

*APMA Keynote—*

# All About the Workforce!

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# GROWER TALKS



**Our Industry  
Ringmasters**

AmericanHort's advocacy team is dedicated to

**It  
Takes  
A  
Team!**



# Overview

- Our Workforce
- A Look Back at 2019, Legislative and Administrative
- The year ahead
- Election 2020

# What I'm NOT Planning to Cover...

- Impeachment
- Iran
- Iraq
- Iowa



# 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

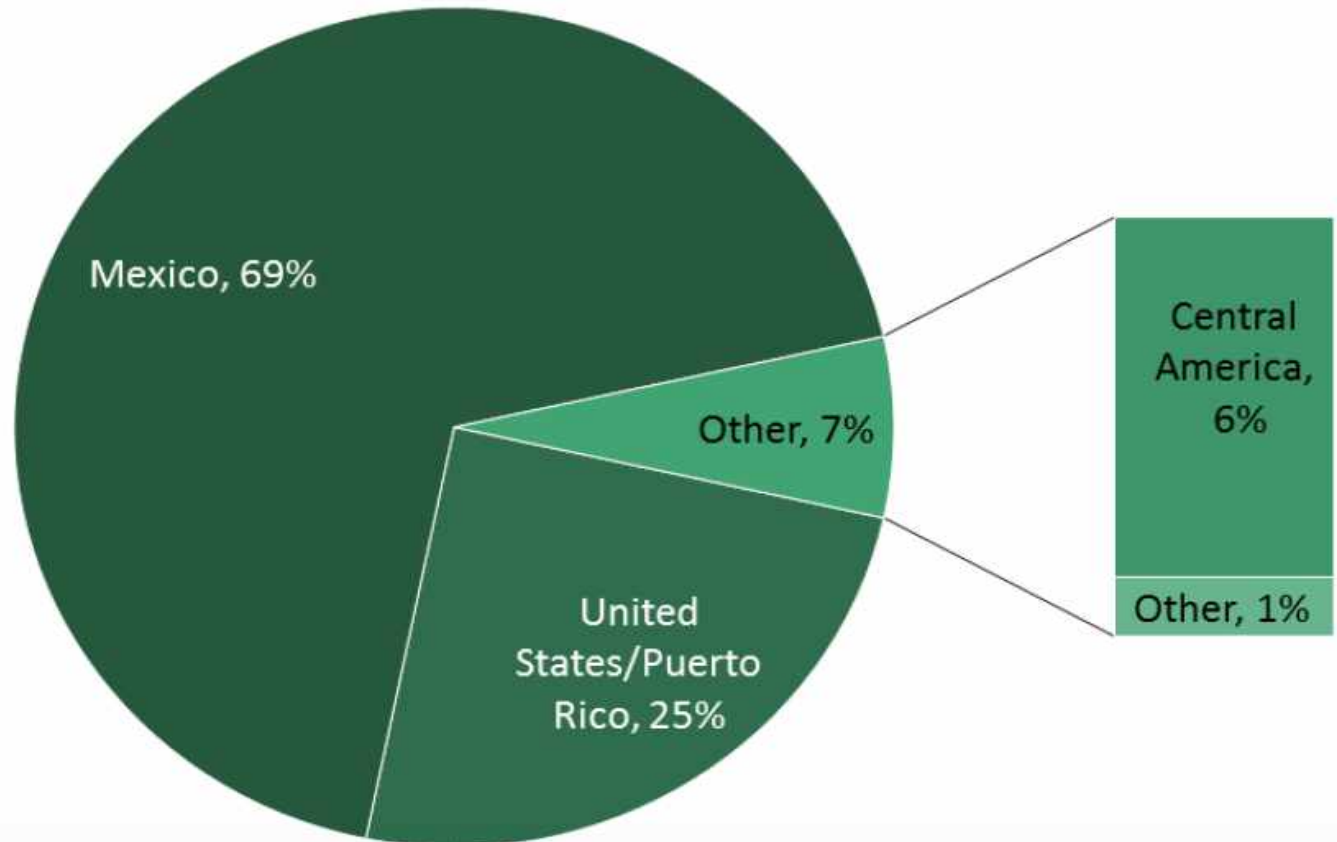


# National Ag Worker Survey: National Employment Characteristics

- 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

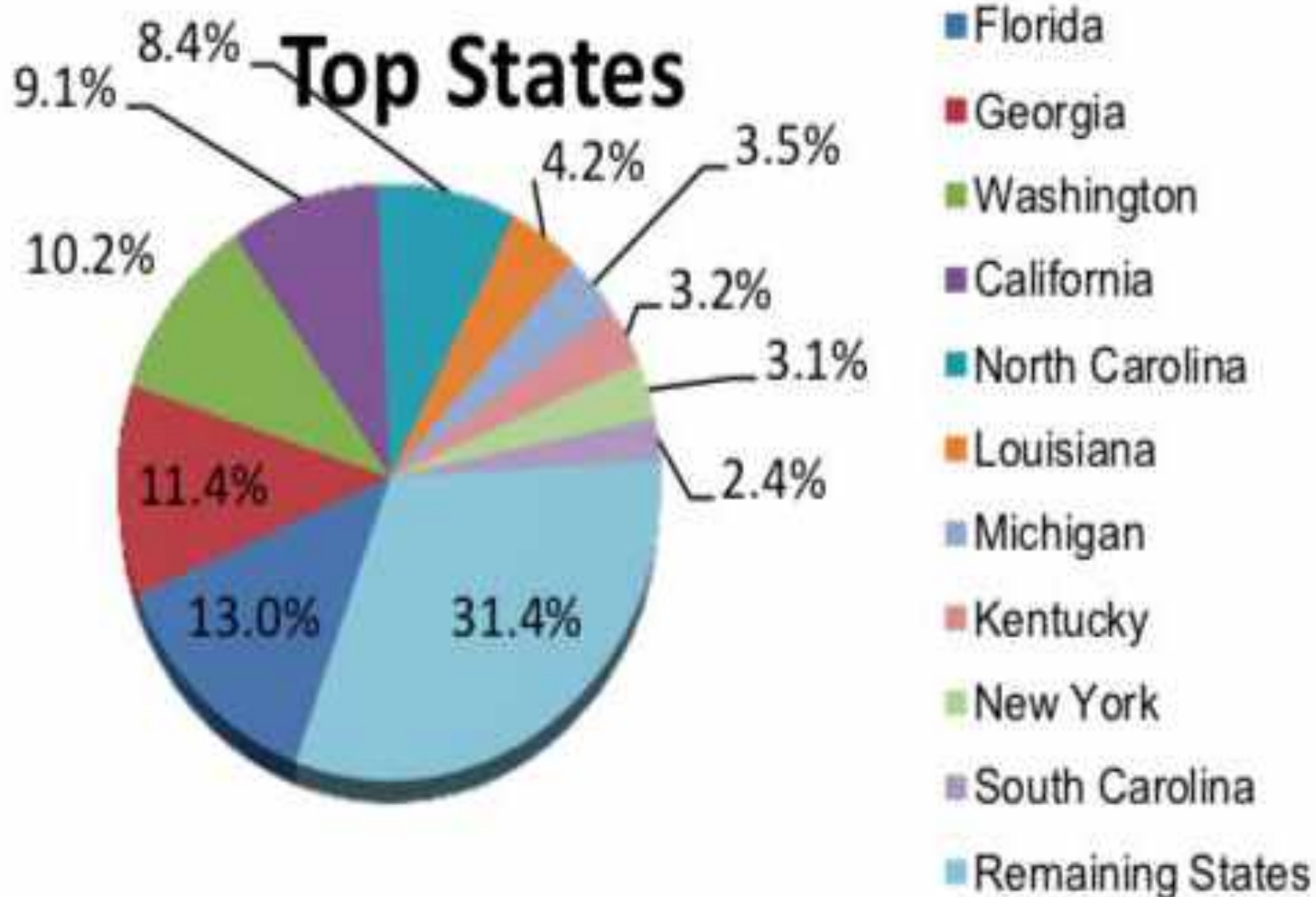


# H-2A Continues Rapid Growth

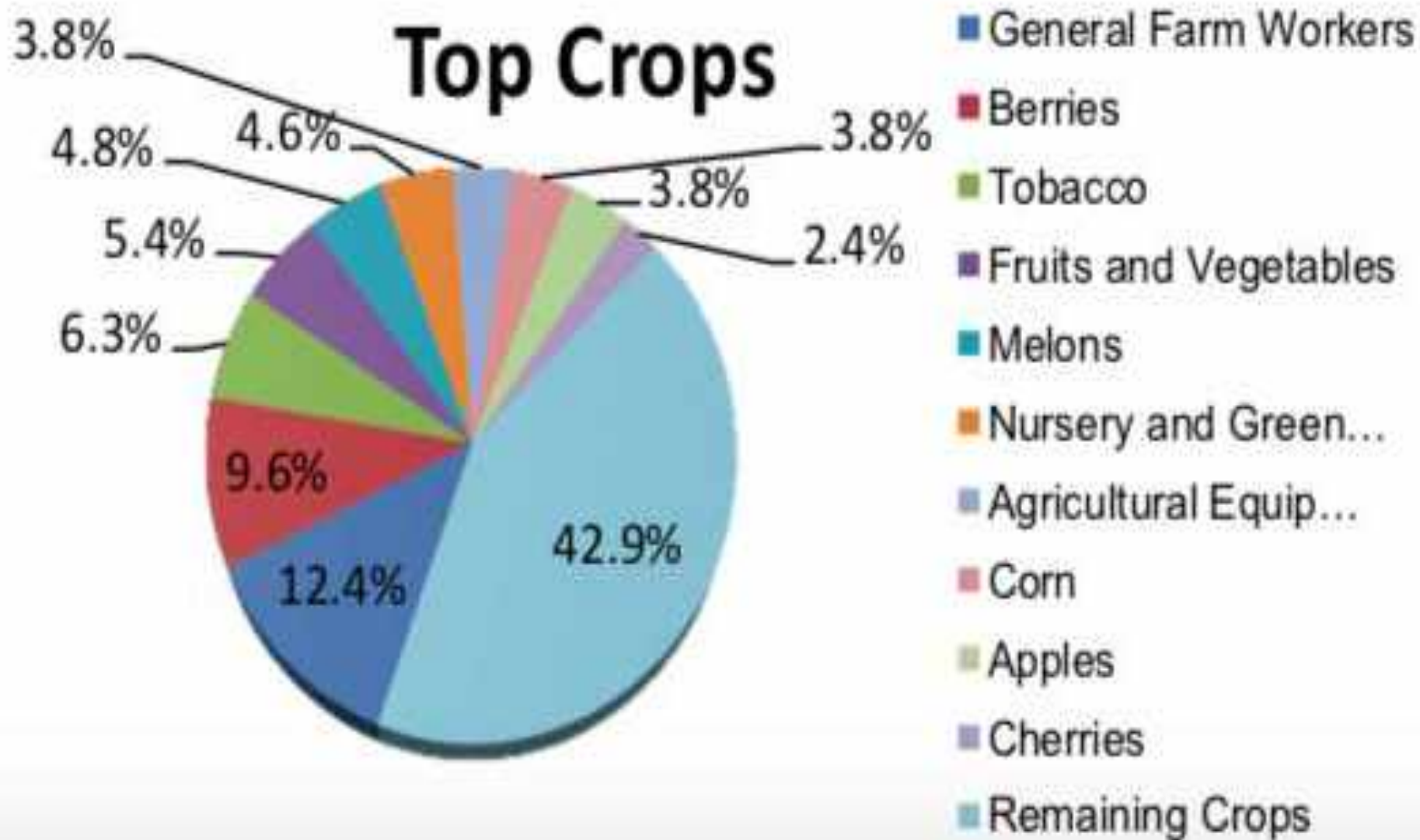
## Applications Processed<sup>3</sup>

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- Withdrawn	258	50	73	62	73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 Timely <sup>3</sup>	86.1%	92.6%	77.5%	85.6%	96.3%

# Top States



# Top Crops



# 2019 Highlights

- April – House negotiations
- July – Trump Dept of Labor publishes Notice of Proposed Rulemaking (NPRM). Late September comment deadline
- Late October – Farm Workforce Modernization Act



# DOL NPRM on H-2A

- Some good
  - Streamlining
  - Staggered entry
- Some not so good
  - Wages – disaggregation taken too far
- Some not addressed
  - “Corresponding employment”

# Two Images that Tell a Story





# What's in a Number? (33)

- *33 is a number with special significance.*
- In the field of Numerology, thirty-three symbolizes a Master Teacher.
- *Religion: in English version of Book of Genesis, God is mentioned 33 times. Jesus was believed to be 33 when he died*
- In nature, the animal kingdom is divided into 33 phyla. The human spine has 33 vertebrae. The sun rises at the exact same spot on the horizon once every 33 years
- ***It's been 33 years since the House of Representatives passed a bill that seeks to address Agriculture's unique labor challenges***

# H.R.5038 – 2019 Political Context

- House must move first. Democrats control House
- House leadership would not advance a bill unless (1) bipartisan, (2) supported by farm worker advocates
- Much common ground on “current workforce”
- More controversy on “guest workers”
- Flash points: **caps**, wages, enforcement rights
- Take-home messages:
  - Compromise...; the Perfect is enemy of good
  - No UFW “bottom line” in House
  - We are not fully bound to “the deal” going forward

# H.R.5038, Farm Workforce Modernization Act



# H.R.5038, Farm Worker Modernization Act

- Three-pronged approach
  - Current workforce stabilization, incentives
  - H-2A changes (mostly improvements)
  - E-Verify, phased in for Agriculture specifically
- Passed House December 11, 260 – 165
- Anatomy of a Victory: champions, old fashioned grassroots, grasstops

# 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:
  - Agricultural work authorization for 5 ½ years
  - Protection of immediate family, Right to travel
  - “U.S. domestic worker” labor protections
- Renewable in 120 day period at end of 5 years
  - Must have worked 100+ days in Ag each year as CAW
  - Not otherwise ineligible
- *NOTE: current H-2A employers shielded from displacement of experienced H-2A’s by CAW worker referrals*

# Optional “LPR” 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
- Penalty - \$1000

# Title II – Modernizing H-2A

- Temporary/Seasonal H-2A **remains uncapped**
- Streamlined electronic platform
- Retains/codifies key elements of current program
- Several cost, flexibility improvements
  - Underlying 3 year visa – saves 2 years of visa costs
  - Job registry posting only. No advertising
  - Active recruitment ends when workers depart for job
  - 50% rule: longer of 30 days or 1/3 of contract
  - “Staggered entry” up to 120 days under single filing



# Required Wage

- “Higher of” construct
- One-year AEWB freeze
- 2021-2029, +3.25 / +4.25% or -1.5% caps
- Once job posted, “promised wage” applies through the contract
- Disaggregation by occupational classification (borrowed from Trump DOL NPRM)
- Post-2029, AEWB replaced by new wage rate based on joint USDA/DOL study and rulemaking

# Housing

- Maintains requirement for employer to provide housing
- Authorizes 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 /3 year admission
- 20,000 cap/year for first 3 years (60,000 total)
  - Half are restricted to dairy industry
- For next 7 years, USDA and DOL jointly determine. Increase 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

# Portable Agricultural Visa Pilot Program

- 6-year pilot program authorizes portable H-2A visas for up to 10,000 workers
- Period of admission up to 3 years; 60 day grace period between jobs to secure new employment
- Employers must register with DHS, may employ these workers “at will”

# Primary Concerns with H-2A Provisions

- Wage disaggregation
  - Too many classifications, highest applicable wage...
  - Lack of clarity regarding primary vs. limited or ancillary tasks
- Cap on non-seasonal/non-temporary visas
- Application of Migrant & Seasonal Ag Worker Protection Act
  - Concern is expansion of “private right of action”
  - Mediation prior to right of action
  - Mixed views based on degree of exposure

# Permanent Residency / Employer Sponsorship

- This is expanded “legal immigration” option, distinct from the earned legalization and H-2A reforms
- Adds 40,000 new visas to employment-based category for “unskilled” labor. Agriculture has first preference
- Employer sponsorship; H-2A visa holders eligible to self-petition after working 10 years/100 days per year

# 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

# The Road Ahead





# Senate Process

- “Own bill” or House bill?
- Bipartisan working group
  - Tillis (R-NC) & Feinstein (D-CA), and....?
- Timelines and considerations
  - Impeachment
  - Primaries
  - Supreme Court
  - Election
- Past as prologue?



## • **H-2A AEWRs**

- 2020 average increase 5.6%
- Setting aside the freeze, most states saw increases greater than the H.R.5038 caps
- IL/IN/OH took biggest hit, 9.5%
- California: \$14.77, 6.1% increase

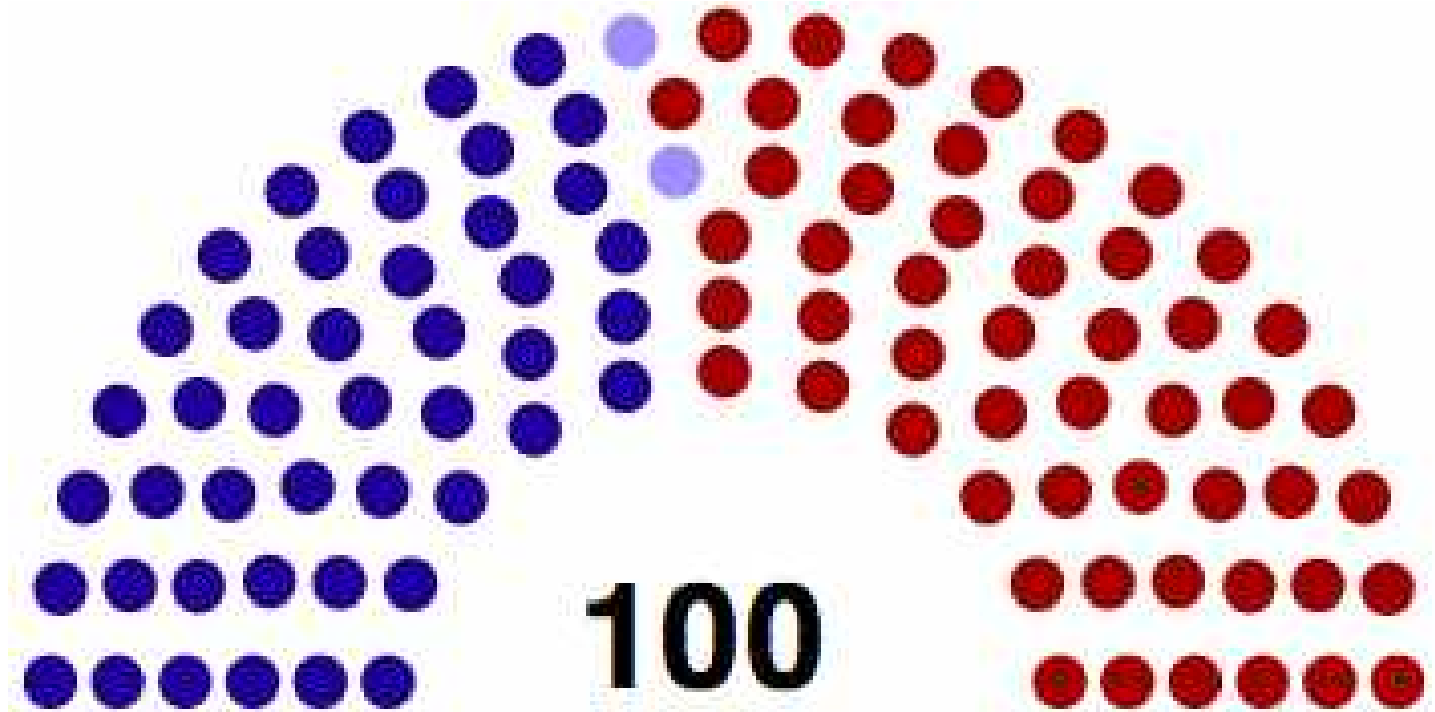
## • **Enforcement**

- SSA No-Match
- I-9 Audits, Raids

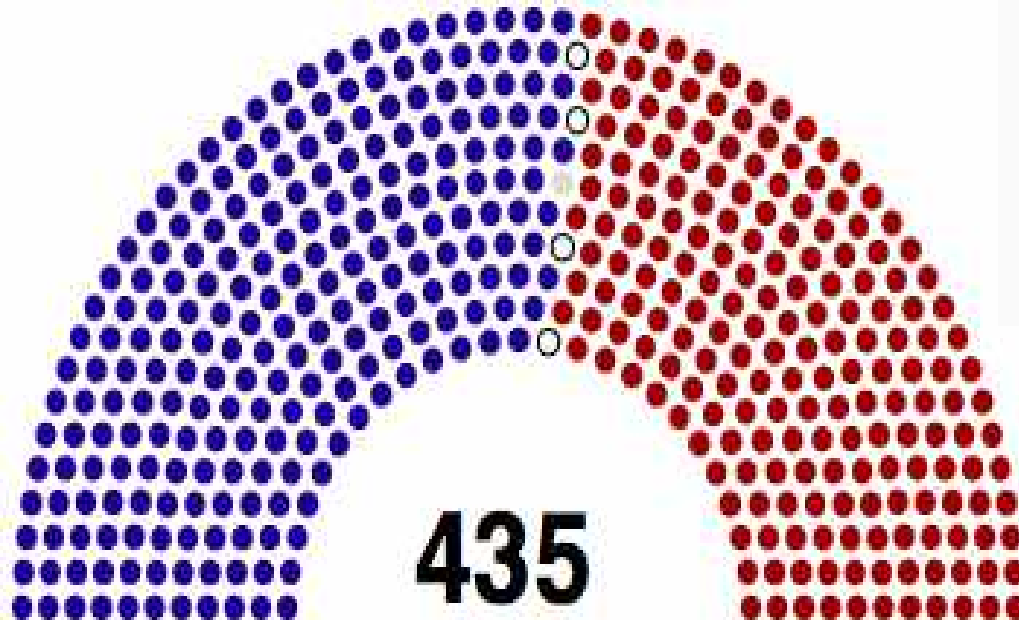




# U.S. Senate



# U.S. House of Representatives



## Political groups

### Majority (232)

 Democratic (232)

### Minority (198)

 Republican (198)

### Other (1)

 Independent (1)

### Vacant (4)

 Vacant (4)

Image Credits: Wikipedia

# “Bold” Predictions

- House Held by Democrats
- GOP ekes and squeaks out a Senate majority, though narrower
- And...



Democrats'  
Nominee

Recession?

# UNCERTAINTY

Stock Market

DACA

Impeachment  
Process

H-2A  
Regulatory  
Reform

Shutdown  
Showdown







What It  
Will Take

