



# THE GLOBAL INITIATIVE AGAINST TRANSNATIONAL ORGANIZED CRIME

POLICY NOTE

## For protection or profit? Free trade, human smuggling and international border management

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### Summary

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For the past two decades, policy officials and human-rights groups in both Europe and the US have participated in a vicious cycle of criticizing each other over the impact of border-control policies. Many activists hold enforcement authorities responsible for the human impact of migration enforcement, evident in allegations of increases in human smuggling and the grim realities of migrant deaths. In contrast, policymakers often claim that human-rights advocates encourage migration and risk-taking by proposing consequence-free international transit, which exacerbates the problem. Although the role of free-trade policies and supply chains is critical to understanding the border-management landscape in which these activities play out, customs laws are rarely considered by either side in this debate.

This policy paper considers the impact of multinational corporations on border control through so-called trusted trader and traveller programmes, whose aim is to reduce border inspections for individuals and companies by allowing inspectors to pre-screen cargo and passengers who pass background investigations. Although these programmes have become essential to the management of global supply chains, they often create an illusion of increased security while simultaneously intensifying the divide between those who are and those who are not willing to pay the fees to participate in them.

The paper also critically examines two pillars of American border policy – beyond-the-border initiatives and joint border management – and compares them with security elements of the European system. These mechanisms, which increased sharply through American-led initiatives following the 9/11 terrorist attacks, often appear effective and harmless, and therefore receive little scrutiny.

Both in the US and Europe, multinational border-control agreements have been subjected to little scrutiny because of the failure of stakeholders to hold the global transportation system and state authorities accountable for these agreements. Although scant empirical evidence is available, what little does exist suggests that illicit activities, such as smuggling, are only marginally deterred by these strategies. By taking advantage of the vulnerabilities in such border-control agreements, smugglers of migrants and contraband are able to exploit trusted trader/traveller programmes and public-private partnerships by using companies or people that are participants to make illicit transits.

Although these agreements should not be eliminated, Europe should be cautious about mirroring the American approach to border management. And amid the current political climate of increasingly xenophobic US immigration policies, European policy negotiators should consider stipulating minimum requirements for participation in US programmes, including protections for people seeking humanitarian relief.





*The San Antonio Walmart parking lot where James Bradley Jr's truck containing Latin American migrants was discovered.  
Photo: David Danelo*

## Introduction

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On 23 July 2017, just after midnight, the police department in San Antonio, Texas, a metropolitan area of 2 million people two hours north of the US–Mexico border, received a phone call from a concerned Walmart employee.<sup>1</sup> Worldwide, the American retailer has become synonymous with cheap products, low wages, mass commercialization and rapid distribution. Walmart's ruthlessness in cutting costs through supply-chain efficiencies – enabled by the ease and speed with which the corporation's trucks and shipping containers cross international borders – has been modelled by retailers across the globe.

Under normal circumstances, the police might have been more likely to field calls from Walmart employees reporting shoplifters rather than a migrant tragedy. But that evening, an 18-wheeled freight truck bearing Iowa licence plates stirred suspicion after dozens of dehydrated 'Spanish people' (the term used by the vehicle's driver, James Bradley Jr, to describe the Latin American migrants<sup>2</sup>) spilled from the cargo hold and ran for safety. Bradley later told police he had not known the truck contained passengers: he had opened the rear door only after noticing 'banging and shaking'. One migrant, whom US federal prosecutors identified by initials only, estimated that 70 people were in the truck; another put the figure at 200. Exactly when the first of the 10 passengers who died from combinations of asphyxiation, hyperthermia and other injuries perished remains unknown.

Forensic and investigative authorities cordoned off the Walmart parking area the following morning, as they conducted interviews and collected evidence. Employees whose shifts had ended were detained inside the store for several hours, without additional pay, and unable to leave until investigators gave their supervisors permission. But it was not the lack of compensation that employees who had witnessed the event remembered most: according to one, 'the smell was in the parking lot until the next day'.<sup>3</sup>

The San Antonio incident was not the first time that suffocated migrants had been discovered in a cargo hold, nor is it likely to be the last. On 14 May 2003, in what was then called 'the worst immigrant tragedy in American history', police found 73 migrants locked in the back of a trailer parked near Victoria, Texas – 19 of whom died. And on 27 August 2015, a police patrol observed fluid dripping from a truck deserted on the highway near Parndorf, Austria. The liquid was decomposition from the bodies of 71 migrants, most of whom had been dead for more than 24 hours.<sup>4</sup>



The trend continues today. On 22 August 2017, Romanian police discovered 42 asylum seekers inside a freight truck that was transporting textiles. The vehicle was discovered near the Hungarian border.<sup>5</sup> Although all migrants were unharmed (the lorry apparently had sufficient ventilation), the incident highlighted both the regularity and the precariousness of this smuggling method.

Why is transport by truck popular for migrants under some circumstances but not others? In the US there is little evidence to suggest migrants are smuggled across the Mexican border in large numbers in freight trucks. Since the Immigration Reform Control Act of 1986, almost all apprehensions of migrants detained crossing the border illegally in vehicles have involved individuals concealing themselves or passengers claiming to have proper documentation and identities (especially children, in the case of the latter, who are often smuggled across by trusted agents claiming to be relatives). And within the US, as is also the case in continental Europe, freight trucks often ferry migrants from one waypoint to another. 'We would see trucks here early in the morning, all the time,' said a San Antonio Walmart employee. 'They would just park, and the people would get out and leave. None of us bothered them.'<sup>6</sup>

Although the tightening of Europe's border controls has happened in response to events there, it was taking place in 2017, unlike in previous years, within the context of an aggressively austere border-control policy in the US.

Unfortunately, these policies have not emerged in a vacuum. Following 9/11, American authorities sought to cash in throughout Europe on decades of deposits accrued after World War II and the Cold War. The enduring goodwill after the halcyon days of German reunification in the 1990s – and the belief that the US government represented values of freedom, equality and human rights, shared by Europeans – made it easy for Europe's governments to accommodate American requests for information sharing and intelligence collaboration, even following the anti-American backlash after the Iraq War.

At Europe's borders, as with security controls worldwide, American-led requests both for expediting selected people and cargo through security, and restricting travel permissions from unwelcome regions, have created a new generation of border structures. Many of these mechanisms, which appear effective and harmless – and therefore receive little scrutiny – began to take form in the mid-1990s along the US–Mexico border, as policymakers developed responses to migration waves that presaged events in Europe by almost two decades. Border-management techniques, such as screening, targeting and public–private partnerships, increased sharply after the 9/11 terrorist attacks, and have endured across the Bush, Obama and Trump administrations.

When migrants are discovered in tragic circumstances like the examples above, American and/or European authorities are quick to cast blame on 'traffickers' and 'criminals'.<sup>7</sup> Rarely do they discuss the efficacy of the structures that benefit multinational corporations and border-control agencies, which have consequently become part of the smuggling and policy landscape.

Trusted-trader programmes and collaborative information exchanges have been components of the border architecture for so long now that they are almost taken for granted; they are physically exemplified in buildings like the National Targeting Center in Reston, Virginia, and the Air and Marine Operations Center in Riverside, California.

Unfortunately, the rhetoric and executive actions surrounding the current US administration's border policies lack the commitment to human rights and transcontinental cooperation that, even when failing in practice, had at least once characterized the nation's goals and aspirations. Having imposed the current system on the rest of the world, the US has created an unfair advantage for its own multinationals while encouraging one to turn a blind eye to abuses. Rhetoric matters, especially as Americans continue to ask Europe to assume increasing costs for the continent's defence.

Because migration and border-control policies are both constant and ever changing, the European Union (EU) will benefit by frequently re-evaluating the cooperative programmes it has with the US, as well as continuing to distance the continent from American influence in EU border management.





The US border 'wall' along the Mexican border in El Paso, Texas. Photo: Gabriella Sanchez

## Changing US border policy: Historical overview and its influence on the EU

Despite the current conditions in the US, the EU's replication of American border policy is not entirely without benefit to Europe. Since the imposition and refinement of passports as common travel identity documents – which happened during the interwar period thanks to the American-led League of Nations – and more recent influences on supply chains and air transit, US border policy innovations have often been normalized within Europe more quickly than in the US. Europe's Schengen Area, which was established in the 1990s three years after the North American Free Trade Agreement (NAFTA) was signed, was the next logical step in European border management once the Cold War had ended. After all, if neighbouring countries are at peace, and people and goods are granted free trade and transit permissions, why have border controls at all?

Like NAFTA in North America, Schengen may someday represent the high point for Europe's globalists who seek to open borders.<sup>8</sup> Since then, both regions have confronted nationalist and xenophobic political backlashes not seen since World War II, and border security measures have increased in response. Explaining Brexit, the Trump election, or the far right's rise throughout Europe because voters feel threatened by terror attacks, cheap labour and cultural diversity has become commonplace on both sides of the Atlantic. And the most immediate impact of these political events is seen on the frontiers, where restrictions in border controls and tighter security measures are enacted as a sacrificial offering from politicians hoping to mollify a restive citizenry.

The current trend of increased border control began in the US around the same time that Europe was opening its own frontiers at unprecedented levels. In the early 1990s, the US experienced its first major urban border crisis in San Diego, California. For two years, migrants from Mexico and Central America would gather at night in groups of

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several hundred in neighbouring Tijuana, then sprint across the US–Mexico line bound for meeting points on the other side. Overwhelmed US Border Patrol agents were able to detain only a small fraction of the migrants, and those who were apprehended, after being hastily deported to Mexico, frequently ran north again the same night. It became such a regular occurrence that it was common for street vendors to set up food stands on both sides, and the anarchic atmosphere was almost festive.<sup>9</sup>

This changed in 1994, after the Border Patrol erected over 60 kilometres of fencing along the border stretching from the Pacific Ocean to the Laguna Mountains, east of San Diego. Almost instantly, the boisterous crossings ceased and the street vendors dispersed. It took migrants some time to scale the fence, and fewer numbers managed to pass through the holes that smugglers constantly cut (and agents constantly repaired), so the Border Patrol apprehended increasing numbers.

With the urban route through San Diego now impassable, migrants headed east into the deserts of Arizona, hiking great distances in severe conditions. The Border Patrol and activist groups started keeping statistics on dead and missing migrants in the mid-1990s, as mass casualties resulting from these route shifts were increasingly reported in the desert (see Figure 1).

The emergence of stricter border controls in the US in the 1990s during the Clinton administration foreshadowed events that would occur in Europe two decades later. As land migration has evolved throughout Europe – particularly following the 2004 enlargement of the EU (which made the ‘Polish plumber’ part of the common European vernacular) – an arc of countries from Scandinavia to Greece have witnessed similar patterns of movement. The response was to build obstacles to keep migrants away.

Fortifications and fences will never end migration completely, but they have thwarted mobility. When combined with border policing in greater numbers, a function that the military assumed in Hungary, Austria and other European countries, the barriers often deter migrants and lead to an increase in the arrest rate. For example, in September 2017, Hungarian authorities claimed the nation’s barbed-wire fencing had decreased illegal migration ‘by 99 per cent’.<sup>10</sup> The increase in obstacles and patrols along physical borders is among the reasons smugglers began to turn to freight trucks as a transport solution.



*A fence runs along the US–Mexico border outside Douglas, Arizona. Photo: David Danele*

**Figure 1:** Migrant apprehensions and fatalities recorded on the US–Mexico border (2016 and 2017)



**Sources:** US Customs and Border Protection, 2017; IOM, Migrant deaths on the rise on the US–Mexico border, Analysis of Missing Migrants Project data, January–July 2017



It's easy to forget that after the 2000 election of George W Bush, many US and Mexican politicians believed North America was on the verge of creating its own version of the Schengen travel zone. A former governor of Texas, Bush had a warm friendship with Mexico's then president, Vicente Fox, and the pair had championed the passage of comprehensive US immigration reform as a precursor to a 'grand bargain' on migration and labour mobility throughout North America.<sup>11</sup> In the summer of 2001, Bush's political team had wanted to place immigration reform and border-control reductions at the centre of his 2002 legislative agenda. 'We will put 100 percent effort into it during the year,' Bush said at a 6 September 2001 joint appearance with Fox in Ohio.<sup>12</sup> The next phase of NAFTA – so they believed at the time – would make the US, Mexico and Canada more competitive with Europe by opening borders further.

Five days later, these dreams exploded. The attacks on the World Trade Center and the Pentagon, and the weapons deployed in the aircraft used in the attacks, permanently ended any discussion of open borders in North America. Immediately after the attacks, air travel was grounded, cargo terminals closed, and every vehicle entering the US from Canada and Mexico was subjected to detailed inspections. Two days after the 9/11 attacks, the CEO of General Motors (GM) phoned President Bush and told him that if his manufacturing supply chains, now heavily disrupted by the escalation in border security, could not begin moving again, the company would 'be bankrupt within a week.'<sup>13</sup>

During the next two months, a series of negotiations between the US Customs Service, auto manufacturers and a consortium of national security authorities were held along the US–Canada border. These would eventually change supply-chain procedures worldwide. Before 9/11, manufacturers had rules that penalized suppliers if they failed to deliver inventory outside a specific time frame. But even after the US customs authority had lifted the rigorous screening requirements for all vehicles and goods entering the US (which had begun on the morning of 9/11 and had never been attempted in the modern supply-chain era), US border waiting times to enter Detroit from Canada, where 9 000 trucks crossed into the US each day, still averaged 14 hours.

This hurt manufacturers like GM, which had engineered entire business models around 30-minute maximum waiting times at border crossings and relatively predictable transits to ensure just-in-time inventory deliveries across the US border. This new normal of lengthy delays was a potential death knell for auto manufacturing.

But, as it so happened, US customs had been auditing GM for almost five years before the 9/11 attacks. 'You know more about our company than we do,' a senior GM manager told one of the auditors. 'Is there a way we can arrange for expediting our deliveries?'<sup>14</sup>

There was. Customs permitted GM to pre-screen cargo in Canada, bypass the backed-up truck lane and ship containers across the border on barges. Understandably, competing US auto manufacturers Ford and Chrysler were unhappy about this arrangement, and argued that it gave GM an unfair advantage. Customs offered Ford and Chrysler the same privilege provided they were willing to submit to an inspection as detailed as GM had received, which would include not only customs audits but security screening as well.

The Customs-Trade Partnership Against Terrorism (C-TPAT) was thus born in November 2001. This voluntary supply-chain initiative would become the flagship US trusted-trader programme, growing from seven initial corporate participants to more than 11 400 certified partners in every trade sector.<sup>15</sup>

A similar process unfolded with passenger screening at airports. In the immediate aftermath of 9/11, airlines and travellers demanded increased security, but at the same time decried the inconveniences that accompanied the new measures. With wait times in security lines skyrocketing, airlines asked the newly created Transportation Security Administration for special privileges for its employees. Bypassing security screening, however, necessitated a background check, which the airlines had to pay for. 'It was very invasive,' a former US customs official told me. 'One year later, people in the airline industry started to object. But by then there was no going back.'<sup>16</sup>

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# Follow the money: Comparing US and EU trusted-trader programmes

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Since states have existed, customs officials have been responsible for collecting tariffs from travelling merchants, often pocketing a percentage for themselves. But, unlike today, where customs regulators have also evolved into front-line counterterrorism officers, historically, the primary function of inspectors was revenue collection, and not security. It was the soldier's job to protect against outside threats; the customs officer was responsible solely for assessing the value of imported goods and collecting tax accordingly.

Today, US customs officers perform both functions. In 2015, US customs collected \$35 billion for the nation's treasury, second only to the Internal Revenue Service, the country's domestic tax-collection agency, in bringing revenue into the country's coffers.<sup>17</sup> The second oldest government institution in the US is the customs service (the army is the oldest).

Europe's Authorized Economic Operator (AEO) programme initially took the opposite approach to security and customs compliance from its US counterpart, C-TPAT. Rather than opting for a co-creation process with corporate leaders, EU customs regulators focused on defining security policies and compliance standards. Multinational corporations, especially from the US, cried foul at what they argued was an insufficient level of corporate involvement. 'The lack of uniformity among EU member states undermines and fractionalizes the AEO program and will result in a nightmare for multinational companies operating in the EU,' intoned Michael Laden, a US-based export regulations expert in 2007. 'The proliferation of different standards among different EU member states, if not put in check, might just render AEO as a nonstarter in the EU.'<sup>18</sup>

Since ancient times, customs authorities have played a cat-and-mouse game with international merchants over the value of items entering a country. Importing traders often accuse customs authorities of overvaluing their goods, so they can charge higher taxes and increase revenue. Customs officials argue the converse – that traders routinely undervalue goods to avoid paying import taxes (often referred to as 'non-compliance' by customs officials). Importers often release data on goods to position shipments for the lowest possible value; government authorities counter by refusing to allow cargo to enter the country until an importer agrees to a 'valuation adjustment', which raises the tax. That an experienced US-based customs broker would chide the EU's customs associations for an inadequate partnership with multinational business highlights how far US Customs and Border Protection (CBP) – and American border management policy – has gone towards streamlining a relationship that has historically been antagonistic. This also illuminates an important point that policymakers often forget: for any government anywhere, the customs house is a for-profit organization.

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For researchers and policymakers, especially those involved with smuggling and organized crime, this is important for two reasons. First, the practical reasons for the programme's existence are not what they claim: while trusted-trader programmes have provided some security benefits in the process of streamlining trade, they have also been quite profitable for both businesses and customs houses worldwide. Secondly, and more significantly, customs officials and compliance brokers – the multinationals' import/export negotiating representatives – rarely argue about security procedures. Indeed, they often consider the entire process of supply-chain security as a necessary inconvenience: 'The entire process is a lot of smoke and mirrors,' one senior compliance official told me, referring to the C-TPAT relationship between trusted-trader programmes, business and government. 'We report smuggling findings to CBP every day, but they haven't kicked us out of the C-TPAT program. And they won't, because C-TPAT makes everyone so much money.'<sup>19</sup>



How exactly does C-TPAT enable both US customs authorities and multinational corporations to profit? Theoretically, the programme grants partners quicker passage through border crossings in exchange for giving CBP greater confidence in the overall supply-chain security. But C-TPAT also offers a cost-free inspection service, which, according to a compliance official who helped design C-TPAT with one of the first companies certified, exposed internal supply-chain fraud among subcontractors and vendors.<sup>20</sup> From 2002 onwards, as US manufacturers regained cost savings from suppliers whose invoices had been inflated because of the C-TPAT inspections, the manufacturers began requiring subcontractors to become C-TPAT compliant as a precondition for doing business. With the number of certified partners having multiplied by more than 1 600 times since the programme's inception, it is practically impossible to contract with any US-based multinational corporation, including Walmart, without being C-TPAT-certified.

This compliance requirement also explains why the partnership has been of such benefit to CBP. Although there are no official fees to be certified with the programme, companies have to conduct vulnerability assessments, physical security improvements, IT and database systems upgrades, and provide CBP with access to substantial amounts of company data. The costs of compliance therefore average tens of thousands of dollars per company. They also have to pay for audit activities, for which CBP used to bear the cost.<sup>21</sup> And besides the security upgrades, the data that CBP collects invariably grants the government certain advantages in valuation costs for taxation purposes. This applies in particular to CBP's negotiations with smaller importers, which gives the government advantages in the valuation game. This is ultimately the 'partnership' that Laden, the American customs expert, hailed: C-TPAT has been a financial benefit for both US customs and participating businesses.

In the EU, the AEO's combined efforts, although the programme is perhaps more cumbersome for business than C-TPAT is (and therefore of less financial benefit), have proven more agile for customs authorities in the wake of decisions made by individual European countries to reimpose border controls after the migration crisis (see Figure 2). Following the 2005 SAFE Framework<sup>22</sup> agreement of the World Customs Organization, which created standards that would enable mutual recognition of AEO status across countries, Europe's governments have avoided putting together any agreements that provide large multinationals with substantial benefits over smaller importers.

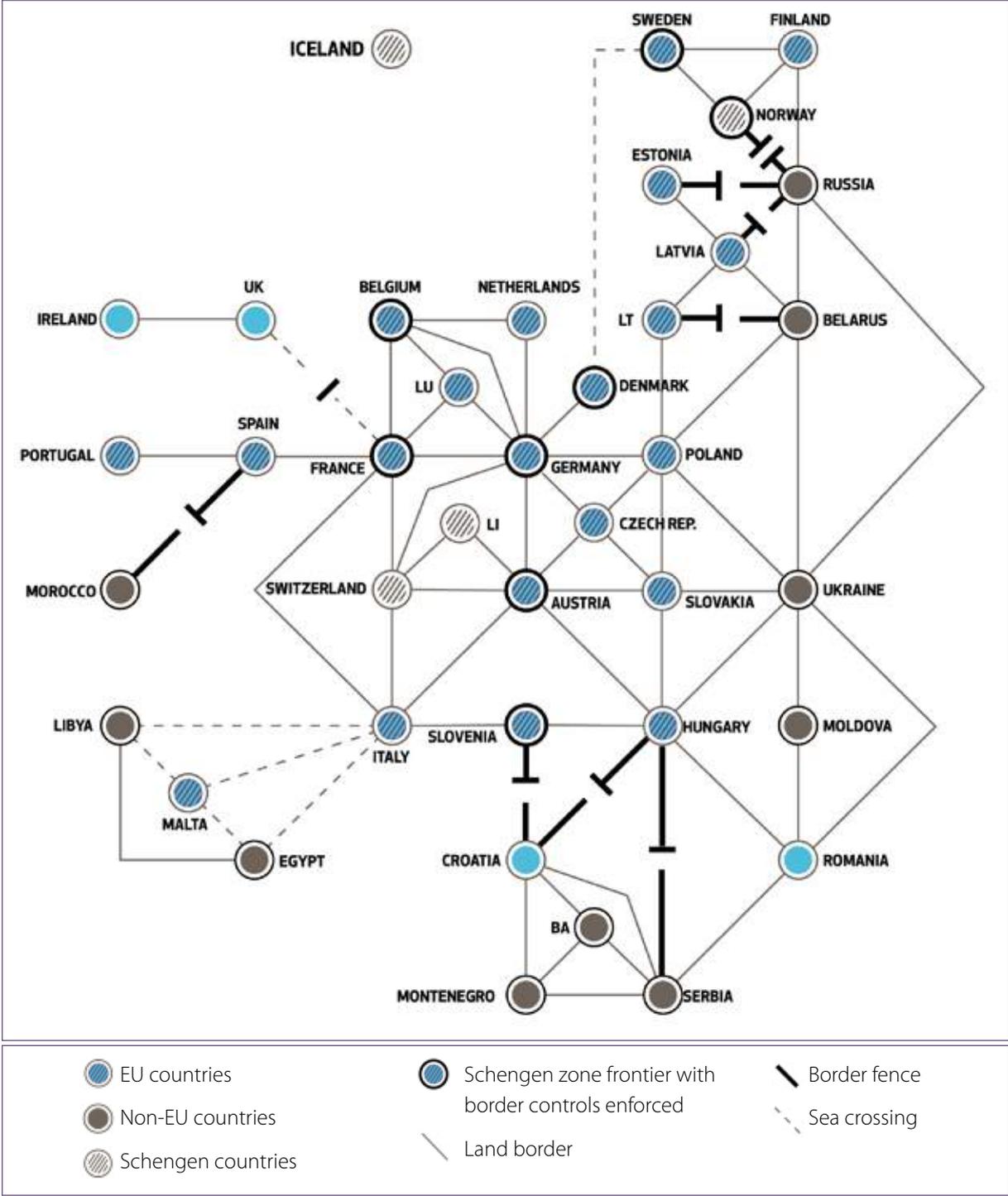
Whereas American trade experts might have initially criticized the EU's lack of 'co-creation' and 'partnership', European customs authorities have maintained a distinction between activities that enhance security and those that establish consistency in compliance. In part, this was accomplished by creating two different types of AEO certification. The AEOS is granted to companies that maintain safety and security standards, while the AEOC is a customs compliance certification that allows companies to have an expedited customs process. Once companies with AEO status hold both certificates, they are eligible for an AEOF, a certification that affirms a company is compliant with both security and valuation standards.

In May 2012, the EU's Taxation and Customs Union signed a mutual recognition agreement with America's CBP. This allowed the US and EU to treat both C-TPAT and AEO participants as members of each other's programmes, permitting reciprocities for American and European businesses for security efficiencies. Although this agreement was designed to afford benefits to EU businesses holding AEOS and AEOF certificates, in the end businesses supporting American-owned supply chains received the most tangible rewards. Among the many practical incentives for CBP was the waiver of official validation visits for C-TPAT participants in the EU; in mutual recognition, AEO status was considered a proxy for a validation visit. This outsourced a time-consuming and difficult portion of the C-TPAT approval process to external partners and streamlined the ability for European supply chains to compel all vendors to be C-TPAT holders.

These benefits are among the reasons that CBP has already agreed to 11 mutual recognition decisions and is continuing to negotiate with additional countries. As well as the EU, Canada, Mexico, Japan, South Korea, Jordan, Israel, Taiwan, Singapore, New Zealand and the Dominican Republic have signed documents affirming mutual



Figure 2: Europe's spreading anti-migrant barriers



Source: Adapted from Reuters, Spreading across Europe: A fortress of fences, 4 April 2016, <https://www.reuters.com/investigates/special-report/migration/#story/38>

recognition of each other's customs security programmes. As customs houses have pursued these agreements, governments have presumably noted the unstated but obvious similarities to political alliances. Put simply, while mutual recognition undoubtedly offers security advantages, the practical cost savings to American business and the US government are equally significant incentives for the US government to pursue.

# Checkpoints and cargo screening: The impact on the ground

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Although achieving AEO status in Europe has provided security benefits for participating countries, and the SAFE Framework has cut out formal inspections through most transit countries, speeding up the import/export process for shippers, considerable sections of the supply chain still have security gaps. These gaps – one of which is that a certain number of lorries cannot be feasibly stopped for detailed screening if one is to maintain a steady flow of goods – have been exposed as migration into Europe has increased. Unsurprisingly, this has influenced how migrant smugglers choose how best to transport people across borders.

For Europe, establishing a customs security procedure in the form of the AEO lacked the sheer urgency of America's C-TPAT, which was precipitated by 9/11. This proved fortuitous after the collapse of the Schengen zone in 2015. As individual EU countries began imposing border controls, both to curb migration (e.g. Germany, Austria, Sweden, Norway, Denmark) and for counterterrorism security (e.g. France), the effect on economic activity was less consequential than it might have been otherwise. Since Schengen countries retain the prerogative to re-establish border controls at any time, the AEO's structure benefits Europe's plethora of agreements. This kind of flexibility has proved more challenging for the US: if NAFTA were to collapse, the economic value of C-TPAT for US traders might disintegrate as well. When crossing borders provides little return on investment, security cooperation between business and government becomes cost prohibitive.

But, regardless of whether European multinational company participates in the AEO programme, reintroducing border controls throughout the continent has still had an economic impact. In March 2016, after checkpoints had been established in countries along the migration route, delivery patterns for supply routes that had been stable for two decades suddenly became unpredictable. Instead of taking five days to drive from Turkey to Germany, it now took 12; instead of two hours to drive across Austria, it took 15.

But, eventually, suppliers adjusted to the new constraints. Shippers consolidated trips. Companies established shuttle buses through border crossings to save commuters' time. And in October 2017, when the German government announced that border controls would remain in place for another six months, and that (along with Austria, Sweden, Norway and Denmark), it would ask the EU for permission to extend controls for another four years, Germans collectively shrugged.

Germany provides a useful case study for reasons why the continuation of border controls in Europe has not yielded further protestations from the public. The actual border inspections are administered inside the border by the Bundespolizei, Germany's federal police, and are often outsourced to state police officers. They do not involve customs screening, and have consequently not disturbed the valuation processes with the AEO or SAFE Framework. The only disruption to economic activity has been delayed deliveries due to inspections.

Indeed, Germany's checkpoints are operated not like ports of entry, but along the lines of screening procedures similar to those used at US Border Patrol checkpoints on highways near the US–Mexico border. (At interior checkpoints, drivers are typically asked if they are US citizens by an agent before being waved through. Customs checkpoints at the land border ports of entry involve more thorough inspections.) 'It's not in our interest to cause delays,' a Bundespolizei spokesperson told a reporter in 2016. As trucks with Austrian inspection stickers were waved through, the spokesperson said that the German police normally restricted their inspections to drivers 'who looked Arabic.'<sup>23</sup>

And polls show that the majority of Germans have consistently requested the additional security checks as a deterrent to migration. Like the American people after 9/11, they are prepared to accept the inconvenience. 'Once an event happens, we can never go back to less [security],' one former US customs official told me, describing the enduring impact of 9/11 on US border-control policy. 'It will always be more. People will always ask: "Are we doing enough?" until the event has faded from memory. But by then everyone has gotten used to the new way.'<sup>24</sup>



## Trusted-traveller programmes: Who benefits most?

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In addition to expediting cargo for preferred-status traders, thereby theoretically focusing security on shipping containers that pose greater risk, an adjacent component of the modern border architecture is the so-called trusted-traveller programme for airline travellers.

In the US, citizens and lawful permanent residents, after paying a \$100 non-refundable fee and passing a background check, are eligible for a programme known as Global Entry, which allows participants to enter the country through reserved travel lanes. Membership to Global Entry is often conferred for free by airlines to high-status travellers in frequent-flyer programmes, and these perks apply in other countries with bi-national agreements. US citizens are also eligible for trusted-traveller programmes in Mexico, the UK, Germany, the Netherlands, Australia, New Zealand and South Korea. Citizens of these countries, which have their own trusted-traveller programmes, can also become Global Entry participants if they have passed their own country's trusted-traveller screening process (typically also entailing a fee and background check).

Unlike with cargo-screening programmes for trusted traders, which have been driven more by economics than by security demands, evidence has emerged that expedited traveller programmes do provide tangible security benefits to participating countries. The background checks (which usually include a lengthy interview with customs officers which, in some countries, follows the framework of a security clearance questionnaire) mean that authorities can collect more data on travellers, which focuses inspections on people who haven't been through the process and are therefore considered to be a greater risk.

According to a 2011 study by the US Research and Development (RAND) Corporation, which simulated a series of terrorist exploitation attempts, participation in background checks justifies trusted-traveller programmes from a security perspective – even if a potential attacker slips through the system. 'Greater public participation, which enables greater performance improvement in the screening of the general public, reduces the sensitivity of net benefits to attacker exploitation,' the study concluded. 'Even at higher terrorist application rates, overall performance is still better than having no program at all.'<sup>25</sup>

From a security perspective, trusted-traveller programmes, which expedite travel across borders, are therefore a necessary antidote to terrorism watch lists, which restrict it. Unfortunately, although watch lists have been effective in deterring suspected criminals from using air travel, they have not been universally effective in preventing terror. For example, reports following the December 2016 Berlin Christmas market truck attack and the November 2015 Paris attacks noted that perpetrators were already on no-fly lists and, in several cases, arrest warrants had been issued for the attackers.

Border and counterterrorism security officials, regardless of the country, have limited inspection and enforcement resources. The biggest strain on resources is the large pool of people who are neither members of a trusted-traveller programme nor suspected terrorists on a restricted travel list. Because reducing that pool makes more inspectors available to examine the rest of the public, security authorities would like as many people as possible in either the trusted-traveller or no-fly category. And, for obvious reasons, aspiring travellers much prefer the former to the latter.

Unfortunately, although security officials, border-control authorities, traders and travellers all value the trusted programmes, and all benefit from them, the attacks in Europe noted above and the horrific levels of gun violence in the US – evidenced by the October and November 2017 massacres in Las Vegas and Texas – suggest that such programmes do not necessarily make people safer. Trusted programmes for traders and travellers may obviate the need for border inspections for companies that allow inspectors to pre-screen cargo and for passengers who pass background investigations, but they ultimately create an illusion of increased security. They also exacerbate a class divide between those who are and those who are not willing to pay the fees or to reveal the personal or corporate data required for participation.



Additionally, the 'trusted' classification programmes, as well as their accompanying multinational border-control agreements, result in little public accountability to the legislative or parliamentary representation of any of the countries involved. Neither the executive branches of the state authorities who reach such agreements, nor representatives of the global transportation system, are accountable to any group of citizens for these contracts. Although this does not negate their value, it is relevant to consider such programmes within the context of the current political climate. Globalization as a tool is less effective, and more fragile, when marginalized citizens believe that elites have foisted border policies on them. In contrast, extending benefits or enacting controls through legislators and representatives, rather than through executive fiat, can pay policy dividends by refuting the common charge that globalists are deaf to local needs.

## Beyond borders? The pitfalls of externalization

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Perhaps the most significant development in modern border management has been the extension of crossing or transit permissions from a country's own physical border or point of entry into the country where a conveyance or passenger originates. In both the US and Europe, this has taken two forms. The first has been 'beyond the border' initiatives. These are exchange programmes between participating nations that grant agents or representatives of one country permission to pre-screen cargo and passengers within a partner nation, and to deny passengers from boarding a flight or other means of transport. Like trusted-traveller and trader programmes, these are designed to expedite entry permission for people and cargo well before they reach the destination border.

The second has been the provision of funding to countries along a migration route – as the US has given to Mexico, and the EU to Turkey – to deploy additional border guards and immigration enforcers to prevent migrants from reaching their desired destination. This is known as border externalization. Although the parallel systems in Europe are different because of geography (as a body of water, the Rio Grande bears little similarity to the Mediterranean Sea), as are the number of countries that migrants and smugglers pass through along their routes, the incentive structures are the same. Whether in the Americas, Europe or Oceania, countries seeking to restrict migration, but which remain desirable destinations, outsource their border enforcement policies to the state authorities in the countries that migrants are leaving.

With beyond the border initiatives, data and law-enforcement exchange programmes enable countries to prevent people from boarding and goods being loaded onto transport at the point of departure. For the US, although the physical borders of the country are delineated on a political map, the juridical borders, in both a legal and practical sense, are throughout the world. When a container is sealed and scanned by a US customs representative in Shanghai, or a parcel is loaded onto an aircraft in Karachi while being observed remotely at the National Targeting Center in Reston, or a passenger is not permitted to board an aircraft in Frankfurt because an officer assigned to the Immigration Advisory Program raised concerns, these are all US border-control activities, but they occur far from the US physical borders.

Unlike beyond the border initiatives, most of which receive little public scrutiny and are often carried out through semi-classified or 'for official use only' memorandums of understanding, border externalization occurs in the public eye through diplomatic initiatives, agreements and formally requested funding. These are covered by the media and debated by officials. Although the EU's €3 billion arrangement with Turkey in 2015 was often reported as an aid package for migrants, the funds enabled Turkey to increase border enforcement and stem the flow of migration into Europe. The EU also has arrangements with Libyan militias, Nigerian soldiers and Egyptian naval forces – among many external official and semi-official partners – to prevent migrants from leaving these transit corridors for EU countries. Australia has similar programmes with the Indonesian government, just as the US does with Mexico and several Central American countries.



Both types of beyond the border systems – especially those related to aviation security – depend on cooperation with other countries, which American political leaders appear to take for granted. Although pre-departure programmes with Mexico and Canada are formalized through trade deals and infrastructure, the Immigration Advisory Program (which permits the US to station its own immigration officers at overseas airports and advise airlines on whether passengers should be denied boarding) operates in cooperation with Germany, the UK, Spain, Ireland, France, the Netherlands, the United Arab Emirates, Qatar, Japan and Panama. These agreements impart a disproportionate benefit to the US in comparison to the host countries, and reciprocal benefits of stationing immigration agents from the host countries in American airports are rarely considered or requested. The EU should keep this in mind when evaluating policy negotiations with the US. The cooperation that maintains such programmes is a form of bargaining power that European interlocutors might forget they have.

A similar form of international cooperation is at work at the US National Targeting Center (for passengers and cargo) and the Air and Marine Operations Center. These represent the operational lifeblood of US CBP and function as intelligence centres that process data from hundreds of sources through a series of algorithms. After reviewing the data, analysts inform airlines, shipping companies and ground transportation officials if they believe a person or cargo conveyance should be additionally screened or not allowed to enter the US at all. The analysts at these centres use data from all over the world, and that data is used through cooperative international exchanges. US security officials would therefore see the loss of this information sharing and the professional relationships as damaging to international security and their own interests.

Border externalization, on the other hand, may benefit other states as much as the countries seeking to push out their borders. Mexico and Turkey, for example, now have substantially enhanced state capabilities at America's and Europe's expense. And smaller countries along migration routes, such as Guatemala and Macedonia, have also seen aid packages initially awarded to deter migration grow to the extent that they appear to form a substantial proportion of salaries paid in the law-enforcement sector.<sup>26</sup>

Oddly, the governments of the US and EU appear to be ignoring the escalating costs of border externalization. Perhaps the public prefers to perceive that curbing migration is a singular event that will not be necessary to sustain. But, once the US and EU choose to extend their borders, maintaining the external structure will prove a large ongoing investment. If US and EU policymakers approve of the results of externalizing the borders of Mexico, Turkey, Guatemala, Macedonia and other countries, then €3 billion<sup>27</sup> (and the US equivalent) will become a perpetual maintenance cost rather than a one-time fix. Border controls are expensive, whether they exist in the homeland or in the Global South.

Finally, the process of border externalization – either through immigration watch programmes, data-exchange agreements or cooperative international accords – raises concerns about privacy loss, data usage and citizens' rights. In a January 2017 privacy impact assessment on data collection, CBP acknowledged that the risk posed to American citizens and the travelling public to their privacy from inaccurate or old data pulled from aggregated sources 'cannot be fully mitigated'.<sup>28</sup> Because CBP has legal permission to store data on tracking systems and watch lists for anywhere from seven to 99 years, it is difficult for anyone to know what the US government will do with all that information over time.<sup>29</sup> And as international agreements enable borders to externalize, citizens may understandably question who is responsible for their security. That is a question that may be more challenging for the US government to honestly answer given the organizational changes to border policing in recent years.

***'The governments of the US and EU appear to be ignoring the escalating costs of border externalization.'***



# Joint border management: Does organizational structure matter?

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As part of the US government's reorganization following the 9/11 attacks, the US Department of Homeland Security (DHS) merged 22 federal agencies, charging all of them with the primary mission of keeping people safe from terrorism. The largest new bureaucracy following the merger became the CBP. Often mistakenly called Customs and Border Patrol (after the two largest former agencies before the merger), CBP combined the US Border Patrol, US Customs Service, Agriculture Inspection Service and portions of the Immigration and Naturalization Service into what is now the largest law-enforcement agency in the US government, with over 60 000 employees.

Given the cost of the DHS reorganization and historic rivalry between the Customs Service and Border Patrol, CBP leaders are often asked to explain why the new agency is more effective than the previous set-up before the merger. Initially, preventing another terrorist attack on the scale of 9/11 proved sufficient justification. But 10 years after the 9/11 attacks, many of the congressional committees and subcommittees to whom the department reported sought a more detailed explanation.

In 2011 CBP's then commissioner, Alan Bersin, described the impacts of the reorganization through the model of what he called joint border management. This, he said, was a management structure that aimed to integrate the functions of customs officials at ports of entry, where legal passage into a country is permissible, with border patrolling authorities, who are responsible for apprehending anyone attempting to enter a country outside an entry port. Although Bersin acknowledged that the US had adopted the structure by accident, he argued that other countries will also adopt the model over time:

Immigration, customs, and agricultural inspection authorities exercised by the same officer working for a single agency defined by an overarching security mission invented the institution of joint border management and the science and art of modern border protection. It sounds so sensible, and in practice it has turned out to be so. But it would not have come to pass in the absence of crisis, and we remain virtually alone in implementing it comprehensively. I venture to project that over the next generation most nations will turn to joint border management and wonder in retrospect, as we do, how they could have functioned otherwise.<sup>30</sup>

Because American authorities like to trumpet the efficiencies of the joint border management structure, it is worth considering why Bersin's prediction has yet to be realized. Other than the targeting systems enabled by data and information exchanges between agencies – which Australia, New Zealand, the UK and several EU countries have built into their systems – the US remains virtually alone in fully implementing and sustaining a joint border management structure.<sup>31</sup> One reason is because the DHS merger created a legislative mess, which, 15 years later, appears to have only worsened. The department's offices report to no fewer than 92 committees and subcommittees of the US Congress for budgetary oversight and funding. The DHS has several hundred employees who do nothing but respond to congressional letters and committee requests. The incomprehensibility of the oversight, rooted in the merger, is often cited by those who advocate small government in the US to illustrate federal waste.

The broader problem of joint border management is the unanswered (and often inconvenient) question, what is the consequence of investing national security responsibility in a law-enforcement agency whose officers are also required to perform financial-management tasks, community service, corporate analysis and pest control at a national level? Considering the outsized presence of the US military worldwide, CBP operates with an increasing level of paramilitary authority in accomplishing its security responsibilities, much of which is enabled, indeed required, by the joint border management paradigm. Bersin himself acknowledges this, often comparing the reorganizations of CBP and DHS to that of the US Department of Defense following World War II.<sup>32</sup> Those



who have designed the joint border management architecture presumably believe this governmental machine will function with greater efficiency and humanity as time goes by. Whatever flaws exist are not from malicious design, in their view, and they will be rectified with modifications by succeeding chief executives.

Unfortunately, the Trump administration's policies have demonstrated otherwise. While CBP and the US Immigration and Customs Enforcement have informally celebrated Trump's removal of restraints on their authority, the structures that enable border controls, inspections and enforcement in the US have grown more stringent under each successive administration since President Clinton. The effect has been a normalized policy of militarization along the border, which, as recently as 20 years ago, would have prompted widespread outcry among American citizens. Immigrant rights activist Brian Erickson writes on the consequences of CBP's militarization:

In short, the United States' predominant policy response to human migration over the past three decades has been one of enforcement-only strategies, which place their overarching faith in a single concept – *deterrence*. In a post-9/11 world, CBP's added national security mission justified Congressional and Presidential initiatives that pushed good government expectations of transparency, oversight or accountability to the wayside in the interest of doubling CBP in less than a decade. Finally, and most importantly, the unprecedented investment in militarising CBP occurred in southwest border communities where roughly 15 million Americans live, play and work. Border Patrol has become an occupying force that treats border residents with suspicion – especially those [whom] agents deem to look or sound foreign.<sup>33</sup>

Over the past two decades, the American public servants who designed and implemented the policies that became joint border management have not done so with malevolent intent.

After all, American citizens, quite reasonably, asked the US government to reconsider national security following the 9/11 tragedy, and American leaders did so. But years after the US had established the Department of Defense (this following World War II in the wake of equally strident public demands to 'never again' witness the horrors of global war), President Eisenhower warned (presciently) of the unchecked influence that a military-industrial-political complex would have over policy, poisoning the prospects of American foreign and domestic restraint and with sustainment demands that would never diminish.

***'Institutionally, CBP appears to perceive migrants as an inconvenience at best and as potential terrorists at worst.'***

Similar problems now face the DHS today, brought about in part by reorganizations and efficiencies such as joint border management. No American leader of Eisenhower's stature – indeed, few American politicians at all – has offered any substantive criticism of the moral consequences of border militarization on the fabric of a nation that claims to be a global beacon of the 'huddled masses yearning to breathe free'. As the nation's largest police force, the largest consumer of data in the US federal government, and with a paramilitary mandate for enforcement and interdiction, CBP exercises immense legal authority over US national security. It also exerts an influence over how the US is perceived in other countries.

Yet, institutionally, CBP appears to perceive migrants as an inconvenience at best and as potential terrorists at worst. 'Despite the fact that the only crime they may be committing is illegally entering the US, they see them as an adversary,' said James Tomscheck, a former assistant commissioner of CBP Internal Affairs, responding to a question about how Border Patrol agents perceive migrants. For officers and agents, identifying themselves as institutional opponents of migrants enables extreme actions when enforcing immigration laws. For example, in late 2017, Texas Border Patrol agents followed the undocumented parents of a sick infant to a hospital and later detained them. Agents also arrested an undocumented 10-year-old with cerebral palsy soon after her emergency surgery.<sup>34</sup> With the US government lacking any formal advocate for asylum seekers, and acting to further aggressively arm border authorities, what migrant wouldn't seek protection from extra-legal sources, such as smugglers?



# Implications for counter-smuggling

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Trusted trader/traveller programmes, border externalization initiatives and joint border management may have offered some improvements in corporate efficiency, in deterring migration and in public security. However, according to current and former CBP officials and senior business executives, the smuggling of contraband and people is only marginally disrupted by these strategies.<sup>35</sup> Because counter-smuggling is one of the primary justifications for government spending on these programmes, the significance of this finding should not be understated. Indeed, researchers who specialize in smuggling have repeatedly shown that little, if any, empirical evidence exists that links border management activities over the past 20 years to reductions in smuggling.<sup>36</sup> If anything, the converse is true: the scant evidence available suggests that the border control programmes in place in the US and Europe have led to increased demands for smuggling – even though the cost of smuggling has also risen commensurately.<sup>37</sup>

This is particularly true in the case of people smuggling. For example, in 2017 the Italian government purchased the momentary loyalty of hundreds of Libyan militias, which effectively paid Libyan smugglers to keep migrants onshore.<sup>38</sup> The result has been that migrants have either waited or pursued options along other routes, and Libyan people smugglers expect to resume business whenever the Italian government stops sending Libya money.<sup>39</sup> However, demand for smuggling services has increased elsewhere along North Africa's coast. Meanwhile in Hungary, although building a perimeter fence and establishing interior checkpoints along the country's southern border have sharply reduced uncontrolled migration through the country's borders, cases of smuggling arrests, especially among vehicle drivers, and related migrant apprehensions and detentions appear to be on the increase.

On the US–Mexico border, the costs of smuggling services appear to have more than doubled since January 2017, reflecting the actual and perceived difficulty of completing a successful crossing.<sup>40</sup> These increases in the demand for – and cost of – smuggling services correspond directly to border externalization and militarization. This finding is hardly surprising, yet it conflicts with much of the official rhetoric of government anti-smuggling campaigns.

According to former customs officials, contraband smugglers often take advantage of trusted-trader programmes by using companies or people who are participants in these programmes as part their operational strategy.<sup>41</sup> Yet, according to corporate programme managers, multinational companies suffer little to no penalty from customs authorities for identifying and reporting smuggling violations, and there is an economic need to keep supply chains efficiently moving.<sup>42</sup> The fact that drugs continue to be imported into the US and Europe, where they are consumed in increasing quantities, offers evidence of successful contraband smuggling operations. Trusted-trader programmes may offer security and financial benefits, but they appear to do little to prevent, or even discourage, contraband smuggling.

Besides their lack of impact in terms of curtailing smuggling, trusted trader/traveller programmes, border externalization initiatives and joint border management systems yield bi-national and multinational agreements. These are often labelled as mutual recognition, memorandums of understanding, or public–private partnerships, and they are rarely deliberated in public by legislative bodies or civil-society representatives. At times, these agreements appear to supersede government's obligation to its own citizens because of the lack of transparency through which they are reached. While little evidence exists that these policies have reduced smuggling, they do frequently result in public inconveniences, corporate headaches and human-rights violations worldwide.

***'The scant evidence available suggests that the border control programmes in place in the US and Europe have led to increased demands for smuggling.'***



## EU policy recommendations

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For over 20 years, the US government has steadily increased the size, authority and scope of its border-control measures. In 1994 the Clinton administration introduced Operation Gatekeeper, then, following 9/11, there was the DHS and CBP's joint border management programme, followed by expansions in the trusted trader and traveller programmes, along with sharp increases in deportations under Obama. Now, under Trump, many would argue that schools, hospitals, churches and even homes are not safe. Migrants living in the US without documentation have good reason to fear. Although it is the Trump administration's policies that cause this terror, the legal and organizational tools that enable it were built by politicians on all sides. Through Clinton, Bush, Obama, and now Trump, the US government has constructed an efficient, determined and dispassionate machine of border controls without legislating any limits on the levers.

For Europeans and Americans alike, the critical challenge in managing border controls will always be how to maintain the movement of people and goods while preserving the screening functions essential for security. Trusted trader and traveller programmes, beyond-the-border policies and joint border management processes offer certain benefits to these activities, and that value should not be easily dismissed. That said, once these programmes are put in place, they can rarely be undone. EU countries, unlike the US, would be wise to keep customs and border-control functions under separate government agencies. Tax collectors and agriculture inspectors may inform public safety, but they are not ideal soldiers or constables, nor should they be.

Given the pernicious consequences of border militarization, and the rise of nationalism and xenophobia in both Europe and the US, the EU should be cautious about mirroring the American approach to border externalization. There is a major difference in policy between a country where the majority of voters lobby for a slower pace of inward migration to enable greater social integration (Germany is an example, according to public polling and election results) and one that declares migrants to be fully incompatible with their own culture (e.g. Hungary, according to the same variables). The stories emerging daily of the Trump administration's arbitrary, cruel and draconian enforcement of US immigration laws (e.g. deliberately targeting parents of sick newborns or disabled children) are reminders that the officers who perform state services are functional tools that whoever assumes power can use. Similar abuses have occurred in Europe, such as these reports from Hungary of border guard abuses: 'They beat us with everything, with fists, kicks and batons,' said a migrant from Iran.<sup>43</sup> 'We asked why they are beating us but they just said: Go back to Serbia.' As Europeans debate migration, the social impact of border controls in the US is a cautionary tale for what can happen to a society that externalizes security to, for example, Egyptian sailors, Sudanese soldiers and Libyan militias.

EU authorities would benefit from recognizing more publicly that US border management policy has been built around international agreements, which can be used as bargaining power to hold the US accountable for irresponsible governance. If the US maintains the Trump-style 'America first' protectionism as policy and withdraws from international treaties, it will be difficult to explain why the EU would want to continue cooperating with the US over its border security, with American agents stationed at European airports, information exchanged on travellers, or through mutually recognized customs security procedures. EU countries may benefit from stipulating minimum requirements for their participation in US programmes. These could theoretically include America extending mandatory guaranteed protection for migrants, or accepting a minimum number of asylum seekers.

EU authorities would also be wise to resist excessive streamlining of partnerships between the public and private sector. Efficiencies and information exchanges do not always produce results that benefit the public good, and

***'As Europeans debate migration, the social impact of border controls in the US is a cautionary tale for what can happen to a society that externalizes security.'***



the inherent tension between customs and business is healthy for both entities. In the US, the C-TPAT certification process has become one of the many tools multinational corporations can use to retain market dominance, and yet companies such as Walmart use C-TPAT to avoid formal customs inspections – essentially saying ‘trust us’. Trust, but verify might be a better mantra.

Finally, major border policy changes, including bi-national or multinational border control or border externalization agreements, should be voted on through representative legislative bodies (i.e. in Congress or Parliament, etc.) instead of being established through executive directives. For any country, borders define a homeland. Whether national or collective, governments benefit from debating border-control methods publicly and establishing them through popular consent. This helps protect individual freedoms and preserves economic stability.

## Conclusion

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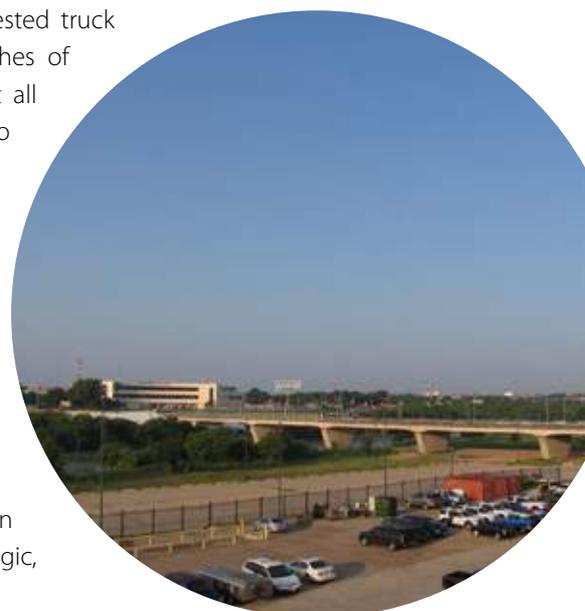
On 16 October 2017, back in San Antonio, US authorities accepted a guilty plea from James Bradley Jr, the driver of the truck discovered in the San Antonio Walmart parking lot, to charges of human smuggling. Admitting awareness of his cargo, the driver, a US citizen, was however spared the death penalty as authorities cast blame on a second man. Pedro Segura Silva was arrested for running a migrant safe house in Laredo the day after Bradley’s truck was discovered in Walmart. Authorities later claimed that Silva, an undocumented immigrant, was using the safe house to smuggle the people found in Bradley’s truck, but offered no public evidence for the accusation. On 28 October, Silva pleaded not guilty.

Since this incident, Romanian, Bulgarian and Belgian authorities have arrested truck drivers for illegally transporting migrants. According to local staff, branches of Walmart in Texas now require employees to observe, report and inspect all 18-wheeled trucks parked at night. As for the migrants, only one of the 22 who were hospitalized (and volunteered as government witnesses) was granted the humanitarian visa that US authorities had promised would be given to those who cooperated. The rest have been either detained or deported

Both in the US and Europe, current statistics and historical reflection point towards grim conclusions. Since January 2017, US Border Patrol apprehensions of migrants along the 3 000-kilometre US–Mexico border have fallen to early 1970s levels, continuing a pattern of decline that began when Obama was in office.<sup>44</sup> As US border militarization and immigration restrictions increase, apprehensions are likely to fall further in the coming years. The number of border agents and officers is almost 15 times larger than what it was in the 1970s and, although the arguments are rapidly defying logic, policymakers continue to call for increasing enforcement resources.

In Europe and the US, official responses and media reports are quick to condemn human traffickers and powerful crime networks as culpable. Consequently, these groups are held almost exclusively accountable for migrant suffering in the public’s collective consciousness. It is as though neither the inability of migrants to legally leave their circumstances nor the state’s restrictions on human rights are relevant factors in the situation or debate. Despite the events that propel Afghans, Pakistanis, Syrians, West Africans, Hondurans, Eritreans, Salvadorans, and dozens more nationalities, to migrate in the first place, the state, and by extension its citizens, absolve themselves of moral responsibility by blaming irregular transits only on those who facilitate them.

The Trump administration’s rhetoric and policies have heightened this trend across the US, causing many Americans to inaccurately perceive smuggling and trafficking as the same practice. Despite the impossibility of speeding



*An average of 10 000 trucks a day cross the World Trade Center Bridge into Laredo, Texas.  
Photo: David Danelo*



'preferred' cargo (such as Walmart trucks) through border controls while preventing anyone from hiding in such cargo, officials condemn the smuggler (or 'trafficker') as part of a vast networked conspiracy against the state's authority. Although Bradley pleaded guilty, the extent of his knowledge of who was in the back of his truck at the time he made his heartbreaking discovery may never be publicly known. Nevertheless, the crimes he was initially charged with carried a maximum sentence of the death penalty.

Beyond exonerating the state of culpability for the human consequences of militarizing border controls, American and European policymakers have also avoided honest analysis and discourse of the relationship between multinationals, border management and human-smuggling practices. This absence of investigation has enabled policies benefiting both corporate profits and border enforcement to continue unrestrained, and has perpetuated an unexamined architecture of border management that incentivizes both states and corporations to maintain exclusive privileges that unwittingly motivate smugglers and harm migrants.

As European governments have adjusted to increased arrivals of migrants and refugees, a central and often overlooked policy pillar has been the synchronization and adaptation of US border control mechanisms within the EU's systems. Since the September 2001 terrorist attacks, the technicalities and tactics that followed US policies have significantly influenced policing, analysis and entry/exit controls for passengers and cargo travelling by air, sea and land throughout the Schengen structure and in individual European countries. This replication has prolonged the enduring paradox of border controls across both continents: as increasing numbers of people and volumes of freight cross international borders with minimal inspection, nationalist political movements, whose platforms call for their governments to fully secure borders by rejecting cross-border exchanges, free trade and free travel regions, are also on the rise.

In the coming years, migrants are likely to continue dying while attempting to enter the US and Europe at constant or increasing levels. Despite policy calls for Frontex officials and US Border Patrol agents to protect borders or gain full operational control, migrants will continue to travel – through all modes available – and, consequently, human smuggling will grow and endure. These predictions, while troubling, reinforce the call for nations that claim to support human rights to reform their processes around labour mobility, to help bring an end to the tragic criminalization of people who want nothing more than life, liberty and happiness.

## About the author

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David Danelo was the policy and planning director of US Customs and Border Protection from 2011 to 2012. A former US Marine, Danelo has also directed field research at the Foreign Policy Research Institute and is affiliated faculty at the University of Texas at El Paso. He is the author of *The Border: Exploring the US–Mexican Divide* (Stackpole, 2008).

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# Notes and references

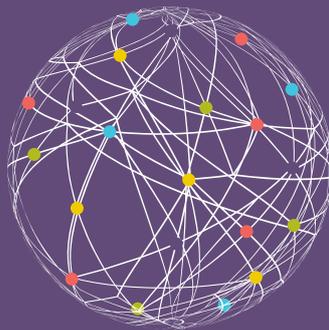
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- 29 From the publicly available January 2017 Department of Homeland Security privacy assessments on the Automated Targeting System. From the migrant advocate's perspective, the failure of the US government to protect sensitive data from the Obama-era programmes Deferred Action for Childhood Arrivals and Deferred Action for Parents of Americans led to the apprehension of thousands of irregular migrants, despite repeated assurances from Obama's politically appointed immigration officials that sensitive personal data would not be used for detentions or deportations. Although the number of reported abuses of people mistakenly placed on the US no-fly or terrorism watch lists has fallen, US citizens for whom there is no evidence of having committed any crime – filmmaker Laura Poitras is one example – have been detained or prevented from boarding US-bound flights.



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- 31 The UK and Australia are among several countries that have merged large elements of border agencies. The UK Border Agency, which existed from 2008 to 2013, was disbanded after coming under parliamentary criticism, although Border Force remained under the Home Office. Australia perhaps comes the closest to paralleling the American construct, although it has no land border. Neither the UK (although this may change after Brexit) nor Australia maintains a land border patrol. By contrast, the 21 000-plus US Border Patrol agents accomplish a function that deploys almost half of CBP's uniformed federal law-enforcement officers. By mission, terrain and scope of function, CBP is alone in fully establishing joint border management.
- 32 Alan D Bersin, Lines and flows: The beginning and end of borders, Ira M Belfer Lecture, Brooklyn Law School, 6 October 2011.
- 33 Brian Erickson, How US Customs and Border Protection became the world's largest militarised police force, in Tuesday Reitano, Sasha Jespersen and Lucia Bird Ruiz-Benitez de Lugo (eds), *Militarised Responses to Transnational Organised Crime: The War on Crime*. London: Palgrave, 2018, pp 235–256.
- 34 These incidents occurred in September and October 2017, in Laredo and San Antonio, Texas, as part of the Trump administration's strategy of policing immigration enforcement in the US interior rather than along the US–Mexico border. The fact that desperate parents were detained as part of the conditions of treating their sick children was not incidental: it was a deliberate goal of the Trump administration's policy to increase fear of detention, theoretically incentivizing repatriation (or what anti-immigrant advocates call 'self-deportation'). In both cases, DHS agents involved told hospital personnel the detentions were proceeding under supervisor orders.
- 35 From August to September 2017, interviews as referenced. This statement recurred in every conversation on the topic, particularly regarding US C-TPAT, and is consistent with my own observations while at CBP.
- 36 Mexico Migration Project, University of Princeton, Border crossing costs 1975–2013, 2017, <http://mmp.opr.princeton.edu/results/001costs-en.aspx>.
- 37 Daniel Martínez, Migrant deaths in the Sonora Desert: Evidence of unsuccessful border militarization efforts from southern Arizona, in R Rubio-Goldsmith, C Fernandez, JF Finch and A Masterson (eds), *Migrant Deaths in the Arizona Desert: No Vale Nada la Vida*. Tucson: University of Arizona Press, 2016, pp 97–119.
- 38 M Michael, Backed by Italy, Libya enlists militias to stop migrants, Associated Press, 29 August 2017, <https://www.apnews.com/9e808574a4d04eb38fa8c688d110a23d>.
- 39 R-A Clermont, Libyan smuggler says human trafficking will continue despite Italian deal, The Local Italy, 13 September 2017, <https://www.thelocal.it/20170913/exclusive-libyan-smuggler-says-human-trafficking-will-continue-despite-italian-deal>.
- 40 A Campoy and C Groskopf, quoting then-DHS Secretary John Kelly, The Trump tax: Human smugglers at the US–Mexico border are jacking up prices, Quartz Media, 17 March 2017, <https://www.sbs.com.au/news/dateline/article/2017/11/07/trump-tax-human-smugglers-us-mexico-border-are-jacking-prices>.
- 41 Interviews with two formal customs officials, September 2017. Informally, this concern has long been recognized in CBP as any trusted-trader programme's biggest vulnerability.
- 42 11 August 2017 phone interview with multinational corporation trade compliance official who claimed their organization reported violations 'daily'.
- 43 L Dearden, Hungarian border guards 'taking selfies with beaten migrants' as crackdown against refugees intensifies, *Independent*, 4 March 2017, <http://www.independent.co.uk/news/world/europe/refugee-crisis-hungary-border-police-guards-fence-beating-asylum-seekers-serbia-push-back-a7610411.html>.
- 44 See CBP, <https://www.cbp.gov/newsroom/media-resources/stats> for historical data and <https://www.cbp.gov/newsroom/stats/usbp-sw-border-apprehensions#> for current data.





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