Immigration Law Spanish-Style II: A Study of Spain’s Voluntary Immigrant Return Plan and Circular Migration

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Immigration Law Spanish-Style II: A Study of Spain’s Voluntary Immigrant Return Plan and Circular Migration

By: María Pabón López* and Roxana A. Davis**

In 2008, following the downturn in its economy, Spain undertook a bold experiment in circular migration, by enacting a voluntary repatriation plan Plan de Retorno Voluntario. This plan gave immigrant workers in the country who could not find employment in Spain the opportunity to return to their countries of origin and take with them their accrued unemployment benefits. After discussing the background and history of Spain’s immigration law, this article explores the current situation regarding immigrant workers in Spain, as well as the hardships faced by immigrants during the economic downturn.

The article then examines the Plan de Retorno Voluntario itself, along with the policy analysis undertaken by the Spanish government as it decided to implement the plan. The article also discusses whether the Plan de Retorno Voluntario comports with the legal and policy norms of the European Union, of which Spain is a member. In particular, this piece takes into account the new EU policies regarding circular migration and examines Spain’s actions in the context of such policies. The article concludes by analyzing whether Plan de Retorno Voluntario can be considered a success, and discusses lessons that can be learned from this plan that was enacted in Spain.

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Introduction- What to do about immigrants in a downturn economy?

The global crisis that followed the collapse of the investment house Lehman Brothers in September 2008 can be viewed as having a deeper and more global effect on the movement of people around the world than any other economic downturn in the post-World War II era of migration. 1

The worldwide economic downturn has forced governments to adopt a range of policies to decrease the flow of immigrants, encourage their departure, and protect labor markets for native workers. 2 For example, Malaysia, Thailand, Kazakhstan, Taiwan, Australia, South Korea, and Russia have all restricted access to their labor markets by halting or decreasing the number of work permits for foreigners. 3 The United Kingdom has tightened admission requirements and the United States has placed restrictions on some companies seeking to bring high-skilled workers. 4 In an effort to encourage departure, Italy has criminalized unlawful presence and prevented unauthorized immigrant’s access to education and emergency medical care. 5

The Czech Republic, and Japan revived the “pay-to-go” schemes that date back to the 1970s. These plans encourage unemployed migrants to return to their home countries in exchange for some compensation and transportation expenses. 6 The United Kingdom also experimented with a “pay-to-go” scheme but with the variation that the government offers economic assistance to the immigrants before they reach their destination in the

2 Id. at 5.
3 Id.
4 Id.
5 Id. at 6
6 Id.
U.K. 7 The assistance includes airport transportation back to their home countries, €2000 in cash, resettlement assistance, and retraining when they arrive in their home country.8

Spain, a country which experienced a seven fold rise in its immigrant population in the last ten years9 and even granted immigration status to certain undocumented workers10 has also turned to such schemes. It is also “pay-to-go” scheme, called the Plan de Retorno Voluntario (Voluntary Return Program) has been the most publicized of all and is the focus of this article.

Spain launched its Plan de Retorno Voluntario in September 2008 with the slogan “Si has decidido regresar…tu eliges tu futuro,”11( if you have decided to return, you select your future.”) The Spanish government took this step after the country had entered a recession, with 11.3% unemployment rate—a 15 year high.12 By advancing unemployment benefits to unemployed non-EU workers, Spain sought to assist foreign workers that had contributed to Spain’s economic growth to return home in the best possible conditions.13

Along with the Plan de Retorno Voluntario, Spain adopted other domestic immigration policies to cope with the crisis.14 Spain enhanced security measures

7 Id.
8 Id.
9 Id.
14 The government of Spain launched a program in 2007 in conjunction with Red Cross International and NGOs, similarly named Retorno Voluntario (Voluntary Return), for immigrants in precarious conditions or at risk of social exclusion who wished to return to their homelands. See Se Disparan en las Solicitudes de Retorno Voluntario de los
against irregular immigration by increasing by more than half (53.4%) the number of
border police in 2008 and reducing by over a quarter (25.6%,) the irregular immigration
coming from the Mediterranean Sea. Also, Spain reduced the hiring of non-European
Union workers on long-term contracts in order to preserve jobs for its own citizens. The quota was reduced from 15,731 for 2008 to 931 for 2009, a drastic reduction of 94.3%.

Moreover, the Spanish Congress once more reformed the Ley Orgánica No. 4/2000 sobre Derechos y Libertades de los Extranjeros en España (Organic Law N°4/2000 on the Rights and Freedoms of Foreigners in Spain and their Social Integration) in December 2009. This reform links immigration with the labor market and adopts circular migration as a new pillar of Spain’s immigration policy, in harmony with the newly defined European Union common immigration policy. With all these measures the re-elected Spanish socialist government seems to have turned around its once welcoming immigration policy.

This article calls attention to the impact of the global economic downturn in the issue of migration and uses Spain’s Plan de Retorno Voluntario as an example of how governments around the world are responding to the crisis by encouraging circular migration. Part I presents an overview of Spain’s immigration law and its latest reforms. Part II describes the Spanish economic crisis and its consequences on the immigrant

17 Id.
population. Part III analyzes the legal framework of the *Plan de Retorno Voluntario* and how it is operating to date. Part IV gathers the reactions to the program from the point of view of the immigrants, unions, political parties, and the international community. Part V assesses the public policy behind the *Plan de Retorno* and how it coincides with the recently adopted common European Union immigration policy. Part VI concludes by assessing whether the *Plan de Retorno* was a success or failure and whether lessons can be drawn from what has happened in Spain.

I. Overview of Spain’s Immigration Law and its latest reform

The Spanish Constitution of 1978, which mandates that “foreigners in Spain will enjoy the rights and liberties put forth here, according to the terms set by international treaties and the law”, protects the rights of foreigners in Spain.\(^{19}\)

Aside from the Spanish Constitution, the legal framework applicable to foreigners that are citizens of the European Union (“EU”) differs greatly from the one applicable to non-EU citizens.\(^{20}\) This is because EU citizens and their relatives have rights to free movement and permanence within the EU member states and thus do not require work and residence authorizations in Spain.\(^{21}\)

Royal Decree N°240/2007 of February 16, 2007 on access and permanence in Spain of citizens of member states of the EU and other member states of the Economic European Space is the main regulation for EU citizens.\(^{22}\) Its basic purpose is to outline

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\(^{19}\) See López, *supra* note 10 at 574.


\(^{21}\) *Id.*

\(^{22}\) *Id.* Royal Decree N°240/2007 of February 16 replaced Royal Decree N°178/2003 of February 14 on the access and permanence in Spain of citizens of member states of the EU and the latter replaced Royal Decree N°766/1992 of June 2006 regarding access and permanence in Spain of citizens of member states of the EU.
procedures that EU citizens have to follow to be legally identified while living in Spain.

On the other hand, the regulatory structure applicable to non-EU citizens is much more complex because it encompasses a series of laws and regulations that detail foreigner’s work and residence rights and which been modified several times within the last decade. The first immigration legislation in Spain was enacted on July 11, 1985; it is entitled Organic Law N°7/1985 on the Rights and Freedoms of Foreigners in Spain and their Social Integration. This law was highly restrictive and aimed at reducing the entry of immigrants in Spain as much as possible.

On January 11, 2000, Organic Law N°4/2000 amended this law to expand immigrant’s rights and introduce integration measures. Organic Law N°4/2000 established the basic rights and freedoms of foreigners in Spain; the legal requirements to enter, live, and work in Spain; the different types of visas, residence, and work permits; and the different status of foreign citizens during their stays in Spain; as well as the offenses and penalties related to immigration.

On July 20, 2001, the Spanish Congress issued the administrative regulations for Organic Law N°4/2000 through Royal Decree N°864/2001. These regulations set forth specific requirements for foreigners’ entry and departure, as well as transitory and resident statuses; the annual contingent of foreign employees; cross-border employees;

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23 *Id.*
26 *Id.*
27 *Id.* at 1.
28 *Id.*
foreign minors; foreigners’ documentation; returns and required exits; foreign offices; and centers for migration.  

Organic Law N°4/2000 on the Rights and Freedoms of Foreigners in Spain and their Social Integration, as subsequently amended, continues to be the most relevant legislation on immigration to this date.  

As a result of the crisis, the Spanish Congress recently reform it on December 12, 2009 through Organic Law N°2/2009. This new reform introduced modifications in the areas of rights of foreigners, family reunification, as well as new immigration offenses and sanctions to combat illegal immigration.  

The reform guarantees foreigners the fundamental human rights of assembly and speech, association, unionization and strike, education, and legal counsel regardless of legal status. The right to education is plenary and recognized for children under the age of 18.  

In terms of family reunification, immigrants need permanent resident status, and five years of stay in Spain in order to bring spouses, children, and parents to Spain. This is in contrast to the former law that allowed immigrants who resided in Spain for one year to bring their nuclear family to Spain. Also, immigrants may only bring parents over the age of 65 if they can justify the need for their relocation. The policy

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29 Id. In December 30, 2004, Royal Decree N°864/2001 was replaced by Royal Decree N°2393/2004, which was amended through Royal Decree N°1162/2009.  
31 Ley Orgánica N°2/2009, supra note 18.  
32 Id.  
33 Id.  
34 Id.  
35 Id.  
36 Spanish government moves to restrict immigration amid economic downturn, EFE World News Service, December 19, 2008 available at 12/19/08 EFENEWSERV 00:00:00 WL news  
behind the age ban is to prevent the entry of more people of working age.\textsuperscript{38} Another difference is that immigrants now may bring a partner who is not necessarily a legal spouse.

Finally, the reform establishes new immigration offenses to combat fraud such as sham marriages, promotion of irregular immigration, and falsification of personal data for immigration applications.\textsuperscript{39} Spanish law enforcement now can hold immigrants entering Spain legally for 60 days instead of the former 40 days.\textsuperscript{40} New fines for immigration offenses are also steeper both for employers and immigrants ranging from €500 for lesser offenses to between €10,000 and €100,000 for serious and very serious offenses.\textsuperscript{41}

II. Spain’s economic crisis and its impact on immigrants

A. The Spanish economy and the global crisis

The fiesta is over in Spain. The Spanish economy that flourished between 1994 and 2007, with an average growth rate of 3.6%, and created one in three jobs in the European Union during this period is no longer.\textsuperscript{42} The total employment in Spain grew from 12 million in 1993 to 20 million in 2007.\textsuperscript{43} This development allowed Spain to become a vibrant, middle-class, urban society where Spaniards enjoyed an income 90% equal to their European counterparts.\textsuperscript{44}

The major driver of the Spanish’s economy was the housing market’s growth that began in 1999 when Spain adopted the Euro as its currency and interest rates dramatically

\begin{flushright}
\textsuperscript{38} See supra note 34. \\
\textsuperscript{39} Ley Orgánica N°2/2009, supra note 14. \\
\textsuperscript{40} Id. \\
\textsuperscript{41} Id. \\
\textsuperscript{43} Id. \\
\textsuperscript{44} Id. \\
\end{flushright}
fell from 18% to 5%. 45 The labor demand increased sharply and it was fulfilled initially by Spaniards but later mostly by immigrants. 46 The majority of immigrants worked in construction (24.3%), followed by agriculture (18.6%), services (12.9%), and industry. 47

The housing boom ended in 2007, when the European Central Bank raised interest rates and the international financial crisis tightened access to credit. 48 By the end of 2008, the construction sector crisis spread to service and other industries, and Spain closed the year with a rate of unemployment of 13.4% with a total of 3.1 million people unemployed. 49 Of these, immigrants have been the most affected.

At the end of 2008, the total foreign population residing in Spain, according to municipal registry statistics, reached 5.2 million out of a total population of 46 million. 50 Resident immigrant statistics, accounted for 4.4 million immigrants. 51 From this group, European Union citizens were 1.794 million and citizens from the rest of Europe were 122.840. 52 African immigrants numbered 922.635; the majority of these came from Morocco. 53 Latin-American immigrants totaled 1.333.886, and were mostly Ecuadorians.

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45 Id.
46 Id.
48 Reid, supra note 42.
50 Pajares, supra note 47, at 24. This calculation included the unauthorized immigrant population.
51 Id.
52 Id. at 37.
53 Id.
The largest communities of immigrants in Spain at the time of the crisis were Rumanians (718,844), followed by Moroccans (717,016), and Ecuadorians (421,527).\textsuperscript{55}

B. The impact of the crisis on immigrants

The effects of the global recession on the immigrants’ well-being have been identified as belonging into six categories: unemployment, poverty, increased reliance on the informal economy, greater vulnerability for trafficking, and increased hostility in the countries of destination.\textsuperscript{56} We follow this classification to describe the impact of the crisis on immigrants in Spain.

Unemployment

Although unemployment rates for foreign workers have historically been higher than for native born Spaniards, by the third quarter of 2008, unemployment rates had risen substantially for both groups, to 10.2\% for Spaniards and 17.4\% for foreigners, compared to 7.4\% and 11.8\% in the same quarter of 2007.\textsuperscript{57} By the end of 2008, the general unemployment rate was 13.9\%, but for Spaniards it was 12.5\% in comparison to 21.3\% for foreigners.\textsuperscript{58}

The Minister of Labor and Immigration, Celestino Corbacho, has actually acknowledged that immigrants have suffered the consequences of the crisis with more intensity than Spaniards. He sympathized with immigrants and urged Spaniards to

\textsuperscript{54} Id.
\textsuperscript{55} Id.
\textsuperscript{56} Fix, supra note 1, at 93.
\textsuperscript{57} Id. at 61
\textsuperscript{58} Pajares, supra note 47, at 199.
understand the plight of the immigrant and not to see an immigrant as a fugitive, but as another Spaniard paying for the consequences of the crisis.  

By the end of 2009, the general unemployment rate was 18.8%, divided into 16.8% for Spaniards and 29.7% for foreigners. Foreign men were the most affected by unemployment at 33.1%, while the foreign women’s unemployment rate was 25.5%. Overall, these statistics show what Labor Minister Corbacho has asserted, that immigrants have been the most affected by the economic crisis in Spain.

In terms of poverty, immigrants have commented that their lives have become a grinding trail of employment centers, soup kitchens, and local charities. Many have fallen behind on rent or mortgage payments, are at risk of foreclosure, and others have already abandoned their residences. They express regret at having embarked in purchasing a house and blindly signed the papers without understanding the terms. At that time, immigrants were told that no barriers existed to obtaining credit and mortgage companies were willing to facilitate the process for them.

Representatives from the largest immigrant organizations, FEDROM for Romanians, ATIME for Moroccans and RUMINAHUI for Ecuadorians have confirmed a

61 Id.
64 Id.
65 Id.
climate of desperation among immigrants. 66 In their own words, the reality is simple; there has been no work and many immigrants are not able survive because they have already collected all their unemployment benefits. 67 The government measures to help with the crisis, principally regarding mortgages and debt, have not reached the bulk of immigrants yet. 68

A stark example of the immigrants’ struggle with poverty is that parents have begun sending their children back to their homelands. 69 The rationale behind this action is that it is better for the children to be at home during lean economic times. 70 The children’s departure and separation from their families is a human drama because they are often returned alone or accompanied by only one of the parents so that the other parent remains in Spain to maintain immigration status. 71 Most of ten the immigrants making this difficult choice are recently arrived ones who are unable to receive unemployment benefits. 72

The immigrants’ increased reliance on the informal economy, the black labor market, and the enhanced harsh exploitation are additional signs of the crisis in Spain. 73 Some entities have observed the increase in situations where immigrants with legal status were forced by their employers to work “under the table,” which meant no labor contract

67 Id.
68 Id.
70 Id.
71 Id.
72 Id.
73 See supra note 61.
and no social security benefits. 74 The more available workers there are, the more these situations are likely to increase. 75

Also, the worsening of labor conditions in some sectors seemed to affect immigrants in particular. 76 For the majority of immigrants, the return to their homelands on their own has not been an option; because of this, their need to find any kind of job has become more urgent day after day. Often, they have been pressured into taking jobs in working conditions which are ripe for exploitation. 77

The Secretary of Social Policy of Union General de Trabajadores (“UGT,” Spain’s National Labor Union) has called attention to the fact that female immigrants endured some of the worst working conditions in Spain. These include lack of employment stability, disproportionate concentration in sectors such as housekeeping and elderly care and overall underemployment. These experiences of immigrant women workers are related to with jobs that historically have the worst hours and wages, and to the difficulty of validation of degrees from their homelands. 78

The hostility towards immigrants also increased in Spain, to such degree that the average Spaniard, when polled, has indicated that immigration to Spain should be halted. This view was shown by a survey conducted for the newspaper, El Mundo, at the beginning of the crisis. The survey showed that 68% of Spaniards thought that too many foreigners lived in Spain and half of them considered that the government erred in

74 Pajares, supra note 50, at 72.
75 Id.
76 Id. at 73.
77 Id.
approving the last massive regularization.\textsuperscript{79} Moreover, two thirds of all Spaniards linked increased immigration with higher crime rates. Finally, the same poll showed that approximately half of the Spaniards agreed with the idea of denying health care and free education to immigrants. \textsuperscript{80}

Professor Carlos Giménez, a scholar at Universidad Autónoma de Madrid forecasts that the crisis inevitably will bring more cases of racism and facilitate the advancement of xenophobic parties in Spain. \textsuperscript{81} He has stated that periodic polls have showed an increase in the hostile and ambivalent Spanish groups that fear loss of identity, language, and public space because of immigration. \textsuperscript{82} Against this dire backdrop, the Spanish government has taken action in the form of the \textit{Plan de Retorno Voluntario}.

III. \textit{Plan de Retorno Voluntario}

A. Law and Regulation

In response to the soaring unemployment rates of the second quarter of 2008, the Spanish government launched the \textit{Plan de Retorno Voluntario} to encourage unemployed immigrants to return to their countries of origin in exchange for compensation. The \textit{Plan de Retorno} is a pay-to-go scheme that dates back to 1977 when France first created a voluntary return program to repatriate its guest workers. \textsuperscript{83} Spain is not the only nation

\begin{itemize}
\item \textsuperscript{80} \textit{Id.}
\item \textsuperscript{81} \textit{La crisis hará crecer el racismo y la xenofobia en España}, ABC, February 21, 2009, available at http://www.abc.es/20090221/nacional-sociedad/crisis-hara-crecer-racismo-200902211201.html (last visited August 12, 2010)
\item \textsuperscript{82} \textit{Id.}
\item \textsuperscript{83} Fix, \textit{supra} note 1, at 6.
\end{itemize}
that has used the program to deal with the recent economic crisis; as mentioned earlier, the Czech Republic and Japan have also launched similar programs in 2009.  

The Spanish Congress adopted the *Plan de Retorno Voluntario* on September 19, 2008, under Royal Decree Law N°4/2008. The administrative regulations with the specific terms of the program were approved on November 3, 2008, under Royal Decree Law N°1800/2008. Unlike previous immigration programs, such as the generalized regularizations of 2000 and 2005, this plan is permanent. This explains why neither the act nor the administrative regulation establishes a deadline for applications.

In order to qualify for the *Plan de Retorno Voluntario*, the applicant needs to comply with the following requirements: 1) have legal residence in Spain, either permanent or temporary; 2) be unemployed as a consequence of an employment termination; 3) be registered at the Public Office of Employment; 4) be entitled to receive unemployment benefits; 5) have not incurred in any of the actions that prohibit exit from Spain under Spain’s Immigration Law; and 6) be a national of a country that has signed a bilateral agreement on social security matters with Spain.

Nations that have subscribed a bilateral treaty with Spain on social security matters are: Andorra, Argentina, Australia, Brazil, Canada, Chile, Colombia, Ecuador,

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84 Id.
85 Real Decreto Ley N°4/2008, de Septiembre 19, sobre abono acumulado y de forma anticipada de la prestación contributiva por desempleo a trabajadores extranjeros no comunitarios que retornen voluntariamente a sus países de origen.
86 Real Decreto N°1800/2008, Noviembre 3, por el que se desarrolla el Real Decreto-Ley N°4/2008, de 19 de Septiembre, sobre abono acumulado y de forma anticipada de la prestación contributiva por desempleo a trabajadores extranjeros no comunitarios que retornen voluntariamente a sus países de origen.
87 Nota de Prensa del Ministerio de Trabajo e Inmigración, supra note 13.
88 Nota Informativa, Ministerio del Trabajo e Inmigración and INEM, sobre el abono acumulado y anticipado de la prestación contributiva por desempleo a trabajadores extranjeros que retornan a su país de origen, available at http://www.inmigracionclm.org/recursos/recursos/36258.html (last visited August 12, 2010)
U.S.A., Russian Federation, Philippines, Morocco, Mexico, Paraguay, Peru, Dominican Republic, Tunisia, Ukraine, Uruguay, and Venezuela.\textsuperscript{89}

Thus, European Union citizens and undocumented immigrants are excluded from the program. European Union citizens were excluded to ensure that they did not claim departure bonuses and then return to Spain under European Union free-migration agreements.\textsuperscript{90} Overall, the excluded undocumented immigrants are comprised mostly of the African workers and a large percentage of Bolivians living in Spain.\textsuperscript{91}

By agreeing to the Plan de Retorno, applicants commit to return to their country of origin within 30 calendar days from the date of receipt of compensation and to remain there for a period of 3 years.\textsuperscript{92} The bar on return is specific to labor or professional activities.\textsuperscript{93} This suggests that immigrants that committed to this program may travel to Spain for family visits.

The compensation in exchange for the return is a lump-sum of each individual immigrant’s uncollected unemployment benefits.\textsuperscript{94} In addition to the compensation, the Spanish government offers to pay for transportation plus € 50 per family member for travel expenses, and unexpected related expenses.\textsuperscript{95} The amount of compensation depends on the contributions immigrants made to the social security funds while working in Spain. This means workers who have being collecting unemployment will only receive

\begin{itemize}
  \item \textsuperscript{89} Id.
  \item \textsuperscript{90} Fix, supra note 1, at 62.
  \item \textsuperscript{92} See supra note 84.
  \item \textsuperscript{93} Id.
  \item \textsuperscript{94} Id.
  \item \textsuperscript{95} See supra note 7 and accompanying text.
\end{itemize}
whatever remains in their funds and those who have not worked long will collect smaller amounts. The average payment is about €9,035.  

The returning immigrants under the Plan de Retorno Voluntario receive 40% of their compensation up front in Spain and receive the remaining 60% in their countries of origin when they appear at the respective Spanish embassy or consulate to confirm their return.  

They have a maximum of 90 days, from the date of the first payment, to collect the second payment. Once they give up their residence cards and any document linking them to Spain—such as work permits, national identity number cards, social security cards, health care cards, and the like—they lose their right to reside in Spain.  

After three years of being away, immigrants who had obtained permanent residence in Spain may regain their status following a simplified process that has yet to be regulated. Immigrants who had only temporary residence, however, have to reapply for authorization to work and reside in Spain. The government does not guarantee future employment authorizations, but only a “preferred right” to incorporate in the Spanish workforce. The period of time outside Spain will not count for residence purposes. Family members who do not have independent legal residence also lose their status when the principal applicant agrees to return under this plan.

B. How the plan is working

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96 Manzano, supra note 87.
97 See supra note 88.
98 Id.
99 Id.
100 Id.
101 Id.
102 Id.
103 Id.
When the Minister of Labor and Immigration, Celestino Corbacho, first announced the *Plan de Retorno* in June of 2008, he estimated than more than 1 million immigrants would opt to return home. However, by October of the same year, his expectations had dropped to 87,000 applicants.\(^{104}\)

The *Instituto Nacional de Empleo* (Spain’s Ministry of Labor) began receiving applications on November 17, 2008, and by the end of the first week, it collected 256. In weeks that followed, the rhythm slowed down, and the first month of the program closed with a total of 767 applications.\(^{105}\)

Of this first group of applicants, the majority were men, 180, whereas only 30 were females.\(^{106}\) By employment sectors, 37% of applicants belonged to the construction industry, 31% worked in real estate and provided general services to businesses (including janitorial work), 9% were merchants, and 8% worked in the hotel industry.\(^{107}\) By nationality, Ecuadorians led the list of applicants, followed by Colombians, and Argentines.\(^{108}\)

Immigrants who were ready to depart found several obstacles. First, they needed more time to resolve with domestic obligations. These duties included paying off loans, selling property and equipment, getting a release from housing contracts, and finding new housing, jobs, and schools for their children in their countries of origin.\(^{109}\)

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\(^{104}\) Abend, *supra* note 12.


\(^{106}\) Id.

\(^{107}\) Id.

\(^{108}\) Id.

Second, the Spanish government did not provide counseling, administrative, or financial assistance for the complex moving process and made it more difficult for immigrants to leave.\textsuperscript{110} Despite this official lack of assistance, immigrants were fortunate that they had access to consultation services provided by migrant organizations, NGOs, churches, mosques, and the International Organization for Migration.\textsuperscript{111}

Third, some immigrants encountered a long bureaucratic process and a lengthy two month wait for approval of their applications.\textsuperscript{112} This was the case even when Spanish law requires the \textit{Instituto Nacional de Empleo} to approve applications within 15 days from the day of filing and notify the applicants within 10 days of the decision.\textsuperscript{113}

While applications for the program had not increased much by May 2009, the Minister of Labor and Immigration continued to express confidence in the program. Minister Corbaho stated at the time that the numbers were within the government’s expectations. He also noted that if the applications rose, they would prove the utility of the plan. He further opined that if applications continued to be low, it would show that despite the crisis, immigrants continued to trust Spain more than their own countries.\textsuperscript{114}

As of April 2010, the last figures available, a total of 11,660 immigrants have submitted applications since the launching of the \textit{Plan de Retorno Voluntario}.\textsuperscript{115} Of this total, the Spanish government approved 8,451 immigrants and they actually returned

\begin{footnotesize}
\begin{footnotes}
\item[\textsuperscript{110}] \textit{Id}. at 3.
\item[\textsuperscript{111}] \textit{Id}. at 7.
\item[\textsuperscript{113}] Ministerio del Trabajo e Inmigracion and INEM, \textit{Solicitud de abono acumulado y anticipado de la prestación contributiva por desempleo a trabajadores extranjeros que retornan a su país de origen}, available at \url{http://www.inem.es/inem/ciudadano/prestaciones/pdf/Anexo_2_APRE_Solicitud_abono_acumulado_y_anticipado.pdf}.
\item[\textsuperscript{114}] See \textit{supra} note 55.
\item[\textsuperscript{115}] Pajares, \textit{supra} note 57, at 122.
\end{footnotes}
\end{footnotesize}
home. 116 Ecuadorians were by far the most benefited with more than 5,000 returns, followed by Colombians, Argentines, and Peruvians.117

Reactions to the Plan de Retorno

A. Immigrants

Twenty four hours after the Spanish Congress adopted the Plan de Retorno, twenty three immigrant organizations in the community of Cataluña protested against the immigration policy of the government. 118 They criticized the government for blaming immigrants for the current economic crisis and encouraging a xenophobic and racist public reaction. 119 The president of the Dominican Association of Cataluña summed it best in his words of protest: “it is not our fault; instead we are part of the solution.” 120

At the launching of the program, the Association of Moroccan Workers and Immigrants of Spain (“ATIME”), a group which comprises the largest immigrant community in Spain after Rumania, polled the reactions of their members to the Plan de Retorno. The poll found that an overwhelming 83% of Moroccan immigrants rejected the measure and only 10% welcomed it. 121

To the question of whether they would take advantage of the measure, 73% interviewed Moroccans answered no, 8% said yes, and 11% left the possibility open for the near future. 122 To the question of the need for extra compensation in addition to the

116 Id.
117 Id.
119 Id.
120 Id.
121 Id.
122 Id.
unemployment advance, 44% answered it was necessary whereas 43% said that there was no need for it. 123 From the group that demanded additional compensation, 88% considered that the amount should be more than 20,000 €. 124

The Immigrant Association Rumiñahui of Ecuador (“Ruminahui”) predicted that even those immigrants who can collect up to €7000 in unemployment benefits would find it difficult to depart Spain. 125 The reasons were that Ecuadorians doubted that employment opportunities in Ecuador would improve in the near future. Also, they feared that foreign investment, if attracted, would first occur in areas with better infrastructure, but not in the rural and geographically isolated areas where they come from. 126 Finally, they feared downward labor mobility if they have to work in maquiladoras after having worked in services in Spain. 127

Overall, eligible immigrants interviewed by the media rejected the Plan de Retorno for six main reasons: 1) they have not worked long enough to receive significant compensation; 128 2) they do not want to give up their residence cards and employment authorizations after all the sacrifices they endured to obtain them; 129 3) despite the crisis, they have a better life in Spain than in their countries of origin; 130 4) they fear humiliation of returning home empty-handed; 131 5) they are integrated in Spain.

123 Id.
124 Id.
125 Plewa, supra note 109 at 8.
126 Id.
127 Id.
128 See supra note 101.
129 See supra note 59.
131 Id.
and do not want to go back home and start their lives again; and 6) they believe that they have been used and now the government wants to get rid of them.\textsuperscript{133}

Another motivation for rejecting the plan that did not show in the polls or interviews is the fact that Spain provides of free services to immigrants regardless of legal or employment status. These services include essentials such as free health care, free education for children, and re-qualification programs.\textsuperscript{134} This factor alone possibly balanced the scale in favor of staying in Spain by positioning immigrants in a better situation than back in their countries of origin.\textsuperscript{135}

B. Domestic Opinion

The Spanish Congress approved the \textit{Plan de Retorno} with the opposition of two major political parties, the rightist Popular Party ("PP") and the United Left ("IU").\textsuperscript{136} Rafael Hernando, a Congressman for the PP, expressed his disappointment with the measure calling it a “mini-law” that did not solve the main problem of massive illegal immigration and unemployment.\textsuperscript{137}

Gaspar Llamazares, a Congressman for IU, also rejected the measure but for different reasons. He qualified the measure as symbolic, useless, and populist; a step backwards in the path of integrated and welcoming immigration.\textsuperscript{138} In his words, the plan

\begin{flushleft}
\textsuperscript{132} \textit{Id.} \\
\textsuperscript{133} \textit{Id.} \\
\textsuperscript{134} Plewa, \textit{supra} note 109, at 9. \\
\textsuperscript{135} \textit{Id.} \\
\textsuperscript{137} \textit{Id.} \\
\end{flushleft}
pointed at immigrants as the cause of the bad economy and unemployment and that link
was unfair because they did not bring the crisis and should not have to pay for it.139

The Confederated Labor Union (“USO”) commented that the Plan de Retorno
was not advantageous for immigrants because it required immigrants to give up their
hard-to-obtain right to reside in Spain in order to receive an advance of their pensions, a
right that already belongs to them.140 The USO urged the government to stop linking
unemployment and immigration and act to prevent that the weakest class of workers
suffer the most in times of crisis.141

Employers who depended on foreign workers opposed the Spanish’s government
incentives from immigrants to leave or to curb their admissions.142 They claimed that
any unexpected decrease in labor supply would penalize Spanish businesses without
necessarily helping the Spanish unemployed.143 Moreover, farmers and growers argued
that despite the economic crisis, they continued to find difficult to attract Spanish workers
to their industry.144

C. International opinion

Morocco and Ecuador, the nations with most immigrants residing in Spain after
Romania, viewed Spain’s Plan de Retorno with caution due to their inadequate capacity
to integrate returnees.145 They found that their reception resources were limited,

139 Id.
140 USO: “El plan de retorno de inmigrantes no tendrá éxito”, available at
http://hi35.dinaserver.com/hosting/fuso.es/uso/content/view/11796/33/, (last visited August 12, 2010)
141 Id.
142 Plewa, supra note 109, at 11.
143 Id.
144 Id.
145 Plewa, supra note 109, at 5.
particularly if immigrants where to come home en masse and all at the same time.\textsuperscript{146}

The economic crisis had debilitated their reception capabilities not only because they were affected by the crisis too, but because they had to receive immigrants from other countries besides Spain.\textsuperscript{147}

Morocco and Ecuador were also concerned that the returns would increase unemployment pressures and interrupt remittance flows, since the program did not include any training or job creation provisions.\textsuperscript{148} They considered a sudden wave of returnees a major obstacle to development, particularly in the context of the crisis.\textsuperscript{149}

At time of the launching of the \textit{Plan de Retorno}, the Ecuadorian Ambassador in Spain, Nicolas Issa, publicly rejected the plan. He found that it was not economically attractive for Ecuadorians and thus he did not expect many Ecuadorians to opt for it, even in face of the economic crisis in Spain.\textsuperscript{150}

Despite that the crisis has affected approximately 10\% of Ecuadorians living in Spain, Ambassador Issa was confident in the versatility of Ecuadorian workers and their ability to find other ways to make a living.\textsuperscript{151} He forecasted that Ecuadorians might go back to their country when they retire, but not now because they had obligations, kids in school, and a whole life in Spain.\textsuperscript{152} He also regretted that the Spanish government did not request Ecuador’s input in the creation of the plan.\textsuperscript{153}

\textsuperscript{146} \textit{Id.}
\textsuperscript{147} \textit{Id.}
\textsuperscript{148} \textit{Id. at 4.}
\textsuperscript{149} \textit{Id.}
\textsuperscript{151} \textit{Id.}
\textsuperscript{152} \textit{Id.}
\textsuperscript{153} \textit{Id.}
Despite the initial lack of cooperation, Ecuador has developed the most friendly reception policies for returning immigrants. This is true especially as compared to Morocco and Colombia, the other two countries with most eligible immigrants returning from Spain.\textsuperscript{154} The Ecuadorian Welcome Home Plan consisted of duty exemptions on household and professional equipment brought from abroad, a housing loan up to $50,000, and business start-up funds.\textsuperscript{155}

In addition, Ecuador funded its cultural institutes in Spain, known as Casas Ecuatorianas, with a financial and administrative capacity to keep Ecuadorians informed about what they could expect in Ecuador following their return.\textsuperscript{156} These institutions facilitated contact between immigrants and potential employers in Ecuador, and they provided information on educational reinsertion of their children. They also assisted families with some administrative tasks associated with departure.\textsuperscript{157}

Reaction to the plan has also come from broader places in the international community. The OECD Labor Department Director, John Martin, has commented on Spain’s abrupt changes on immigration policy in the OECD Annual Meeting on Global Migration.\textsuperscript{158} He warned Spain that experience had shown that return policies have not succeeded in the past. In fact, he predicted the failure of these policies in Spain based on the immigrants’ unwillingness to lose their social rights and their skepticism of being allowed reentry to Spain after three years.\textsuperscript{159} Angel Gurria, OECD Secretary General,

\textsuperscript{154} Plewa, supra note 109, at 5-6
\textsuperscript{155} Id.
\textsuperscript{156} Id.
\textsuperscript{157} Id.
\textsuperscript{159} Id.
added that the success of return programs is conditioned upon existing opportunities in the countries of origin.\textsuperscript{160}

Circular Migration as the public policy behind the Plan de Retorno and the new EU Common Immigration Policy

In its press release, the Labor and Immigration Ministry introduced the \textit{Plan de Retorno} as a measure aimed at the following objectives: (1) to assist foreign workers that have contributed to Spain’s economic growth to return home in the best possible conditions; (2) to facilitate circular migration and thus allow foreign workers to decide whether to stay or depart Spain based on the opportunities in Spain and their countries of origin, and (3) to favor the development of countries of origin with the supply of qualified workers and capital.\textsuperscript{161}

Similar objectives were behind the latest reform of Organic Law N°4/2000 on the Rights and Freedoms of Foreigners in Spain and their Social Integration. The law was directed at perfecting the legal and orderly channeling of migratory flows and consolidating Spain’s immigration policy as one that links the arrival of new immigrants to the necessities of the labor market.\textsuperscript{162}

Thus, although Spain has attributed the Plan de Retorno unilaterally on the economic crisis, it appears that there are additional rationales for the plan. The measure has not been designed exclusively for this economic juncture because the program is permanent. The \textit{Plan de Retorno} when combined with the latest reform of the Organic Law N°4/2000 on the Rights and Freedoms of Foreigners in Spain and their Social Integration shows a clear transformation in the broader scheme of Spain’s immigration

\textsuperscript{160} \textit{Id.}
\textsuperscript{161} See supra note 83.
\textsuperscript{162} Ley Organica N°2/2009, supra note 14.
policy from open and welcoming to restrictive and encouraging only of circular migration.

So what is circular migration? The term first appeared in the late 1960s and 1970s, mainly in anthropological and demographic literature and referred often to seasonal or periodic migration for work, for survival, or as a life-cycle process.\textsuperscript{163} In 2000, the concept of circular migration entered discussions of international migration, notably along the US-Mexico border and within the European Union in relation to countries east and south of the EU.\textsuperscript{164}

It was not until the middle of the current decade, circular migration began to be seriously considered as a policy tool for governments.\textsuperscript{165} The EU used the concept in its attempt to develop both a global approach to migration and a neighborhood policy in 2006 and the United Nations also used it to launch a Global forum on Migration and Development in 2007.\textsuperscript{166} Since then, circular migration has been seen as a valuable policy tool in the areas of migration and development because it takes advantage of the natural preference of immigrants of returning, at least temporarily, to their countries of origin.\textsuperscript{167}

Although no formal definition of circular migration exists yet, the EU’s definition “a form of migration that is managed in a way allowing some degree of legal mobility back and forth between two countries” is the most relevant in the Spanish context

\begin{footnotes}
\footnote{Id. at 6.}
\footnote{Id.}
\footnote{Id.}
\footnote{Id.}
\footnote{Id.}
\end{footnotes}
because Spain is a member state. \footnote{Christiane Kuptsch, \textit{Circular Migration and Integration: Squaring the Circle, ILO} (background paper prepared for Conference Population, Integration, and Law: Implications for Immigration Policy, San Diego, 29-30 March 2010), available at, http://migration.ucdavis.edu/rs/files/2010/kuptsch-circular-migration-and-integration.pdf} It is important to note that when the EU defined circular migration, it clarified that “if not properly managed, migration intended to be circular can easily become permanent and thus defeat its objective.” This statement clearly indicates that circular migration is about temporary migration. \footnote{Id.}

Looking at Spain’s adoption of circular migration as the new immigration policy in light of the above EU’s definition, we understand that Spain is saying: 1) we will take immigrants, but we will decide in advance which kinds of immigrants and what qualifications we want; and 2) the immigrants that we take will come to Spain temporarily but not to stay. In the words of the Labor and Immigration Minister “Spain is not in any condition to absorb more immigrants, but sectors with professional deficit may still need qualified workers.” \footnote{Corbacho: “España no está en condiciones de absorber más inmigración,” Jan. 18, 2009, TRIBUNA LATINA, available at, http://www.tribunalatina.com/client/print/print_notice.php?IDN=16510, (last visited August 12, 2010)}

Spain’s change of heart coincides with the newly adopted common EU immigration policy of closing doors to low-skilled immigrants and welcoming high-skilled ones. This policy flows from the last two agreements passed by the EU in 2008: the Directive of Common Standards and Procedures in Member States for Returning Illegally Staying Third-country Nationals, commonly known as “The Return Directive” and the European Pact on Immigration and Asylum.
The purpose of the Return Directive is to lay down EU-wide rules and procedures on the return of illegal immigrants.\textsuperscript{171} The Return Directive covers periods of custody as well as re-entry bans but also includes a number of legal safeguards.\textsuperscript{172} Member States are banned from applying harsher rules to illegal immigrants but allowed to keep or adopt more generous rules.\textsuperscript{173}

This directive was harshly criticized by Amnesty International and the European Council on Refugees and Exiles (ECRE), among other NGOs, in that it does not guarantee the fundamental rights of immigrants being removed.\textsuperscript{174} It was also condemned by South America’s leaders, Hugo Chavez from Venezuela, Lula Da Silva from Brazil, and Rafael Correa from Ecuador.\textsuperscript{175} Chavez called the rules "shameful" and threatened both to cancel investment in and disrupt oil exports to the countries that enact the controversial immigration measure while Lula expressed his fear that the cold winds of xenophobia were once again blowing from Europe.

The European Pact on Immigration and Asylum is intended to form the basis of a genuine common European policy on immigration and asylum, given the challenges of the coming years and the need for solidarity and cooperation in the management of migratory flows.\textsuperscript{176} This pact has five principal objectives: 1) to organize legal immigration, by taking account of the priorities, needs and reception capacities

\textsuperscript{172} Id.
\textsuperscript{173} Id.
\textsuperscript{175} Id.
determined by each Member State, including the need to encourage integration; 2) to control illegal immigration, in particular by ensuring that illegal immigrants return to their countries of origin or to a transit country; 3) to make border controls more effective; 4) to construct a Europe which is welcoming of those seeking asylum; and 5) to create a comprehensive partnership with the countries of origin and of transit by encouraging the synergy between migration and development.\textsuperscript{177}

The pact specifically urges Member States to adapt immigration policies to the labor market and to encourage forms of temporary or circular migration. Similarly, it prioritizes the increase of attractiveness of the EU for highly qualified workers and the taking of new measures to further facilitate their reception. Also, it bans generalized regularizations or mass amnesties and mandates illegal immigrants to leave the EU territory.\textsuperscript{178} Spain, of course, has participated in such regularizacion programs, as recently as 2005.\textsuperscript{179}

Conclusion-Has the plan worked?

For the Director of the Observatory of Immigration at Universidad de Alicante, the plan has absolutely failed.\textsuperscript{180} His view seems accurate based on the number of applications filed to date that only account for 13.4\% of the expected applications considering the lowest government’s estimate of 87,000. This result may change over time, however, due to the weak recovery of the global economy.

\textsuperscript{178}Id.
\textsuperscript{179}See generally Lopez, supra note 10.
The positive aspect of the Plan de Retorno is the Spanish government’s prompt response to the economic crisis and attempt to assist the large immigrant population affected by high unemployment. In fact, policies that promote circular migration, like the Plan de Retorno, may be good after all, according to a survey conducted by El Mundo, a leading Spanish national newspaper. Half of the interviewed immigrants living in Spain denied wanting to remain in Spain indefinitely. Of this group, 82% was planning to return to their homelands in some years whereas only 17% was willing to stay until retirement age.\footnote{El 50\% de los inmigrantes piensa en regresar a su país de origen, EL MUNDO, July, 11, 2008, available at http://www.elmundo.es/elmundo/2008/11/07/madrid/1226077659.html, (last visited August 12, 2010)} Certainly having the ability to take unemployment earned and be back at home in one’s own country can be an attractive proposition for some immigrants, particularly in face of extended time of no work in Spain. The possibility of returning after three years under the plan is also attractive, again in face of restrictive immigration policies in other countries around the globe.

The negative aspects of the Plan de Retorno, however, appear to outweigh the positive ones. First, the plan excludes undocumented immigrants, the most vulnerable to the crisis because they have not been long enough in Spain and do not have family or friends willing to help them get back on their feet. Second, it links unemployment and immigration exacerbating division between Spaniards and immigrants. Third, it focuses on the problem of unemployment but not in solutions, like education and training for the low-skill immigrants to adapt to the new market needs. Fourth, it does not remunerate immigrants adequately for the relinquishment of their residence since the compensation offered comes from their unemployment funds that already belong to them.
In the end, responses to economic crisis in the form of policies such as the *Plan de Retorno Voluntario* call attention to the issue of what kind of social responsibility Spain and other developed countries have towards immigrants during times of economic crisis. Human beings are not like other parts of the economy; it is problematic to get rid of them after having used their labor to benefit the national economy in times of growth. We are reminded of the saying that “we sought workers and human beings came.” After taking a look at Spain, we know that governmental return policies need to take into account the intense hardships of relocating and attempting to integrate again into a new environment which these programs entail for the immigrants and their children. Only then will the policies reach their maximum utility, when the immigrants will more likely to take advantage of them.

Only the passage of time will show if Spain’s experiment has been a success or a failure. Depending on who is judging, there also will be different perspectives on the success of the program from its very inception. It is clear, however, that the plan has undoubtedly been a bold step to address a societal economic crisis and Spain’s government has shown great leadership in taking such swift and decisive action. Other countries experiencing economic downturns where there are large immigrant populations might do well to analyze how Spain has done immigration law Spanish-style with the enactment of the Plan de Retorno Voluntario as a way to encourage circular migration.

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