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The Impact of the Immigration Reform and Control Act of 1986 (IRCA) on Farm Labor Contracting

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CORNELL
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STAFF PAPER

**The Impact of the Immigration Reform and Control
Act of 1986--IRCA--On Farm Labor Contracting**

by
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THE IMPACT OF THE IMMIGRATION REFORM AND CONTROL ACT OF 1986--IRCA--ON FARM LABOR CONTRACTING

I. INTRODUCTION

One of the intentions of IRCA was to curtail the ability of U.S. employers to hire undocumented employees. IRCA mandates that all employers ascertain the legal status of individuals seeking employment and the employer sanctions provisions were designed to penalize employers for not adhering to the letter of the law. In addition, IRCA includes provisions to protect individuals--primarily intended for Hispanics--from employer discrimination based on an individual's appearance--i.e, Hispanics are viewed as having a greater probability of being undocumented and therefore employers may shun away from hiring them.

A significant number of workers affected by IRCA have and continue to work in the agricultural sector of the economy. In particular, growers of fruits, vegetables, nuts, and/or ornamentals (FVN&O) are heavy users of workers affected by IRCA. Within the FVN&O categories, farm labor contractors (FLCs) have and continue to play a major role in labor procurement and management. In fact, existing evidence indicates that FLCs have increased their participation in the demand for labor by FVN&O producers.

As with all public policy interventions, the potential exists for not fully addressing and/or ameliorating the public policy concerns. Though the increased participation of FLCs in FVN&O production is not a negative outcome, *per se*,

the increased employment of undocumented workers by FLCs can be argued to be a negative outcome. In addition, the extent to which increased FLC participation affects the "prevailing wages" of FVN&O workers can be viewed as a positive--increased wages--or negative effect--lower wages. Though IRCA did not directly address the working and living conditions of FVN&O workers, one can argue that IRCA did not intend to make these conditions worse. Therefore, the extent to which these conditions have changed with the increased participation of FLCs may be an indirect effect of IRCA.

Historically, research into the role of FLCs has been limited and almost all of the analysis regarding IRCA has excluded the FLCs role. The role can be approached from the perspective of FVN&O producers--a very large and economically strong segment of American agriculture. It can be approached from the perspective of public policy analysis and the corresponding implications for the 'public good'. Since Hispanics constitute the majority--particularly Mexican Americans--of FLCs, then it can be approached from the perspective of a 'successful minority entrepreneur'. Lastly, it can be approached from the workers perspective. Again, a majority of FVN&O workers are Hispanics of Mexican heritage, but more recent entrants into the labor market are Central and South American Hispanics. How has the participation of FLCs affected the economic welfare of workers?

This paper reviews a number of papers addressing the topic and the intent here is to cast and thereafter frame the impact of IRCA on farm labor contracting

in the FVN&O segments. The paper does not present new research findings, but rather interprets the available data to lend justification for future avenues of inquiry. There is no maintained hypothesis regarding the positive or negative affect of IRCA on FLC participation in FVN&O labor markets, but it does present what can be described as positive or negative outcomes. Most importantly, the paper is an attempt to gear researchers toward a topic of significant importance to particular segments and agents in our economy. Moreover, the dynamics of the problem present challenging opportunities as well as innovative approaches.

II. PREVIOUS WORK

II.A. National Perspectives

Fisher [3] delineated the services FLCs provide:

- 1.) recruitment of workers
- 2.) supervision of workers
- 3.) daily transportation of workers
- 4.) payment of workers
- 5.) payment of payroll taxes
- 6.) management of labor camps
- 7.) miscellaneous activities such as providing water and toilet facilities in the fields

Though Fisher wrote his book in 1953 and based it primarily on California conditions, the above seven services have not changed appreciably. Perhaps under 1.), one could add verification of work eligibility; under 3.), add transportation of harvested product; and to 5.) add payment of social security, workers' compensation, unemployment insurance, etc. Fisher asserts that FLCs go back to

America which in turn required the "importation of off-shore" workers. This is substantiated by the decline of domestic hired farmworkers from 4.3 million in 1950 to 2.5 million in 1987--a 42% decline. Off-shore workers have been both legal and undocumented, but as might be expected little information exists with regards to the undocumented. The legally admitted foreign nationals peaked in 1959 at 455,000 and in 1987 they were 23,000--a 95% drop. A glimpse at the population of the undocumented is provided by the Immigration & Naturalization Service (INS) apprehension statistics. Apprehensions of individuals working in agriculture were 8,000 in 1958 and reached 123,000 in 1975--a 94% increase. More recent figures reveal significantly larger numbers of apprehensions. In essence, labor intensive agriculture shifted from a domestic work force to one originating off-shore.

Whitener and Coaltrane [18] present further information, but more importantly put forth the important issues facing America's farm labor markets. Most people are aware of the Bracero Program, but few realize the magnitude--nearly 5 million Mexican *braceros* worked on U.S. farms between 1942 and 1964 when it was terminated. Also, legally admitted workers from Mexico peaked at 445,000 in 1956. What emerges is that Mexicans became a major portion of farm labor supply--particularly in the migrant category. In 1979, there were 2,652,000 hired farm workers and 217,000 (8.2%) were migrant farmworkers. Of the former, 75% were White, 12% were Hispanic, and the remainder were Other (mostly African Americans). Of the latter, 63% were white, 27% were

Hispanic, and 11% were Other. The latter figures are more reflective of labor in FVN&O production because of the seasonal labor demands of the industry.

Lastly, the issues facing farm labor in America during the 1980s include: immigration reform, workers' compensation, social security, unemployment insurance, farm safety regulations, employment stability, programs to train farm employers in personnel management and labor-management relations, and the impact on technology. There is no direct mention of FLC participation, but references to personnel management, employment stability, and payroll related issues clearly pertain to the use of FLCs.

Pollock's [13] paper is specific to 1983 and in it she indicates that 9%--226,000--of the hired farmworker force were migrants. Of those, 45% were White, 15% Hispanic, and the rest were Other. The discrepancy between the percentage of Hispanic included as migrants is typical of farm labor data--unprecise and variable. Also, regular and year-round workers (those working 150 days or more) made up only one-fourth of the hired farm work force, but accounted for over two-thirds of the worker days. Even with the rather liberal definition of "regular or year-round" workers, the majority of hired farm work is done by "seasonal" workers--many of which work through FLCs.

Oliveira and Cox [12] present similar information as Pollock, but the information is pertinent to 1987. First, the authors assert that hired farmworkers number almost 2.5 million and the number has been stable since 1970. Hired farmworkers averaged 112 days of work, but 33% worked fewer than 25 days

while 33% worked more than 150 days. Therefore, only 29% of hired farmworkers considered hired farm work their primary source of income. Hired farmworkers earned \$6,663 in 1987, but only \$3,368 (50%) was from hired farm work. No doubt, individuals hired for farm work do not generate enough income to live above the poverty threshold.

II.B. California

California is the largest employer of hired farmworkers--primarily because its' agriculture includes large numbers of FVN&O farms. Also, it is the state with the most amount of data and information pertaining to the farm labor market. Several papers have been written about FLC participation and there are currently other studies addressing the issue--for California has the largest number of FLCs. In addition, the California farm labor force has been and continues to be almost predominantly Mexican or Mexican American.

Mines and Martin [9] present the results of the most detailed study of California farmworkers. Among the many findings are: 75% of the farmworkers were born and raised in Mexico and 80% of the U.S. raised farmworkers were of Mexican extraction; less than 16% of farmworkers with families in the U.S. were deportable, but over 50% of the single males were deportable; and twenty-five percent (312 out-of 1230) of the farmworkers worked for a FLC. This is the first reported figure concerning the proportion of farmworkers working for FLCs.

Vaupel and Martin [17] reported the first detailed study of FLC participation in California agriculture and they also provide a chronology of FLC government regulation. Briefly, the federal government began regulating FLCs in 1965 with the Farm Labor Contracting Registration Act (FLCRA) of 1963. The FLCRA was amended in 1974 and in 1982, The Migrant and Seasonal Worker Protection Act (MSPA) was passed. The regulations were intended to reduce the role of FLCs in farm labor markets, but because of lax enforcement, the statutes were not effective. For example, in 1983 the Department of Labor (DOL) located 1,100 undocumented workers employed by FLCs while the INS apprehended 1.2 million undocumented workers the same year. During the early 1980s, only 173 of 15,000 - 18,000 FLCs were fined by INS for hiring undocumented workers. Also, in 1975 the INS estimated that 30% of California farmworkers were undocumented and if one uses total farmworker employment figures, then 185,000 workers were undocumented--600 times greater than what DOL found. Lastly, irreverence to enforcement reached the state where, "...another case, a contractor had been convicted and jailed for murder, but paroled during harvest season so he could manage a crew." In fact, the authors assert that 20% to 30% of FLC workers are illegal and some harvest crews have 50-100% illegal workers.

The Vaupel and Martin study also presented the description of farms most likely to hire FLCs as well as trends in FLC use. They found that two-thirds of FLC wages are paid by FVN&O producers, fifty-two percent of FLC wages were paid by farms generating \$500,000 or more in annual sales, and that California,

Florida, and Texas accounted for 64% of all FLC wages. With regards to trends, they found that between 1978 and 1982, the number of farms in the U.S. decreased by 3%, but the number of farms hiring workers directly increased by 5% while FLC hirings increased by 17%. Direct hire wages increased by 81% while FLC wages increased by 116%. Therefore, within this four year period, a period characterized by successful union activity in California agriculture, FLC hires and wages increased at a faster rate than direct hires.

Lastly, the following two quotes from the study anticipated some potential outcomes from the employer sanction provisions of IRCA--"The FLC experience suggests that enforcement of an employer sanctions law will be very difficult, and that inadequate enforcement will encourage subcontracting and other forms of flexible employment" and "The evidence tends to indicate that a general employer sanctions law would be just as ineffective....increased use of forged documents could also reduce enforcement effectiveness."

Martin [7] draws from data similar to the above and concludes that the harvest market is an unstructured market where workers prefer labor shortages to bid up wages and producers prefer labor surpluses to minimize wages. The perishability of the commodity, FVN&O, injects an expedient time dimension. However, within this unstructured landscape, the key person is the "foreman" and his principle asset is his ability to have access to the migratory labor network. Increasingly however, the migrant stream is made of undocumented workers and nearly 50% of FLC workers are from the undocumented pool even though federal

laws exist against this practice. With regards to the farm profile, 20% of all California farms (1982) used contract labor and contract wages totaled \$414 million. The 1,900 farms that had annual sales of \$500,000 or more paid 63% of all contract wages and 82% of all contract wages were paid by FVN&O farms (75% of farms using contract labor are FVN&O farms). The foregoing figure was the first documentation of the importance of FLCs to FVN&O producers in California. Between 1974 and 1982, the number of farms using FLCs increased by 36% and the wage bill increased by 123% (compared to 74% for direct hires). Contrary to popular thought, wages for FLC workers increased at a faster rate than direct hires, but relevant information such as fringe benefits for direct hires vs. FLC employment may reveal a different picture.

A more detailed picture--County level--is presented by Martin and Miller [6]. In Monterey County, they found that between 1984 and 1988, FLC employment rose by 151% while vegetable crop employment declined by 17%. A possible explanation may be that the county had relatively more smaller FLCs that charged cheaper rates. Conversely, a sharp increase in both the number and wages of FLCs took place in Imperial County--45%. In 1988, the sixteen largest FLCs in Imperial County accounted 80% of all FLC wages. A mixed picture emerged in Fresno County where the top 46 FLCs accounted for 75% of all FLC wages and the large FLCs got larger (therefore fewer FLCs), but FLC wages rose 17%. In California as a whole, the four-year time period reveals fragmentation in the 'Agricultural Services category'--the category FLCs fall under. The greatest

increase took place in medium-sized Agricultural Services firms--\$50,000 to \$500,000.

Lastly, the State of California [1] began collecting and reporting very detailed information on the State's farm labor force. Currently, only data for 1987 and 1988 has been published, but the amount of detail--particularly with regards to FLCs (one limitation is crop-specific FLC use)--is significant. The data are based on a 10% sample of all workers reported at least once by an agriculture employer. The data shows:

--California agriculture employers employed 1.2 million workers--about the same as in 1987 and the distribution of the workers was: 50% in Crops, 46% in Agricultural Services, and 4% in Livestock.

--A total of \$4.5 billion in agriculture wages (nearly \$1 billion more than 1987) were paid in 1988 and \$2.2 billion were in the crops category (\$0.4 billion increase), \$1.9 in Agricultural Services (\$0.3 increase), and \$0.38 billion in livestock (0.05 increase).

--Approximately 300,000 farmworkers were employed by FLCs--49% of the Agricultural Services category--, but they only earned 20% of the total earnings in the Agricultural Services category.

--Employment in Agricultural Services increased by 5%, but FLC employment declined by 2%. However, FLC earnings increased by 15%.

--Agricultural Services employed 191,000 seasonal and migrant workers representing 39% of all seasonal agricultural workers. The figure represents a 20% increase for both Agricultural Services and for FLCs. Approximately 58%--111,000--of seasonal Agricultural Services workers were employed by FLCs and half were migrants.

--About 33% of agricultural workers were seasonal and many of them were also migrants--particularly Crops and FLC workers.

--Almost 67% of farmworkers employed by FLCs earned less than \$1,000.

--FLCs are the largest single employers of migrants and fully 25% of all migrants were employed by FLCs.

One can surmise the following from the California data. First, FLCs rely on migrants to a greater extent than any other employment category. Though FLC wages increased more than Agricultural Services wages, FLC employed individuals earn the least annual income. It is not clear whether FLC workers and direct hire workers are perfect substitutes.

II.C. Case Studies Addressing FLC Employment

The most informative and useful look at FLC use in agriculture is presented by Lloyd *et al* [5] in their investigation of the Ventura County, California citrus industry. The study describes the stabilization and destabilization of the citrus labor market in the County over time. The first phase is described as a de-stabilization period during the mid- to late 1960s because of excess labor supply. In fact, until 1968, a Mexican worker could obtain Permanent Resident Alien status--a greencard--with a letter from a U.S. employer asserting that the Mexican worker had a job. Many employers went to Mexico with such letters to recruit workers. In 1965, 24,000 harvesters were hired to fill a peak season high of 3,000 jobs. Also, Coastal Growers Association (CGA) employed 8,517 harvesters who averaged 17 days of work. Even though excess labor existed, the growers progressively wanted better and more efficient workers. Efforts by growers and packers led to the formation of harvesting associations which were comprised of former Mexican *braceros*. Average hourly earnings increased 45%

from \$1.77 to \$2.57 between 1965 and 1970 and fringe benefits increased significantly. Also, grower harvest costs remained stable--\$0.53 per box in 1965 and \$0.54 in 1970 for direct harvest and \$0.61 per box for fringe benefits. In addition, worker productivity increased by 41%--3.4 boxes of lemons per hour to 4.8 in 1970. Almost a one-to-one correspondence between wages and productivity!

This stabilization period began and continued with the United Farm Workers (UFW) union gaining contracts--1976 to 1978--with most growers and packers. The relative prosperity and stability attracted individuals interested in entering the labor market.

The subsequent destabilization period of the early 1980s is characterized by the entrance of FLCs who hired primarily undocumented and/or recent immigrant workers. The FLCs paid lower wages and fewer benefits and eventually drove out the UFW. By 1987, 27 FLC existed in Ventura Co. and no UFW contracts were in place. A comfortable income for a FLC is described as, "...an FLC whose 90 workers average \$5.00 hourly for twenty 40-hour weeks annually will have a gross payroll of $\$450 \times 40 \times 20 = \$360,000$, so a 10% profit yields \$36,000.00 annually...". The general lesson appears to be the substitutability between union contracts and FLC contracts.

Mason [8] looked at the demand for harvest labor in Oregon's major crops--caneberries, cherries (sweet) cucumbers, grapes (wine), hops, and strawberries--and found that the production of the six crops required 121,378

hired workers. The demand was highly seasonal--approximately 80% of the employment took place between May and October--and about 66,096 or 54% of the hired workers were undocumented. Of these, 93% were employed during the 6-months. The figures are somewhat surprising since IRCA had been in effect for at least a year, but the employer sanction provisions had not been fully implemented. In addition, the figure for the total farmworker demand appears high when one compares the 191,000 seasonal workers employed by Agricultural Services in California. Though the California figures exclude direct hires, the level of production in Oregon is significantly lower than California.

New York State established a task force to look at the total picture concerning employment in the agricultural sector. The majority of the Report addressed housing, education, and other non-FLC related issues, but the Report does direct the State Department of Labor to conduct a study of the entire farm labor contract system and thereafter propose administrative and/or legislative action. It based the recommendation on the grounds that the current FLC licensing process has sufficient loopholes that preclude adequate enforcement.

Polopolus and Emerson [14] present a rather innovative perspective of how to view FLC participation in Florida agriculture--entrepreneurship. First, however, they postulate the three primary motivations for agricultural employers to use FLCs--1.) to minimize the risk of employer sanctions and their corresponding fines; 2.) the need for large numbers of workers in labor intensive industries; and 3.) the relative efficiency of FLCs to recruit and hire undocumented workers.

However, a necessary condition for the third motivation is lax enforcement of IRCA's regulations pertaining to sanctions. Given the above motivations, which one can generalize to the entire U.S., they found a complex web of arrangements for hiring citrus harvest labor. In fact, contrary to popular belief, the primary employer of citrus harvest labor is not the grower, but rather a FLC, or processing firm, or packing house, an independent buyer of fruit, or any combination thereof. In addition, whether or not a FLC is paid for hauling fruit accounts for the bimodal distribution of FLC compensation. The charge for hauling fruit is about \$0.35 per box. A FLC's overhead is approximately \$0.58 per box and the compensation covers the management of the fruit harvest, paying workers' compensation, unemployment insurance, social security, withholding tax, and maintaining the payroll. In turn, the FLC charges its workers for transportation, rent if applicable, and other incidentals. Of the 3,270 citrus pickers in the study, 1,853 (57%) were employed by FLCs--a figure slightly higher than the one found in California.

II.D. Case Studies Assessing the Impact of IRCA

Duffield *et al* [2] provide information regarding how labor expenditures can assist in the analysis of IRCA's impact, but the majority of the information regards the size and distribution of farms, by region, employing farmworkers. For example, the 27,000 farms with annual sales of \$500,000 or more accounted for 46% of farm labor expenditures in 1986. The next category of farms, \$100,000 to

\$499,000, accounted for 37% of farm expenditures and the smallest farms, less than 100,000, accounted 15%. The figures are consistent with figures from California and they reflect the high revenues from FVN&O farms. More specifically, vegetable producing farms with sales greater than \$500,000 annually, averaged \$623,000 in farm labor expenditures and this category of farms accounted for more than 50% of all farm labor expenditures.

IRCA also mandated that the U.S. Congress ascertain the impact of IRCA on domestic workers and/or their wage rates. More specifically, the General Accounting Office (GAO) [16] provided preliminary analysis of how "Illegal Aliens" have impacted the working conditions of domestic workers. Among the findings are: a.) "illegal alien" workers did depress wages and worsen the working conditions of native and legal workers. This conclusion is qualified in that not all of the case studies evaluated substantiated the conclusion. However, GAO did report that the lower the work-skill for the employment task, the higher the probability that the affect would be adverse. Entry level farm work certainly falls in this category. The study also found that the presence of "illegal aliens" does not translate to a depressed industry--for the incidence of "illegal aliens" in an industry was irrespective of the relative economic health of the industry. Lastly, the report cited the Lloyd *et al* [5] study as an example of how "illegal aliens" hired by FLC had depressed wages for domestic labor.

Another report by the GAO [15] (for which this author was a consultant) looked specifically at the impact of IRCA on West Coast farm labor. The report

emanated from another IRCA mandate requesting the analysis of potential labor shortages induced by IRCA. The conclusion is that no labor shortages are likely to occur because, among other factors, outmigration from Mexico will continue to occur and growers will hire undocumented workers rather than suffer crop losses. Also, nearly 55% of growers reported the use of some unauthorized "alien" farmworkers during 1987 and 40% of the growers reported that more than 50% of the seasonal work force was unauthorized. A figure consistent with the data from California. The limited information specific to FLCs states that during 1985, approximately 1,200 FLCs were registered to do business in California and 92%--77%--paid unemployment insurance (UI). The UI data indicate that FLCs employed over 300,000 workers and 80% of those workers made \$1,000 or less. The study suggests that Oregon and Washington are less dependent on FLCs than California.

III. SYNTHESIS

What does all the above mean? It is clear that the number and market share of FLCs has increased post-IRCA. The factors contributing to the increase in FLC numbers are:

--Grower reluctance to deal with IRCA mandated paperwork. More to the point is the issue of employer sanctions and the corresponding fines per worker.

--Grower perceptions that FLC contracts reduce the risk of not finding enough labor.

--Because of increased migratory--legal and illegal--pressure, there are more entrants into the farm labor market.

--In turn, because of IRCA's Special Agricultural Workers (SAWs) provisions, there are more individuals exiting the farm labor market. That is, the turnover rate has accelerated.

--FLCs are more efficient at recruiting undocumented workers and in turn, FLCs have more "legal" illegals in their work force.

Also, the majority of the evidence indicates that the new FLCs hire a relatively larger number of: new immigrants--progressively non-Mexicans, and seasonal and/or migrant workers. It is not as apparent that the wages in FLC work as compared to direct hires, are lower. However, what is apparent is that the fringe benefits paid by FLCs are lower than direct hires. To what extent the above are the result of IRCA is difficult to identify. However, the following is a sub-set of what the relevant researchable issues may be:

--Post IRCA, has FLC profitability increased? For FVN&O growers?

--How can one assess the impact, adjustment path, of FLCs on wage rates paid to FVN&O workers?

--Does utilizing a FLC lower the risk of employer sanctions to a grower? Of possible labor shortages?

--For new entrants into the farm labor market, does working for a FLC lower the risk of not finding sufficient work?

--What has been, and perhaps continues to be, the earnings differential for FLC and non-FLC workers in the FVN&O segments before and after IRCA?

A few closing comments. Howard *et al* [4] make an important contribution in that they present a rather quantitative analysis of workers in the pork producing

sector. Similar work related to the FVN&O segments needs to be conducted--for this industry certainly employs more individuals and is of greater economic importance. They also identify a very important component in farm labor management--management style and its' effect on worker productivity and turnover. FLCs have had a language and cultural advantage over many growers and this advantage may be that intangible asset left out of much of the previous work.

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