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S U M M A R Y

Steep increases in illegal immigration in many developed countries have propelled the issue into the center stage of the social and political debate throughout the advanced industrial world. One of the most common responses to rising unauthorized immigrant stocks is to offer large portions of them legal status (known as “regularization” in Europe and “legalization” in the Americas and elsewhere). Yet, the potential of such programs to inform migration policies and make their regulation more effective has been largely neglected.

This policy brief argues that regularization can not only prevent the population of illegally resident immigrants from building to unacceptable levels, but can also make the management of migration more effective when used in concert with other policy initiatives. Properly conceived and carefully executed regularization programs that allow those that can meet certain tough but fair and transparent criteria to earn such status, can be effective processes for meeting important security, labor market, and social policy goals. Such programs can also become the means by which the motivation and behavior of unauthorized immigrants and their employers are understood better.

In combination with other migration management strategies, such as greater openings to legal migration; more honest but tough-minded cooperation with sending and transit countries; and smarter and more systematic attention to lawless behavior, earned regularization can set the stage for better policy development and the smarter use of enforcement resources.

The “Regularization” Option in Managing Illegal Migration More Effectively: A Comparative Perspective

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Introduction

In the past two decades, the advanced industrial world has seen its population of illegally resident immigrants grow at ever-increasing rates. Visa-free entries, visa overstaying, and a poorly managed asylum system are the three most frequently used routes to unauthorized stay, but unauthorized entries account for the lion’s share of that population for many countries.

Few countries publish official estimates of illegal immigration. Impressionistic accounts, however, partly based on the large number of persons who have participated in regularization programs, suggest that the population of unauthorized immigrants is very large and growing at a robust pace. In the European Union (EU), unauthorized or “irregular” immigrants are estimated to be at least one percent of the population of the EU 25 (about 4.5 million persons) and are growing at annual rates that are into the mid-hundreds of thousands. The size of that population is thought to exceed 10 million in the United States, where it comprises about 30

percent of the country's total foreign-born population, while that of Canada may be between half and three-quarters of a million people.

Responding to this trend, states have, individually and collectively, developed a bundle of policy responses. So far, these efforts have been slow in bearing fruit — an outcome that requires the evaluation of each response and its use. In this regard, one aspect demands particular attention: how policy outcomes might change if policy tools were to be used deliberately in mutually reinforcing ways, that is, within a more explicitly strategic framework.

The policy “tools” used most frequently include greater attention to visa policy and more vigorous border controls; interior enforcement measures and measures to prevent illegal

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employment; and, as a distant last, the removal of unauthorized immigrants and failed asylum seekers. (Removal poli-

cies have been used with the nominal cooperation of some countries of origin.) Not all states apply these policies with equal vigor, and few governments would argue that they have been particularly successful with any one of them, let alone all of them, in recent years.

Many of these policy measures have been the subject of intense debate, have been evaluated, and, in the case of the European Union, have become the focus of EU-level action. One measure, however, the “regularization” of irregular immigrants, has received little such attention despite being one of the earliest-developed and most frequently used tools for managing illegal migration. Not surprisingly, regularization remains poorly understood and continues to be a blunt and problem-ridden policy option.

The Regularization Option

Since 1980 to 1981, when a large-scale French program launched the post-World War II age of European regularizations, more than five million people have been regularized in countries now belonging to the European Union. Spain's most recent regularization (2005) will likely put that number well in excess of six million. Regularization programs in the Americas nearly double that amount, with the US having contributed almost 2.8 million in a single program and now considering another, much more massive one.

Most EU Member States that have carried out major regularization programs have done so more than once a decade, on average, despite repeated vows that such programs would be “one-time only.” Most other EU Member States, as well as most other advanced industrial democracies, have quietly but continuously regularized migrants, one at a time or on a small group basis. In fact, there is no indication that the rate of regularizations has slowed. If anything, both frequency and total numbers of beneficiaries have continued to increase.

Yet, regularization today remains at best a stop-gap measure. It is both evidence of, as well as the result of, the continuing failure of other immigration management and control policies.

This policy brief seeks to raise the policy bar. It makes the case that regularization, thoughtfully employed within a broader strategy of migration management initiatives, can not only prevent the population of unauthorized immigrants from building to unacceptable levels, but also play an important role in improving the effectiveness of other migration management policies. More effective migration man-

agement policies, in turn, will gradually reduce unauthorized immigration and make large-scale regularizations unnecessary.

The case is presented as follows:

- By drawing out the key strengths and limitations of regularizations and other migration management tools as they are typically employed.
- By identifying some of the ways in which regularizations typically operate and explaining some of the reasons for their success or failure.
- By suggesting ways in which the various components of regularization programs might be improved and become integrated into an overall migration management and illegal migration control strategy.

Discussion

It is now plainly clear that single-faceted policy solutions are not sufficient in controlling illegal immigration. The more vigilant visa, border, and interior controls applied with increasing tenacity in the last decade or so have not lowered unauthorized entries and stays.

In fact, with the fundamental reasons for irregular migration essentially unchanged (if not strengthened), greater control efforts have pushed migrants to more dangerous and more elaborate ways of crossing borders and remaining illegally in countries of destination. This has helped grow and enrich people-smuggling networks immensely; has increased the human cost; has led irregular migrants to burrow ever more deeply into the underground economy and at the edge of society; and has fuelled their potential for engaging in criminal activities beyond those of illegal presence and employment.

Furthermore, ever greater controls have their own non-pecuniary costs, some of which can be perverse. For instance:

- Tighter visa policy can only do so much before inhibiting commerce and legitimate travel.
- Increased border controls without concomitant openings to legal immigration disrupt circular migration patterns between adjacent and/or closely interconnected countries and encourage would-be migrants to attempt to immigrate illegally. Once successful, and having absorbed the increased costs and risks, migrants typically stay in the destination countries longer than might otherwise have been the case.
- Markedly tighter interior controls can unsettle families, disrupt the economy, overwhelm the court systems, and give rise to human rights and civil liberties issues.

Other policy options have proven equally weak when used alone. Increased legal migration opportunities, implemented alone, are unlikely to substitute for illegal migration to a sufficient degree unless they are of a very large scale. Like all systems that allocate a scarce public good, they must be well regulated so as to minimize disregard for rules and discourage fraud. In other words, no large scale system can work well without committed and well-resourced enforcement.

Furthermore, the link between legal and illegal migration flows is difficult to establish with precision. Nonetheless, one thing is clear: Since the early 1970s, legal labor migration has not been open at anywhere near the level at which one would be able to test any hypothetical linkage between the two processes.

Efforts to control the irregular, or underground/informal, economy are not a cure-all for illegal immigration.

Equally, efforts to control the irregular, or underground/informal, economy are not a cure-all for illegal immigration. The presence of substantial numbers of unauthorized immigrants in countries with relatively small informal employment, such as France or the US, is a strong demonstration of this point. Finally, regularization and/or expulsion of unauthorized immigrants are clearly only remedial measures that do not alter the fundamental dynamics — or realities — that drive unauthorized migration.

While each of the elements for controlling illegal immigration and managing migration better identified above are of limited usefulness as self-standing policy tools, together they can reinforce each other and increase the probability of success. This is this policy brief's main thesis. Below are presented a few important but frequently overlooked connections among some of the key elements of illegal migration control.

Expanded Labor Migration Channels

Significantly expanded opportunities for (mostly temporary) labor migration have been thought of largely as a bargaining chip with which to secure the cooperation of countries of irregular immigrant origin and transit. This is indeed a critical reason for pursuing that policy option. However, it is at least equally useful to think of labor migration programs as a way of giving domestic employers — whether factory owners, hospital administrators, elderly care facilities, personal and low-value-added service providers, farmers, or homemakers and families — a reasonable alternative to hiring irregular workers.

Equally significant may also be that openings to well-regulated labor migration can also be

used as an “enforcement” tool of sorts. Firms and sectors that use illegal immigrant labor could be targeted for higher inspection for compliance with employment regulations and other rules (primarily through electronic audits). Employers found to continue to employ unauthorized workers or employing workers off-the-books, despite their now far greater access to *legal* foreign workers, could be denied access to foreign workers for a period of time while making themselves subject to greater and more intrusive enforcement.

Finally, expanded labor migration channels can serve as a “soft” regularization option, at least in the early years of the strategy's implementation, by allowing illegally resident workers to apply for legal work with the assistance of their employer without leaving the host country. (Several EU Member States already use variants of this approach to ongoing regularizations and most current US policy proposals imply a similar process.)

For expanded legal labor migration channels to have a chance to succeed in replacing most illegal migration over the medium term, several preparatory interventions are necessary. The most important among these are the following:

- First, the public must be prepared for expanding labor migration through public education and a systematic attempt to reduce domestic unemployment rates, particularly among minority and immigrant populations. In many instances, especially in the EU, this might be accomplished through a structural labor market, social policy, and economic reforms.
- Second, the size of the existing unauthorized population must be reduced dramatically. If many immigrants remain in an illegal status, some employers will be tempted to continue

to employ them irregularly, most likely by continuing preexisting relationships, and some would-be immigrants would continue to be tempted to immigrate illegally.

- Third, employers must be brought into the process of planning the labor migration program at an early stage so that they can “buy-in” to the overall approach and cannot claim any incentive to continue to employ unauthorized migrants.
- Finally, enhanced enforcement of immigration and labor laws must be made a priority. By doing so, illegal migration and irregular employment will become increasingly less attractive options for both immigrants and employers.

These actions are essential. In their absence, public support for expanding legal migration channels cannot be reasonably expected.

Fighting Irregular Employment

The largest proportion of Europe’s unauthorized immigrants live in EU Member States where employment in the underground economy is high among immigrants and natives alike.

Although it is mostly Germany and the southern and easternmost tiers of the Union that fit this pattern particularly well, heavy taxation and labor market regulation in much of the EU act as incentives for even authorized workers — natives or foreigners — to work in the underground economy.

Perhaps paradoxically, in other countries, such as in the United States, where minimum wages are low, an employer’s required social contributions modest, and regulation of the labor market light, the proportions of immigrants employed in the underground economy are not thought to be

nearly as high. Such differences notwithstanding, unauthorized migrants across the board both fuel, and are drawn to, places with vibrant underground and low-wage economic sectors. Such conditions thus act as magnets for unauthorized migrants and typically overwhelm even the strongest controls.

The relationship works both ways. Just as informal and low-wage economic sectors attract irregular migrants, unauthorized immigrants make these sectors more “efficient,” more “profitable” for both employers and consumers, and more durable. Workers who have few other employment

options use ever-more creative ways of finding employment in these sectors and continue to be a temptation to employers — making efforts to combat informal employment far more difficult.

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In geographic spaces without internal border controls, such as the EU, the existence of unauthorized migrants who are determined to stay and survive can become everyone’s problem if employment options in the underground economy of the country of entry truly dry up. If that becomes the case, these migrants may find moving to a more “hospitable” destination (another EU Member State or, in North America, from the US to Canada and vice versa), or engaging in criminal activities, to be their only options. For these reasons, removals and regularizations are intimately linked in the migration management panoply.

Removals and Regularizations

Both removals and regularizations are ways of reducing the stock of unauthorized immigrants. Yet, neither can really affect the rates of irregular presence in the longer term by themselves. This reality challenges policy makers to better understand the important links between the size of the existing unauthorized immigrant population and policies intended to directly affect future illegal inflows.

Removals and regularizations have different advantages and pitfalls. Large-scale removals are extremely, even prohibitively, expensive, can be socially and economically disruptive, and may have serious humanitarian consequences — such as impacts on families with members of mixed legal statuses. Removals' more benign cousin, “voluntary” returns, do not seem to be applicable on a large scale, even when they are accompanied by financial incentives.

Regularization, however, can be even more controversial as large proportions of the host population have a negative view of this option and may organize to oppose it actively. Furthermore, regularizations operate under the cloud that they may encourage further illegal migration. Accordingly, and almost invariably, the state claims that the proposed program is “exceptional” and “one-time only.” In the EU context, with the absence of internal borders, this “incentive” may attract illegally-resident, third-country nationals from other Member States, an issue that may also be relevant in the US-Canada context.

One of the most remarkable things about regularization, however, may be that despite its frequent use, there has been relatively little attention paid to improving it as a policy tool,

most notably through learning from previous programs. The remainder of this policy brief will be dedicated to exploring the virtues and limits of this tool, and to investigating ways in which it can be improved and thus be employed more strategically.

Selected Regularization Types and Requirements

Analytically, regularizations can be organized according to the criteria and administrative methodologies used to determine who can qualify and how, as well as according to the type of status they grant.

Criteria for general regularizations The most frequently used regularizations are ones in which migrants must qualify within a limited period of time by satisfying a small number of requirements. The most common among them are employment-related, such as the requirement that applicants demonstrate that they have a steady formal sector job, or an employer who is willing to give them such a job. In a frequent variant, applicants may be asked to show that they have been employed for a certain amount of time, or that they have been resident since before a certain date. This last requirement is designed to avoid encouraging an influx of migrants in response to the announcement of regularization.

Regularizations often involve large numbers of migrants and are sometimes sold politically as a way to “clean the slate.” They are also a way to reduce social and economic marginalization. In today's environment of intense sensitivity to security, broad regularizations are also the most promising way to dramatically reduce the number of “unknown” residents and process them through the appropriate security screens. Finally, regularizations often become a *de facto* migration policy as many “one-time-only” pro-

grams are repeated — often, again and again. This is the case in several Southern European countries, most notably Italy, which has regularized nearly two million immigrants on about half-a-dozen occasions since 1982.

“Continuous” regularizations At the other end of the spectrum are the less well-known “continuous” or “permanent” regularizations. These are done on a case-by-case basis by administrative or judicial bodies, usually without fanfare. To different degrees, virtually all advanced industrial societies rely on them, even those without a publicly acknowledged policy of regularization.

The criteria used in such regularizations are similar to those that apply to the broader regularizations and more general immigration policies. These may include extended stays in an irregular status, filling an economic need for an employer, family connections to a legal resident (often justified by the fact that the regularized individual might qualify for immigration privileges were they not already in the country), or humanitarian circumstances (usually for people who have not qualified as refugees but are fleeing other humanitarian threats or confronting serious health problems).

One of the most systematic and considerable ongoing examples of a continuous regularization program started in France under a law passed on May 11, 1998. That law broke with a French tradition of “exceptional” (that is, rare but periodic) regularizations, and has survived a transition of government with widespread support. The law allows several categories of non-legal foreign residents who have strong links to France, or otherwise have strong reasons to stay, to petition the French immigration service for a legal residence permit. These categories are as follows:

- Foreigners who can prove they have been living in the country for 10 years (three if they have children).
- Foreign parents of French children.
- 18 year olds who arrived in France before the age of 10.
- Family members of legal residents whose immigration privileges are implicitly protected under Article 8 of the European Convention on Human Rights.
- Sick people who can prove that their deportation would prevent them from receiving the medical attention necessary to save their lives.

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In 2003, about 28,000 permits were issued on that basis, representing about 20 percent of all the permits issued to non-European foreign residents in France that year. The system is seen as a way to give residence rights to immigrants who have strong ties to France and to prevent the build-up of the unauthorized immigrant population without the political disruption surrounding exceptional regularization programs. Additionally, the deliberate nature and pace of the program means that it is spread out temporally and quickly becomes part of the regular administrative process, with the non-governmental organization (NGO) sector serving as a key intermediary.

Status granted Finally, the status granted at regularization also varies among states. Immediate permanent or quasi-permanent status is granted relatively rarely in Europe, and usually only when the degree of integration and length of stay of the migrants are part of the qualification criteria. Temporary status — lasting the period of employment, the duration

of the relevant humanitarian crisis, or a set number of months or years — is more common, although permit renewals and successive regularizations can make such stays anything but temporary.

Assessing Regularizations

One of the principal goals of regularization has always been to reduce the number of people

living in a country without the responsibilities and protections of legal status. Today, this goal is joined by the need to reduce the number of people who are unknown to the security and intelligence services of a receiving state. To the extent that these goals are thought to warrant a regularization decision, their success must be evaluated in terms of the proportion of the potentially eligible unauthorized population that applies.

The very nature of illegal migration makes knowing the size and characteristics of the illegally resident population very hard. This reality, in turn, makes estimating how many unauthorized immigrants will apply or qualify for regularization equally hard. Yet, it is clear that a program's qualification criteria play a critical role. In the US case, for example, the 1986 regularization program that granted legal status to nearly 2.8 million migrants included only for-

eigners who had been continuously resident in the United States since January 1, 1982. The final number that qualified was larger than official estimates, but about half of the undocumented population estimated to be in the US in 1986 could not qualify because they had entered the country subsequent to that date.

In Spain's first regularization in 1985, the requirement that migrants be employed in the

Notional Earned Regularization Program: The Credit System

Prerequisites	Applicants would have between three and five years to earn the required number of credits. (This chart assumes three years). The countdown starts when one receives a temporary worker card.			
	The Registry would be updated to 1995.			
	Any applicant convicted of a felony would be barred from participating in the regularization program.			
	A dedicated fee would be collected by the federal government to fully offset expected program administration costs.			
	A fee of \$1,500, payable in annual installments, would be required of all applicants to offset expected near-term social expenditures to state and local governments.			
	The three and 10-year immigration eligibility bars would be waived for all participants, as would selected other provisions enacted in and since 1996.			
Characteristics	Total Possible Credits	Maximum Credit	Partial Credit?	Comments
Stable Job	5	A three-year formal relationship with employer(s) and an employer letter of intent to continue to employ the applicant	Two credits for each year of a formal relationship with an employer	Demonstrates likelihood of long-term attachment to the US labor market (a proxy for future labor market "success")
Lawfulness Index	3	No conviction for illegal act other than one related to illegal immigration status	Each misdemeanor conviction leads to a deduction of one credit (can refine further)	FELONY BAR (felony definition returned to pre-1996 legislation standard)
Paying Taxes	3	Three years of "on-the-books" employment	One credit for each year of "on-the-books" employment	Partial credit system recognizes that the transition from the informal to the formal economy may take time
Family Equities	2	Lawful Permanent Resident (LPR) spouse would qualify applicant for full credit	US citizen child(ren) would earn the applicant one credit	Addresses the issue of unreasonable delays in the adjudication of immigration benefits (if delays are reduced greatly, the "pass mark" can be adjusted)
Service to America	2	Military, Americorps, or similar form of governmental service (any level of government)	One credit for public sector service, e.g., mentoring, skills building, school programs, youth development programs, etc.	Integration proxy showing extraordinary commitment to the adopted country
Civic Engagement I	2	Documented basic English fluency	One credit for completion of an English instruction course	This is a basic integration indicator
Civic Engagement II	2	Documented volunteerism at the community level, e.g., volunteering in churches, food banks, hospitals (interpretation, customer relations), youth sports, community projects, etc.	YES	Rewards participation in the life of the community in which an applicant lives
Employment Sector	2	Employment in sectors where demand is highest (US Department of Labor designates)	One credit for work in sectors projected to show continuous employment growth by Bureau of Labor Statistics	Recognizes the realities of and rewards employment in the labor market sectors where the jobs are
Geographic Location	2	Willingness to live and work in parts of the country where population may be declining and labor needs are (or are projected to be) most pronounced (US Department of Labor designates <i>in consultation with states</i>)	N/A	Addresses the needs of many Midwestern and other states, such as Iowa, Kansas, the Dakotas, etc., which have been experiencing or are projected to experience declines in their working age population due to aging and outmigration
Years in Country	1	Continuous residence in the US for at least three years prior to registering for program	N/A	Those who meet the new Registry Date need not participate in the earned regularization system
Maximum Credits				25
Required Credits for Eligibility ("pass mark"); approximately 75 percent of the maximum number of credits (notional)				
Unsuccessful candidates get a final, two year temporary work visa				
				<18

formal sector led an average of only four out of 10 migrant applicants to seek a one-year residence permit that did not permit them to work. Presumably, most of these migrants were in fact working and/or intended to work, but they could not qualify for the full regularization grant because they could not show formal-sector employment.

Spain's most recent regularization program started on February 7, 2005, and ended on May 7, 2005. Nearly 700,000 applications were received and approval rates have been running at or near 90 percent. An additional

400,000 persons are expected to receive residence permits as family members of those who received legal status in the form of one-year renewable work and residence permits.

Regularizations are often criticized on the grounds that they tend to create incentives for more unauthorized immigrants to seek entry into the countries that use them.

There were two categories of applications in the 2005 program. The first category consisted of those presented by employers, who were required to certify that they would employ or continue to employ the applicant, in accordance with all labor laws and social security regulations, for at least six months (three months for more seasonal employment sectors) over the next 12 months. The second class of applications were filed directly by workers who worked in part-time jobs and/or had several employers (such as workers in the personal services' sector). About 30 percent of all applicants used this second application route.

All applicants were required to show that they had been living in Spain since before August 8, 2004, that they had committed no criminal offence for the five years prior to their applica-

tion, and that they were not excludable from Spain for reasons other than their illegal immigration status. All applicants also had to prove their identity and their qualifications for performing their job duties.

Experience offers several lessons; criteria for regularization can create intense incentives for fraud. Criteria that require migrants to prove past behavior, that cannot be verified independently by public records, do so most directly. For instance, the residence requirement of the US 1986 regularization law created a market for false documents to demonstrate residence and (off-the-books) employment.

This is also the case with criteria that tread into areas where informality is the norm or that depend on promises about future behavior. In Italy's 2003 to 2004 regularization, about 20 percent of inspected applications were found to contain false information concerning the job offer, and many migrants were found to have paid their own fines (although in the name of their employer). Even legitimate employers who declared their intent to provide a job to applying migrants often did not end up employing the migrant at a formal sector wage and social contribution rate.

Perhaps paradoxically, stringent requirements do not necessarily prevent large numbers of migrants from participation. In the same Italian regularization, the requirements that employers pay fines for missed social contributions and that immigrants demonstrate that they had a formal-sector job offer did not prevent over 700,000 migrants — almost three times the number predicted by the government — from applying.

Realistically, there are probably no qualification criteria for regularization that can elimi-

nate such perverse incentives. However, attention to the design of the requirements, solid investments in the careful processing of applications, and intensified investigations during the program — and the willingness to change its terms to prevent abuse — can contain the problem.

Selected Critiques of Regularizations

Regularizations are often criticized on the grounds that they tend to create incentives for more unauthorized immigrants to seek entry into the countries that use them. The draw is thought to be the prospect of participating in the ongoing regularization or the general impression that if one survives long enough as an unauthorized immigrant one will eventually be regularized.

This view finds some support in the literature. Some of that support takes the form of surveys of apprehended immigrants — typically at the border — in which they refer to regularization programs as one reason for their attempt to enter illegally. Other support relies on correlations that “match” the top destinations of certain unauthorized immigrant groups and the countries that have performed the most regularizations — a correlation, however, whose causality could run either way.

Such evidence does not make a conclusive case. In Southern European countries, as well as in the US, where the risk of apprehension is particularly low, informal job opportunities abundant, and prospects for formal sector employment uncertain (at best), the prospect of regularization is probably a far less important draw than is the general availability of work for unauthorized migrants. Nonetheless, the possible signalling effect of repeated mass regularizations cannot be dismissed.

A second point of tension with regard to regularizations concerns the relationship between expulsions (removals) and regularizations. In some ways, these two options are substitutes and are thus difficult to deploy jointly. Most obviously, a regularization program in which not all applicants qualify, or in which some regularized immigrants later lose legal status, gives the government an enhanced capacity to engage in large-scale deportations. On the other hand, the fear that regularizations could enable expulsion may discourage many migrants from applying. This

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development undermines security goals as well as the goals of reducing informal employment and social exclusion. Unless addressed up front, such fears risk emasculating the government’s aim of checking as many people as possible against security criteria and are likely to motivate civil society to stand firmly against the government.

New Concepts in Regularization: “Earned” Regularization

See table insert on pages 8-9.

This analysis points to the following “things to watch for” in thinking about and setting up regularization programs. First, such programs must capture the behavior and needs of both migrants and their employers accurately if they are to succeed in their administrative goals. Second, they must learn from the lessons of past programs. The fact that there has been remarkably little evaluation of, and even less systematic experimentation with, regularization programs is a big obstacle in this regard. Third, regularizations must be deployed *jointly* with the other

tools that one finds in the full migration management toolbox.

For instance, the requirement that an illegally resident person should demonstrate formal sector employment in order to receive or maintain legal status has not been shown to be an effective measure in drawing migrants out of vibrant informal labor markets. An alternative, and as yet formally untested, approach might be to grant regularized migrants unconditional work permits and then target the sectors and companies in which they worked for greater enforcement of labor and immigration laws.

Most regularizations also fall victim to a false dichotomy by assuming either that all unauthorized migrants would decide to return home within a few years or that all migrants somehow desire and “deserve” to live permanently in the host country.

Another example of an area where too little reflection and even less experimentation has taken place is the duration of residence permits. Underlying decisions in this regard is the political anxiety about granting the very important privilege of

permanent residence too readily to people who have entered or stayed illegally. Yet, this understandable anxiety perverts a program’s logic and undermines its effectiveness.

Most regularizations also fall victim to a false dichotomy by assuming either that all unauthorized migrants would decide to return home within a few years or that all migrants somehow desire and “deserve” to live permanently in the host country. As with all binary arguments about complex social and economic behavior, both assumptions are partially false. In fact, many regularized immigrants drop out of legal status yet stay on, while others, a smaller number, return to their homes, especially if their visas allow back-and-forth movement. Both

Italy and Greece have had this latter experience with Albanians after granting them work visas that allowed reentries. Of course, geographic proximity, and especially contiguity, play a large role in this regard.

The concept of “earned” regularization shown in the chart on pages 8-9 takes the policy discussion beyond the political dead-end of whether or not to offer illegally resident migrants “amnesty” by addressing many of these and related problems in a practical and clear-headed way. Earned regularization has received the most attention in the United States, but has also entered the policy lexicon in the United Kingdom. In such a program, unauthorized migrants enter a three-tiered process. Of course, the criteria for qualifying for each tier and the exact privileges, rights, and responsibilities awarded can vary without altering the basic concept.

In the first tier, applicants would qualify virtually automatically for a probationary status that grants them temporary residence and work permission by registering with the government and submitting to full background checks. The all-important security concern would thus be met first.

After a reasonable length of time, say, three to five years, migrants would be able to move to the second tier by applying for permanent residence and work permission on the basis of meeting a number of criteria. Among them would be having a record of stable formal-sector employment, paying taxes, passing a basic language skills test, engaging in the life of the community of which they are part, being willing to work in economic sectors and parts of the country where the population is declining and workers are needed, and so on.

Applicants would be awarded “credits” or “points” for meeting those and other reasonable requirements, and would earn permanent status if they gain enough points within the pre-agreed time frame. A “bonus” year might be offered to those who are within a point of the pass mark at the end of the pre-agreed time frame in return for agreeing to a higher pass mark. Both scenarios would stretch out the period during which tier-two applications would be filed. Doing so would make the administrative end of things more orderly, manageable, and less subject to the fraud associated with massive programs having to be delivered in very compressed periods of time. The fact that many applicants will meet the pass mark before the deadline and would be able to apply whenever they do so will contribute further toward the goal of programmatic orderliness and manageability.

The third tier would be for those who fail to meet this test and “graduate” into legal permanent status. These individuals would receive a two-year extension to their residence and work permit and be required to return to their homes.

Earned regularization thus offers the following advantages.

- First, by setting the bar for gaining temporary legal (first tier) status relatively low, it can pull the largest possible number of unauthorized migrants out of the pool of the unknown population and, hopefully, with time, out of the informal economy.
- Second, from a security perspective, the vetting of applicants allows the government to dramatically reduce the “haystack” of unknown foreigners into a more manageable-sized one. The resulting smaller haystack makes it more likely that the application of reasonable, but always limited, investigative resources would stand a better chance of identifying the few proverbial “needles” that are of legitimate security concern.
- Third, by being very generous in allowing applicants to achieve the first-tier probationary status (that of legal temporary status with full work privileges and all applicable labor and social protections and obligations), the host society removes the biggest social problems associated with illegal residence and work. These include gross violations of labor laws, disregard for social and related protections, and unfair competition by those employers who systematically trawl the waters of illegal work.
- Fourth, earned regularization takes into account, without prejudging whether unauthorized migrants are primarily interested in temporary or permanent status, that many migrants may want to stay and work towards earning permanent residence status — and that they could be an asset to the host nation if they were allowed to do so. In fact, a well-designed earned regularization program would grant permanent residence rights only to those migrants who demonstrate the desire and ability to succeed economically and integrate socially into the society in which they have been living.
- Fifth, a transparent system of earning “credits” toward legal status, the barring of felons from the program, the full reimbursement of all administrative and investigative costs the government incurs through the collection of fees, and the fairness and reasonableness of the criteria one chooses make the entire process clear, both to the American public and the program’s users alike. Such clarity leads to realistic expectations and predictable

outcomes for the latter while reassuring the public that a “tough-but-fair” system is in place to address the issue of the illegally resident population.

- Sixth, a policy-savvy earned regularization program would place most of the burden of evidence on criteria that are a matter of public record, and thus less prone to fraud (e.g., tax receipts), and are otherwise easily proven (e.g., not having a criminal record or having the necessary language skills).
- Seventh, an earned regularization system offers the government the best means to remove failed applicants effectively and at relatively modest cost, in a manner that the US public considers fair and to which most civil society groups can acquiesce.
- Eighth, by focusing on evaluating how individuals behave after they have been granted probationary legal status, an earned regularization program creates incentives for ongoing positive behaviors. Not incidentally, such a program becomes, in effect, a transition belt or a bridge to “selecting” permanent immigrants according to requirements that can predict long-term success both for the immigrant and the receiving society.
- Finally, by requiring applicants to pay a very substantial additional fee to offset near-term social expenditures by states and localities, two critical goals are met. The first one is getting state and local governments actively on board the regularization bandwagon, a political priority of the first order if such a program is to be enacted. The second is the very real one of creating a pool of money for use by services provided to immigrants in the fields of health, education, and, more generally, immigrant integration. These are areas where money will be the most effective

— on the ground in our cities, where the need is most pronounced and funds most scarce. Better integrated immigrants, in turn, contribute to stronger communities that benefit all of their members.

Concluding Thoughts and Issues for Further Reflection

The regularization of unauthorized immigrants, while controversial and politically complicated, is a public policy challenge that no country can ignore forever or, for that matter, ever perfect. Still, there remain a host of ways that regularization can be made into a more effective migration management policy tool. The most important ones have to do with learning more about migrant motivations and behavior (such as the complex array of factors that drive migrants to stay or leave their place of residence), and the market and other forces that direct them to seek entry into a specific country or location. Such knowledge, in turn, can be put to work toward developing smarter immigration policies *and* more effective regulatory regimes.

By considering such issues in depth, the incentives that are built into regularization programs can be more carefully shaped, moving beyond such simplistic observations that one should not “reward” law breakers or that regularization engenders further irregular migration. Such observations only lead to policy dead ends.

At the heart of creating more robust regularization programs will be not only better design, but better execution, with increased attention to verifying the information offered by applicants and to following regularized migrants afterwards. A regularization program must thus

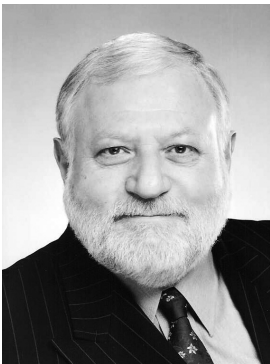
be allowed to become what it has the potential to become: an investment in more orderly labor markets, in the rule of law, and in social stability through inclusion.

This policy brief, however, has set for itself a more challenging goal than simply thinking through the promise and performance of regularization programs. Specifically, beyond better-designed regularization programs lies the issue of how regularization is to be coordinated within the broader context of managing international migration better — much better — than is the case today. Clearly, regularization cannot contribute toward more effective migration management systems in the absence of its full coordination with other measures, especially if it does not take place in the context of a fundamental

rethinking of one's overall migration management policy framework. In such a rethinking, regularization will become part of a broader strategy that includes greater openings to migration, truer cooperation with sending and transit countries, greater attention to issues of rights, *and* smarter and more systematic attention to employment in the underground economy and to lawless behavior of several types.

This policy brief is based partly on Demetrios G. Papademetriou and Kevin O'Neil's, "Managing Irregular Migration." That paper was prepared for the Dutch EU Presidency Conference on Asylum, Migration, and Frontiers held in Amsterdam in September 2004. The discussion of the French case draws on the work of Sorbonne Professor Patrick Weil.

About the Author



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Demetrios G. Papademetriou is the President of the Migration Policy Institute (MPI), a Washington-based think tank dedicated exclusively to the study of international migration. He is also the convener of the Athens Migration Policy Initiative (AMPI), a task force of mostly European senior immigration experts that advises EU member states on immigration and asylum issues, and the Co-Founder and International Chair *Emeritus* of "Metropolis: An International Forum for Research and Policy on Migration and Cities." Mr. Papademetriou holds a Ph.D. in Comparative Public Policy and International Relations (1976) and has taught at the universities of Maryland, Duke, American, and New School for Social Research. He has held a wide range of senior positions that include: Chair of the Migration Committee of the Paris-based Organization for Economic Cooperation and Development (OECD); Director for Immigration Policy and Research at the U.S. Department of Labor and Chair of the Secretary of Labor's Immigration Policy Task Force; and Executive Editor of the *International Migration Review*. Mr. Papademetriou has published nearly 200 books, articles, monographs and research reports on migration topics and advises senior government and political party officials in more than twenty countries. His most recent books include *NAFTA's Promise and Reality* (2003, co-author), *America's Challenge: Domestic Security, Civil Liberties, and National Unity after September 11* (2003, co-author), and *Caught in the Middle: Border Communities in an Era of Globalization* (2001, senior editor and co-author).

The Migration Policy Institute (MPI) is an independent, non-partisan, non-profit think tank dedicated to the study of the movement of people worldwide. The institute 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 responses to the challenges and opportunities that migration presents in an ever more integrated world. MPI produces the Migration Information Source web site, at www.migrationinformation.org.

This report was commissioned as part of MPI's Independent Task Force on Immigration and America's Future. The task force is a bipartisan panel of prominent leaders from key sectors concerned with immigration, which aims to generate sound information and workable policy ideas.

The task force's work focuses on four major policy challenges:

- The growing unauthorized immigrant population
- Immigration enforcement and security requirements
- Labor markets and the legal immigration system
- Integrating immigrants into American society

The panel's series of reports and policy briefs will lead to a comprehensive set of recommendations in 2006.

Former Senator Spencer Abraham (R-MI) and former Congressman Lee Hamilton (D-IN) serve as co-chairs, and the task force's work is directed by MPI Senior Fellow Doris Meissner, the former Commissioner of the Immigration and Naturalization Service.

The approximately 25 task force members include high-ranking members of Congress who are involved in shaping legislation; leaders from key business, labor and immigrant groups; and public policy and immigration experts. MPI, a nonpartisan think tank dedicated to the analysis of the movement of people worldwide, is partnering with Manhattan Institute and the Woodrow Wilson International Center for Scholars for this project.

For more information on the Independent Task Force on Immigration and America's Future, please visit:

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