. *United States Unemployment Rate*, TRADING ECON. (2012), http://www.tradingeconomics.com/united-states/unemployment-rate (last visited Aug. 19, 2012).

in the work force lead many citizens to believe the two are somehow related.[126] Yet, missing from this argument is a candid recognition that non-citizens simply do not "take jobs" that citizens do not want or refuse to perform.

In 2010, the United Farm Workers of America (UFWA) initiated a "Take Our Jobs Campaign."[127] The central notion around the campaign was to connect unemployed citizens and permanent residents across the nation to farm jobs.[128] However, out of the more than three million people who visited the campaign's website, and out of the 8,600 people who expressed an interest in seeking employment as farmworkers, only seven people actually accepted a job in agriculture.[129] The migrant farmworkers already laboring in the fields were ready to welcome those citizens and permanent residents who criticized them for "taking their jobs."[130] However, the unemployed citizens and permanent residents chose not to join them.[131] UFWA President Arturo Rodriguez stated most citizens and permanent residents balked at the difficult working conditions.[132] President Rodriguez commented, "[citizens] really don't have any idea what it is to work in agriculture today."[133]

In 2006, the Washington state apple industry launched a campaign to recruit domestic field workers.[134] State and county agencies set up advertising, recruitment, and training programs for 1,700 job vacancies.[135] Yet, only forty workers were placed.[136] Executive director of the Washington Growers League, Mike Gempler, stated the barrier to recruitment was simply the nature of farm work.[137]

Lucy Ruelas, manager of the California Employment Development Department's Agricultural Services Unit, stated that despite disseminating information about the job to the public, once "an applicant sees the reality of

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[126] *UFW*, *supra* note 122.

[127] *Id.*; *see also 'Take My Job!' Campaign Markets Agricultural Labor*, NAT'L PUB. RADIO (July 7, 2010), http://www.npr.org/templates/story/story.php?storyId=128358334 [hereinafter *Take My Job*].

[128] *UFW*, *supra* note 122; *Take My Job*, *supra* note 127.

[129] *UFW*, *supra* note 122.

[130] *Id.*

[131] *Id.*

[132] *Id.*

[133] *U.S. Farmers Depend on Illegal Immigrants*, VOICE OF AM., http://www.voanews.com/content/us–farmers-depend-on-illegal-immigrants-100541644/162082.html (last updated Aug. 11, 2010).

[134] Wainer, *supra* note 2, at 5; *see also The Elusive Citizen Field Laborer*, THE 2012 HUNGER REPORT, http://www.hungerreport.org/2012/full-report/chapters/three/citizen-field-labor (last visited Nov. 12, 2012).

[135] Wainer, *supra* note 2, at 5; *The Elusive Citizen Field Laborer*, *supra* note 134.

[136] Wainer, *supra* note 2, at 5.

[137] Wainer, *supra* note 2, at 5; *The Elusive Citizen Field Laborer*, *supra* note 134.

the job, they might change their mind."[138] One California employer stated he had worked with the H-2A program for over ten years on his farm and that while the program is not perfect, it is workable.[139] However, the California grower continued, given the highest unemployment the country has seen in decades, he "was still not able to hire one qualified [domestic] worker from the employment office referrals," only proving there is not a sufficient domestic labor supply.[140] An anonymous farmer stated that while he has tried to hire domestic workers, he could not find enough people able and willing to actually complete the work.[141] As United States Representative Elton Gallegly (CA24) stated in his opening remarks as chairman of the House Subcommittee on Immigration Policy in an April 2011 meeting, "[t]here are simply not enough Americans willing . . . to take the jobs of migrant farm workers."[142] It appears there are more politicians and finger-pointers interested in blaming undocumented farmworkers for the current unemployment crisis than there are unemployed citizens and permanent residents willing to harvest and cultivate this country's produce.[143]

Growers Opt to Hire an Unauthorized Workforce. Unquestionably, growers would prefer a stable, legal workforce.[144] Without a stable, legal workforce, growers face a variety of problems. For example: looming labor shortages, labor disruptions due to worksite raids, immigration audits and investigations, rotting crops, and dealing with Social Security Administration "No-Match" letters[145] for

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[138] Garance Burke, *Americans Don't Want Farm Work*, *Despite Economy,* THE HUFF POST (Sept. 27, 2010 6:21 PM), http://www.huffingtonpost.com/2010/09/27/americans-dont-want-farmwork_n_740178.html.

[139] CA NEWSROOM, http://www.communicatingforamerica.org/news/AgJOBS.html (last visited July 11, 2012).

[140] *Id.*

[141] *Id.*

[142] Rafael Romo, *Rep: U.S. faces agriculture farm-worker visa reform*, CNN POLITICS (Apr. 13, 2011), http://articles.cnn.com/2011-04-13/politics/immigration.agriculture_1_farm-workers-visa-program-agricultural-industry?_s=PM:POLITICS.

[143] *Take Our Jobs Campaign Update*, UNITED FARM WORKERS (Sept. 24, 2010), http://ufw.org/_board.php?mode=view&b_code=news_press&b_no=7812&page=1&field=&key=&n= 680.

[144] *See Facts About Farmworkers*, IMMIGRATION POL'Y CTR. (May 13, 2009), http://www.immigrationpolicy.org/sites/default/files/docs/Farmworkers%20Fact%20Sheet.pdf; Megan Horn, *Farmworkers in the* News, FARMWORKER JUSTICE (Aug. 13, 2012), http://podersano.org/fj-blog/farmworkers-news-august-13-2012; Dan Wheat, *Ag Groups See Labor Reform Window*, CAPITAL PRESS, http://www.capitalpress.com/orewash/djw-CNTRlabor-w-art-110212 (last updated Nov. 1, 2012, 9:15 AM) (commenting that "labor shortages and dependency on illegal workers for picking and packing have been growing issues"); *U.S. Farmers Depend on Illegal Immigrants*, *supra* note 133.

[145] Emily Patten, *E-Verify During a Period of Economic Recovery and High Unemployment*, 2012 UTAH L. REV. 475, 480 (2012) (stating within seconds after comparing the information submitted on the I-9 with information on file with the Social Security Administration, the employer receives a match or a no-match letter of the employee's work authorization eligibility).

employers who use E-Verify.[146] At an October 2007 hearing before the House Committee on Agriculture, American Farm Bureau Federation President Bob Stallman commented:

> Without a stable, legal supply of labor to replace the presence of currently unauthorized workers, the fresh fruit and vegetable sector could see U.S. production decline by up to *$9 billion* a year. Similarly, an abrupt loss of our labor supply would cause net farm income to drop by up to *$5 billion* annually.[147]

Yet, despite the current high unemployment rate, citizens and permanent residents refuse to do the work of a migrant farmworker.[148] To obtain the needed workforce, growers rely on foreign, unauthorized labor to plant, weed, grow, and pick the fresh fruits and vegetables on our nation's tables.[149]

Critics argue there is a way for workers to come legally to the United States—through H-2A visas.[150] However, farmers describe the guestworker program as a "bureaucratic nightmare."[151] For example, one grower noted:

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[146] *Facts About Farmworkers*, *supra* note 144. Growers comment that without workers to pick the crops, fresh fruits and vegetables will rot in the fields of American farms. *U.S. Farmers Depend on Illegal Immigrants*, *supra* note 133. Commentators state those farms would wither away, as well. *Id.* Farmers are increasingly concerned about losing their workforce to immigration crackdowns. *Id.* In December 2006, federal officers raided six Swift & Co. meat-packing plants, detaining 1,300 workers. Bill Ong Hing, *Symposium: Immigrant's Rights & Critical Perspectives on Immigration Reform, February 10, 2006: Article: The Case for Amnesty*, 3 STAN. J.R.C. & C.L. 233, 239–40 (2007). The Employment Eligibility Verification Program, or "E-Verify," "is an Internet-based system that allows businesses to determine the eligibility of their employees to work in the United States." *E-Verify*, U.S. CITIZENSHIP & IMMIGRATION SERV., http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=e94888e60a405110VgnVCM1000004718190aRCRD&vgnextchannel=e94888e60a405110VgnVCM1000004718190aRCRD (last updated Nov. 1, 2012).

[147] *Facts About Farmworkers*, *supra* note 144 (emphasis added).

[148] *See supra* notes 122–43 and accompanying text.

[149] *See supra* notes 1–2, 122–48 and accompanying text; *U.S. Farmers Depend on Illegal Immigrants*, *supra* note 133. Immigrant workers are willing to take jobs the average citizen or permanent resident refuses to do for a number of reasons. McCland, *supra* note 5, at 70. According to the Immigration Policy Center, these jobs are more attractive to non-citizens than citizens because of the different cultural and educational backgrounds between the two. *Id.* Each group experiences a different level of expectation in their actual and potential earning capacity and "comfortable" living. *Id.* For example, most citizens and permanent residents argue they cannot live a "comfortable" life on the wages of a migrant farmworker. *Id.* However, a migrant farmworker earning near poverty wages in this country nonetheless may be making much more money than he could ever hope to make in his home country. *Id.* Thus, a citizen may view the work of a migrant farmworker as a low paying job while a non-citizen perceives it as a way to better provide for his family. *See id.*

[150] David Bier, *H-2A Visas: Open in Theory, Closed in Practice*, OPEN MARKET (May 7, 2012), http://www.openmarket.org/2012/05/07/h-2a-visas-open-in-theory-closed-in-practice/.

[151] *U.S. Farmers Depend on Illegal Immigrants*, *supra* note 133; Bill Maxwell, *We Need Immigration Law that Will be Fair to Migrant Workers*, TAMPA BAY TIMES, http://www.deseretnews.com/

> Every farmer I know would gladly use the [H-2A] program and be legal . . . . Every Hispanic would love to be legal. But the program is so onerous, it's so hard to use, and so expensive . . . . And you don't necessarily get your people. [If] the crop is ready, [and] the people are not here, boom, it's a loss. Most growers will not take that chance.[152]

Even DOL acknowledged the program's failure.[153] In 2008, President Bush's Secretary of Labor Elaine Chao commented:

> There are 1.2 million hired agricultural workers in the United States today. Estimates show that between 600,000 and 800,000 are undocumented. There simply aren't enough U.S. workers to fill the hundreds of thousands of agricultural job openings in this country. Farmers can hire temporary foreign workers to harvest their crops through the H-2A visa program. . . . Yet despite the fact that this program is uncapped, agricultural employers hired only about 75,000 H-2A workers in 2007. . . . Farmers report that the H-2A program is burdensome, duplicative and riddled with delays. [In addition,] many who have tried it report such bad experiences that they stopped using it altogether.[154]

Growers additionally comment "the program is expensive and cumbersome, and requires them to predict harvest schedules and labor needs a year in advance," even though crop yields and harvest times often vary from season to season.[155]

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article/765592012/We-need-immigration-law-that-will-be-fair-to-migrant-workers.html?pg=all (last updated July 25, 2012, 12:00 AM) (similarly stating growers feel the H-2A regulations are a "bureaucratic nightmare").

[152] *U.S. Farmers Depend on Illegal Immigrants*, *supra* note 133.

[153] Bier, *supra* note 150.

[154] *Id.*

[155] *Ganging up on Guest Workers*, L.A. TIMES (Sept. 23, 2011), http://articles.latimes.com/2011/sep/23/opinion/la-ed-guestworkers-20110923. For example, employers using the H-2A program must apply forty-five calendar days before the first date on which the employees are needed; however, farmers claim the weather and other factors make it impossible to anticipate exactly when workers will be needed. Oliveira, *supra* note 47, at 173; 20 C.F.R. § 655.130(b) (2012) ("A completed Application for Temporary Employment Certification must be filed no less than 45 calendar days before the employer's date of need."). In March 2012, Wyoming Senator Mike Enzi wrote to the labor department expressing his concern about such problems. Sean Cockerham, *Seasonal Farm-worker Visa Program Frustrates Growers*, MCCLATCY WASH. BUREAU, http://www.mcclatchydc.com/2012/05/07/v-print/148051/seasonal-farm-worker-visa-program.html (last updated May 7, 2012 8:17 PM). Farmers not only in Wyoming, but also across the country, are frustrated over the federal H–2A visa. *Id.* Six senators joined in the recent letter, including Michael Bennet from Colorado, Sherrod Brown from Ohio, Mike Crapo from Idaho, Bill Nelson from Florida, and Jim Risch from Idaho. *Id.*

For example, H-2A regulations force employers to advertise to domestic labor.[156] However, it is often the case that once the employer hires domestic labor, the worker quits just a few days after starting.[157] The advertising requirement thus frequently results in farmers spending seemingly pointless time and money advertising their positions to a domestic workforce that does not take or finish the job.[158] Out of the estimated 40,900 full time farmers and ranchers in California, only twenty-three petitioned in 2010 to recruit foreign migrant farmworkers through the H-2A visa program.[159] California farmer Steve Fortin spent $3,000 in 2010 to advertise in newspapers and on an electronic job registry to ensure domestic workers had priority on his job offer.[160] Despite his best efforts in following the advertising requirements, he received no applications from any citizen or permanent resident.[161] The California figures provide a snapshot of how difficult it is to encourage growers to use the program, how the program fails to attract domestic labor even when unemployment remains high, and why growers opt to hire undocumented workers.

B. AgJOBS Earned Legalization is Not Amnesty

Some critics of AgJOBS have misleadingly characterized its earned legalization program as an amnesty program. Earned legalization is not amnesty because it requires undocumented immigrants to earn their legal status, rather than being given a free pass to citizenship.[162] Unlike IRCA, AgJOBS earned legalization provides undocumented immigrants an opportunity to earn permanent legal status by satisfying significant retrospective and prospective requirements.[163] For example, AgJOBS participants must evidence past work history, work prospectively for a number of years, undergo security and background checks, pay any applicable back taxes and fines, and apply for citizenship after obtaining a Green Card.[164] In addition, those who successfully meet the requirements are not moved to the head of the visa waiting line or gain preferential treatment over others who have been

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[156] *Employer Guide*, *supra* note 62, at 8 (delineating when an employer's advertising and recruitment efforts must be conducted).

[157] *Ganging up on Guest Workers*, *supra* note 155.

[158] *Id.* Evidence also suggests the labor certification system is flawed because it fails to "produce a meaningful indication of whether U.S. workers are available." Jackson, *supra* note 24, at 1293. For example, employers who hope to avoid being required to hire U.S. workers often advertise openings at times and in places where U.S. workers are unlikely to notice the posting. *Id.*

[159] *Ganging up on Guest Workers*, *supra* note 155.

[160] Burke, *supra* note 138.

[161] *Id.*

[162] *Making the Case for Comprehensive Immigration Reform*, *supra* note 7, at 26.

[163] *Id.*; *see supra* notes 77–79, 110–21 and accompanying text.

[164] *See supra* notes 110–21 and accompanying text.

waiting for their Green Cards.[165] Instead, they earn the opportunity to apply for permanent residency and must wait in line with everyone else.[166] Also, IRCA dealt only with those immigrants present in the country without proper authorization, thereby failing to recognize future employment needs.[167] In contrast, AgJOBS provides an avenue for large numbers of low-wage workers to enter the country in the future to satisfy our workforce needs.[168]

In order to safeguard the application process, thus helping to ensure a lower rate of fraud, AgJOBS provides mechanisms in which the applicant could lose their Blue Card status.[169] For example, AgJOBS imposes punishments for non-compliance if an applicant fails to meet any requirement.[170] Applicants who do not meet immigration admissibility requirements, who fail to pay the requisite fees or taxes, who file a sham application, or who do not apply for permanent status by the seventh year, would lose their Blue Card status and would be required to leave the country.[171]

C. Realizing AgJOBS: The Importance of Integration

AgJOBS is the most important piece of legislation proposed in decades that will benefit farmworkers and growers.[172] Providing a legalization pathway for undocumented farmworkers is key to encouraging and enabling these individuals to come out of the shadows, allowing the government to review their legal status.[173] Also, it is in the interest of national security to know who is working in food production and to have an effective means of monitoring these essential workers.[174] This legislation would provide that security. With the

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[165] *Making the Case for Comprehensive Immigration Reform*, *supra* note 7, at 26.

[166] *Id.*

[167] Hing, *supra* note 146, at 272 (quoting Congressman Flake, an Arizona Republican, who stated the AgJOBS program "is critical because it avoids the mistakes of IRCA in 1986").

[168] *Id.*

[169] *Id.*

[170] *See AgJOBS Bill*, *supra* note 94.

[171] *Id.*

[172] *AgJobs*, NAT'L FARM WORKER MINISTRY (2012), http://nfwm.org/campaigns/agjobs/ (last visited Oct. 29, 2011) [hereinafter *NFWM*].

[173] *AgJOBS: The Key to Achieving a Stable and Legal Agricultural Work Force*, AM. IMMIGRATION LAWYER'S ASS'N, http://www.aila.org/content/default.aspx?bc=33496%7C9897 (last visited Sept. 17, 2012).

[174] Hing, *supra* note 146, at 246; *Immigration Hearing*, *supra* note 8, at 129–30 (stating our country must solve the "status quo" or else the domestic farm products we rely on will be replaced by imported food products, the quality of which will be "uncertain[,] and the health and safety of our people will be put at risk").

enactment of AgJOBS, agricultural workers would emerge from the underground economy and be screened by our government as they begin the process toward legal status.[175] Additionally, AgJOBS allows farmworker families to stay together and fully participate in the society they help feed.[176] Earned legalization could further motivate migrant farmworkers to speak up about abuse and to advocate for better working and living conditions.[177] Congress should provide farmworkers the ability to legalize so they can work without the fear of deportation and so farmers may have stable access to the workers they require.[178] Providing earned legalization would also enable current undocumented migrant farmworkers and H-2A workers to contribute to costs such as healthcare and education through the payment of employment taxes. Undocumented immigrants already contribute to the economy through consumption and the payment of sales tax; thus, further investing in the integration of immigrants today will create the workers and taxpayers this country will need in the future.[179]

Providing the potential for foreign agricultural workers to earn legalization further addresses the labor stability needs of employers while providing workers with appropriate integration into the United States. For a nation proclaiming to be one founded by immigrants, H-2A and migrant farmworkers cannot ever hope to become members of our society under the current H-2A program.[180] By treating these individuals as a temporary fix for the economy's labor needs, the H-2A visa encourages the treatment of migrant farmworkers as a means to an end rather than as permanent members of society.[181] Professor of Law and Asian American Studies at the University of California, Davis, Bill Ong Hing, stressed the importance of legalization when he commented:

> Establishing a guestworker program without a path to legalization automatically erects boundaries between the enfranchised and the disenfranchised, and institutionalizes a division within our society. That scenario suggests a sub-human

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[175] Hing, *supra* note 146, at 246.

[176] *NFWM*, *supra* note 172.

[177] *Id.*

[178] Wainer, *supra* note 2; *Immigration Hearing*, *supra* note 8, at 129–30.

[179] Shatniy, *supra* note 75, at 886, 871, 908–09; *Immigration Hearing*, *supra* note 8, at 130 ("American citizens and taxpayers deserve secure borders and a government that works.").

[180] Mary Lee Hall, *Defending the Rights of H-2A Farmworkers*, 27 N.C. J. INT'L L. & COM. REG. 521, 527 (2002); *Produce Workers*, FOOD EMPOWERMENT PROJECT (2010), http://www.foodispower.org/produce_workers.php (last visited Sept. 12, 2012); *see also* INA § 101(a)(15)(H)(ii)(a), 8 U.S.C. § 1101(a)(15)(H)(ii)(a) (2006).

[181] Cristina M. Rodriguez, *Guest Workers and Integration: Toward a Theory of What Immigrants and American Owe One Another*, 2007 U. CHI. LEGAL F. 219, 223–24 (2007).

> existence, reminiscent of the bracero days and even slavery. . . . Only through that path can these individuals attain a sense of enfranchisement and freedom from political subjugation and servitude. . . . Our moral, economic, social, and national-security interests demand that we grant legalization.[182]

The fact that undocumented immigrant workers contribute significantly to this country's agricultural labor force serves as a primary foundation for why they should have the opportunity to obtain earned legalization.[183] The Bureau of Labor Statistics (BLS) projected the number of people in the labor force aged twenty-five to thirty-four would increase by only three million between the years 2002 and 2012, while those aged fifty-five and older would increase by eighteen million.[184] The BLS further estimated that in 2012, those aged forty-five and older would have the fastest growth rate and would be a little more than fifty-percent of the labor force.[185] According to the United Nations:

> [T]he fertility rate in the United States is projected to fall below "replacement" level by 2015 to 2020, declining to 1.91 children per woman (lower than the 2.1 children per woman rate needed to replace the population). By 2010, 77 million baby boomers will retire and, by 2030, one in every five Americans is projected to be a senior citizen.[186]

In addition, the number of low-skilled jobs, which partially includes agricultural work, is expected to grow by more than 700,000 a year.[187] However, there is a shrinking pool of domestic labor to fill those jobs.[188] A legislative process providing a documented, stable, and legal workforce should be the foundation for this nation's agricultural industry. Thus, a legal population of immigrants, rather than a continuous stream of undocumented workers, should provide the source of labor to fill the growing gap between labor demand and worker supply.[189]

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[182] Hing, *supra* note 146, at 268–69, 284.

[183] *Id.* at 269.

[184] *Id.*; *see* Mitra Toossi, *Employment Outlook: 2010–2020: Labor Force Projections to 2020: A More Slowly Growing Workforce*, BUREAU OF LABOR STATISTICS (Jan. 2012), http://www.bls.gov/opub/mlr/2012/01/art3full.pdf.

[185] Hing, *supra* note 146, at 269*; see also* Toossi, *supra* note 184.

[186] Hing, *supra* note 146, at 269.

[187] *Id.* at 271.

[188] *Id.* at 271; Daniel Griswold, *Hearing on National Security Begins at Home Legislation*, CATO INST. (Aug. 31, 2011), http://www.cato.org/publications/congressional-testimony/hearing-national-security-begins-home-legislation ("[T]he number of Americans who have traditionally filled such [low-skilled] jobs continues to shrink.").

[189] Hing, *supra* note 146, at 271; Griswold, *supra* note 188 ("Immigrants fill the growing gap between the expanding number of low-skilled jobs and the shrinking pool of native-born Americans who have traditionally filled them.").

Movement to meaningful immigration reform is gaining momentum. During the 2012 election year politicians from both sides enjoyed discussing the issue of immigration reform because it allowed them to further "harangue their opponents and mobilize their base of support."[190] However, the year 2013 could bring new hope as President Obama "will push for comprehensive reform."[191] Phone calls, letters, and emails to state senators can and do matter as legislators will often track and tally citizen communications to gauge their constituent's viewpoints.[192] Becoming informed by talking with local bankers, merchants, friends, and neighbors about the need for reform and explaining the need for a legal, documented immigrant workforce is important.[193] Farmers need a predictable farming workforce. A guestworker program that actually works in a reasonable and rational manner is critical if this nation intends to secure the future viability of the farms that feed us.

IV. CONCLUSION

The fight is never about grapes or lettuce. It is always about people.

—Cesar Chavez

The presence of migrant farmworkers in the United States is not only undeniable, but also crucial to the production of the agricultural products we as consumers demand.[194] AgJOBS ensures the stable, legal workforce our growers require, protects migrant farmworkers, and provides undocumented migrant farmworkers a pathway to earned legalization.[195] This country's laws should make

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[190] Jim Dickrell, *After 2012 Elections, Reform Might by Possible*, DAIRY TODAY (Feb. 27, 2012), http://www.agweb.com/article/immigration_reform_2013/.

[191] *Id.*; *see also Immigration Reform Effort to Begin in Senate Post-Inauguration*, THE HUFF POST, http://www.huffingtonpost.com/2012/11/08/immigration-reform-senate_n_2093178.html?view=print&comm_ref=false (last updated Nov. 9, 2012, 12:25 AM EST) (quoting President Obama: "I can promise that I will try to do it in the first year of my second term. I want to try this year."); David Chalian & Terence Burlij, *President Obama to Renew Push for Immigration Reform*, PBS, http://www.pbs.org/newshour/rundown/2011/05/morning-line-obama-steps-up-immigration-reform-push.html (last updated May 10, 2011 at 8:52 AM EDT) ("President Obama [is] . . . eager to tout all they've done on border security in order to inoculate one of the key obstacles to moving the debate back to comprehensive immigration reform: a pathway to citizenship for the roughly 11-12 million immigrants currently residing in the United States illegally.").

[192] Dickrell, *supra* note 190.

[193] *Id.*

[194] *See supra* notes 1–6, 122–61 and accompanying text.

[195] *See supra* notes 94–121 and accompanying text.

it easier, not more difficult, for employers to hire willing workers, and to help those workers enter the United States to fill the jobs citizens and permanent residents simply do not and often refuse to fill.[196]

The decision of whether a guestworker program should include a legalization component reflects how we view guestworkers—as producers in the global economy or as individuals with families, hopes, and dreams. Investing in the integration of migrant farmworker immigrants into our society today will sustain our country for years to come and, more importantly, help protect the migrant farmworkers who feed us.[197]

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[196] *See supra* notes 122–89 and accompanying text.

[197] *See supra* notes 122–89 and accompanying text.