

THE ECONOMIC DIMENSIONS OF FAMILY SEPARATION

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ABSTRACT

Migrants in the United States experience varying degrees of harm related to family separation. This article focuses on the economic dimensions of these harms by focusing on transnational remittances, a topic that has generated significant scholarly attention. Within this story, remitters are pitched as heroes and remittances are held up as a critical, market-based solution for solving global poverty. Of course, this picture is incomplete. This account ignores remittance-sending countries and provides only a narrow account of law. This Article focuses on anti-money laundering policies, an important set of U.S. laws that regulate the remittance economy. Examining remittances from this perspective shows that anti-money laundering and antimigration policies form a joint project that regulates the relationship between migrants and their family members. While antimigration laws inhibit migrant mobility, anti-money laundering laws create uneven opportunities for transferring wage earnings to family members left behind on their journey. Recognizing the connection between these areas of the law leads to the Article's broader contribution: identifying different ways that the law exacerbates or mitigates the economic harms related to family separation. Specifically, anti-money laundering policies help structure the conditions in which migrants engage in expression of affinity across borders, thereby

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showing the intertwined nature of economic and physical harms within transnational families.

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INTRODUCTION

A significant body of scholarship has focused on remittances,¹ defined as funds or assets sent to other countries via formal channels such as banks or money transfer services.² Their story has been told by economists, sociologists, political scientists, and anthropologists and it goes something like this: workers, almost always migrants, send wages to loved ones in their countries of origin.³ As these loved ones receive an influx of capital and gain economic security, the economies of their

1. Although remittances originate within many countries across the globe, in this article I focus on the funds or assets that are sent from the United States to other countries. While remitters can share capital informally such as through in-person gifts, I focus on capital shared through formal channels such as banks or money transfer services. See Abby Budiman & Phillip Connor, *Migrants from Latin America and the Caribbean Sent a Record Amount of Money to Their Home Countries in 2016*, PEW RSCH. CTR. (Jan. 23, 2018), <http://www.pewresearch.org/fact-tank/2018/01/23/migrants-from-latin-america-and-the-caribbean-sent-a-record-amount-of-money-to-their-home-countries-in-2016> [https://perma.cc/UQ28-SCLT].

2. See *id.* (stating that remittances exclude gifts and other assets of value that are given in person or through informal channels).

3. See Nurith Aizenman, *Mexicans in the U.S. Are Sending Home More Money Than Ever*, NPR (Feb. 10, 2017, 8:41 AM), <https://www.npr.org/sections/goatsandsoda/2017/02/10/514172676/mexicans-in-the-u-s-are-sending-home-more-money-than-ever> [https://perma.cc/9MV7-A3ZY] (reporting that the annual remittances topped \$69 billion in 2016).

home countries also benefit, with consumer goods purchased, houses built, tuition bills paid, and investments made in small businesses. Within this story, remitters are called “heroes”⁴ and remittances are held up as a critical, market-based tool in the fight against global poverty.⁵

This story is incomplete. For one thing, while scholars have had much to say about remittance-receiving countries, they have had much less to say about remittance-*sending* countries like the United States.⁶ We know a lot about the benefits that remittances produce for recipients but know much less about the remitters whose wages prop up this transnational economy. Such an omission might be understandable except that remitters are often migrants working in the United States, a topic of scholarly inquiry that has suffered from no shortage of political or scholarly attention from immigration and other public law scholars. For another, this account has provided a relatively narrow account of the law’s role in regulating remittance channels. Scholars have mostly focused on whether and how tax laws might be calibrated to meet welfarist goals,⁷ an important conversation but one that has not examined how remittances flow in the context of the punitive laws that define domestic law enforcement policies.

This is an article about those domestic law enforcement policies. In particular, I am interested in anti-money laundering laws, which were designed to disrupt the flow of cross-border financial transfers related to terrorism and serious criminal activity like drug or human

4. See Ricardo Guzman, *Migrants Are Living Heroes / Social Distancing Flattens the Curve*, MEX. BUS. NEWS (May 5, 2020, 11:56 AM), <https://mexicobusiness.news/policyandeconomy/news/migrants-are-living-heroes-social-distancing-flattens-curve> [<https://perma.cc/TE4U-9XGM>].

5. See generally Carol Adelman, *Global Philanthropy and Remittances: Reinventing Foreign Aid*, 15 BROWN J. WORLD AFFS. 23 (2009) (discussing how remittances and philanthropy supplement and influence government foreign aid); Richard H. Adams Jr. & John Page, *Do International Migration and Remittances Reduce Poverty in Developing Countries?*, 33 WORLD DEV. 1645 (2005) (finding that an increase in international remittances leads to a decline in poverty).

6. For the most part, this scholarship has neglected the broader legal, political, and administrative domestic context in which these wages are earned and remitted. One exception is Cecilia Menjivar, Julie DaVanzo, Lisa Greenwell & R. Burciaga Valdez, *Remittance Behavior Among Salvadoran and Filipino Immigrants in Los Angeles*, 32 INT’L MIGRATION REV. 97 (1998). But even while Menjivar and her coauthors focus on the domestic elements of the transnational remittance economy, their focus remains on the migrants themselves, *see id.* at 98, rather than the legal and governmental actors charged with regulating this economy.

7. See, e.g., Shayak Sarkar, *Capital Controls as Migrant Controls*, 109 CALIF. L. REV. 799, 808–21 (2021); Ariel Stevenson, *Recovering Lost Tax Revenue Through Taxation of Transnational Households*, 34 BERKELEY J. INT’L L. 100, 103 (2016); Ezra Rosser, *Immigrant Remittances*, 41 CONN. L. REV. 1, 37–40 (2008).

trafficking. Banks and other financial institutions provide the infrastructure for this transnational economy, and the anti-money laundering policies, in turn, subject these institutions to a host of recordkeeping and reporting requirements.⁸ Through these laws, federal agencies can shape, constrain, and sometimes block altogether remittance flows altogether, especially when remittances are intended for recipients in countries closely associated with terrorist or criminal activity. More broadly, these laws empower banks to make their own calls about the kinds of international transactions that present a cover for unlawful activity, leading to delays in completing transfers or canceling them altogether.

These fluctuations take a particular toll on poor migrants who, like most if not all poor community members, struggle to have their banking needs met.⁹ Unlike tax laws, which regulate remittances either at the point of earning wages (in the United States) or at the point of consumption (in another country), anti-money laundering laws disrupt remittance channels (the process by which funds travel from the United States to another country). As a result, regulators and financial institutions can shape migrants' ability to remit wages for reasons that are not always transparent and that can feel arbitrary.

Against this backdrop, this Article hopes to make two primary contributions. The first is to demonstrate how anti-money laundering policies work together with antimigration policies to create a system of social and economic control over migrants in the United States. These two sets of policies share common origins; rely on similar regulatory logics, such as the use of private gatekeepers; and are subject to the same pathologies, such as abuse in the form of surveillance and bias. Taken together, this system of laws that governs both the flow of capital and the movement of people enables a mix of public and private actors to interpret and enforce laws in ways that are ad hoc and subject to little judicial oversight. This flexibility is often justified by the nature of the regulatory goal, namely the disruption of financial support for criminal and terrorist activity, an undesirable and dangerous enterprise that unfolds furtively and across national boundaries. But this far-reaching enforcement approach also sweeps up innocuous behavior like migrant remittances and empowers regulators and bank officials

8. *See infra* Part II.

9. *See* MEHRSA BARADARAN, HOW THE OTHER HALF BANKS: EXCLUSION, EXPLOITATION, AND THE THREAT TO DEMOCRACY 1, 138–39 (2015).

to pursue goals in ways that don't always bear an obvious relationship to these laws' anticrime and antiterrorist foundations.

Analyzing anti-money laundering laws as a set of rules governing migrant economic opportunities clarifies and contextualizes the underlying logic of modern immigration policies. The top four remittance-receiving countries are Mexico, China, India, and the Philippines.¹⁰ These are the same four countries where the demand for migration opportunities far exceeds the supply, as reflected by the long wait times for immigrant visas.¹¹ This account reaffirms the observation that people often experience the physical movement and transfer of funds across borders as interrelated phenomena, a reminder of the importance of "bottom-up" approaches to legal scholarship. At the same time, centering anti-money laundering policies highlights how regulators can use the interrelated nature of migration and remittances to pursue a variety of regulatory goals. To take one example, President Trump issued a travel ban to thwart migration,¹² invoked emergency powers to start a trade war (which may or may not have pressured Mexico to agree to help enforce immigration laws at the border),¹³ and threatened to constrain remittance channels to pay for a wall.¹⁴ While the pace at which the Trump administration rolled out these policies

10. WORLD BANK GRP., *MIGRATION AND REMITTANCES: RECENT DEVELOPMENTS AND OUTLOOK* 2 fig.1.2 (2019), <https://www.knomad.org/sites/default/files/2019-04/Migrationanddevelopmentbrief31.pdf> [<https://perma.cc/VJR7-9H8Q>].

11. See Akila Muthukumar, *Life in Limbo: Pandemic Policy and Immigration Backlogs*, HARV. POL. REV. (Oct. 29, 2020), <https://harvardpolitics.com/life-in-limbo> [<https://perma.cc/28XV-44S3>]; BUREAU OF CONSULAR AFFS., U.S. DEP'T OF STATE, *VISA BULLETIN FOR JANUARY 2021*, at 2–3 (2021), https://travel.state.gov/content/dam/visas/Bulletins/visabulletin_january2021.pdf [<https://perma.cc/UKU9-ZTS3>] (listing China, Indian, Mexico, and Philippine wait times separately from bulk of applications).

12. See *Trump v. Hawaii*, 138 S. Ct. 2392, 2403 (2018).

13. See Michael D. Shear & Maggie Haberman, *Mexico Agreed To Take Border Actions Months Before Trump Announced Tariff Deal*, N.Y. TIMES (June 8, 2019), <https://www.nytimes.com/2019/06/08/us/politics/trump-mexico-deal-tariffs.html> [<https://perma.cc/K5VK-J6RU>].

14. See Bob Woodward & Roberta Costa, *Trump Reveals How He Would Force Mexico To Pay for Border Wall*, WASH. POST (Apr. 5, 2016), <http://wapo.st/236XOth> [<https://perma.cc/6NW7-KHMQ>].

was frenetic,¹⁵ that administration was not unique in its willingness to mix and match these two sets of legal tools.¹⁶

This leads to the Article's broader goal: to illuminate the quiet and nonobvious forms of family separation that pervade the U.S. immigration system.¹⁷ Within an immigration system that largely prohibits unencumbered movement across borders, antimigration policies disrupt a crucial means of maintaining emotional connections across Westphalian space. It is tempting to write off these types of harms as the unintended consequences of a legal regime created to address existential threats like terrorism or morally repugnant activities like drug and human trafficking. Under this view, the disruption of remittance flows is an unfortunate but acceptable cost in light of the social benefits of preventing mass atrocities.¹⁸ But an audit of U.S. anti-money laundering policies should account for the full range of costs that come with such policies.

The costs of these policies include disrupting or blocking remitters from economically reaffirming familiar versions of love and affinity expressed between and among family members: gratitude,¹⁹

15. See SARAH PIERCE & JESSICA BOLTER, *MIGRATION POL'Y INST., DISMANTLING AND RECONSTRUCTING THE U.S. IMMIGRATION SYSTEM 1* (2020), https://www.migrationpolicy.org/sites/default/files/publications/MPI_US-Immigration-Trump-Presidency-Final.pdf [<https://perma.cc/R9NN-BD5W>] ("After pledging to take one of the most activist agendas on immigration in modern times, the administration has delivered on nearly everything the president promised on the campaign trail, almost exclusively via executive fiat, ignoring a Congress he had originally pledged to work with on systemic reform.").

16. See DEP'T OF TREASURY & DEP'T OF JUST., *THE NATIONAL MONEY LAUNDERING STRATEGY FOR 1999*, at 58 (1999), <https://www.treasury.gov/press-center/press-releases/Documents/money.pdf> [<https://perma.cc/HT6A-UL65>] (recommending that the president invoke his powers under the International Emergency Economic Powers Act to block economic transactions where such transactions threaten the national security and economy of the United States).

17. See Stephen Lee, *Family Separation as Slow Death*, 119 COLUM. L. REV. 2319, 2359–60 (2019).

18. See CLAY LOWERY & VIJAYA RAMACHANDRAN, *UNINTENDED CONSEQUENCES OF ANTI-MONEY LAUNDERING POLICIES FOR POOR COUNTRIES: A CGD WORKING GROUP REPORT 2*, 15–27 (2015), <https://www.cgdev.org/sites/default/files/CGD-WG-Report-Unintended-Consequences-AML-Policies-2015.pdf> [<https://perma.cc/B6FC-CG65>] (describing the impacts that anti-money laundering policies have on remittance flows).

19. See RHACEL SALAZAR PARREÑAS, *SERVANTS OF GLOBALIZATION: MIGRATION AND DOMESTIC WORK 83* (2015).

obligation,²⁰ guilt,²¹ and nostalgia.²² Many migrants come to the United States knowing that a long-term separation from their family members is likely to follow, and for this reason, rely on remittances to maintain familial bonds for the duration of the separation. Economic circumstances vary across migration trajectories, and for this reason, remittances as expressions of affinity should not be romanticized. In some instances, remittances might top off a recipient's income, while in other instances, such capital flows literally mean the difference between survival and a poverty-induced demise. Despite the differences in economic impact generated by remittances across contexts, the common thread connecting these money transfers is the familial relationship prompting and perpetuating the transfers in the first place.

Part I of this Article provides a primer on remittances, the central aim of which is to provide monetary support for family members in countries outside of the United States, especially in the Global South. Part II explains how anti-money laundering policies regulate the transnational remittance economy. Specifically, I discuss how regulators and gatekeepers exercise enforcement authority in ways that narrow and sometimes outright eliminate remittance corridors. These policies do not impact remitters evenly. Indeed, they exacerbate inequalities that already exist on the basis of immigration status, class, and race or national origin. This Part also shows how anti-money laundering policies and antimigration policies form a joint regulatory project impacting the lives and livelihood of migrants. Part III explores how this adjusted descriptive picture—one that includes both anti-money laundering and antimigration policies—can help scholars theorize the role that law ought to play in regulating the remittance economy. Finally, Part IV examines economic expressions of affinity in related legal contexts. Recognizing the economic dimensions of family separation can help inform and shape debates in adjacent contexts.

20. See HUNG CAM THAI, *INSUFFICIENT FUNDS: THE CULTURE OF MONEY IN LOW-WAGE TRANSNATIONAL FAMILIES* 70 (2014).

21. Allison J. Petrozziello, *Feminised Financial Flows: How Gender Affects Remittances in Honduras-US Transnational Families*, 19 *GENDER & DEV.* 53, 63 (2011).

22. Susan Bibler Coutin, *Being En Route*, 107 *AM. ANTHROPOLOGIST* 195, 202 (2005) (describing the formation of hometown associations as a form of “practiced nostalgia” by migrants in the United States). For background information on the role of hometown associations in generating remittances, see generally Manuel Orozco & Michelle Lapointe, *Mexican Hometown Associations and Development Opportunities*, 57 *J. INT’L AFFS.* 31 (2004).

I. REMITTANCES AS ECONOMIC EXPRESSIONS OF AFFINITY

Although the subject of remittances has enjoyed significant scholarly attention, especially from economists and social scientists, legal scholarship has not offered much on the topic.²³ For this reason, this Part lays out the basics of the transnational remittance economy, focusing first on macro trends and then delving into some of the qualitative aspects of the economy to highlight the social meaning of remittances.

It would be difficult to overstate the global significance of the U.S. economy, which generates more remittances than any other country.²⁴ Of the 247 million migrants in the world, more find their way into the United States than any other country,²⁵ and unsurprisingly, the U.S. labor market generates more remittances than that of any other country.²⁶ Recent estimates suggest that the United States sends out roughly \$67 billion to the rest of the world.²⁷

Given the degree to which other countries rely on remittance flows originating in the United States, access to capital features prominently in U.S. foreign policy goals. These goals include fostering the development of local economies or providing humanitarian relief for disasters and other unforeseen crises. Within this context, remittances provide a significant source of capital that is available to advance broader goals related to fighting poverty or mitigating the fallout from regional disasters. In this regard, remittances are no different than foreign aid or assistance packages dispensed by U.S. agencies. At the same time, remittances are different in that they derive

23. For some notable exceptions, see generally Sarkar, *supra* note 7; Stevenson, *supra* note 7; Rosser, *supra* note 7.

24. *Remittance Flows Worldwide in 2017*, PEW RSCH. CTR. (Apr. 3, 2019), <https://www.pewresearch.org/global/interactives/remittance-flows-by-country> [<https://perma.cc/297X-TXUD>] (stating that \$148 billion in remittances were sent from the United States to other countries in 2017); see also Aizenman, *supra* note 3 (reporting that the annual remittances topped \$69 billion in 2016).

25. See Paul Adams, *Migration: Are More People on the Move Than Ever Before?*, BBC NEWS (May 28, 2015), <https://www.bbc.com/news/world-32912867> [<https://perma.cc/NHR4-85ZP>] (explaining that the United States is the end destination for the largest percentage of the world's immigrants).

26. See WORLD BANK GRP., *supra* note 10, at 4 fig.1.3 (noting that the \$68 billion in remittances that flowed out of the United States in 2017 placed it as the country generating the largest amount of remittances).

27. U.S. GOV'T ACCOUNTABILITY OFF., GAO-18-313, REMITTANCES TO FRAGILE COUNTRIES: TREASURY SHOULD ASSESS RISKS FROM SHIFTS TO NON-BANKING CHANNELS 1 (2018), <https://www.gao.gov/assets/gao-18-313.pdf> [<https://perma.cc/QB6T-DNL9>] [hereinafter GAO REPORT: REMITTANCES TO FRAGILE COUNTRIES].

from purely private activity—wages earned and saved, and money banked and wired—as opposed to funds collected in and disbursed from federal coffers. Unconstrained by the limits and conditions imposed by congressional appropriations as a source of capital, remittances grow as the U.S. economy grows.

Not surprisingly, the difference in scale between remittances and foreign aid is stark. Evaluated in absolute dollar amounts, remittances that originate within U.S. markets amount to three times the amount given through formal aid commitments by the United States.²⁸ Debates over remittances have focused on different metrics to evaluate the significance of this transnational economy. Of course, the remittance-to-aid ratio fluctuates from country to country. For certain countries, the remittance flow from the United States simply dwarfs the foreign aid flow, while other countries have the inverse.²⁹ Moreover, remittance streams out of the United States do not flow evenly to economies all over the world. Broadly speaking, Mexico, China, India, and the Philippines receive more remittances from the United States

28. See WORLD BANK GRP., *MIGRATION AND REMITTANCES FACTBOOK 2016*, at 17 (2016), <https://openknowledge.worldbank.org/bitstream/handle/10986/23743/9781464803192.pdf> [<https://perma.cc/Q37P-4GGV>] (giving data on remittances compared with other resource flows).

29. Compare Mexico, for which remittances far outpace foreign aid from the United States, with Afghanistan, which receives significant aid from the United States but a much lower amount in terms of remittance flows. See UNHCR, *REMITTANCES 5, 17* (2018), <https://www.unhcr.org/5b3101d44.pdf> [<https://perma.cc/5RHL-FHAQ>] (explaining that in 2016, Afghanistan recorded inbound remittances of about \$431 million and Mexico recorded around \$28 billion); Max Bearak & Lazaro Gamio, *The U.S. Foreign Aid Budget, Visualized*, WASH. POST (Oct. 18, 2016), <http://wapo.st/2dy7GHO> [<https://perma.cc/7XTE-26SF>] (explaining that, in 2016, Afghanistan received around \$1 billion in U.S. foreign aid and Mexico received around \$45 million). The World Bank releases information on the remittance economy on an annual basis. See, e.g., *Migration and Remittances Data*, WORLD BANK, <https://www.worldbank.org/en/topic/migrationremittancesdiasporaissues/brief/migration-remittances-data> [<https://perma.cc/4ADT-S5QX>] (last updated May 2021). For a useful overview of the relative strengths and weaknesses of this dataset, see generally Sandra Paola Alvarez, Pascal Briod, Olivier Ferrari & Ulrike Rieder, *Remittances: How Reliable Are the Data?*, *MIGRATION POL'Y PRAC.*, Apr.–June 2015, at 42. Both government agency reports and scholarly contributions routinely cite this data. See GAO REPORT: *REMITTANCES TO FRAGILE COUNTRIES*, *supra* note 27, at 1 n.2 (citing World Bank data for remittance statistics); U.S. GOV'T ACCOUNTABILITY OFF., *GAO-16-65, INTERNATIONAL REMITTANCES: MONEY LAUNDERING RISKS AND VIEWS ON ENHANCED CUSTOMER VERIFICATION AND RECORDKEEPING REQUIREMENTS* 9 n.23 (2016), <https://www.gao.gov/assets/gao-16-65.pdf> [<https://perma.cc/VK6M-LFBQ>] [hereinafter *GAO REPORT: MONEY LAUNDERING RISKS*] (citing World Bank data on remittances). See Stevenson, *supra* note 7, at 109 n.48 (citing World Bank quantitative data on migration and remittance flows). Given the source material, a strong quantitative and economic streak runs through the remittance discussions. See generally Alberto Alesina & Beatrice Weder, *Do Corrupt Governments Receive Less Foreign Aid?*, 92 *AM. ECON. REV.* 1126 (2002) (conducting a study on the relationship between corrupt governments and foreign aid).

than any other country, in that order.³⁰ These four countries amount to about one-third of all remittances sent worldwide.³¹ In the context of the countries with the greatest remittances flows from the United States, consider the degree to which remittance capital outpaces formal aid commitments. As Table 1 illustrates, the funds and assets sent to these countries as remittances far surpass the aid packages provided by U.S. agencies.

Table 1³²

RECEIVING COUNTRY	FOREIGN AID	REMITTANCES
Mexico	\$296 million	\$30 billion
China	\$51 million	\$16.1 billion
India	\$104 million	\$11.7 billion
Philippines	\$167 million	\$11.1 billion

The top remittance-receiving countries comprise a familiar group to immigration scholars and lawyers.³³ When examining wait times for immigrant visas, these are the same four countries in which demand for migration opportunities far exceeds existing supply, as reflected by the long wait times for immigrant visas.³⁴ These interconnected and

30. See PEW RSCH. CTR., *supra* note 24 (displaying this information in chart form).

31. See Budiman & Connor, *supra* note 1 (describing the global distribution of remittances by region).

32. The federal government makes available information on expenditures sent to other countries. All figures include data from fiscal year 2017. The foreign aid data is available at foreignassistance.gov. I used the data available for funds that have been “obligated,” which reflects funds that a government agency has applied toward some activity or program in the recipient country. See MARIAN L. LAWSON & EMILY M. MORGENSTERN, CONG. RSCH. SERV., R40213, FOREIGN AID: AN INTRODUCTION TO U.S. PROGRAMS AND POLICY 20 (2019), <https://sgp.fas.org/crs/row/R40213.pdf> [<https://perma.cc/HW9F-69PQ>] (defining “obligations” as “amounts contractually committed” towards foreign assistance). The 2017 remittances data is available through the World Bank 2017 Bilateral Remittance Matrix as updated in April 2018. *Migration and Remittances Data*, WORLD BANK, <https://www.worldbank.org/en/topic/migrationremittancesdiasporaissues/brief/migration-remittances-data> [<https://perma.cc/F89R-PVQG>]. 2017 is the latest year in which data for both categories is available. *Id.*

33. See PEW RSCH. CTR., *supra* note 24 (stating that \$148 billion in remittances were sent from the United States to other countries in 2017).

34. This has been especially true in the context of family-based green card petitions with wait times swelling for would-be visa beneficiaries in Mexico and the Philippines. See BUREAU OF CONSULAR AFFS., U.S. DEP’T OF STATE, VISA BULLETIN FOR JUNE 2021, at 1 (2021), https://travel.state.gov/content/dam/visas/Bulletins/visabulletin_june2021.pdf [<https://perma.cc/Z5AR-L3XW>]; see also CLAIRE BERGERON, MIGRATION POL’Y INST., GOING TO THE BACK OF THE LINE: A PRIMER ON LINES, VISA CATEGORIES, AND WAIT TIMES 4 (2013),

overlapping data points on capital flow and migrant mobility are the predictable consequence of migration policies informed by economic disparities between the Global North and South, and the historical circumstances leading to this resource allocation.

Looking beyond these four countries, significant remittance streams also flow into Guatemala, El Salvador, Honduras, and the Dominican Republic.³⁵ These countries have also figured into modern immigration policy debates further confirming the close relationship between U.S. policy on setting controls over capital outflow and migrant inflow.³⁶ The degree to which the economies of different countries depend on remittance flows can vary. In terms of gross domestic product (“GDP”), remittances comprise 21 percent of El Salvador’s GDP, whereas in China, remittances comprise less than 1 percent of its GDP.³⁷ For obvious reasons, countries like El Salvador are vulnerable to fluctuations in remittance streams while other larger economies can afford to weather these sorts of swings.

Beyond these macro trends of the remittance economy, anthropologists and sociologists have deepened our understanding of how and on what terms migrants attach social meaning to remittance flows.³⁸ Although an important, standalone body of remittances scholarship exists, the broader literature on migration studies also provides helpful insights on the meaning of remittances.³⁹ Together, this scholarship confirms that the remittance market arises within the

<https://www.migrationpolicy.org/sites/default/files/publications/CIRbrief-BackofLine.pdf> [<https://perma.cc/ZA6E-N46G>] (noting the long wait times for visa applicants from Mexico, the Philippines, China, and India); BUREAU OF CONSULAR AFFS., *supra* note 11 (listing the wait times for Mexico, the Philippines, China, and India separately from bulk of applications).

35. See PEW RSCH. CTR., *supra* note 24.

36. See generally Sarkar, *supra* note 7, at 806–08 (explaining that legal controls over capital affect the movement of migrants across borders at both the international and state levels).

37. See *Personal Remittances, Received (% of GDP) – El Salvador, Philippines, China, India, Mexico*, WORLD BANK, <https://data.worldbank.org/indicator/BX.TRF.PWKR.DT.GD.ZS?locations=SV-PH-CN-IN-MX> [<https://perma.cc/242N-F7XW>]. Of the “big four” remittance-receiving countries, the greatest impact of remittances as measured by GDP is the Philippines for which remittances comprise 9.7 percent. *Id.*

38. For a good sampling of an anthropological analysis of the remittance economy binding the United States to other countries, see generally THAI, *supra* note 20 (retelling the stories of various Vietnamese migrants and the role remittances and money generally played in their experiences) and Coutin, *supra* note 22 (same, but with the stories of migrants from El Salvador).

39. This is not surprising given that a core reason why many migrants seek out opportunities to come to the United States and other developed nations is to work for the purpose of remitting some portion of their wages to loved ones. See LAUREN HEIDBRINK, *MIGRANTHOOD: YOUTH IN A NEW ERA OF DEPORTATION* 44–47 (2020); PARREÑAS, *supra* note 19, at 53–54.

context of transnational families—that is, families in which different members live in different countries.

For this reason, the decision to migrate is often the product of a collective decision-making process. The journey to the United States is costly—both in economic terms and increasingly in terms of human life—so a would-be migrant often must ask family and community members to pool resources to invest in a migrant.⁴⁰ Both lawful channels like temporary work visas⁴¹ or unlawful channels like surreptitious entry into the United States require significant expenditures. And if saving and sharing resources cannot cover the costs, families can take out loans to cover the rest. This decisionmaking process can be complicated. While there might be a consensus within a family over who should be the one to embark for the United States, migration opportunities can be a precious resource to which many in a family might want to lay claim. Decisions to fund a family member's journey to the United States can unfold the same way they do at American dinner tables—awkwardly, angrily, intensely, and sometimes leading to resentment even if the underlying motivation behind these migration decisions is a sense of familial love.⁴²

In this context, remittances function as a form of support for family members.⁴³ This money transfer can be used for a variety of ends: to invest in human capital, such as by helping to pay for a family member's education;⁴⁴ to start a business by providing seed money; or, in many instances, to enable remittance recipients to meet their basic consumption needs.⁴⁵ Remittances also provide other less obvious but

40. See FILIZ GARIP, ON THE MOVE: CHANGING MECHANISMS OF MEXICO-U.S. MIGRATION 68–71 (2017).

41. See Jennifer Gordon, *Regulating the Human Supply Chain*, 102 IOWA L. REV. 445, 460–68 (2017) (providing an overview of the various costs and fees associated with applying for a temporary work visa).

42. See, e.g., GARIP, *supra* note 40, at 68–70.

43. See, e.g., Ester Hernandez & Susan Bibler Coutin, *Remitting Subjects: Migrants, Money, and States*, 35 ECON. & SOC'Y 185, 190 (2006); Menjivar et al., *supra* note 6, at 98; Bernard Poirine, *A Theory of Remittances as an Implicit Family Loan Arrangement*, 25 WORLD DEV. 589, 598 (1997). Note that another strain of the literature characterizes remittances as acts of altruism, which do not necessarily benefit family members. See generally Adelman, *supra* note 5 (analyzing remittances as a type of foreign aid that reduces poverty in poorer countries).

44. See Lauren Heidbrink, *Circulation of Care Among Unaccompanied Migrant Youth from Guatemala*, 92 CHILD. & YOUTH SERVS. REV. 30, 35 (2018).

45. See Jorge Durand, Emilio A. Parrado & Douglas S. Massey, *Migradollars and Development: A Reconsideration of the Mexican Case*, 30 INT'L MIGRATION REV. 423, 426 (1996). One longstanding criticism of remittances has been that they do not always or even often offer much return on investments in human capital because recipients are free to use remittance income

no less important secondary benefits, such as access to microloans and other financial services.⁴⁶ Specifically, a steady flow of remittance income can help remittance recipients demonstrate “credit worthiness” in local lending markets.⁴⁷ Thus, remittances both directly and indirectly help alleviate poverty, and to a certain extent, foster development in receiving countries.⁴⁸

All of this points to the insight that remittances function as an economic affirmation of familial bonds. Sometimes, scholarly and popular accounts describe this family-affirming dimension to remittances in self-serving terms, in which remittances function as a kind of repayment for implicit loans made to migrants by their family members.⁴⁹ In exchange for supporting family members, remitters receive goodwill and enhanced community standing. Popular accounts portray remitters as occupying a position of respect and high standing in remittance receiving countries. In describing migrants who send remittances to Mexico, Mexican President Andrés Manuel López Obrador described them as “living heroes.”⁵⁰ In this way, the familial bonds that cut across transnational boundaries remain dynamic and emotionally fulfilling. As an economic transaction that reaffirms familial identities, remittances are subject to market constraints in

on imported consumer goods, which undercuts job creation in local economies. See Charles B. Keely & Bao Nga Tran, *Remittances from Labor Migration: Evaluations, Performance and Implications*, 23 INT’L MIGRATION REV. 500, 502 (1989).

46. See AUDREY SINGER & ANNA PAULSON, FINANCIAL ACCESS FOR IMMIGRANTS: LEARNING FROM DIVERSE PERSPECTIVES 1–2, 7 (2004), <https://www.brookings.edu/wp-content/uploads/2016/06/cr19.pdf> [<https://perma.cc/NJD9-NRKD>].

47. See Maryann Bylander, *The Growing Linkages Between Migration and Microfinance*, MIGRATION POL’Y INST. (June 13, 2013), <https://www.migrationpolicy.org/article/growing-linkages-between-migration-and-microfinance> [<https://perma.cc/3LAR-97KE>].

48. See DILIP RATHA, THE IMPACT OF REMITTANCES ON ECONOMIC GROWTH AND POVERTY REDUCTION 5–6 (2013), <https://www.migrationpolicy.org/pubs/Remittances-PovertyReduction.pdf> [<https://perma.cc/T9QP-48HQ>] (stating that remittances represent a major vehicle for reducing the scale and severity of poverty in the developing world); see also Peter Gammeltoft, *Remittances and Other Financial Flows to Developing Countries*, 40 INT’L MIGRATION 181, 190 (2002) (discussing remittances as a development resource).

49. See Poirine, *supra* note 43, at 593 (describing “[e]nforcement of the implicit loan contract”).

50. Guzman, *supra* note 4. This is a common description across countries. See Eric J. Pido, *Balibkayan Paranoia: Tourism Development in Manila and the Anxiety of Return*, in SOUTHEAST ASIAN DIASPORA IN THE UNITED STATES: MEMORIES AND VISIONS, YESTERDAY, TODAY, AND TOMORROW 31, 33–34 (Jonathan H. X. Lee ed., 2014); see also Rhacel Salazar Parreñas, *Transgressing the Nation-State: The Partial Citizenship and “Imagined (Global) Community” of Migrant Filipina Domestic Workers*, in GENDERED CITIZENSHIPS: TRANSNATIONAL PERSPECTIVES ON KNOWLEDGE PRODUCTION, POLITICAL ACTIVISM, AND CULTURE 98 (Kia Lilly Caldwell et al. eds., 2009).

ways that noneconomic expressions are not. Unlike words of affirmation or endearing text messages, economic expressions like remittances can dry up as labor markets shrink or shift and remitters lose work. And while remitters can find other ways to remain connected with family members, those family members who had counted on remittance flows still have economic needs to meet and debts to pay off.⁵¹

Other times, remittances are portrayed as economic expressions of affinity between family members, emotional affirmations free of market logics. In this account, the decisions related to migrating, accessing work, and remitting wages all comprise parts of a larger effort to support one's family. In her ethnographic work on migrant youth in Guatemala, Professor Lauren Heidbrink observes that family members who remain behind in remittance-receiving countries might see migration as an "act of love."⁵² In this context, remittances "are not anonymized financial transfers; they are infused with care and commitment to . . . family. They have a face."⁵³ Similarly, in her study of Salvadoran migrants, sociologist Leisy Abrego found that her interviewees were often driven by desperation to provide for their families who were living on the brink of poverty.⁵⁴

None of this should be taken to foster an idealized vision of family connection. These monetary transfers unfold across a range of economic circumstances. In many cases, remitted funds represent more than an electronic version of a hug or an encouraging pat on the back. They also represent the economic culmination of a journey beset with violence and long-term trauma for the remitter and a crucial financial

51. Often times, migrants take out loans to fund a single family member's journey to the United States and the failure to repay those loans can have severe economic consequences for those still living in the remittance-receiving country. See Lauren Heidbrink, *The Coercive Power of Debt: Migration and Deportation of Guatemalan Indigenous Youth*, 24 J. LATIN AM. & CARIBBEAN ANTHROPOLOGY 263, 272 (2019) (noting that moneylenders in migration sending countries sometimes confiscate land for defaulted loan payments). Remittances, like any kind of valuable resource, can generate family strife, especially as family members suspect that remitters are saving more of their wage earnings for themselves than for remitting. In this context, shaming and guilt-tripping are common and probably similar to the kinds of behavior that arise within native-born U.S. households in the face of financial disputes. See LEISY J. ABREGO, *SACRIFICING FAMILIES: NAVIGATING LAWS, LABOR, AND LOVE ACROSS BORDERS* 60 (2014) (recounting the experiences of a migrant who felt motivated to repay debts to avoid intrafamily tension).

52. HEIDBRINK, *supra* note 39, at 43.

53. *Id.*

54. See ABREGO, *supra* note 51, at 26.

cushion against poverty and its associated economic and physical vulnerability.⁵⁵ For some, remittances are equal parts love and survival.

Both popular and scholarly accounts of migrants often paint them as motivated by a desire to access U.S. labor markets, the wage earnings from which prop up the transnational remittance market. And of course, this is true—to some extent. At the same time, migrants may feel compelled to provide remittances for reasons that arise after making the decision to journey into the United States for unrelated reasons. Disasters may strike different parts of the globe, causing those in the United States with endangered family members to send monetary relief. Using El Salvador as an example, many unauthorized migrants in the United States were able to secure a form of immigration relief through the Temporary Protected Status (“TPS”) program, which was a humanitarian response to the earthquake in El Salvador in 2001.⁵⁶ This relief maintained or improved the work opportunities available to Salvadoran migrants, which in turn enabled them to send some of their wage earnings to their family members coping with the disaster.⁵⁷ In other words, programs like TPS both directly stabilize migrant opportunities in the United States as well as indirectly foster support for regions affected by a qualifying disaster.

Finally, it is worth emphasizing that, while it is easy to fixate on those remittances that are money transfers via banks and other financial institutions, remittances can also be shared in person. Much of the joy in giving support to family members comes from the human connection fostered by gifts, be they cash in an envelope or paying for a meal together. But remittances of this variety are mostly limited to migrants with lawful status who have the ability to move freely across borders. Migrants without lawful status or with temporary or contingent forms of status like TPS generally cannot foster relationships through traditional means of physical connectedness, like spontaneous visits to say hello and planned visits to celebrate life events.⁵⁸ For migrants who face greater constraints in their mobility,

55. *See id.* at 52.

56. *See* Hernandez & Coutin, *supra* note 43, at 191.

57. This is one of the reasons that remittance flows are theorized as a countercyclical phenomenon: flows increase as the economies of remittance-receiving communities shrink. *See* Rosser, *supra* note 7, at 17 (“[E]ven where the shock is purely economic, there is the strong possibility that remittances are counter-cyclical, providing additional resources when the home country’s economy is not doing well.”).

58. Of course, technological advances like video calls also help maintain connections. *See* HEIDBRINK, *supra* note 39, at 49.

remittances via wire transfers remain the most viable method of showing economic support to their family members abroad.⁵⁹ Thus, for the undocumented community, remittances allow migrants to maintain an “absent presence” overseas in the businesses they help fund and through the clothes and food their family members purchase.⁶⁰

II. REMITTANCES IN A WORLD OF REDUCED MIGRANT MOBILITY

Legal scholarship on the remittance economy has tended to focus on bilateral or multilateral legal arrangements grounding debates within the context of tax law and policy.⁶¹ This Part highlights a different set of domestic laws that regulate remittances, namely anti-money laundering laws. Drawing from criminal law and national security legal traditions, these financial controls shape the kinds of banks and financial institutions that are available to remitters in the United States.

Centering the role that these laws play in shaping remittance markets situates the remittances discussion within the economic and legal realities most applicable to unauthorized migrants who have resided in the United States for years and who often do not enjoy the freedom of movement across borders. Thus, while remittances can be construed to account for both transfers that happen through banks and financial institutions as well as gifts and payments that happen in person,⁶² for migrants with unlawful or tenuous legal statuses, bank-facilitated money transfers remain the only meaningful version of this form of connection. Given that migrants frequently remain separated from family members across borders for years and sometimes decades,⁶³ remittances offer an important alternative to physical togetherness for reaffirming familial relationships.

59. In some situations, remitters can pay couriers to physically carry money and gifts into countries on their behalf. See GAO REPORT: MONEY LAUNDERING RISKS, *supra* note 29, at 9–10; see also 31 U.S.C. § 5316(a) (detailing reporting requirements for those carrying more than ten thousand dollars into or out of the United States).

60. Hernandez & Coutin, *supra* note 43, at 202.

61. See, e.g., Stevenson, *supra* note 7, at 103–19; Rosser, *supra* note 7, at 28–41.

62. Anti-money laundering laws regulate in-person transfers by requiring travelers to declare any amount of money in possession greater than ten thousand dollars. See 31 U.S.C. § 5316(a)(1); FIN. CRIMES ENF'T NETWORK, FINCEN FORM 105, REPORT OF INTERNATIONAL TRANSPORTATION OF CURRENCY OR MONETARY INSTRUMENTS (2017).

63. See Lee, *supra* note 17, at 2336–54, 2372.

A. Anti-Money Laundering Laws and their Regulators

In the broadest of terms, the statutory framework undergirding modern anti-money laundering policies developed at three distinct moments. The origin story begins in the 1970s, as Congress began focusing on the cover the financial system provided for drug dealers and others who profited from illicit activities.⁶⁴ Most notably, the Bank Secrecy Act of 1970 (“BSA”) imposes recordkeeping and reporting requirements on financial institutions as a way of preventing banks from benefiting from the drug trade.⁶⁵

A second key piece of legislation came in the 1980s in which Congress began intensifying the penalties related to BSA recordkeeping requirements. In 1986, Congress passed the Money Laundering Control Act (“MLCA”), which criminalizes the act of money laundering, with penalties in the forms of fines or imprisonment for banks and other financial institutions complicit in the drug trade.⁶⁶ The MLCA not only targeted banks for their role in facilitating money laundering, it also enlisted the banks’ help in identifying suspicious transactions that could be covering up or facilitating dangerous behavior related to organized crime such as drug trafficking.⁶⁷

Finally, the 2001 USA PATRIOT Act further expands regulatory powers by imposing greater obligations on financial institutions to collect information on their customers and clients.⁶⁸ The existing infrastructure was geared toward identifying “dirty” money that had been commingled with legitimate funds. The PATRIOT Act added new legal programs and goals designed to ferret out terrorist activity, which presented a slightly different challenge. Money laundering typically involves attempting to conceal unlawful criminal activity that

64. Stavros Gadinis & Colby Mangels, *Collaborative Gatekeepers*, 73 WASH. & LEE L. REV. 797, 859 (2016).

65. Banks are required to report to agencies significant currency deposits, exchanges, or withdrawals. *See id.*; *see also* Peter E. Meltzer, *Keeping Drug Money from Reaching the Wash Cycle: A Guide to the Bank Secrecy Act*, 108 BANKING L.J. 230, 232–35 (1991) (reviewing key provisions of the Bank Secrecy Act that are intended to thwart money laundering).

66. *See* 18 U.S.C. § 1956(a)(1).

67. *See* Gadinis & Mangels, *supra* note 64, at 861 (describing the MLCA approach to anti-money laundering policy as “regulators [relying] on financial institutions as reputational intermediaries, requiring them to turn away potential money launderers, or face heavy sanctions”); *see also* David Zaring & Elena Baylis, *Sending the Bureaucracy to War*, 92 IOWA L. REV. 1359, 1409–10 (2007) (describing anti-money laundering policies as a system that requires banks and other financial institutions to report to the Treasury Department “suspicious transactions”).

68. *See* 31 U.S.C. § 5318.

has already transpired for the purpose of washing away the money's criminal origins. By contrast, terrorist financing often involves money with lawful origins being put toward unlawful and dangerous ends, like terrorism. For example, wages that were lawfully earned and then donated to a charity that turned out to be a cover for terrorist financing did not obviously violate anti-money laundering laws at least as to the donor.⁶⁹ Against this backdrop, the PATRIOT Act requires banks and other financial institutions to create and implement customer identification programs—that is, to require banks to verify the identities of anyone opening an account.⁷⁰ The PATRIOT Act also requires banks to report any “suspicious activity,” including larger financial transactions.⁷¹

In targeting transnational financial activity, these policies empowered a mix of public and private actors to carry out the fight against dangerous activity supported and obfuscated by financial institutions. The U.S. Department of the Treasury bears primary responsibility for regulating remittance flows. Within the Treasury, the Financial Crimes Enforcement Network (“FinCEN”) sets policy related to preventing money laundering and the financing of crimes and terrorist activity through the financial system.⁷² The Office of Foreign Assets Control (“OFAC”), also within Treasury, enforces economic and trade sanctions against foreign countries and other entities, which can include stopping or capping remittance flows into countries on the sanctions list.⁷³ Both FinCEN and OFAC enjoy wide

69. William Vlcek, *A Leviathan Rejuvenated: Surveillance, Money Laundering, and the War on Terror*, 20 INT'L J. POL. CULTURE & SOC'Y 21, 25 (2008).

70. See Zaring & Baylis, *supra* note 67, at 1412.

71. APPLESEED, EXPANDING IMMIGRANT ACCESS TO MAINSTREAM FINANCIAL SERVICES: POSITIVE PRACTICES AND EMERGING OPPORTUNITIES FROM THE LATIN AMERICAN IMMIGRANT EXPERIENCE 40–43 (2006), <https://www.texasappleseed.org/sites/default/files/100-FinancialServices-ReportExpandImmigrantAccesstoServices.pdf> [<https://perma.cc/8MVV-68GQ>]; ANNA PAULSON, AUDREY SINGER, ROBIN NEWBERGER & JEREMY SMITH, FED. RSRV. BANK OF CHI. & THE BROOKINGS INST., FINANCIAL ACCESS TO IMMIGRANTS: LESSONS FROM DIVERSE PERSPECTIVES 35 (2006), <https://www.chicagofed.org/region/community-development/financial-access-for-immigrants> [<https://perma.cc/99ME-2CJV>].

72. *What We Do*, FIN. CRIMES ENF'T NETWORK, <https://www.fincen.gov/what-we-do> [<https://perma.cc/85K6-SCAE>].

73. *Office of Foreign Assets Control – Sanctions Programs and Information*, U.S. DEP'T OF THE TREASURY, <https://home.treasury.gov/policy-issues/office-of-foreign-assets-control-sanctions-programs-and-information> [<https://perma.cc/Y742-LDBK>].

latitude and discretion in policy setting and pursuing enforcement targets.⁷⁴

Other agencies also regulate financial institutions that process remittances, but their missions differ from those lodged in Treasury. Most notably, the Consumer Financial Protection Bureau targets remittance transfer companies engaging in predatory economic practices.⁷⁵ But what distinguishes FinCEN and OFAC is how their policies are embedded within broader criminal law enforcement and antiterrorist legal structures. Regulators can use violations of FinCEN rules as the basis of criminal prosecutions instead of having to settle for less punitive outcomes in civil administrative proceedings.⁷⁶ And the OFAC sanctions list is meant to punish foreign countries and entities who tolerate or harbor terrorist activity.⁷⁷ This means that as a general matter, FinCEN and OFAC enjoy a greater degree of freedom from judicial review and public monitoring.

Finally, in certain instances, the president himself can freeze assets or disrupt financial transactions through power created through national security laws.⁷⁸ The International Emergency Economic Powers Act (“IEEPA”) authorizes the president to freeze the assets of individuals and groups that provide financial support to or otherwise assist acts of terrorism⁷⁹ on a finding of “any unusual or extraordinary

74. For example, the lack of transparency and judicial review surrounding “terrorist” designations gives agencies like OFAC broad discretion to freeze assets of organizations with putative ties to terrorist organizations even before an investigation concludes. *See* Zaring & Baylis, *supra* note 70, at 1402–03 (discussing instances where OFAC froze the assets of various Islamic charities).

75. Specifically, Congress directed the Consumer Financial Protection Bureau to ensure that the terms and conditions surrounding these services are transparent and accessible to remitters. *See* 15 U.S.C. § 1693b(c). Among other things, the Dodd-Frank Act amended the Electronic Fund Transfer Act of 1978. Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, § 1073, 124 Stat. 1376, 2060 (2010).

76. *See BSA Records “Critical” in Conviction of Money Launderer in Organized Retail Theft Case*, FIN. CRIMES ENF’T NETWORK, <https://www.fincen.gov/resources/law-enforcement/case-examples/bsa-records-critical-conviction-money-launderer-organized> [https://perma.cc/9PH6-ESST].

77. *See* Press Release, The United States Department of Justice, Standard Chartered Bank Agrees To Forfeit \$227 Million for Illegal Transactions with Iran, Sudan, Libya, and Burma (Dec. 10, 2012), <https://www.justice.gov/opa/pr/standard-chartered-bank-agrees-forfeit-227-million-illegal-transactions-iran-sudan-libya-and> [https://perma.cc/L48B-DUFC].

78. *See, e.g.*, Trading with the Enemy Act of 1917, 50 U.S.C. § 4305; National Emergencies Act of 1976, Pub. L. No. 94-412, 90 Stat. 1255 (codified at 50 U.S.C. §§ 1601–1651); International Emergency Economic Powers Act of 1977, Pub. L. No. 95-223, 91 Stat. 1626 (codified in scattered sections of 50 U.S.C.).

79. *See* 50 U.S.C. § 1702.

threat . . . to the national security, foreign policy, or economy of the United States.”⁸⁰ Initially used to address threats posed by foreign states and their governments, over time, presidents began evoking IEEPA to address threats posed by nongovernmental entities like terrorists and terrorist organizations.⁸¹ In the days following the September 11 attack, President Bush invoked his powers delegated to him under IEEPA to roll out an initial response to the attack.⁸² This paved the way for Congress to formally recognize the president’s authority in this context through the PATRIOT Act, which expanded on the basic infrastructure IEEPA created and President Bush invoked.⁸³

B. Gatekeepers in the Anti-money Laundering System

In trying to craft laws that could address extraordinary threats to the public security of the United States, lawmakers and regulators developed approaches that not only targeted noncitizens and foreign-born individuals, but also enlisted the help of those well-positioned to profit from the targeted behavior. These laws coerce both private actors and intermediaries.

In the context of financing criminal and terrorist activity, financial institutions such as banks play a key part in sheltering these illicit activities. Federal regulators rely on banks to identify potentially unlawful banking activity through their access to the banking activity of broad cross sections of the economy.⁸⁴ These laws also impose recordkeeping obligations on businesses that are meant to deter them from shirking their duty to monitor for suspicious activity.⁸⁵ Most notably, the BSA requires firms to keep records and submit reports pertaining to activity deemed to be useful to a variety of legal matters including those that affect terrorism.⁸⁶ The PATRIOT Act not only

80. See *id.* § 1701(a); see also CHRISTOPHER A. CASEY, IAN F. FERGUSON, DIANNE E. RENNACK & JENNIFER K. ELSEA, CONG. RSCH. SERV., R45618, THE INTERNATIONAL EMERGENCY ECONOMIC POWERS ACT: ORIGINS, EVOLUTION, AND USE 10 (2020), <https://sgp.fas.org/crs/natsec/R45618.pdf> [<https://perma.cc/L7YG-F78X>].

81. See CASEY ET AL., *supra* note 80, at 21–22.

82. See Exec. Order No. 13,224, 31 C.F.R. 786 (2002).

83. See Zaring & Baylis, *supra* note 67, at 1395.

84. See Rachel Ratliff, *Third-Party Money Laundering: Problems of Proof and Prosecutorial Discretion*, 7 STAN. L. & POL’Y REV. 173, 173 (1995).

85. See Gadinis & Mangels, *supra* note 64, at 860.

86. See *id.* at 871. At some later date, if a criminal is charged with engaging in drug sales, bank records showing that members of the criminal organization were making frequent deposits in small amounts can help prosecutors build their case. See Meltzer, *supra* note 65, at 233–34; see

reorients financial regulatory tools to account for antiterrorist goals, but it also significantly expands the types of financial institutions subject to monitoring and reporting requirements. In addition to national banks, the new requirements cover credit unions, pawnbrokers, and hawalas⁸⁷—basically any entity engaged in the business of lending money no matter how minimal or informal.⁸⁸ All of these covered entities are obligated to file Suspicious Activity Reports with the Treasury Department.⁸⁹

As mentioned earlier, 1986 was a turning point for the regulation of capital flows when Congress passed the MLCA. That same year, Congress passed, and the president signed into law, the Immigration Reform and Control Act of 1986 (“IRCA”). This was a major legislative achievement, one that commentators sometimes invoke as a potential guide to navigating the difficult political terrain that elected officials face today in achieving immigration reform.⁹⁰ IRCA amended the immigration code to impose a set of verification duties onto firms to ensure that they do not hire unauthorized migrants—that is, to reserve job opportunities in the formal economy for U.S. citizens,

also Mariano-Florentino Cuéllar, *The Tenuous Relationship Between the Fight Against Money Laundering and the Disruption of Criminal Finance*, 93 J. CRIM. L. & CRIMINOLOGY 311, 351 (2003) (describing the process by which money laundering crimes are prosecuted). The PATRIOT Act expanded the BSA framework to cover laundering crimes related to terrorist activity. The BSA prohibits, among other things, using financial transactions to conceal “the proceeds of specified unlawful activity.” 18 U.S.C. § 1956(a)(1)(B)(i). The statute, in turn, defines “specified unlawful activity” to include various terrorism-related offenses. *Id.* § 1956(c)(7)(D); see also Zaring & Baylis, *supra* note 67, at 1410–11 (describing the different ways that the PATRIOT Act amended the BSA to allow regulators to punish money launderers for harmful acts related to terrorism).

87. “Hawala” refers to informal money transfer systems organized around familial relationships and regional affiliations. See GAO REPORT: MONEY LAUNDERING RISKS, *supra* note 29, at 9–10. Hawala originated within the Islamic and Arab economic context. See generally Matthias Schramm & Markus Taube, *Evolution and Institutional Foundation of the Hawala Financial System*, 12 INT’L REV. OF FIN. ANALYSIS 405, 406–07 (2003) (explaining how “the hawala system established itself as an efficient institutional arrangement” for “coordinating economic interaction” in the Near and Middle East). While different regions employ similar alternative remittance systems, the U.S. remittances literatures often uses hawala as shorthand to capture all of these alternative systems. See, e.g., FIN. ACTION TASK FORCE, FINANCIAL FLOWS FROM HUMAN TRAFFICKING 56 (2018), <https://www.fatf-gafi.org/media/fatf/content/images/Human-Trafficking-2018.pdf> [<https://perma.cc/3FGJ-ARVZ>] (describing a British company’s efforts to launder profits through the use of “local hawala bankers”).

88. See Zaring & Baylis, *supra* note 67, at 1411.

89. See Gadinis & Mangels, *supra* note 64, at 807, 869–70; Cuéllar, *supra* note 86, at 358.

90. See, e.g., Nicole Narea, *What a Reagan-era Law Can Teach Democrats About Legalizing Undocumented Immigrants*, VOX (July 4, 2021, 8:30 AM), <https://www.vox.com/policy-and-politics/22557613> [<https://perma.cc/779H-XCRD>].

green card holders, and other legal insiders.⁹¹ IRCA also requires firms to begin keeping records, and in some cases, requires firms to submit a worker's information to federal agencies for verification.⁹²

Both the MLCA and IRCA were legal intermediation strategies designed to dry up opportunities for funding and work by leveraging the United States' massive global economic influence to deter the proliferation of undesirable behavior. Pursuant to this logic, disrupting cash flow can create structural consequences for criminal organizations in ways that seizing profits or arresting low-level criminals cannot.⁹³ In the case of money laundering, the goal is to undermine terrorist or criminal activity; in the case of migration, the goal is to deter unauthorized migration for anti-humanitarian reasons.

The two laws share many features. First, like the MLCA, IRCA imposes law enforcement duties on private intermediaries. MLCA targets banks and other financial institutions while IRCA targets employers and labor recruiters.⁹⁴ Second, just as the MLCA imposes criminal penalties on banks that refuse to carry out recordkeeping and reporting requirements in good faith,⁹⁵ IRCA similarly imposes criminal penalties on employers and recruiters who knowingly hire unauthorized migrants.⁹⁶ Third, just as the MLCA has been criticized for being narrowly construed to permit banks to avoid the most punitive aspects of the law,⁹⁷ IRCA has been similarly criticized for not penalizing employers even where the facts strongly suggest that they had reason to believe that their workers were unauthorized.⁹⁸ Finally, both regimes have been subject to criticism on the grounds of capture, with prosecutors and agency officials rarely mustering up the resources

91. See 8 U.S.C. § 1324a(a)–(b); Stephen Lee, *Private Immigration Screening in the Workplace*, 61 STAN. L. REV. 1103, 1112 (2009) [hereinafter Lee, *Private Immigration Screening*].

92. See Juliet P. Stumpf, *Getting To Work: Why Nobody Cares About E-Verify (and Why They Should)*, 2 U.C. IRVINE L. REV. 381, 391–92 (2012).

93. See Mark Osler, *Asset Forfeiture in a New Market-Reality Narcotics Policy*, 52 HARV. J. ON LEGIS. 221, 228–29 (2015).

94. Lee, *Private Immigration Screening*, *supra* note 91, at 1110–13.

95. Gadinis & Mangels, *supra* note 64, at 861.

96. See 8 U.S.C. § 1324a(a)(1)(A), (a)(4), (f)(1).

97. See Gadinis & Mangels, *supra* note 64, at 861–62.

98. See Lee, *Private Immigration Screening*, *supra* note 91, at 1119–25; Kitty Calavita, *Employer Sanctions Violations: Toward a Dialectical Model of White-Collar Crime*, 24 LAW & SOC'Y REV. 1041, 1061–64 (1990).

or will to target high-level criminals, and opting instead to target low-hanging fruit.⁹⁹

Indeed, during the 1980s, legal scholars described anti-money laundering and antimigration laws as fitting within the same category of regulatory challenge. As Congress was considering whether to enlist the help of banks and employers in the fight against criminal economic activities, legal scholars began taking on questions related to gatekeeper liability. Put simply, gatekeeper liability sought to target not just bad actors, but also private parties whose cooperation is necessary for the commission of bad acts. Professor Reinier H. Kraakman's work on gatekeeping from the mid-1980s has proven to be especially influential within the gatekeeping literature.¹⁰⁰ Much of this scholarship focuses on gatekeeping in the context of corporate governance,¹⁰¹ but this idea eventually propped up scholarly inquiries in parallel arenas, including for banks engaging in anti-money laundering efforts¹⁰² and for lawyers advising firms.¹⁰³ Importantly, early iterations of gatekeeping scholarship also recognized the gatekeeping's applicability to immigration enforcement. Listing examples to develop his idea of gatekeeping in a well-known 1986 article, Kraakman points to employer liability for hiring unauthorized immigrants, which at the time was an idea embedded in a bill that would become IRCA.¹⁰⁴

99. See Michael J. Wishnie, *Prohibiting the Employment of Unauthorized Immigrants: The Exempt Fails*, 2007 U. CHI. LEGAL F. 193, 209–11; Cuéllar, *supra* note 86, at 405–11.

100. See generally Reinier H. Kraakman, *Gatekeepers: The Anatomy of a Third-Party Enforcement Strategy*, 2 J.L. ECON. & ORG. 53, 61–66 (1986) [hereinafter Kraakman, *Gatekeepers*] (describing gatekeeper liability); see also Reinier H. Kraakman, *Corporate Liability Strategies and the Costs of Legal Controls*, 92 YALE L.J. 857, 888–97 (1984) (discussing gatekeeper liability in the corporate context).

101. See Richard M. Buxbaum, *The Internal Division of Powers in Corporate Governance*, 73 CALIF. L. REV. 1671, 1707–08 (1985). This work also spilled over into other related areas such as tax regulation. See Ann Southworth, *Redefining the Attorney's Role in Abusive Tax Shelters*, 37 STAN. L. REV. 889, 890–91 (1985); Alan L. Feld, *Fairness in Rate Cuts in the Individual Income Tax*, 68 CORNELL L. REV. 429, 430 (1983).

102. See Gadinis & Mangels, *supra* note 64, at 8003.

103. See Donald C. Langevoort, *Gatekeepers, Cultural Captives, or Knaves?: Corporate Lawyers Through Different Lenses*, 88 FORDHAM L. REV. 1683, 1686 (2020).

104. In the article, Kraakman notes that employers would become gatekeepers “if they were required to exclude undocumented aliens,” and then cites the 1983 Simpson-Mazzoli Act, which eventually became the foundation for the Immigration Reform and Control Act of 1986. See Kraakman, *Gatekeepers*, *supra* note 100, at 64. For a modern application of the gatekeeping concept to employers and unauthorized migrants, see Jeffrey Manns, *Private Monitoring of Gatekeepers: The Case of Immigration Enforcement*, 2006 U. ILL. L. REV. 887, 892–93.

These legal tools, which foist onto private actors a degree of responsibility over public-like duties, illustrate how such programs can function in ways that are simultaneously coercive and empowering. These laws are coercive in the sense that Congress and the relevant agencies can punish employers, banks, and other intermediaries for failing to keep records and to report suspicious activity. The enforcement can be arbitrary both across and within administrations.¹⁰⁵ And over time, enforcement decisions motivated or shaped by arbitrariness or bias drain the obligations' legitimacy.¹⁰⁶

At the same time, the laws also empower firms and banks to make judgment calls, thereby creating broad pockets of discrimination for the private actors charged with these legal obligations.¹⁰⁷ The standards governing these duties can be vague and hard to meet and the regulatory landscape can be vast, lowering the likelihood of audit and inspection, which in turn leaves intermediaries with the flexibility and discretion to act in self-serving ways. Large banks with a significant transnational presence might have sufficient resources to cultivate in-house expertise on complying with anti-money laundering requirements, but a smaller credit union might turn a blind eye to customers engaging in "red flag" activity.¹⁰⁸

C. *Blocking and Narrowing*

Anti-money laundering laws formally empower regulators and law enforcement officials and functionally deputize banks and financial institutions to identify and separate those financial transactions meant to facilitate or support criminal and terrorist activity from those that

105. See Cheryl R. Lee, *Constitutional Cash: Are Banks Guilty of Racial Profiling in Implementing the United States Patriot Act?*, 11 MICH. J. RACE & L. 557, 587–91 (2006) [hereinafter Lee, *Constitutional Cash*] (suggesting that banks have engaged in discriminatory behavior in implementing monitoring policies); Mariano-Florentino Cuéllar, *The Mismatch Between State Power and State Capacity in Transnational Law Enforcement*, 22 BERKELEY J. INT'L L. 15, 49–50 (2004) [hereinafter Cuéllar, *The Mismatch Between State Power and State Capacity*] (noting the potentially perverse effects created by enforcement choices made by regulators). For a useful overview of the various administrative difficulties related to implementing anti-money laundering policies, see Zaring & Baylis, *supra* note 67, at 1394–1418.

106. See William J. Stuntz, *Unequal Justice*, 121 HARV. L. REV. 1969, 1979–80 (2008).

107. For a helpful account on the equity implications of banking laws and regulations, see generally BARADARAN, *supra* note 9 (detailing the different banking system experienced by impoverished Americans).

108. See 31 U.S.C. § 5318(h) (requiring financial institutions to develop anti-money laundering programs); see also Gadinis & Mangels, *supra* note 64, at 882–83 (noting that J.P. Morgan has eight thousand employees working on anti-money laundering issues while smaller banks will likely have fewer than ten people devoted to these issues).

advance legitimate purposes like supporting family members in other countries. The broad and sweeping nature of anti-money laundering laws often leaves remitters with little recourse when remittance corridors narrow or disappear.

In a common scenario, a remitter deposits money into an account of a bank that has a transnational presence, which allows recipients to access those funds at a bank branch in the recipient's country of residence. This is ideal in terms of ease and costs of access to remittances. In a less ideal but still common scenario, a remitter might still use a bank for initiating the remittance transfer, but the intended recipient does not have access to the same bank in the recipient's country. Accordingly, a United States-based bank must wire the money through sending services that can transfer that money to a bank that the recipient can access.¹⁰⁹ In one final scenario, a remitter may decide to bypass banks altogether and simply wire the funds through a money transfer organization like Western Union.

Anti-money laundering policies can disrupt remittance flows in two ways. The first and most extreme disruption involves the outright prohibition of the transfer of money through financial institutions. Residents of countries subject to OFAC sanctions, for example, have few options in receiving remittances from the United States.¹¹⁰ Remitters in the United States interested in transferring money to residents of sanctioned countries must navigate a kaleidoscope of restrictions. Sometimes remitters are subject to a transfer cap (as is the case for remittances to Cuba).¹¹¹ At other times, the restriction regulates the type of remittance. Transfers to individuals might be permissible while transfers to charitable organizations would not be—at least not without procuring a license to do so (as is the case for remittances to Iran).¹¹² And where OFAC permits remittances, it

109. See GAO REPORT: MONEY LAUNDERING RISKS, *supra* note 29, at 6–7.

110. See U.S. GOV'T ACCOUNTABILITY OFF., GAO-16-297, FINANCIAL INSTITUTIONS: FINES, PENALTIES, AND FORFEITURES FOR VIOLATIONS OF FINANCIAL CRIMES AND SANCTIONS REQUIREMENTS 16–18 (2016), <https://www.gao.gov/assets/gao-16-297.pdf> [<https://perma.cc/MF3K-WAHC>]; *Sanctions Programs and Country Information*, U.S. DEP'T OF THE TREASURY, <https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information> [<https://perma.cc/R9YF-YUSR>].

111. See 31 C.F.R. § 515.570(a)(1) (2019).

112. See 31 C.F.R. § 560.550(b) (2020); *see also* 31 C.F.R. § 510.511(2) (2020) (imposing similar restrictions on remittances to the Democratic People's Republic of Korea).

usually requires remitters to use a pre-approved entity to facilitate the transfer (as is the case for remittances to Syria).¹¹³

The bottom line is that OFAC reduces remittance flows to a trickle for countries on the sanctions list. A blunt regulatory tool, sanctions certainly raise the costs for terrorists interested in pooling donations and payments to fund their illicit and dangerous activity, but such restrictions also leave members of those countries even more vulnerable in terms of economic security.¹¹⁴ It is also unclear whether such policies actually deter the financing of terrorism, or whether it simply pushes such funding activities into other channels that do not as easily lend themselves to monitoring, such as courier services and the physical transfer of funds.¹¹⁵

Anti-money laundering policies affect remittance streams in a second, less direct, but more broadly applicable way. Beyond the blanket prohibitions that federal regulators like OFAC impose, the broad reach of the policies also generate uncertainty and confusion for banks in deciding which types of financial transactions trigger a reporting obligation. Instead of bearing the costs of recordkeeping, suspending, and then reactivating bank accounts after investigation and reporting suspicious activity, banks can simply decide to avoid these costs altogether by closing individual accounts, and in some cases, entire branches. This process of “derisking” involves banks cutting ties with certain types of customers and clients to avoid the costs associated with regulatory scrutiny.¹¹⁶ In other words, a bank may simply decide that maintaining risky customer accounts may not justify the associated benefits and therefore decide to close those accounts.

This strategy helps banks mitigate risk, but it imposes social costs by barring customers with legitimate banking needs who happen to fit the profile of a risky client. Repeated and relatively modest deposits from various locations in the United States to a common beneficiary reflects economic activity that is consistent with human trafficking or

113. See U.S. DEP'T OF THE TREASURY, GENERAL LICENSE NO. 6, NONCOMMERCIAL, PERSONAL REMITTANCES AUTHORIZED (2011), https://home.treasury.gov/system/files/126/syria_gl6.pdf [<https://perma.cc/GD2Y-563G>].

114. See Bruce Zagaris, *The Merging of the Counter-Terrorism and Anti-Money Laundering Regimes*, 34 LAW & POL'Y INT'L BUS. 45, 69–70 (2002).

115. See GAO REPORT: REMITTANCES TO FRAGILE COUNTRIES, *supra* note 27, at 1–3.

116. See Christina Parajon Skinner, *Executive Liability for Anti-Money Laundering Controls*, 116 COLUM. L. REV. 1, 11 (2016).

other criminal behavior,¹¹⁷ but such activity is also consistent with the remittance activities of a seasonal migrant worker attempting to help pay for a family member's funeral in Mexico.¹¹⁸ In some instances, larger banks have taken aggressive risk-management strategies such as shutting down branches in regions associated with high-risk money laundering practices.¹¹⁹ Finally, banks also close accounts for firms, not just individuals. In particular, banks might want to avoid tarnishing their brand by associating with money transfer organizations that have attracted scrutiny or that have been penalized for facilitating criminal activities.¹²⁰

The disruptions caused by anti-money laundering policies can exacerbate inequality in at least three respects. The first has to do with unequal treatment built into immigration status differentials. As noted earlier, although remittances can be shared during return visits for many migrants, that is unrealistic. Individuals who travel outside of the United States can deliver cash, dole out trendy commodities, and pay for luxurious experiences for family members in person.¹²¹ But immigration enforcement or antimigration policies make it harder for migrants to move freely across borders. In a world of reduced mobility, remitters are more heavily dependent upon the availability of financial institutions for money transfers.

117. See FIN. CRIMES ENF'T NETWORK, U.S. DEP'T OF THE TREASURY, FIN-2014-A008, GUIDANCE ON RECOGNIZING ACTIVITY THAT MAY BE ASSOCIATED WITH HUMAN SMUGGLING AND HUMAN TRAFFICKING—FINANCIAL RED FLAGS app. A (2014), <https://www.fincen.gov/sites/default/files/advisory/FIN-2014-A008.pdf> [<https://perma.cc/S6UJ-PMLF>].

118. See Heidbrink, *supra* note 51, at 273; see also Peter Benson, *El Campo: Faciality and Structural Violence in Farm Labor Camps*, 23 CULTURAL ANTHROPOLOGY 589, 606 (2008) (describing the life of a seasonal migrant worker, including remittance activities).

119. See, e.g., David Garrick, *Border Banks Closures Prompting Feds To Review Money-Laundering Rules*, SAN DIEGO UNION-TRIB. (Feb. 27, 2018, 7:40 PM), <https://www.sandiegouniontribune.com/news/border-baja-california/sd-me-border-banks-20180227-story.html> [<https://perma.cc/49YL-UHBT>]; see also U.S. GOV'T ACCOUNTABILITY OFF., GAO-18-213, COMMUNITY BANKS AND CREDIT UNIONS: REGULATORS COULD TAKE ADDITIONAL STEPS TO ADDRESS COMPLIANCE BURDENS 1–2 (2018), <https://www.gao.gov/assets/gao-18-213.pdf> [<https://perma.cc/DG5Z-QXT9>] (discussing the regulatory concerns that led banks to begin derisking).

120. See Press Release, The United States Department of Justice, Moneygram International Inc. Admits Anti-Money Laundering and Wire Fraud Violations, Forfeits \$100 Million in Deferred Prosecution (Nov. 9, 2012), <https://www.justice.gov/opa/pr/moneygram-international-inc-admits-anti-money-laundering-and-wire-fraud-violations-forfeits> [<https://perma.cc/8JQ5-NBFZ>].

121. See ABREGO, *supra* note 51, at 143; THAI, *supra* note 20, at 152.

Along these lines, the most obvious example is the intensification of enforcement policies at the U.S.–Mexico border, which has curtailed circular migration flows.¹²² Less obvious but equally important has been the intensification of screening protocols at airports and other ports of entry. Database screening protocols and No Fly Lists criteria disproportionately impact passengers who are associated with or are traveling to or from countries with significant Muslim communities.¹²³ Because of the expansive architecture of database screening and broad deference in regulating travel across borders, remitters who are traveling—even those with secure legal statuses such as citizenship or lawful permanent residence—must contend with uncertainty.¹²⁴

A second way that anti-money laundering policies make it harder to access financial services is by adding to the difficulties that poor migrants already experience on account of their poverty. Outside of the OFAC context, the Treasury Department does not dictate access to remittance channels on a day-to-day basis. Instead, banks largely make those decisions, and the disruptions to remittance channels illustrate one of the dangers of relying on banks to support social relationships.¹²⁵ In her work on banking, Professor Mehrsa Baradaran observes that “[m]ost banks, especially the financial giants, no longer see their role as serving a community at large but view each customer as a potential source of profit.”¹²⁶ Unless banks prioritize the transnational remittance economy (a constant but low-volume stream of economic activity), increases in regulatory scrutiny can raise costs to the point that derisking becomes a viable business strategy.

Of course, different types of banks can exhibit different risk appetites. Smaller community banks, for example, do not have the same resources to absorb large swings in compliance costs that can

122. See Douglas S. Massey, Jorge Durand & Karen A. Pren, *Why Border Enforcement Backfired*, 121 AM. J. SOCIO. 1557, 1557–58 (2016).

123. See Margaret Hu, *Algorithmic Jim Crow*, 86 FORDHAM L. REV. 633, 668 (2017).

124. See Jeffrey Kahn, *International Travel and the Constitution*, 56 UCLA L. REV. 271, 277–84 (2008).

125. One GAO report finds:

Treasury officials . . . noted that in implementing BSA/AML regulations, banks retain the flexibility to make business decisions such as which clients to accept, since banks are in the best position to know whether they are able to implement controls to manage the risk associated with any given client.

GAO REPORT: REMITTANCES TO FRAGILE COUNTRIES, *supra* note 27, at 27.

126. See BARADARAN, *supra* note 9, at 141.

arise when a customer has ties to laundering schemes.¹²⁷ At the same time, large banks with established and recognizable brands have to take into account other factors that can increase costs beyond investigations and fines. Larger banks often have to consider possible consumer backlash from providing banking services to clients with lawful but controversial activities, such as religious organizations¹²⁸ or legalized cannabis.¹²⁹ Within this banking landscape, poor migrants often turn to money transfer organizations like Western Union, which are subject to some, but on balance, less regulatory oversight.¹³⁰ These services generally require paying higher (and in some cases exorbitant) transaction fees.¹³¹

Finally, derisking can also compound existing racial disparities within commercial settings.¹³² Communities nestled near the U.S.–Mexico border have been especially impacted by derisking. Several banks along the U.S.–Mexico border closed those branches for this reason, rendering those communities banking deserts.¹³³ This impacted

127. See Ian McKendry, *Banks Face No-Win Scenario on AML ‘De-Risking’*, AM. BANKER (Nov. 17, 2014, 4:11 PM), <https://www.americanbanker.com/news/banks-face-no-win-scenario-on-aml-de-risking> [<https://perma.cc/4D92-RYX9>] (quoting an officer at a small bank who emphasized the importance of a careful cost-benefit analysis in this regulatory environment).

128. See Sheila Tendy, *De-Risking Threatens Religious Access to Banking Services*, AM. BANKER (Jan. 28, 2015, 12:00 PM), <https://www.americanbanker.com/opinion/de-risking-threatens-religious-access-to-banking-services> [<https://perma.cc/YTX6-PTER>].

129. See McKendry, *supra* note 127.

130. See Jessica Silver-Greenberg, *New Rules for Money Transfers, but Few Limits*, N.Y. TIMES (June 1, 2012), <https://www.nytimes.com/2012/06/02/business/new-rules-for-money-transfers-but-few-limits.html> [<https://perma.cc/H3CY-2Y6W>] (illustrating the costs immigrants face using money transfer companies to send remittances to families living outside of the United States).

131. See Stephen Wilks, *A Complicated Alchemy: Theorizing Identity Politics and the Politicization of Migrant Remittances Under Donald Trump’s Presidency*, 50 CORNELL INT’L L.J. 285, 288 n.11 (2017) (reporting that Western Union’s transactions fees exceeded \$3.9 billion in 2015); see also *id.* at 302–04 (describing the payment system taxonomy and how the further away from traditional banking, the more companies can charge vulnerable individuals large fees for banking services).

132. A GAO report found that banks that closed accounts for derisking reasons did not do so in response to federal investigations. Rather, most banks closed accounts preemptively for fear of investigation. 80 percent of respondents indicated that they closed accounts to avoid the potential legal consequences and monetary fines that come with facilitating money laundering. U.S. GOV’T ACCOUNTABILITY OFF., GAO-18-263, BANK SECRECY ACT: DERISKING ALONG THE SOUTHWEST BORDER HIGHLIGHTS NEED FOR REGULATORS TO ENHANCE RETROSPECTIVE REVIEWS 18–19 (2018), <https://www.gao.gov/assets/gao-18-263.pdf> [<https://perma.cc/4QSG-NNA8>] [hereinafter GAO, BANK SECRECY ACT: DERISKING ALONG THE SOUTHWEST BORDER].

133. See GAO, BANK SECRECY ACT: DERISKING ALONG THE SOUTHWEST BORDER, *supra* note 132, at 1; Garrick, *supra* note 119; Emily Glazer, *Big Banks Shut Border Branches in Effort*

community banks and credit unions, which are crucial to local economies.¹³⁴ And because these communities have long been home to Latino migrants—and the site of extensive and pervasive law enforcement policies—the withdrawal of banking services piles onto a broad set of exclusionary institutional practices. Indeed, banks in communities with significant Latino populations might ratchet up the screening process at the front end in order to avoid getting fined by Treasury regulators. This creates biased disbursement of financial and lending services and puts banks in an impossible situation. On the one hand, banks must balance tightening up their banking services to avoid being fined for facilitating money laundering; on the other hand, banks must implement these screening measures in a way that is principled and unbiased to avoid liability under federal civil rights laws.¹³⁵

Given that financial controls in the money laundering context are so closely tied to anticriminal and antiterrorist objectives, remitters with ties to nations embroiled in these enforcement projects inevitably have their rights hampered in predictable, if unfair, ways. American Muslims and others with family ties to nations with significant Muslim populations face the reality that their financial assets may be seized with little legal recourse.¹³⁶ Remitters to Central American countries with gang-related criminal threats, such as El Salvador¹³⁷ or Guatemala,¹³⁸ face similar kinds of uncertainty.

D. A Joint Regulatory System

Anti-money laundering and antimigration laws interact in various ways that affect noncitizens differently. For example, citizenship or lawful permanent residence confers on immigrants the ability to travel across borders. As described above, those migrants who enjoy this kind of freedom of movement will be the least affected by policy changes that lead to the restriction of remittance corridors. So to the extent that

To Avoid Dirty Money, WALL ST. J. (May 25, 2015, 8:07 PM), <https://www.wsj.com/articles/big-banks-shut-border-branches-in-effort-to-avoid-dirty-money-1432598865> [<https://perma.cc/5M5L-GUCJ>].

134. See Curt Prendergast, *GAO: Banks Left Border To Avoid Fines, Now Face Renewed Scrutiny*, TUCSON (Mar. 24, 2018), https://tucson.com/news/local/gao-banks-left-border-to-avoid-fines-now-face-renewed-scrutiny/article_57aef8ac-314b-5a06-af8d-7a039e9f62ef.html [<https://perma.cc/L264-5SJT>].

135. See, e.g., Fair Housing Act, 42 U.S.C. §§ 3604–3606.

136. See Zaring & Baylis, *supra* note 67, at 14006.

137. ABREGO, *supra* note 51, at 133–34.

138. See HEIDBRINK, *supra* note 39, at 133–34.

political leaders and agencies can streamline or reduce hurdles for migrants seeking to obtain a green card or to naturalize, migrants will become desensitized to fluctuations in anti-money laundering policies.

In other instances, it can be much harder for the president and agency officials to reconcile anti-money laundering policies and antimigration policies. Consider, for example, the challenges that President Reagan faced in the 1980s when trying to implement the wave of new immigration laws passed as part of IRCA. At the time, a significant percentage of unauthorized migrants had arrived from El Salvador and faced uncertainty over their ability to remain in the United States.¹³⁹ Salvadoran President José Napoleón Duarte sent a confidential letter to President Reagan imploring him not to remove unauthorized Salvadoran migrants in the United States.¹⁴⁰ According to Duarte, the remittances generated by the hundreds of thousands of migrants were critical to the country's effort to rebuild its economy after years of unrest and natural disaster.¹⁴¹ This exchange illustrates how foreign dependence on access to U.S. labor markets provides the president and the executive an important negotiating tool. The broader context for this exchange also illustrates the degree to which nonenforcement decisions stemmed from purely political considerations rather than enduring legal principles. After rejecting President Duarte's entreaty,¹⁴² for example, the Reagan administration implemented a policy of nonenforcement against Nicaraguans allowing two hundred thousand migrants to stay in the United States rather than be forced to return to a country and face dangerous conditions. While Nicaraguans and Salvadorans faced similar dangers at home, the Nicaraguan nonenforcement policy better aligned with U.S. anti-communist foreign policy goals at the time.

Congress eventually created the legal category of TPS (passed as a part of the Immigration Act of 1990) to help provide relief to Salvadoran migrants in the United States and more generally provided a more principled basis upon which relief might be provide where

139. PEDERSEN, *supra* note 137, at 138.

140. *Id.*

141. *See id.*; *see also* Robert Pear, *Duarte Appeals to Reagan To Let Salvadorans Stay*, N.Y. TIMES (Apr. 26, 1987), <https://www.nytimes.com/1987/04/26/world/durate-appeals-to-reagan-to-let-salvadorans-stay.html> [<https://perma.cc/J2WR-NJM8>].

142. Robert Pear, *Reagan Rejects Salvadoran Plea On Illegal Aliens*, N.Y. TIMES, May 15, 1987, at A1.

migrants faced dangerous conditions abroad.¹⁴³ While the story of Salvadoran relief often is discussed within the context of the Sanctuary movement,¹⁴⁴ it is unquestionably a key inflection point in social movements and activism in the immigration context. The backdrop of Reagan-era policies concerning immigration, money laundering, and foreign policy demonstrates how remittance flows figured into the calculus for regulating the lives and livelihood of migrants in the United States.¹⁴⁵

Closely analyzing how antimigration and anti-money laundering policies interact to jointly regulate migrant lives illustrates that the law governing remittances is much broader than what has been canvassed. In other words, these policies work together to regulate the lives *and* the livelihood of migrants. Much of the existing legal scholarship addressing remittances focuses on tax laws that shape the incentives of the different parties propping up the transnational remittance economy.¹⁴⁶ Legal scholars often focus on the tax implications of the

143. See Susan Gzesh, *Central Americans and Asylum Policy in the Reagan Era*, MIGRATION POL'Y INST. (Apr. 1, 2006), <https://www.migrationpolicy.org/article/central-americans-and-asylum-policy-reagan-era> [https://perma.cc/X2ZP-5G67].

144. See SUSAN BIBLER COUTIN, *THE CULTURE OF PROTEST: RELIGIOUS ACTIVISM AND THE U.S. SANCTUARY MOVEMENT* 223–28 (1993).

145. Elected officials and regulators can reconcile these policies in ways other than by dialing down enforcement efforts. For example, President Trump threatened to ratchet up enforcement efforts against money transfer companies, using the threat of disruption to remittance flows for political gain. For example, early in his presidency, President Trump threatened to extend the “know your customer” rule to money transfer companies like Western Union unless Mexican officials did not agree to fund the construction of a wall on the U.S.–Mexico border. See Vanda Felbab-Brown, *The Wall: The Real Costs of a Barrier Between the United States and Mexico*, BROOKINGS (Aug. 2017), <https://www.brookings.edu/article/the-wall-the-real-costs-of-a-barrier-between-the-united-states-and-mexico> [https://perma.cc/DB56-MWBM]. In the days leading up to the 2020 election, the Trump administration issued a new regulation that prohibited Cuban entities with military ties from processing remittances, Press Release, U.S. Department of the Treasury, Treasury Prohibits Cuban Military from Processing Remittance-Related Transactions (Oct. 28, 2020), <https://home.treasury.gov/news/press-releases/sm1164> [https://perma.cc/NU3X-ZQQA]; see also 31 C.F.R. § 515.421(a)(7) (excluding from the definition of “transaction[s] ordinarily incident to a licensed transaction” a “transaction relating to the collection, forwarding, or receipt of remittances involving any entity or subentity identified on the Cuba Restricted List”), thereby causing Western Union to shut down several businesses in Cuba, Kirk Semple, *Cuba Says Restrictions Will Force Western Union Offices To Close*, N.Y. TIMES (Oct. 28, 2020), <https://www.nytimes.com/2020/10/28/world/americas/cuba-western-union-remittances.html> [https://perma.cc/U9XD-QZ9G].

146. See Stevenson, *supra* note 7, at 103–19 (analyzing benefits and costs of taxing remittances in receiving countries); Alberto Simpser, Lauren Duquette-Rury, José Antonio Hernández Company & Juan Fernando Ibarra, *The Political Economy of Social Spending by Local Government*, 51 LATIN AM. RSCH. REV. 62, 71–77 (2016) (analyzing the impacts of Mexico’s remittance “matching” program as an incentive for cross-border financial flows).

remittance economy and have exhibited concerns with policies that treat remitters fairly.¹⁴⁷ Aside from fairness concerns, tax laws also impede the goal of reducing global poverty, a widely recognized benefit of remittance flows.¹⁴⁸ Just as important are domestic enforcement laws imbued with a moral agenda often associated with criminal and national security law. This is important not just because we have a clearer understanding of the full range of laws regulating remittances but also because we must grapple with a broader range of interests that make it hard to develop a coherent set of normative commitments.

Anti-money laundering policies present conceptual and implementation challenges that are distinct from the tax laws that receive scholarly attention. First, at the conceptual level, discussions of fairness in the tax context often involve debates about changing policies within at least two countries—the country in which the remittances originated, and the country in which remittances are received. Arguing in favor of a single taxation system means having to justify why one country should receive the taxation benefit but not the other. By contrast, anti-money laundering policies are characterized by a high degree of unilateralism compared to other controls over capital flows. Instead of tax treaties binding the United States and partner countries,¹⁴⁹ the Treasury Department can simply place countries on a sanctions list or constrict remittance flows through a mix of civil and criminal investigations.¹⁵⁰ Unlike bilateral and multilateral legal agreements, which can be difficult to forge and costly to ignore or invalidate, federal officials and regulators can usually implement anti-money laundering policies as a matter of prosecutorial discretion and without the input of transnational stakeholders.¹⁵¹

147. In particular, these scholars have trained their attention on the problems of double taxation and the unfairness that comes from forcing a wage earner to have to pay into two governance systems in different countries. See Stevenson, *supra* note 7, at 145–48; Ruth Mason, *Tax Expenditures and Global Labor Mobility*, 84 N.Y.U. L. REV. 1540, 1610 (2009); Rosser, *supra* note 7.

148. Professor Ezra Rosser argues that transaction barriers should be lowered to enable remittances to realize anti-poverty goals. In his estimation, “[t]he greatest potential regulatory threat to remittances is remittance taxation.” Rosser, *supra* note 7, at 37.

149. See Mason, *supra* note 147, at 1567 (describing the difficulties of amending tax treaties).

150. See 18 U.S.C. § 1956(b) (describing a range of civil penalties for using financial instruments for money laundering purposes); 18 U.S.C. § 1957(b) (describing a range of criminal penalties for related violations of law); cf. Gadinis & Mangels, *supra* note 64, at 840–43 (proposing noncompliance penalties and affirmative incentives to comply with reporting requirements imposed by anti-money laundering laws).

151. See Cuéllar, *supra* note 86, at 337, 353–54, 357, 362–63 (discussing prosecutorial and regulatory discretion under anti-money laundering laws).

The unilateral nature of anti-money laundering and antimigration enforcement policies allows the executive to toggle between these two sets of laws to achieve a system of migration control. In this regard, the laws that regulators can use between and across contexts extends observations that other legal scholars have made about the modern immigration enforcement system. Professor David Sklansky observes that agency officials routinely toggle back and forth between immigration and criminal laws to punish noncitizens, thus creating an enforcement regime grounded in principles of “ad hoc instrumentalism,” in which pragmatic and outcome-oriented considerations take precedence over respect of formal legal categories.¹⁵² In a related vein, Professor Jennifer Chacón highlights the way that these converging and all-encompassing regimes place noncitizens in a state of “liminal legality” in which no degree of lawful status truly guarantees noncitizens a reprieve against the destabilizing effects of law.¹⁵³ This same dynamic characterizes the regulation of financial institutions and flows in the antiterrorist context.

To be clear, agency officials do face some limitations in the exercise of their discretionary authority. Three limits in particular come to mind. First, while the discretion of executive officials—of the president, political appointees, and civil servants—is broad with regards to unauthorized migrants, they have less latitude with lawful permanent residents and even less with citizens.¹⁵⁴ Second, decisions made by regulators and their proxies (like employers and the local law enforcement officials) that transpire within the interior are subject to greater statutory and constitutional constraints than those transpiring wholly outside of the country. Enforcing immigration laws against workers must be reconciled with basic workplace protections.¹⁵⁵ Many labor and employment laws cover workers irrespective of immigration

152. David Alan Sklansky, *Crime, Immigration, and Ad Hoc Instrumentalism*, 15 *NEW CRIM. L. REV.* 157, 197, 201–02 (2012); see also Jennifer M. Chacón, *Managing Migration Through Crime*, 109 *COLUM. L. REV. SIDEBAR* 135, 139–47 (2009) (noting the prevalence of using criminal law and actors to address unauthorized migration without providing the procedural protections of criminal proceedings).

153. Jennifer M. Chacón, *Producing Liminal Legality*, 92 *DENV. U. L. REV.* 709, 730–31 (2015).

154. Admittedly, government officials have more latitude over citizens when enforcing laws at the border as well as with banking.

155. See Lori A. Nessel, *Undocumented Immigrants in the Workplace: The Fallacy of Labor Protection and the Need for Reform*, 36 *HARV. C.R.-C.L. L. REV.* 345, 348 (2001) (noting the inherent conflict between IRCA and workplace protection laws).

status,¹⁵⁶ which means migrants may be able to bring claims for wage and hour, workplace safety, or antidiscrimination violations on the basis of work they were not entitled to undertake in the first place.¹⁵⁷ Decisions to stop and frisk or arrest migrants is also subject to constitutional protections. By contrast, foreign aid disbursement decisions are reviewed under the much more deferential arbitrary and capricious standard.¹⁵⁸ Finally, the president and the relevant agencies enjoy limited control over which countries ultimately receive the remittances by virtue of the private nature of the transfer of funds and assets.¹⁵⁹

Still, the larger point is that structural realities and constitutional doctrine confer a *comparative* advantage in terms of possessing the unilateral flexibility to enforce immigration and national security laws, at least when considering the alternative of conventional foreign aid channels through bilateral arrangements. The ability to disrupt the flow of people and capital gives agencies, and the president more generally, flexibility in attempting to disrupt criminal and terrorist activities. This is a hallmark of modern immigration enforcement policies.¹⁶⁰

All of this created an immigration system that offers agencies a wide array of tools nested within malleable concepts of crime control and national security. Political and legal actors are incentivized to enforce anti-money laundering laws to signal to the public their commitment to eradicating harmful activities like trafficking and

156. See *Sure-Tan, Inc. v. NLRB*, 467 U.S. 883, 891–92 (1984) (holding that undocumented workers are protected by the National Labor Relations Act (“NLRA”)); *Espinoza v. Farah Mfg. Co.*, 414 U.S. 86, 95 (1973) (including undocumented workers within the meaning of “employee” under Title VII of the Civil Rights Act of 1964); *Patel v. Quality Inn S.*, 846 F.2d 700, 705 (11th Cir. 1988) (holding that undocumented workers should be considered “employees” under the Fair Labor Standards Act).

157. See Nessel, *supra* note 155, at 349 (arguing that “immigration law is enforced and interpreted in such a way as to render any NLRA remedies meaningless for aggrieved workers who lack proper immigration status”).

158. See Ganesh Sitaraman, *Foreign Hard Look Review*, 66 ADMIN. L. REV. 489, 493–94 (2014) (describing foreign hard look review, which determines whether an agency action is arbitrary or capricious).

159. See Dilip Ratha, *Remittances: Funds for the Folks Back Home*, INT’L MONETARY FUND (Feb. 24, 2020), <http://www.imf.org/external/pubs/ft/fandd/basics/remitt.htm> [<https://perma.cc/N4X4-AV7B>] (stating that “[i]t is hard to estimate the exact size of remittance flows because many transfers take place through unofficial channels”); see also Rosser, *supra* note 7, at 13 (stating that remittances are primarily used to support the basic needs of family abroad).

160. See Sklansky, *supra* note 152, at 201–04 (arguing that modern immigration enforcement and national security practices are characterized by flexibility, a phenomenon that Sklansky terms “ad hoc instrumentalism”).

terrorism. Whether or not enforcement decisions actually accomplish deterrence or other legitimate enforcement goals is less important than giving administrators the ability to point to concrete instances of punishing bad actors, even if they are not the most deserving of punishment.¹⁶¹

E. Deference to Enforcement Decisions

As antiterrorism projects, both antimigration and anti-money laundering laws often receive significant deference from courts, which confers wide latitude upon federal officials in setting policies. Like other social and economic problems folded into the umbrella of national security challenges, policies in these arenas often get the benefit of broad discretionary powers and judicial deference. Scholars often criticize the many social and economic costs that come with such an arrangement. As is the case in the immigration enforcement context, national security justifications often make it difficult to challenge anti-money laundering policies.

On the antimigration enforcement side, courts are highly deferential when officials defend regulatory actions on national security grounds, which leaves noncitizens with little judicial recourse and raises the risks of error or abuse.¹⁶² This dynamic applies to both standard immigration law problems as well as to remittance-related problems. The most notable thing here is that those accused of engaging in terrorist activity have limited procedural rights.¹⁶³ Without meaningful notice or a hearing, this adjudicatory system creates the risk of mistaken convictions and removals and invites abuse by executive officials. This is one of the main contributions of the court system: the threat of generous discovery laws deters institutional actors like the federal government from engaging in potentially unlawful or embarrassing behavior. Here, courts have intervened in only measured

161. See Cuéllar, *The Mismatch Between State Power and State Capacity*, *supra* note 105, at 44; see also Jennifer M. Chacón, *Unsecured Borders: Immigration Restrictions, Crime Control and National Security*, 39 CONN. L. REV. 1827, 1865–75 (2007).

162. See, e.g., *Kerry v. Din*, 576 U.S. 86, 104 (2015). Dean Kerry Abrams has argued that while courts still defer to Executive decisions grounded in national security rationales, the growing recognition of familial relationships provide one potential basis for reining in this deference. See Kerry Abrams, *Family Reunification and the Security State*, 32 CONST. COMMENT. 247, 248–50 (2017).

163. See Chacón, *supra* note 161, at 1871–72 (describing the curtailed constitutional rights for migrants in the national security enforcement context).

ways.¹⁶⁴ This system, which proceeds without the full array of information-producing measures typically offered by courts, creates the risk of erroneous or abusive decisions. A long string of immigration decisions from the Cold War era¹⁶⁵ and the post-September 11 era¹⁶⁶ demonstrate the Supreme Court's willingness to defer to immigration officials when national security justifications are offered. Moreover, the relatively uneventful and inconsequential postscripts that followed those decisions cast doubt on the veracity, or at least the depth, of the government's asserted concerns with national security.

All of this provides a more complete picture of how intentionally broad and vague conceptions of public security frame and justify policies that impact migrants in the United States. Laws that empower immigration officials to identify, detain, and expel migrants with little judicial oversight arise from the same legislative spring as the laws that enable financial regulators to flag, reroute, and disrupt financial flows. Drawing this connection between these two regulatory arenas also illustrates the range of legal tools available to elected and bureaucratic officials in managing relations with other countries. Indeed, a common set of themes binds the scholarly discourse in each of these areas. In terms of migration scholarship, legal scholars focus on how national security laws have reduced the civil liberties of migrants and those who appear to be migrants,¹⁶⁷ observing that these reductions are allocated in discriminatory ways.¹⁶⁸ Abuse by executive officials, enabled by broad doctrines of deference, has preoccupied this discussion with an eye toward the harms that have been exacted upon migrant bodies.¹⁶⁹ The concurrent rise of "criminal aliens" and "terrorists" to foster a "public security" state shows how the harms exacted upon migrant

164. See Shirin Sinar, *Procedural Experimentation and National Security in the Courts*, 106 CALIF. L. REV. 991, 1047–49 (2018).

165. See, e.g., *Kleindienst v. Mandel*, 408 U.S. 753, 770 (1972); *Harisiades v. Shaughnessy*, 342 U.S. 580, 580 (1952); *Knauff v. Shaughnessy*, 338 U.S. 537, 537 (1950); Jennifer Gordon, *Immigration as Commerce: A New Look at the Federal Immigration Power and the Constitution*, 93 IND. L.J. 653, 664–65, 706 (2018); Hiroshi Motomura, *Immigration Law After a Century of Plenary Power: Phantom Constitutional Norms and Statutory Interpretation*, 100 YALE L.J. 545, 559 (1990).

166. See *Kerry*, 576 U.S. at 106. For an argument that the Court exhibits less deference to the political branches when family unification claims are involved, see *Abrams*, *supra* note 162, at 269–79.

167. See Chacón, *supra* note 161, at 1850–56.

168. See Shirin Sinar, *Separate and Unequal: The Law of "Domestic" and "International" Terrorism*, 117 MICH. L. REV. 1333, 1363–66 (2019).

169. See Deborah N. Pearlstein, *Form and Function in the National Security Constitution*, 41 CONN. L. REV. 1549, 1562–71 (2009).

bodies is intertwined with the constraints placed on migrants' livelihoods—the money they earn, share, and transfer.

On the financial regulation side, legal scholars have also argued that the law in this area engenders abuse, both by regulators as well as by private intermediaries enlisted into the project of surveilling and reporting.¹⁷⁰ But this abuse has been largely tied to critiques of the arbitrariness of decision-making and the confusion surrounding the legal obligations that these laws impose on private actors. Embedding financial controls like anti-money laundering laws within a broader system that aims to protect U.S. citizens by controlling the migration and mobility of noncitizens illustrates the broader stakes tied up in the freezing of assets. And while impeding the ability of individuals to send money overseas through financial institutions may not generate harms that are as severe or drastic as physical imprisonment, the harms associated with financial immobility stem from the same impulse to neutralize foreign threats even in the absence of firm information. In this regard, the desire to disrupt financial channels fits into a larger regulatory project that relies on the dehumanization of its targets—the treatment of migrants as criminals and terrorists and remitters as financiers and unwitting lemmings.

Although broad doctrines of deference give the executive significant room to go it alone within the antimigration and anti-money laundering policy arenas, recent years produced some notable instances of bilateral cooperation. Both the Obama and Trump administrations engaged in “border externalization” strategies, which enlist the help of other countries to deter migration flows at the U.S.–Mexico border.¹⁷¹ The Alliance for Prosperity Plan, for example, provides funds to countries in the “Northern Triangle” in Central America in exchange for, among other things, increased enforcement against money laundering and cash smuggling, along with other criminal activity associated with unlawful migration.¹⁷² And migration

170. See Zaring & Baylis, *supra* note 70, at 1394–1418; Lee, *Constitutional Cash*, *supra* note 105, at 598.

171. See Ana Muñiz, *Bordering Circuitry: Crossjurisdictional Immigration Surveillance*, 66 UCLA L. REV. 1636, 1650–55 (2019); Cecilia Menjivar, *Immigration Law Beyond Borders: Externalizing and Internalizing Border Controls in an Era of Securitization*, 10 ANN. REV. L. & SOC. SCI. 353, 357–60 (2014).

172. See Press Release, The White House, Fact Sheet: Support for the Alliance for Prosperity in the Northern Triangle (Mar. 3, 2015), <https://obamawhitehouse.archives.gov/the-press-office/2015/03/03/fact-sheet-support-alliance-prosperity-northern-triangle> [<https://perma.cc/HQU5-ASLV>]; Jennifer Fowler, *Treasury Participates in Latin American Financial Action Task Force Meetings Focused on Combatting Illicit Finance*, U.S. DEP'T OF THE TREASURY (July 17, 2015),

protection protocols, such as the “Remain in Mexico” policy, require U.S. immigration officials to work with their counterparts in the Mexican government to manage the population of asylum seekers.¹⁷³

Yet these plans confirm the broader point about unilateralism. This broad power combined with the economic influence of the United States gives the executive leverage in setting favorable terms in bilateral agreements. Both the Alliance for Prosperity Plan and the Remain in Mexico policy advance a mix of antimigration and anti-money laundering policies in ways that reduce costs for regulators even if they might also increase human costs in other ways. In other contexts, developing nations have been able to gain leverage in setting the terms of bilateral agreements with developed nations, but those instances have been rare, and in any event, have not yet transpired within the context of the United States.¹⁷⁴

III. THEORIZING THE LAW REGULATING REMITTANCES

Thus far, I have tried to make two points: (1) remittances function as a kind of economic expression of affinity between family members; and (2) anti-money laundering laws work in conjunction with antimigration laws to foster a system of long-term and normalized family separation. These two points provide some descriptive clarity on

<https://www.treasury.gov/connect/blog/Pages/Fowler-Latin-American-GAFILAT.aspx> [https://perma.cc/KX86-MHFQ]; see also 2 BUREAU OF INT’L NARCOTICS & L. ENF’T AFFS., U.S. DEP’T OF STATE, INTERNATIONAL NARCOTICS CONTROL STRATEGY REPORT: MONEY LAUNDERING 24 (2020), <https://www.state.gov/wp-content/uploads/2020/03/Tab-2-INCSR-Vol-2-508.pdf> [https://perma.cc/MLW4-GWKU] (noting that El Salvador, Guatemala, and Honduras all present vulnerabilities within a broader anti-money laundering strategy). The Alliance for Prosperity Plan also imposes conditions on participating countries to better develop their economies and legal and political institutions to address push factors of migration. See Dawn Paley, *Obama’s Central American Rescue Plan Will Only Make Life There Worse*, NEW REPUBLIC (Feb. 5, 2015), <https://newrepublic.com/article/120962> [https://perma.cc/TT9Q-PVCK].

173. See ARIEL G. RUIZ SOTO, MIGRATION POL’Y INST., ONE YEAR AFTER THE U.S.-MEXICO AGREEMENT: RESHAPING MEXICO’S MIGRATION POLICIES 4 (2020), <https://www.migrationpolicy.org/sites/default/files/publications/OneYearAfterUS-MexAgreement-EN-FINAL.pdf> [https://perma.cc/6ZRF-57U6].

174. For example, after reports of severe abuse and even deaths of Filipina domestic workers at the hands of Kuwaiti employers, the Philippines negotiated a bilateral labor migration agreement with Kuwait that included greater protections for Filipina workers. Ahmed Hagagy, *Kuwait To Regulate Employment of Philippine Domestic Workers After Reports of Abuse*, REUTERS (May 11, 2018, 9:08 AM), <https://reut.rs/2jMSM2G> [https://perma.cc/QZ2N-BYU2]. Central to this effort was the Philippines’ threat to cut off labor migration altogether. See *id.* For an excellent analysis of the potential for bilateral agreements to protect domestic workers, see Shayak Sarkar, *The New Legal World of Domestic Work*, 32 YALE J.L. & FEMINISM 1, 38–44 (2020).

how the law regulates the transnational remittance economy. Yet, as economic transactions, remittances remain undertheorized by legal decision-makers and scholars. For this reason, it can be hard to figure out how the descriptive picture provided in this Article fits into a broader set of normative commitments—to figure out when law ought to expand remittance markets and when it ought to curtail them.

My account prominently features state actors and public law. In this regard, my account complements the descriptive picture painted by the few legal scholars who address remittances as a migrant phenomenon. Starting with the observation that the law typically permits capital to flow freely across borders while clamping down on migrant flow, Professor Shayak Sarkar argues that there are several instances in which this distinction collapses upon itself.¹⁷⁵ Specifically, he provides a helpful taxonomy of laws across federal and state regulatory contexts that constrain capital flows as attempts to disrupt migrant mobility.¹⁷⁶ Given that these laws arise within various branches of government, Sarkar focuses on how these laws implicate different constitutional doctrines, such as preemption and federalism,¹⁷⁷ while leaving aside the social meaning of remittances and the range of harms that flow from different capital controls.

Other legal scholars have recognized the social meaning of remittances, but most of their analysis focuses on the legal controls imposed by governments in remittance-receiving countries. Professor Ezra Rosser, for example, endorses a robust remittance economy and encourages governments in remittance-receiving countries to give significant weight to the views of communities most directly impacted by remittances.¹⁷⁸ Professor Ariel Stevenson similarly argues that tax reforms that focus on the ability of governments in migrant-sending (that is, remittance-receiving) countries to tax remittance income better account for migrant well-being when compared to alternative tax structures.¹⁷⁹ Both of these accounts prioritize migrant well-being and subjectivity, but neither considers how the state's power to regulate remittances fits within its power to regulate migration.¹⁸⁰

175. Sarkar, *supra* note 7, at 805.

176. *See id.* at 808–35.

177. *Id.* at 836–58.

178. *See* Rosser, *supra* note 7, at 58.

179. *See* Stevenson, *supra* note 7, at 102.

180. Professor Rosser explicitly brackets the question of how U.S. immigration policy figures into debates about how legal controls ought to be calibrated over remittance flows even when he offers a clear-eyed (and in my opinion, correct) critique that “remittance practices must be

Sarkar, Rosser, and Stevenson have all created an important foundation for engaging with the topic of how the law ought to constrain remittance markets. And in many respects, my account overlaps with theirs. Sarkar is right to suggest that sometimes capital controls represent an extension of attempts to penalize noncitizens on the basis of immigration status. This resonates with my focus on the shared legislative origins of the MLCA (which empowers banks to identify suspicious transactions) and IRCA (which empowers employers to identify unauthorized workers). Similarly, Rosser and Stevenson prioritize migrant well-being and argue in favor of protecting cross-border familial love from intrusive state power, which is effectively what I argue in characterizing remittances as a part of a broader normalized state of family separation.

Yet missing from this picture is domestic law, especially of the law enforcement variety. Domestic enforcement power is broad especially when it advances immigration goals. Therefore, any attempts to theorize remittances must account for domestic power and whether any values might constrain the exercise of such power. In this Part, I sketch out two types of theoretical commitments, one articulated in terms of law and a second expressed in terms of political realities.

A. *Legal Commitments*

To the extent that the Supreme Court has theorized the legal controls of transnational remittances, it has focused on remitters' expectations of privacy for information submitted to banks and financial institutions to use banking services. In *United States v. Miller*,¹⁸¹ the Supreme Court held that bankers have no legitimate expectation of privacy under the Fourth Amendment.¹⁸² Financial statements and deposit slips—documents that can shine a light on money laundering activities—reflect information that customers have freely given away as a part of engaging in ordinary business

protected against regulatory practices or taxes that raise the cost of sending money to loved ones.” Rosser, *supra* note 7, at 59. Similarly, Professor Stevenson recognizes that remittances arise out of a workforce that lacks lawful status, but does not address the immigration policies creating that reality. See Stevenson, *supra* note 7, at 102 n.4.

181. The Supreme Court initially held that the recordkeeping requirements of the Bank Secrecy Act (“BSA”) were constitutional in *California Bankers Association v. Shultz*, 416 U.S. 21, 52 (1974). *United States v. Miller* addressed the more specific question of whether the issuance of a subpoena to obtain bank records created under the BSA violated the Fourth Amendment. 425 U.S. 435, 441 (1976).

182. *Miller*, 425 U.S. at 442, 446.

transactions.¹⁸³ *Miller* was important because it addressed the constitutionality of the BSA's recordkeeping requirements.¹⁸⁴ By putting bank records outside the reach of the Fourth Amendment, the Court effectively constitutionalized the legal infrastructure supporting the modern anti-money laundering system.

A few years later, in *Smith v. Maryland*,¹⁸⁵ the Supreme Court addressed a similar Fourth Amendment challenge regarding phone logs. *Smith* holds that callers have no expectation of privacy in phone logs held by telephone companies.¹⁸⁶ During this same period, the Court also confronted gatekeeping questions in the context of employer screening of workers. In *De Canas v. Bica*¹⁸⁷ (decided the same term as *Miller*), the Court holds that a California law prohibiting employers from hiring noncitizens without lawful status was not preempted under federal law at the time.¹⁸⁸ All of these cases—*Miller*, *Smith*, and *De Canas*—create a law enforcement landscape in which Congress could enlist the help of banks and other third parties as gatekeepers with little constitutional consequence. These cases help to normalize economic practices in which individual actors—bank customers and workers—share information with more powerful economic actors—banks and employers—to relinquish control over identifying information as a part of ordinary course of business.¹⁸⁹

The gatekeeping dimension is a part of what makes anti-money laundering laws unique as a regulatory tool. Like other laws grounded in criminal and national security projects, enforcement officials are left to decide by themselves how to strike the proper balance between national security and criminal law enforcement goals and human costs. But anti-money laundering laws operate in an enforcement landscape in which a record has been gathered and curated by banks and other financial entities, which makes it particularly easy for regulators to pick and choose which targets to choose.

In this regard, the legal commitments governing anti-money laundering law decisions are similar to those governing immigration

183. *See id.* at 442.

184. *See id.* at 441–43.

185. *Smith v. Maryland*, 442 U.S. 735 (1979).

186. *See id.* at 737–38, 745.

187. *De Canas v. Bica*, 424 U.S. 351 (1976).

188. *Id.* at 352–53, 365 (“It suffices that this Court decide at this time that the Court of Appeal erred in holding that Congress in the INA precluded any state authority to regulate the employment of illegal aliens.”).

189. *See e.g., Miller*, 425 U.S. at 442.

enforcement decisions, which unfold in a context that treats state power as “plenary.”¹⁹⁰ Beginning in 1990, Congress made criminal law rationales and tools a central part of its strategy to regulate immigration flows.¹⁹¹ Congress began developing the legal infrastructure to enlist the help of local police in the immigration enforcement project.¹⁹² Concerns with terrorism added to the impulse of expanding the reach of agencies and federal officials. After both the World Trade Center bombing of 1993 and then the attacks on September 11, 2001, Congress further empowered executive officials to take broad and far-reaching measures to ensure the safety and security of Americans. In particular, the September 11 attacks prompted Congress to expand enforcement tools in ways that better allowed for immigration laws to identify and apprehend potential terrorists. In 2001, Congress passed the PATRIOT Act,¹⁹³ in 2002, the Homeland Security Act,¹⁹⁴ and in 2004, the Intelligence Reform and Terrorism Prevention Act.¹⁹⁵ All of these laws drastically expand the reach of agencies in fighting foreign terrorist threats through mix-and-match enforcement settings and procedural protections.¹⁹⁶ As a result,

190. See Kerry Abrams, *Plenary Power Preemption*, 99 VA. L. REV. 601, 604 (2013).

191. See Antiterrorism and Effective Death Penalty Act, Pub. L. No. 104-132, 110 Stat. 1214 (1996); Illegal Immigration Reform and Immigrant Responsibility Act, Pub. L. No. 104-208, 110 Stat. 3009-546 (1996); Immigration Act of 1990, Pub. L. No. 101-649, 104 Stat. 4978. Professor César Cuauhtémoc García Hernández argues that the lawmaking of this period was defined by immigration law absorbing and succumbing to criminal law penalties and logics. See García Hernández, *supra* note 201, at 1361. This war on drugs justified creating a system of coordinated enforcement across two systems—criminal law and immigration law—that had historically remained separate. See *id.* at 1360–72.

192. While the local enforcement of immigration laws has forced many difficult constitutional questions in the last decade, Congress created the statutory framework for this phenomenon in 1996. See Amada Armenta, *From Sheriff's Deputies to Immigration Officers: Screening Immigrant Status in a Tennessee Jail*, 34 LAW & POL'Y 191, 192–93 (2012). In contrast to earlier eras in which courts and the public viewed federal control over policing with skepticism, this new era tried to naturalize federal participation in this traditionally local endeavor. Professor Trevor Gardner explains, “Contemporary immigration enforcement is premised on a single, overarching administrative system designed by the federal government to enforce federal immigration law. . . . [A]nd it presumes the universal participation of state and local police departments.” See Gardner, *supra* note 198, at 62.

193. Uniting and Strengthening America by Providing Appropriate Tools Required To Intercept and Obstruct Terrorism Act of 2001, Pub. L. No. 107-56, 115 Stat. 272.

194. Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135.

195. Intelligence Reform and Terrorism Prevention Act, Pub. L. No. 108-458, 118 Stat. 3638 (2004).

196. See Robert Chesney & Jack Goldsmith, *Terrorism and the Convergence of Criminal and Military Detention Models*, 60 STAN. L. REV. 1079, 1100–20 (2008). And then in 2005, Congress passed the REAL ID Act, which sets standards for states to issue driver's licenses, again as a way

Congress layered a national security agenda on top of an immigration system that was already bending toward transnational crime control.¹⁹⁷

The example of anti-money laundering laws actually bolsters the case made by immigration scholars who characterize the modern immigration enforcement system as one committed to ensuring and maintaining “public security” through U.S. immigration laws.¹⁹⁸ But the example of anti-money laundering laws suggest that the breadth and vagueness are built into the regulatory project itself. Broad doctrines of deference combined with recordkeeping requirements implemented by private gatekeepers blur the boundaries of power and complicate the process of maintaining accountability in this system. The development of anti-money laundering policies and antimigration policies track one another, which sets a thicker foundation for articulating critiques of public security enforcement goals. Public security scholarship focuses on the historical role of the police, antiterrorism campaigns, and xenophobia, which all converge in the contemporary immigration system to identify and control a dangerous “other” whose specter justifies the promulgation of far-reaching laws and regulations.¹⁹⁹ Professor Jennifer Chacón observes, “Irregular migration, crime committed by non-citizens (or those perceived as non-citizens) and terrorist threats are all subsumed under the broad rubric of national security threats.”²⁰⁰ Public security is an intentionally broad and vague term meant to capture the unwieldy and often contradictory enforcement policies that animate our immigration system.²⁰¹

For the most part, legal scholars have used the concept of public security to describe immigration or antimigration laws. Both antimigration and anti-money laundering policies share a foundation built on criminal law logic that was later expanded to address national

to prevent noncitizen terrorists from moving through society and the economy without some degree of surveillance. See Zaring & Baylis, *supra* note 70, at 1374–76. The REAL ID Act also imposed stricter screening requirements on asylum seekers and vested greater discretion in the hands of asylum judges. See *id.* at 1374–94.

197. See Sinnar, *supra* note 168, at 1397; Amy L. Stein, *A Statutory National Security President*, 70 FLA. L. REV. 1183, 1193–97 (2018).

198. See Trevor George Gardner, *Immigrant Sanctuary as the “Old Normal”*: A Brief History of Police Federalism, 119 COLUM. L. REV. 1, 8–10 (2019); Chacón, *supra* note 161, at 1831.

199. See Gardner, *supra* note 198, at 1; Chacón, *supra* note 161, at 1831.

200. See Chacón, *supra* note 161, at 1831.

201. See César Cuauhtémoc García Hernández, *Immigration Detention as Punishment*, 61 UCLA L. REV. 1346, 1360, 1379–80 (2014); Ingrid V. Eagly, *Prosecuting Immigration*, 104 NW. U. L. REV. 1281, 1298, 1330 (2010).

security concerns.²⁰² Together, they form a set of interlocking public security policies in which expansive enforcement programs are justified to pursue vaguely defined foreign criminals and terrorists. Both sets of policies empower regulators with a wide degree of latitude to surveil, partner with, and sometimes coerce private entities to identify potentially dangerous targets.

B. Political Commitments

A part of the allure of remittance markets is the political appeal of having markets solve global poverty, which deemphasizes the state's role in structuring markets.²⁰³ And a part of what makes anti-money laundering laws so noteworthy as a governance strategy has been the willingness of banks and other private financial institutions to cooperate with regulators.²⁰⁴ The implication, of course, is that state actors are dependent upon, and therefore must cede some degree of power to, market actors. Given how much money flows out of the United States to the Global South in the form of remittances, one could argue that state actors *should* cede this power.

Viewed from the perspective of U.S. state actors, remittances function as a kind of de facto version of foreign aid, a privatized counterpart to state-to-state transfers that typically define foreign aid packages. American foreign policy contains an antipoverty component, which includes foreign aid packages to governments of nations struggling to develop economic infrastructure or experiencing instability wrought by unforeseen natural disasters.²⁰⁵ Rather than the federal government drawing from its coffers to provide aid directly to Mexico, the Philippines, and other countries in which demand for migration opportunities to the United States remains high, the domestic labor market creates opportunities for workers to realize some of the same benefits indirectly.²⁰⁶ Like other forms of foreign aid,

202. See *id.* at 1869–73.

203. As Professor Ezra Rosser observes, part of the allure of fostering remittance markets is the discursive emphasis on the “minimal role of the state and the power of people acting independently to improve their own situation.” See Rosser, *supra* note 7, at 52. And to be clear, Professor Rosser is critical of discourse uncritically embracing market-based solutions. See *id.* at 51–52.

204. See Gadinis & Mangels, *supra* note 64, at 888–93.

205. See George Ingram, *What Every American Should Know About US Foreign Aid*, BROOKINGS (Oct. 15, 2019), <https://www.brookings.edu/policy2020/votervital/what-every-american-should-know-about-us-foreign-aid> [https://perma.cc/2B3G-78PT].

206. While remittances are subject to a different set of legal rules than foreign aid, they are often understood in the public eye as interchangeable, or at least as complementary goods. See

remittances advance U.S. policy goals like development and humanitarian relief in receiving countries,²⁰⁷ but do so by harnessing the labor of migrants within the United States to generate economic and social goods in receiving countries.²⁰⁸

As a form of foreign aid, remittance markets offer an important advantage to state-directed disbursements: remittances can mitigate some of the problems of graft, which is a persistent obstacle to realizing the benefits of foreign aid.²⁰⁹ With no meaningful way of monitoring on-the-ground disbursement practices in developing nations, parties to bilateral and multilateral agreements often contend with the reality that corrupt local officials will siphon off payments as the aid makes its way (if at all) to the intended beneficiaries.²¹⁰ In this regard, harnessing remittances for aid purposes largely avoids the graft problem because wage earning transfers operate through private channels instead of by entrusting governmental agencies in foreign countries with distribution choices.

As a market-based solution for addressing global poverty, propping up remittance markets does face some limitations. Given the transnational familial context of remittances, such money transfers most directly benefit relatives of remitters and sometimes community members from their hometown or region. This therefore excludes those who live in remittance-receiving countries lacking similar

Rohit Sudarshan, *Remittances: A Complement to International Aid*, PROSPER (Apr. 11, 2017), <https://csisprosper.com/2017/04/11/remittances-a-complement-to-international-aid> [<https://perma.cc/X5YW-PMBX>].

207. *But see* Rosser, *supra* note 7, at 5 (“Remittances . . . can alleviate some of the hardships families face because of a lack of local opportunities in their home countries. Ultimately, while remittances are ‘hot’ in development circles, remittances are by their very nature better suited to reducing poverty than fueling lasting development.”).

208. *See id.* at 20 (“Remittances impact not only recipient families but also, in the aggregate, have important and potentially negative consequences for the economies of remittance-receiving countries.”).

209. *See* Ann M. Simmons, *U.S. Foreign Aid: A Waste of Money or a Boost to World Stability? Here Are the Facts*, L.A. TIMES (May 10, 2017, 8:05 PM), <https://www.latimes.com/world/la-fg-global-aid-true-false-20170501-htlstory.html> [<https://perma.cc/FR7C-7D89>]. There is some evidence of self-dealing in spending policies in remittance-receiving countries. In particular, Mexico has a “remittance-matching” program in which local governments will match funds remitted into Mexico from overseas. Simpser et al., *supra* note 146, at 63. Such programs have benefitted local governments in ways that do not always directly benefit individuals, although the broader observation remains that remittances that go directly into the hands of family members reduces the likelihood of graft as compared to state-to-state transfers. *See id.*

210. Laura Iesue, *The Alliance for Prosperity Plan: A Failed Effort for Stemming Migration*, COUNCIL ON HEMISPHERIC AFFS. (Aug. 1, 2016), <https://www.coha.org/the-alliance-for-prosperity-plan-a-failed-effort-for-stemming-migration> [<https://perma.cc/3Q72-D47Y>].

relationships with individuals in the United States.²¹¹ Moreover, the range of uses for remittances is limited. Remittances typically can buy food and clothing, start a business, pay for education, or buy or renovate a house—which are all steps toward climbing out of poverty. By contrast, foreign aid can serve a variety of purposes. Some forms of aid seek to foster development or alleviate the exigencies of natural disaster, which roughly correlate to the remittance narrative in that the aid aims to serve the poorest and most vulnerable within the recipient country.²¹² But other foreign policy goals tied up in other forms of aid bear no resemblance to this story.²¹³ Afghanistan and Israel routinely receive significant disbursements of U.S. foreign aid.²¹⁴ The aid has been provided to advance national security and counterterrorism goals,²¹⁵ neither of which can plausibly be realized through remittances.²¹⁶ Finally, allowing money transfers to flow through

211. In Lauren Heidbrink's ethnographic work on remittance channels between the United States and Guatemala, some of her interview subjects in Guatemala expressed the view that "[o]nly families benefit, not communities," when it comes to remittance flows. See HEIDBRINK, *supra* note 39, at 148–49. At the same time, other studies have shown that remittances can reach even rural regions that lie beyond formal networks within the remittance-receiving country. In their ethnographic study of the remittance economy in El Salvador, Professors Hernandez and Coutin found that remittances from the United States "would reach everywhere, even rural areas, and would go directly into the pockets of recipients." Hernandez & Coutin, *supra* note 43, at 198.

212. See William Easterly, *Can Foreign Aid Buy Growth?*, 17 J. ECON. PERSPS. 23, 34–38 (2003).

213. Such as when the United States sends military equipment or other assets of value to the recipient country.

214. Simmons, *supra* note 209.

215. See *U.S. Relations with Afghanistan*, U.S. DEP'T OF STATE (July 26, 2018), <https://www.state.gov/r/pa/ei/bgn/5380.htm> [<https://perma.cc/MUN8-AYV2>] (noting that "Afghanistan remains an important partner of the United States in the fight against terrorism"); Laurel E. Miller, *The Challenges and the Benefits for U.S. National Security of Providing Foreign Assistance to Afghanistan*, Testimony Before the Committee on Homeland Security and Government Affairs 1–2 (May 9, 2018), https://www.rand.org/content/dam/rand/pubs/testimonies/CT400/CT493/RAND_CT493.pdf [<https://perma.cc/8H3U-DMSH>] (noting that the purpose of the War in Afghanistan "was not, of course, to make Afghanistan a nicer place for Afghans but, rather, was to pursue U.S. national security interests in destroying al-Qaeda and—because it had provided a safe haven to al-Qaeda—the Taliban"); Emma Green, *Why Does the United States Give So Much Money to Israel?*, ATLANTIC (Sept. 15, 2016), <https://www.theatlantic.com/international/archive/2016/09/united-states-israel-memorandum-of-understanding-military-aid/500192> [<https://perma.cc/D2Q6-FJH7>] (describing the U.S.-Israel relationship as a "diplomatic and military alliance between the two countries [that] is longstanding").

216. If anything, government officials would argue that remittances undermine these goals by funding transnational criminal and terrorist organizations. See INT'L MONETARY FUND, *MEXICO: DETAILED ASSESSMENT REPORT—ANTI-MONEY LAUNDERING AND COMBATING THE FINANCING OF TERRORISM* 9 (2017), <https://www.elibrary.imf.org/view/journals/002/2017/405/002.2017.issue-405-en.xml> [<https://perma.cc/H7XD-NJH2>]; David Cohen, *Under Sec'y for*

private channels will make it harder to know how much has been transferred.²¹⁷

At the same time, when compared to more conventional state-to-state transfers of aid, remittances provide the executive branch with a relative degree of autonomy in terms of interrupting the flow of cash transfers. U.S. agencies commonly work with their state-level counterparts in the receiving country—facilitating transnational remittances as a form of foreign aid is purely a function of domestic enforcement policy, especially as those policies impact immigration and anti-money laundering objectives.²¹⁸ By contrast, the president and agencies, most notably the U.S. Department of Homeland Security, enjoy nearly unfettered discretion and autonomy in this enforcement realm. As Professor Jennifer Gordon observes, policies governing immigration can proceed on unilateral terms given that a country decides for itself how it admits and welcomes newcomers.²¹⁹ Although Professor Gordon was making this argument in the context of immigration policies, the same logic can be extended to domestic anti-money laundering controls over remittance flows. Compared to bilateral tax treaties, which require negotiation with and the cooperation of another country, anti-money laundering policies permit officials to control flows from within the Treasury Department using only domestic actors.

Importantly, the nature of state power in the context of regulating remittances is often rendered invisible by the market logic that dominates remittance debates. Policy advocates associated with both the political left and right often invoke a kind of cost-benefit analysis

Terrorism & Fin. Intel., Remarks Before the Center for a New American Security on “Confronting New Threats in Terrorist Financing” (Mar. 4, 2014), <https://www.treasury.gov/press-center/press-releases/Pages/jl2308.aspx> [<https://perma.cc/R7GB-STHT>].

217. This is something that has long concerned public law scholars in the context of privatization schemes. See Jon D. Michaels, *Privatization’s Pretensions*, 77 U. CHI. L. REV. 717, 722–23 (2010).

218. Timothy Meyer & Ganesh Sitaraman, *Trade and the Separation of Powers*, 107 CALIF. L. REV. 583, 665–66 (2019).

219. See Jennifer Gordon, *People Are Not Bananas: How Immigration Differs from Trade*, 104 NW. U. L. REV. 1109, 1138 (2010) (“In the case of labor migration, . . . developed country governments can legislate whatever sort of immigration program they desire without engaging any developing countries at all.”); see also Hiroshi Motomura, *The New Migration Law: Migrants, Refugees, and Citizens in an Anxious Age*, 105 CORNELL L. REV. 457, 505 (2020) (“To satisfy demand with workers with little formal education, destination country governments allow labor migration, both lawful and outside the law—almost always acting unilaterally to get them without explicitly cooperating with other countries.”).

to support migration, which could easily be extended to support broader remittance channels.²²⁰ The argument is that American consumers benefit from migration through lower costs of goods and services, and migrants benefit from access to labor markets offering higher wages than what is available in their home countries. Remittance markets reflect the predictable consequence of capital flows from this kind of work, prompting arguments about the costs of such an arrangement. Hence, the debate focuses on arguments that immigrants take the jobs that Americans won't (thereby mitigating arguments about labor market costs),²²¹ or that immigrants commit fewer crimes than U.S.-born natives (thereby addressing concerns with social costs).²²²

These are effective, pragmatic arguments that can help preserve the limited protections and opportunities currently enjoyed by vulnerable unauthorized migrants. But over the long-term, the market logic of cost-benefit analysis—which runs throughout remittances debates—runs the risk of distracting the public from the state's role in structuring these markets, whether by limiting opportunities to move across borders freely or by turning a blind eye to private exploitation. As Professors Ester Hernandez and Susan Bibler Coutin explain, “[b]y defining remittances as altruistic gifts or unrequited transfers, central banks ignore certain costs (such as alien-smuggling fees or fees charged by money transfer agencies) born [sic] by migrants and make remittances appear to be cost-free.”²²³ It valorizes what the market, and specifically what the domestic labor market, can achieve at a global level.

220. See Pia Orrenius, *Benefits of Immigration Outweigh the Costs*, GEORGE W. BUSH INST.: THE CATALYST (Spring 2016), <https://www.bushcenter.org/catalyst/north-american-century/benefits-of-immigration-outweigh-costs.html> [<https://perma.cc/Y6VZ-329J>]; Tom Jawetz, *Building a More Dynamic Economy: The Benefits of Immigration*, CTR. FOR AM. PROGRESS (June 26, 2019), <https://www.americanprogress.org/article/building-dynamic-economy-benefits-immigration> [<https://perma.cc/MK7U-WMNA>].

221. See Julia Preston, *Immigrants Aren't Taking Americans' Jobs*, *New Study Finds*, N.Y. TIMES (Sept. 21, 2016), <https://www.nytimes.com/2016/09/22/us/immigrants-arent-taking-americans-jobs-new-study-finds.html> [<https://perma.cc/48P4-T27E>] (presenting the progressive argument that “immigrants contribute to the economy whether they are here legally or not, by providing labor for American employers and opening businesses that create jobs for Americans rather than taking them”).

222. See Kari Hong, *The Absurdity of Crime-Based Deportation*, 50 U.C. DAVIS L. REV. 2067, 2072 (2017) (“[N]on-citizens commit fewer crimes and reoffend less often than citizens.”); see also Sklansky, *supra* note 152, at 193 (“[T]he rise of crimmigration cannot be attributed to a growing problem of crime committed by noncitizens . . .”).

223. See Hernandez & Coutin, *supra* note 43, at 201.

The “markets will save us” mindset that focuses on the costs and benefits of allowing migrants to remit some of their wages to support family members avoids the obvious point that certain jobs are so exploitative that they simply should not exist.²²⁴ That is an issue that should be answered by state, not market, actors. For this reason, debates about mass legalization programs implicate remittance markets. Banks that cancel individual accounts or that shut down entire branches exacerbate inequalities because electronic money transfers remain one of the only opportunities for migrants to stay connected with family members. But loosening restrictions on travel across borders can take the pressure off of banks. If given the ability to move back and forth across borders, migrants can hand over and share remittances in person, thereby freeing banks to focus on activities that truly signal or support dangerous behaviors such as drug trafficking or terrorism. In the United States, the only legal status that provides near unfettered mobility is citizenship, and to a certain extent, lawful permanent residence.

A mass legalization program would begin to correct the cramped vision of family reunification that immigration policy currently embraces.²²⁵ Recent mass legalization bills include the opportunity to gain these statuses usually after a conditional period, which would not only provide some measure of security for migrants living in the United States, but would also provide greater certainty for the relationships between migrants and their family members in other countries.

IV. ECONOMIC EXPRESSIONS OF AFFINITY IN RELATED CONTEXTS

The remittance economy demonstrates how migrants stay connected across borders through economic means. This final Part explores how legal controls outside of the banking and financial context might account for this reality. Specifically, I focus on the meaning that legal and political decisionmakers attribute to remittances.

224. See Brishen Rogers, *Justice at Work: Minimum Wage Laws and Social Equality*, 92 TEX. L. REV. 1543, 1571–72 (2014).

225. See generally JOANNA DREBY, *DIVIDED BY BORDERS: MEXICAN MIGRANTS AND THEIR CHILDREN* (2010) (exploring stories of migrant parents and the ways in which their children influenced their decision to relocate as well as the outcomes of these choices).

A. *Family Unity*

Physical togetherness and family unity form the basis of critiques of immigration enforcement policies designed to separate migrant families. But in a world of limited mobility and increased dependence on economic expressions of affinity and support, the remittance economy requires considering whether there might be forms of family separation beyond physical disruptions that the law should target.

Immigration law has historically relied on family law principles to develop family unification theories. Family unification has figured into the constitutional contours of immigration law since at least the late nineteenth-century. In the closing decades of the nineteenth century, the Supreme Court recognized and consolidated a general immigration power in the hands of Congress and the president,²²⁶ and in the early part of the twentieth century, the Court took similar steps with regards to administrative agencies.²²⁷ The Court accomplished this through a series of decisions upholding the constitutionality of various Chinese exclusion laws.²²⁸

Importantly, despite those decisions, which were grounded in sweeping ideas about deference to Congress and the president, notions of family unity could blunt the force of the worst impulses of those laws.²²⁹ Dean Kerry Abrams points to a number of lower court decisions in which judges read into the Chinese exclusion laws what was effectively a family unity exclusion: “The common law theory of marital unity was still so powerful that family unity was treated with extraordinary deference—even in the face of an articulation of the immigration power that made the state’s authority sound absolute.”²³⁰

226. See Adam B. Cox & Cristina M. Rodríguez, *The President and Immigration Law*, 119 *YALE L.J.* 458, 466–67 (2009).

227. See generally Gabriel J. Chin, *Regulating Race: Asian Exclusion and the Administrative State*, 37 *HARV. C.R.-C.L. L. REV.* 1, 26–30, 35–38, 41, 43 (2002) (detailing how the Supreme Court developed several facets of administrative law, including deference to administrative factfinders, through several immigration cases in the early nineteenth and late twentieth centuries).

228. See Lucy Salyer, *Captives of Law: Judicial Enforcement of the Chinese Exclusion Laws, 1891-1905*, 76 *J. AM. HIST.* 91, 114–15 (1989).

229. See Kerry Abrams, *The Rights of Marriage: Obergefell, Din, and the Future of Constitutional Family Law*, 103 *Cornell L. Rev.* 501, 561–63 (2018).

230. Abrams, *supra* note 162, at 255. In one notable example, the foreign-born Chinese wife and child of a Chinese merchant challenged their exclusion. *In re Chung Toy Ho*, 42 F. 398, 398 (C.C.D. Or. 1890). And while the exclusion law specifically exempted “merchants” from the ban, the law was silent as to spouses and children. *Id.* at 398–99. The court in that case interpreted the law in a way that suggested the merchant had a “natural right” to the “company of the one, and

Physical togetherness was assumed to be the defining feature of forming and belonging to a family—living and loving together in the same household. Most recently, family unity formed the basis of a critique of immigration enforcement measures that caused family separation at the U.S.–Mexico border. As part of its anti-smuggling and antitrafficking enforcement policies, the Trump administration separated children from adult guardians at the border ostensibly to protect children from dangerous or predatory adults.²³¹ For many, the nature of the harm was obvious and hardly worth exploring: denying parents access to their children violated the basic human right to care for and live with their children. While these enforcement practices undeniably implicated human rights frameworks, they also violated a key normative commitment of immigration law—that immigration law should recognize and account for familial relationships when allocating benefits and imposing sanctions.

Perhaps it is because physical togetherness is such an obviously defining feature of the family unit that courts, lawmakers, and regulators have spent such little time defining its importance. The implicit goal of family-based admissions categories is for noncitizens to live with citizen or lawful permanent resident family members. The entire suite of family-based admissions categories reflects this principle, as do other categories such as derivative beneficiaries.²³² At the same time, the broader social science literature documenting how migrants experience the adverse effects of both antimigration and anti-money laundering policies highlights the limits of legal categories. The concept of remitting rights does not currently afford courts the doctrinal cover to limit executive overreach in its administration of national security programs.

For legal scholars, then, the social realities and meaning surrounding the remittance economy present an invitation to critique the migration/capital distinction itself. Feminist scholarship provides a

the care and custody of the other,” which could not be displaced unless Congress was absolutely clear with its intention to do so. *Id.* at 399–400.

231. *Cf. Ms. L. v. U.S. Immigr. & Customs Enf’t*, 302 F. Supp. 3d 1149, 1164–65 (S.D. Cal. 2018) (summarizing the claims against the government as separating parents “from their children upon arriving at our nation’s border without any determination they were unfit or presented a danger to their children”).

232. *See* Kerry Abrams & R. Kent Piacenti, *Immigration’s Family Values*, 100 VA. L. REV. 629, 682 (2014) (identifying family reunification, or the ability to live with family, as an important value of immigration law); Hiroshi Motomura, *The Family and Immigration: A Roadmap for the Ruritanian Lawmaker*, 43 AM. J. COMPAR. L. 511, 511–13 (1995) (stating that family reunification principles influence immigration law and outlining tiers of family preferences in immigration law).

rough roadmap as to how such an intervention might unfold. Scholars like Peggie Smith,²³³ Vicki Schultz,²³⁴ Nancy Staudt,²³⁵ and more recently Noah Zatz,²³⁶ helpfully critique how conventional definitions of work render caregiving duties invisible. For my purposes, the significance is that market activities that trigger legal protections, namely work, are socially constructed and obfuscate historically unequal relationships based in gender, race, and class. A similar critique applies to family unity. Immigration provisions covering removal cancellation and admission already contain pockets recognizing economic obligations grounded in affinity. The working pieces to build out an infrastructure already exist. Just because family separation harms are triggered by the disruption of physical proximity does not mean that such disruptions are the only kinds of family separation that merit legal protection, especially in light of the broader antimigration policies governing migrant lives.

The realities of physical and geographic distance mean that migrants rely on remittances as a key method of expressing affinity or love for family members. Centering the role that remittances play in the lives of migrants illustrates how family unity principles are given expression beyond physical proximity. Remittances offer one way for migrants to remain connected with loved ones in their countries of origin. Money transfers operate alongside text messages, video calls, and other technological innovations that enable remitters to foster and maintain emotional intimacy across the globe.²³⁷

Immigration laws restrict migrant mobility and prevent them from visiting family members. Anti-money laundering laws constrain the ability of migrants to send remittances to those same family members. Legal constructions of family unity, then, reflect the imprimatur of two overlapping and complementary sets of laws—those governing

233. See Peggie R. Smith, *Laboring for Child Care: A Consideration of New Approaches To Represent Low-Income Service Workers*, 8 U. PA. J. LAB. & EMP. L. 583, 591 (2006) (noting that “child care is frequently dismissed as a form of emotional work that lacks economic visibility and value”).

234. See Vicki Schultz, *Life’s Work*, 100 COLUM. L. REV. 1881, 1899–1900 (2000) (arguing that society fails to value housework, childcare, and other work performed at home).

235. See Nancy C. Staudt, *Taxing Housework*, 84 GEO. L.J. 1571, 1573–74 (1996) (arguing that society fails to formally acknowledge, and thus value, “women’s work” like housework and childrearing).

236. See Noah D. Zatz, *Supporting Workers by Accounting for Care*, 5 HARV. L. & POL’Y REV. 45, 58–59 (2011) (criticizing conceptions of work that encompass only paid employment as excluding and rendering invisible the work of family caretakers).

237. HEIDBRINK, *supra* note 39, at 49.

migration and those governing capital. Put in slightly different terms, the harms of family separation operate on a spectrum in which some forms of separation are physical while others are more indirect, as in the remittances context.²³⁸ Expanding out to include remittance flows further develops this idea that even ostensibly voluntary forms of separation—such as knowingly and willingly leaving one’s family behind to enter the United States for work—inflicts a similar, albeit less offensive, form of moral harm compared to family separation at the U.S.–Mexico border.

The remittance economy deepens the understanding of how those who lack or possess only tenuous legal statuses experience family separation. There are instances in which noncitizens in the United States are arbitrarily barred from remitting wages. Banks shut down individual accounts because of the frequency of cash deposits²³⁹ or shut down entire branches because operating in high trafficking and laundering zones like border communities is more trouble than it is worth.²⁴⁰ Families often pool resources to invest in a single family member’s journey to the United States so that they can work and send remittances. It is a survival strategy. As beneficiaries of family resources, migrants who find themselves unable to or deterred from remitting wages can experience trauma similar to survivor’s guilt.²⁴¹

Recognizing the affinity-based elements of remittances brings that account in line with significant pockets of immigration law that rely on similar principles to shape the rights and benefits available to migrants. Consider *In re Gonzalez Recinas*,²⁴² a well-known case examining the

238. See Lee, *supra* note 17, at 2359–63 (describing how anti-money laundering laws hinder sending remittances to family abroad).

239. Cf. McKendry, *supra* note 127 (noting that some banks are reluctant to take on “high risk” customers like those involved with the “marijuana business”); Emily Feldman, *The U.S.-Mexico Border Is Becoming a Banking Desert*, BLOOMBERG BUSINESSWEEK (Aug. 30, 2018 10:42 AM), <https://www.bloomberg.com/news/articles/2018-08-30/the-u-s-mexico-border-is-becoming-a-banking-desert> [<https://perma.cc/48P6-5JBV>]. One GAO report found that money laundering-related risks likely played a significant role in driving bank branch closures in the U.S.–Mexico border region. This study surveyed banks and found that a significant percentage of banks in the Southwest region reported terminating cash-intensive small business accounts as well as accounts involving money services and other businesses involved in cross-border activity. GAO, BANK SECRECY ACT: DERISKING ALONG THE SOUTHWEST BORDER, *supra* note 132, at 19–20..

240. See GAO, BANK SECRECY ACT: DERISKING ALONG THE SOUTHWEST BORDER, *supra* note 132, at 11–16, 31–33 (describing the difficulties of banking in border communities and concluding that the cost of complying with anti-money laundering laws can contribute to bank closures).

241. See Heidbrink, *supra* note 51, at 278.

242. *In re Gonzalez Recinas*, 23 I. & N. Dec. 467 (B.I.A. 2002).

kinds of equitable factors that might support an affirmative grant of canceling removal.²⁴³ It examined whether Ariadna Recinas, a removable noncitizen, was entitled to “cancellation of removal,” a form of relief that allows a removable migrant to remain in the United States.²⁴⁴ As part of its hardship assessment, the Board of Immigration Appeals considered Recinas’s business with two employees and her automobile ownership.²⁴⁵ Importantly, this discussion was embedded within a broader analysis of how Recinas’s deportation and subsequent collapse of her business would impact her children within the United States due to her inability to support them financially.²⁴⁶ In other words, the Board considered Recinas’s investments in the United States to be equity gained through time spent supporting her family. Uprooting her would also harm her two children.

Another example is the affidavit of support requirement that all sponsors must complete in order to sponsor family members as a part of the visa application process.²⁴⁷ Sponsors must promise to provide financial support for their noncitizen family members to reduce the likelihood that new members strain public resources by slipping into poverty.²⁴⁸ These affidavits amount to legally enforceable promises to support and ensure the economic well-being of visa recipients. Moreover, the only category of recipients for whom affidavits are required are family-based recipients.²⁴⁹ Both the cancellation of removal and affidavit of support illustrate the different ways that law currently recognizes the significance of economic support in assessing the legitimacy of familial bonds. The example of anti-money laundering laws highlights how Treasury officials also use financial records and economic activity in ways that allow them to track and observe familial relationships with and among noncitizens in the United States.

243. *See id.* at 468–73.

244. *See id.* at 467–68.

245. *Id.* at 470.

246. *Id.* at 471.

247. *See Immigrant Visa Process*, U.S. DEP’T OF STATE – BUREAU OF CONSULAR AFFS., <https://travel.state.gov/content/travel/en/us-visas/immigrate/the-immigrant-visa-process/step-1-submit-a-petition/affidavit-of-support.html> [https://perma.cc/7JYR-89V4].

248. *See id.*

249. Those who seek to sponsor noncitizens in other categories such as employment and diversity may be required to do so at the discretion of immigration officials but are not required to do so by statute. *See* 8 U.S.C. § 1183a(a)(1) (setting forth terms for a sponsor’s affidavit of support).

B. Wage Earnings

Remittances are often the product of wage earnings. For this reason, the regulatory influence of anti-money laundering laws implicates the various workplace laws that protect migrants in the United States. A significant strand of legal scholarship focuses on migrants as workers and workplace laws.²⁵⁰ Much of this scholarship is heavily informed by economic analysis and dominated by practical questions about how to balance the societal benefits of new migrant workers against the costs borne by native-born workers. Unsurprisingly, the focus has been on empirical questions: whether migrants will function as supplements or substitutes to native-born workers;²⁵¹ whether the economic contributions of immigrant workers offset the dilution of public resources;²⁵² and whether these economic impacts are differently experienced by native-born workers across regions of the country.²⁵³

Those who theorize immigrant work and advance normative claims quite sensibly try to meld claims for migrant inclusion into this labor-centric view of immigration law. This body of work highlights the economic productivity of migrants and explores whether and how the economic interests of migrant workers meld with those of native

250. See generally, e.g., Shannon Gleeson & Kati L. Griffith, *Employers as Subjects of the Immigration State: How the State Fosters Employment Insecurity for Temporary Immigrant Workers*, 46 LAW & SOC. INQUIRY 92 (2021) (arguing that migrants with temporary protected status have more difficulty obtaining and maintaining employment than do permanent residents due to stringent bureaucratic requirements); Jennifer Gordon, *Transnational Labor Citizenship*, 80 S. CAL. L. REV. 503 (2007) (advocating for transnational labor citizenship, which “would link permission to enter the United States in search of work to membership in cross-border worker organizations,” not to a specific employer). I have also contributed to this conversation. See generally Stephen Lee, *Screening for Solidarity*, 80 U. CHI. L. REV. 225 (2013) (arguing that migrant workers who assert labor claims should receive preference for immigration benefits).

251. See, e.g., Howard F. Chang, *The Economics of International Labor Migration and the Case for Global Distributive Justice in Liberal Political Theory*, 41 CORNELL INT’L L.J. 1, 8–9 (2008) (discussing empirical evidence demonstrating that migrant labor does not substitute for native labor).

252. See, e.g., Michael J. Trebilcock & Matthew Sudak, *The Political Economy of Emigration and Immigration*, 81 N.Y.U. L. REV. 234, 271–74 (2006) (discussing dueling empirical studies concerning burdens that immigration places on the welfare state).

253. See Jennifer Gordon, *Tensions in Rhetoric and Reality at the Intersection of Work and Immigration*, 2 U.C. IRVINE L. REV. 125, 138–43 (2012) [hereinafter Gordon, *Tensions in Rhetoric and Reality*] (discussing more particularized effects of immigration and the need for additional study). See generally GIOVANNI PERI, THE IMPACT OF IMMIGRANTS IN RECESSION AND ECONOMIC EXPANSION (2010), <http://www.migrationpolicy.org/pubs/Peri-June2010.pdf> [<https://perma.cc/KC4D-JXFM>] (discussing the effects of immigration on employment and income).

workers.²⁵⁴ Both advocates²⁵⁵ and regulators²⁵⁶ have understandably focused on notions of economic productivity to advance arguments in favor of mass legalization programs because migrants have “earned” legalization.²⁵⁷

The reality of remittances and the law regulating the transnational economy exposes precisely the point at which these sorts of arguments become politically vulnerable. The broad and inclusive nature of labor protections are negotiated and implemented within a political environment with streaks of nativism and nationalism.²⁵⁸ Those on the political right often invoke nativist sentiments to argue against increasing migration opportunities. One could imagine a similar sort of argument that remittance flows represent capital leaving the United States, thereby representing migrants’ economic disloyalty toward their adopted home.²⁵⁹ This reality highlights the ease with which labor-

254. From the perspective of migrant plaintiffs, this has been a productive legal pursuit given that several courts and agencies extend workplace laws to workers regardless of immigration status. But there are some limitations to what this labor-centric approach to immigration law can provide, and the realities surrounding the remittance economy highlight these limitations. See Stephen Lee, *Undocumented Civil Procedure*, in *A CRITICAL GUIDE TO CIVIL PROCEDURE* (Brooke Coleman, Suzette Malveaux, Portia Pedro & Elizabeth Porter eds., forthcoming 2021).

255. See generally, e.g., Giovanni Peri, *The Economic Benefits of Immigration*, *BERKELEY REV. LATIN AM. STUDS.*, Fall 2013, at 14 (discussing economic benefits of immigration).

256. See Luis A. Aguilar, Comm’r, Sec. & Exch. Comm’n, *The Important Role of Immigrants in Our Economy*, Remarks at the 2013 Annual Gala of the Georgia Hispanic Chamber of Commerce (May 18, 2013), <https://www.sec.gov/news/speech/2013-spch05181313aa.htm> [<https://perma.cc/55K3-A2E9>] (discussing the economic benefits of immigration).

257. Indeed, despite internal struggles and dissension, over the last couple of decades, mainstream labor organizations have embraced the interests of migrant workers. See Janice Fine & Daniel J. Tichenor, *A Movement Wrestling: American Labor’s Enduring Struggle with Immigration, 1866–2007*, 23 *STUD. AM. POL. DEV.* 84, 111 (2009).

258. See George J. Sánchez, *Face the Nation: Race, Immigration, and the Rise of Nativism in Late Twentieth Century America*, 31 *INT’L MIGRATION REV.* 1009, 1021 (1997).

259. In a satirical essay, Professor Yxta Murray voices a set of recommendations to President Trump as a journalist with right-wing extremist tendencies. Yxta Maya Murray, *A Modest Memo*, 22 *MICH. J. RACE & L.* 187, 187 (2017). On the subject of remittances specifically, Professor Murray channels this position to address the position that “remittances to Mexican family members qualify as symbols of love and utter sacrifice on the part hard-working economic refugees.” *Id.* at 207. Imploring President Trump to lump remittances into his broader project of attacking Mexican Americans, Murray reminds President Trump that he “will help us see remittances not as icons of loving-kindness, but rather as polluted, stolen property.” *Id.* Embedded within Professor Murray’s satirical analysis is fodder for real-life restrictionists pressing the case for expanding enforcement efforts against migrants. See Matthew O’Brien, Spencer Raley & Casey Ryan, *The United States Loses \$150 Billion Annually in Remittances*, *FAIR* (May 2019), <https://www.fairus.org/issue/publications-resources/united-states-loses-150-billion-annually-remittances> [<https://perma.cc/Y32X-628B>].

centric accounts of unauthorized work can slide into unproductive debates about economic nationalism.

The restrictionist approach to labor migration partially reflects the absence of a compelling normative vision for how the law should count migrants' economic contributions. Theories about the legal benefits of *earning* wages do not fully account for *spending* choices made by migrants. This economic security, in turn, enables workers to recirculate their earnings through the consumption of goods and services thereby growing the national economy. For migrant workers embedded within transnational families, the recirculation of earnings is expressed through remittances, which benefits the economies of other countries.

Debates in this area are often framed in terms of identifying the winners and losers among the dominant economic interests in the United States. In reductive terms, both migration (especially unauthorized migration) and trade benefit American *businesses* by giving them access to cheaper sources of labor.²⁶⁰ Similarly, both migration and trade create benefits for American *consumers* when businesses pass along the costs savings to the public. Assessing the economic consequences of migration and trade becomes more complicated when considering native-born *workers*. Increases in migration and expanded reliance on imported goods can cause certain labor markets to shrink in the United States, hence harming the economic interests of native-born workers, which places workers on a different footing than businesses and consumers. As a result, much of the research is empirical: Are migrant workers supplements or substitutes for native-born workers?²⁶¹ Do the economic contributions of migrants offset the increase in public expenditures? Are these gains and losses spread evenly across the nation or only regionally?²⁶²

The reality of remittances can also complicate normative commitments that might otherwise be obvious. While there is much in the economic lives of migrants that remains to be theorized, one way forward is to account for the social meaning of work for migrants more explicitly and to let that social reality inform the substance and reach

260. See Motomura, *supra* note 219; KIMBERLY CLAUSING, OPEN: THE PROGRESSIVE CASE FOR FREE TRADE, IMMIGRATION, AND GLOBAL CAPITAL 141–42 (2019); Gordon, *supra* note 219, at 1131.

261. See Chang, *supra* note 251 (discussing empirical evidence demonstrating that migrant labor does not substitute for native labor).

262. See, e.g., Gordon, *Tensions in Rhetoric and Reality*, *supra* note 255, at 140–41.

of workplace protections. For example, a number of legal scholars theorize core employment protections like minimum wage laws in terms of social equality. These social equality scholars have provided a theoretical base that could be expanded to account for remittance flow. Several scholars argue that employment protection generally, and minimum wage protections specifically, not only protect workers against wage theft, but they also operate to ensure a degree of social equality.²⁶³ In the context of wage protections, Professor Brishen Rogers argues that “[g]iven the all-too-recent historical context of slavery and serfdom, the very payment of wages is a powerful indication of workers’ moral equality.”²⁶⁴

At the same time, scholarship in this area does not explicitly contemplate the transnational dimensions of immigrant work that transpires in the United States. Social equality scholars have embraced concepts that are tethered to a purely domestic life. For example, Professor Samuel R. Bagenstos explains that the social equality principle “demands that inequalities in economic position (which may be beneficial or inevitable) not be automatically replicated into inequalities in other areas of life that are key to participation in society.”²⁶⁵ Thus, a worker’s relatively modest economic success should not lock in those disadvantages in terms of “access to the political process, community self-government, the process of petitioning for redress of grievances, or the protections of the law.”²⁶⁶

Still, the basic contours of the social equality account provide an opening for thinking through what equality means to workers embedded within transnational families. Returning to Rogers, he helpfully argues that wage protections provide workers with “greater self-respect as well as more time for leisure, caregiving, or other activities through which to achieve self-realization.”²⁶⁷ But realizing these benefits in transnational familial relationships would unfold differently than for workers who live with or near family members and

263. See Rogers, *supra* note 224, at 1570–88 (arguing that “minimum wage laws help ensure decent work and social equality for low-wage workers”); Samuel R. Bagenstos, *Employment Law and Social Equality*, 112 MICH. L. REV. 225, 243–73 (2013) (arguing that “employment law rules pervasively implicate questions of social equality” and analyzing employment law through a social equality lens); Noah D. Zatz, *The Minimum Wage as a Civil Rights Protection: An Alternative to Antipoverty Arguments?*, 2009 U. CHI. LEGAL F. 1, 23–27 (discussing the civil rights justifications for the minimum wage).

264. Rogers, *supra* note 224, at 1571.

265. Bagenstos, *supra* note 263, at 236.

266. *Id.* at 237.

267. Rogers, *supra* note 224, at 1592.

loved ones. For many migrant workers, leisure would not involve sharing meals or taking walks together (at least not with family members who remain in the migrant's country of origin). It would more likely involve using wages to pay for electronic devices or Internet services that could facilitate videocalls or remitting some wages so family members can gain similar access.²⁶⁸ A social equality vision of the law already meshes well with scholarly accounts of antimigration policies. A number of legal scholars have already demonstrated how immigration enforcement exacerbates inequality in the wage context. Marrying these accounts to anti-money laundering policies would help complete the picture of how migrant workers experience inequality as workers: that even if they are able to secure all of the wages they are owed, they face additional costs and indignities in translating those wages into benefits measured through leisure and caregiving. Because migrant workers are more likely to be embedded within transnational families than native-born workers, they are disproportionately impacted by the costs created by anti-money laundering practices in supporting family members.

A less extreme version of this same argument might pressure consumers and workers within the United States to buy American in certain instances. Even if legal tools like tariffs have a spotty or unsavory historical record, the general idea that law might be used to encourage spending within the American economy could be defensible. But even if such an idea is generally defensible, it is hard to make that case for remittances. It feels odd to demand that migrant workers spend their money within the United States when the reason that many remit wages is because immigration laws do not create meaningful opportunities for them to regularize their status or to admit their family members.²⁶⁹ This is not just the case for unauthorized migrants, but also for lawful permanent residents and citizen migrants who are subject to long wait times for visas for family members.

The empirical consequences of the remittance economy are less apparent because the negative impacts on Americans are less visible. Increased migration, especially of low-skilled workers, harms native-born workers by expanding the supply of workers and rendering wages

268. See Valerie Francisco, 'The Internet is Magic': *Technology, Intimacy and Transnational Families*, 41 CRITICAL SOCIO. 173, 175 (2015) (describing how transnational families use computer technology to keep in touch).

269. See *id.* (framing the need for immigrants to resort to computer technology to keep in touch as a result of immigration laws that prevent in-person interaction).

stagnant, at least in industries where migrant workers serve as substitutes. By contrast, the harm from remittances is much more diffuse because it affects U.S. businesses and consumers rather than workers. The argument here is that wages or earnings that flow out of the country could have been spent or reinvested in the United States, thereby expanding the consumer base for U.S. businesses. There might be some truth to this claim, but the consequences are much harder to identify. While some U.S. businesses might lose out on migrants' disposable income, others, like the financial services sector or transportation services (for those who are carrying or paying others to carry remittances to family members), certainly benefit.

Ultimately, there many reasons to support using the law to protect migrant wage earnings. But most of the thinking in this arena focuses on protecting wage earnings without taking into account whether and how these wage earnings end up in the pockets of a migrant's family. This focuses on a migrant's livelihood without considering the rest of a migrant's life. For migrants, giving meaning to one's body, mind, and heart is a project that requires disaggregation and that unfolds across multiple countries. Blending analyses of anti-money laundering and antimigration laws with family law and employment law can help reveal the quiet violence of moving across a border in one direction to send funds back in the other direction.

CONCLUSION

This Article has focused on the centrality of anti-money laundering policies in regulating migration. Viewing the broader legal system from this vantage point illustrates that anti-money laundering and antimigration policies developed in tandem to ensure a broadly conceived notion of public security against vague threats of foreign elements. Together, these legal tools enable legal and political actors to expand their reach not only over transnational remittance flows, but also over the conditions of admission and deportation of migrants. The harms emerge in remittance deserts and are experienced as the loss of economic expressions of affinity. In short, these laws work together to regulate the lives and livelihood of migrants. The harms of this system have mostly eluded legal scholars, so this Article presents the opportunity to contribute to important and ongoing discussions central to reform projects in the immigration law space. Finally, this Article shows that family separation harms operate along a spectrum and have become normalized in the modern era. One way that advocates and

legal decision-makers can slowly begin the process of integrating family separation into the legal infrastructure of U.S. financial institutions is to accord proper weight to the social meaning of remittances—namely, the long-distance, digitized expressions of familial relationships meant to preserve an emotional bond that one day may be enjoyed in person.