

E-Verify and Its Implications for U.S. Agriculture

Kuan-Ming Huang, Derek Farnsworth, Zhengfei Guan, and Yi Li

JEL Classifications: J08, J22, J61, J68, Q18

Keywords: Agricultural labor, E-Verify, H-2A program, Immigration reform

Introduction

Agricultural producers across the United States are reporting farm labor shortages (Mulder, 2023; Ali, 2022). These reports of worker scarcity are corroborated by rapidly rising real wages for agricultural workers (Yurkevich, 2022; USDA ERS, 2023). There are several reasons for the decline in the supply of domestic agricultural labor. Legal domestic workers in the United States tend to leave farms for nonfarm employment, seeking higher wages and better working conditions (Guan et al., 2015). With fewer domestic workers willing to work on farms, the industry has come to rely heavily on foreign-born workers, many of whom lack proper documentation.

Undocumented workers, defined as foreign-born workers who lack the legal authorization to work in the country in which they live, play a significant role in U.S. agriculture, particularly in labor-intensive fruit and vegetable production (Huang, Guan, and Hammami, 2022; Martin, 2017; Porter, 2022). The Department of Labor's National Agricultural Workers Survey (NAWS) shows that, in 2020, 41% of crop farmworkers across the United States were undocumented workers (Figure 1 Panel A). While this is a substantial proportion of the agricultural workforce, the utilization of undocumented workers had declined significantly to reach this point (Figure 1 Panel B). The decline in undocumented workers can be attributed to a variety of factors, including increased immigration enforcement, improving economic conditions in Mexico, and, recently, the COVID-19 pandemic decreasing international travel (Charlton and Taylor, 2016; Luckstead and Devadoss, 2019; Farnsworth, 2020; Alfonsi, 2023; Owen, 2023).

Historically, the Immigration and Reform and Control Act of 1986 (IRCA) required employers to use Form I-9 to verify job applicants' identity and work authorization. However, employers were not allowed to question the documents provided by applicants, and any refusal to hire based on reasonable-appearing documents could result in a lawsuit by the job applicant. For this reason, the use of fraudulent documents by workers has been

widespread, especially in the agricultural industry (American Farm Bureau Federation, 2020). Recently proposed legislation such as the Farm Workforce Modernization Act and state-level mandates have targeted this loophole.

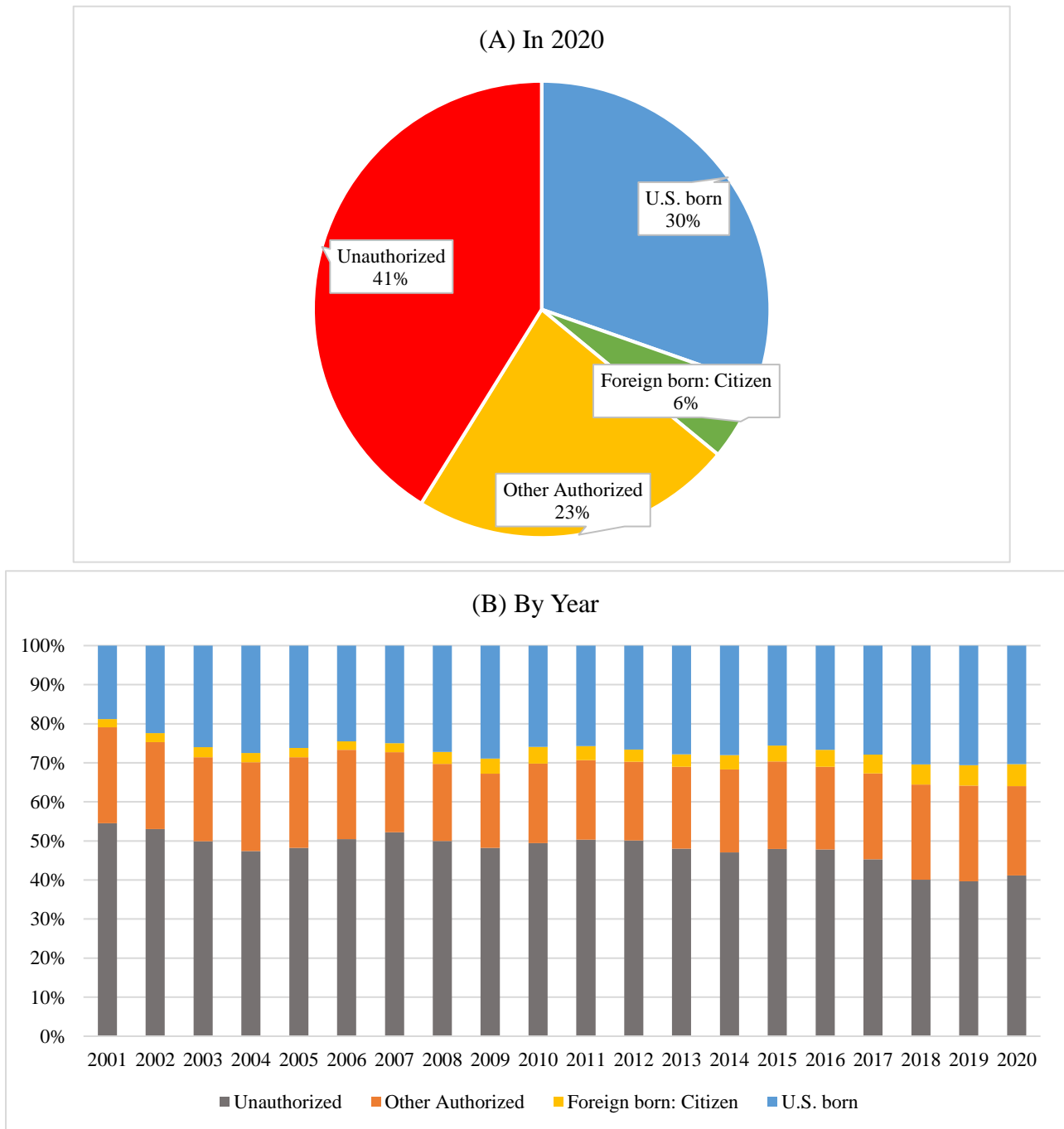
On March 18, 2021, the Farm Workforce Modernization Act of 2021 (H.R. 1603) passed in the House but stalled in the Senate without receiving a vote during the 117th Congress. Among numerous other changes, the legislation includes provisions mandating the use of the electronic verification system, E-Verify, for verifying the identity and employment authorization of agricultural workers. In June 2023, the act was reintroduced by bipartisan House members of the 118th Congress as the Farm Workforce Modernization Act of 2023 (H.R. 4319). The potential for this or similar E-Verify mandates to soon pass may prompt employers and workers to adjust their employment decisions in the future. This could cause unintended consequences, potentially reducing labor availability even further and increasing agricultural production costs (Lim and Paik, 2022; Luo, Kostandini, and Jordan, 2022).

In this article, we examine the historical evolution and current implementation of the E-Verify program. We further explore and discuss the potential impacts of E-Verify mandates on the U.S. agricultural industry. In doing so, we acknowledge that immigration policy is a highly contentious, multifaceted topic without easy solutions. The topic warrants thoughtful analysis and discussion.

A Brief History of the E-Verify Program

The E-Verify program is an electronic employment eligibility verification program used by employers to confirm the work authorization of their employees. The program was created under the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996. The Basic Pilot Program, which was launched in 1997, was the first electronic employment verification program and was voluntary for employers to implement.

Figure 1. Legal Status of Hired Crop Farmworkers

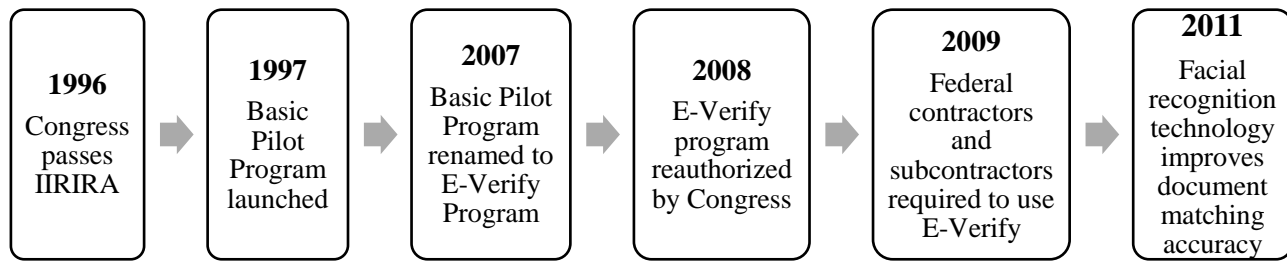


Source: USDA ERS (2023) using U.S. Department of Labor, National Agricultural Workers Survey (NAWS).

Along with the Basic Pilot Program, the IIRIRA also created two other voluntary electronic employment eligibility verification pilot programs: the Citizen Attestation Pilot (CAP) and the Machine-Readable Document Pilot (MRDP). The CAP program allowed employees to self-attest their employment eligibility, while the MRDP program allowed employers to verify the work authorization of newly hired employees by scanning their documents.

The Basic Pilot Program was renamed the E-Verify Program in 2007 and reauthorized by Congress in 2008. Several changes were made to the program, including the expansion of photo matching to all employers using E-Verify to increase matching accuracy. In 2009, the Department of Homeland Security (DHS) issued a final rule requiring federal contractors and subcontractors to use E-Verify to verify the employment eligibility of their employees. This rule was implemented to ensure that federal contractors and subcontractors were hiring only

Figure 2. E-Verify Program History Summarized Timeline



Source: Authors' summary based on the information from the E-Verify website (<https://www.e-verify.gov/>)

workers with proper documentation. In 2011, the DHS initiated a photo screening tool to further enhance the accuracy of E-Verify. The tool used facial recognition technology to compare the photo on an employee's document to a photo stored in the government database (E-Verify, 2023). Figure 2 summarizes the history of the E-Verify Program.

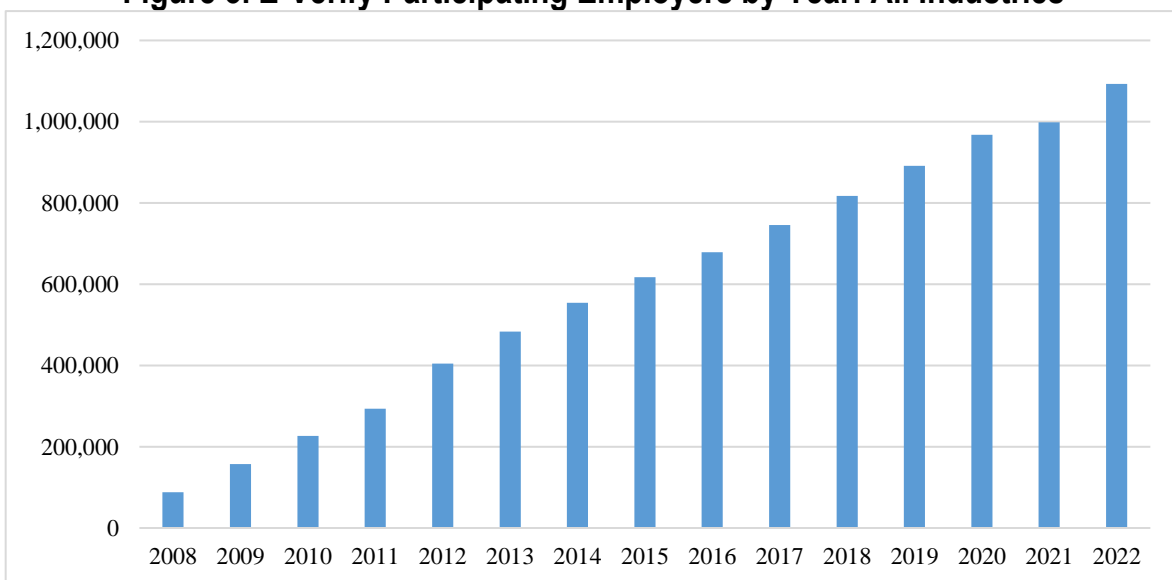
Recently, more states have begun enforcing the compulsory participation of private businesses in the E-Verify program, resulting in a notable increase in the number of participating employers. Between 2008, when Congress reauthorized the E-Verify program, and 2022, the number of participating employers increased from 88,041 to 1,093,292 (Figure 3).

While a nationwide E-Verify requirement has not been enacted, past research has shown the mixed effects of state-level implementations on various demographic groups (Amuedo-Dorantes and Pozo, 2019). For instance, undocumented male Mexican immigrants have experienced decreased average hourly earnings across states, whereas undocumented female Mexican immigrants have seen an uptick in labor force

participation (Orrenius and Zavodny, 2014, 2021). Further, these mandates have not led to improved outcomes for workers competing with undocumented immigrants. Although employment has risen among naturalized male Mexican immigrants in states with E-Verify mandates, the rise in employment among low-skilled U.S. native workers was not significant (Bohn, Lofstrom, and Raphael, 2014; Orrenius and Zavodny, 2021). This result is consistent with the findings of Wei et al. (2019), which suggests that the substitutability between undocumented immigrants and native farmworkers is low.

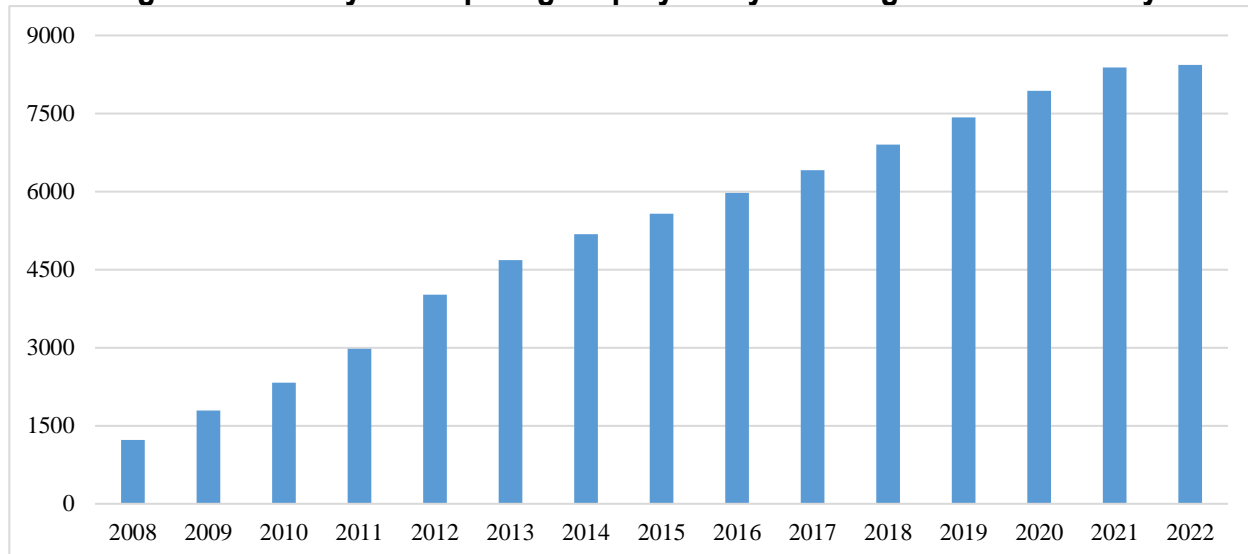
The E-Verify mandates implemented so far appear to redirect labor toward industries that receive specific exclusions, such as agriculture and food service (Amuedo-Dorantes and Bansak, 2012), which have been suffering chronic labor shortages. The enforcement of E-Verify mandates has also been associated with geographic movement, as noncitizens tend to relocate away from states with such mandates. For instance, the statewide mandate in Arizona led to a significant reduction in the proportion of the Hispanic noncitizen population in the state (Bohn et al., Lofstrom, and

Figure 3. E-Verify Participating Employers by Year: All Industries



Source: Authors' calculations based on the information from the E-Verify website (<https://www.e-verify.gov/>)

Figure 4. E-Verify Participating Employers by Year: Agricultural Industry



Source: Authors' calculations based on the information from the E-Verify website (<https://www.e-verify.gov/>)

Raphael, 2014, 2015). Similarly, employers have faced compliance costs and hiring challenges when enrolling in the E-Verify program (Orrenius, Zavodny, and Greer, 2020). In light of these multifaceted effects, implementing a rigorously enforced nationwide E-Verify mandate could create adverse effects to certain labor-intensive industries that rely on substantial undocumented workforce, such as the agricultural industry.

The E-Verify Program in Agriculture

The number of E-Verify participating employers in the agricultural industry (Primary Industry Class 11: Agricultural, Forestry, Fishing, and Hunting) has been on the rise as more states mandate the use of E-Verify. Figure 4 shows the number of participating agricultural employers increasing from 1,225 in 2008 to 8,383 in 2022. Policy makers and industry stakeholders are currently engaged in policy debates about how to enforce E-Verify mandates and whether to exclude or delay compliance for the agricultural industry (Monyak, 2023).

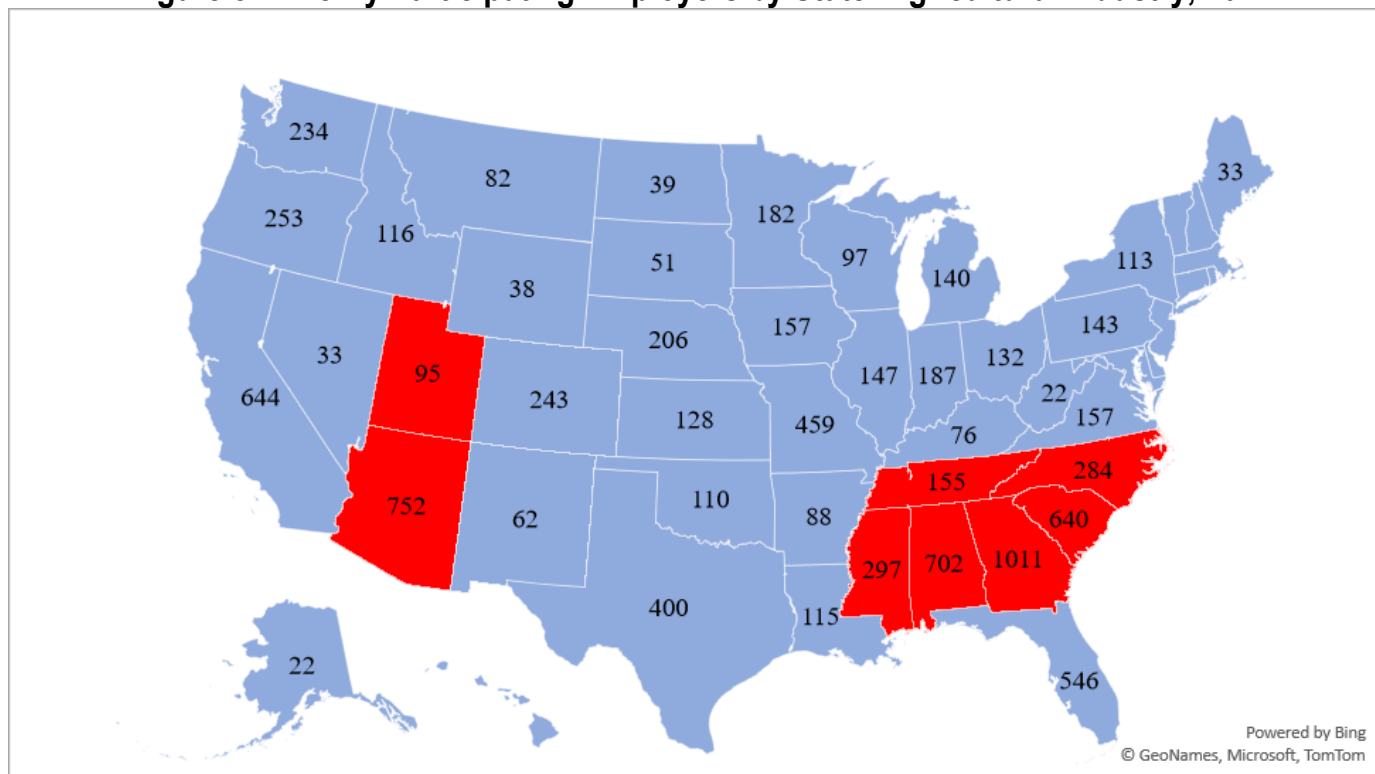
By 2022, private businesses in eight states (indicated in red on Figure 5) were mandated to use the E-Verify program. Specifically, Arizona and Mississippi implemented the mandate in 2008, Utah followed suit in 2010, and Alabama, Georgia, Tennessee, North Carolina, and South Carolina all implemented the mandate in 2012. Of these states, Tennessee, Georgia, and Utah granted exemptions from E-Verify to employers with 6, 10, and 15 or fewer employees, respectively (Lim and Paik, 2022). North Carolina also granted an exemption to employers hiring seasonal employees who are employed for 90 or fewer days within a 12-month period (Lim and Paik, 2022).

The top five states with the highest number of E-Verify employers in the agricultural sector are Georgia (1,011), Arizona (752), Alabama (702), California (644), and South Carolina (640), as shown in Figure 5. With the exception of California, the other four states mandate that private businesses use the E-Verify Program. While California does not mandate the use of E-Verify outside of employers performing work under a federal contract, it is nevertheless the state that employs the most agricultural workers and has the greatest number of agricultural establishments (U.S. Census Bureau, 2023). Relatively speaking, California has a below average rate of E-Verify adoption compared to the United States as a whole. Three of these states (Alabama, Arizona, and South Carolina) observed significant declines in their farmworker populations after implementing the program (Luo, Kostandini, and Jordan, 2022). Additionally, Luo and Kostandini (2021) revealed that the E-Verify mandate led to substantial decreases in labor-intensive crop production and farm profits in Arizona. Farmers in other states may face comparable consequences if their states begin to mandate the E-Verify Program for private businesses.

Current Policy Landscape

The U.S. House of Representatives passed the Farm Workforce Modernization Act of 2021 (H.R. 1603) on March 18, 2021. It was received in the Senate and referred to the Committee on the Judiciary on March 22, 2021. The act includes several provisions related to alien farmworkers, such as the mandated use of the E-Verify Program, modifications to the H-2A Temporary Agricultural Workers Program, and the creation of a Certified Agricultural Worker status (Martin and Rutledge, 2021; Castillo, Martin, and Rutledge, 2022). Although the Senate did not vote on the 2021 Act during the 117th Congress, bipartisan House members of the 118th Congress reintroduced the Farm Workforce

Figure 5. E-Verify Participating Employers by State: Agricultural Industry, 2022



Note: 1. States that mandate private businesses to use the E-Verify Program are indicated in red. 2. The numbers of E-Verify agricultural employers of the following states are not shown in the Figure: VT (15), NH (22), MA (73), RI (23), CT (28), NJ (58), MD (79), DE (14), and HI (46).

Source: Authors' calculations based on the information from the E-Verify website (<https://www.e-verify.gov/>)

Modernization Act of 2023 (H.R. 4319) in June 2023. The most notable provisions of the 2021 legislation, such as those listed above, remain in the proposed 2023 legislation. While the 2023 legislation may fail to pass through the Senate, much like its predecessor, it nevertheless highlights common issues and strategies proposed for immigration reform.

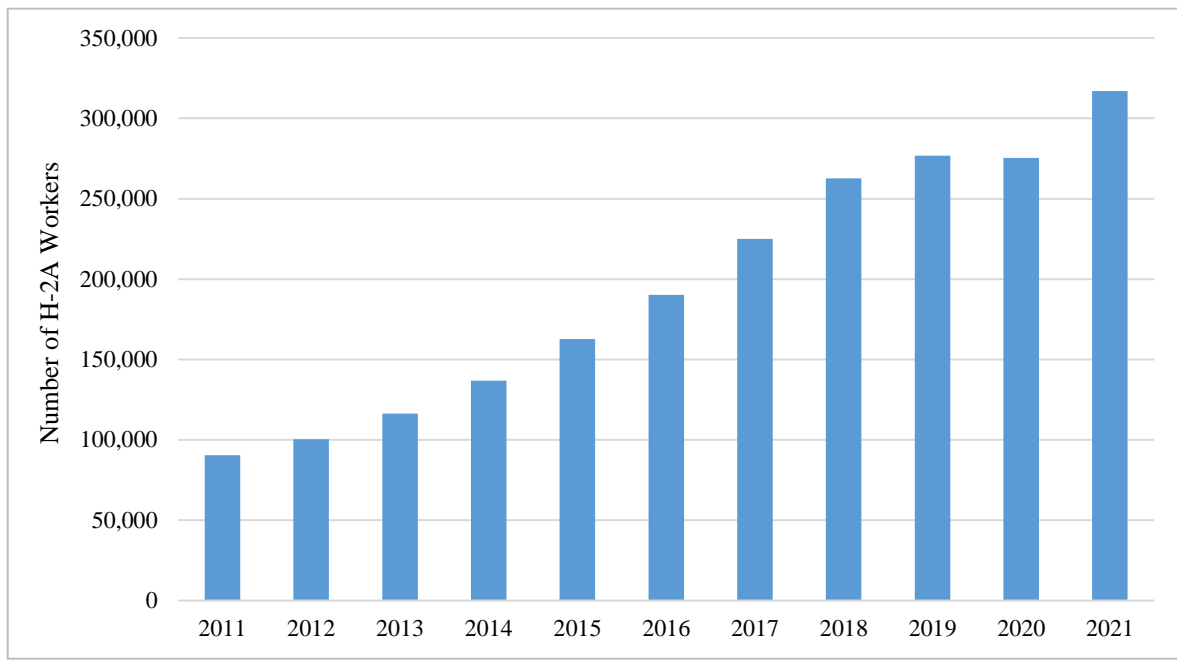
The proposed legislation mandates that all employers who hire farmworkers in the United States use the E-Verify Program. The implementation of this new rule has the potential to further decrease the availability of agricultural labor, particularly in states where private businesses are not currently required to utilize the E-Verify system. For decades, studies have evaluated how immigration enforcement—such as E-Verify requirements—has affected the U.S. agricultural industry. For instance, Luo and Kostandini (2021) found a 16.4% decrease in the farmworker population and an 8% decrease in vegetable crop acreage in Arizona after the 2008 Legal Arizona Workers Act, which requires all Arizona employers to use the E-Verify Program. South Carolina and Mississippi experienced decreases in farmworker populations by 13% and 10%, respectively, after E-Verify became mandatory for private businesses in these states (Mississippi: July 2008 and South Carolina: January 2012) (Luo, Kostandini, and Jordan, 2022). The decrease in farmworkers could be more severe for labor-intensive agricultural sectors such as

fruits and vegetables, which rely more heavily on foreign labor (Luo, Kostandini, and Jordan, 2022; O'Brien, Kruse, and Kruse, 2014).

Because of the labor-intensive nature of fruit and vegetable production, agricultural employers in California, Florida, and Washington—major fruit- and vegetable-producing states—may face the toughest challenges if a nationwide E-Verify mandate is implemented. According to the National Agricultural Worker Survey (NAWS), California had the highest percentage of undocumented crop farmworkers, accounting for nearly 60% of total farmworkers in the state. Following close behind, 50% and 46% of farmworkers in the Northwest (including Washington) and Southeast (including Florida), respectively, were undocumented. A relatively lower percentage, 36%, of farmworkers were undocumented in the East. In the Southwest (excluding California), approximately 20% of crop farmworkers were undocumented. The Midwest had the lowest percentage, with only 4% of crop farmworkers undocumented.

Florida's farmers may face the challenge sooner than those in the other two states, as the Florida Senate approved S.B. 1718 on April 28, 2023. This bill requires private employers in Florida with a workforce of over 25 employees to use the E-Verify system for newly hired staff, effective from July 1, 2023 (Reiff, 2023). Both the Florida Agriculture Commissioner and the Farmworkers

Figure 6. Certified H-2A Workers by Year



Source: U.S. Department of Labor (2022).

Association of Florida have pointed out that this bill could present significant labor challenges for farmers in the state (CBS News Miami, 2023; Mapp, 2023), and there have since been anecdotal reports of undocumented farmworkers exhibiting absenteeism and relocating out of the state (Lopez, 2023; Paz, 2023). Overall, various

members of Florida's agricultural community have expressed concerns about the bill's potential to exacerbate ongoing farm labor shortages and negatively impact the industry (Phillips, 2023). The implementation of the bill is likely to further accelerate the increase in agricultural production costs in a state where farmers were already concerned about significant increases in minimum wages and intensifying foreign competition (Beal Cohen et al., 2020; Li et al., 2021; Wu, Guan, and Huang, 2022).

The Farm Workforce Modernization Act of 2023 also proposed several modifications to the H-2A Temporary Agricultural Workers Program, which allows agricultural employers who face a shortage of domestic workers to temporarily hire foreign workers on a seasonal basis (USCIS, 2023). As shown in Figure 6, the number of certified H-2A workers hired has more than tripled, from 90,420 in 2011 to 317,619 in 2021 (DOL OFLC, 2022). Nevertheless, some employers still hesitate to adopt the program because of administrative costs (e.g., Guan et al., 2015; Williams and Escalante, 2019). The legislation aims to streamline the H-2A application processing and make modifications to the H-2A program. Efforts proposed in the 2023 Farm Workforce Modernization Act to streamline the H-2A application process include: Launching a centralized online portal where employers can submit all petitions, allowing for the issuance of 3-

year H-2A visas, and permitting staggered entry for H-2A workers in the same intended employment area.

In addition to streamlining the application process, other significant modifications proposed in the 2023 Farm Workforce Modernization Act include introducing year-

round H-2A visas, enabling H-2A workers to move between registered agricultural employers, and allowing workers to seek new H-2A employment opportunities at the end of their initial contracts. Possibly the most debated issue, the legislation proposes a pathway for H-2A workers to obtain permanent residency. If passed, the bill would allocate 40,000 green cards for eligible H-2A workers, and those who have worked in H-2A positions for a decade or more would have the option to file a self-petition. Overall, these reforms to the H-2A program could attract more foreign agricultural workers to the United States while simultaneously making the program easier for agricultural employers to use.

Further, the Farm Workforce Modernization Act seeks to establish a program to provide undocumented farmworkers, who have been crucial contributors to the U.S. food and agricultural sectors, with a pathway to legal status and permanent residency. A two-step process is outlined to qualify farmworkers for Certified Agricultural Worker (CAW) status, followed by the opportunity to apply for permanent resident status after fulfilling certain work requirements. To be eligible for CAW status, undocumented workers must pass security and law enforcement background checks, demonstrate at least 180 workdays of employment in the U.S. agricultural industry over the 2 years prior to the bill introduction, and maintain a continuous presence within

the United States. After receiving CAW status, those desiring lawful permanent residency would need to engage in a minimum of 100 agricultural workdays per year for a period of time dependent on the length of their prior agricultural experience. Providing a pathway for undocumented agricultural workers to obtain legal working status and residency, along with the modifications to the H-2A program, could potentially mitigate the impacts of national- and state-level E-Verify mandates on the farm labor pool and result in a more stable farm labor force in the United States.

Discussion

The employment of undocumented workers is a highly controversial topic. Establishing a path to lawful permanent residency for undocumented workers will likely bring more debate and legislative battles. On one hand, agricultural employers have reported labor shortages for years. Quickly rising farm wages from a shrinking supply of farm labor have significantly increased production costs for labor-intensive agricultural operations. Undocumented workers represent nearly half of the farm workforce, and further restrictions on their employment are likely to continue or exacerbate hiring issues for agribusinesses. On the other hand, while employing undocumented workers poses different legal and ethical problems, further limitations on the employment of these workers could possibly result in higher wages for workers with proper documentation.

The growing implementation of the E-Verify program will undoubtedly force agricultural employers to employ fewer undocumented workers. This outcome is already evident from available data and studies. Some agricultural employers are turning to technology and

alternative sources of labor such as the H-2A Temporary Agricultural Workers Program to make up the difference. However, there is no technological “silver bullet” for many industries. Employing workers through the H-2A program comes with additional costs, both in terms of wages and other administrative costs (Roka and Guan, 2018). Moreover, H-2A workers are limited to temporary, seasonal positions and are not a suitable choice for employers trying to fill permanent positions. The increase in production costs and various issues with the current H-2A program could decrease the competitiveness of U.S. agribusinesses, cause business closures, and contribute to food price inflation. Consumers would likely pay higher prices for labor-intensive food products, with a great share of food being imported from abroad (Devadoss and Luckstead, 2011; Devadoss, Zhao, and Luckstead, 2020).

The 2023 Farm Workforce Modernization Act proposes the Certified Agricultural Worker (CAW) status and revisions to the H-2A program to increase the supply of legal, documented agricultural workers. The proposed revisions are expected to make the program less restrictive and cumbersome, increase program participation, and reduce compliance costs. Further, the legislation introduces pilot programs for portable and year-round H-2A visas, potentially bolstering the farm labor force. Despite the controversy around the CAW status and path to lawful permanent residency, this too would increase the supply of legal, documented workers, at least in the short term. Ultimately, we hope that legislators will find a solution that brings some consensus on these issues and pass immigration reform that will ensure the continued success of U.S. agribusinesses.

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About the Authors: Kuan-Ming Huang (kmh1169@msstate.edu) is Assistant Professor with the Department of Agricultural Economics at Mississippi State University. Derek Farnsworth (dfarnswo@ufl.edu) is Associate Professor with the Food and Resource Economics Department at the University of Florida. Zhengfei Guan (quanz@ufl.edu) is an Associate Professor with the Food and Resource Economics Department, and Gulf Coast Research and Education Center at the University of Florida. Yi Li (yi.li1@ufl.edu) is a Graduate Research Assistant with the Food and Resource Economics Department at the University of Florida.

Acknowledgments: We express our gratitude to the editor, Dr. Ruiqing Miao, and anonymous reviewers for their valuable comments and insightful suggestions that significantly improved the quality of this article.