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IMPROVING US AND EU IMMIGRATION SYSTEMS

Policies to Curb Unauthorized Employment

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Executive Summary

Illegal immigration is possible in large part because unauthorized immigrant workers are able to find work in destination countries. Employers turn to the unauthorized not just because they are willing to accept lower wages; illegal hiring, often in the informal economy, can also enable employers to evade costly regulations and taxes, and to enjoy greater flexibility in working hours and employment length. The underlying drivers of illegal hiring vary based on the type of employer, the nature of the industry, state of the economy, and a country's labor market institutions, employment legislation, immigration systems, and even culture.

*Illegal immigration is in large part driven by
illegal employment.*

Policymakers crafting a coherent strategy to reduce illegal employment can rely on three major lines of attack. First, employer sanctions aim to raise the cost of hiring illegally. Effectively implementing sanctions requires reliable mechanisms to verify workers' employment status and prove that employers *knowingly* hired an unauthorized worker, and a strategy to make the most of limited resources, including by targeting law enforcement efforts at high-risk employers or industries. Second, legal channels should provide a realistic and *preferred* option for low-skilled migrants and employers. Simplifying and easing access to legal visas can address this problem but must be balanced against the desire to moderate the inflow of less-skilled workers. Finally, domestic labor market reforms to increase labor participation, tackle the incentives for informal working, and reduce labor standards violations represent more ambitious policies with the potential to address some of the underlying causes of illegal employment.

I. Introduction

Illegal immigration is in large part driven by illegal employment. Not exclusively, of course — some unauthorized migrants are nonworking family members or unsuccessful asylum seekers — but most illegal immigration to developed countries would not occur if unauthorized employment simply were not possible. Instead, the ready supply of migrant workers who desire better economic opportunities, coupled with employers' demand for low-skilled labor, creates persistent incentives for illegality despite the numerous laws and regulations that aim to prevent this bargain from taking place.

Strong underlying drivers create both the supply and the demand for unauthorized employment. On the "supply" side, immigrants are attracted to wealthy countries because of large wage differentials; globalization and economic development in sending countries reduce the cost of moving; economic restructuring and trade displace workers in some regions while creating jobs in others; and the development and strengthening of social networks in host countries leads to chain migration. On the "demand" side, increasingly educated native populations have been moving out of low-skilled occupations for decades while employer demand in these occupations remains substantial. Meanwhile, host countries tend to limit the number of visas for low-skilled immigration in order to address concerns about exploitation, immigrant integration, the fiscal impacts of low-income immigrants, and competition with a shrinking but disadvantaged low-skilled native labor force.

The overall impact of illegal immigration on receiving countries' economies is thought to be small.¹

¹ The impact is thought to be small because the unauthorized population make up only a small share of the overall labor force in advanced industrialized nations (even if they are a substantial share of a country's immigrants). See Gordon H. Hanson,



However, governments strive to keep illegal immigration under control in order to gain public trust in migration management, to reduce the risk of exploitative employment practices, and in some countries, as part of a wider strategy to limit undeclared (and untaxed) work. This policy brief describes the reforms and policies available to reduce unauthorized employment — namely strengthening employer sanctions and employment verification methods, improving legal immigration avenues, and pushing labor market reforms — that go beyond border controls to tackle the strong push and pull factors that drive the phenomenon. It analyzes which policies are most promising, which are most cost effective, and which are both feasible and politically palatable.

II. Why Do Employers Hire Unauthorized Immigrants?

Employers face various incentives to hire illegally, assuming that they do so knowingly.² Generally, they fall into two categories: unauthorized workers are not as expensive to hire; and they come with fewer strings attached — strings that can make it more difficult for employers to run their businesses.³

- **Unauthorized workers cost less — in wage and nonwage costs.** Employers in industries with low profit margins, such as agriculture, low-tech manufacturing, or low-skill services, face pressure to reduce labor costs and may turn to unauthorized workers willing to accept a lower wage. Unauthorized hiring also may enable employers to evade costly regulations and taxes, including payroll taxes, social security contributions, health care, maternity benefits, and other paid leave.
- **Unauthorized workers provide greater flexibility.** Unauthorized workers can be quickly hired “off the street” or through social networks for an open-ended period and are often willing to work flexible or irregular hours. They are more likely to work without contracts and so are not subject to costly and time-consuming hiring and firing regulations. This makes them a more flexible source of labor compared to host-country citizens *and* authorized workers on employment visas. Employers hiring through legal migration arrangements such as temporary guest worker programs, by contrast, may be required to file applications several months in advance, meet complicated paperwork requirements, provide evidence that they cannot find local workers, and commit to employing the worker for a specified time period. Low-skilled migration programs also tend to restrict the sectors or occupations that are eligible while others are subject to oversubscribed quotas, preventing some employers from using the legal system.

The demand for unauthorized labor depends on the type of employer, economic circumstances, and the country’s labor market institutions and policies. The pressure to reduce costs and increase flexibility is greater in industries with low profit margins, such as agriculture, low-tech manufacturing, or low-skilled services, some of which face tight competition with overseas producers.⁴ Particularly susceptible are

The Economics and Policy of Illegal Immigration in the United States (Washington, DC: Migration Policy Institute, 2009), www.migrationpolicy.org/pubs/Hanson-Dec09.pdf

- 2 It is not known what proportion of unauthorized immigrants’ employers are aware of their employees’ legal status. Note that even employers who formally comply with verification regulations might in some cases knowingly hire an unauthorized immigrant worker by accepting fraudulent documents or turning a blind eye to workers who use false or borrowed identities.
- 3 Note that this memo assumes that unauthorized immigrants themselves would work legally; although it has been argued that compared to a strictly enforced temporary worker program, some may prefer an illegal contract that can be extended indefinitely. See Christiane Kuptsch, “The Protection of Illegally Employed Foreign Workers: Mission Impossible?” in *Inter-economics* 39 no. 1 (2004): 14-7, http://econpapers.repec.org/article/sprintere/v_3a39_3ay_3a2004_3ai_3a1_3ap_3a14-17.htm.
- 4 For a discussion of the use of unauthorized labor in low profit-margin firms in the United States and France respectively, see J. David Brown, Julie L. Hotchkiss, and Myriam Quispe-Agnoli, “Undocumented Worker Employment and Firm Survival” (IZA Discussion Paper 3936, revised January 12, 2009), <http://ftp.iza.org/dp3936.pdf>; and Natasha Iskander, “Immigrant Work-



small businesses, which can more easily operate partially or wholly in the informal economy without detection⁵ because of their sheer numbers, their inconspicuousness, and the fact that inspectors find it easier to target large employers.⁶ Seasonal employers, especially those in rural areas with small local labor markets, may also rely on unauthorized workers because their numbers are more responsive to fluctuations in labor demand.⁷ Note that some of these employers might not be able to remain in business without the low-cost, flexible labor supply that unauthorized immigrants provide.

The incentive to hire illegally depends on labor market institutions and even culture. In countries with strict employment legislation or high social charges (such as Greece, Spain, or Portugal), employers may hire unauthorized workers in part to avoid the costs of legal employment.⁸ In addition, these countries tend to have larger informal economies,⁹ potentially making noncompliance with employment and tax legislation (and perhaps, therefore, immigration laws) more socially acceptable. By contrast, in countries such as the United States — where unauthorized workers account for more than 5 percent of the labor force — high illegal immigration occurs in tandem with flexible labor markets; here, employers' motives for hiring illegally are more likely to be lower wages, flexibility, and difficulties finding sufficient numbers of authorized workers in certain types of occupations.

III. Policies to Curb Unauthorized Employment

Three main types of policy can be used to reduce the prevalence of illegal working: employer sanctions and status verification schemes, the provision of sufficient legal immigration routes, and a set of wider labor market and labor standards reforms.¹⁰ These approaches should be considered complements rather than substitutes, as it is unlikely that any one policy alone could be effective in reducing illegal employment.

A. Employer Sanctions and Status Verification

Sanctions are designed to deter employers from hiring unauthorized immigrants with the threat of fines or, in some countries, criminal charges. Their goal is to level the playing field by raising the potential cost of hiring unauthorized workers, thereby reducing the economic incentive to do so. As with any deterrence policy, however, effectiveness hinges on the size of the sanction and employers' perceptions about how

ers in an Irregular Situation: The Case of the Garment Industry in Paris and its Suburbs" in *Combating the Illegal Employment of Foreign Workers* (Paris: Organization for Economic Cooperation and Development, 2000).

5 Violations of visa rules are also more common in small businesses, for whom the cost of compliance with a whole range of HR and personal regulations is less affordable. US Citizenship and Immigration Services (USCIS), "H-1B Benefit Fraud & Compliance Assessment," (Washington, DC: USCIS, 2008),

www.laborimmigration.com/wp-content/uploads/2008/10/uscis-h1b-audit-report.pdf.

6 David Weil, "A Strategic Approach to Labour Inspection," *International Labour Review* 147 no. 4 (2008): 349-75. www.hctar.org/pdfs/Weil.strategic_approach08.pdf.

7 Hanson, *The Economics and Policy of Illegal Immigration in the United States*.

8 Organization for Economic Cooperation and Development (OECD), *Combating the Illegal Employment of Foreign Workers* (Paris: OECD, 2000).

9 The informal economy is defined here as undeclared (but not necessarily illicit) economic activity. Note that countries with large informal economies sometimes, but not always, also experience higher levels of illegal immigration. For example, Greece, Italy, and Spain combine large informal economies with substantial illegal immigration, while large informal economies in the Scandinavian countries appear to be less associated with unauthorized foreign employment. For a discussion, see Lars P. Feld and Friedrich Schneider, "Survey on the Shadow Economy and Undeclared Earnings in OECD Countries," *German Economic Review* 11 no. 2 (2010): 109-49. www.econ.jku.at/members/Schneider/files/publications/LatestResearch2010/SurveyShadEconTaxEvasion.pdf.

10 Accompanying memos examine other policies designed to reduce the size of the unauthorized population more directly but which do not focus specifically on its roots in the labor market: legalization, deportation, assisted voluntary returns, and border enforcement.



persistently they are enforced. Both the size of the penalties and the resources dedicated to enforcement vary substantially by country.¹¹ While many countries have employer sanctioning regimes on their legislative books — sometimes involving substantial fines — limited enforcement has raised questions about their actual effectiveness.¹²

At the same time, some major challenges arise during the implementation of employer sanctions:

- **Proving employers' guilt.** Employers must have a reliable mechanism to check their workers' immigration status in order to comply with law. Otherwise, employers who knowingly hire unauthorized workers may be able to deny their guilt and avoid the penalties. Verification policies typically rely on creating secure employment authorization documents or providing (and often requiring the use of) a government verification service.¹³ Note that reliable status verification can be an enormous challenge because of the difficulty creating a system that is both fraud-proof and cost-effective.
- **Making the most of law enforcement resources.** Concerns about insufficient resources and number of investigators are common across countries with employer-sanction laws, even among those that can rely on more numerous labor or tax inspectors to enforce immigration laws.¹⁴ Inspectorates working with limited resources can make their efforts more effective, however, by targeting them at high-risk industries or employers, strategically collecting intelligence on where violations are most common and most serious, and publicizing the outcomes of inspections. Increasing fines for repeat offenders have also been used with some success in inspection and sanction regimes more generally.¹⁵

It remains an open question to what extent governments can use employer sanctions regimes to fundamentally alter employers' behavior and change their assessment of the benefits of hiring illegally. If genuinely effective enforcement ultimately requires unfeasibly large resources, the strong appeal of employer sanctions may remain theoretical.

B. Facilitating Legal Immigration

In theory, illegal immigration could be reduced almost mechanically if receiving countries made it easier for less-skilled foreign workers to obtain work permits. But governments tend to restrict levels of less-skilled immigration for legitimate reasons, such as preventing a decrease in average education levels among the population, facilitating immigrant integration, and reducing the risk of wage stagnation in the existing low-wage labor force.

How does expanding legal immigration affect the levels of illegal immigration? This question has so far

11 Susan Sachs, *Employer Sanctions in Europe: The Gap between Goals and Impact* (Washington, DC, Migration Policy Institute, forthcoming 2011).

12 A 2009 European Union (EU) directive requires Member States to implement sanctions policies against employers of unauthorized immigrants. See European Commission, Directive 2009/52/EC of the European Parliament and of the Council, *Official Journal of the European Union*, June 18, 2009, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:168:0024:0032:EN:PDE>.

13 In France, for example, employers must register at least two days before hiring a non-EU national, and the government performs the verification. The United States runs E-Verify, an electronic verification system used to check workers' legal status before they start work, although it currently covers only a small proportion of employers. See Bernard Ryan, *Innovations in Employer Sanctions in the United States and Europe* (Washington, DC: Institute for the Study of International Migration, 2008), www12.georgetown.edu/sfs/isim/Publications/GMF%20Materials/EmployerSanctionsGMF.pdf; and Marc R. Rosenblum and Doris Meissner, *The Next Generation of E-Verify: Getting Employment Verification Right* (Washington, DC: Migration Policy Institute, 2009), www.migrationpolicy.org/pubs/Verification_paper-071709.pdf.

14 For a more detailed discussion, see Sachs, *Employer Sanctions in Europe*.

15 Weil, "A Strategic Approach to Labour Inspection;" Richard Macrory, *Regulatory Justice: Making Sanctions Effective* (London: Cabinet Office, 2006), www.bis.gov.uk/files/file44593.pdf.



not proved amenable to statistical analysis and little robust evidence exists. On one hand, larger and more flexible legal flows ought to reduce the “need” to hire illegally, at least in the short run. However, it is not clear how many legal visas would be needed to induce a meaningful reduction in illegal flows. A risk exists that expanding legal flows without concurrent efforts to discourage illegal immigration could simply lead to more low-skilled migration with only small reductions in unauthorized flows — an outcome most countries seek to avoid. Increased legal immigration can also create social networks that draw in more immigrants (authorized or unauthorized) in the long run. The legacy of US and German guest worker programs provides an illustration of this problem.

What type of systems can substitute for existing illegal flows? First, in order to bring employers who would otherwise have hired illegally into legal hiring, legal systems would have to mimic at least some of the characteristics of illegal migration.

- **Targeted recruitment.** Several receiving countries have developed (usually temporary) employment-based visa programs specifically targeted either at sectors with high levels of unauthorized workers, such as agriculture or food processing, or at the source countries of illegal flows (often through bilateral agreements between sending and receiving governments). The United Kingdom’s Sector Based Scheme for food processing workers, for example, was introduced with the explicit purpose of reducing illegal immigration into this sector.
- **Flexible volume.** The number of permits available, and the speed and efficiency with which they can be dispatched, should respond at least to some extent to employer demand. Illegal immigration is much more sensitive to the business cycle than most legal streams, and this flexibility underpins much of the demand for unauthorized workers.¹⁶
- **Flexible length.** Many unauthorized immigrants work for years in nonseasonal, ongoing jobs. Temporary migration programs with strict end dates may fail to reduce illegality since both individual migration decisions and employers’ hiring needs are often open-ended, and foreign workers who enter legally may stay on illegally if the demand for their labor continues. Ultimately, bringing these long-term immigrants into the legal system would require a path to permanent residence for less-educated workers. This can be politically difficult, however, and provisional or permanent low-skilled immigration systems (excluding legalization) are relatively rare.
- **Simplifying regulatory requirements.** Paperwork, advertising requirements, visa fees, and the terms and conditions governing the employment contract (wages, housing, hours, or other conditions employers must guarantee) reduce “good-faith” employers’ flexibility and the ease with which they can comply with the rules. Complicated visa renewal procedures can also push authorized workers into illegal status even if they are theoretically eligible for a new visa.¹⁷

The most difficult policy decisions when designing legal immigration systems for less-skilled workers involve the tradeoff between accommodating employers’ demand for a flexible system without numerical limits and with few regulations and retaining sufficient conditions and restrictions to protect rights and prevent abuses.

C. Labor Market Reforms and Enforcing Labor Standards

A third set of policies takes a different approach. Instead of targeting the illegal employment of foreign

¹⁶ Hanson, *The Economics and Policy of Illegal Immigration in the United States*.

¹⁷ For example, the strict terms of the US H-2A visa for temporary agricultural workers (requiring employers to provide government-inspected housing, guarantee a minimum number of hours’ pay, and commit to hire any qualified US worker who applies for the job for a set period even after the foreign worker has started work) are widely thought to have discouraged legal immigration in an agricultural sector dependent on the unauthorized. In Ireland and Spain, complicated visa renewal procedures are thought to have contributed to illegal employment.



workers, they aim more generally to reduce the size of the informal economy and enforce core labor regulations more strictly, thus reducing some of the cost and flexibility advantages that employers can gain by hiring the unauthorized.

I. Increasing Labor Force Participation

Unauthorized immigrants find jobs because there is a demand for their labor. When increasingly educated native cohorts move out of low-skilled jobs but continue to demand the goods and, particularly, services that low-skilled workers produce, pressures for low-skilled immigration are inevitable.¹⁸

Immigration is not the only way to increase labor supply, however. Expanded labor force participation among women, older workers, minorities, discouraged workers, the low-educated, and other groups with low participation rates could reduce the need for less-skilled immigrant workers. In some cases, however, the structure of pension systems and retirement ages, welfare programs, or child care availability put barriers between potential workers and the labor market.¹⁹ In the long term, as wealthy nations (especially those in Europe) grapple with the implications of aging workforces, they will need to experiment with ways to bring down some of these barriers while minimizing the burden of new obligations for employers.

2. Addressing Informality

Illegal immigration is part of a broader informal economy which, as discussed earlier, can result from the desire to avoid costly taxes and regulations. As one analyst puts it, “charging low-skilled, low-paid jobs with all the costs of the modern welfare state makes them too costly to sustain on the regular labor market.”²⁰ As a result, some countries (such as France and Germany) have attempted to bring certain low-wage activities into the formal economy by reducing the tax burden on employers in occupations vulnerable to informal employment,²¹ while others (such as the United States), more controversially do not extend full social protections and labor rights to sectors such as agriculture.

Blanket deregulation is unlikely to solve the problem of unauthorized foreign workers, not least because regulations are by no means the only driver of unauthorized employment. But certain targeted reforms introducing more flexibility for sectors vulnerable to illegal or informal employment could help to reduce the problem in countries with particularly rigid formal labor markets.

3. Enforcing Labor Standards

Approaching the issue from another angle, the enforcement of basic labor standards aims to reduce employers’ incentives to hire illegally by making unauthorized immigrants less exploitable. All countries in the Organization for Economic Cooperation and Development (OECD) have at least some labor standards laws on their books, but as with employer sanctions, enforcement is often patchy — for budgetary, political, or economic reasons. Aside from dedicating more resources to labor standards enforcement (a policy which generally lies outside of the immigration debate), policies to reduce labor standards violations can include:

- **Giving temporary or provisional low-wage workers the right to change jobs.** Rather than tying visas to specific employers, this allows workers to leave exploitative employers and encourages employers to provide better working conditions.

18 Hanson, *The Economics and Policy of Illegal Immigration in the United States*.

19 Tito Boeri and Jan van Ours, *The Economics of Imperfect Labor Markets* (Princeton, NJ: Princeton University Press, 2008).

20 Marek Kupiszewski, “Addressing the Irregular Employment of Migrants – Concluding Remarks and Recommendations” in *Addressing the Irregular Employment of Migrants: Between Sanctions and Rights* (Budapest: International Organization for Migration, 2008), www.iom.hu/PDF/Addressing%20the%20Irregular%20Employment%20of%20Immigrants%20in%20the%20European%20Union_Between%20Sanctions%20and%20Rights.pdf.

21 OECD, *Combating the Illegal Employment of Foreign Workers*.



- **Targeting inspections to sectors and occupations in which labor standards violations are more common.** These also tend to be sectors where unauthorized immigrants find employment in larger numbers.²² Note that enforcement systems relying exclusively on worker complaints may under-investigate some industries or employers because their workers (particularly the unauthorized) are less likely to report violations. This implies the need for at least a minimal level of “proactive,” noncomplaint-based inspection.²³
- **Enforcing labor standards without regard to legal status.** If unauthorized immigrants cannot enforce their labor rights (for example, claiming unpaid wages), unscrupulous employers have a greater incentive to hire them. Of course, a trade-off exists between separating immigration and labor inspection functions on the one hand, and making more efficient use of labor inspection resources and personnel on the other.²⁴

As with policies that facilitate low-skilled legal migration, a delicate balance exists between the desire to create protections for low-income immigrant workers vulnerable to exploitation and the risk of creating a burden so significant as to push employers into the informal economy.

IV. Conclusion

For decades, OECD countries have tolerated varying levels of illegal employment, not least because eliminating or even reducing it is difficult and unlikely to bring economic benefits.²⁵ But with the growth of illegal immigration in some receiving nations and the accompanying public mistrust, this approach is increasingly untenable.

This memo proposes three types of policy to reduce illegal employment: making it more costly to hire illegally through employer sanctions, making legal channels a realistic and *preferred* option for low-skilled migrants and employers, and reforming labor market institutions to reduce the supply and demand for illegal work.

In conclusion, three more general observations are warranted.

- A comprehensive approach has the greatest potential for success, since individual policies can only tackle isolated pieces of a complicated puzzle. For example, facilitating legal immigration may help to reduce illegal hiring among employers who simply cannot find enough legal workers, but without sanctions, expanding legal immigration is unlikely to sway employers who willfully hire unauthorized workers because they are more flexible or more easily exploited.
- Not all employers will respond even to a comprehensive reform package. Small employers are particularly hard to reach because legal visas do not necessarily fit their staffing needs — especially for those who hire day laborers rather than temporary employees, for example. These businesses also have fewer resources to comply with regulations. Meanwhile, sanctions may represent a less meaningful threat to small employers if their entire business operates in the informal economy or if they have such low profit margins that unauthorized workers are a means to survive rather than a calculated strategy. Even if enforcement agents could reach these employers — which is hard — deterrence strategies may do little more than put them out

22 Donald M. Kerwin, *Labor Standards Enforcement: A Missing Pillar in the Immigration Policy Debate* (Washington, DC: Migration Policy Institute, forthcoming).

23 Weil, “A Strategic Approach to Labour Inspection.”

24 In other words, labor inspectors could also check workers’ immigration status (as they do in France, for example), but doing this undermines their relationship with workers on whom they rely for information, making their labor enforcement tasks more difficult. For a longer discussion, see Sachs, *Employer Sanctions in Europe*.

25 Hanson, *The Economics and Policy of Illegal Immigration in the United States*.



of business.

- Finally, some of the policies described are more difficult than others, and some more expensive than others — an important fact in a time of tight public finances. The effective (and cost-effective) enforcement of employer sanctions is likely to remain a persistent challenge, while increasing labor market flexibility and simplifying or expanding legal immigration routes might require political capital rather than financial resources. Bringing more “marginal” workers into the labor force is also likely to require longer-term, sustained investments — albeit investments that have benefits well beyond the immigration debate.



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