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Possibilities for Farm Policy in a Trump Era

Stephen Carpenter* & Kirsten Valentine Cadieux**

A federal farm policy should, as has been the case at least since the Great Depression, focus on three things: (1) providing nutritious and affordable food; (2) producing food sustainably and in a way that regenerates the environment; and (3) providing a decent living for those that raise food and ensuring equity in the opportunities to engage and succeed in farming. This essay suggests ways that farm policy might further these goals while remaining relatively consistent with what we understand to be the priorities of the President.

There are aspects of the President's quasi-populist ideology and of the sentiments that supported his election that might provide an opening for interesting farm policies.¹ We take that ideology, for the purposes of this essay, to hinge on three principles. First, government regulates business too much.² As a candidate, President Trump mentioned Environmental Protection Agency rulemaking with the Clean Water Act as an example of unwarranted government interference.³ A Trump Administration agricultural policy, it seems likely, will not

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1. For the original farmer populism from which the term emerges, see LAWRENCE GOODWYN, *THE POPULIST MOMENT: A SHORT HISTORY OF THE AGRARIAN REVOLT IN AMERICA* (1978).

2. See Trump-Pence: Make America Great Again: Regulations, <https://www.donaldjtrump.com/policies/regulations/>.

3. See Sara Jerome, *Trump, Clinton Debate Water Rule*, WATER ONLINE (Sept. 30, 2016), <http://www.wateronline.com/doc/trump-clinton-debate-water-rule-0001>; and Sarah Jerome, *WOTUS is "Doomed" Under Trump, Experts Say*, WATER ONLINE (November 28, 2016),

<http://www.wateronline.com/doc/wotus-doomed-under-trump-experts-say-0001>. The rule can be found at 80 Fed. Reg. 30,754, Department of Defense, Department of Army, Corps of Engineers and Environmental Protection Agency, Clean Water Rule: Definition of "Waters of the United State," Final Rule (to be codified at 33 C.F.R part 328, 40 C.F.R. parts 110, 112, 116, 230, 232, 300, 302, 402) (June 29, 2015) and discussed from the EPA point of view in detail in EPA, Clean Water Rule, <https://www.epa.gov/cleanwaterrule>.

embrace additional regulation of agriculture. Second, restriction of undocumented immigration will be a priority.⁴ Whether or not a 2000 mile border wall is fully constructed, let us assume that the Administration will attempt to radically reduce the number of undocumented immigrants in the United States. Third, the Administration seems likely to step away from the principles of what has come to be called “free trade” that tend to undergird American trade agreements. As a candidate, the President was adamant that the country’s approach to trade should be reformed in ways that would be less favorable to cross-border movement of goods and capital.⁵ Each of these ideological premises, and possible ways that agricultural policy might be formed to be consistent with them, are discussed below.

First, the effort to unravel the regulation of agriculture is one that many in the agribusiness world will find appealing. In actuality, however, there is little evidence that environmental or other regulation thwarts the farm community in any significant way. Regarding the environment, in particular, there is no doubting that farming causes pollution in waterways, that agriculture is a significant source of greenhouse gas emissions, and that markets will not remedy these problems.⁶ These are economic externalities of a classic nature and farmers who voluntarily seek to limit runoff or greenhouse gases are

4. See Miriam Valverde, *Politifact Sheet: Donald Trump’s Immigration Plan*, POLITIFACT (Nov. 9, 2016), <http://www.politifact.com/truth-o-meter/article/2016/nov/09/politifact-sheet-donald-trumps-immigration-plan/>.

5. See Trump-Pence: Make America Great Again: Trade, <https://www.donaldjtrump.com/policies/trade/>.

6. Environmental consequences of agriculture are summarized in JASON W. CLAY, *WORLD AGRICULTURE AND THE ENVIRONMENT: A COMMODITY BY COMMODITY GUIDE TO IMPACTS AND PRACTICES* (2004) and Erin M. Tegtmeier & Michael D. Duffy, *External Costs of Agricultural Production in the United States*, 2 INT’L L. J. AGRIC. SUSTAINABILITY 1 (2004). A classic law review discussion is J.B. Ruhl, *Farms, Their Environmental Harms, and Environmental Law* 29(2-3) *ECOLOGICAL L.Q.* 1 (2000). Agriculture as creating economic externalities is discussed in James Stephen Carpenter, *Farm Chemicals Soil Erosion, and Sustainable Agriculture*, 13 *STAN. ENVTL. L.J.* 190 (1994). An estimate putting agriculture as the source of about 8 percent of all United States greenhouse gas emissions is Greenhouse Gas Emissions, *Sources of Greenhouse Gas Emissions*, EPA (last updated Feb. 14, 2017), <https://www.epa.gov/ghgemissions/sources-greenhouse-gas-emissions>.

generally penalized for their efforts by the market.⁷ We can expect the Administration, however, to limit regulatory efforts for the next four years. There is another way, however, for environmental problems to be taken into account. The President has not seemed hostile to farm programs in general, although no evidence has been provided that he has any familiarity with what the programs entail. Still, suppose these programs were doubled in cost, to say 40 billion dollars annually, and the programs were focused on conservation benefits.⁸ We know a great deal about ways to limit the environmental consequences from farming,⁹ for example, and about the possibility of capturing carbon in agriculture soils.¹⁰ If we moved farm program spending into something more conservation oriented,¹¹ like the poorly funded

7. J.J. LAFFONT, *THE NEW PALGRAVE DICTIONARY OF ECONOMICS, EXTERNALITIES* (2D ED. 2008).

8. Current spending on farm and conservation programs is in the area of 20 billion dollars per year. Early farm bill estimates for farm and conservation programs for 2014-2018 were about 19 billion dollars per year. See U.S. DEP'T OF AGRIC. ECON. RES. SERV. *Projected Spending Under the 2014 Farm Bill* (19 percent of 489 billion over five years), <https://www.ers.usda.gov/topics/farm-economy/farm-commodity-policy/projected-spending-under-the-2014-farm-bill/>. The 2016 USDA budget authority is about 19 billion for farm and commodity programs, conservation and forestry. *USDA Fiscal Year Budget Summary and Annual Performance Plan 1-3* (conservation, forestry, farm and commodity programs are 21 percent of 148 billion), <https://www.ers.usda.gov/topics/farm-economy/farm-commodity-policy/projected-spending-under-the-2014-farm-bill/http://www.obpa.usda.gov/budsum/fy16budsum.pdf>. Accounting for inflation, the cost in current dollars going back to 2000 is roughly 20 billion dollars per year. RENEE JOHNSON AND JIM MONKE, *WHAT IS THE FARM BILL*, CONGRESSIONAL RESEARCH SERVICE (2016)(estimating from figure 3), <https://fas.org/spp/crs/misc/RS22131.pdf>. Some estimates are higher. For 25 billion dollars per year, see CHRIS EDWARDS, *AGRICULTURAL SUBSIDIES*, CATO INSTITUTE 1 (2016), <https://www.downsizinggovernment.org/agriculture/subsidies>. By including all programs at least partially intended to benefit farmers, some economists argue that the cost of farm programs is much higher. For a claim that U.S. farm subsidies totaled more than 100 billion dollars a year as of the mid 2000s, see E. WESLY F. PETERSON, *A BILLION DOLLARS A DAY: ECONOMICS AND POLITICS OF AGRICULTURAL SUBSIDIES* (2009).

9. TOWARD SUSTAINABLE AGRICULTURAL SYSTEMS IN THE 21ST CENTURY, NAT'L RESEARCH COUNCIL (2010), <http://dels.nas.edu/resources/static-assets/materials-based-on-reports/reports-in-brief/Systems-Ag-Report-Brief.pdf>. Basic knowledge on these matters is longstanding. See ALTERNATIVE AGRICULTURE, NAT'L RESEARCH COUNCIL (1989).

10. For a broad view see, Rattan Lal et al, *Soil Carbon Sequestration to Mitigate Climate Change*, 123 (1-2) *GEODERMA* 1 (2004); and for the beginning of an effort to calculate the various ways that farming adds and subtracts from greenhouse gasses, see W.R. Teague et al., *The Role of Ruminants in Reducing Agriculture's Carbon Footprint in North America* 71 *J. SOIL AND WATER CONSERVATION* 156, 156 (2016).

11. Work exploring a beginning point includes Joanathan Coppess, *The Next Farm Bill May Present Opportunities for Hybrid Farm-Conservation Policies*, 31(4) *CHOICES*

Conservation Stewardship Program,¹² and spent enough money to ensure that the vast majority of farmers did not exit the program, the benefits for the environment could be profound and relatively inexpensive. One could imagine, as well, crop insurance programs that rewarded, rather than penalized, diversified farms, soil building crop rotations, and dispersion of livestock onto many farms, rather than concentrating them in massive numbers on a relatively small number of farms.¹³ The Administration could rightly claim that it was achieving substantial environmental benefits without resorting to

(2016); M. Eve et al, *Quantifying Greenhouse Gas Fluxes in Agriculture and Forestry: Methods for Entity-Scale Inventory*, U.S. DEP'T OF AGRIC. OFFICE OF THE CHIEF ECONOMIST TECHNICAL BULLETIN NO. 1939 in Marlen Eve et al., *Quantifying Greenhouse Gas Fluxes in Agriculture and Forestry: Methods for Entity-Scale Inventory*, U.S. DEP'T OF AGRIC. (July 2014), https://www.usda.gov/oce/climate_change/Quantifying_GHG/USDATB1939_07072014.pdf; https://www.usda.gov/oce/climate_change/Quantifying_GHG/USDATB1939_07072014.pdf; Roger Claassen, *Green Payments: Can Conservation and Commodity Programs be Combined?*, AMBER WAVES (March 2012); Roger Claassen et al, *Integrating Commodity and Conservation Programs: Design Options and Outcome*, U.S. DEP'T OF AGRIC. ECON. RES. SERV. REPORT NO. 44 (2007); Roger Claassen and Mitch Morehard, *Greening Income Support and Supporting Green*, U.S. DEP'T OF AGRIC. ECON. RES. SERV., ECONOMIC BRIEF 1 (2006).

12. The Conservation Stewardship Program (CSP) is an especially interesting already existing option. See Conservation Stewardship Program, *Rewarding Farmers for Adopting and Managing Advanced Conservations System*, NAT'L SUSTAINABLE AGRICULTURE COALITION (2016),

<http://sustainableagriculture.net/publications/grassrootsguide/conservation-environment/conservation-stewardship-program/>;

<http://sustainableagriculture.net/publications/grassrootsguide/conservation-environment/conservation-stewardship-program/>. USDA summarizes it this way: supports ongoing and new conservation efforts for producers who meet stewardship requirements on working agricultural and forest lands. Farmers and ranchers must demonstrate a high level of stewardship to be eligible for the program and must agree to further improve environment performance over the life of the CSP contract (up to 10 years). Participants receive financial assistance for adopting new conservation practices and for stewardship, based on previously adopted practices and the ongoing maintenance of those practices.

U.S. DEP'T OF AGRIC., *Background Conservation Spending Seeks To Improve Environmental Performance in Agriculture*, <https://www.ers.usda.gov/topics/natural-resources-environment/conservation-programs/background/>.

13. See generally, U.S. DEP'T OF AGRIC., FCIC-18160, WHOLE-FARM REVENUE PROTECTION PILOT HANDBOOK (2016) (exemplifying the viability of such a program). As a long term matter, policies could begin to embrace agro-ecological principles. See, e.g., STEPHEN R. GLEISSMAN, *AGROECOLOGY: THE ECOLOGY OF SUSTAINABLE FOOD SYSTEMS* (2d ed. 2006); JUDY SOULE & JOHN PIPER, *FARMING IN NATURE'S IMAGE: AN ECOLOGICAL APPROACH TO AGRICULTURE* (2d ed. 1991).

regulation. In order to minimize the spending, tightened payment limitations in farm programs would save a bit of money.¹⁴

The President and his advisors have surely been stung by charges of racism and sexism.¹⁵ Discrimination at USDA has

14. Payment limitation rules attempt to cap the farm program payments that one person can receive and to make some high-income farmers not eligible for some payments, potentially enabling the immediate reallocation of a significant amount of funding to conservation and equity measures. At present, these limitations are quite ineffective, a remarkable achievement given that the USDA Handbook discussion on the topic exceeds hundreds of pages. See U.S. DEP'T OF AGRIC. FARM SERVICE AGENCY, *Payment Limitation, and Average Gross Income – Agricultural Act of 2014*, https://www.fsa.usda.gov/Internet/FSA_File/5-pl_r00_a03.pdf; C. Zulauf et al, *2014 Farm Bill Decisions: Payment Limits and Adjusted Gross Income Eligibility*, 157(4) *FARMDOC DAILY* (2014), <http://farmdocdaily.illinois.edu/2014/08/2014-farm-bill-decisions-payment-limits-adjusted-income.html>; NSAC, *Final Actively Engaged Rule Preserves Unlimited Subsidies for the Biggest Farms* (2015), <http://sustainableagriculture.net/blog/final-actively-engaged-rule/>; and Ron Durst, *Effects of Reducing the Income Cap on Eligibility for Farm Program Payments*, U.S. DEP'T OF AGRIC. ECON. RES. SERV. (2007). See generally, U.S. DEP'T OF AGRIC., 5-PL, PAYMENT ELIGIBILITY, PAYMENT LIMITATION, AND AVERAGE ADJUSTED GROSS INCOME – AGRICULTURAL ACT OF 2014 (2016) (exemplifying the ineffectiveness of payment limitations given its vast discussion in the USDA's handbook). See also, JIM MONKE, CONG. RESEARCH SERV., RS21493, PAYMENT LIMITS FOR FARM COMMODITY PROGRAMS: ISSUES AND PROPOSALS (2008) (describing the basic issues). See generally, Ron Durst & Robert Williams, *Farm Bill Income Cap for Program Payment Eligibility Affects Few Farms*, U.S. DEP'T OF AGRIC. ECON. RES. SERV. (Sept. 2007), <https://www.ers.gov/amber-waves/2016/august/farm-bill-income-cap-for-program-payment-eligibility-affects-few-farms/>.

15. Among the many discussion along these lines are Dana Milbank, *Donald Trump is a Bigot and A Racist*, WASH. POST (December 1, 2015) at https://www.washingtonpost.com/opinions/donald-trump-is-a-bigot-and-a-racist/2015/12/01/a2a47b96-9872-11e5-8917653b65c809eb_story.html; Lydia O'Connor and Daniel Marans, *Here are 13 Examples of Donald Trump Being a Racist*, HUFFINGTON POST (October 10, 2016) http://www.huffingtonpost.com/entry/donald-trump-racist-examples_us_56d47177e4b03260bf777e83. For the implication that these accusations trouble Trump, see Mark Fischer, *Donald Trump: 'I am the least racist person'* WASH. POST (October 16, 2016) at: https://www.washingtonpost.com/politics/donald-trump-i-am-the-least-racist-person/2016/06/10/eac7874c-2f3a-11e6-9de3-6e6e7a14000c_story.html; Caitlin Yilek, *Trump: 'Nobody has more respect for women than me'* *The Hill* (March 26, 2016) at: <http://thehill.com/blogs/ballot-box/presidential-races/274374-trump-nobody-has-more-respect-for-women-than-me>; See, Dana Milbank, *Donald Trump is a Bigot and a Racist*, WASH. POST (Dec. 1, 2015), https://www.washingtonpost.com/opinions/donald-trump-is-a-bigot-and-a-racist-examples_us_56d47177e4b03260bf777e83; Mark Fischer, *Donald Trump: 'I am the least racist person.'* WASH. POST (Oct. 16, 2016), <https://www.washingtonpost.com/politics/donald-trump-i-am-the-least-racist-person/2016/06/10/eac7874c-2f3a-11e6-9de3->

been longstanding; thwarted opportunity for many, and costing the government billions in litigation.¹⁶ As the Administration ramps up voluntary conservation aspects of farm programs, it could also, at relatively little cost, emphasize civil rights enforcement at USDA as a priority in the increased spending. An aggressive effort to ensure equal opportunity in farming would be one way the Administration could legitimately claim to be promoting social justice and opportunity.

Second, we can assume that the Administration will aim to reduce radically the number of undocumented immigrants in the country. A brief review: there are probably more than 10 million such immigrants.¹⁷ Hundreds of thousands, probably more than one million, work on a farm for some part of the year.¹⁸ Although most farms hire no wage labor and, consequently, do not hire undocumented immigrants, relatively few farms, many of which are quite large, are significantly concentrated in certain sectors of agriculture. This is especially true in the fruits, vegetables, and nursery and greenhouse crops sectors, all of which use a great deal of wage labor and undocumented labor.¹⁹

6e6ea14000c_story.html?utm_term=.65f6c5db24a5.

16. See generally, Stephen Carpenter, *An Overview of USDA Discrimination Cases*, 17 DRAKE J. AGRIC. L. 1 (2012).

17. See, Michael Hoefler et al., *Estimates of the Unauthorized Immigrant Population Residing in the United States: January 2011*, DEP'T OF HOMELAND SECURITY (MAR. 2012), https://www.dhs.gov/xlibrary/assets/statistics/publications/ois_ill_pe_2011.pdf.

18. See, U.S. DEP'T OF AGRIC., *Immigration and the Rural Workforce* (last updated Feb. 3, 2017). According to USDA, in 2012, about 1.1 million hired farmworkers were employed on U.S. farms, according to the Farm Labor Survey of USDA's National Agricultural Statistics Service (NASS). *Immigration and the Rural Workforce* This number has held fairly steady over the past five years. USDA, ERS, *Immigration and the Rural Workforce*, at <https://www.ers.usda.gov/topics/in-the-news/immigration-and-the-rural-workforce.aspx>; see also, Jeffrey S. Passel & D'Vera Cohn, *A Portrait of Unauthorized Immigrants in the United States*, PEW RES. CTR. (Apr. 14, 2009), For nongovernmental survey data, see Jeffrey S. Passel and D'Vera Cohn, *A Portrait of Unauthorized Immigrants in the United States*, Pew Hispanic Center 14 (2009) at <http://www.pewhispanic.org/files/reports/107.pdf>. (4 percent of 8.3 million undocumented workers, total undocumented immigrants number 11.2 million). About half of all hired farm workers over the past 15 years were undocumented. Id. at 1.

19. U.S. DEP'T OF AGRIC., AC-12-A-51, 2012 CENSUS OF AGRICULTURE: UNITED STATES SUMMARY AND STATE DATA 12 (2012). About 30 percent of all farms hire wage labor. USDA, Nat'l Agric. Stat. Serv. *Census of Agriculture* page 12, table 4, https://www.agcensus.usda.gov/Publications/2012/Full_Report/Volume_1_Chapter_1_US/ (about 566,000 farms, out of about 2.1 million, hired labor). Farmers spent about 27 billion dollars on farm labor in 2012. A total of about 8000 farms, about .4 percent of all

Powerful agribusiness leaders must find Trump's immigration rhetoric alarming. While not saying so straightforwardly, the parts of agriculture that use immigrant labor seem reasonably comfortable with the current system. Labor that is cheap, powerless, and illegal has had an appeal for Big Agriculture.²⁰

From a social justice perspective, it is far from clear what an appropriate policy for immigrant labor in agriculture might be.²¹ It cannot escape one's attention, however, that farmworkers are typically Latino, and that, historically, immigration policy in the United States has hinged at almost every turn on the race of the immigrants in question. Put differently, limiting the number of immigrants that work on farms can undermine aspects of equality and justice by targeting Latinos.²² Historically and at present, an agriculture based mainly on the household labor of family farms, which rely minimally on wage labor, is more egalitarian, and involves less exploitation than large farms that employ poorly paid wage labor.²³ Because industrial agriculture offers little hope for a

farms, spent 13 billion dollars on farm labor. Id. Looked at from a different angle, about 32 percent of total hours worked on farms are hired or contract labor. Robert A. Hoppe, *STRUCTURE AND FINANCES OF U.S. FARMS: FAMILY FARM REPORT, 2014 EDITION STRUCTURE AND FINANCES*, at 11, table 1. By the middle 2000s, the largest farms—literally the largest two percent—averaged 2.5 million in gross farm revenue, earned \$600,000 per year in farm profit, accounted for nearly half of all farm production, and relied overwhelmingly on hired labor. Robert A. Hoppe et al, *MILLION DOLLAR FARMS IN THE NEW CENTURY*, at 29, table 11(rely on hired labor); at 9, figure 4 (48 percent of production); at 3 (less than two percent of all farms); at 24, table 10 (\$2.5 million revenue, \$600,000 profit) (2008). While hired labor and contractors account for about 17 percent of all variable production expenses for agriculture as a whole. For vegetables, the proportion is 35 percent; for nursery products, 46 percent; and for fruit 48, percent. Zahniser, at 1.

20. Gerald P. Lopez, *Don't We Like Them Illegal*, 45 U. CAL. DAVIS L.R. 1711, 1718 (2012).

21. For the question of how we might conceptualize equitable land, labor, and exchange, see Rachel Slocum, Kirsten Valentine Cadieux, and Renata Blumberg, *Solidarity, Space and Race: Toward Geographies of Agrifood Justice*, 9 *SPATIAL JUSTICE* (2016), https://www.jssj.org/wp-content/uploads/2016/02/JSSJ9_01_ENG.pdf.

22. For the case that immigration policy has relied on constitutionally impermissible racial criteria see Liav Orgad and Theodore Ruthizer, *Race, Religion and Nationality in Immigration Selection 120 Years After the Chinese Exclusion Case*, 26(2) *CONSTITUTIONAL COMMENTARY* 787 (2010). For a vivid example of how this has worked in practice, see Malissia Lennox, *Refugees, Racism and Reparations: A Critique of the United States' Haitian Immigration Policy*, 60 *STANFORD L. R.* 687 (1993).

23. At least two caveats need to be made about family farming. First, our understanding of what constitutes a family has changed substantially over the last several

relatively egalitarian countryside, a more just agriculture would almost inevitably require more and smaller farms, but it would also demand an equal opportunity for everyone to take a place on those farms. A farm policy that sought to reduce wage labor in general by focusing sharply on Latino workers is unacceptable. A policy that encourages poor immigrants from Latin America to marginally better their situations through the massive expansion of industrial agriculture seems also not desirable. Fundamental questions about the role of national borders and international mobility are not addressed here. The question, for the purposes of this essay, is how we might proceed if we take as a given the assumption that the federal government will reduce substantially the number of undocumented immigrants in the country.

The economic effects for agriculture would certainly be complicated, and in some ways unpredictable if, say, half of all undocumented workers were no longer available to United States employers.²⁴ The social dislocation and hardship for the immigrants themselves under such a scenario would likely be enormous, especially if the policy was in part based on mass

years. The point here is not to privilege one form of household arrangement over another, or to minimize the inequalities within farm and other families. It is instead, to argue on behalf of a household and commons based economic structure and to oppose wage labor and plantation labor for farming – the two primary alternatives historically in the United States. For this history see Max J. Pfeffer, *Social Origins of Three Systems of Farm Production in the United States* 48(4) RURAL SOC. 540 (1983). Second, a system of family farming is worth defending because, in addition to raising food, it can be the basis for a thriving, humane community and can produce in relative harmony with nature. See John Ikerd, *Family Farms of North America*, (Food and Agriculture Org., Working Paper No. 152, 2016), http://www.ipc-undp.org/pub/eng/WP152_Family_farms_of_North_America.pdf. A case for family farming can also be found in STEPHEN CARPENTER, THE RELEVANCE OF FAMILY FARMING TODAY, 11-16 (2006), http://www.flaginc.org/wp-content/uploads/2013/03/CLE_SC.pdf. See also MARTY STRANGE, FAMILY FARMING: A NEW ECONOMIC VISION 78-103 (1990).

24. This scenario is discussed in STEPHEN ZAHNISER ET AL., THE POTENTIAL IMPACT OF CHANGES IN IMMIGRATION POLICY ON U.S. AGRICULTURE AND THE MARKET FOR HIRED FARM LABOR 26 (2012), <https://www.ers.usda.gov/publications/pubdetails/?pubid=44983>. Cf. LINDA FOR ANALYSIS ON SEVERAL PARTICULAR CROPS REGARDING SIGNIFICANT REDUCTIONS OF UNDOCUMENTED LABOR SEE, LINDA CALVIN AND PHILIP MARTIN, THE U.S. PRODUCE INDUSTRY AND LABOR FACING THE FUTURE IN A GLOBAL ECONOMY (2010), https://www.ers.usda.gov/webdocs/publications/err106/8069_err106.pdf.

round-up and deportation of undocumented workers. Families would be fractured. “Dreamers,” people with no living memory of being in another country, would suddenly be deported.²⁵ Illegal immigration for the desperate would become more dangerous. It is not clear that the Administration will have the stomach for the humanitarian issues raised, the popular resistance that mass deportations would trigger, or perhaps most importantly for the Administration, the vigorous resistance that significant immigration restriction of any kind would engender with Big Agriculture.

Suppose, however, that the Administration proceeds. One of the worst possible scenarios consistent with draconian reductions in illegal immigration, and the one that would be favored by Capitol Hill agribusiness lobbyists, would be to allow farm workers into the country legally with no right to stay, no path to citizenship, no rights as workers, poor living conditions, and very low pay. Further, to the extent that part of the point of President Trump’s opposition to undocumented immigration is that it takes economic opportunities from citizens and legal immigrants, a significant “guest worker” or bracero program would undermine the entire point of restricting undocumented immigration. Capitol Hill agribusiness lobbyists, who are sure farm workers should not be paid overtime, have the right to organize, or receive a minimum wage will surely argue that agriculture requires an underclass of labor to succeed and, thus, will likely attempt to craft an exploitative exception to the main immigration policy.

Suppose, however, a strategy is launched for keeping undocumented immigrants from making it over the border while simultaneously increasing efforts to deport those without papers. It will be a struggle. Those seeking to escape from poverty by working in the United States will not be easily deterred. To the extent restriction is effective, we could expect a number of tangled results for agriculture. As with the minimum wage and

25. RUTH SPENCER, *THE DREAMERS’ DREAMS: YOUNG IMMIGRANTS TELL THEIR STORIES* (July 12, 2012), <https://www.theguardian.com/world/interactive/2012/jul/12/dreamers-dreams-young-immigrants-interactive>.

other policies that affect low-wage workers, the effects would be complicated in some respects and would evolve over time pay. As a baseline, we know that certain foods would be more expensive to produce. Some farms, over time, would adopt more technology as a substitute for labor, concentrating more farming where funding for such technology was available. Some farms relying on cheap labor would become far less profitable but still make a successful adjustment. In some instances, a shift in farm size could occur without extraordinary difficulty. For example, the dairy industry long existed without massive dairies using extremely cheap wage labor, and could do so again. Some farms would shift less labor-intensive crops. Prime farmland in California would not suddenly go unfarmed, but farming would change. Some operations would be unable to adjust and would, after a time, move to a place with cheaper labor. Some food now grown in the United States, as a result, would soon be imported.

From a social justice perspective, if the Administration has the stomach to actually massively restrict immigration, it could also take several steps to make the effort more humane. First, it could refine the policy by taking into account family connections, longevity in the country, and other factors, in forming policies. Second, a policy that gradually reduces the immigration of undocumented workers – as opposed to mass deportations of those already here – seems likely to lessen social disruption and suffering. Third, more effective barriers to undocumented immigration could be accompanied by significant increases in efforts to establish historically disenfranchised farm laborers as actual farmers. There would be some cost, but many, many legal immigrants and their families would love a chance to farm in the United States and would be capable of doing so with minimal assistance.²⁶

What the Administration should not do, however, is listen

26. For a sense of the potential here see, for example, *Stories from the Field, Empowering Latino Farmers*, NSAC (Apr. 18, 2016), <http://sustainableagriculture.net/blog/latino-farmers-2501-profile/> and the activities of the National Latino Farmers and Ranchers Trade Association, <http://hispanicdigitalmediaconsultinginc.com/NLFRFTA/index.html>.

mainly to agribusiness interests and combine immigration restrictions with a policy of “guest workers” or some other scheme that would minimally change the current labor force. If part of the point of restricting illegal immigration is to increase the economic opportunities for those in the country legally, a bracero-like program would offer no real change and reducing immigration would merely serve as a symbolic gesture.

Third, the Administration seems likely to rely less on the magic of free trade as enforced by trade agreements. This proposal also must alarm agribusiness. About 15 to 20 percent of the country’s agricultural products are exported.²⁷ Interestingly, across the world, the most contentious aspects of negotiation and the implementation of trade agreements have been agricultural policy.²⁸ The United States has made access to foreign markets a center point of its trade agreement negotiation strategy.²⁹ Other countries, anxious to protect their own longstanding rural cultures, often resist trade agreements that mandate the import of foreign-grown food. The Japanese, for example, are famous for protecting their very small-scale rice farmers from American imports.³⁰ If the Administration seeks to unwind trade agreements, NAFTA and WTO, for example, opportunities for American agriculture exports will be reduced. Imports of food, however, will also be restricted. For goods that are truly not available here, imports will be possible, one would

27. *Export Share of Productions*, USDA (2017), <https://www.ers.usda.gov/topics/international-markets-trade/us-agricultural-trade/export-share-of-production/>.

28. See Tim Josling, *Why Trade Negotiations Still Matter to U.S. Agriculture*, CHOICES (2009), <http://www.choicesmagazine.org/UserFiles/file/PI6.pdf>. See also Tim Josling, *Agricultural Trade Disputes in the WTO*, FRONTIER OF ECONOMICS AND GLOBALIZATION (2009), http://fsi.stanford.edu/sites/default/files/Agricultural_Trade_Disputes_in_the_WTO.pdf.

29. An enthusiastic account of the result of trade agreements for exports is USDA, FOREIGN AGRICULTURE SERVICE, FREE TRADE AGREEMENT AND U.S. AGRICULTURE (2016), https://www.fas.usda.gov/sites/default/files/2016-06/2016-06_iatr_ftas.pdf.

30. For a discussion of the cultural meaning of rice and rice imports in Japan, see Gianne Simone, *The Future of Rice Farming in Japan*, JAPAN TIMES (Jan. 29, 2016), <http://www.japantimes.co.jp/life/2016/01/29/food/the-future-of-rice-farming-in-japan/#.WfSVrDmrCs>. For an unsympathetic view of Japan’s efforts to limit the import of rice, see, CHANDLER H. UDO, JAPANESE RICE PROTECTIONISM: A CHALLENGE FOR THE DEVELOPMENT OF AGRICULTURAL TRADE LAWS, 31(1) BOSTON COLLEGE INT’L AND COMPARATIVE L. R. 169 (2008).

assume, but they will be more costly. In the Western Hemisphere, there is an odd coupling of two central Trump issues – immigration and trade agreements. Left-wing critics of NAFTA, for example, have long emphasized that American exports of corn to Mexico undermined small scale Mexican corn production and led to massive undocumented immigration from the Mexican countryside to the United States.³¹ Such dislocation might in part be reversed with a revision of NAFTA and the draw of the United States as a work destination would lessen. Further, reduced United States efforts to export, for example, cotton, would help small-scale producers in the rest of the world.³² The trade aspects of the new Administration are in some ways quite hard to anticipate. It is not clear what the President means by a better “deal” on trade. One would suspect that the President does not yet realize that the devilish details of these agreements often center on agriculture. There is an opportunity as trade is reconfigured to reshape trade policy in a way that does not place forcing farm exports onto the rest of the world as a high priority. This approach will be highly unpopular with agricultural exporters, but if the Administration approached the issue this way, it would be of benefit to millions of small-scale producers abroad, would likely be appreciated by our trade partners, and might generate leverage for the Administration as it negotiates other trade matters of concern.

There are reasons that the Republican Establishment was made nervous by presidential candidate Donald J. Trump. While promises to reduce government regulation is a standard Republican issue, and a common aim for parts of American agriculture, candidate Trump’s emphasis on two other issues—immigration and trade agreements—part ways with established policy, and in particular with established farm policy, of the last several decades. These issues seem important to the President and seem to have been a significant basis for his political

31. See generally BILL ONG HING, *ETHICAL BORDERS: NAFTA, GLOBALIZATION, AND MEXICAN IMMIGRATION* (2010).

32. Julian M. Alston et al., *Impacts of Reductions in US Cotton Subsidies on West African Cotton Producers* OXFAM AMERICA (2007), <https://www.oxfamamerica.org/static/oa3/files/paying-the-price.pdf>; Roger Thurow and Scott Killmean, WALL STREET J., *U.S. Subsidies Create Cotton Glut That Hurts Foreign Cotton Farms* (June 26, 2002) <https://www.wsj.com/articles/SB1025050239742827480>.

support.³³ The point here is not to minimize any other factor that may have played an important role in the election. It is instead to suggest that for President Trump and his supporters, the issues of immigration and trade seem not likely to fall by the wayside. For agriculture and everyone else, there will be important consequences based on how the questions of immigration and trade are resolved. Some who have vigorously opposed President Trump from the left will withdraw from all political cooperation with the Administration.³⁴ Others will engage the Administration on issues of common concern.³⁵ As Karl Marx once wrote about the political choices one must make in the face of the rise of a charismatic and powerful leader, “Men make their own history, but they do not make it as they please; they do not make it under self-selected circumstances, but under circumstances existing already.”³⁶

33. Immigration and trade appear to be important for the President. Understanding the precise reasons people vote and why they pick one candidate over another – perhaps, particularly in this election—is a precarious business. At a minimum, however, exit polls suggest that trade and immigration were important issues for Trump voters. Trump voters, for example, tended to think trade takes away jobs, that illegal immigrants should be deported and that a wall should be built on the Mexican border. Jon Huang et al., *Election 2016: Exit Polls*, N. Y. TIMES (Nov. 8, 2016), <https://www.nytimes.com/interactive/2016/11/08/us/politics/election-exit-polls.html>. See also Jeffrey Anderson, *Trump Won on the Issues*, REAL CLEAR POLITICS (Nov. 18, 2016), http://www.realclearpolitics.com/articles/2016/11/18/trump_won_on_the_issues_132383.html;

Gerald F. Seib, *Trade, Not Immigrants, May Have Been Key Motivator of Donald Trump's Voters*, WALL STREET J. (November 10, 2016), <https://www.wsj.com/articles/trade-not-immigrants-may-be-key-motivator-of-donald-trumps-voters-1478813590>. See, as well, Carroll Doherty, Pew Research Center, 5 Facts About Trump Supporters' Views of Immigration (August 25, 2016) at <http://www.pewresearch.org/fact-tank/2016/08/25/5-facts-about-trump-supporters-views-of-immigration/>; Rasmussen Reports, Most Support Trump's Call for Immigration Restrictions, Screening Test, (August 19, 2016) at: http://www.rasmussenreports.com/public_content/politics/current_events/immigration/august_2016/most_support_trump_s_call_for_immigration_restrictions_screening_test.

34. Randall Kenney, *The Case for Resistance: There is No Common Ground to be Had with the Trump Administration*, AMERICAN PROSPECT (Dec. 16, 2016), <http://prospect.org/article/case-resistance>.

35. Bryce Covert, *The Trump Economic Policy Plan That Could Work*, THINK PROGRESS (Mar. 30, 2016), <https://thinkprogress.org/the-trump-economic-policy-plank-that-could-work-a37a851dba98#.jg1nnwedn>.

36. KARL MARX, *THE EIGHTEENTH BRUMAIRE OF LOUIS BONAPARTE 1* (1852) (trans. Saul K. Padover) (1972).

The Trump Administration may abandon immigration and trade as key issues, or it may push them and fail to achieve significant change. It is possible, however, that the Administration will have success on these fronts. If so, there is a populist wiggle room for a farm policy that minimizes dislocation and suffering in immigration policy and develops some sound and interesting farm policies that promote the production of abundant and nutritious food, protect the environment, and further some forms of justice and equality in agriculture.