Trade-Offs in Immigration Enforcement

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Executive Summary

Unauthorized migrants—those without a legal right of residence—live in all modern industrialized countries. Policymakers face significant constraints in addressing this population, including insufficient financial and human resources, and legal frameworks that protect individuals regardless of their residence status. The latter, in particular, means government must uphold the principle of family reunification, and avoid deporting migrants to countries where they may face torture. Governments must also be aware that comprehensive enforcement efforts often have adverse consequences in related policy domains, such as public health and safety.

Policymakers must also recognize that they operate in a context shaped by large forces, not least the strong demand for cheap labor in a globalized world, and the fact that the politics of (illegal) immigration is often a salient and toxic political issue.

Governments must therefore shape their approach carefully and make difficult decisions, including whether to allocate resources to reduce the overall unauthorized population or target those unauthorized immigrants who pose the greatest threat (typically those involved in crime). All governments do both to some degree, but the prioritization differs markedly. Policymakers must also decide how to identify unauthorized people and, once identified, they must overcome a series of operational and legal barriers to establish this identity and obtain permission from other governments to admit the person they wish to return. Throughout, the costs are high, often creating perverse incentives.

The sheer existence of large unauthorized populations in most industrialized societies undermines public confidence in the efficacy of enforcement policies.

Alternatively, policymakers may also choose the politically less popular but often more pragmatic option of legalization, where there are many policy lessons to be learned regarding how to design, target, and implement programs that are, ultimately, an expression of immigration policy failure.

This brief report argues that a successful migration enforcement regime is best defined as one that does limited (or zero) harm to a country's institutions of governance and to citizens' livelihoods, while fortifying public trust that the government is running an efficient and effective system. More simply, a successful regime is managed in the public interest, as shown by a range of measures including but not limited to public confidence in the system. This is not easy to achieve, but the experience of some governments show how it is possible to do it reasonably well.

I.   Introduction

Public and private sector institutions are struggling to respond to the challenges of fast-paced, diverse migration patterns, and in particular to the harms associated with illegal or unauthorized migration. Most scrutiny is focused on unauthorized entry and effective border management. But the sheer existence of large unauthorized populations in most industrialized societies undermines public confidence in the efficacy of enforcement policies. This memo explores the challenges policymakers face as they seek success in one of the most challenging areas of migration management: what to do about unauthorized residents.

Given the deep sensitivities that surround immigration enforcement policies, governments tend to articulate a high standard for successful intervention, or rather, a low tolerance for policy failure in this domain. The political context—as well as the core political philosophies of the government itself[1]—is central to investment decisions. But policymakers do not operate in a vacuum, and understanding the limits of state action (which differ from country to country) is fundamental to any assessment of success.

Policymakers are required to pursue specific enforcement goals within a set of direct and indirect constraints. Direct constraints include:

- *Resource constraints.* Although austerity measures have compelled most Organization for Economic Cooperation and Development (OECD) member governments to reduce budgets for immigration systems over the past five years, legal short- and long-term immigration flows have not dissipated. The resources for enforcement activities have thus been reduced and/or diverted to operating legal immigration systems, while the pressures to achieve success in enforcement remain strong.

- *Legal framework.* The framework of international law—and the institutions within that framework, including national courts, the European Court of Human Rights, and leading nongovernmental organizations—is constantly evolving. For migration policymakers, any legal framework contains a trade-off, explicit in international law, between individual rights and the primacy of states' rights in controlling entry. Moreover, the intrinsically international nature of migration requires bilateral or multilateral state agreements that inevitably clash or cause friction with values of state sovereignty.

- *Broader policy consequences.* Policymakers are constrained by the possible effect of the unauthorized population on other policy areas. For instance, enforcement may be trumped by other public interest imperatives, such as maintaining the health and welfare of the whole population (regardless of residence status).

Indirect constraints include:

- *Market forces.* Increased global integration—alongside the specific skill requirements of certain sectors—creates labor needs that can (and in many cases can *best*) be met by immigrants. Policymakers who choose to work against the market face a difficult task.

- *The nature and contour of the public debate.* In countries with a toxic and politically salient public debate on immigration, immigration issues can swing votes. This results in pressure on policymakers to achieve results they can showcase in the short term, at the expense of developing innovative policy responses for the long term.

Applying laws mechanistically, without consideration for context or nuance, is not the answer, any more than is making rules that are unenforceable, applied inconsistently, or that the government does not intend to enforce. Doing so breeds cynicism among publics, invites further illegal behavior, and, over time, destroys a government's credibility and may fuel the growth of populist movements and reactionary political parties.[2]

Aside from dealing with competing public interests and policy constraints, policies also need to be tailored according to target group. Apprehension and detention are the primary objectives with respect to criminal groups, including those exploiting migrants. But for certain vulnerable groups the central aim is protection, a goal that may be undermined by enforcement action. In the cases of women trafficked in the sex industry or unaccompanied children, for example, enforcement goals have to be balanced against the more immediate concern of providing appropriate guardianship and support. In the United States, the allocation of T-visas

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1   Demetrios G. Papademetriou and Will Somerville, *A Strategic Framework for Creating Legality and Order in Immigration* (Washington, DC: Migration Policy Institute, 2014), www.migrationpolicy.org/pubs/TCM-Migration-StrategicFramework.pdf.

2   For examples in the United States, see the publications associated with the American Bar Association's (ABA) Commission on Immigration. For example, ABA, *Reforming the Immigration System: Proposals to Promote Independence, Fairness, Efficiency, and Professionalism in the Adjudication of Removal Cases* (Washington, DC: ABA, 2010), www.americanbar.org/content/dam/aba/migrated/Immigration/PublicDocuments/aba_complete_full_report.authcheckdam.pdf.

for trafficking victims is contingent on the recipient's cooperation with investigating law authorities—a condition that has been criticized for putting these victims under inordinate pressure.

Box 1. Conflicting Policy Imperatives: A Case Study of Public Health

Public health is a good example of how enforcement may be trumped by other public interest imperatives. In 2011 in Europe, 26 percent of tuberculosis cases occurred within the foreign-born population, with ten European Union Member States reporting that the foreign born accounted for the majority of cases (up to 89 percent in Sweden). These high rates of disease among immigrants are exacerbated by the coexistence of unauthorized and legally resident populations living in poor conditions, who are reluctant (or unable) to access health services, but whose health status may have a contingent effect on surrounding populations. Thus policymakers need to ensure that unauthorized immigrants have access to health care for public-health reasons, rather than pursuing a zero-tolerance (blind-eye) approach to unauthorized populations. To deny health care on enforcement grounds (which may or may not increase the likelihood of return to the sending country—the evidence is mixed) is a disproportionate response in light of enforcement goals of preventing illegal immigration.

Source: European Center for Disease Prevention and Control (ECDC) and World Health Organization Regional Office for Europe, *Tuberculosis surveillance and monitoring in Europe* (Stockholm: ECDC, 2013), www.euro.who.int/__data/assets/pdf_file/0004/185800/Tuberculosis-surveillance-and-monitoring-in-Europe-2013.pdf.

II.   The Reality of Return Policy

Governments are often under pressure to place resources behind the most visible policies in the area of border management, such as immigration control in airports and border patrols. However, they must also address the pool of migrants who have circumvented these policies, both those who entered illegally and those who arrived legitimately but overstayed their terms of entry (the majority of the unauthorized in Europe).

Policymakers have two main policy options: to offer legal residence to unauthorized immigrants, or to identify them and seek to return or deport them to their country of origin. Identification and return remains the preferred policy goal in both Europe and North America. The 2008 European Pact on Immigration and Asylum made this clear, calling on governments to refrain from "mass" regularizations.

The following sections discuss key dimensions of return policies, including how governments may prioritize resources in return-related activities; addressing the dual challenges of locating unauthorized residents and gaining permission from the country of origin to return them; and considerations on whether return or regularization will produce the optimal outcome in any given context.

A.   How to Prioritize Resources

There are two main approaches to interior enforcement through return. Governments can focus their enforcement efforts on removing the *greatest number* of unauthorized immigrants or on removing those

unauthorized immigrants who pose the *greatest threat*. While governments will typically give priority to one over the other, successful enforcement strategies typically combine both approaches.[3]

Most immigration system administrators publicly state that the interior enforcement target is to remove unauthorized migrants who pose the greatest threat. This means that immigration enforcement aims to prosecute unauthorized immigrant individuals who are criminals or when they pose a threat to public safety. This can range from organized crime, drug and arms smuggling, gang-related activity, and sex trafficking; to lower-level crimes, such as burglary and petty theft. Resources are focused on the worst and repeat offenders, such as members of criminal gangs.[4]

One example of this strategy is the tiered approach that some countries, such as Canada and the Netherlands, have adopted. The removal of high-risk persons who pose a threat to national security or are involved in organized crime is the highest priority. The governments secondarily devote resources to other persons of interest such as failed asylum seekers and overstayers. Another example is the United Kingdom's "harm agenda" that rates enforcement action on a sliding scale, and focuses enforcement action on people likely to cause the most harm.[5] In all instances, the implementation of priorities is an open question, since officers may take any number of approaches in practice.[6]

The main drawback of targeting high-threat activity is that it is costly and resource intensive.

The main drawback of targeting high-threat activity is that it is costly and resource intensive, in many cases requiring intelligence and careful law enforcement work. Sometimes prosecution is so complex and difficult that disruption of a particular network is the most effective response, which can mean no convictions or other forms of "public" success. Meanwhile, many people without legal residence could potentially carry on with their daily lives with little disruption. A focus on only those who pose a threat could also reduce the deterrent effect of broader interior enforcement. Both anti-immigration activists and enforcement officials favor this last argument, believing that an overall "hostile environment" persuades immigrants to "self-deport." Finally, if the law is regularly ignored, and perceived as ignored, governments may further lose public trust in the management of the entire migration regime.

A second approach is to reduce the volume of illegal migration by removing the largest possible number of unauthorized immigrants resident in a particular country. Politicians and policymakers may set quotas or targets of the numbers of people to be removed in a particular year, while many immigration agencies outline internal targets as a performance management tool. In the U.S. case, the administrations of both President Bush and President Obama have pursued an aggressive interior enforcement strategy in an effort to persuade the public that the government can and will enforce the law scrupulously. Some countries such as France and the Netherlands have established specific targets or quotas. These can also be politically motivated, as in the case of the French announcement

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3   For a longer discussion, see Papademetriou and Somerville, *A Strategic Framework for Creating Legality and Order in Immigration*.

4   Muzaffar Chishti and Claire Bergeron, "Obama Administration's Steps Point to Significant Shift in Immigration Enforcement Policy," *Migration Information Source*, September 2010, www.migrationinformation.org/USfocus/display.cfm?ID=798.

5   Martin Ruhs and Bridget Anderson, "Semi-Compliance and Illegality in Migrant Labor Markets: An Analysis of Migrants, Employers and the State in the UK," *Journal of Population, Space and Place* 16, no. 3 (2010): 195–211; UK Border Agency, *Protecting Our Borders, Protecting the Public: The UK Border Agency's five year strategy for enforcing our immigration rules and addressing immigration and cross-border crime* (London: UK Border Agency, 2010): 10, www.webarchive.nationalarchives.gov.uk/20100303205641/http:/www.ukba.homeoffice.gov.uk/sitecontent/documents/managingourborders/crime-strategy/protecting-border.pdf?view=Binary.

6   A Migration Policy Institute (MPI) study of the 287(g) immigration enforcement program shows how a universal model of enforcement takes precedence over a targeted one in the United States, despite stated goals. See Randy Capps, Marc R. Rosenblum, Cristina Rodriguez, and Muzaffar Chishti, *Delegation and Divergence: A Study of 287(g) State and Local Immigration Enforcement* (Washington, DC: MPI, 2011), www.migrationpolicy.org/pubs/287g-divergence.pdf.

to increase the 2012 return target from 33,000 to 40,000 just days before the final round of presidential elections.[7]

There are a number of problems with volume-led or universal models of enforcement.[8] Two problems in particular can have perverse consequences. First, resource allocations are neither precise nor flexible enough to cope with the numbers of unauthorized that may emerge, and may compromise the more important goal of targeting those unauthorized immigrants who pose the greatest threat. Second, this approach typically leads to targeting individuals who offer the *least threat* since it is easiest to go after the low-hanging fruit. (These are well-known problems in other areas of policy—the targeting of public policies are often referred to as cream-skimming.) There are examples of this in France, where over the years authorities have focused on particular nationalities and groups, many of whom hold EU citizenship. In 2010, 30 percent of effected returns were Romanian nationals, and nearly one-quarter of the remaining returns were made up of just three additional nationalities—Algerian, Tunisian, and Moroccan.[9] Advocates have similarly argued that immigration enforcement teams may target families (which are more easily identified). The unauthorized population itself is considered to be far more diverse. Finally, focusing on numbers alone means that whether or not officials meet the target for returns becomes the sole metric for success.

Overall, the targeting model (aimed at reducing the greatest threat) offers a more precise targeting of resources and is more strategic in reducing both the threat to public safety and the more organized violation of immigration and other important laws. In practice, the choice of which approach to prioritize, and hence how to allocate resources, remains extremely dependent on context—the legal framework, the influence of civil society, external factors, and the situation on the ground.

B.   *Challenges in Implementing Return Policies*

Governments are faced with two central practical challenges in effecting return: locating and identifying unauthorized migrants, and obtaining the consent of the origin country in order to return them.

Locating unauthorized immigrants can be challenging, not least because their lifestyle is necessarily clandestine. Governments have piloted a number of different methods in recent years, but many of these have been challenged on rule-of-law and discrimination grounds. In 2006 the French government was severely criticized for sending police officers to wait at school gates for unauthorized parents to pick up their children,[10] while in the Netherlands, police officers had to defend their decision to raid a bar, known for its immigrant clientele, in court.[11] In the United Kingdom, the government has given contracts to private contractors in order to trace individuals.[12] Clearly, there are limits to how intrusive immigration officers can be in locating the unauthorized population. Other countries, such as the United States and Switzerland, focus on making life more difficult for immigrants without correct documentation. In Switzerland, for example, an identity card is required in order to open a bank account or purchase a mobile phone account.

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7   *Libération*, "Gueant table sur 40,000 expulsions de clandestins en 2012," May 3, 2012, www.liberation.fr/poli-
     tiques/2012/05/02/gueant-table-sur-40-000-expulsions-de-clandestins-en-2012_815825**.**
8   It is worth noting that the problems of quota-based targets are common to other regulatory enforcement regimes.
9   European Migration Network (EMN), *Practical Measures to Reduce Irregular Migration*, France Report (Brussels: EMN, 2011),
     accessed on December 16, www.immigration.interieur.gouv.fr/Europe-et-International/Le-reseau-europeen-des-migra-
     tions-REM/Les-publications-du-REM/Les-etudes/Mesures-pratiques-pour-reduire-l-immigration-irreguliere.
10   Platform for International Cooperation on Undocumented Migrants (PICUM), *Undocumented Children in Europe: Invisible
     Victims of Immigration Restrictions* (Brussels: PICUM, 2008), www.picum.org/picum.org/uploads/file_/Undocumented_
     Children_in_Europe_EN.pdf.
11   Amnesty International, *The Netherlands: the Detention of Irregular Migrants and Asylum Seekers* (Amsterdam: Amnesty In-
     ternational, 2008), www.amnesty.org/en/library/asset/EUR35/002/2008/en/4c629481-482d-11dd-a377-f5461cc8d4de/
     eur350022008eng.pdf.
12   See, for example, UK House of Commons Home Affairs Committee, "The work of the UK Border Agency (July–September
     2012)" (Fourteenth report of the session 2012-13, March 25, 2013): 45, www.parliament.uk/documents/commons-commit-
     tees/home-affairs/HC792-UKBA-Q3-Report-FINAL.pdf.

Once enforcement officials apprehend unauthorized immigrants, they must process the return to their country of origin. For many immigrants, particularly those who have not managed to obtain refugee status, return is extremely difficult. This population may come from unstable countries and regions, and many will have destroyed their passports and identification documents on their journey. In the absence of a voluntary decision to return home, authorities must both establish the migrants' country of origin and citizenship, and obtain travel documents for each individual. This is more of a challenge for European governments than for the United States and Canada. While the dominant sending region to the United States remains Central America and Mexico, unauthorized migrants to Europe hail from around the globe. In order to effect return, European national authorities must establish relationships with far more countries of origin in order to convince them to issue travel documents.

> *Clearly, there are limits to how intrusive immigration*
> *officers can be in locating the unauthorized population.*

In an effort to mitigate this challenge, national governments and the European Commission have invested in negotiating readmission agreements with both origin and transit countries such as the Ukraine and Turkey. These agreements require transit countries to accept migrants who have travelled through, rather than originated in, their territory. However, a recent assessment of the implementation of EU readmission agreements suggests that their use is still nascent among Member States, many of whom prefer the formal and informal bilateral arrangements that predated the multilateral negotiations.[13] National approaches seem to have been much more effective. For example, Spain's bilateral agreements with a range of African sending countries, such as Senegal, have led to a significant reduction in the number of migrants arriving in the Canary Islands by boat. Officials appear to prefer this approach because of the one-on-one relationships with their counterparts and the scope for informal practical arrangements for return. Bilateral agreements can be unstable, and sometimes unethical, bargains. Italy's agreement with Libya to return migrants arriving across the Mediterranean came under fire from a range of human rights groups concerned about the treatment of returnees, and then collapsed entirely during the 2011 Arab Spring. Several years later, one of the challenges facing EU Member States has been the difficulty (and undesirability) of returning migrants to unstable transit countries in North Africa and beyond.

Cost is also an issue, as the process of identifying, detaining, and returning migrants has become increasingly expensive. Identification systems, particularly those that can work across the European Union, are costly and time-consuming to implement. Many of those responsible for producing a design for an EU entry-exit scheme are dubious about its added value relative to its cost,[14] and its potential impact on fundamental rights and privacy.[15]

In addition, the costs of detention and return for each individual have raised questions of efficiency. In France it cost an estimated 20,970 euros to return each individual migrant in 2008.[16] The best estimate in the United Kingdom dates back to 2003-04, where it was estimated at 10,100 pounds.[17] The European Union has begun to invest in joint returns procedures, allowing Member States to share the costs of

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13   European Commission, "Evaluation of EU Readmission Agreements," COM (2011) 76, February 23, 2012, Brussels.
14   European Parliament Directorate-General for Internal Policies, *The Commission's legislative proposals on Smart Borders: their feasibility and costs* (Brussels: European Parliament, 2013), www.europarl.europa.eu/RegData/etudes/etudes/join/2013/493026/IPOL-LIBE_ET(2013)493026_EN.pdf.
15   European Commission. "Article 29 Data Protection Working Party: Serious concerns regarding proposed Entry-Exit System" (press release, June 17, 2013), www.ec.europa.eu/justice/data-protection/article-29/press-material/press-release/art29_press_material/20130617_pr_smart_borders_en.pdf.
16   Econ Pöyry, *The Enforced Return of Irregular Migrants: Rules and Practices in Norway, France, Poland and Sweden* (Oslo: Norwegian Directorate for Immigration, 2009): 59, www.samfunnsforskning.no/content/download/34480/668928/file/TheEnforcedReturnOfIrregularMigrantsJune2009.pdf.
17   National Audit Office, *Returning Failed Asylum Seekers* (London: National Audit Office, 2005): 44, www.nao.org.uk/wp-content/uploads/2005/07/050676.pdf.

returning to particular countries, but this has not yet reached a scalable level. Thirty-nine joint operations were undertaken in 2012, with a total of 2,110 individuals returned (around a 25 percent increase from 2009) at a cost of 10.243 million euros.[18] In 2013 Frontex allocated 10 million euros for joint return operations, down slightly from 2012.[19] While costs have yet to become part of the public debate, this might change if numbers returned were to increase significantly in a continued economic crisis or times of austerity.

Overcoming these challenges is essential for maintaining credibility across the immigration system. If return is repeatedly highlighted as the only acceptable tool of enforcement, then a sustained inability to improve rates of identification and return undermines the system as a whole.

C.   Considering Regularization as a Policy Tool

Return remains an incomplete policy option. It is in this context that regularization has emerged as a "policy valve" to complement incomplete enforcement strategies. For example, in France, the number of removal orders issued to immigrants is far lower than the actual number of unauthorized migrants resident in France, exemplified by the fact that more than 20,000 become eligible for regularization each year (individually determined at the local, prefectural level).[20] This is not a problem singular to France—indeed the French government is considered to be one of the most effective in Europe in this regard—but reflects a broader challenge evident across Europe in effecting return.

The central enforcement goal of regularization is a pragmatic one: to reduce unauthorized residence and work.

Despite political and public distaste for the policy, regularization remains a frequently employed tool. According to the International Center for Migration Policy Development (ICMPD), over 40 regularizations have taken place across Europe over the past decade, giving legal status to over 3 million people.[21] However, most governments are loath to employ regularization policies; they are unpopular among publics and for some governments represent a mark of failure. For example, the Swedish government is reluctant to acknowledge regularization as a policy option not because of the potential pull factor, but because to do so would acknowledge policy failure. Sweden's remote location, strong labor market regulation, and open legal migration policies make this reluctance less critical than for countries with major flows of unauthorized migrants. By contrast, in Spain, Greece, and Italy, high numbers of unauthorized immigrants, a large shadow economy, and employer dependence on migrant labor have made regularizations an established policy tool.

The central enforcement goal of regularization is a pragmatic one: to reduce unauthorized residence and work, though not the size of the immigrant population itself. Regularization is not a perfect policy choice; it appears to reward wrongdoing and thus may encourage future immigrants to follow illegal paths.[22]

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18   Frontex, *General Report 2012* (Warsaw: Frontex, 2012), www.frontex.europa.eu/assets/About_Frontex/Governance_documents/Annual_report/2012/EN_General_Report_2012.pdf.
19   Frontex, *Programme of Work 2013* (Warsaw: Frontex, 2012): 7, www.europarl.europa.eu/meetdocs/2009_2014/documents/libe/dv/frontex_wp2013_/frontex_wp2013_en.pdf.
20   European Migration Network, *Practical Measures to Reduce Irregular Migration*, 2011.
21   International Centre for Migration Policy Development (ICMPD), *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: REGINE Project of the ICMPD, 2009), www.research.icmpd.org/fileadmin/Research-Website/Logos/Publications/REGINE_Policy_Brief.pdf.
22   Pia M. Orrenius and Madeline Zavodny, "What Are the Consequences of an Amnesty for Undocumented Immigrants?" (working paper 2004-10, Federal Reserve Bank of Atlanta, 2004), www.frbatlanta.org/filelegacydocs/wp0410.pdf.

Conversely, many governments highlight the positive humanitarian impacts of regularization, namely that it reduces uncertainty, poverty, and poor employment conditions for those who may have resided in the destination country for many years. But at root, amnesties are also a very visible admission of failed policy: to offer legal status is to accept that illegal migration not only exists, but that it is almost impossible to eliminate exclusively through return.

Amnesties cannot be considered a universal panacea. Spain, proud of its huge legalization effort in 2005, now faces high levels of unemployment, particularly of non-nationals. A recent analysis of work permit issuance in Barcelona found that as many as 25 percent of regularized immigrants had fallen back into irregularity.[23] An even higher proportion of those who obtained legal status through individualized "settlement" processes since 2005 have failed to renew their work permits yet have still not returned to their sending states, perpetuating a cycle. As a consequence, policy analysts at the Migration Policy Institute (MPI) have recommended examining models of earned regularization.[24] These may be group-based for all immigrants, or—perhaps the most politically viable option—on a case-by-case basis.

Most governments adopt a combination of both return and regularization (recognizing that achieving full return is both costly and unfeasible), relying on the second option in response to crisis situations.

III.   Conclusion: Measuring Success

This report provides a brief overview of the trade-offs and difficulties associated with one of the core functions of government immigration enforcement: reducing the volume of illegally resident immigrant populations and mitigating the risks associated with them.

Governments are faced with the challenge of reducing unauthorized populations while preventing future illegal immigration in the context of limited resources. Policymakers also have legitimate concerns beyond existing illegally resident populations and flows of illegal immigration. In particular, they may be concerned with types of organized immigration crime—most obviously drug smuggling and other underground economic activities, gang activities, or the trafficking of women for sexual exploitation. The growth of intermediaries or agents who facilitate illegal immigration is an escalating problem, contributing further to the sense that the rule of law and society's sense of order are under assault.[25] How then can an enforcement policy serve the public interest while having a realistic prospect of success?

This report argues that a successful migration enforcement regime is best defined as one that does limited (or no) harm to a country's institutions and to citizens' livelihoods, even while fortifying public trust that the government is running an efficient and effective system. More simply, a successful regime is managed in the public interest, as shown by a range of measures including but not limited to public confidence in the system.[26]

Public confidence in the immigration system is a narrow measure and should not be confused with public opinion about immigration generally. Public concern on the topic is reflected by the political salience of illegal immigration. Recent data from *Transatlantic Trends*,[27] a comparative public opinion poll on immigration, now in its fifth year, shows a consistent trend: between 56 and 80 percent of the public worries about illegal

23   Albert Sabater and Andreu Domingu, "A New Immigration Regularization Policy: The Settlement Program in Spain," *International Migration Review* 46 No. 1 (Spring 2012): 191–220.

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

25   David Kyle and Rey Koslowski, eds., *Global Human Smuggling: Comparative Perspectives* (Baltimore, MD: The Johns Hopkins University Press, 2001); Aspasia Papadopoulou, "Smuggling into Europe: Transit Migrants in Greece," *Journal of Refugee Studies* 17, no. 2 (2004): 167–84.

26   Papademetriou and Somerville, *A Strategic Framework for Creating Legality and Order in Immigration*.

27   German Marshall Fund of the United States (GMFUS), Transatlantic Trends: Immigration (Washington, DC: GMFUS, 2011), www.trends.gmfus.org/files/2011/12/TTImmigration_final_web1.pdf.

immigration, compared to between 18 and 38 percent who worry about *legal* immigration. There is also the troubling perception held by many—up to 64 percent in Italy and 49 percent in Spain—that *most* migration is illegal.

However, public preferences are often polarized by the difference between means and ends. Those concerned about illegal immigration and large illegally resident populations do not necessarily agree on how to tackle the problem. For example, while a majority welcomes strong control, there is a split between those who feel that the unauthorized population should be returned (52 percent in Europe and 47 percent in the United States) and those who favor legalization (35 percent in Europe and 49 percent in the United States).

On the narrower measure of public confidence in migration management, opinion survey findings vary but are largely negative. For instance, three in four people in the United Kingdom and four out of five people in Italy say governments are doing a "poor" job of managing immigration.[28] Other governments—notably those of Canada and Germany—are seen as doing a better job. Just over half of Germans think that the German government is doing a poor job, and this figure drops to fewer than half of those surveyed in Canada. This measure is an important signal of whether a system is robust enough for the public to accept, and whether policymakers have room to maneuver.

As a metric of success, public confidence in the management of the migration regime can be difficult to operationalize, since policymakers do not know what the public considers an acceptable level of illegality, and also because opinion often responds to political promises that may not be realistic (zero tolerance on illegal immigration, for example). Communication on progress should therefore emphasize what is feasible and realistic—overpromising on reducing harm and illegal immigration is frequently self-defeating and leads to a vicious circle of loss of public trust followed by increasingly bold (and unachievable) promises.

> *One of the key elements of success in this field may well be the recognition that success is not solely an enforcement approach.*

Effective process and redress procedures can increase support for the immigration system overall (including enforcement programs), even among immigrant communities. Furthermore, effective rule-of-law processes—for example, where asylum claims are adjudicated fairly, without delay, and result in either refugee status or swift return—alleviate concerns that people are exploiting bureaucratic ineffectiveness or bias in immigration systems.

In order to achieve success, and maintain public confidence, policymakers must also have a strong understanding of other available metrics. There is potential to collect and analyze a range of key performance indicators drawn from court cases, crime statistics, health indicators, and so on. Doing so could allow policymakers to better differentiate between known and unknown risks, and to adjust policies to cope with both existing and emerging challenges of enforcement. A range of metrics, if transparently and thoughtfully deployed, will also increase the confidence of stakeholders and the public that enforcement actions are effective.

Of course, policymakers must work within a set of parameters, which can impede absolute enforcement. These include respect for the individual rights of immigrants or trade-offs against broader public welfare goals (for example around public health risks). As such, one of the key elements of success in this field may well be the recognition that success is not solely an enforcement approach, but one which takes the broad range of policy tools (including regularization) into account.

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28   Ibid.

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