A STRATEGIC FRAMEWORK FOR CREATING LEGALITY AND ORDER IN IMMIGRATION

By Demetrios G. Papademetriou and Will Somerville

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Executive Summary

"Immigration harms"—the various forms of illegality that can result from immigration, and their consequences—undermine the positive economic and social benefits of immigration and in some cases produce economic and social costs that may outweigh the benefits. The risks associated with immigration come in many forms and vary in their nature and severity. Risks of migration include the exploitation of workers, the erosion of working standards, the undermining of formal labor markets, the presence of illegally resident persons that undermine the rule of law, profit to criminal enterprises, government corruption, potential adverse fiscal and welfare consequences, and—at their most severe—violent criminal activity.

Governments must make hard decisions on how to allocate their resources, including choosing which threats to tackle and where to prioritize enforcement efforts. This process is common to public policy regulation across the developed world, but policymakers in the immigration field have often lagged behind other public policy regulators, failing to prioritize resources effectively. In particular, immigration policymakers can learn from efforts to ensure that regulatory actions advance the public interest by undertaking strategic analysis of the nature of the immigration violations involved, the cost-effectiveness and feasibility of different approaches to tackling them, and the range of both intended and unintended consequences that enforcement actions produce, as regulators in other fields do.

In addressing the risks associated with immigration, policymakers have many tools at their disposal. Some policies aim to prevent abuses by disrupting illicit activities or the actors who may perpetrate them *before* they reach the border. This can involve efforts to undermine facilitators and smugglers through, for example, international prosecution or measures to reduce profit from criminal enterprises (such as money-laundering regulations); policies that "harden" physical borders, such as new detection technologies; diplomatic cooperation between countries of destination and those of origin and transit; visa policies specific to certain countries; and measures to reduce prospective migrants' incentives or desire to move.

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Another set of policies targets labor markets. These include sanctions on employers who hire illegally, demand-side reforms aimed at changing incentives in markets with substantial degrees of harm (such as the sex trade or domestic work), the creation of deeper and more flexible *legal* family and labor migration channels that can reduce the presence of illegal flows, and other reforms designed to increase labor market participation and ensure an adequate supply of labor. While some policies are more appropriate for dealing with particular types of violations than others, a comprehensive approach that combines several strategies is likely to have the most impact.

An effective and strategic enforcement regime to tackle immigration harms would have a number of key characteristics. First, governments would continuously generate new evidence and analysis to improve their operational understanding of the nature of the threats they face, the market forces that drive them, and the impact of particular interventions. Second, policymakers would allocate resources by focusing attention on the scale and intensity of the violations, as well as the cost-effectiveness of policies designed to address them. Third, strong partnerships would be forged among government agencies responsible for implementing different components of the immigration harm-reduction strategy. And, finally, governments would base decisions on transparent criteria that all participants in the system can understand and work with, enhancing the authority of immigration agencies to act effectively.

I. Introduction: Approaches to Risk Management and Regulation

Well-managed immigration regimes are ones where flows are safe, legal, and orderly; the rules are transparent; and within reason, systems are managed in the public interest of the receiving country.[1] If these conditions are met, immigration can deliver significant economic and social benefits. In some cases, however, these conditions are not met, creating negative consequences that undermine immigration regimes and public welfare. At their worst, such consequences, or immigration harms, produce economic and social costs that may outweigh the benefits of immigration.

The risks associated with and attributed to immigration come in many forms. They include the exploitation of workers (particularly of immigrant workers themselves), the existence of substantial populations of people without a legal right of residence, pressures that illegally-resident populations may exert on welfare and public services, the erosion of working standards, the undermining of formal labor markets, profit to criminal enterprises, corruption of the legal state and its bureaucracies, potential adverse fiscal and welfare consequences, and at their most severe, the import of violent criminal activity.

The adverse social and economic costs that can arise from immigration are broad and varied.

The adverse social and economic costs that can arise from immigration are broad and varied. Yet political rhetoric and public debate usually revolve around securing borders and promises that "bad actors" will be caught and punished, often without much differentiation between different types of violators.

Officially, governments are seeking to end all types of immigration harm, defined broadly as any violation of existing law. This definition sets a high bar for success, and obscures important distinctions between different abuses. At a more detailed policy level, governments do prioritize certain abuses over others. For example, in the United States, the Department of Homeland Security (DHS) has committed to a doctrine of prosecutorial discretion that aims to primarily target enforcement activities to illegally resident immigrants with criminal records, and does not actively pursue certain other categories (such as high school students without a criminal record). In the United Kingdom, the Border Agency pursues a "harm agenda" that prioritizes the worst offenders. For the most part, however, such priorities are rarely set out clearly and publicly and may be present in theory more than they are in practice. Nevertheless, in most countries unauthorized workers who are "semi-compliant" (for example, are legally resident but working in breach of their visas) are quietly tolerated.

Reassuringly, the challenges of defining key risks and then deciding which risks to target are not unique to immigration enforcement. Public policymakers and regulators across the developed world must assess the risks of different types of harm, stay up to date on their changing nature, and make trade-offs while setting targets.[2]

Comparative analysis of regulation and risk suggests that most enforcement regimes involve a three-step process as they seek to define definitions of harm and set objectives to deal with them.

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1   A more expansive global perspective would include the interests of origin countries and immigrants themselves. We confine ourselves in this report to a receiving-country perspective on risk and harm.
2   Giandomenico Majone, "Regulatory Legitimacy" in *Regulating Europe*, ed. Giandomenico Majone (London: Routledge, 1996): 9. See also Christopher Hood, Oliver James, George Jones, and Tony Travers, *Regulation Inside Government: Waste-Watchers, Quality Police, and Sleaze-Busters* (Oxford: Oxford University Press, 1999).

First, enforcement regimes must compile an accurate picture of the problem through ongoing information gathering (intelligence) and an understanding of trends (usually including a modeling of future trends). Not only must regulators assess the nature of the violation and the actors involved, but they must also identify the underlying drivers of the problem, including the markets that bring it into existence—a need discussed further below. As an example applied to immigration it has been the case for some time that the development of effective policy to combat human trafficking in many countries has been undermined by a lack of detail on the numbers of human traffickers, trafficked people, and routes into particular countries.[3] Better intelligence, where available, has led to a more informed response. In the United Kingdom, for instance, the Human Trafficking Centre offers a template for capturing the data needed for a more informed response. The 2013 discussions of immigration reform in the United States offer another example, as proposed immigration policies involve the development of an exit program tracking who leaves "on time" and who overstays. This intelligence, if linked to visa consular decisionmaking, will be essential to proper risk management.

Second, regulators define the "rules of the game" through standard setting. Setting standards requires making trade-offs, and distinguishing between a more and a less preferred state of affairs. To continue the previous example, anti-trafficking policy has also been undermined by a lack of agreement on the rules of the game, meaning the procedures for dealing with traffickers and trafficked victims. In the United Kingdom, the mechanism for referring trafficking victims became systemized (as the National Referral Mechanism) in 2009 and aligned with the European Union (EU) Directive on trafficking. Such steps, while incomplete,[4] ensure the clarity of standards for how service providers (such as social workers) and enforcement bodies (such as the police) deal with trafficking victims.

Two common principles in regulation enforcement that are not typically applied in immigration enforcement are proportionality and repetition.

Third, regulators attempt to modify the behavior of a range of actors in order to increase compliance with standards, using a variety of tools. Here, well-established regulatory principles[5] can also help determine the type of enforcement action. Two common principles in regulation enforcement that are not typically applied in immigration enforcement are proportionality and repetition: the enforcement action should be proportional to the type and level of harm caused, and the enforcement action should reduce the likelihood of repetition.

Another principle of risk regulatory regimes is flexibility or the ability to adapt to changed circumstances (for example to new or improved intelligence). Again, not all immigration systems are flexible, hampering agencies' ability to do their work. For instance, strict quotas on workers that are not informed by the economic cycle may lead to greater numbers of illegal workers in times of boom and unemployment (economic scarring) of incoming legal workers in times of bust.

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3   International Organization for Migration (IOM), *Deceived Migrants from Tajikistan: A Study of Trafficking in Women and Children* (Geneva: IOM, 2001), www.iom.tj/pubs/trafficking_2001.pdf.
4   Centre for Social Justice (CSJ), *It Happens Here: Equipping the United Kingdom to Fight Modern Slavery* (London: CSJ, 2013): 67-82, www.centreforsocialjustice.org.uk/publications/it-happens-here-equipping-the-united-kingdom-to-fight-modern-slavery.
5   Philip Hampton, *Reducing Administrative Burdens: Effective Inspection and Enforcement* (London: HM Treasury, 2005), www.bis.gov.uk/files/file22988.pdf.

II. Immigration and the Public Interest

Determining the harmful aspects of immigration—that is, those that cause the greatest injury to the public interest—is a complicated task. Policymakers must consider both the *degree of the threat* to the public interest and the *force of the market drivers* behind it. Determining the degree of the threat typically involves some type of cost-benefit analysis in which enforcement action—whether preventative or reactive—would likely yield significant benefits to the welfare of citizens, while a lack of enforcement action would have deleterious consequences.[6] Immigration risks range from serious violations that pose clear consequences for public safety and public order, to lesser ones (such as the presence of legally resident immigrants working in the formal economy but not in full compliance with their visa conditions) whose relative costs and benefits are not obvious.

> *Policymakers must consider both the degree of the threat to the public interest and the force of the market drivers behind it.*

In addition to assessing the nature of the harm and its potential threat to the public interest, policymakers must also seek to understand the force of the market drivers behind a given problem. In some cases, such as informal economic activity in certain sectors, violations are possible because a wide range of actors have economic incentives to flout the law, and are at low risk of apprehension and sanction. More severe violations are perpetrated by fewer actors who face higher risk but derive substantial profits. Where the markets that drive immigration harms are deeply entrenched and provide profits to a wide range of individuals, the enforcement task can be more difficult. Policies meant to disrupt harmful activities may be less effective if governments do not tackle the underlying market drivers.

Gauging the force of these market drivers in the immigration context can be done in a number of ways, including by analyzing the level of informal labor in a sector of the economy, looking at data on labor law compliance, and gathering information from redress mechanisms.

How policymakers view the degree of a threat and the market forces that drive it will be contingent on country context. Different governments have different immigration regimes in place and different institutional architectures that enforce compliance and reduce violations. At least four system-shaping variables are important to consider when determining how a particular government views immigration-related risk:[7]

- *Legislation and existing immigration rules and regulations.* Governments have a legislative framework that defines immigration violations of various forms, and many have had relevant regulations and laws grafted onto their systems over many years. For instance, the vast majority of European governments are signatories to the Council of Europe *Convention on Action against Trafficking in Human Beings* and the EU directive on trafficking in human beings, providing clear standards and a shared understanding of how trafficking victims should be treated.[8]

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6   Such a judgment may not be made entirely on a structured cost-benefit analysis, but nearly all regulators make judgments on the degree of risk from the welfare economics perspective developed at the University of Chicago in the 1920s and 1930s. This perspective is the basis of nearly all cost-benefit analyses today.

7   Christopher Hood, Henry Rothstein, and Robert Baldwin, *The Government of Risk* (Oxford: Oxford University Press, 2001).

8   See Council of Europe, *Convention on Action against Trafficking in Human Beings*, Warsaw, 16.V.2005, http://conventions.coe.int/Treaty/en/Treaties/Html/197.htm; and European Parliament and Council of the European Union, "Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims," April 5, 2011, http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:101:0001:0011:EN:PDF.

- *Political salience.* The political salience of immigration-related violations is particularly relevant to governments' likely tolerance of them. In most countries, immigration is of high political salience, and political direction is important to enforcement activities (where short-term crises of various forms can determine priorities).

- *Public preferences.* Immigration is periodically found to be among the top concerns of electorates (partly explaining the political salience of harms associated with immigration). Furthermore, publics generally believe that immigration systems are managed poorly,[9] and their confidence and trust in enforcement systems are often low.

- *Organized interests.* Organized interests, especially business and organized labor, play important roles in determining how immigration violations are understood and the likely enforcement responses. For instance, in many countries, regulatory changes in certain economic sectors (or enforcement action against employers) may be effectively resisted.

Of course, a full understanding of both the degree of a threat and the market forces that drive it requires substantial intelligence gathering and an independent evidence base. For such a contested subject as immigration harm, ongoing intelligence gathering and independent evidence are essential, yet difficult to gather.

A.   The Public Interest Test

While understanding the problem better can help policymakers categorize immigration harms, they must still choose which violations to target. When making such decisions, the concept of a public interest "test" can be helpful. In such a test, whether an action will advance the public interest is assessed by the competent regulatory authority carefully considering a series of questions: Does the violation impact regulatory authority? What are the costs and benefits of enforcement action, and for what stakeholders? (For example, what are the costs of compliance for private actors such as employers and immigrant workers?) Is the problem likely to increase or decrease over time? How will action—or the lack of action—affect public confidence in the system? How serious are the abuses, and for who?

Decisions made with reference to these (and other) considerations will be better placed to prioritize the most extreme violations while avoiding the dangers of short-term political interference, organizational capture, and temporary swings of public opinion.[10]

B.   Sling Shots and Boomerangs

However resources are allocated and priorities chosen, policymakers must be sensitive to unintended and perverse consequences. The interdependence of different levers and the possible creation of new incentives for illicit activity must be understood, or problems will multiply. The policymaking ideal is for each action to have its *intended consequence*—a precise policy slingshot—but a common problem with policy action is the unintended consequences that boomerang back.

There are many examples of such boomerangs in the context of immigration policy. To take two linked examples: over the past decade and especially since 9/11 many developed countries have increased the technical and physical security of land borders with poorer neighboring countries. Many have also made it more difficult to forge travel documents, by introducing measures such as biometric passports. Measuring the impacts is not easy, but it is widely agreed that such measures have reduced the numbers of illegal crossers and the use of illegal documentation, thereby reducing the harms of illegal immigration. For

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9   This is not always the case. Publics in Germany and Canada have much higher levels of faith in their government's ability to manage immigration for example.

10   Martin Minogue, "Governance-Based Analysis of Regulation" (working paper no. 3, University of Manchester, Center on Regulation and Competition, October 2001), http://ageconsearch.umn.edu/bitstream/30590/1/cr010003.pdf.

instance, walking across the U.S.-Mexico border is no longer easy. Faking a Japanese passport (which was once handwritten and could be altered with lemon juice and a pen) is no longer a simple proposition.

However, the unintended consequence of both types of actions has been that the "price" of entry into these developed nations has increased and as a consequence, the involvement of organized crime in immigration has increased too.[11] Enriched by growing profits, criminal and smuggling networks now have the resources to corrupt officials and access the machinery needed for high-quality fake identity cards or passports. Many of the "mom and pop" operations smuggling people across the U.S.-Mexico border in the 1990s have given way to criminal cartels.[12] The remaining ones enrich the cartels further by paying "rent" to them for the privilege of moving migrants through their territory.[13] Moreover, forging more sophisticated documents can involve significant corruption across immigration bureaucracies and highly sophisticated acts of fraud (such as the use of contact lenses to alter irises for iris scans). In other words, strong enforcement action may be followed by diversionary activity.

> *Many of the "mom and pop" operations smuggling people across the U.S.-Mexico border in the 1990s have given way to criminal cartels.*

Immigration policymakers also face the implications of events outside their control, including decisions made by other departments and supported by various interest groups. For instance, an increase in unauthorized Mexican immigrants to the United States over the last four decades was partly the result of a 1964 congressional vote (achieved in part through pressure from civil-rights campaigners concerned about substantial levels of exploitation)[14] to end a legal temporary worker program known as the Bracero program. The elimination of this program turned previously legal workers into illegal workers.

III.   Policy Tools

Policymakers have an arsenal of policy tools available to them to mitigate or end immigration-related violations. In selecting these, two considerations are paramount. The first is whether to focus on *severity* or *ubiquity*: should policymakers pursue the worst actors and the most extreme abuses (a targeted model), or focus on a larger swath of harmful activity (a universal model)? The second consideration is whether to *destroy* the harm (by focusing on root causes, such as underlying drivers) or *disrupt* it (through containment measures, for example).[15] Figure 1 depicts these two axes.

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11   Bryan Roberts, Gordon Hanson, Derekh Cornwell, and Scott Borger, "An Analysis of Migrant Smuggling Costs along the Southwest Border" (working paper, Office of Immigration Statistics, Department of Homeland Security, Washington, DC, November 2010), www.dhs.gov/xlibrary/assets/statistics/publications/ois-smuggling-wp.pdf; and Randall Hansen and Demetrios G. Papademetriou, *The Intended, Unintended, and Perverse Consequences of Securing Borders* (Washington, DC: Migration Policy Institute, 2014). www.migrationpolicy.org/pubs/TCM-SecuringBorders-UnintendedConsequences.pdf.

12   Jeff Tietz, "The U.S.-Mexico Border's 150 Miles of Hell," *Men's Health*, April 2012, www.mensjournal.com/150-miles-of-hell.

13   Hansen and Papademetriou, *The Intended, Unintended, and Perverse Consequences of Securing Borders.*

14   Douglas S. Massey and Karen A. Pren, "Unintended Consequences of US Immigration Policy: Explaining the Post-1965 Surge from Latin America," *Population and Development Review* 38, no. 1 (2012): 1–29.

15   Demetrios G. Papademetriou, Will Somerville, and Elizabeth Collett, *Goals of Enforcement: Understanding the Rationale and Means for Addressing Unauthorized Migrant Populations* (Washington, DC: Migration Policy Institute, 2012 unpublished).

Figure 1. Enforcement Priorities: A Matrix of Approaches

The first axis (narrow-wide) is the difference between severity and ubiquity. Policymakers can address the *most severe abuses* associated with immigration (a narrow approach) or actors and activities causing *lesser harm but in greater numbers* (a wide approach). The second axis refers to policymakers' choice to disrupt or destroy. For example, should a criminal enterprise be disrupted and inconvenienced through criminal prosecution and incarceration or destroyed through removal of demand? In other words, should policymakers pursue a root-cause solution to the problem (destruction) or simply reduce it, even if only on a temporary basis (disruption)?

Such choices usually come into play when deciding how to allocate resources. For instance, should officials commit resources to closing down a brothel (wide, disrupt), prosecuting individual sex workers and those buying sex (wide, destroy), seizing the owner's financial assets (narrow, disrupt), or incarcerating the brothel owner(s) and/or the trafficker(s) of prostitutes (narrow, destroy)?

In practice, these approaches overlap and often work in concert. The binary distinctions noted are simply reductions of more sophisticated risk assessments. Interviews with policymakers involved in enforcement nearly always highlight the need for a great deal of flexibility—aided by opportunity and serendipity—when seeking to end a particular type of abuse in a cost-effective and reasonably easy way. Policymakers are also subject to external constraints that may alter how they proceed. That said, the two axes in Figure 1 offer a useful entry point for conceptualizing action and formulating the more sophisticated risk assessment framework that this report recommends to policy practitioners.

We now examine the various policy tools that are available for addressing migration-related violations, and assess their effectiveness. Some policies aim to prevent violations by disrupting harmful activity or the actors who may perpetrate it *before* they reach the border. This can involve efforts to penetrate and cripple facilitators and smugglers through, for example, international prosecution or efforts to reduce profit from criminal enterprises (such as money-laundering regulations); policies that "harden" physical borders, often through the use of new detection technologies; diplomatic cooperation between destination countries and those of origin and transit; visa policies specific to certain countries; and measures to reduce prospective migrants' incentives or desires to move.

Another set of policies targets labor markets. These include sanctions on employers who hire illegally, demand-side reforms aimed at changing incentives in markets with substantial degrees of harm (such as the sex trade or domestic work),[16] the creation of deeper and more flexible *legal* family and labor migration channels that can reduce the presence of unauthorized immigrants, and other reforms designed to increase labor market participation and ensure an adequate supply of labor.

Finally, a set of policies aims to reduce the risks associated with the large numbers of unauthorized immigrants present in most developed countries. Such policies include increasing returns and removals, restricting entitlements and welfare, and enacting various legalization programs.

We organize these policies into ten categories:

1. Early interventions that disrupt illegal flows before they reach the border

2. Cooperation between destination countries and those of origin and transit

3. Border security efforts

4. Policies targeting organized immigration crime

5. Policies for reforming selection systems and opening legal migration channels

6. Employer sanctions and labor standards

7. Demand-side reforms

8. An increase in returns and removals

9. Legalization

10. Policies that limit welfare services.

The complexity of the problem means that there is no silver bullet; governments that are serious about immigration-related abuses must undertake a series of complementary measures rather than embarking upon either single or unilateral action. Furthermore, each of these policy types—described in detail below—should be seen in this light: as complementary and interdependent, requiring a "whole-of-government" approach to the problem, with a focus on gaining the trust and cooperation of civil society to ensure a common purpose to the largest degree possible.[17] The scope of this report does not encompass all the elements needed for such a whole-of-government approach. In particular, good governance and prosecution of all forms of corruption are important.

A.   *Early Interventions that Disrupt Illegal Flows Before They Reach the Border*

Early or "upstream" policy interventions aim to reduce illegal immigration flows (including those of trafficked and smuggled people) before they arrive at a country's borders.[18] These interventions can include changes to visa policy to prevent the entry of certain categories of migrants (such as those likely

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16 Meghan Benton, *Spheres of Exploitation: Thwarting Actors Who Profit from Illegal Labor, Domestic Servitude, and Sex Work* (Washington, DC: Migration Policy Institute, 2014), www.migrationpolicy.org/pubs/TCM-Migration-Exploitation.pdf.

17 Note that for European countries in particular, any solution must also take account of levels of governance. The European Union has lawmaking powers in the "competence" or area of illegal immigration.

18 They are also known as interception measures. The United Nations High Commissioner for Refugees (UNHCR) defines interception measures as those "applied by a state, outside its national territory, in order to prevent, interrupt or stop the movement of persons without the required documentation crossing international borders by land, air or sea, and making their way to the country of prospective destination." See UNHCR, "Interception of Asylum-Seekers and Refugees: The International Framework and Recommendations for a Comprehensive Approach" (paper prepared for the Executive Committee of the High Commissioner's program, 18th meeting of the Standing Committee, June 9, 2000), www.unhcr.org/4963237411.pdf.

to overstay), efforts to improve document integrity, cooperation between destination countries and sending and transit countries, the regulation of transport carriers, the aggressive prosecution of movers and facilitators of illegal migration, and information and marketing campaigns in countries of origin.

In the recent past, and especially among European governments, upstream interventions have focused on reducing asylum flows, but have subsequently been applied to organized immigration crime and the clandestine entry of those without protection needs. The objective has been to cripple the operating capacity of cartels and other trafficking and smuggling operations.

Upstream interventions may not impress publics eager for progress on immigration control and are difficult for immigration agencies to present as tangible successes.

Evidence suggests these activities have proved relatively effective in reducing flows, and therefore abuses, defined as the number of people in a country who have been smuggled and trafficked.[19] However, since early interventions are often targeted at asylum seekers, they raise concerns about human rights, as asylum seekers are often detained or turned back because of measures aimed at catching migration criminals. Human-rights advocates identify upstream interventions as a major state trend and argue that in many cases they contravene international law, especially on humanitarian protection.[20] From a political perspective, upstream interventions may not impress publics eager for progress on immigration control and are difficult for immigration agencies to present as tangible successes. They may also require the cooperation of authorities in sending and transit countries, requiring diplomatic investments.

Policymakers can adjust at least four sets of policy parameters when designing upstream interventions to reduce the flows of illegal immigration.

First, policymakers can use national visa regimes to prevent the travel of undesirable individuals. For example, the United States' Visa Waiver Program (VWP) makes countries' membership largely contingent on visa refusal rates. U.S. legislation states that in the future, when entry-exit systems are in place, VWP membership should be conditional on visa overstay rates.[21] Many countries also require transit visas. For example, the United Kingdom's additional transit visa (the Direct Airside Transit Visa, or DATV) was originally set up for nationals of asylum-producing countries and proved effective in reducing asylum claims. Future visa systems, relying on biometric markers as opposed to documents, will allow the increasing refinement of visa regimes with a view to reducing certain flows, provided that analytical capacity is in place.

Second, policymakers now require airlines, trucking firms, and other transportation operators to carry out checks to prevent illegal entry, such as the examination of passports on international flights or vehicle sweeps carried out by drivers of haulage vehicles. These requirements are backed up by sanctions or penalties applicable to commercial carriers, and are thought to have successfully reduced illegal immigration.[22]

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19 See for example, Roger Zetter, David Griffiths, Silva Ferretti, and Martyn Pearl, *An Assessment of the Impact of Asylum Policies in Europe 1990-2000* (London: Home Office Research, Development, and Statistics Directorate, 2003), www.homeoffice.gov. uk/rds/pdfs2/hors259.pdf.

20 For an overview, see Sile Reynolds and Helen Muggeridge, *Remote Controls: How UK Border Controls are Endangering the Lives of Refugees* (London: Refugee Council, 2008), www.refugeecouncil.org.uk/Resources/Refugee%20Council/downloads/re-searchreports/Remote%20Controls.pdf.

21 Rey Koslowski, *The Evolution of Border Controls as a Mechanism to Reduce Illegal Immigration* (Washington, DC: Migration Policy Institute, 2011), www.migrationpolicy.org/pubs/bordercontrols-koslowski.pdf.

22 Reynolds and Muggeridge, *Remote Controls,* 47.

Third, policymakers can build on existing foreign policy platforms with other governments. This might include joint funding and joint working arrangements at border crossings (as happens across the Schengen area in Europe and at the U.S.-Canada border); border controls set up in a foreign country's territory (for example, the UK-France and UK-Belgium controls at Calais, Paris, and Brussels as well as similar arrangements between the United States and both neighboring and non-neighboring countries, such as Canada and Ireland); co-located immigration staff in consulates, embassies, and other agencies in countries considered to be sources of illegal immigration (for example, the U.S. Department of Homeland Security has a strong presence in many countries); and the increasingly explicit inclusion of illegal immigration controls in foreign policy discussions.[23] Cross-governmental cooperation is increasing rapidly.

Finally, policymakers can develop information campaigns and additional immigration and border capacity abroad in key source countries. For example, information campaigns often aim to influence immigrant decisionmaking in source or transit countries using advertising (for example, on television, radio, or billboards) or even by influencing plotlines in popular television series such as soap operas. Marketing may be aimed at attracting particular groups of immigrants or trying to deter them from coming to a particular country. Despite significant investment, however, there is little evaluation of the effectiveness of communications interventions. Some of the better-evaluated campaigns have been aimed at the potential victims of trafficking. Western European governments, usually through the International Organization for Migration (IOM), and nongovernmental organizations and foundations, notably MTV EXIT in Europe, have operated many of these campaigns. The campaigns do not have an obvious impact on behavior: prospective immigrants may dismiss the information as biased or incorrect. And in cases where repeat trafficking has occurred, the pull and push factors may be far more powerful than dissuasion campaigns.[24]

Enhanced border control may include developing border capacities in other countries, for example, by providing training for border guards, infrastructure assistance, or new equipment.

Information campaigns aimed at deterring movement appear to lack value for money on the slim evidence available. By contrast, there is clear evidence that forced returns to a country (especially if backed by both governments) as well as enforcement measures are effective in sending signals to prospective immigrants, and have at least a short-term deterrence effect on movement.

Enhanced border control may include developing border capacities in other countries, for example, by providing training for border guards, infrastructure assistance, or new equipment. Both the United States and the European Union use such assistance liberally. Again, there is little evidence on whether these measures are effective, but they are seen nonetheless as critical to building foreign policy relationships, especially with key source countries; controls on particular flows of migrants are a desired byproduct.

Policies that "expand the border," as all those above do, have been negatively received by civil-society actors. They have also received strong academic critiques.[25] By increasing the price of entry, governments

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23 Note that virtually all Organization for Economic Cooperation and Development (OECD) governments have resisted the inclusion of immigration as a negotiable matter in and of itself (rather than a lever counterbalanced by a gain on another issue such as technical assistance or trade) or as a development issue.

24 See Jørgen Carling and Maria Hernandez-Carretero, "Protecting Europe and Protecting Migrants? Strategies for Managing Unauthorised Migration from Africa," *British Journal of Politics and International Relations* 13, no. 1 (2011): 49; and, especially, Céline Nieuwenhuys and Antoine Pécoud, "Human Trafficking, Information Campaigns, and Strategies of Migration Control," *American Behavioral Scientist* 50, no. 12 (2007): 1674-95.

25 Virginie Guiraudon, "Enlisting Third Parties in Border Control: A Comparative Study of its Causes and Consequences," in *Borders and Security Governance*, eds. Marina Caparini and Otwin Marenin (Geneva: Geneva Centre for the Democratic Control of Armed Forces, 2006).

may also unintentionally increase the profit for criminal enterprises, indirectly encouraging them to facilitate illegal immigration. However, in governments across the Organization for Economic Cooperation and Development (OECD), policy measures to expand the border are viewed as effective instruments to reduce violations, especially the numbers of unauthorized immigrants coming into a country, and as useful tools for disrupting trafficking and smuggling operations.

B.   *Cooperation between Destination Countries and Those of Origin and Transit*

Cooperation beyond the border mainly involves returning unauthorized immigrants already in destination countries. (There is also cooperation around development, predeparture tests, and so on, but significantly more resources are allocated to returns). Cooperation reduces the risks associated with illegal immigration, potentially including the exploitation of unauthorized immigrants themselves, by reducing numbers and ensuring that the rule of law is observed. Of course, state observance of international jurisprudence on the human rights of individuals is not always guaranteed. Cooperation also encompasses agreement on international criminal law and the management of criminal prosecutions and shared intelligence.

Governments have made substantial efforts to secure readmission agreements for the repatriation of unauthorized immigrants to their countries of origin.[26] Most readmission agreements are bilateral, and their number has risen dramatically since the 1990s,[27] especially in the European Union. Evaluations provide a mixed report of their effectiveness, noting the length of time taken to negotiate them, their limited use by governments, and concerns over circumvention of human-rights law.[28]

A notch below formal state treaties, memoranda of understanding (MOUs) and operational agreements form an important level of international cooperation. These agreements lack the imprimatur and binding nature of international law, but governments often claim that they are more effective. However, many civil-society actors express concerns that the proliferation of such agreements poses risks to human rights and other protections at critical levels, especially those related to the fundamental customary international laws of seeking asylum and non-refoulement.

In addition to bilateral agreements (either state treaties or operational agreements), examples of multilateral cooperation exist. In Europe, for example, there is increasing multilateral cooperation on a European Immigration Crime Strategy (which broadens information sharing and capacity to deal with trafficking and smuggling threats).[29]

C.   *Border Security Efforts*

Border security aims to prevent the entry of bad actors and those associated with their activities, such as trafficked or smuggled people. Technological developments have increased border security, though often with a weighty price tag. These developments include biometric identification and surveillance technology to detect and stop clandestine entry, such as heat and carbon dioxide sensors, observation cameras,

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26   Readmission agreements are state treaties, typically bilateral, in which a (source) country agrees to accept an individual who lacks identification but is understood to be a national of that country. Agreements safeguard individuals' security, allow travel documents to be issued, and so on.

27   Jean-Pierre Cassarino, ed., *Unbalanced Reciprocities: Cooperation on Readmission in the Euro-Mediterranean Area* (Washington, DC: Middle East Institute, 2010). In July 2010, the twelfth European readmission agreement (with Pakistan) entered into force, after ten years of negotiations.

28   European Commission, "Communication from the Commission to the European Parliament and the Council: Evaluation of EU Readmission Agreements," Brussels, February 23, 2011, http://ec.europa.eu/home-affairs/news/intro/docs/COMM_PDF_COM_2011_0076_F_EN_COMMUNICATION.pdf.

29   For a more detailed discussion of the relationship between cooperation beyond the border and third-country relations, see Demetrios G. Papademetriou and Elizabeth Collett, *A New Architecture for Border Management* (Washington, DC: Migration Policy Institute, 2011), www.migrationpolicy.org/pubs/borderarchitecture.pdf.

and even sophisticated unmanned drones (like those employed along the southern U.S. border). These new technologies are deployed in tandem with (and may rely on) more traditional measures, such as increased staffing and border fencing.

Investment in sea and land ports of entry has been shown to reduce the flow of unauthorized immigrants. For example, Jørgen Carling and María Hernández-Carretero note that Frontex maritime patrols surveilling the waters of Mauritania, Senegal, and Cape Verde by sea and air (in an initiative launched in 2006 and known as Hera II) led to a 75 percent reduction in arrivals to the Canary Islands in two years.[30]

However, other empirical analyses have shown that such border controls produce undesired results: illegal flows are displaced to other entry points, more unauthorized immigrants enter by legal means or are smuggled, and the number of people making multiple attempts at crossings also increases.[31] These factors put into question the cost-benefit ratio of border investments in countries with extensive and accessible borders.[32]

> *Technological developments have increased border security, though often with a weighty price tag.*

While border controls appear to have had a deterrent effect as they increase the risks for individual immigrants, massive increases in funding for border enforcement have not always led to major reductions in flows, with the U.S.-Mexico border as a possible exception. Border controls also have had some downsides, such as increases in transit time due to border checks. Overall, border security is not a policy tool that attacks the root causes of the problem, and economic and family unification incentives often outweigh the deterrent effects of even the most sophisticated and well-resourced border controls.[33]

D. Policies Targeting Organized Immigration Crime

A number of law enforcement tools are aimed at organized immigration crime. To destroy organized immigration crime requires systemic action in and between governments, including cooperative efforts to prosecute and incarcerate the leadership of criminal groups. Such systemic action nearly always requires partnership with a multilateral organization (such as Interpol or Europol). Governments can rely on a long list of international law instruments to combat organized crime, ranging from international arrest warrants to legal instruments on trafficked persons. However, measures like these need a high level of cooperation and substantial intelligence. For example, analysis of Turkish organized immigration crime—the country is a major hub of unauthorized immigration facilitation, trafficking, and smuggling into Europe—found criminals with 68 different nationalities working with a series of Turkish criminal gangs.[34]

Disruption efforts are cheaper and may ultimately be more effective than attempts to destroy criminal organizations. Measures to counter corruption and successfully prosecute criminal leaders are high-risk, long-term efforts subject to many variables. Classic disruption tools include money-laundering regulations and a focus on recovering financial assets. However, these tools also require substantial internal government cooperation (typically from finance ministries), which in turn requires patience, resources, and joint work from immigration policymakers.

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30 Frontex is the European Union border management agency. Carling and Hernandez-Carretero, "Protecting Europe and Protecting Migrants?," 47–9.

31 For example, see Wayne Cornelius and Idean Salehyan, "Does Border Enforcement Deter Unauthorized Immigration? The Case of Mexican Migration to the United States of America," *Regulation and Governance* 1, no. 2 (2007): 139-53.

32 Koslowski, *The Evolution of Border Controls.*

33 Cornelius and Salehyan, "Does Border Enforcement Deter Unauthorized Immigration?," 140.

34 Louise Shelley, *Human Smuggling and Trafficking: A Comparative Perspective* (Washington, DC: Migration Policy Institute, forthcoming). See also Mark Galeotti, "Turkish Organized Crime: Where State, Crime, and Rebellion Conspire," *Transnational Organized Crime* 4, no. 1 (1998): 25–42.

E. *Policies for Reforming Selection Systems and Opening Legal Migration Channels*

The policy tools noted thus far tend toward control and do not generally address the root causes of immigration harms. To be effective, policymakers must look beyond such approaches and complement them with other levers.

Adjustments to the selection of *legal* immigrants could potentially reduce irregular immigration and certain types of abuses such as smuggling, but only if carefully calibrated. It is widely thought that opening up and expanding legal routes to meet labor demand reduces the pressures of illegal migration: if allowed to do so, most immigrants choose to enter legally. Opening legal routes also reduces crime by lowering the profit margins for those seeking to facilitate illegal entry.[35] Furthermore, immigrants who have legal rights are able to press for those rights to be exercised, with better ability to hold employers to account.

However, it is too simplistic to just open up significant new legal immigration channels. Network effects can mean that legal migration sustains demand for further migration, both legal and illegal, as relatives, friends, and acquaintances also seek to migrate. There is no serious quantitative evidence of how legal immigration impacts illegal immigration. Certain legal routes, such as domestic worker visas in several countries, may be open to misuse or lead to increased exploitation[36] (such that policies to reduce one type of violation may increase another). In addition, increasing migration may conflict with other policy goals, for example policy goals relating to countries' education, welfare, and training systems.

Revising a selection system involves three types of policy measures: expanding legal channels, increasing flexibility, and simplifying the system. First, some legal channels can be opened up to economic sectors in periods of high demand, or where firms would not be able to operate without immigrant labor. Absent such action, it is highly probable that illegal immigration flows and negative impacts associated with them will follow. Inevitably, some workers who enter under targeted visas of this kind would not have entered illegally in their absence, but careful selection of which occupations or source countries to target should help divert illegal flows through legal channels more effectively.

Second, increased flexibility within the system can mitigate the drivers of illegality. Complex and time-consuming procedures for renewing visas can push authorized workers into illegal status even if they are eligible for a new visa. Policy options to reduce avoidable illegality could include reducing the administrative barriers to switching visas, especially in-country; revising terms and conditions to allow greater numbers of work opportunities; and extending certain temporary visas. Well-designed reforms can also result in cost savings if targeted appropriately.

Third, employers sometimes do not comply with immigration laws because such laws are too burdensome, involving numerous administrative requirements, visa fees, and compliance with other terms and conditions. For example, the strict terms of the U.S. H-2A visa for temporary agricultural workers are widely thought to have discouraged the use of legal immigrant workers in the U.S. agricultural sector.[37] The terms of the visa require employers to provide government-inspected housing, guarantee a minimum number of hours' pay, and commit to hire any qualified U.S. worker who applies for the job for a set period even after the foreign worker has started work.

It is also worth noting that the overall operation of the immigration system is critical to a functioning enforcement program. Immigration systems with backlogs or inadequate systems of redress inadvertently encourage illegality. For illustration, one could point to U.S. backlogs of *approved* family visas, whose processing takes so long that some family members immigrate illegally.

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35   Shelley, *Human Smuggling and Trafficking*.
36   Benton, *Spheres of Exploitation*.
37   Madeleine Sumption, *Policies to Curb Unauthorized Employment* (Washington, DC: Migration Policy Institute, 2011), www.migrationpolicy.org/pubs/unauthorizedemployment-2011.pdf.

F.   *Employer Sanctions and Labor Standards*

Employers are critical agents in sustaining the illegally resident population and other negative aspects of immigration, unwittingly or not. Employers may have an incentive to hire unauthorized workers in order to pay lower wages, reduce nonlabor costs (such as health care, social protection contributions, and other employee benefits, which in some countries are substantial), or benefit from such workers' flexibility and willingness to work open-ended, irregular, or even exploitative hours. In countries where nonlabor costs are minimal and legal wages low, employers in some occupations may hire illegally simply because resident workers tend to have little interest in such jobs.

Employer sanctions use the threat of substantial fines, and in some countries criminal charges, to seek to deter employers from hiring unauthorized immigrants. Policies differ across countries, as do the types of sanctions, their scale, and whether they are implemented. As with other types of regulatory deterrence mechanisms, their efficacy is contingent on several factors. In particular, the level of on-the-ground intelligence available to regulators, the type of sanction (usually penalty size but also the legal consequences of noncompliance), and the vigor with which rules are enforced, all affect the decisions of employers to hire unauthorized immigrants.[38]

Employers are critical agents in sustaining the illegally resident population and other negative aspects of immigration, unwittingly or not.

Virtually all wealthy countries have employer sanctions regimes, but enforcement is often limited. Targeted employers may escape paying fines, in part because proving their complicity in illegal activity is difficult.[39] Evidence indicates that sanctions regimes have limited effect. For instance, a U.S. sanctions program introduced in 1986 had a short-term impact on employers' incentives to recruit workers illegally, but its effectiveness over the long term has been widely questioned.[40] Similarly, while the new EU sanctions directive requires Member States to implement their own employer sanctions regimes and for 10 percent of companies to be audited every year, the audit target is on paper only.

The implementation of sanctions regimes differs by country. The size and nature of sanctions (from fines to criminal charges) vary widely, and enforcement duties may fall to labor inspectors, tax investigators, or immigration officers.[41] These differing regimes do face some common challenges, however, which are detailed below:

- *Ensuring accuracy.* First, sanctions regimes rely on accurate processes to enable employers to verify work authorization *and* the identity of workers. Without such accuracy, investigators may be unable to prove that employers knowingly hired unauthorized workers (indeed, in some countries inspectors prefer to prosecute for offenses, such as undeclared employment, that are easier to prove).[42]

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38   Sumption, *Policies to Curb Unauthorized Employment.* Both of these categories of intervention are aimed at those already working; thinking through the *flow* of labor is also crucial, and was addressed above.

39   Susan Sachs, "Employer Sanctions in Europe: A View from the Ground" (unpublished working paper, Transatlantic Council on Migration, Migration Policy Institute, Washington, DC, 2012).

40   Doris Meissner and Marc R. Rosenblum, *The Next Generation of E-Verify: Getting Employment Verification Right* (Washington, DC: Migration Policy Institute, 2009), www.migrationpolicy.org/pubs/Verification_paper-071709.pdf; Marc R. Rosenblum, *Immigration Enforcement at the Worksite: Making it Work* (Washington, DC: Migration Policy Institute, 2005), www.migrationpolicy.org/ITFIAF/TF6_Rosenblum.pdf.

41   Sachs, "Employer Sanctions in Europe."

42   Ibid.

- *Creating incentives for compliance.* The second major challenge is to tap the resources needed to investigate sufficient numbers of employers and deter future noncompliance. Thorough investigations are costly, and courts (and juries) may be unable or unwilling to convict. As a result, perhaps the single biggest obstacle to making sanctions more effective is to persuade employers (through public education and targeted enforcement) that noncompliance is not simply a business cost but, depending on the nature of the infraction, could threaten a firm's (and its owner's) financial existence.

- *Interagency cooperation.* A third key challenge is defining the level of requisite cooperation between labor and immigration inspection regimes, which are often led by different government agencies, while ensuring that proper due process for employers and immigrants remains in effect. Here other fields of regulatory law may provide helpful insights.

To help overcome these challenges, effective sanctions regimes should comply with several basic principles to benefit the public interest.[43] They should gather evidence and intelligence from a range of sources in order to enable a focus on high-risk employer practices and sectors. Information needs to be categorized by quality and active efforts made to fill knowledge gaps. Sanctions regimes should also be transparent and accountable—governments should publish their sanctions policies and justify enforcement choices to a range of actors, including employers and civil society. Employers in particular must understand what is required of them and why. Enforcement must be appropriate and proportionate. Policies should envisage a range of responses so the right sanction can be selected for the context,[44] as well as ensure the ability to adjust responses to employers' specific circumstances (for example, the numbers of unauthorized workers and the nature or conditions of work) in order to encourage compliance and eliminate financial benefit. Enforcement must also be consistent: enforcement actions should be followed up on over time and strategies adjusted accordingly. And finally, policymakers should also remain sensitive to the potential for perverse incentives: for instance, discrimination against authorized workers who "look like" immigrants.

Governments may combine efforts targeting employers with stricter enforcement of core labor regulations in order to reduce employers' ability to gain from exploitative labor practices. Labor standards enforcement is not always seen as a tool of immigration enforcement, as it applies to the workplace rather than to the category of worker. However, much labor standard enforcement work is connected with the workplace abuse of unauthorized immigrants. For example, the Gangmasters Licensing Authority, a public agency dedicated to labor standards in the agriculture and food-processing industries in the United Kingdom, was in large part set up in response to the deaths of 23 Chinese immigrant workers in 2004.[45]

No major study has proved a link between increased labor standards enforcement and a reduction in unauthorized worker numbers, but several studies have elucidated the connection between industries employing significant numbers of low-skilled workers (e.g. construction and hospitality), low-quality labor standards and enforcement, and concentrations of unauthorized workers.

While all OECD countries require workplaces to adhere to certain laws, both financial and political factors can make enforcement inconsistent. In most countries, there is significant room for clearer strategic goals to increase compliance with the law, for resource increases (labor enforcement is a Cinderella service in many countries, receiving far less than immigration enforcement), and for improved partnerships both vertical (national to local) and horizontal (across agencies).[46]

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43 For a thorough review of regulatory sanctions, see Richard B. Macrory, *Regulatory Justice: Making Sanctions Effective* (London: Cabinet Office, 2006), www.berr.gov.uk/files/file44593.pdf.

44 Different contexts should lead to different enforcement actions: governments could impose sanctions along a spectrum, starting with penalty notices through fines and trading sanctions and, as a last resort, criminal penalties.

45 Benton, *Spheres of Exploitation.*

46 For a more detailed discussion of labor standards enforcement and unauthorized immigration, see Donald M. Kerwin and Kristen McCabe, *Labor Standards Enforcement and Low Wage Immigrants: Creating an Effective Enforcement System* (Washington, DC: Migration Policy Institute, 2011), www.migrationpolicy.org/pubs/laborstandards-2011.pdf.

G.   Demand-Side Reforms

Regulators could use a range of demand-side policy reforms to reduce immigration-related violations. These reforms apply generally to the labor market, but also to specific (high-harm) markets, such as those for drugs or sex.[47]

In some countries, demand for unauthorized workers stems at least in part from the structure and relative inflexibility of the labor market. Structural barriers to labor force participation can reduce the flow of labor from the resident workforce, encouraging illegal immigration. The presence of large informal economies, meanwhile, can make it easier for employers to hire unauthorized workers, pay them low wages, or otherwise exploit them. As a result, broad labor market reforms can help to reduce employers' incentives to hire illegally.

Host countries with strong regulatory or institutional barriers to hiring legally (including barriers to labor force participation) often have large informal economies. Broadly speaking, countries with high taxation and highly regulated labor markets tend to have larger informal economies. The connection between illegal immigration and the informal economy is more complicated: many unauthorized immigrants do not work in the informal economy, and most informal economy workers in most countries are not immigrants. Nonetheless, employers may turn to unauthorized labor for the same reasons they turn to informal working arrangements—in order to avoid social charges and taxation, and to increase flexibility—and the existence of informal economies makes it easier for employers to hire illegally. Large informal economies may also be associated with illicit activities that harm the public interest, from criminal operations to persistent disregard for labor and safety standards.

> *There has been some debate over whether returns act as a deterrent, but most evidence suggests they do.*

Labor market reforms, especially those seeking to reduce the size of the informal labor market, could therefore play an important role in mitigating immigration abuses. Reforms that address the institutional or policy barriers to labor force participation include policies that encourage greater participation (e.g. of females, by supplying child care, part-time work options, and labor force reentry assistance; of older workers, by changing pension policy; and of minorities, through anti-discrimination policies) and provide adequate job training.

A more targeted approach may also yield results. For example, some governments have attempted to address concentrations of informal workers in certain sectors, such as agriculture or domestic work, by offering tax exemptions.

H.   An Increase in Returns and Removals

In the past five years, there has been an increase in returns from countries within the OECD area. In the United States, removals increased by 115 percent between 1999 and 2009.[48] An increase in deportations has also been recorded in Europe,[49] a trend that has become particularly pronounced in recent years

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47 For more discussion on demand-side reforms to address prostitution, see Benton, *Spheres of Exploitation.*
48 Authors' calculation based on U.S. Department of Homeland Security (DHS), "Enforce Alien Removal Module (EARM), February 2010, Enforcement Case Tracking System (ENFORCE), December 2009," Table 36.
49 Matthew J. Gibney, "Asylum and the Expansion of Deportation in the United Kingdom," *Government and Opposition* 43, no. 2 (2008): 146-67.

alongside an emphasis on deportations in countries such as France and Italy. However, returns remain a small proportion of the estimated size of the illegally resident population as a whole, and they are an expensive way to reduce this type of violation. Analysis suggests that even in countries with industrial-scale return programs, such as the United States, less than 5 percent of the existing illegally resident population is removed annually.Returns have three basic functions: to reduce the size of the unauthorized population, remove the most harmful individuals, and send a deterrent signal discouraging future illegal flows. There has been some debate over whether returns act as a deterrent, but most evidence suggests they do, though with varying degrees of intensity—primarily due to conditions in the source country, but also clarity of message and consistency of action.[50]

Return policies face several challenges: ensuring that migrants who have been removed do not simply reenter as soon as they are able, fostering cooperation with source countries (a requirement for forced returns), and ensuring consistency with human-rights and civil liberties laws. Furthermore, increasing returns of certain types of migrants may undermine efforts to reduce violations more generally. For example, illegally resident immigrants identified in the process of labor standards enforcement who are returned may undermine prosecution efforts. The main questions that policymakers face—whether to seek to address severe or ubiquitous harms, and whether to disrupt or destroy those harms—are critical to understanding the nature of such challenges.

Four main types of return or removal can be identified in most immigration systems:

- legally mandated removal proceedings (before a court);

- administrative removal (for violent criminal offenders);

- expedited or "fast-track" removal (for those with no documents or false documents who are caught at or near the border or who make unfounded asylum claims); and

- noncoercive voluntary or assisted voluntary return.

The ways in which return policies are implemented vary by country. In the United States, for example, the numbers of deportations have reached historic highs in recent years. In Europe, noncoercive return measures (such as "pay-to-go" programs) have gained prominence; these policies aim to return immigrants more cheaply and in a way that is politically more palatable while also avoiding international law obstacles.[51]

The allocation of resources across different types of removal is rarely strategic, but rather a response to external constraints and previous practice—a muddling through.[52] A greater focus on the public interest offers immigration enforcement authorities a framework of action in line with good governance principles. There are major "wins" for immigration agencies that are both authoritative and accountable—for example, by processing people in a timely fashion and ensuring that effective redress is in place. Independent monitoring bodies may help agencies achieve such a balance.

50 For example, recent fieldwork in Senegal among forced returnees from Spain suggested that the majority of returnees saw the pirogue journey as less worthwhile as a result of the Spanish-Senegalese cooperation on return. Forced return after making the journey to Spain was often described as profoundly humiliating, and the Senegalese government was accused of betraying its youth by agreeing to repatriate them; some of the first deportees from the Canary Islands staged protests to express their frustration. See Carling and Hernandez-Carretero, "Protecting Europe and Protecting Migrants?" 48. Research also indicates that the message must be consistent if it is to be effective. See Tim Finch and Myriam Cherti, *No Easy Options: Irregular Immigration in the UK* (London: Institute for Public Policy Research, 2011), www.ippr.org/images/media/files/publication/2011/05/No%20Easy%20Options%20Apr2011_1837.pdf.
51 Richard Black, Michael Collyer, and Will Somerville, *Pay-to-Go Schemes and Other Noncoercive Return Programs: Is Scale Possible?* (Washington, DC: Migration Policy Institute, 2011), www.migrationpolicy.org/pubs/pay-to-goprograms.pdf. The report includes a detailed examination of noncoercive returns, including program design elements and past successes and failures.
52 Charles Lindblom, "The Science of "Muddling Through," *Public Administration Review* 19, no. 2 (1959): 79–88.

I.   *Legalization*

Legalization seeks to remove the risks associated with illegally resident populations. However, there may be unintended consequences; for example, the use of legalization policy tools may undermine public confidence in immigration regimes (if they reverse policy promises and the public loses trust in other parts of the system as a result).

In some countries the harms associated with large populations of illegally resident people are significant. Nearly every major immigrant-receiving country has enacted at least one legalization exercise over the past half century. Legalization (also known as the in-country adjustment of status, amnesty, or regularization) is a controversial policy tool and often politically unpopular; indeed, legalization has become so contentious that many governments have become unwilling to experiment with this policy tool at all, or only under the radar. Nonetheless, legalization remains an important method of addressing illegal immigration at reasonable cost.[53]

Legalization policies can vary considerably in their design, scope, and implementation. Policymakers implementing legalization must make decisions on three main elements: the rules of eligibility, the obligations of program participants, and the program design. Legalization programs can be targeted toward the most pressing cases or to specific populations, or they can be designed to be broadly inclusive in order to legalize larger numbers. For example, eligibility can be based on employment or on humanitarian grounds; it may also be tied to long-term residence and typically exclude most of those with criminal convictions.

In spite of the current negative reaction to the use of legalization, some of it does take place under the policy radar.

Second, the obligations for immigrants who participate in legalization initiatives can vary considerably, including requirements such as paying fines or learning the receiving-country language.

Finally, policymakers must make a series of technical but significant decisions about program design, including whether a program is temporary or permanent; whether it is "tiered," with progress contingent on meeting requirements; and what benefits accrue to participants.[54]

The decisions taken in each of these areas can lead to very different programs and initiatives. They apply not only to formal legalization programs but also to regularizations implemented on a case-by-case or ongoing basis (sometimes referred to as mechanisms). The legalization of individuals or certain small groups is an important policy tool for immigration agencies; one advantage is the ability to limit fraud while opening up avenues to those with bone fide eligibility. In spite of the current negative reaction to the use of legalization, some of it does take place under the policy radar.[55] The United Kingdom, for instance, has official immigration guidance that a person may be legalized after 20 years (less if with a family), or seven years if under the age of 18, if he or she has not committed a crime. Germany and France also use such mechanisms. In France, where regularization often happens on a regional basis, it is estimated that more than 100,000 persons were regularized between 2000 and 2006 through such

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53   Marc R. Rosenblum, *Immigrant Legalization in the United States and European Union: Policy Goals and Program Design* (Washington, DC: Migration Policy Institute, 2011), www.migrationpolicy.org/pubs/legalization-policydesign.pdf.

54   Ibid; Demetrios G. Papademetriou and Will Somerville, *Earned Amnesty: Bringing Illegal Workers out of the Shadows* (London: Centreforum, 2008), www.centreforum.org/assets/pubs/regularisation-web.pdf.

55   Another policy question to ask is who makes these decisions, especially on a case-by-case basis. Is there room for other actors, such as courts? Could administrative legalization powers be extended (to regional governments, for example) under certain strict criteria?

case-by-case mechanisms; four-fifths of these for personal reasons or family ties and one-fifth by virtue of seven years of residence.[56]

In addition to these case-by-case processes, many countries have run small legalization programs for specific groups (such as those admitted temporarily for humanitarian reasons). In the United States, for example, more people have been legalized through population-specific programs than under the general legalization process specified by the 1986 *Immigration Reform and Control Act* (IRCA).[57] Other examples are numerous, including Germany's legalization of failed asylum seekers who are given "tolerated" status, and a similar exercise in the Netherlands in 2008.

Again, however, policymakers must be wary of the interdependence of policy tools. In this case, there is an inherent conflict between legalization and removal measures. Successful legalization programs require the trust of applicants and the civil-society organizations that support them. Therefore, the suspension of deportations while program registration takes place is a prerequisite to success.

J.   *Policies that Limit Welfare Services*

Public concerns about illegal immigration often focus on unauthorized immigrants' access to services such as education, health, and housing. Restricting access to such services may have political appeal, especially in a straitened economic and fiscal climate.

The majority of academic analysts question the assumption that lowering welfare benefits or cutting services reduces immigrants' incentive to come to a particular country.[58] For example, an investigation of asylum seekers and their choice of destination underlines that compliance measures and reductions in welfare benefits have limited policy value in deterring illegal flows.[59] Moreover, many categories of immigrants are already excluded from welfare benefits. In the United States, even legal immigrants often underutilize some types of benefits for which they are eligible, notably food and cash assistance.[60]

However, the view that there is no meaningful relationship between illegal immigration flows and the provision of welfare benefits is not universal, and a number of academics have posited a "welfare magnet" thesis (generally credited to leading immigration economist George Borjas).[61] Certainly, many officials (and publics) believe that there is a welfare magnet.

Reforms to welfare access may provide another potential way to reduce immigration-related abuses. Governments seeking to prevent unauthorized immigrants from receiving public services or benefits typically create rules requiring that beneficiaries establish their identity in return for services (such as health care, schooling, and in some countries, housing). However, welfare adjustments are fraught with difficulty. The limited initial cost savings to the public purse—potentially realized as people are denied services—may ultimately lead to higher costs further down the road when the consequences of withholding services becomes clear. There may be public health risks, for one.[62] Furthermore, reduced

56   Kate Brick, *Regularizations in the European Union: The Contentious Policy Tool* (Washington, DC: Migration Policy Institute, 2011), www.migrationpolicy.org/pubs/EURegularization-Insight.pdf; Martin Baldwin-Edwards and Albert Kraler, eds. *Regularisations in Europe: Study on Practices in the Area of Regularisation of Illegally Staying Third-Country Nationals in the Member States of the EU* (Vienna: International Centre for Migration Policy Development, 2009), http://research.icmpd.org/fileadmin/Research-Website/Project_material/REGINE/Regine_report_january_2009_en.pdf.

57   Donald M. Kerwin, *More than IRCA: US Legalization Programs and the Current Policy Debate* (Washington, DC: Migration Policy Institute, 2011), www.migrationpolicy.org/pubs/legalization-historical.pdf.

58   Vaughan Robinson and Jeremy Segrott, *Understanding the Decision-Making of Asylum Seekers* (London: Home Office, Research, Development and Statistics Directorate, 2002), www.irr.org.uk/pdf/understand_asylum_decision.pdf.

59   Heaven Crawley, *Chance or Choice: Understanding Why Asylum Seekers Come to the UK* (London: Refugee Council, 2010), www.refugeecouncil.org.uk/assets/0001/5702/rcchance.pdf.

60   Michael Fix, ed., *Immigrants and Welfare* (New York: Russell Sage Foundation, 2009).

61   George Borjas, "Immigration and Welfare Magnets," *Journal of Labor Economics* 17, no. 4 (1999): 607–37.

62   Elizabeth Collett and Will Somerville, *Trade-offs in Immigration Enforcement* (Washington, DC: Migration Policy Institute, 2013).

access means further reliance on informal and unaccountable networks—likely increasing violations such as exploitation.

Measures to restrict services or benefits are often unpopular with service providers, who complain that they contravene professional ethics and burden the providers with additional responsibilities. The measures may spill over into discrimination against legal residents (often minorities) and can be expensive, requiring additional recordkeeping, steps to mitigate discrimination, and legal costs if wronged parties sue for damages. Moreover, there is little evidence that they are effective,[63] and civil-society organizations and others have suggested that tough enforcement action undermines social cohesion and drives problems underground. Overall, policy boomerangs are a fact of life for policymakers embarking on these types of actions.

IV.   Conclusions and Recommendations

This report argues that as immigration policymakers decide among the myriad policy tools available to them, they must quickly and efficiently evaluate the likely impact of enforcement action on the public interest. A strategic approach to reducing immigration violations would weigh several considerations, including the possible effect of taking no action on the immigration regime's authority, the cost effectiveness and feasibility of a proposed enforcement action, the chances of success, compliance costs to private actors such as employers and immigrants, and possible future impacts. Many immigration agencies already implicitly consider these and other criteria when setting their objectives; few do so explicitly and with strategic intent.

Creating a strategic approach of this kind—shared across the diverse range of governmental agencies involved in implementing the policies described in this report—would have several benefits. First, it would encourage governments to generate new evidence and analysis to improve operational understanding of their immigration enforcement regimes. Second, it would allow better resource allocation by focusing attention on the size and intensity of a risk, as well as the cost of the policy designed to address it. (For example, several governments have diverted resources from sanctions regimes to border enforcement).[64] Finally, it would provide transparent criteria upon which to base decisions—criteria that other actors can understand and work with—enhancing the ability of immigration agencies to act effectively.

Measures to restrict services or benefits are often unpopular with service providers.

The ways in which governments prioritize resources will differ by country. Policymakers will need to diagnose the drivers and characteristics of a given harm, set standards, and devise responses that are consistent with their priorities and the public interest. Immigration regimes are likely to need administrative flexibility, specifically the ability to reallocate resources quickly and tailor efforts to individual circumstances.

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63   Eiko Thieleman discusses asylum-related measures in an empirical analysis of European data on asylum applications. He notes that deterrence measures have reduced applications, but that this represents a shift of applications to the developing world. He also points out that deterrence measures on services (such as welfare restrictions) appear to have no impact on applications. Eiko Thielemann, "Does Policy Matter? On Governments' Attempts to Control Unwanted Migration" (IIIS Discussion Paper 9, Institute for Internal Integration Studies, Dublin, 2003), www.tcd.ie/iiis/documents/ discussion/pdfs/iiisdp09.pdf.

64   Sachs, "Employer Sanctions in Europe."

Strong partnerships among government agencies responsible for implementing different components of an immigration harm-reduction strategy are particularly important, as is cooperation with governments in other receiving and sending countries, and with stakeholders. These partnerships are essential because immigration ministers may not have the necessary purview to execute the policies that are most effective, and cooperation with other agencies and governments provides a broader economic and social context through which to understand the possible effects of proposed reform.

Governments seeking to act in the public interest must also find new ways to show publics that their actions are indeed improving situations of concern. Since the regulation and inspection agencies in immigration systems often do not command high levels of confidence with the public and other stakeholders, governments may consider having an independent body monitor their progress toward stated goals.

More broadly, a strategy on illegal immigration must meet good governance and regulatory criteria—consistency with the rule of law, clarity in relation to other public priorities, and an ability to show procedural and substantive inclusiveness with other societal and public actors. Meeting these criteria while demonstrating steady progress toward achieving intended outcomes will be crucial to inspiring public confidence in the immigration system.

For more on MPI's Transatlantic Council on Migration, visit:

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Works Cited

Baldwin-Edwards, Martin and Albert Kraler, eds. 2009. *Regularisations in Europe: Study on Practices in the Area of Regularisation of Illegally Staying Third-Country Nationals in the Member States of the EU.* Vienna: International Centre for Migration Policy Development. http://research.icmpd.org/fileadmin/Research-Website/Project_material/REGINE/Regine_report_january_2009_en.pdf.

Benton, Meghan. 2014. *Spheres of Exploitation: Thwarting the Actors Who Profit from Illegal Labor, Domestic Servitude, and Sex Work.* Washington, DC: Migration Policy Institute. www.migrationpolicy.org/pubs/TCM-Migration-Exploitation.pdf.

Borjas, George. 1999. Immigration and Welfare Magnets. *Journal of Labor Economics* 17 (4): 607–37.

Brick, Kate. 2011. *Regularizations in the European Union: The Contentious Policy Tool.* Washington, DC: Migration Policy Institute. www.migrationpolicy.org/pubs/EURegularization-Insight.pdf.

Carling, Jørgen and Maria Hernandez-Carretero. 2011. Protecting Europe and Protecting Migrants? Strategies for Managing Unauthorised Migration from Africa. *British Journal of Politics and International Relations* 13 (1): 49.

Collett, Elizabeth and Will Somerville. 2014 forthcoming. *Trade-offs in Immigration Enforcement.* Washington DC: Migration Policy Institute.

Cassarino, Jean-Pierre, ed. 2010. *Unbalanced Reciprocities: Cooperation on Readmission in the Euro-Mediterranean Area.* Washington, DC: Middle East Institute.

Cornelius, Wayne and Idean Salehyan. 2007. Does Border Enforcement Deter Unauthorized Immigration? The Case of Mexican Migration to the United States of America. *Regulation and Governance* 1 (2): 139-53.

Crawley, Heaven. 2010. *Chance or Choice: Understanding Why Asylum Seekers Come to the UK.* London: Refugee Council. www.refugeecouncil.org.uk/assets/0001/5702/rcchance.pdf.

Finch, Tim and Myriam Cherti. 2011. *No Easy Options: Irregular Immigration in the UK.* London: Institute for Public Policy Research. www.ippr.org/images/media/files/publication/2011/05/No%20Easy%20Options%20Apr2011_1837.pdf.

Galeotti, Mark. 1998. Turkish Organized Crime: Where State, Crime, and Rebellion Conspire. *Transnational Organized Crime* 4 (1): 25–42.

Gibney, Matthew J. 2008. Asylum and the Expansion of Deportation in the United Kingdom. *Government and Opposition* 43 (2): 146-7.

Guiraudon, Virginie. 2006. Enlisting Third Parties in Border Control: A Comparative Study of its Causes and Consequences. In *Borders and Security Governance*, eds. Marina Caparini and Otwin Marenin. Geneva: Geneva Centre for the Democratic Control of Armed Forces.

Hampton, Philip. 2005. *Reducing Administrative Burdens: Effective Inspection and Enforcement.* London: HM Treasury. www.bis.gov.uk/files/file22988.pdf.

Hansen, Randall and Demetrios G. Papademetriou. 2014 .*The Intended, Unintended and Perverse Consequences of Securing Borders.* Washington, DC: Migration Policy Institute. www.migrationpolicy.org/pubs/TCM-SecuringBorders-UnintendedConsequences.pdf.

Hood, Christopher, Henry Rothstein, and Robert Baldwin. 2001. *The Government of Risk.* Oxford: Oxford University Press.

Hood, Christopher, Oliver James, G. Jones, and Tony Travers. 1999. *Regulation Inside Government: Waste-Watchers, Quality Police, and Sleaze-Busters*. Oxford: Oxford University.

International Organization for Migration (IOM). 2001. *Deceived Migrants from Tajikistan: A Study of Trafficking in Women and Children*. Geneva: IOM. www.iom.tj/pubs/trafficking_2001.pdf.

Kerwin, Donald M. 2011. *More than IRCA: US Legalization Programs and the Current Policy Debate*. Washington, DC: Migration Policy Institute. www.migrationpolicy.org/pubs/legalization-historical.pdf.

Kerwin, Donald M. and Kristen McCabe. 2011. *Labor Standards Enforcement and Low Wage Immigrants: Creating an Effective Enforcement System*. Washington, DC: Migration Policy Institute. www.migrationpolicy.org/pubs/laborstandards-2011.pdf.

Koslowski, Rey. 2011. *The Evolution of Border Controls as a Mechanism to Reduce Illegal Immigration*. Washington, DC: Migration Policy Institute. www.migrationpolicy.org/pubs/bordercontrols-koslowski.pdf.

Lindblom, Charles. 1959. The Science of Muddling Through. *Public Administration Review* 19 (2): 79–88.

Macrory, Richard B. 2006. *Regulatory Justice: Making Sanctions Effective*. London: Cabinet Office. www.berr.gov.uk/files/file44593.pdf.

Majone, Giandomenico. 1996. Regulatory Legitimacy. In *Regulating Europe*, ed. Giandomenico Majone. London: Routledge.

Massey, Douglas S. and Karen A. Pren. 2012. Unintended Consequences of US Immigration Policy: Explaining the Post-1965 Surge from Latin America. *Population and Development Review* 38 (1): 1–29.

Meissner, Doris and Marc R. Rosenblum. 2009. *The Next Generation of E-Verify: Getting Employment Verification Right*. Washington, DC: Migration Policy Institute. www.migrationpolicy.org/pubs/Verification_paper-071709.pdf.

Michael Fix, ed. 2009. *Immigrants and Welfare*. New York: Russell Sage Foundation.

Minogue, Martin. 2001. Governance-Based Analysis of Regulation. Working paper no. 3, University of Manchester Center on Regulation and Competition, October 2001. http://ageconsearch.umn.edu/bitstream/30590/1/cr010003.pdf.

Nieuwenhuys, Céline and Antoine Pécoud. 2007. Human Trafficking, Information Campaigns, and Strategies of Migration Control. *American Behavioral* Scientist 50 (12): 1674-95.

Papademetriou, Demetrios G. and Elizabeth Collett. 2011. *A New Architecture for Border Management*. Washington, DC: Migration Policy Institute. www.migrationpolicy.org/pubs/borderarchitecture.pdf.

Papademetriou, Demetrios G. and Will Somerville. 2008. *Earned Amnesty: Bringing Illegal Workers Out of the Shadows*. London: Centreforum. www.centreforum.org/assets/pubs/regularisation-web.pdf.

Papademetriou, Demetrios G., Will Somerville, and Elizabeth Collett. 2012 unpublished. *Goals of Enforcement: Understanding the Rationale and Means for Addressing Unauthorized Migrant Populations*. Washington, DC: Migration Policy Institute.

Reynolds, Sile and Helen Muggeridge. 2008. *Remote Controls: How UK Border Controls are Endangering the Lives of Refugees*. London: Refugee Council. www.refugeecouncil.org.uk/Resources/Refugee%20Council/downloads/researchreports/Remote%20Controls.pdf.

Richard Black, Michael Collyer, and Will Somerville. 2011. *Pay-to-Go Schemes and Other Noncoercive Return Programs: Is Scale Possible?* Washington, DC: Migration Policy Institute. www.migrationpolicy.org/pubs/pay-to-goprograms.pdf.

Roberts, Bryan, Gordon Hanson, Derekh Cornwell, and Scott Borger. 2010. An Analysis of Migrant Smuggling Costs along the Southwest Border. Working paper, Department of Homeland Security, Office of Immigration Statistics, Washington, DC, November 2010.

Robinson, Vaughan and Jeremy Segrott. 2002. *Understanding the Decision-Making of Asylum Seekers*. London: Home Office, Research, Development, and Statistics Directorate. http://rds.homeoffice.gov.uk/rds/pdfs2/r172.pdf.

Rosenblum, Marc R. 2005. *Immigration Enforcement at the Worksite: Making it Work*. Washington, DC: Migration Policy Institute. www.migrationpolicy.org/ITFIAF/TF6_Rosenblum.pdf.

_____. 2011. *Immigrant Legalization in the United States and European Union: Policy Goals and Program Design.* Washington, DC: Migration Policy Institute. www.migrationpolicy.org/pubs/legalization-policydesign.pdf.

Sachs, Susan. 2012. Employer Sanctions in Europe: A View from the Ground. Unpublished working paper, Transatlantic Council on Migration, Migration Policy Institute, Washington, DC.

Shelley, Louise. 2014 forthcoming. *Human Smuggling and Trafficking: A Comparative Perspective*. Washington, DC: Migration Policy Institute.

Sumption, Madeleine. 2011. *Policies to Curb Unauthorized Employment*. Washington, DC: Migration Policy Institute. www.migrationpolicy.org/pubs/unauthorizedemployment-2011.pdf.

Thielemann, Eiko. 2003. Does Policy Matter? On Governments' Attempts to Control Unwanted Migration. IIIS Discussion Paper 9, Institute for Internal Integration Studies, Dublin. www.tcd.ie/iiis/documents/ discussion/pdfs/iiisdp09.pdf.

Tietz, Jeff. 2012. The U.S.-Mexico Border's 150 Miles of Hell. *Men's Health*, April 2012. www.mensjournal.com/150-miles-of-hell.

US Department of Homeland Security (DHS). Enforce Alien Removal Module (EARM), February 2010, Enforcement Case Tracking System (ENFORCE), December 2009, Table 36.

Zetter, Roger, David Griffiths, Silva Ferretti, and Martyn Pearl. 2003. *An Assessment of the Impact of Asylum Policies in Europe 1990-2000.* London: Home Office Research, Development and Statistics Directorate. www.homeoffice.gov.uk/rds/pdfs2/hors259.pdf.

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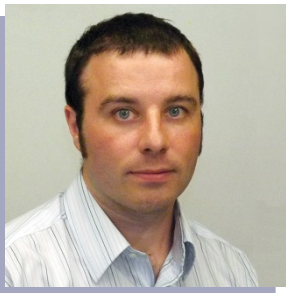
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The Migration Policy Institute is a nonprofit, nonpartisan think tank dedicated to the study of the movement of people worldwide. MPI provides analysis, development, and evaluation of migration and refugee policies at the local, national, and international levels. It aims to meet the rising demand for pragmatic and thoughtful responses to the challenges and opportunities that large-scale migration, whether voluntary or forced, presents to communities and institutions in an increasingly integrated world.

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