

Workforce Woes: The Present and Future of Farm Labor



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Today's Task

- A few farm workforce facts
- State of Play -- federal legislation
- State of Play – rule changes
- Outlook

How Many Farm Workers Are There?

- USDA reports ~1.1 million FTEs
- CA analysis suggests 2:1 ratio
- ~ 2.0-2.5 million hired workers each year nationally

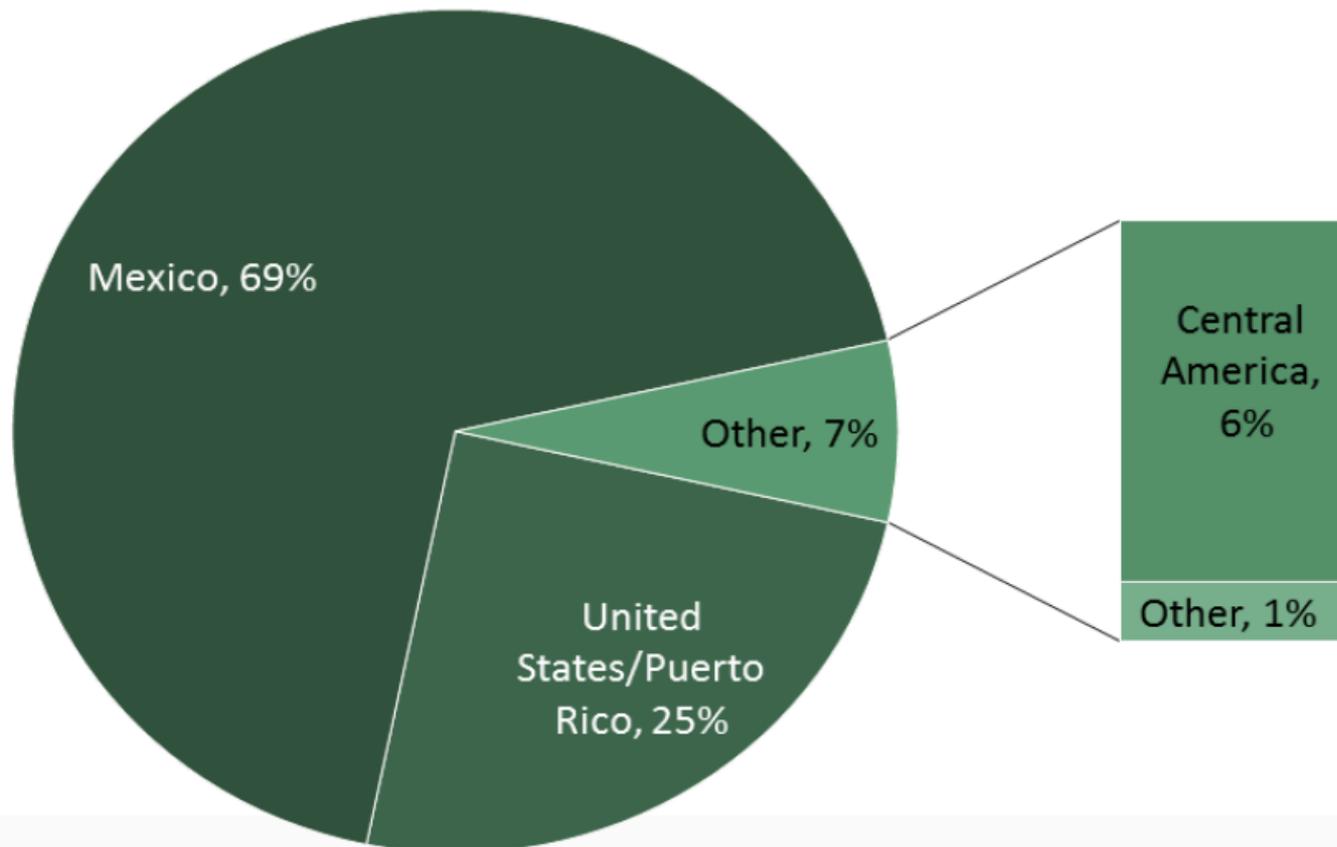


National Ag Worker Survey: National Employment Characteristics

- Employment Relationship
 - Direct Hire: 88% (2009) → 80% (2016)
 - FLC: 12% (2009) → 20% (2016)
- Average Years Farm Experience
 - 8 (2009) → 14 (2016)
- 24% held a non-farm job in last 12 mos.
- 76% “plan to work in Ag at least another 5 years/as long as can”

Figure 1.1: Place of Birth, 2015-2016

Two -thirds of farmworkers are from Mexico.



Employment Eligibility (2015-16)

- 51% “employment authorized”
- Three-quarters of foreign-born in US at least 10 years
- Migrancy becoming rare; 81% were “settled” vs. migrant

Demographics and Family Composition

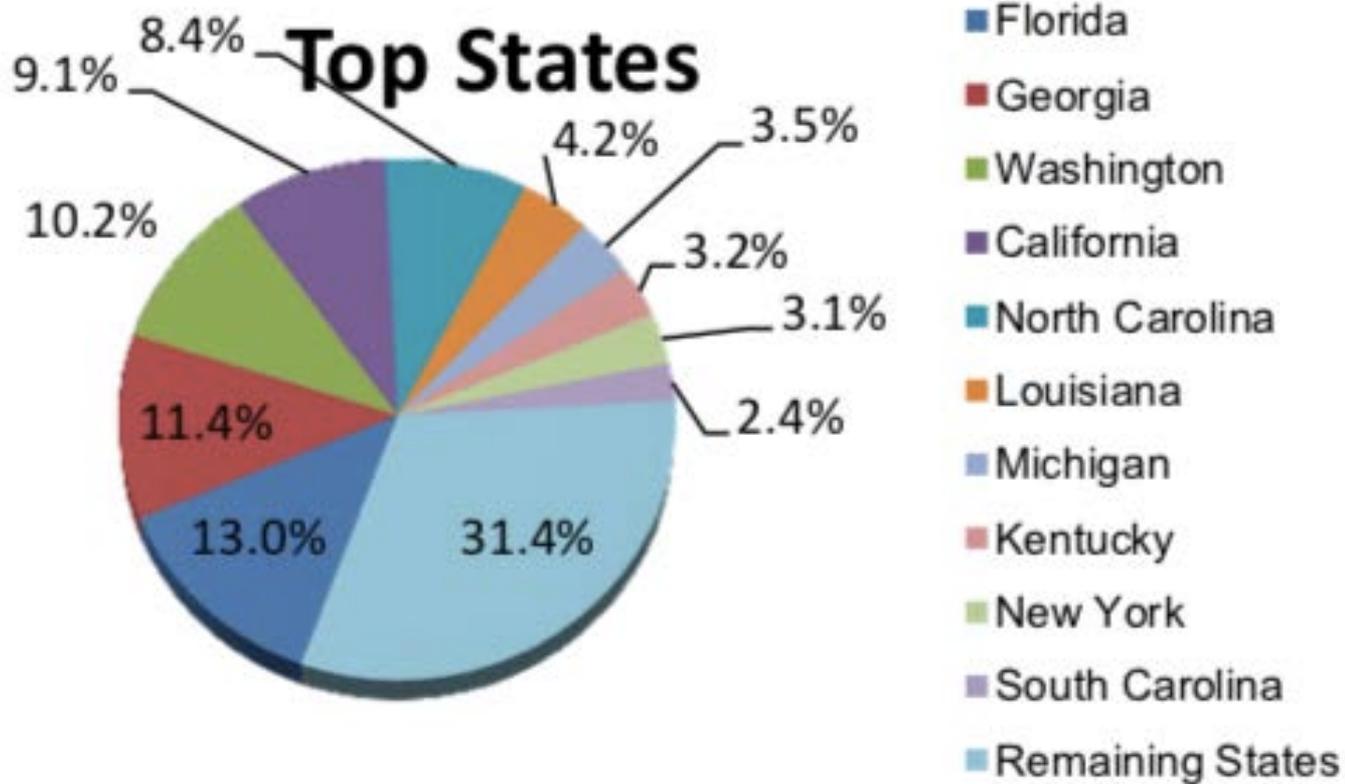


- 68% were males
- Average age 38
- 14% were 55 and older
- 57% were married
- 55% had children

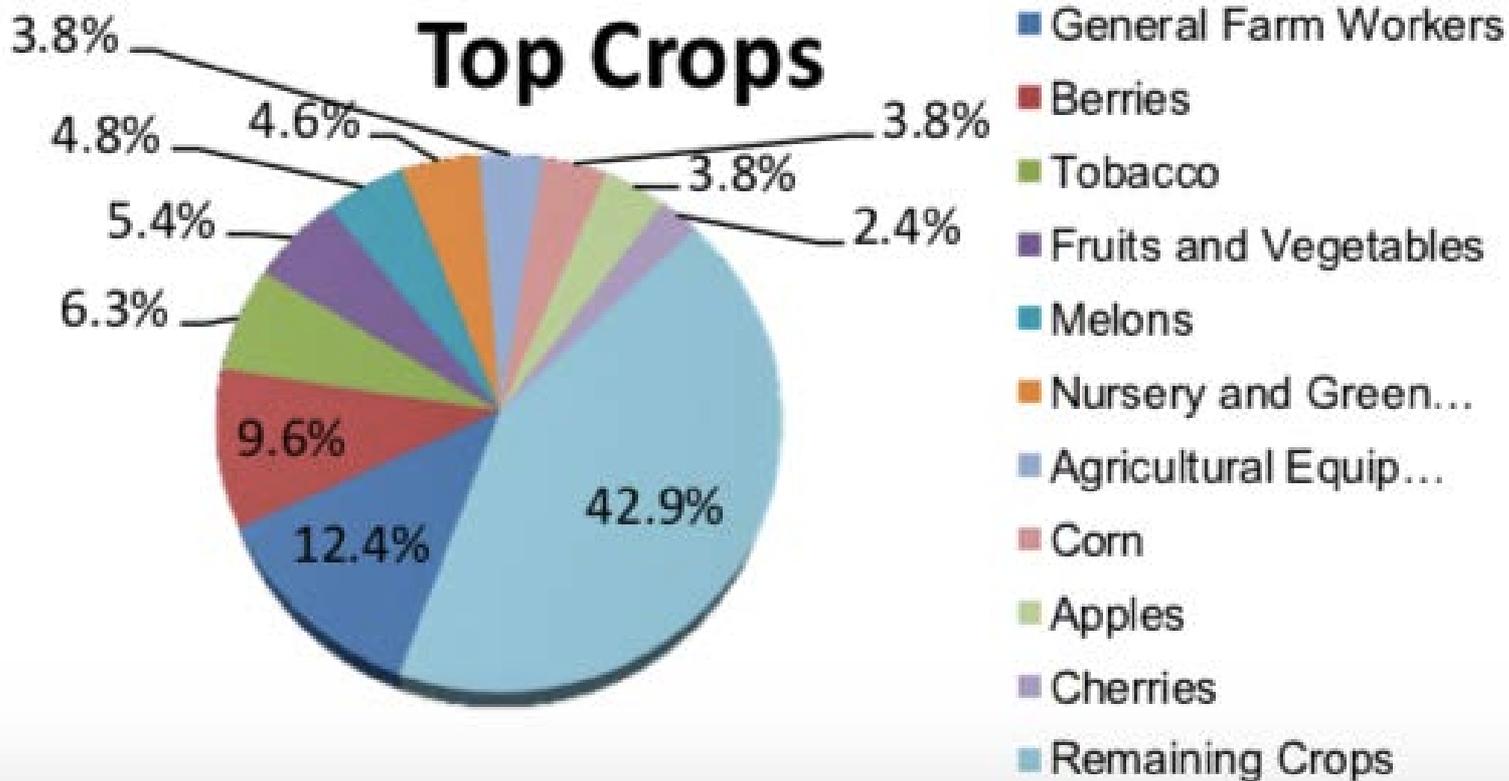
H-2A Continues Rapid Growth

Applications Processed³

Determination	FYTD	Q1	Q2	Q3	Q4
Total Determinations	13,095	1,964	5,800	3,357	1,974
- Certified	12,626	1,880	5,660	3,242	1,844
- Denied	211	34	67	53	57
- Withdrawn	258	50	73	62	73
Positions Requested	268,729	36,477	91,161	85,454	55,637
Positions Certified	257,667	35,449	87,868	82,094	52,256
Processed Timely³	86.1%	92.6%	77.5%	85.6%	96.3%



Top Crops





Two Potential Paths to Relief



116th Congress - Political Context

- House must move first. Democrats control House
- House leadership will not advance a bill unless farm worker advocates (UFW) support
- Stakeholders:
 - Much common ground on “current workforce” solutions
 - Controversy on “more guest workers” and their treatment
- Flash points: wages, visa caps, enforcement rights
- Take-home messages:
 - Any compromise is, well, a compromise
 - No UFW “bottom line”
 - Unlike past agreements, we are not fully bound to “the deal”
 - Several areas for improvement as legislation advances

H.R.5038: Key House Players...



H.R.5038, Farm Workforce Modernization Act

- 53 cosponsors
 - 28 Democrats, 25 Republicans
- Three-pronged approach
 - Current workforce stabilization, incentives
 - H-2A changes (mostly improvements)
 - E-Verify, phased in for Agriculture specifically
- Status
 - Cleared Judiciary Committee on 21st
 - House floor in December or January
- Senate process?

Title I – Three Options for Legal Status

- Option: Transition to H-2A
- Option: Become Certified Agricultural Worker (CAW), and renew that status
- Option: Certified Agricultural Worker (CAW), and earn/pursue eventual right to apply for legal permanent residency (green card)

Certified Agricultural Worker (CAW)

- Past Ag work, good behavior to qualify
- CAW status provides:
 - Work authorization for 5 ½ years
 - Protection of immediate family
 - Right to work, travel
 - “U.S. domestic worker” labor protections
- Renewable at end of 5 years
 - Must have worked 100+ days in Ag each year as CAW
- *NOTE: current H-2A employers shielded from CAW workers displacing their established H-2A workers*

Optional Adjustment of Status for Experienced Ag Workers

- Future work requirement
 - 4 years, for workers who demonstrated 10+ years prior work in Ag
 - 8 years, for workers who met minimum threshold to qualify but worked <10 years prior to enactment
- Background check
- Penalty - \$1000



Title II – Modernizing H-2A

- Temporary/Seasonal H-2A **remains uncapped**
- Streamlined electronic platform
- Several cost, flexibility improvements
 - Underlying 3 year visa – saves 2 years' visa petition costs
 - Job registry posting only. No advertising
 - 50% rule: longer of 30 days or 1/3 of contract
 - “Staggered entry” up to 120 days under single filing

Required Wage

- Employers must offer higher of four wages
- 2020 AEWR frozen one year at 2019 levels
- 2021-2029, AEWRs may not increase more than 3.25% (potentially 4.25% in high minimum wage states) or fall more than -1.5%.
- Once job posted, "promised wage" is exactly that; does not need to be increased if AEWR goes up
- Disaggregation by occupational classification; worker must be paid highest applicable wage
- Post-2029, AEWR replaced by new wage rate based on joint USDA/DOL study and rulemaking

Housing

- Maintains requirement for employer to provide housing
- Provides funding/incentives for employer-provided housing and to encourage construction/rehabilitation of farm worker housing

Non-Seasonal/Temp. Needs (“Year-round Jobs”)

- Expands H-2A to year-round positions with 3 year admission
- 20,000 visa cap each year for first 3 years
 - 60,000 total
 - Half are restricted to dairy industry
- For next 7 years, cap can rise but cannot exceed 12.5% over prior year, nor fall below 20,000
- After year 10, USDA and DOL (with DHS) jointly determine if a cap needed, and if so, methodology
- Emergency provisions

Other Features of the Bill

- Portable visa: 6-year pilot program for up to 10,000 workers. Employer registers to hire these workers “at will”
- Up to 40,000 new “slots” each year for employers to sponsor workers for legal permanent residency/green card. Ag gets first preference.

Primary Concerns with H-2A Provisions

- WAGES – Still relies on surveys; too many classifications; highest applicable wage....
- Need clarity regarding primary vs. limited or ancillary tasks
- Application of Migrant & Seasonal Ag Worker Protection
 - Concern is expansion of “private right of action”
 - Mediation prior to right of action
 - Most employers must comply already

Title III – Electronic Verification

- Makes various E-Verify improvements to address concerns, limitations such as fraud vulnerability
- Phases in E-Verify for agricultural employers, large to smaller, beginning 6 months after closing of CAW application period
- New hires only; no reverification requirement for current workforce



Mr. Lamb

Mr. Demaline

President
Donald Trump

The President

Mr. Rotas

Mr. Brubaker

Ms. Earley

Mr. Kanumara

Ms. Grmer



Trump H-2A Reform: Unpacking the H-2A Proposed Rule

- Some good:
 - Electronic processes, streamlining
 - Advertising rule already final
 - Staggered entry
- Some challenges not addressed, uncertain result, or further work needed
 - Wage structure
 - Seasonality/allowable length of season
 - Definitions (Ag labor/services, temp/seasonal)

What's Going On

Inside the Trump Administration?



Where from Here?



- We need legislative reform
- Watching DACA
- Could see some improvements by rule changes
- Retention, H-2A, mechanization



IF NOTHING HAPPENS...

- **2020 H-2A AEWRs**

- National average increase ~ 5.6%
- Most states see increases greater than the H.R.5038 caps
- WA/OR: \$15.83 (↑ 5.3%)

- **Continued enforcement**

