



TRANSATLANTIC
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A Project of the Migration Policy Institute

CURBING THE INFLUENCE OF “BAD ACTORS” IN INTERNATIONAL MIGRATION

COUNCIL STATEMENT

By Demetrios G. Papademetriou
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President, Migration Policy Institute and MPI Europe

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The eighth plenary meeting of the Transatlantic Council on Migration

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Acknowledgments

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For more on the Transatlantic Council on Migration, visit: www.migrationpolicy.org/transatlantic.

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Executive Summary

Despite massive investments in immigration controls over the past two decades, illegal migration and the unauthorized employment of migrants continue to thrive. This is in large part due to highly adaptive “bad actors”—smugglers, traffickers, unscrupulous employers, and others—who facilitate and profit immensely from illegality. Moreover, consumers, at times unwittingly, support illegality by ensuring there is a market for the services unauthorized foreign workers perform.

As a result, and despite pathways to entry having become more difficult, dangerous, and costly, illegal entries and stays continue to grow. The reasons are as complex as the flows themselves. Most migrants seek jobs and greater opportunities for themselves and their families—making “opportunity differentials” the dominant reason for migration. Some are desperate people escaping various forms of persecution and violence. And substantial numbers are family members seeking to reunite with their relatives. These motivations, and the availability of low-wage jobs that virtually all high-income (and increasingly, some middle-income) countries offer, fuel ever more sophisticated and creative means to circumvent border controls and post-entry enforcement efforts—creating a lucrative market for those who operate outside the law. And although governments’ efforts to secure ports of entry and improve interior enforcement have also grown, public confidence in migration management systems is low on both sides of the Atlantic.

Despite massive investments in immigration controls over the past two decades, illegal migration and the unauthorized employment of migrants continue to thrive.

The Transatlantic Council on Migration convened to explore how governments can meaningfully address this powerful market for illegal entry and employment—outlining a strategic approach to identify the tools and strengthen the political will necessary to tackle some of the factors that fuel these activities and behaviors. The Council discussions centered on the continuum of policies needed to disrupt not only the most obvious patterns of illegal activity, but the underlying conditions that make it possible (and profitable), some of which extend far beyond the border itself. The council appreciates that immigration enforcement in a time of limited resources is an exercise in understanding and constantly (re)evaluating trade-offs. Governments can neither eradicate all illegal activity, nor can they make borders fully secure. Instead, they must constantly weigh the costs, benefits, and (sometimes perverse) consequences of deploying more resources in one area versus another in order to maximize impact while recognizing the limits of both human and financial capital available for this effort.

I. Defining the Challenge: Who Are the “Bad Actors” in International Migration?

Most of the movement into high-income countries is orderly, regulated, and secure. But a large number of “bad actors” exploit and undermine the system—for example by facilitating the illegal entry and work of migrants, or by contributing to the post-entry exploitation of immigrant workers. These actors populate a wide and often ambiguous continuum ranging from overt criminality to a host of less-obvious lawbreaking.

The criminal end of the spectrum includes smugglers, traffickers, and corrupt intermediaries. Recruiters in countries of origin help migrants obtain fraudulent background documents, moneymen supply the loans to pay for the journey, travel agents and transporters organize land and sea passage, smugglers and safe-house



operators handle migrants in transit, and corrupt officials take a cut for “opening a gate” or turning the other way. Organized-crime syndicates or cartels populate all of these activities. And when they don’t care to dirty their hands with migrant smuggling, they are satisfied with extracting tribute for allowing passage through their “territory.”

But the market is also sustained by groups and organizations acting in gray areas, such as consumers who are unconcerned about the source of their goods and services, and even families that finance the travel of relatives outside of legal channels—or sponsor “family members” to whom they are not actually related.

Stretched across the middle of this spectrum are employers.¹ On the most troubling side, some employers exploit migrant workers and break numerous other social protection and labor laws. Others justify hiring unauthorized workers and paying them below-market wages because they are squeezed between low market prices for their products, competition from overseas producers with massive labor cost advantages, and high legal wage rates (while all along reaping the benefits of a competitive advantage over employers who do not break the rules). Still others are simply indifferent to the legal status of their workers, offering jobs at a specific wage and hiring those who apply. For most such employers, the possibility of being caught and punished is thought of as the cost of doing business, although much harsher penalties in some states have likely forced a reconsideration of this position.

The proliferation and complex spectrum of illegality surrounding international migration give rise to a set of severe challenges:

- ***The “enemy” is nebulous and diffuse.*** There is often no mastermind directing operations, but instead a chain of more or less loosely connected groups each playing a part in helping migrants circumvent legal controls. The resulting patchwork is difficult for any one agency or government to disrupt. Officials cannot be effective by relying on their normal arsenal of enforcement tools; instead, they must cooperate across agencies as well as across borders—tasks that are particularly difficult under the best of circumstances and made more so when interests diverge.
- ***Markets—not criminal masterminds, syndicates, or networks—drive illegality.*** The prevalence of bad actors speaks to the wide “market” demand for their services. Yet current enforcement and policing efforts are primarily intended to apprehend and interdict *individual* lawbreakers, and to some extent to disrupt individual criminal operations, not to meaningfully address the underlying market conditions for illegality.²
- ***Low-level lawbreaking can deflect enforcement efforts from the most harmful threats.*** Law enforcement systems are often ill-equipped and lack the patience or resources to tackle the worst perpetrators. Officials may face incentives to apprehend and prosecute lesser offenders (the “low-hanging fruit”) without making a dent in the core of the problem. Meanwhile, sophisticated criminal operations play into this weakness by deflecting blame and consequences to foot soldiers (the low-level facilitators of illegal movement) or the clients (and often victims) themselves, making it even harder to apprehend the individuals and groups who do the *most harm* to society.³
- ***Success is often difficult to measure.*** Concrete metrics like the number of apprehensions or the amount of money spent (or confiscated) are imperfect proxies for whether governments have made it harder (or less profitable) for lawbreakers to inflict serious harms upon society. How does one measure the extent to which enforcement activities are changing *behavior*, not simply destroying or disrupting single occurrences of lawbreaking? The golden metric is the extent to which policies have deterred exploitation and lawbreaking, rather than how many resources have been poured into enforcement. This, however, is the most difficult thing to quantify.

1 The vast majority of employers play by the rules as a matter of course. A small proportion, however, breaks these rules regularly and thus contributes to the large underground economy that flourishes in almost all advanced industrial societies.

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

3 See 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.



II. Targeting Enforcement Efforts: Where to Invest?

Massive investments in enforcement infrastructure over the past two decades—at least in some regions⁴—are in a race with the countervailing forces driving people to break the rules. There are huge incentives for individuals to move outside legal channels, for employers to hire them at destination, for officials to look the other way and even facilitate passage, and for networked syndicates to enter the people-smuggling business. Multiple dynamics drive these actors. People move because of lack of jobs (and, more broadly, of opportunity) at home combined with often readily available jobs abroad. Demand has rapidly increased for foreign workers to do the low-status, difficult, and often poorly compensated jobs to which most natives of high(er)-income countries no longer aspire. In some cases, entire industries—such as agriculture, construction, personal services, and parts of the service and hospitality industries—have gradually been abandoned by better-off native workers in immigrant-receiving countries.

The incentives for corrupt officials and smugglers are equally easy to understand: large (even massive) profits at little cost. Most costs associated with illegal migration are in fact borne by the persons being smuggled rather than the facilitators. And all too often these human costs are grave ones, including deprivation and violence of all types during the journey, exploitation after entry at the hands of both “handlers” and employers, and even death. The lack of legal channels for greater temporary and permanent foreign worker flows—when the need for such workers is clear—simply enables bad actors, instead of governments, to create and control the market for foreign workers.

Given that borders will never be impermeable, the question is: what level of “failure” in impeding illegal flows will the public accept?

Policymakers must wade into this complex, interdependent policy arena with the knowledge that there are no simple solutions and that actions in one area can have both anticipated and unanticipated consequences in others. Progress in stemming illegal entry at the border, for example, depends entirely on progress in other interlinked fields: understanding better and attacking the root causes of why people move, as well as combating the criminal agents who make such movement possible *all across the arc of the illegal journey*. And yet, sometimes efforts on one side undermine the others, making the policy puzzle ever more complicated.

With this in mind, the Transatlantic Council examined the three principal approaches to enforcement:

1. creating barriers by strengthening physical and virtual borders;
2. attacking the criminal operations themselves; and
3. reducing the incentives to seek (and facilitate) illegal entry and employment.

Each of these strategies has different costs, benefits, and tradeoffs—and none will work without concomitant and thoughtful investments in the other areas.

⁴ In the United States, for example, investment in immigration enforcement rose from \$1.2 billion in 1986 to \$17.9 billion in 2012. See Doris Meissner, Donald M. Kerwin, Muzaffar Chishti, and Claire Bergeron, *Immigration Enforcement in the United States: The Rise of a Formidable Machinery* (Washington, DC: Migration Policy Institute, 2013), www.migrationpolicy.org/pubs/enforcementpillars.pdf.



A. **Strengthening the Border**

The most natural place for governments to invest is in strengthening their international borders. However, a physical barrier alone will not have an effect on the other two parts of the puzzle: the underlying demand for illegal work—a matter for interior enforcement—and the myriad strategies that criminal agents use to circumvent controls. Given that borders will never be impermeable, the question is: what level of “failure” in impeding illegal flows will the public accept?

There are three traps associated with the quest for “perfection” in border enforcement. First, increased manpower and technology at the border may not guarantee success unless cost is not an issue, border controls become extremely intrusive and even draconian, and the damage to a country’s international standing is irrelevant. Experience teaches us one thing in this regard: the volume of illegality does not decrease anywhere near in direct proportion to the amount of money spent. Massive increases in enforcement budgets at the border will reduce illegal crossings, but hardening the border may also prevent voluntary returns—in effect “locking people in”—and thus neutralizing the net effect on illegality. Draconian border controls can also interfere with meeting international legal obligations to hear the claims of those seeking protection, thus hurting the ability of a nation steadfastly opposed to illegal migration to display in meaningful ways its humanitarian values. The second trap is that efforts to disrupt bad actors often result in displacement rather than eradication. A concentration of resources in one area often redirects criminal activity rather than preventing it.

The more complicated the hurdles put up by governments, the more creative rogue agents get in their efforts to circumvent these controls.

Finally, higher barriers lead to more sophisticated cheating. The more complicated the hurdles put up by governments, the more creative rogue agents get in their efforts to circumvent these controls and the greater the danger to the physical safety to those being smuggled—compounded by the fact that many more migrants turn to such agents to help them cross borders. Efforts to make documents more secure have meant that forgers now require advanced technology to produce a good fake, creating a lucrative market for ever more sophisticated perpetrators of fraud. As a result, government enforcement efforts inadvertently empower bad actors to get better at what they do, a cycle that perpetuates lawbreaking rather than deterring it.

B. **Reducing the Space in Which Criminal Facilitators Operate**

The second approach to successful enforcement is to target the business model that enables illegal activity. If governments view bad actors as providing a service that many are willing to pay dearly for, the goal becomes to disrupt the ability of these actors to deliver a product and collect a fee. This includes *increasing the risks and costs* for bad actors to run their business as well as *reducing the profits* from their activities. Several instruments have developed over the years that governments pursue to greater or lesser extent. They include identifying and prosecuting cartel leaders (using international instruments to make sure their activities are illegal in their own countries and key transit countries); disrupting and dismantling their logistical infrastructure; and denying or seizing their profits. Each of these steps requires, however, sophisticated information-sharing and intelligence-gathering across agencies and across borders—placing it outside the control of any single policymaker.

It is nonetheless crystal clear that at a national level, many agencies need to be part of the response: immigration, police, intelligence agencies, customs, justice, and financial transaction regulators, among others. The playing field also extends to other jurisdictions that have responsibility for setting and enforcing labor codes, social welfare programs, and health-care delivery. Moreover, private-sector actors, like wire transfer companies and banks, also have a role in the execution of a comprehensive strategy



for combating bad actors. Governments have a powerful arsenal of law enforcement methods available to them—including traditional policing, intelligence sharing, the ability to freeze financial assets, etc. But these tools have to be employed seamlessly across departments if countries are to be as adaptable as the highly flexible multinational crime networks.⁵

C. Combating Illegal Work

The most ambitious part of the overall enforcement endeavor is to change the market itself and target the root causes of illegality.⁶ Illegal immigration is fueled in large part because unauthorized immigrant workers are able to find work in destination countries. Policymakers aiming to reduce illegal employment can either apprehend and remove the unauthorized workers, or target employers who knowingly or unknowingly hire outside the law. The former approach is time-consuming, costly, and most importantly often causes extreme pain for families and is resisted by civil society. The latter approach is rife with challenges. Policymakers can use financial or even criminal sanctions to raise the cost of hiring illegally—but this hinges on being able to prove that employers deliberately hired unauthorized workers. This in turn depends on implementing a reliable, and error-proof system for verifying documents and immigration status—which is far easier for countries that have a foundation of national identification systems or population registries (as is the case in Europe)—than for those that do not (such as the United States).⁷ Some governments are often reluctant to put firms out of business. Yet sanctions are toothless if they do not pose a real threat to employers' livelihoods, and if they are not consistently levied.

A second strategy is to regularly adjust legal channels so that playing by the rules is a realistic and *preferred* option for low-skilled migrants and their employers. Simplifying and easing access to legal visas can address this problem, but must be balanced by robust labor demand calculations that keep firmly in mind the interests of local workers as well as the social and labor market aspirations of receiving communities.

The most ambitious part of the overall enforcement endeavor is to change the market itself and target the root causes of illegality.

Finally, governments can consider more ambitious labor market reforms, such as measures to increase the labor market participation of marginalized groups, tackle the incentives for informal working, and target labor-standards violations. While these policies have the potential to address some of the underlying causes of illegal employment, each has costs and drawbacks, and none can singlehandedly prevent employers from hiring illegally. As a result, a balanced approach that combines all three is likely to be most effective in addressing the root causes of unauthorized employment.

III. Conclusions and Recommendations

Enforcement alone will not “solve” the puzzle of illegal immigration. Governments (working hand-in-glove with the private sector and civil society writ large) also need to build strong and resilient communities

5 See Randall Hansen and Demetrios G. Papademetriou, eds., *Managing Borders in an Increasingly Borderless World* (Washington, DC: Migration Policy Institute, 2013).

6 Addressing the root causes of illegal migration by focusing on the conditions in countries of origin, including by considering attaching appropriate “conditionalities” to development aid, was the subject of an earlier meeting of the Transatlantic Council on Migration, “Restoring Trust in the Management of Migration and Borders.”

7 Some of the other English-speaking countries also fall into this category, though health identification cards can play a similar role to national identification cards.



where everyone has a stake in more effectively addressing all facets of illegality—including would-be consumers of the products of exploitative or illegal work. Strong leadership is necessary to demonstrate that everyone can benefit by building a much better functioning system. Working across the spectrum of policy areas, including trade, business, and development, such a system would reduce the scope for profitable engagement in illegal immigration, protect rights, and reinforce the importance of the rule of law where it matters most—in the communities in which both citizens and immigrants live.

Pursuing such cooperation is essential for one central reason: while countries and domestic stakeholders may broadly agree on a set of goals—for instance that migration should be safe, legal, orderly, and secure—agreement on the means to achieve these goals is not nearly as straightforward. And it is even more difficult to agree on how to prioritize among differing (and sometimes competing) policy objectives. Moreover, there is an inherent tension between public expectations of success in the realm of enforcement and the need to make hard decisions about how to allocate scarce public resources of various types, first and foremost legal work visas and the associated benefits that accrue to working in the formal economy. The most vexing question is thus what is the right mix of policies that can form a new comprehensive approach?

Enforcement alone will not “solve” the puzzle of illegal immigration.

To begin to make meaningful progress, the Transatlantic Council on Migration recommends the following steps:

1. ***Constantly assess and (re)evaluate enforcement efforts and trade-offs.*** Governments must experiment with a continuum of policies designed to disrupt, deter, and “defeat” those who profit from illegal migration. One enduring trade-off in managing risk is the choice between investing in efforts to target the most severe offenders (especially those who deliberately victimize others) versus targeting the low-hanging fruit, meaning those who are easiest to apprehend. Decisionmakers must evaluate the likely impact of each enforcement action on the public interest—and weigh this against its direct and indirect costs (to finances, reputation, and values). In addition, each individual enforcement tool needs to be considered as part of a holistic effort: going after the most pernicious manifestations of illegal migration will not defuse the *incentives* that drive illegality.
2. ***Foster confidence in the migration system by communicating clearly and regularly with the public.*** The foundational principle of a well-managed migration system is that those who follow the rules get rewarded, while those who flout legal avenues face consequences. This requires clear rules and clear *communication* of the rules. First, politicians need to use language that creates realistic expectations for what can be achieved at the border. Second, managing these expectations requires policymakers to open and maintain a public dialogue about the government’s strategy to enforce immigration rules—and to establish appropriate metrics by which success can be measured. And third, observing the rule of law means that lawbreakers face consequences all along the continuum of illegality. As policymakers get better at identifying and addressing the activities that cause the most harm to society, their efforts could backfire unless they signal that *all* lawbreaking is taken seriously. The logic is simple. Every enforcement action taken by governments sends a powerful signal, and within reason, the appearance that low-level illegality is in effect condoned can erode public trust and undermine deterrence efforts.
3. ***Make it easy to play by the rules.*** Not all bad actors have nefarious motives, but when the rules of an immigration system are too cumbersome, some people may decide to operate outside the law or in the informal economy. In doing so, some may seek the assistance of “experts” to navigate the system, not all of whom are legitimate. Similarly, unnecessarily bureaucratic regulatory obstacles to business



creation and operation can push some businesses into informality.⁸ Part of this is straightforward human psychology: migrants rely on networks and trusted members of their own communities to navigate complex requirements, in turn leaving themselves vulnerable to exploitation. Governments—working with civil society—should do more to ensure that information gaps are filled by legitimate actors rather than unscrupulous profiteers.

4. ***Reduce the rewards to acting outside the law in order to increase incentives to cooperate.*** The opportunity for large profits has made criminal behavior more sophisticated, creative, and adaptive. In order to properly tackle this challenge, governments need to do more than merely disrupt illegal activities. Instead, they need to make structural changes that make life difficult—and less profitable—for facilitators of all types. For instance, sanctions imposed on employers will have little impact if the perceived gains far outweigh the perceived risks. Because many people make their livelihoods in the informal economy, they have strong incentives to circumvent the law, and need equally strong incentives to play by the rules.

Sometimes well-intentioned policies—if too narrowly conceived—can inadvertently create new, potentially more serious problems than those they were created to address.

5. ***Leverage cooperation—across agencies and across borders—as the ultimate force multiplier.*** By its nature, illegal migration, and those who facilitate and profit from it, cannot be addressed solely by those responsible for migration matters: the business of transnational crime spills into fields in which immigration agents have little knowledge and experience—and no authority. Without fluid cooperation across agencies and borders, and a calibrated response to threats, bad actors are likely to remain one step ahead of law enforcement. Cross-departmental collaboration is always difficult because it typically involves different priorities, constituencies, advisory bodies, and philosophical approaches. But it is crucial, as governments cannot address these complex, transnational problems through an immigration lens alone. Cross-border collaboration can appear even more elusive than cooperation across agencies in the same country. Governments often have legitimate concerns about partnering with countries with weak institutions and endemic corruption. Yet the kind of operational cooperation necessary to disrupt cartels and criminal organizations requires treating neighbors as partners. Building trust—to the point of being able to share intelligence and conduct joint operations—takes time; when it does develop, however, the benefits are multiplied many times over.

One of the enduring challenges facing decisionmakers across the globe is that sometimes well-intentioned policies—if too narrowly conceived—can inadvertently create new, potentially more serious problems than those they were created to address. Policymakers must therefore always consider the wider context of their decisions. Enforcement efforts that fail to take into account the underlying demand (and perverse incentives) for illegality will inevitably create wider openings for unscrupulous actors to thrive.

⁸ For example, Luis Rubio argues that in Mexico, the most common and convincing explanation of the existence of informality is that there are so many bureaucratic obstacles to business creation and operation that many opt not to register at all. Luis Rubio, *In the Lurch between Government and Chaos: Unconsolidated Democracy in Mexico* (Washington, DC: Migration Policy Institute, 2013): 11, www.migrationpolicy.org/pubs/RMSG-UnconsolidatedDemocracy.pdf. And Nicola Smith's report in this series of Transatlantic Council reports examining migration "bad actors" details how migrants from the Punjab turn to middlemen to secure visas they could obtain directly from the relevant embassy. In some scenarios she details, even if migrants wanted to play by the rules, the requirements were sometimes unrealistic. For example, Indian students must deposit a sum that is five to seven times the average annual Indian wage in their bank accounts to qualify for a visa to the United Kingdom. See Nicola Smith, *"Donkey Flights": Illegal Immigration from the Punjab to the United Kingdom* (Washington, DC: Migration Policy Institute, 2014), www.migrationpolicy.org/pubs/TCM-Migration-DonkeyFlights.pdf.



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About the Author



Demetrios G. Papademetriou is President and Co-Founder of the Migration Policy Institute (MPI), a Washington-based think tank dedicated exclusively to the study of international migration. He is also President of Migration Policy Institute Europe, a nonprofit, independent research institute in Brussels that aims to promote a better understanding of migration trends and effects within Europe; serves on MPI Europe's Administrative Council; and chairs the Advisory Board of the Open Society Foundations' (OSF) International Migration Initiative.

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Dr. Papademetriou co-founded *Metropolis: An International Forum for Research and Policy on Migration and Cities* (which he led as International Chair for the Initiative's first five years and where he continues to serve as International Chair *Emeritus*); and has served as Chair of the World Economic Forum's Global Agenda Council on Migration (2009-11); Chair of the Migration Committee of the 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*.

He has published more than 270 books, articles, monographs, and research reports on migration topics, and advises foundations and other grant-making organizations and senior government and political party officials, in dozens of countries (including numerous European Union Member States while they hold the rotating EU presidency).

Dr. Papademetriou holds a PhD in comparative public policy and international relations (1976) and has taught at the universities of Maryland, Duke, American, and New School for Social Research.

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