



## Foreword

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In the midst of the booming U.S. economy of the late twentieth and early twenty-first centuries, there is evidence that immigrant workers are becoming highly valued. No less an authority than *Business Week* trumpeted this new attitude in a headline calling attention to the need for immigrant workers in the computer software industry: "Forget the Huddled Masses. Send Us Nerds."

According to the Department of Labor's Bureau of Labor Statistics, immigrants were responsible for 39 percent of all U.S. job growth since 1994, despite the fact that foreign-born workers comprise less than 12 percent of the labor force. Economists, long puzzled by the fact that unit labor costs have not increased significantly during the current boom while the unemployment rate shrank to just four percent in 2000, now realize that a huge unrecognized, and uncounted, reserve labor pool has been easily tapped by U.S. employers. That reserve labor force is comprised of workers who were born and presently live in Mexico, Central and South America, Asia, Africa and the nations of Eastern Europe. Eager to work in the U.S., millions have figured out how to get to this country, with or without official permission, knowing that jobs are waiting.

All the while, U.S. law has sought to discourage employment of the foreign-born, especially those without work authorization. During the past 14 years these initiatives have become more restrictive, not less so. Both the Immigration Reform and Control Act of 1986 (IRCA) and the welfare and immigration reforms of 1996 sought to tighten Immigration and Naturalization Service (INS) oversight of those who seek to work here, and has also, for the first time, brought immigration oversight into every U.S. workplace. The Border Initiative, begun in 1994, has deployed thousands of Border Patrol officers along the U.S.-Mexican boundary, making it the most notorious division since the construction of the infamous Berlin Wall that divided communist East Germany from the West. Mexican scholars and government officials estimate that some 750 persons have perished trying to cross this 'line in the American sand,' mostly from exposure in the deserts or mountains of the Southwest. The number of Mexican dead dwarfs the total of 160 Germans who were killed trying to cross the Berlin Wall in its 28 years of existence.

The Clinton administration has dramatically expanded the U.S. Border Patrol, bringing the number of agents up to some 9,000, greater

than the number of agents of the Federal Bureau of Investigation. Vast networks of electronic surveillance, helicopters, off-road vehicles, aircraft and even Native American trackers scouring the desert for signs of trespass have been deployed in a rather fruitless effort to seal U.S. boundaries from unauthorized entry.

As if Federal immigration restrictions were not enough, the late 1990's also brought a wave of both state and Federal domestic policy restrictions governing immigrant access to social benefits normally available to all U.S. residents. Laws were passed denying one or another category of immigrants the right to access food stamps, SSI benefits, welfare, and a whole host of other transfer payments. The most extreme of these laws, Proposition 187 in California, has recently been found to be unconstitutional.

Some five to six million unauthorized workers and family members are now living and working in the U.S. It is increasingly clear that U.S. policy, expressed in these laws, has failed to comprehend the nature of immigration in today's world. While the efforts to seal the border have succeeded in specific locations, those seeking to cross have found other places where the Border Patrol's skills at interception are less developed. Five years ago, San Diego and El Paso were favored crossing points. In the year 2000 it is the Southeastern Arizona town of Douglas where hundreds of thousands of people without papers will seek to cross.

America faces a recurring immigration dilemma. Its current economic success has relied heavily on hiring new immigrant workers. But its laws are mostly intended to discourage them from working here.

The Forum on Transnational Employment (FTE) is a new initiative intended to start a dialogue among representatives of labor unions, researchers, immigration activists and leaders of immigrant communities. FTE's agenda is to create a setting where difficult issues can be frankly discussed, and to seek long-range, realistic solutions.

There are a series of issues that need to be examined and understood if useful policy initiatives are to be proposed. In what follows, these issues will be framed, leading to a series of questions for research and discussion. The papers in this volume serve to bring differing perspectives to the same task.

### *IRCA: the effort to control the flow of unauthorized workers*

In 1986, it was estimated that there were some three to four million undocumented immigrants living and working in the U.S. And their number was increasing with each passing year. Both policy-makers of the left and right, and labor unions, regarded this influx as a



threat to their respective interests.

The agricultural industry, where an estimated three out of every ten workers was thought to be undocumented at that time, saw itself as especially vulnerable to efforts to control immigration. Farm employers foresaw the possibility of losing entire crews of workers at critical times, such as harvest periods.

IRCA was intended to permanently solve the problem of unauthorized workers in the U.S. through a mix of policies of reform and control. On the reform side, IRCA offered immigration amnesty – legalization – of most undocumented workers already working in the country. Those who had continuously resided in the U.S. since January 1, 1982 were eligible to apply for general amnesty.

Agriculture got a special deal, and was the only industry to obtain exceptional consideration, primarily because it was widely recognized that it was the largest major U.S. industry where foreign-born workers were a plurality of the labor force. Under IRCA, anyone who had worked as an unauthorized immigrant in U.S. perishable crop agriculture for at least 90 days between May 1985 and May 1986 was eligible to apply for a Special Agricultural Worker (SAW) visa.

Immigration experts predicted that about 350,000 agricultural workers would be eligible for SAW visas. To the surprise of nearly everyone, especially to INS officials who had prepared 800,000 SAW applications, some 1.25 million individuals eventually applied. In retrospect, the SAW program created an opportunity for many persons living abroad in their home country, whether they had worked the required period in U.S. agriculture or not, to come to America and apply for a SAW visa. While the estimate that the pool of eligible agricultural workers was only 350,000 was undoubtedly too low, it is also clear that IRCA sent an unambiguous, and inviting, message throughout Mexico, Central and South America, and elsewhere. That message was simple: if all else fails, you had a chance to get a visa to work in the U.S. by coming to the U.S. as an unauthorized worker!

The ‘good news’ of IRCA was that millions of workers who had lived in the shadow of being an ‘illegal alien’ could now enjoy the same rights as all other legal immigrants. This is no small achievement. The ‘bad news’ of IRCA is that it *stimulated* substantial new immigration, both of persons residing abroad who returned to the U.S. because they qualified for SAW visas, and of additional undocumented workers, often family members of SAWs. Juan Vicente Palerm, Rafael Alarcon and other scholars have documented the manner in which agricultural communities and labor markets were fundamentally altered,

some would say disrupted, by the new immigrants.

The California Institute for Rural Studies, in its report “Too Many Farm Workers?”, showed that average wage rates for agricultural workers in California plunged in the wake of IRCA. Employers were able to bid down wages owing to the large surplus of available workers. George Borjas has presented evidence that half of the real wage loss that U.S. high school dropouts experienced during the 1990’s was due to the influx of low-skilled immigrants.

Some labor leaders spoke publicly about the potential impact of IRCA’s legalization programs on organized labor. Dolores Huerta, First Vice-President of the United Farm Workers, speaking at the Symposium on California’s Great Central Valley on October 18, 1986, warned that giving out one million visas to Mexican farm workers would have an adverse impact on her union’s members. She argued that the program’s encouragement of immigration would give employers additional leverage on issues such as wage rates.

There is evidence that the large pool of available immigrant workers did have the predicted impact on efforts of labor unions to win improvements in wages and working conditions in some industries. Strikes by workers in the food processing and agricultural industries in California’s Central Valley during the 1990’s, such as those at Diamond Walnut Growers and Gangi Bros. Packing, were easily broken, owing to the ready availability of recent immigrants who were hired as replacement workers.

On the control side, IRCA’s key feature was employer sanctions, which represented a major U.S. policy shift. Before 1986, employers had no legal responsibility for limiting their hiring to authorized workers and generally did not face penalties for hiring unauthorized workers. The Border Patrol could enter an employer’s premises at will, without a search warrant, to look for unauthorized workers. It was the workers themselves who were the object of INS raids, leading, in some instances, to the death of workers being pursued by agents of the Border Patrol. These “raids” would disrupt the employer’s place of business, in some cases leaving perishable products at risk of loss.

IRCA changed U.S. policy dramatically by holding the employer, not the worker, responsible for who got hired. Severe penalties were to be imposed on employers who hired persons not authorized to work in the U.S. And the new law forbade the Border Patrol from “raiding” workplaces without a search warrant.

Both of these provisions were strongly supported by reform-minded legislators, and by key constituencies, such as labor unions.

Organized labor sought to protect the jobs of citizen and legal immigrants from the threat of displacement by unauthorized workers.

Now, every U.S. worker must provide employers with evidence of their immigration status, filling out a government form known as I-9, which must be retained by the employer and is subject to INS review at any time. This official record must include copies of identity documents presented by workers. Of course, unauthorized workers have quickly learned to turn to the false documents “mini-industry” and purchase “papers” to show to prospective employers.

The key fact about the I-9 process is that IRCA’s employer sanctions provisions only apply to employers who “knowingly” hire unauthorized workers. This enormous loophole, intentionally included in IRCA through the collusion of employer groups and some immigration advocates, allows employers to accept false documents from those applying for jobs and later claim ignorance about the authenticity of the pieces of paper.

Today, 69% of U.S. hired farm workers are foreign-born, up sharply from the pre-IRCA period. As a result of IRCA’s legalization initiatives, mainly the SAW visa program, those numbers had dropped to less than 10%. The proportion of undocumented workers has now returned to pre-IRCA levels.

### *Research questions about IRCA’s impact*

These outcomes were not anticipated by Congress when the law was passed in 1986. A series of policy questions that are not adequately understood need attention in the context of seeking resolution of immigration policy. In no particular order, they include the following.

- 1) **What was the impact of the employer sanctions provisions of IRCA on labor union organization?** Some labor union and immigration advocates see these provisions as discriminatory, not only at the point of hiring, but also on the job. Recently, the AFL-CIO Executive Committee voted to reverse its earlier position supporting employer sanctions. It now opposes these parts of IRCA because, in the words of Frank Hurt, President of the Bakery, Confectionary and Tobacco Workers, who chaired the AFL-CIO committee that recommended support for IRCA, now opposes the employer sanctions provisions “...they arm employers with additional weapons, often wielded with gov-

ernmental complicity...They pit worker against worker, ally against friend, driving wedges between us when we should stand united.” But still unknown is the extent to which IRCA was exploited by employers as a weapon against labor organizing drives. New advocacy efforts, such as the Labor Immigration Organizing Network (LION), based in the San Francisco Bay area, have raised important questions about the adverse impact of employer sanctions.

- 2) **Where have the SAW visa holders gone?** By 1996, only 300,000 of the 1.1 million legalized under the SAW visa program remained as U.S. agricultural workers. The number is surely smaller today. Did most go onto other types of employment in the U.S., or were there other significant paths followed by the SAW’s?
- 3) **What has been the impact of the harsh new U.S. immigration policies on the composition of the population of unauthorized workers now coming into the country?** Rick Mines has examined Border Patrol apprehension data and reports that currently only 5% of those apprehended are female, whereas before the stepped up border enforcement policy began in 1994 some 25% were female. Even if all undocumented workers presently in the U.S. were to benefit from another IRCA-like amnesty program, the elimination of the family unification program makes it unlikely that spouses and other family members will be able to join their husbands.
- 4) **What has been the effect of stepped-up the new INS ‘interior enforcement’ program?** There is evidence that INS has returned to the pre-IRCA policy of targeting workers, not employers. Raids by Border Patrol agents in the Southern California sweatshop garment industry appear to focus on apprehending and deporting undocumented workers, not targeting employers.
- 5) **What has been the experience of the new Social Security Administration (SSA) program of carefully reviewing employer records of employee social security num-**

**bers?** A relatively recent program of SSA, described as the ‘unmatched records’ initiative, involves reviewing selected employer records of employee names and social security numbers that accompany tax payments. Employers are notified when employee names and social security numbers don’t match SSA records, and must pay fines of \$50 per worker if they are unable to rectify any discrepancies. A memo of understanding between INS and SSA clearly underscores that this new approach is now an important part of employers sanctions enforcement.

- 6) **What is extent, both in terms of national scope and industries, of the participation of recent immigrants in the U.S. economy?** It is known that some Mid-Western communities in states such as Nebraska and Iowa have become magnets for immigrant workers who are hired to work in meat packing plants. Even as far as Alaska, Mexican workers are found in considerable number working in the fish processing industry. But little is known beyond anecdotal evidence of the recent patterns of migration.
- 7) **Are there jobs that are important components of the U.S. economy that citizens and legal residents are disinclined to do?** Ed Kissam found, in the early 1990’s that U.S.-born children of foreign-born hired farm workers in Parlier, California, were not interested in pursuing their parents’ line of work. In fact, fewer than 3% said they would be willing to do hired farm work. If still true today, then it appears unlikely that the U.S. hired farm labor force will be replicated in the future from within the country. In other words, under present conditions, the 700,000 hired farm workers on whom the hugely successful California agricultural industry now depends, will have to be replenished from persons born in other nations. At one time, students and homemakers would enter the farm labor market on a part-time basis, not only in California but in other states as well, to supplement the labor force. Some California counties, such as Santa Barbara, have imposed work requirements on recipients of welfare, but find that hardly any persons now required to obtain employment will do hired farm work. As employment in the

personal services sectors, such as food service, housecleaning, gardening, health aide and janitorial work, continue to expand rapidly, the question of who will do that work looms large.

### *Are there alternatives to the status quo?*

The Forum on Transnational Employment seeks to explore alternatives to the current impasse. The essays in the present volume are intended to open the dialogue, and includes labor representatives at the outset of the process. This is important, for it guarantees that the point of view of the worker is fully represented in the on-going discussions.

An area to be more fully explored is that of options for future policy. The AFL-CIO has recently endorsed a new blanket amnesty for undocumented workers presently in the U.S., linked to elimination of employer sanctions and heightened border enforcement intended to finally seal the U.S. border. Left unanswered in their proposal is the issue of family unification.

Meanwhile, two proposals have been introduced in Congress. One, designed to address needs of the computer software industry, would expand the existing H-1A program to allow up to 200,000 technically skilled immigrants to enter the U.S. each year and remain for up to five years. Computer companies see this as a way to meet current manpower needs. But labor organizations argue that training programs in this country should be established to upgrade the skills of domestic workers to meet that need.

The other proposal, intended to serve the agricultural industry, would remodel the existing H-2B program along the lines of the long-abandoned Bracero program of the World War II era, and which was finally ended on December 31, 1964. Both SR 1814 and SR 1815 are pending in the Senate at this writing. Hundreds of thousands of new H-2 visas would be issued to enable farm employers to hire authorized workers instead of relying so heavily on undocumented workers. Labor and immigration advocates oppose this proposal, and any other ‘guest worker’ program because it would undermine existing labor markets. It was no accident that the United Farm Workers movement began to pick up and grow shortly after the Bracero program ended.

Lost in this debate, however, is the fact that several guest worker programs in agriculture have long been in place, often producing bet-

ter results for workers than what faces undocumented workers. For example, Catherine Colby has described the successful Canadian-Mexican guest workers program in which tens of thousands of hired farm workers go to Canada each year with full legal status and excellent benefits, including participation in that nation's health system. She reports that participants send back an average of about \$1,000 per month to their home villages, as compared with an average of \$200 per month remitted by undocumented hired farm workers who are employed in the U.S.

For many decades, some Mexican hired farm workers have entered the U.S. with 'border crossing cards,' to work in the Imperial and Coachella Valleys and to return home to Mexico each day or at the end of the season. These documents can be thought of as 'guest worker' documents, offering some protection to the worker from the abuses to which undocumented workers are subjected.

Finally, the policy debate has been sharpened by the emergence of a highly visible protest movement against globalization, largely focussed on opposing the World Trade Organization agenda. The December 1999 protests in Seattle raised important questions about exploitation of labor in less developed nations, particularly in industries where American workers are threatened by global competitions. But this debate left one question off the table: what about U.S. industries, such as California agricultural and garment production, where nearly all of the labor force is foreign-born and perhaps half are undocumented. Is it better in these cases to import workers, or to export factories? For some industries, such as cut-and-sew garment production, centered in Los Angeles, many runaway shops have already relocated to Mexico. But it appears that the folks who would do the work would be the same in either case, undocumented Mexican immigrants who come to the U.S. to take those jobs, or residents of Mexico who work in the maquiladora factories along the border.

And what of workers themselves? Are all immigrants seeking permanent residency in the U.S.? Or are some seeking to return to their home villages regularly, and perhaps even retire there? Paul Johnston has raised the suggestion that a new North American visa be created which would confer the right of cross-border movement, but not guarantee permanent residence status. With FTE, the California Institute for Rural Studies hopes to encourage further debate.