

# Undocumented But In Demand: An Assessment of the Labor Crisis and Illegal Employment System in the U.S

A (formerly) undocumented immigrant's assessment of the labor shortage impacting U.S. industries and the need for functional and humane guest worker programs that meet the needs of businesses, American citizens and workers.

Illegal The Project

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## Executive Summary

Our country is experiencing a system of illegal employment fueled by a lack of blue-collar, domestic workers and functional, humane guest worker programs.

These two factors have created a labor crisis that is negatively impacting our economy and creating fertile ground for illegal employment to grow. Faced with a lack of workers, our agriculture, hospitality, and construction industries are left with no other option than to hire undocumented labor thereby perpetuating illegal employment and a system that exploits undocumented workers.

In order to solve this problem, Congress should pass legislation that creates functional and humane guest worker programs (that meet the needs of our industries and immigrant workers) in tandem with tough enforcement of a revamped E-Verify system (that accurately verifies the legal status of employees).

This will bring an end to the labor shortage impacting our agriculture, hospitality, and construction industries, provide a legal path to employment for immigrants who wish to work in the U.S. seasonally, and end the illegal employment and exploitation of these undocumented workers.

This report is not intended to provide all the answers. Its focus is to lay the framework for immigration policymaking that addresses our country's need for immigrant labor and the current system of illegal employment.

***This is a first draft of an internal document.  
It is not intended for public distribution or publishing.***

# 1. Introduction

Our country is experiencing an immense labor shortage in the agriculture<sup>1 2</sup>, construction<sup>3</sup>, and hospitality<sup>4</sup> industries. This labor shortage is caused primarily by a lack of domestic, blue collar workers<sup>5</sup> willing to accept the low-wage jobs these industries offer. Recently, part of this shortage has been filled by undocumented workers whom we rely on in order to grow and maintain our dominance in the global market. Without the labor of immigrants, our economy would suffer and the American citizens would feel increased financial pressures as a result. The two biggest areas Americans will feel the pressure from this labor shortage includes the increases in food prices and the cost of housing across the country.<sup>6</sup>

Undocumented immigrants are currently keeping our labor crisis from reaching the tipping point and helping to keep our economy and industries afloat. In fact, “between 1970 and 2017, the percentage of the foreign born in the labor force more than tripled, from 5 percent to 17 percent. Over the same period, the foreign born share of the total population grew more slowly: from less than 5 percent to just under 14 percent.”<sup>7</sup>

The U.S. Department of Agriculture states that, “about half of the hired workers employed in U.S. crop agriculture were unauthorized, with the overwhelming majority of these workers coming from Mexico.”<sup>8</sup> The USDA has also warned that, “any potential immigration reform could have significant impacts on the U.S. fruit and vegetable industry.”<sup>9</sup> From the perspective of the National Milk Producers Federation in 2009, retail milk prices would increase by 61 percent if its immigrant labor force were to be eliminated.<sup>10</sup>

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<sup>1</sup> <http://immigrationimpact.com/2017/08/14/farmers-struggle-labor-food-prices/#.XaXg1udKjVp>

<sup>2</sup> <https://www.fb.org/viewpoints/another-year-of-farm-labor-shortages>

<sup>3</sup>

<https://www.curbed.com/2017/2/1/14474716/construction-vocational-training-labor-shortage-homebuilding>

<sup>4</sup> <https://www.vox.com/2019/8/12/20801941/us-labor-shortage-workers-quit>

<sup>5</sup> <https://www.conference-board.org/press/pressdetail.cfm?pressid=7622>

<sup>6</sup> <http://immigrationimpact.com/2017/08/14/farmers-struggle-labor-food-prices/#.XaXg1udKjVp>

<sup>7</sup>

<https://www.migrationpolicy.org/article/frequently-requested-statistics-immigrants-and-immigration-united-states#Labor>

<sup>8</sup> <https://www.ers.usda.gov/amber-waves/2012/june/immigration-policy/>

<sup>9</sup>

<https://www.ers.usda.gov/amber-waves/2010/december/labor-intensive-us-fruit-and-vegetable-industry-compete-in-a-global-market/>

<sup>10</sup> <https://thehill.com/blogs/congress-blog/foreign-policy/203984-illegal-immigrants-benefit-the-us-economy>

Furthering the findings of reputable, nonpartisan sources, “labor economist James S. Holt made the following statement to Congress in 2007: ‘The reality, however, is that if we deported a substantial number of undocumented farm workers, there would be a tremendous labor shortage.’”<sup>11</sup>

According to The Hill, specific industries within the U.S. economy, such as agriculture, are overwhelmingly dependent upon illegal immigrants. “In terms of overall numbers, The Department of Labor reports that of the 2.5 million farm workers in the U.S., over half (53 percent) are illegal immigrants. Growers and labor unions put this figure at 70 percent.”<sup>12</sup>

On a more recent and broader scale,

“Unauthorized immigrants are overrepresented in the labor force relative to the size of the overall population. In 2015, 7 million unauthorized immigrants worked in the United States. They represented 4.9 percent of the U.S. labor force, although they comprised only 3.5 percent of the U.S. population.”<sup>13</sup>

Our country’s need for a solution to this labor crisis is only growing worse. As the baby boomer generation continues to retire, our economy will need to rely more heavily on immigrant labor in order to function, let alone grow<sup>14 15</sup>. “Darrell West, a Brookings expert on technology and public policy, pointed out in 2013 that the U.S. economy would suffer if Congress didn’t overhaul the immigration system:

‘America’s immigration system is not designed for today’s economy, and remains largely unchanged since 1965. In fact, of the approximately one million green cards given out by the US in 2011, around 139,000 (or 13 percent) were given out for economic reasons, a number far too small to meet the needs of the world’s largest economy.’”<sup>16</sup>

As our country’s labor shortage continues to worsen, it is imperative that we have functional and humane guest worker programs in place to meet the demand of our industries. If not, we will see more and more uncocumented immigrants entering the country to obtain illegal jobs. In order to eliminate the supply of illegal jobs we must incentivize employers to use the guest worker programs by eliminating the obstacles they face in order to hire and maintain employees.

According to the American Farmer Bureau Association in regards to our current H-2A program, “72 percent of growers reported that workers arrived on average of 22 days after the ‘date of

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<sup>11</sup> <https://thehill.com/blogs/congress-blog/foreign-policy/203984-illegal-immigrants-benefit-the-us-economy>

<sup>12</sup> <https://thehill.com/blogs/congress-blog/foreign-policy/203984-illegal-immigrants-benefit-the-us-economy>

<sup>13</sup>

<https://www.americanprogress.org/issues/immigration/reports/2017/04/20/430736/facts-immigration-today-2017-edition/>

<sup>14</sup> <https://fivethirtyeight.com/features/what-baby-boomers-retirement-means-for-the-u-s-economy/>

<sup>15</sup> <https://www.conference-board.org/press/pressdetail.cfm?pressid=7622>

<sup>16</sup> <https://www.vox.com/2019/8/12/20801941/us-labor-shortage-workers-quit>

need’.” Entering into the H-2A program has been found to increase the obstacles that farmers face in order to hire and maintain employees. Only 8 percent of employers report that they were audited before they participated in the H-2A program, but 35 percent report being audited since entering the program. Farmers and even professional H-2A agents are routinely forced to hire lawyers to help them get through the process successfully. As a result of these hurdles, the program provides less than 4 percent of the hired workers needed in agriculture<sup>17</sup>.

The flow of undocumented immigrants is not the result of poor border security. It is a function of demand and supply and the origins of undocumented immigration date back to 1965<sup>18</sup>. The flow of undocumented immigrants is the result of our country’s demand for low-wage labor and the lack of functioning programs available for immigrants to obtain employment. When “opportunities for legal entry disappeared, migration did not stop but simply continued under undocumented auspices”<sup>19</sup>.

Based on data compiled by the Pew Research Center, we estimate that 24 percent of all immigrants are in the country illegally. Without a change in policy, between 12 and 15 million new immigrants (legal and undocumented) will likely settle in the United States in the next decade. And perhaps 30 million new immigrants will arrive in the next 20 years.<sup>20</sup> We need a solution to this illegal employment problem. One that is fair and just for our industries, our citizens, and immigrants.

It is incredible, given these numbers, that policymakers have not successfully improved and expanded the legal pathways available to immigrants in nearly 30 years.<sup>21</sup> While certain bills have been created, such as The Border Security, Economic Opportunity, and Immigration Modernization Act of 2013, change has yet to be implemented.

The current immigration system in our country has failed to reflect and meet the needs of our industries, economy, society, and country. Tom Jawetz, Vice President of Immigration Policy at the Center for American Progress states that:

“the immigration system has long failed to reflect the realistic needs of American society, American businesses, and American families. Predictably, an extralegal immigration system has emerged to fill the holes—one that everyone in the United States relies upon or participates in, whether directly or indirectly.

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<sup>17</sup> <https://www.fb.org/issues/immigration-reform/agriculture-labor-reform/economic-impact-of-immigration/>

<sup>18</sup> <https://www.cato.org/cato-journal/fall-2017/counterproductive-consequences-border-enforcement>

<sup>19</sup> <https://www.cato.org/cato-journal/fall-2017/counterproductive-consequences-border-enforcement>

<sup>20</sup> <https://www.pewresearch.org/fact-tank/2019/06/12/5-facts-about-illegal-immigration-in-the-u-s/>

<sup>21</sup> <https://www.americanprogress.org/issues/immigration/reports/2019/07/22/472378/restoring-rule-law-fair-humane-workable-immigration-system/>

Clearly, there is a tension between the laws on the books and reality on the ground”.<sup>22</sup>

The importance of undocumented immigrants to our economy has been recognized by a myriad of politicians, economists and non-partisan sources. One example was highlighted in a report by Texas Comptroller Susan Combs that stated, “Without the undocumented population, Texas’ work force would decrease by 6.3 percent.” Furthermore, “Texas’ gross state product would decrease by 2.1 percent”<sup>23</sup>. The reality “is that undocumented immigrants are important to the U.S. economy and vital to certain industries like agriculture,”<sup>24</sup> construction, and hospitality.

A recent report on *The Economic and Fiscal Consequences of Immigration* released by the National Academy of Sciences (NAS) underscores the importance of immigrants stating that they are essential to economic growth in America. The NAS concluded, “Immigration supplies workers, which increases GDP [gross domestic product] and has helped the United States avoid the fate of stagnant economies created by purely demographic forces – in particular, an aging (and, in the case of Japan, a shrinking) workforce.”<sup>25</sup>

For many Americans, the biggest concern is the strain undocumented immigrants add to our nations social services and the money spent on welfare for these law breakers. However, according to the Congressional Budget Office,

“Over the past two decades, most efforts to estimate the fiscal impact of immigration in the United States have concluded that, in aggregate and over the long term, tax revenues of all types generated by immigrants—both legal and unauthorized—exceed the cost of the services they use”<sup>26</sup>.

Dispelling this argument even more, the New York Times published an article citing the Chief Actuary of the Social Security Administration who claims that “undocumented workers have contributed close to 10% (\$300 billion) of the Social Security Trust Fund”<sup>27</sup>. Furthermore, 500 economists (including five Nobel Laureates) signed an open letter to President George W. Bush in 2006 stating that “While a small percentage of native-born Americans may be harmed by immigration, vastly more Americans benefit from the contributions that immigrants make to our economy, including lower consumer prices”<sup>28</sup>.

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<https://www.americanprogress.org/issues/immigration/reports/2019/07/22/472378/restoring-rule-law-fair-humane-workable-immigration-system/>

23 <https://thehill.com/blogs/congress-blog/foreign-policy/203984-illegal-immigrants-benefit-the-us-economy>

24 <https://thehill.com/blogs/congress-blog/foreign-policy/203984-illegal-immigrants-benefit-the-us-economy>

25 <https://www.cato.org/blog/economic-growth-under-trump-immigration-plan>

26 <https://thehill.com/blogs/congress-blog/foreign-policy/203984-illegal-immigrants-benefit-the-us-economy>

27 <https://thehill.com/blogs/congress-blog/foreign-policy/203984-illegal-immigrants-benefit-the-us-economy>

28 <https://thehill.com/blogs/congress-blog/foreign-policy/203984-illegal-immigrants-benefit-the-us-economy>

## 2. America's Labor Crisis

Our country is experiencing an illegal employment system fueled by a lack of blue-collar, domestic workers willing to fill our open jobs, and functional, humane guest worker programs<sup>29</sup> to provide the low-wage labor our industries require. According to the New York Times, “as a tight labor market raises costs, employers say the need for low-wage help can’t be met by the declining ranks of the native-born”<sup>30</sup>.

Over the past two decades a new trend has been born in the U.S. – companies are having a more difficult time finding blue-collar workers than white-collar workers. According to an analysis of our labor supply conducted by The Conference Board,

“Growing blue-collar labor shortages will continue in 2019 and beyond. Companies can expect growing shortages in sectors that include transportation, health care support, manufacturing, agriculture, mining, and construction.”<sup>31</sup>

U.S. farmers are already having a hard time finding the workers they need. In Southern Oregon, local farmers are unable to fill their job positions. “We’ve had significantly more trouble getting anyone to respond to job postings.” said Josh Cohen, owner of Barking Moon Farm.

The hospitality industry finds itself grappling with a growing labor shortage problem as well. According to the Deloitte 2019 Travel and Hospitality Industry Outlook, “the current hospitality workforce gap has reached unprecedented levels, with the U.S. Bureau of Labor Statistics estimating that there were more than a million job openings within the leisure and hospitality sector in 2018 versus over 350,000 job openings in 2009”.<sup>32</sup>

In the construction industry, “Eighty percent of contractors report difficulty finding qualified craft workers to hire”<sup>33</sup>. With the housing market on an upturn, these employers are feeling the

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<sup>29</sup> <https://www.vox.com/2019/8/12/20801941/us-labor-shortage-workers-quit>

<sup>30</sup> <https://www.nytimes.com/2019/04/03/business/economy/immigration-labor-economy.html>

<sup>31</sup> <https://www.conference-board.org/press/pressdetail.cfm?pressid=7622>

<sup>32</sup>

<https://www.travelweekly.com/Travel-News/Hotel-News/Lots-of-jobs-less-immigration-causing-hotel-labor-shortages>

<sup>33</sup>

<https://www.agc.org/news/2018/08/29/eighty-percent-contractors-report-difficulty-finding-qualified-craft-workers-hire>



pressures of a “shrinking pool of skilled tradesman, with few young laborers ready to pick up the slack”<sup>34</sup>.

In an effort to bridge the labor shortage gap in our agricultural industry, the U.S. implemented a guest worker program called the H-2A program. However, this program has proven to be inadequate in meeting the labor demands of our farmers. An NCAE survey found that 47 percent of employers were “not at all satisfied” or only “slightly satisfied” with the current H-2A program.<sup>35</sup>

As baby boomers continue to make their exit from the workforce and with the bulk of college educated millennials in America uninterested in taking on blue-collar jobs<sup>36</sup>, the need for immigrant labor to fill this void will only grow in the years ahead.

These factors have created a labor crisis that is negatively impacting our economy and creating fertile ground for illegal employment to grow. Faced with a lack of domestic workers and unrealistic hurdles to jump through to hire foreign workers legally, our agriculture, hospitality, and construction industries are left with no other option than to hire undocumented labor.

## 3. Impact On The Country

### 3.1 Introduction

The impact of the labor shortage is evidenced by a continued decrease in commercial agriculture production<sup>37</sup> (and growing reliance on imported produce)<sup>38</sup>, the inability of home builders to keep up with the demand for homes<sup>39</sup> and the inability of restaurant and hotel operators to find and retain staff<sup>40</sup>. This problem is threatening our food supply and fueling the affordable housing crisis among other issues.

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<https://www.curbed.com/2017/2/1/14474716/construction-vocational-training-labor-shortage-homebuilding>

<sup>35</sup> <https://www.nytimes.com/2019/04/03/business/economy/immigration-labor-economy.html>

<sup>36</sup> <https://news.gallup.com/reports/189830/e.aspx>

<sup>37</sup>

<https://research.newamericaneconomy.org/report/vanishing-breed-decline-u-s-farm-laborers-last-decade-hurt-u-s-economy-slowed-production-american-farms/>

<sup>38</sup> <https://research.newamericaneconomy.org/report/no-longer-home-grown/>

<sup>39</sup>

<https://www.curbed.com/2017/2/1/14474716/construction-vocational-training-labor-shortage-homebuilding>

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## 3.2 Food Supply

Immigrants are deeply involved in cultivating our country's food supply. These individuals "are an essential link in the chain of our food system, and are an indelible part of rural America, contributing to the economic and cultural fabric of these communities"<sup>41</sup>. Our food system in the U.S. simply could not function without the contributions of immigrants. America's farmers have been acutely aware of the consequences of restrictive immigration policies for some time. When migration levels drop or restrictive policies drive migrants out of the state or country, farmers feel the pinch first, as their crops are left to rot in the fields due to the shortage of available workers.<sup>42</sup>

The American Farm Bureau Federation, which has been the "voice of agriculture" since 1919, is an independent, non-governmental, voluntary organization governed by and representing farm and ranch families. It is also non-partisan and non-sectarian. The Farm Bureau has long documented the labor shortage facing the agriculture industry citing that entire fields of produce are currently "going to waste because farmer[s] cannot hire enough workers to harvest" resulting in "tens or hundreds of thousands of dollars in lost income".<sup>43</sup>

Painting a wider picture, the Farm Bureau states that,

"there is only so much a farmer can pay before it becomes unprofitable to grow a crop at all. If we don't solve this problem, we'll be importing more of our food. Many of the other jobs that support U.S. ag production—from transportation to equipment sales and maintenance—would disappear, too."<sup>44</sup>

The labor crisis is without a doubt threatening our industries and our food supply. Farm owners and farmworkers are not the only ones being affected and this will only become more apparent as time goes on. Individuals "simply looking to put food on the table may find themselves digging deeper into their pockets to pay for food."<sup>45</sup> In fact,

"A massive farm labor shortage could cause food prices to soar, with the overall cost of food increasing by five to six percent. Production of domestic vegetables

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<sup>41</sup> <https://www.farmaid.org/blog/fact-sheet/immigration-and-the-food-system/>

<sup>42</sup> <https://www.farmaid.org/blog/fact-sheet/immigration-and-the-food-system/>

<sup>43</sup> <https://www.fb.org/viewpoints/its-time-for-a-solution-on-ag-labor>

<sup>44</sup> <https://www.fb.org/viewpoints/its-time-for-a-solution-on-ag-labor>

<sup>45</sup> <http://www.renewoureconomy.org/research/no-longer-home-grown/>

and fruit could fall between 31 and 61 percent, respectively. Livestock production would also suffer by 13 to 27 percent”<sup>46</sup>.

If our labor crisis and the impact it is having on our industries continues, our country will need to look elsewhere to source our food. This issue is not new. The Farm Bureau has been documenting it and proposing solutions for a considerable amount of time.

“In fact, in 2014, the American Farm Bureau produced an economic study that found as much as 60 percent of U.S. fruit and vegetable production would move to other countries if there is more enforcement of worker eligibility requirements but no corresponding solution to problems with current agricultural labor programs—problems such as not getting approved for enough workers, or paperwork delays that result in workers showing up after crops are past their prime.”<sup>47</sup>

Furthermore, according to the American Immigration Council, our...

“...agricultural industry in the United States has been on the decline since 1950. Back then, farming was a family business that employed more than 10 million workers, 77 percent of whom were classified as "family." As of 2000 – the latest such data available – only 3 million work on farms, and... an estimated half are undocumented.”<sup>48</sup>

In addition to eliminating an enormous amount of jobs (on farms and all transportation services associated with them) and crumbling this sector of our economy, importing food could bring additional risks. Being dependent on foreign countries for our food supply is a threat to national security<sup>49</sup>. A report prepared by the Partnership for a New American Economy and the Agriculture Coalition for Immigration Reform shared that foreign grown produce consumed in the U.S. has increased by nearly 80 percent since the late 1990s<sup>50</sup>.

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<sup>46</sup> <http://immigrationimpact.com/2017/08/14/farmers-struggle-labor-food-prices/#.XaUaFOdKjVo>

<sup>47</sup> <https://www.fb.org/viewpoints/its-time-for-a-solution-on-ag-labor>

<sup>48</sup> <https://www.cbsnews.com/news/illegal-immigrants-us-jobs-economy-farm-workers-taxes/>

<sup>49</sup>

<https://www.texasgopvote.com/economy/agricultural-labor-shortages-threaten-america-s-economy-and-national-security-0010215>

<sup>50</sup> <http://www.renewoureconomy.org/research/no-longer-home-grown/>

Our farmers, and our citizens need a solution that will provide a robust and legal work force that meets the needs of the agricultural industry. Without one, we risk slowing our economic growth and becoming dependent on other countries for our food.

### 3.3 Hospitality

The hospitality industry is one of the biggest industries in the U.S., travel and tourism alone account for nearly 3% of our country's GDP<sup>51</sup>. According to a recent article by the New York Times,

“Immigrants make up almost a third of workers in the hotel and lodging industry and over a fifth of workers in the food service industry, according to the Brookings Institution. There are over a million immigrant workers in the direct-care industry — home health aides and personal-care aides tending to the sick and the frail. That amounts to about one-fourth of the total, said Robert Espinoza of PHI, a nonprofit group that does research and advocacy for direct-care workers.”<sup>52</sup>

Looking at this portion of the workforce, few of these workers studied past high school and many didn't get their diploma. Without immigration, such workers would be hard to find. According to an analysis of census data by Ms. Orrenius and Madeline Zavodny of the University of North Florida, “There are fewer working-age Americans who studied no further than high school than there were 20 years ago.”<sup>53</sup> This means that we will have to look outside of our domestic job seekers in order to fill these low-wage positions. The lack of low-wage labor in the hospitality industry over the long term could cause many businesses to close their doors and decrease competition in that space which has the potential to increase prices of hotels, restaurants, and other hospitality services.

### 3.4 Housing

According to the annual labor shortage survey published by NAHB, which tallies answers from the nation's single-family home builders, "the share of builders reporting either some or a serious shortage has skyrocketed from a low of 21 percent in 2012, to 46 percent in 2014, 52

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<sup>51</sup> <https://www.selectusa.gov/travel-tourism-and-hospitality-industry-united-states>

<sup>52</sup> <https://www.nytimes.com/2019/04/03/business/economy/immigration-labor-economy.html>

<sup>53</sup> <https://www.nytimes.com/2019/04/03/business/economy/immigration-labor-economy.html>

percent in 2015, and now 56 percent in 2016."<sup>54</sup> In Southern Oregon, these shortages have made it difficult for builders' to both form their own workforces, and hire subcontractors, such as bricklayers, electricians, and low skill laborers according to a local residential developer, Laz Ayala. In looking at the numbers from the NAHB survey, "75% of builders say they've had to pay higher wages and bids, 64% have delayed projects, and 68% have raised home prices".<sup>55</sup>

Were it not for immigrants, the labor shortage would be even worse. According to a study by Natalia Siniavskaia of the National Association of Home Builders, "In 2016, immigrants accounted for one in four construction workers" a five percent increase since 2004.<sup>56</sup> In the New York Times article where she was quoted states that in "some of the least-skilled jobs — like plastering, roofing and hanging drywall, for which workers rarely have more than a high school education — the share of immigrants hovers around half".<sup>57</sup>

The need for labor has set off a scramble for bodies that is driving up wages and the cost of homes. A New York Times reporter spoke with members of the NAHB regarding the labor crisis and its effect on home prices,

"Jerry Howard, Chief Executive of the National Association of Home Builders shared that 'the recent shortage of immigrant workers is impacting housing and housing affordability'. Phil Crone, who runs the Association's Dallas chapter, said the labor bottleneck was adding about \$6,000 to the cost of every home built in the area and delaying completion by two months"<sup>58</sup>.

Inevitably, if the labor gap continues to increase in the construction industry, housing prices will continue to rise. This will put an immense strain on the middle and lower classes in the U.S..

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<https://www.forbes.com/sites/scottbeyer/2017/04/29/americas-housing-construction-labor-shortage-continues/#4c84e706c80c>

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<https://www.forbes.com/sites/scottbeyer/2017/04/29/americas-housing-construction-labor-shortage-continues/#4c84e706c80c>

<sup>56</sup> <https://www.nytimes.com/2019/04/03/business/economy/immigration-labor-economy.html>

<sup>57</sup> <https://www.nytimes.com/2019/04/03/business/economy/immigration-labor-economy.html>

<sup>58</sup> <https://www.nytimes.com/2019/04/03/business/economy/immigration-labor-economy.html>

## 4. Illegal Employment

### 4.1 Introduction

The fact is, our country does not have enough lower skilled workers to meet the demands of our industries. Even though this problem has only worsened, “since 1964, very few lower skilled workers have been allowed in and the unauthorized immigrant population has skyrocketed”<sup>59</sup>. After the Bracero Guest Worker Program was canceled in 1964, “new DOL wage regulations and labor certification raised costs for farmers and migrants, incentivizing them to move into the informal, underground economy”<sup>60</sup>. In essence, “by making lawful employment of migrants so expensive, the government created unauthorized immigration.... Ending Bracero did not end temporary worker migration to the United States; it merely made such migration illegal”<sup>61</sup> creating an environment where these workers are more easily exploited and dehumanized.

While few lower skilled workers have entered the country legally since the termination of the Bracero Program,

“H-2 guest worker visas became the source of legal foreign agricultural workers. The H-2 was underused relative to the Bracero program because of complex rules, numerical restrictions, and the cost of sponsoring migratory workers. The H-2 visa was initially created through the Immigration and Nationality Act of 1952 for ‘other temporary workers’ not covered by the Bracero program. From 1964 until 1986, mostly temporary unauthorized Mexican migration filled the gap left by the repeal of the Bracero program, which was unfilled by the H-2 visa. After the end of Bracero, the modern age of unlawful immigration began”<sup>62</sup>.

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<sup>59</sup> <https://www.cato.org/blog/enforcement-didnt-end-unlawful-immigration-1950s-more-visas-did>

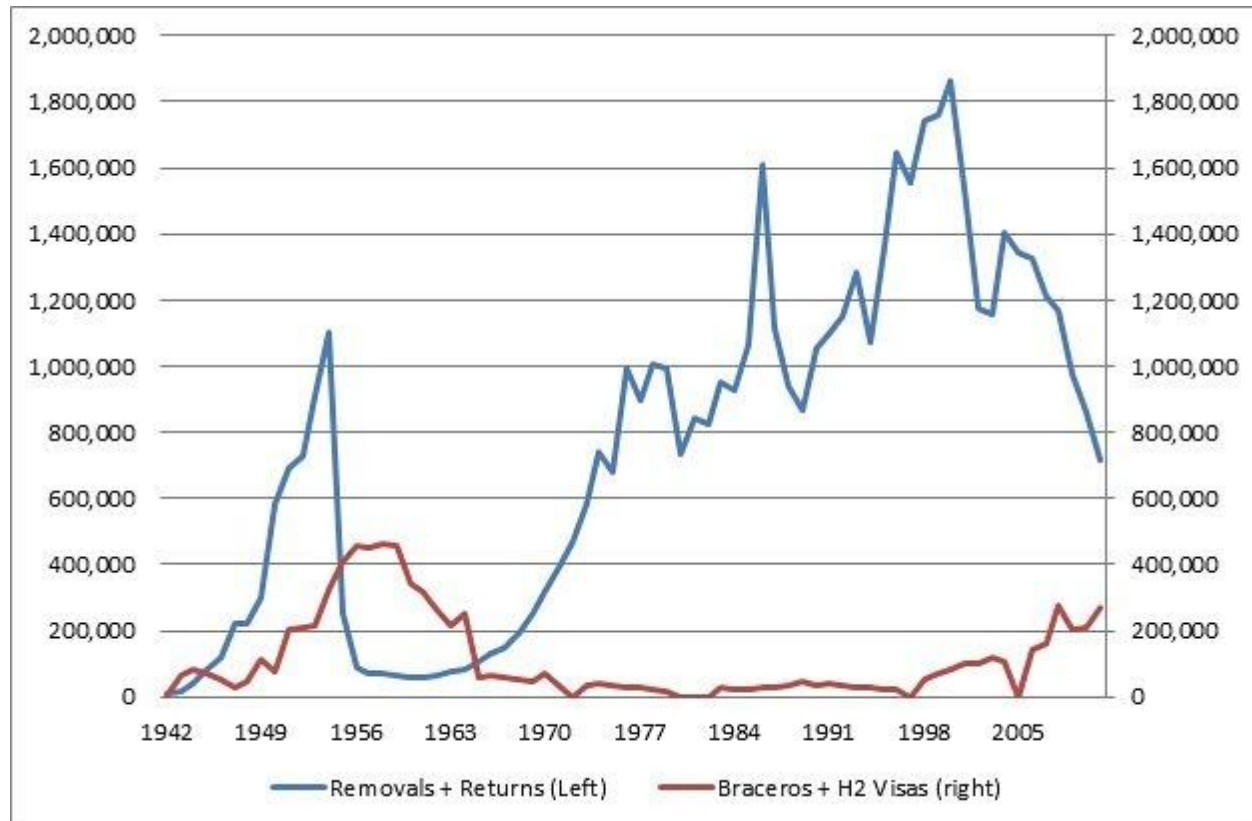
<sup>60</sup> <https://www.cato.org/blog/enforcement-didnt-end-unlawful-immigration-1950s-more-visas-did>

<sup>61</sup> <https://www.cato.org/blog/enforcement-didnt-end-unlawful-immigration-1950s-more-visas-did>

<sup>62</sup> <https://www.cato.org/blog/enforcement-didnt-end-unlawful-immigration-1950s-more-visas-did>

Figure 1

Removals and Returns of Unlawful Immigrants and Numbers of Guest Worker Visas, 1942-2011



Source: Department of Homeland Security and Immigration and Naturalization Service annual reports.

In 2018, 196,000 temporary work visas were issued under the H-2A program accounting for only a small portion of the estimated eight hundred thousand to 1.3 million hired farmworkers in the country<sup>63</sup>. Meanwhile the U.S. Department of Agriculture estimates “that in recent years around half of farmworkers were undocumented, binding this issue to the broader debate over immigration enforcement”. The reality is that when it is easier for people to enter the U.S. and work illegally or overstay their visas then it is for them to apply for our guest worker programs, that is what they will do. Despite the problems plaguing these programs, cutting them entirely would increase undocumented immigration, which is why we need to create a better system that makes it easier for employers to hire the labor they need through a legal and humane guest worker program.<sup>64</sup>

<sup>63</sup> <https://www.ers.usda.gov/topics/farm-economy/farm-labor/#employment>

<sup>64</sup> <https://www.cfr.org/backgrounders/us-temporary-foreign-worker-programs>

## 4.2 Why Employers Hire Undocumented Workers

Just as immigration is a multifaceted issue, so too are the reasons employers hire undocumented workers. For the purposes of this report, we highlight three main reasons:

### 4.2.1 Inadequacy of Current Guest Worker Programs

Our current temporary worker immigration program is riddled with red tape and has led to an inefficient system that pushes employers to hire unauthorized immigrants. The agricultural worker program has no numerical cap, but it provided visas to only about 20% of hired farmworkers in the country in 2018.<sup>65</sup>

The reality is that many individuals feel the need to work in the U.S., just as much as our industries need their work. And when the work program process is too difficult and challenging, both employer and job seeker will turn to illegal means of employment. The Council on Foreign Relations places this argument in a helpful perspective:

“Current rules and fee requirements make it difficult for temporary workers to change employers, which, advocates say, prevents them from negotiating for fair wages and improved working conditions. ‘One of the biggest problems our system has’ is that the legislation behind these programs is inflexible, says the Urban Institute’s Audrey Singer. ‘By the time we develop and pass these bills into law, they become outdated’”<sup>66</sup>.

### 4.2.2 Need for Immigrant Labor to Survive

The labor shortage our country is facing has left employers with no other option than to hire immigrant workers to survive. See section 3 - [“Impact On The Country”](#).

Employers hire undocumented workers because it is their best option. While it is in the interest of employers and workers alike not to be subject to immigration raids, for many, it’s not an option. It is easier and more affordable for employers to tap into the underground economy as opposed to jumping through the complicated hoops and red tape associated with our current temporary guest worker program. And, why wouldn’t employers hire undocumented workers when our current laws don’t require them to verify the legal status of their employees nor hold them accountable for hiring undocumented workers?

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<sup>65</sup> <https://www.cfr.org/backgrounders/us-temporary-foreign-worker-programs>

<sup>66</sup> <https://www.cfr.org/backgrounders/us-temporary-foreign-worker-programs>



### 4.2.3 Lack of Enforcement

Employers are required to ask all new hires for documents supporting the I-9 Form showing that the individual has authorization to work in the U.S. That said, employers are not experts on these documents (and are not expected to be).<sup>67</sup> In fact, the office of U.S. Citizenship and Immigration Services states that employers “must examine the document(s), and if they reasonably appear on their face to be genuine and to relate to the person presenting them, [they] must accept them”.<sup>68</sup>

From the outset, this is not a perfect system. “Reasonably appear on their face to be genuine” is subjective at best. Furthermore, it creates an opportunity in which immigrants can easily provide fake documents and employers can accept them – whether employers believe the documents to be real or not. Additionally, employers are not required to “confirm the work authorization of anyone [they] hire as an independent contractor”<sup>69</sup> which opens yet another loophole.<sup>70</sup> Even so, this is not the root of the issue.

Leaving the burden on employers to objectively verify documents is unreasonable and ineffective. The larger issue is that there is a need for a legitimate verification process that accurately verifies the legal status of prospective hires that employers are required to use.

According to Syracuse University’s Transactional Records Access Clearinghouse, in the last year alone (March 2018 - March 2019), “only 11 individuals were prosecuted for hiring undocumented workers”<sup>71</sup> and, of those, only “three received jail time.”<sup>72</sup> Furthermore, not one company was prosecuted for hiring undocumented employees.<sup>73</sup> Contrast these numbers with the “85,727 individuals prosecuted for entry illegal to the U.S. and 34,627 prosecuted for illegal re-entry during the same period.... employers, for decades, have rarely paid a price for hiring undocumented workers”<sup>74</sup>.

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<sup>67</sup> <https://www.nolo.com/legal-encyclopedia/legal-pitfalls-hiring-undocumented-immigrants.html>

<sup>68</sup> <https://www.uscis.gov/faq-page/i-9-central-questions-about-documents>

<sup>69</sup> <https://www.nolo.com/legal-encyclopedia/legal-pitfalls-hiring-undocumented-immigrants.html>

<sup>70</sup> <https://www.nolo.com/legal-encyclopedia/legal-pitfalls-hiring-undocumented-immigrants.html>

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<sup>72</sup> <https://kjzz.org/content/985216/employers-rarely-held-accountable-hiring-undocumented-immigrants>

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<sup>74</sup> <https://publicintegrity.org/immigration/immigration-decoded/employers-escape-sanctions-while-the-undocumented-risk-lives-and-prosecution/>

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<sup>74</sup> <https://publicintegrity.org/immigration/immigration-decoded/employers-escape-sanctions-while-the-undocumented-risk-lives-and-prosecution/>

Employers (and immigrant workers alike) need a legal pathway to employment in the U.S. It is no secret that we need their labor to survive, let alone thrive. Immigration reform is desperately needed to provide employers with a legal means to survive (by providing functional and easily accessible guest worker programs), curb the extralegal job market we have created, protect American interests and provide humane options for the immigrant workers themselves.

### 4.3 Why Immigrants Enter The U.S. Illegally

Within international relations and foreign policy, the reasons individuals migrate are often categorized as either “push” or “pull” factors. While there has yet to be a consensus on which category is responsible, to a greater degree, for the influx of undocumented immigrants to the U.S., understanding these two categories of migration provides ample opportunity to explain why immigrants enter the country illegally, how to curb these numbers and transform many of them into legal, temporary residents.

According to the National Immigration Forum, “push factors are conditions in migrants’ home countries that make it difficult or even impossible to live there.”<sup>75</sup> While, “pull factors are circumstances in the destination country that make it a more attractive place to live than their home countries”<sup>76</sup>.

#### 4.3.1 Push Factors

Push factors often include reasons like natural disasters, crop failure, famine, and/or pollution; violence, persecution, and/or war; poor wages, lack of jobs, a struggling economy, limited opportunities, family separation, and/or a lack of services<sup>77</sup>.

While unauthorized immigrants in the U.S. come from all over the world, “Mexico alone accounts for more than half of the estimated 11 million unauthorized immigrants in the United States, with another 15 percent and 14 percent from Central America and Asia, respectively”<sup>78</sup>.

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<https://immigrationforum.org/article/push-or-pull-factors-what-drives-central-american-migrants-to-the-u-s/>

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<https://immigrationforum.org/article/push-or-pull-factors-what-drives-central-american-migrants-to-the-u-s/>

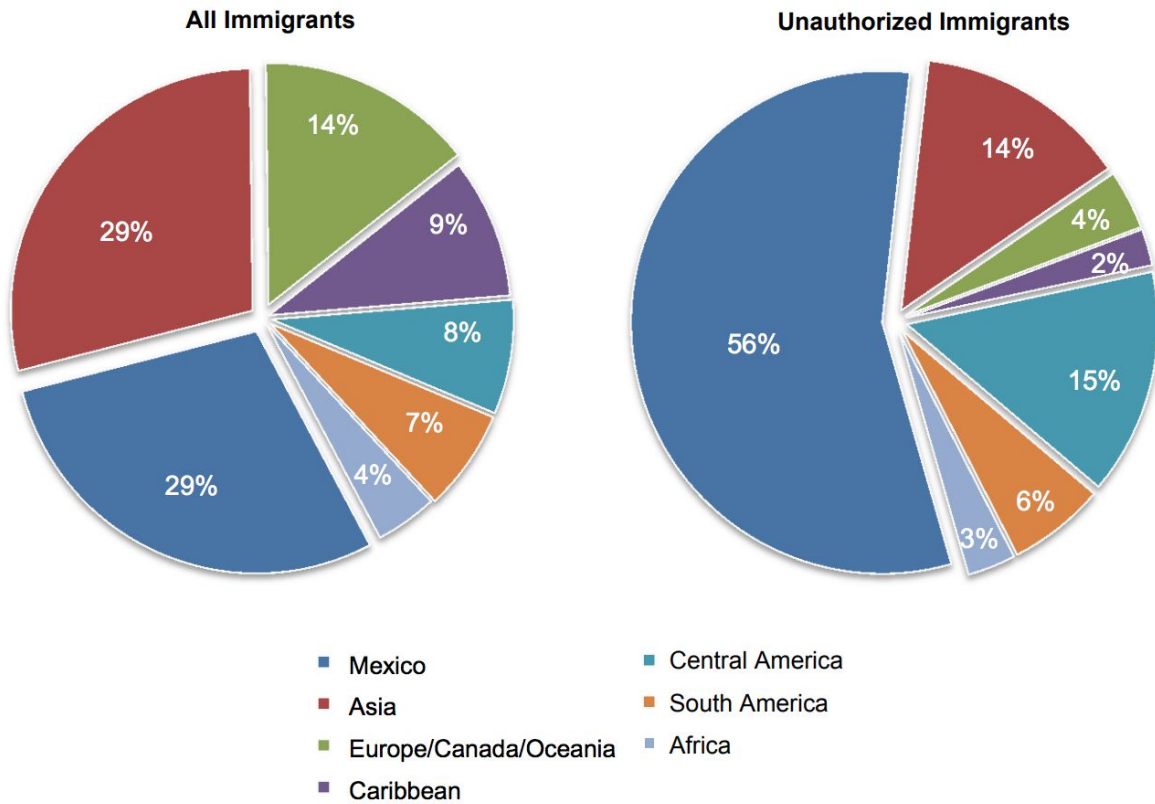
<sup>77</sup>

<sup>78</sup>

<https://www.migrationpolicy.org/research/analysis-unauthorized-immigrants-united-states-country-and-region-birth>

Figure 2

U.S. Foreign-Born Population Overall and Unauthorized, by Country/Region of Origin, (%), 2009-13<sup>79</sup>



Over decades, “the U.S. has contributed to the poverty and civil unrest that has fostered conflict and violence abroad... by using foreign lands and labor to expand American business, financing the overthrow of democratically elected leaders, or training the leaders of oppressive military leaders”<sup>80</sup>. In addition to the U.S.’s history of intervening in the governments of Latin American countries and providing fertile ground for unrest, violence and gangs to grow, Mexico as well as Central and South America are also our closest neighbors making entering the U.S. easier.

<sup>79</sup>

<https://www.migrationpolicy.org/research/analysis-unauthorized-immigrants-united-states-country-and-region-birth>

<sup>80</sup>

<https://www.kcet.org/shows/link-voices/deportations-assassinations-and-dictator-nations-a-timeline-of-us-intervention-in>

### 4.3.2 Pull Factors

The immigrant worker community recognizes our need for their labor. While many of these individuals would prefer to enter the country legally, work seasonally and return home to their families, this isn't a viable option. With the lack of participation by employers in our guest worker program (due to many issues including red tape), and the barriers to entry for immigrants to qualify and apply to enter into this program, many are taking the easier route to a job; an illegal one. To make matters worse, those who enter the country to work undocumented are trapped once they are here unless they want to risk deportation and not being able to return to earn a living for their families.

Developing a functional guest worker program would allow them to come to the U.S to work seasonally, return to their communities, maintain their family structure and use their hard-earned dollars to promote economic sustainability back home. Though there are those who wish to establish citizenship, this temporary working situation is something many undocumented workers want.

## 5. Proposed Solution

### 5.1 Introduction

The labor shortage and illegal employment system we are experiencing in the U.S will not be a priority for either political party, unless there is pressure from the industries most affected, the immigrant worker community and the American public. We have been held at an impasse in the arena since the last presidential election.

In order to solve the problems we are facing as a nation, it is imperative that we develop a well-functioning, legal immigration system that is responsive to the nation's changing needs<sup>81</sup>.

In the case of this report, this legal immigration system would encompass functional, humane guest worker programs that meet the ever changing needs of our industries, are void of excess red tape, and enhance workers' rights. These guest worker programs would coincide with a revamped, accurate and easy to use E-Verify system.

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<https://www.americanprogress.org/issues/immigration/reports/2019/07/22/472378/restoring-rule-law-fair-humane-workable-immigration-system/>

The Center for American Progress, an independent nonpartisan policy institute dedicated to improving the lives of all Americans, stated it well when it said:

“The rules of such a system would be designed to recognize the fact that the only way to have an immigration system that works is to more closely align supply and demand, rather than force the system to adhere to artificial caps, untethered from reality and revisited only once in a generation at best. Importantly, if immigration were successfully channeled through a functioning regulatory system, enforcement resources could instead be dedicated to preventing individuals from entering the country outside of that system and to appropriate enforcement actions necessary to maintain the integrity of that system and U.S. borders, which remain central to the very notion of national sovereignty”<sup>82</sup>.

Functional and humane guest worker programs and implementation of an improved E-verify system would eliminate the demand for undocumented workers thereby leaving employers and workers with only one choice – a legal one.

## 5.2 A Common Sense Solution: Improved Guest Worker Programs & Enforcement of a Revamped E-Verify System

We need to pass legislation that provides a humane and legal path to employment for guest workers. One solution that can solve our labor shortage problem and drastically reduce the amount of undocumented immigrants working in and entering the U.S. is to create a better guest worker program that incentivizes employers and immigrants to participate.

In order to create a more functional guest worker program, we must eliminate the red tape currently associated with our temporary guest worker programs making it easier for both the employer and immigrant to participate. These streamlined programs should include an annual assessment of the labor needs of various industries and authorize the needed guest worker visas to meet those needs.

In tandem with expanded guest worker programs, there must be legislation requiring tough enforcement of a revamped E-Verify system that is accurate and dependable. The law must require employers to verify the legal status of each employee and enforce stiff penalties and consequences for employers that violate the law.

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<https://www.americanprogress.org/issues/immigration/reports/2019/07/22/472378/restoring-rule-law-fair-humane-workable-immigration-system/>

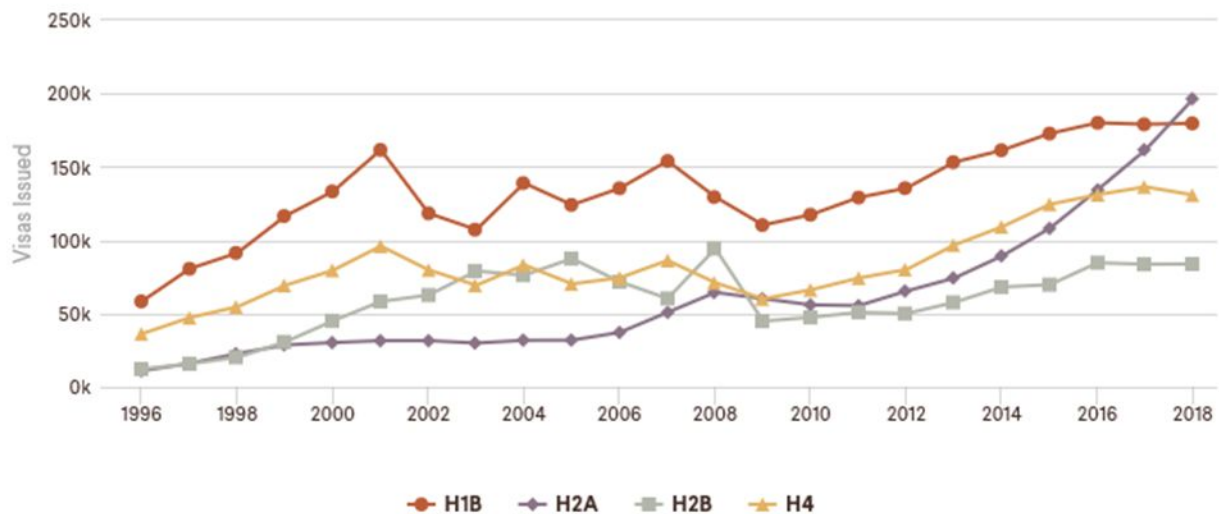
The 11 million undocumented immigrants already living in the U.S. should be given first priority with regard to guest worker programs. While not all will be eligible or desire this option, many will jump at the opportunity to obtain a legal job and return home to their families with the money they earn each season. This will reduce the number of undocumented immigrants and provide a foundation from which a path to citizenship would be easier to provide for those who remain. Priority should also be given to the country's from which the majority of undocumented immigrants are currently coming from (Mexico & Central America).

### 5.3 Guest Worker Program and H-2A Visas

Our current temporary guest worker program is riddled with red tape and has led to an inefficient system. According to The Council on Foreign Relations, this

“spurs employers to hire from a massive pool of unauthorized immigrants, many of whom are just as willing to avoid the required fees and paperwork. The agricultural worker program has no numerical cap, but it provided visas to only about 196,000 workers in 2018, a small portion of the estimated eight hundred thousand to 1.3 million hired farmworkers in the country.”<sup>83</sup>

Temporary Worker Visas Issued, 1996–2018



In an article published by the Council on Foreign Relations, Alex Nowrasteh of the libertarian-leaning Cato Institute stated that “When it’s more difficult to come into the United

<sup>83</sup> <https://www.cfr.org/backgrounders/us-temporary-foreign-worker-programs>

States to work legally, all things being equal, more people enter to work illegally or overstay their visas,”<sup>84</sup>

Industry professionals, advocates and immigration experts are frustrated with the pace of guest worker visa reform. “Agriculture's interests have been repeatedly set back by politicking on Capitol Hill,” said Jim Moore, a political science professor at Pacifica University.<sup>85</sup> Moore says the agriculture industry's problems are more fundamental. “Agriculture for the past 25 to 30 years has decided its future is with the Republican Party, which supports agriculture but opposes immigration reform.”<sup>86</sup>

According to an article published by the Council on Foreign Relations about U.S. temporary foreign worker programs,

“Some lawmakers and advocacy groups say the government agencies managing these programs do not go far enough to ensure that foreign workers are not displacing domestic workers. Others stress they fail to protect foreign workers from exploitation. Current rules and fee requirements make it difficult for temporary workers to change employers, which, advocates say, prevents them from negotiating for fair wages and improved working conditions. ‘One of the biggest problems our system has’ is that the legislation behind these programs is inflexible, says the Urban Institute’s Audrey Singer. ‘By the time we develop and pass these bills into law, they become outdated’”<sup>87</sup>.

“Proposed reforms to the H2 programs have focused on streamlining their administration to shorten the labor certification and application process from up to two months to just days. Some have proposed overhauling or entirely replacing the programs; Senator Dianne Feinstein (D-CA) has pushed for an agricultural worker program focused not only on admitting new workers but also on identifying undocumented workers in the country and granting them legal status. A Republican-sponsored bill introduced in 2017 would have allowed state governments to craft their own temporary worker programs. Some proposals for H2A reforms have sought to allow employers to hire temporary workers for year-round, rather than just seasonal, labor needs. Other proposals have sought to broaden the scope of the types of labor authorized under the H2B program and the groups exempted from its numerical cap ”.<sup>88</sup>

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<sup>84</sup> <https://www.cfr.org/background/us-temporary-foreign-worker-programs>

<sup>85</sup>

<https://www.bignewsnetwork.com/news/230815973/the-h-2a-problem-why-a-perfectly-legal-farmworker-visa-program-isnt-being-used-more>

<sup>86</sup>

<https://www.bignewsnetwork.com/news/230815973/the-h-2a-problem-why-a-perfectly-legal-farmworker-visa-program-isnt-being-used-more>

<sup>87</sup> <https://www.cfr.org/background/us-temporary-foreign-worker-programs>

<sup>88</sup> <https://www.cfr.org/background/us-temporary-foreign-worker-programs>

To make matters worse, under our current system farmers who want to maintain the labor status quo face a dilemma. They do not want to apply for H-2A guest workers because that would require them to prove that U.S. workers are not available and provide housing to the guest workers. They also do not want to simply legalize currently illegal workers, because the experience with Special Agricultural Worker (SAW) demonstrates that legalized farm workers soon leave for nonfarm jobs in a booming economy.<sup>89</sup>

To solve this problem for farmers and other U.S. industries we need legislation that provides a humane and legal path to employment for guest workers and a streamlined and affordable process for employers to hire these guest workers. This legislation should include an annual assessment of the labor needs of various industries and authorize the needed guest worker visas to meet those needs. Hardships on the employer such as requiring that they prove that there are no domestic workers available to fill these positions should be removed.

## 5.4 Revamped E-verify System

E-Verify is an internet-based system operated by U.S. Citizenship and Immigration Services (USCIS) in partnership with the Social Security Administration (SSA)<sup>90</sup>.

In tandem with expanded and improved guest worker programs, there must be legislation requiring tough enforcement of an improved E-Verify system that is accurate and dependable. The law must require employers to verify the legal status of each employee and carry stiff penalties and consequences for employers that violate the law. Functional guest worker programs and E-verify implementation would drastically reduce the demand for undocumented workers thereby leaving employers and workers with only one pathway to employment - a legal pathway.

E-Verify is currently free to employers and is available in all 50 states. It provides an automated link to existing federal databases to help employers determine the employment eligibility of new hires and the validity of their Social Security numbers. While its usage remains voluntary throughout the country, some states have passed legislation making its use mandatory for certain businesses<sup>91</sup>.

Mandating E-Verify without an expanded guest worker program would make the situation worse. Instead it would decimate the existing workforce without providing any workers to take their place. Furthermore, mandating E-Verify without fixing the issues associated with the system (e.g. false positives and negatives)<sup>92</sup> would be detrimental to positive immigration reform.

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<sup>89</sup> <https://cis.org/Report/Guestworker-Programs-21st-Century>

<sup>90</sup> <https://www.e-verify.gov/about-e-verify>

<sup>91</sup> <https://www.numbersusa.com/resource-article/everify-state-map>

<sup>92</sup> <https://www.cato.org/blog/e-verify-has-held-or-cost-jobs-half-million-legal-workers>



Ensuring compliance with immigration rules is not just in the hands of the federal and state governments. Local businesses can take action by using E-Verify to prevent the hiring of undocumented immigrants who lack authorization to work in the United States. With ongoing structural unemployment and stagnant wages, the best thing any smart, practical, law-abiding, civic-minded and patriotic American business can do is to begin using E-Verify to ensure that all new hires are legal to work in the United States. In order to make this system effective there will need to be unbiased audits performed to validate the system's accuracy in verifying the legal status and authenticity of the applicants it receives. Based on these findings, the system should be updated and revamped to ensure optimal performance and accuracy before being re-implemented.

## 6. Conclusion: Decreased Labor Shortage and Illegal Employment

This kind of legislation would provide a legal and humane path for workers while providing our industries with the labor they need. To the degree we improve guest worker programs to meet the needs of our economy, we will also drastically improve the illegal immigration problem. We can do this at a fraction of the \$7 billion spent annually on immigration enforcement.

This plan does not solve all of our immigration issues. It doesn't cover the future of DACA Dreamers, asylum seekers and refugees. It is not a perfect solution. But, imperfect does not mean not good. In the words of Voltaire, "perfect is the enemy of good".



Illegal The Project seeks to humanize the conversation around immigrants and their families in the U.S. through advocacy, coalition building, and community engagement in an effort to create a system where both immigrants and employers may thrive. As a subset of this project, we have identified the labor crisis and illegal employment system as an avenue for positive immigration reform that benefits immigrants, industries and American citizens.

**[www.illegaltheproject.org](http://www.illegaltheproject.org)**

Illegal The Project  
604 Fair Oaks Ct  
Ashland, OR 97520