

IMMIGRATION LAW SPANISH-STYLE II: SPAIN'S VOLUNTARY IMMIGRANT RETURN PLAN AND THE NEW PUSH FOR CIRCULAR MIGRATION

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TABLE OF CONTENTS

I. INTRODUCTION	80
II. OVERVIEW OF SPAIN'S IMMIGRATION LAW AND ITS LATEST REFORM.....	82
III. SPAIN'S ECONOMIC CRISIS AND ITS IMPACT ON IMMIGRANTS	85
A. The Spanish Economy and the Global Crisis	85
B. The Impact of the Crisis on Immigrants.....	86
1. Unemployment	86
2. Poverty	87
3. Increased Reliance on the Informal Economy	88
4. Greater Vulnerability to Human Trafficking.....	89
5. Increased Hostility in the Countries of Destination.....	89
IV. <i>PLAN DE RETORNO VOLUNTARIO</i>	90
A. Law and Regulation	90
B. How is the Plan Working?	92
V. REACTIONS TO THE <i>PLAN DE RETORNO VOLUNTARIO</i>	94
A. Immigrants	94
B. Domestic Opinion	96
C. International Opinion	96
VI. CIRCULAR MIGRATION AS THE PUBLIC POLICY BEHIND THE <i>PLAN DE RETORNO VOLUNTARIO</i> AND THE NEW EU COMMON IMMIGRATION POLICY	98
VII. CONCLUSION	101

I. INTRODUCTION

*The global financial 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 global economic downturn has forced governments around the world to adopt a range of policies to decrease the influx 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 in highly-skilled workers.⁴ In an effort to encourage departure, Italy has criminalized unlawful presence and prevented unauthorized access to education and emergency medical care by immigrants.⁵

Countries have also implemented “pay-to-go” schemes which encourage unemployed migrants to return to their home countries in exchange for partial compensation and transportation expenses.⁶ The Czech Republic and Japan have both revived “pay-to-go” schemes that date back to the 1970s.⁷ The United Kingdom has also experimented with a “pay-to-go” scheme, but with the variation that the government offers economic assistance to U.K.-bound immigrants before they even enter the United Kingdom.⁸ The assistance includes airport transportation back to their home countries, €2000 in cash, resettlement assistance, and retraining once they arrive in their homelands.⁹

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1. MIGRATION POLICY INSTITUTE, *MIGRATION AND THE GLOBAL RECESSION 1* (2009), available at <http://www.migrationpolicy.org/pubs/MPI-BBCreport-Sept09.pdf> [hereinafter MIGRATION POLICY INSTITUTE].

2. *Id.* at 5.

3. *Id.*

4. *Id.* at 5-6.

5. *Id.* at 6.

6. MIGRATION POLICY INSTITUTE, *supra* note 2, at 6.

7. *Id.*

8. *Id.*

9. *Id.*

Spain, which has experienced a seven-fold rise in its immigrant population in the last ten years and ¹⁰ has granted immigration status to certain undocumented workers,¹¹ has also turned to such schemes. Its “pay-to-go” scheme, called the *Plan de Retorno Voluntario* (Voluntary Return Program), has been highly publicized 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” (If you have decided to return, you select your future).¹² The Spanish government took this step after the country entered a deep recession, with an 11.3% unemployment rate – a 15-year high.¹³ With this plan, Spain sought to help non-EU foreign workers, who had contributed to its economic growth, return home in the best possible conditions, by advancing unemployment benefits.¹⁴

Along with the *Plan de Retorno Voluntario*, Spain adopted other domestic immigration policies to cope with the crisis.¹⁵ Spain enhanced security measures against irregular immigration by significantly increasing the number of border police, while also reducing the irregular immigration coming from the Mediterranean Sea by over a quarter.¹⁶ Also, in order to preserve jobs for its own citizens, Spain decreased the hiring of non-EU workers on long-term contracts by

10. *Id.* at 3.

11. For an analysis of the granting of legal status of undocumented workers in Spain, see generally María Pabón López, *Immigration Law Spanish Style: A Study of Spain's Normalization of Undocumented Workers*, 21 GEO. IMMIG. L.J. 571 (2007).

12. *Plan de Retorno Voluntario*, GOBIERNO DE ESPAÑA, http://www.planderetornovoluntario.es/interior_uno.html (last visited Feb. 8, 2011) [hereinafter *Plan de Retorno Voluntario*].

13. Lisa Abend, *Spain Tries to Buy Out Immigrants*, TIME, Oct. 20, 2008, available at <http://www.time.com/time/world/article/0,8599,1852000,00.html>.

14. Nota de Prensa, Ministerio de Trabajo e Inmigración, El Gobierno aprueba ofrecer el abono acumulado del desempleo a extranjeros que deseen retornar a sus países de origen (Sept. 19, 2008), available at http://extranjeros.mtin.es/es/Actualidad/documentos/cdm_retorno_final.pdf.

15. The government of Spain launched a program in 2007 in conjunction with Red Cross International and other 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. *Se disparan en las solicitudes de retorno voluntario de extranjeros*, TERRA NOTICIAS (Aug. 6, 2008), <http://noticias.terra.es/2008/espana/0806/actualidad/se-disparan-en-las-solicitudes-de-retorno-voluntario-de-extranjeros.aspx>.

16. GOBIERNO DE ESPAÑA, MINISTERIO DEL INTERIOR, BALANCE DE LA LUCHA CONTRA LA INMIGRACIÓN ILEGAL (2008), available at http://www.mir.es/DGRIS/Balances/Balance_2008/pdf/bal_lucha_inmigracion_ilegal_2008.pdf.

reducing the allowed quota from 15,731 for 2008 to 901 for 2009.¹⁷ This represents a drastic reduction of 94.3%.¹⁸

Moreover, the Spanish Congress once more reformed the *Ley Orgánica No. 4/2000 Sobre Derechos y Libertades de los Extranjeros en España* in December 2009. This bill marks the first time that immigration flows have been linked with the labor market. It also adopted circular migration as the new pillar of Spain's immigration policy, a move that places Spain in harmony with the newly defined EU common immigration policy.¹⁹ With these measures the re-elected Spanish socialist government reversed its once welcoming immigration policy.

This article calls attention to the impact of the global economic downturn on migration both globally and in Spain. It also evaluates the push for circular migration as the new Spanish immigration policy. In addition, it points out the need for governments around the globe to comprehensively examine all the factors involved in "pay-to-go" schemes that aim to send immigrants and their children back home, including the intense hardships of relocation and integration into a new environment.

Part I of this article presents an overview of Spain's immigration law and its latest reforms. Part II describes the Spanish economic crisis and its consequences on immigrants. Part III analyzes the legal framework of the *Plan de Retorno Voluntario* and how it is operating to date. Part IV gathers reactions to the program from the point of view of immigrants, unions, political parties, and the international community. Part V assesses the public policy behind the *Plan de Retorno Voluntario* and how it coincides with the recently adopted EU common immigration policy. Part VI concludes by assessing whether the *Plan de Retorno Voluntario* was a success or failure and evaluating the lessons that can be drawn from its implementation.

II. OVERVIEW OF SPAIN'S IMMIGRATION LAW AND ITS LATEST REFORM

The Spanish Constitution of 1978 mandates that "[f]oreigners in Spain will enjoy the rights and liberties put forth here, according to the terms set by international treaties and the law."²⁰ Notwithstanding the Spanish Constitution, the legal framework applicable to foreigners that are citizens of the European Union differs greatly from the one applicable to non-EU citizens.²¹ This is because EU

17. Tomas Barbulo, *El gobierno reduce el 94% una va de contratacion de inmigrantes en origen* [Government Reduces Hiring of Foreigners in Country of Origin by 94 Percent], *ELPAIS* (Spain), Dec. 16, 2008, http://www.elpais.com/articulo/espana/Gobierno/reduce/94/via/contratacion/inmigrantes/origen/elpepiesp/20081212elpepinac_12/Tes.

18. *Id.*

19. *Ley Orgánica 2/2009, de 11 de diciembre, de reforma de la Ley Orgánica 4/2000, de 11 de enero, sobre derechos y libertades de los extranjeros en España y su integración social* [Organic Law 2/2009 on the Rights and Freedoms of Foreigners in Spain and their Social Integration] (B.O.E. 2009, 299) (Spain), available at http://www.bcn.cat/novaciudadania/pdf/en/assessoria/plans/BOE-A-2009-19949_en.pdf.

20. See López, *supra* note 12, at 574-75.

21. Pilar Menor, *Current Practices and Upcoming Changes for Immigration Law in Spain*,

citizens and their relatives have rights to free movement and permanence within EU member states and thus do not require work and residence authorizations in Spain.²²

The main Spanish regulation regarding EU citizens is Royal Decree No. 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.²³ Its basic purpose is to outline procedures that EU citizens must follow for legal identification while living in Spain.²⁴

The regulatory structure applicable to non-EU citizens, however, is much more complex; it encompasses a series of laws and regulations that detail foreigners' work and residence rights and has been modified several times within the last decade. The first immigration legislation in Spain for non-EU citizens, entitled Organic Law No. 7/1985 on the Rights and Freedoms of Foreigners in Spain and their Social Integration, was enacted on July 11, 1985.²⁵ This law was highly restrictive and sought to reduce the entry of immigrants into Spain as much as possible.²⁶

To the contrary, subsequent legislation issued on January 11, 2000, Organic Law No. 4/2000 on the Rights and Freedoms of Foreigners in Spain and their Social Integration, expanded immigrant's rights and introduced integration measures.²⁷ It established the basic rights and freedoms of foreigners in Spain as well as the legal requirements to enter, live, and work there.²⁸ It set forth different types of visas, residence and work permits, and the different statuses of foreign citizens during their stays in Spain.²⁹ In addition, it defined the offenses and penalties which could be imposed with regard to immigration.³⁰

This expansive law, applicable to non-EU citizens, was regulated in July 20, 2001 by Royal Decree No. 864/2001.³¹ This regulation established: "specific requirements in order to enter or exit Spain, as well as transit and resident situations; the annual contingent of foreign employees; the situation of cross-border employees; foreign minors (foreigners under legal age); foreigners'

in IMMIGRATION LAW CLIENT STRATEGIES IN THE EU 23 (Eddie Fournier ed., 2010).

22. Treaty Establishing a Constitution for Europe, art. 2-105, Dec. 16, 2004, 2004 O.J. (C 310) 51; *see also* Menor, *supra* note 21, at 4 (discussing the differences in regulation on entry and right to work applicable to EU and non-EU nationals).

23. Menor, *supra* note 22, at 4. Royal Decree No. 240/2007 of February 16, 2007 replaced Royal Decree No. 178/2003 of February 14, 2003, on the access and permanence in Spain of citizens of EU member states and the latter replaced Royal Decree No. 766/1992 of June 26, 1992 regarding access and permanence in Spain of citizens of member states of the EU.

24. *Id.*

25. López, *supra* note 12, at 575.

26. Menor, *supra* note 22, at 2.

27. *Id.*

28. *Id.*

29. *Id.* at 1.

30. *Id.*

31. Menor, *supra* note 22, at 1.

documentation; returns and obligatory exits; foreign offices; and centers for migration.”³²

Organic Law No. 4/2000, as subsequently amended, continues to be the most relevant legislation on immigration applicable to non-EU citizens.³³ As a result of the economic crisis, the Spanish Congress reformed it once more on December 12, 2009 by passing Organic Law No. 2/2009.³⁴ This latest reform introduced modifications to the rights of foreigners and family reunification. It also created new immigration offenses and sanctions to combat illegal immigration.³⁵

In terms of fundamental human rights, Spain now guarantees foreigners’ rights of assembly, free speech, and association, the right to unionize and strike, the right to education, and the right to legal counsel regardless of legal status.³⁶ The right to education is plenary and recognized for children under the age of eighteen.³⁷

For family reunification, sponsoring immigrants now need permanent resident status, and five years of residence in Spain, in order to sponsor spouses, children, and parents.³⁸ Previously, immigrants who had resided in Spain for one year were able to sponsor their nuclear family.³⁹ Also, immigrants may now only bring parents under the age of sixty-five on the condition that they justify the need for their parents’ relocation.⁴⁰ The policy behind this age restriction is to prevent the entry of more working age people.⁴¹ Another difference is that immigrants may now sponsor a partner who is not necessarily a legal spouse.⁴²

Finally, the latest reform creates new immigration offenses in order to combat fraud such as sham marriages, promotion of irregular immigration, and falsification of personal data for immigration applications.⁴³ Spanish law enforcement can now detain immigrants entering Spain for up to sixty days, instead of the prior forty-day limit.⁴⁴ New fines for immigration offenses are also

32. *Id.* at 1-2. On December 30, 2004, Royal Decree No. 864/2001 was replaced by Royal Decree No. 2393/2004, which was amended through Royal Decree No. 1162/2009.

33. *Id.* at 2. The original Organic Law No. 4/2000 has three major amendments: (1) Organic Law No. 8/2000; (2) Organic Law No. 11/2003; and (3) Organic Law No. 14/2003. *Id.*

34. LO 2/2009, de 11 de diciembre, de reforma de la Ley Orgánica 4/2000, de 11 de enero, sobre derechos y libertades de los extranjeros en España y su integración social, (B.O.E. 2009, 299) (Spain), available at [http://www.tt.mtin.es/periodico/LEY_EXTRANJERIA\(BOE12-12-2009\).pdf](http://www.tt.mtin.es/periodico/LEY_EXTRANJERIA(BOE12-12-2009).pdf) [hereinafter LO 2/2009]

35. *Id.*

36. *Id.*

37. *Id.*

38. *Id.*

39. *Spain passes immigration reform bill with new restrictions but also new rights for Foreigners*, CANADIAN PRESS, Nov. 26, 2009.

40. LO 2/2009, (B.O.E. 2009, 299) (Spain).

41. *Id.*

42. *Id.*

43. *Id.*

44. *Id.*

steeper, both for employers and immigrants, ranging from €500 for lesser offenses to between €10,000 and €100,000 for grave and very serious offenses.⁴⁵

III. SPAIN'S ECONOMIC CRISIS AND ITS IMPACT ON IMMIGRANTS

A. *The Spanish Economy and the Global Crisis*

The Spanish economy flourished between 1994 and 2007, averaging a growth rate of 3.6% and creating one in three jobs in the European Union.⁴⁶ During this period, the total employment in Spain grew exponentially from twelve million in 1993 to twenty million in 2007.⁴⁷ This development allowed Spain to become a vibrant, middle-class, urban society where Spaniards enjoyed an income that was ninety-percent of that of their European counterparts.⁴⁸

The major force behind the Spanish economic boom was the housing market's growth, which began in 1999 when Spain adopted the euro as its currency and interest rates fell dramatically from eighteen to five percent.⁴⁹ The housing boom caused the labor demand to increase sharply; demand that was initially fulfilled by Spaniards, but after some time mostly by immigrants.⁵⁰ During these prosperous times, the majority of immigrants living in Spain worked in construction (24.3%), some worked in agriculture (18.6%) and services (12.9%), while the minority was employed in manufacturing.⁵¹

The housing boom ended in 2007 when the European Central Bank raised interest rates and the international financial crisis tightened access to credit.⁵² By the end of 2008, the fiesta was over in Spain. The construction sector crisis spread to services and other industries, and the unemployment rate in Spain rose to 13.4% with a total of 3.1 million people unemployed.⁵³ Undoubtedly, of the unemployed section of the population, immigrants were the most affected.

When the crisis hit at the end of 2008, the foreign population residing in Spain was 5.2 million out of a total population of 46 million.⁵⁴ Resident

45. LO 2/2009, (B.O.E. 2009, 299) (Spain).

46. Michael Reid, *The Morning After*, THE ECONOMIST, Nov. 6, 2008, http://www.economist.com/surveys/PrinterFriendly.cfm?story_id=12501087.

47. *Id.*

48. *Id.*

49. *Id.*

50. *Id.*

51. MIGUEL PAJARES, INMIGRACIÓN Y MERCADO DE TRABAJO. INFORME 2009 79 (2010), *available at* http://extranjeros.mtin.es/es/ObservatorioPermanenteInmigracion/Publicaciones/archivos/Inmigracion_Mercado_de_Trabajo_OPI25.pdf.

52. Reid, *supra* note 47.

53. *El Paro Sube en un Millón de Personas en 2008 y Rebasa la Barrera de los Tres Millones*, EL PAIS, Aug. 1, 2009, http://www.elpais.com/articulo/economia/paro/sube/millon/personas/2008/rebasa/barrera/millones/elpepueco/20090108elpepueco_1/Tes.

54. PAJARES, *supra* note 52, at 24. This calculation included the unauthorized immigrant

immigrants accounted for 4.4 million of this total whereas undocumented immigrants were less than 1 million.⁵⁵ However, this last figure is inexact and might be larger because it comes from official records and it is known that some undocumented immigrants do not register with the government.⁵⁶

In terms of the immigrant population with resident status, the composition was as follows:⁵⁷ EU citizens amounted to 1,794,000; citizens from the rest of Europe were 122,840; African immigrants numbered 922,635 (the majority from Morocco); and Latin American immigrants totaled 1,333,886 (mostly Ecuadorians).⁵⁸ Overall, the largest communities of resident immigrants in Spain at the time of the crisis were Romanians (718,844), followed by Moroccans (717,016), and Ecuadorians (421,527).⁵⁹ On the other hand, Bolivians and Africans, other than Moroccans, represented the largest undocumented immigrant communities.

B. The impact of the crisis on immigrants

According to the Migration Policy Institute, the effects of the global recession on immigrants' well-being can be classified into five categories: unemployment, poverty, increased reliance on the informal economy, greater vulnerability to human trafficking, and increased hostility in the countries of destination.⁶⁰ We adopt this classification scheme in order to describe the impact of the crisis on immigrants living in Spain.

1. Unemployment

The labor market suffered the first signs of crisis by the third quarter of 2008 when unemployment rates rose substantially to 10.2% for native born Spaniards and 17.4% for foreigners, compared to 7.4% and 11.8%, respectively, in the same quarter of 2007.⁶¹ Unemployment rates for foreign workers have historically been higher than for native born Spaniards and the crisis continued this trend.⁶² By the end of 2008, the general unemployment rate was 13.9%, with a 12.5% rate for native born Spaniards in comparison to a 21.3% rate for foreigners.⁶³

The Minister of Labor and Immigration, Celestino Corbacho, acknowledged that immigrants were suffering the consequences of the crisis more intensely than Spaniards.⁶⁴ In his public speeches, he sympathized with immigrants and urged

population. *Id.*

55. *Id.*

56. *Id.*

57. *Id.* at 37.

58. *Id.*

59. *Id.*

60. MIGRATION POLICY INSTITUTE, *supra* note 2, at 93-109.

61. *Id.* at 61.

62. *Id.*

63. PAJARES, *supra* note 52, at 199. This calculation included the unauthorized immigrant population.

64. Corbacho: *no habrá brotes de xenofobia en España*, TRIBUNA LATINA (May 2, 2009),

Spaniards to try to understand their plight by viewing immigrants like any other Spaniard paying for the consequences of the crisis, rather than seeing them as fugitives.⁶⁵

By the end of 2009, the general unemployment rate in Spain hit a record high of 18.8%, yet native born Spaniards still had a clear advantage over immigrants with a rate of 16.8% versus a rate of 29.7% for foreigners.⁶⁶ Not surprisingly, foreign men were the most affected by unemployment at 33.1% because of the loss in construction jobs, while the unemployment rate for foreign women was 25.5%.⁶⁷

2. Poverty

In terms of poverty, immigrants commented that their lives had become a grinding trail of employment centers, soup kitchens, and local charities.⁶⁸ Many had fallen behind on rent or mortgage payments, were at risk of foreclosure, or had already abandoned their residences.⁶⁹ Several interviewees expressed regret at having embarked in purchasing a house and blindly signing papers without understanding the terms.⁷⁰ At the time these immigrants bought their homes they were told that no barriers existed to obtaining credit and that mortgage companies were willing to facilitate the process for them.⁷¹

Representatives from the largest immigrant organizations confirmed a climate of desperation among immigrants.⁷² In their own words, the reality was simple; there was no work and many immigrants were unable to survive because they had already collected all their unemployment benefits.⁷³ The principal government measures to combat the crisis, such as those dealing with mortgages and debt, did not reach the bulk of immigrants.⁷⁴

http://www.tribunalatina.com/client/print/print_notice.php?IDN=16790.

65. *Id.*

66. PAJARES, *supra* note 52, at 157. This calculation included the unauthorized immigrant population. *Id.*

67. *Id.*

68. Victoria Burnett, *Unemployed Immigrants Struggle as Hard-Pressed Spain Rolls Up Welcome Mat*, N.Y. TIMES, Dec. 10, 2008, www.nytimes.com/2008/12/10/world/europe/10spain.html.

69. Ana del Barrio, *'Perdí el empleo y me van a embargar. Pienso en suicidarme'*, EL MUNDO, Feb. 5, 2009, <http://www.elmundo.es/mundodiner/2009/02/04/economia/1233731781.html>.

70. *Id.*

71. *Id.*

72. *Los inmigrantes, "desesperados" porque el paro se está cebando con ellos*, EL ECONOMISTA.ES, (Feb. 2, 2009), <http://www.economista.es/empresas-finanzas/noticias/1019765/02/09/Los-inmigrantes-desesperados-porque-el-paro-se-esta-cebando-con-ellos.html>. The immigrant organizations for Romanians and Moroccans are, respectively, Rumiñahui Fedrom and Atime. *Id.*

73. *Id.*

74. *Id.*

A stark example of the immigrants' struggle with poverty was that immigrant parents had begun sending their children back to their homelands.⁷⁵ The rationale behind this action appeared to be that it is better for children to be at home during lean economic times.⁷⁶ Family separation is a human drama because children are often returned alone or accompanied by only one of the parents, while the other parent remains in Spain to maintain the family's immigration status.⁷⁷ Most often, the immigrants making this difficult choice have recently arrived in Spain and are ineligible for unemployment benefits.⁷⁸

3. Increased Reliance on the Informal Economy

Immigrants' increased reliance on the informal economy, the black labor market, and enhanced harsh exploitation are all additional signs of the unemployment crisis in Spain.⁷⁹ Some entities have observed an increase in situations where immigrants with legal status were forced by their employers to work "under the table," which means no labor contract and no social security benefits.⁸⁰ These entities predict that the more available workers there are, the more likely these situations are to continue.⁸¹

The worsening of labor conditions in some sectors also seemed to affect immigrants in particular.⁸² For the majority of immigrants, the return to their homelands on their own was not an option; because of this, their need to find any kind of job had become more urgent day after day.⁸³ Often, they have been pressured into taking jobs in working conditions which are ripe for exploitation.⁸⁴

According to the Secretary of Social Policy of *Union General de Trabajadores* (UGT, Spain's National Labor Union), female immigrants rely the most on the informal economy and therefore endure some of the worst working conditions in Spain.⁸⁵ The reasons are simple. First, immigrant women are employed and underemployed in low-wage industries, like housekeeping and elderly care, which lack economic stability.⁸⁶ Second, immigrant women have a hard time validating their foreign degrees in Spain and are therefore forced to work in low-wage industries.⁸⁷

75. *Padres envían de retorno a sus hijos*, TRIBUNA LATINA, (Feb. 26, 2009), http://www.tribunalatina.com/es/notices/padres_envian_de_retorno_a_sus_hijos_17122.php.

76. *Id.*

77. *Id.*

78. *Id.*

79. See MIGRATION POLICY INSTITUTE, *supra* note 2, at 108.

80. PAJARES, *supra* note 52, at 72. This calculation included the unauthorized immigrant population.

81. *Id.*

82. *Id.* at 73.

83. *Id.* at 74.

84. *Id.*

85. *Las mujeres inmigrantes ganan la mitad de sueldo que los hombres autóctonos*, EL MUNDO, May 8, 2010, <http://www.elmundo.es/elmundo/2010/08/05/barcelona/1281008827.html>.

86. *Id.*

87. *Id.*

4. Greater Vulnerability to Human Trafficking

Spain is a transit and destination country for men, women, and children trafficked for the purposes of commercial sexual exploitation and forced labor.⁸⁸ Victims are primarily trafficked from Romania, Russia, Ukraine, Brazil, Colombia, Dominican Republic, Ecuador, Paraguay, Venezuela, and Nigeria, though victims are also trafficked from other areas of Latin America, Eastern Europe, and Africa.⁸⁹ While most identified victims are women between the ages of eighteen and twenty-five who are trafficked for sexual exploitation, minor females are also trafficked to Spain for the same purpose, and men and women are trafficked for forced labor, most often in the agriculture and construction sectors.⁹⁰ A coalition of twenty NGOs in Spain estimates that there are at least 50,000 people in Spain who are victims of human trafficking.⁹¹

According to the U.S. Department of State, the recession has increased the vulnerability of migrants to human trafficking and to exploitation in the workplace, including involuntary servitude, both in Spain and globally.⁹² The reasons are simple: there is increased pressure to migrate and to take greater risks to do so because the recession dramatically reduced the immigrant's opportunities at home.⁹³ Additionally, the recession increased the demand for forced cheap and child labor, while at the same time reduced programs and services that previously assisted trafficked persons.⁹⁴ At the time of the crisis, the International Organization for Migration in Spain (which arranges returns for immigrants in the most precarious conditions) confirmed this vulnerability when it reported that several victims of human trafficking were among the immigrants that desperately needed to return home.⁹⁵

5. Increased Hostility in the Countries of Destination

Hostility towards immigrants has also increased to such a degree that polls indicate that many average Spaniards believe that immigration to Spain should be halted.⁹⁶ This sentiment was indicated by a survey conducted for the newspaper *El Mundo* at the beginning of the crisis. According to that survey, an overwhelming majority of Spaniards, sixty-eight percent, opined that too many foreigners lived in Spain, and fifty percent of the respondents believed that the government erred in

88. U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT 262 (2009) [hereinafter TIP REPORT 2009].

89. TIP REPORT 2009, *supra* note 88, at 262.

90. *Id.*

91. *Id.*

92. *Id.* at 34.

93. *Id.*

94. *Id.*

95. PAJARES, *supra* note 52, at 178.

96. Olga R. San Martín, *Demasiados y vinculados a la delincuencia*, EL MUNDO, Aug. 17, 2008, <http://medios.mugak.eu/noticias/noticia/163374>.

approving the last massive regularization.⁹⁷ Moreover, two-thirds of Spaniards linked increased immigration with higher crime rates.⁹⁸ Finally, the same poll showed that approximately half of the Spaniards surveyed agreed with the idea of denying health care and free education to immigrants.⁹⁹

Professor Carlos Giménez, a scholar at Universidad Autónoma de Madrid, forecasts that the crisis will inevitably increase cases of racism and facilitate the advancement of xenophobic parties in Spain.¹⁰⁰ According to Giménez, periodic polls have already showed an increase in the hostile and ambivalent Spanish groups that fear loss of identity, language, and public space because of immigration.¹⁰¹ Against this dire backdrop, the Spanish government has taken action in the form of the *Plan de Retorno Voluntario*.

IV. PLAN DE RETORNO VOLUNTARIO

A. Law and Regulation

In response to the soaring unemployment rates, the Spanish government launched the *Plan de Retorno Voluntario* to encourage unemployed immigrants to return to their countries of origin in exchange for compensation.¹⁰² The *Plan de Retorno Voluntario* is a “pay-to-go” scheme that is modeled after a plan dating back to 1977, when France first created a voluntary return program to repatriate its guest workers.¹⁰³ Spain is not the only nation that has used the program to deal with the recent economic crisis; as mentioned earlier, the Czech Republic and Japan also launched similar programs in 2009.¹⁰⁴

The Spanish Congress adopted the *Plan de Retorno Voluntario* on September 19, 2008, under Royal Decree Law No. 4/2008.¹⁰⁵ The administrative regulations, which contain the specific terms of the program, were approved on November 3, 2008 under Royal Decree Law No. 1800/2008.¹⁰⁶ Unlike previous immigration programs, such as the generalized regularizations of 2000 and 2005, this plan is

97. *Id.*

98. *Id.*

99. *Id.*

100. *La crisis hará crecer el racismo y la xenofobia en España*, ABC, Feb. 21, 2009, <http://www.abc.es/20090221/nacional-sociedad/crisis-hara-crecer-racismo-200902211201.html>.

101. *Id.*

102. MIGRATION POLICY INSTITUTE, *supra* note 2, at 62.

103. *Id.*

104. *Id.*

105. Real Decreto Ley No. 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 (BOE 2008, 228) (Spain).

106. Real Decreto Ley No. 1800/2008, de 3 de noviembre, por el que se desarrolla el Real Decreto-ley 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 (BOE 2008, 272) (Spain).

permanent.¹⁰⁷ This explains why neither the act nor the administrative regulations establish a deadline for applications.

In order to qualify for the *Plan de Retorno Voluntario*, an 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) not have engaged 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.¹⁰⁸

EU citizens and undocumented immigrants are excluded from the program to ensure that they do not claim departure bonuses and then return to Spain under EU free-migration agreements.¹⁰⁹ Overall, the excluded undocumented immigrants are comprised mostly of African workers and a large percentage of Bolivians living in Spain.¹¹⁰

Once applicants qualify under the *Plan de Retorno Voluntario*, they commit to return to their country of origin within thirty calendar days from the date of receipt of compensation and to remain there for a period of three years.¹¹¹ The bar on return is specific to labor or professional activities.¹¹² This suggests that immigrants that commit to this program may travel to Spain for family or personal visits.

The compensation in exchange for the return to the country of origin is a lump-sum of each individual immigrant's uncollected unemployment benefits.¹¹³ In addition to the compensation, the Spanish government offers to pay for transportation out of Spain, plus fifty euros per family member for travel expenses and unanticipated related expenses.¹¹⁴ The amount of compensation depends on the contributions immigrants made to the social security funds while working in Spain.

107. Nota de Prensa, Ministerio de Trabajo e Inmigración, *supra* note 15, at 2.

108. *Nota Informativa sobre El Abono Acumulado y Anticipado de la Prestación Contributiva por Desempleo a Trabajadores Extranjeros que Retornan a Su País de Origen*, INMIGRACIÓN CASTILLA LA MANCHA, http://www.inmigracionclm.org/upload/06/16/Nota_informativa.pdf (last visited Feb. 11, 2011). Nations that have subscribed to a bilateral treaty with Spain on social security matters are: Andorra, Argentina, Australia, Brazil, Canada, Chile, Colombia, Ecuador, the United States, the Russian Federation, the Philippines, Morocco, Mexico, Paraguay, Peru, the Dominican Republic, Tunisia, Ukraine, Uruguay, and Venezuela. *Id.*

109. MIGRATION POLICY INSTITUTE, *supra* note 2, at 62.

110. Gador Manzano & Yolanda Vaccaro, *Take the Money and Run: Voluntary Return Programs* (paper presented at the Conference on Diaspora and Development for the World Bank, July 13-14, 2009), *available at* http://siteresources.worldbank.org/INTPROSPECTS/Resources/334934-1110315015165/Manzano_Vaccaro.pdf.

111. MIGRATION POLICY INSTITUTE, *supra* note 2, at 62.

112. *Id.*

113. *Id.*

114. *Id.*

This means that workers who have been collecting unemployment will only receive whatever remains in their funds and those who have not worked long will collect even smaller amounts. The average payment is about €9,035.¹¹⁵

The returning immigrants under the *Plan de Retorno Voluntario* receive forty percent of their compensation before departing Spain and receive the remaining sixty percent in their countries of origin when they appear at the respective Spanish embassy or consulate to confirm their return.¹¹⁶ They have a maximum of ninety days from the date of the first payment to collect the second payment.¹¹⁷ 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.¹¹⁸

After three years of being away, immigrants who had permanent residence in Spain may regain their status following a simplified process, though that process has yet to be regulated.¹¹⁹ Immigrants who were only temporary residents, 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.¹²⁰ The period of time outside Spain will not count for residence purposes.¹²¹ Family members who do not have independent legal residence also lose their status when the principal resident agrees to return under this plan.¹²²

B. How is the Plan Working?

When the Minister of Labor and Immigration first announced the *Plan de Retorno Voluntario* in June of 2008, he estimated that more than one million immigrants would opt to return home.¹²³ However, by October of the same year, his expectations had dropped to 87,000 applicants.¹²⁴

The *Instituto Nacional de Empleo* (Spain’s Ministry of Labor) began receiving applications on November 17, 2008; by the end of the first week it had collected 256. In the weeks that followed, the rhythm slowed down and the first month of the program closed with a total of 767 applications.¹²⁵

115. Manzano & Vaccaro, *supra* note 102, at 18.

116. Piotr Plewa, *Update 11: The 2008/2009 Financial Crisis: Spain's Voluntary Return Program: Early Mechanisms and Early Responses*, <http://www.age-of-migration.com/na/financialcrisis/updates/11.pdf>.

117. *Id.*

118. *Id.*

119. *Id.*

120. *Id.*

121. *Id.*

122. Plewa, *supra* note 108, at 3.

123. Abend, *supra* note 14.

124. *Id.*

125. Daniel Ayllón, *El Plan de Retorno de inmigrantes se desinfla*, PUBLICO, Dec. 17, 2008, <http://www.publico.es/espana/183964/el-plan-de-retorno-de-inmigrantes-se-desinfla>. Daniel Ayllón, *El Plan de Retorno de inmigrantes se desinfla*, PUBLICO, Dec. 17, 2008, <http://www.publico.es/espana/183964/el-plan-de-retorno-de-inmigrantes-se-desinfla>.

Of this first group of applicants, the majority (180) were men, whereas only 30 were women.¹²⁶ 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.¹²⁷ By nationality, Ecuadorians led the list of applicants, followed by Colombians and Argentines.¹²⁸

Ironically, immigrants who were ready to depart Spain found several obstacles. First, they needed more than thirty days to resolve their domestic obligations, which included paying off loans, selling property and equipment, getting a release from housing contracts, in addition to finding new housing, jobs, and schools for their children in their countries of origin.¹²⁹

Second, the Spanish government did not provide counseling, administrative assistance, or financial assistance for the complex moving process, making it more difficult for immigrants to leave.¹³⁰ Fortunately, despite this lack of official assistance, many immigrants had access to consultation services provided by migrant organizations, NGOs, churches, mosques, and the International Organization for Migration.¹³¹

Third, some immigrants encountered a long bureaucratic process and a lengthy two month wait for approval of their applications.¹³² This occurred despite the fact that Spanish law requires the *Instituto Nacional de Empleo* to approve applications within fifteen days from the day of filing and to notify applicants within ten days of the decision.¹³³

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.¹³⁴ Minister Corbacho stated at that time that the numbers were within the government's expectations.¹³⁵ He also noted that, if the applications rose, they

126. *Id.*

127. *Id.*

128. *Id.*

129. Plewa, *supra* note 108, at 2.

130. *Id.* at 3.

131. *Id.* at 7.

132. Rebeca Llorente, "Me quiero marchar porque aquí, sin trabajo, no soy nadie", EL PAÍS, Jan. 19, 2009, http://www.elpais.com/articulo/Comunidad/Valenciana/quiero/marchar/trabajo/soy/nadie/elpepiespval/20090119elpval_1/Tes/.

133. Ministro De Trabajo E Inmigración, *Solicitud de Abono Acumulado y Anticipado de la Prestación Contributiva por Desempleo a Trabajadores Extranjeros Que Retornan a su País de Origen*, available at https://www.redtrabaja.es/es/portalttrabaja/recursos/pdf/informacion/prestaciones/Anexo_2_APR E_Solicitud_abono_acumulado_y_anticipado.pdf.

134. Corbacho dice que la 'excesiva flexibilidad' laboral es el problema, EL MUNDO, Apr. 2, 2009, <http://www.elmundo.es/mundodinero/2009/02/04/economia/1233769277.html>.

135. *Id.*

would prove the utility of the plan.¹³⁶ However, he further opined that, on the other hand, if applications continued to be low, it would show that despite the crisis, immigrants continued to trust Spain more than their home countries.¹³⁷

As of April 2010, a year and a half since the launching of the *Plan de Retorno Voluntario* (the last figures available), a total of 11,660 immigrants have submitted applications.¹³⁸ Of this total, the Spanish government approved 8,451 immigrants; all these individuals actually returned home to their respective countries of origin.¹³⁹ By far, Ecuadorians benefited the most, with more than 5,000 returns, followed by Colombians, Argentines, and Peruvians.¹⁴⁰

V. REACTIONS TO THE *PLAN DE RETORNO VOLUNTARIO*

A. Immigrants

Twenty-four hours after the Spanish Congress adopted the *Plan de Retorno Voluntario*, twenty-three immigrant organizations in the community of Cataluña protested against the new immigration policy.¹⁴¹ They criticized the government for blaming immigrants for the current economic crisis and encouraging a xenophobic and racist public reaction.¹⁴² The president of the Dominican Association of Cataluña summed it up best, protesting that “it is not our fault; instead we are part of the solution.”¹⁴³

After the launching of the program, the Association of Moroccan Workers and Immigrants of Spain (ATIME) polled the reactions of their members to the *Plan de Retorno Voluntario*. An overwhelming eighty-three percent of Moroccan immigrants rejected the measure and only ten percent welcomed it.¹⁴⁴

Seventy-three percent of Moroccans interviewed said that they would not take advantage of the measure, while only eight percent stated that they would do so and eleven percent left the possibility open for the near future.¹⁴⁵ With respect to the question of whether extra compensation was needed to leave in addition to the unemployment advance, forty four percent answered it was necessary, whereas forty-three percent said that there was no need for it.¹⁴⁶ Moreover, of the group that

136. *Id.*

137. *Id.*

138. PAJARES, *supra* note 52, at 123.

139. *Id.* at 124.

140. *Id.*

141. Angel Marin, *Los Inmigrantes se Organizan Contra el Ministro Corbacho*, ABC, Oct. 4, 2008, <http://www.abc.es/20081004/catalunya-catalunya/inmigrantes-organizan-contra-ministro-20081004.html>.

142. *Id.*

143. *Id.*

144. Plewa, *supra* note 108, at 9.

145. *Id.*

146. *Id.*

opined that additional compensation was necessary, eighty-seven percent believed that the amount should be more than €20,000.¹⁴⁷

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.¹⁴⁸ This was due to the fact that Ecuadorians doubted that employment opportunities in Ecuador would improve in the near future.¹⁴⁹ Also, Ecuadorians believed that even if foreign investment were attracted, it would first occur in areas with better infrastructure, rather than the rural and geographically isolated areas from where they had come.¹⁵⁰ Finally, they feared downward labor mobility: being forced to work in *maquiladoras* in their country of origin, after having worked in the service industry in Spain.¹⁵¹

In summary, eligible immigrants interviewed by the media rejected the *Plan de Retorno Voluntario* for six main reasons: (1) they have not worked long enough to receive significant compensation;¹⁵² (2) they do not want to give up their residence cards and employment authorizations after all the sacrifices they endured to obtain them;¹⁵³ (3) despite the crisis, they have a better life in Spain than in their countries of origin;¹⁵⁴ (4) they fear humiliation of returning home empty-handed;¹⁵⁵ (5) they are integrated in Spain and do not want to go back home and start their lives again;¹⁵⁶ and (6) they believe that they have been used and now the government wants to get rid of them.¹⁵⁷

Another motivation for rejecting the plan, which the polls or interviews did not reveal, is the fact that Spain provides 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.¹⁵⁸ This factor alone possibly tipped the scale in favor of staying in Spain by positioning immigrants in better situations than those in their countries of origin.¹⁵⁹

147. *Id.*

148. *Id.* at 8.

149. Plewa, *supra* note 108, at 8.

150. *Id.* at 9.

151. *Id.*

152. *Id.* See Manzano & Vaccaro, *supra* note 102.

153. Steve Kingstone, *Spain's radical plan for migrants*, BBC NEWS, Sep. 3, 2008, <http://news.bbc.co.uk/2/hi/europe/7568887.stm>. To qualify, migrants would have to surrender their Spanish work and residence papers for the duration of the deal. *Id.*

154. *Id.*

155. *Id.*

156. *Id.*

157. *Id.*

158. Plewa, *supra* note 108, at 9.

159. *Id.*

B. *Domestic Opinion*

The Spanish Congress approved the *Plan de Retorno Voluntario* with the opposition of two major political parties, the rightist Popular Party (PP) and the United Left (IU).¹⁶⁰ 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.¹⁶¹

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 integration and fostering immigration.¹⁶² He believed that the plan targeted immigrants as the cause of the bad economy and unemployment, noting that such a link was unfair because immigrants did not cause the crisis and should not have to pay for it.¹⁶³

The Confederated Labor Union (USO) commented that the *Plan de Retorno Voluntario* was not advantageous for immigrants because it forced them to give up their hard-to-obtain right to reside in Spain in order to receive an advance of their pensions, which is a right that already belonged to them.¹⁶⁴ The USO urged the government to stop linking unemployment with immigration and instead act to prevent the weakest class of workers from suffering the most in a time of crisis.¹⁶⁵

Employers who depended on foreign workers opposed the Spanish government's attempt to both incentivize immigrant departures and curb immigrant admissions.¹⁶⁶ They claimed that any unexpected decrease in labor supply would penalize Spanish businesses without necessarily helping unemployed Spaniards.¹⁶⁷ Moreover, farmers and growers argued that, despite the economic crisis, they continued to find it difficult to attract Spanish workers to their industry.¹⁶⁸

C. *International opinion*

Morocco and Ecuador, the nations with most immigrants residing in Spain after Romania, viewed Spain's *Plan de Retorno Voluntario* with caution due to

160. *El Congreso Aprueba el Plan de Retorno Voluntario Para Inmigrantes Desempleados*, EL PAIS, Feb. 10, 2008,

http://www.elpais.com/articulo/espana/Congreso/aprueba/plan/retorno/voluntario/inmigrantes/desempleados/elpepuesp/20081002elpepunac_8/Tes.

161. *Id.*

162. *El dinero del retorno no es suficiente para retomar la vida, dice Llamazares*, TRIBUNA LATINA, Sep. 30, 2008, http://www.tribunalatina.com/es/notices/el_dinero_del_retorno_no_es_suficiente_para_retomar_la_vida_dice_llamazares_14596.php.

163. *Id.*

164. *USO: “El plan de retorno de inmigrantes no tendrá éxito”*, AGENCIA DE NOTICIAS DE INFORMACIÓN ALTERNATIVA, Sep. 19, 2008, <http://www.uso.es/content/view/11796/33/>.

165. *Id.*

166. Plewa, *supra* note 108, at 11.

167. *Id.*

168. *Id.*

their inadequate capacities to integrate returnees.¹⁶⁹ These governments found that their reception resources were limited, particularly if immigrants were to come home *en masse*.¹⁷⁰ The economic crisis had debilitated their reception capabilities because they too were financially affected by the crisis and because they had to receive immigrants from countries other than Spain.¹⁷¹

Because the program did not include any training or job creation provisions, Morocco and Ecuador were also concerned that the returns would increase unemployment pressures and interrupt remittance flows.¹⁷² They considered a sudden wave of returnees a major obstacle to development, particularly in the context of the crisis.¹⁷³

At the time of the launching of the *Plan de Retorno Voluntario*, the Ecuadorian Ambassador to Spain, Nicolas Issa, publicly rejected the plan.¹⁷⁴ He found that the plan would not be 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.¹⁷⁵

Despite the fact that the crisis had affected approximately ten percent 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.¹⁷⁶ He forecasted that Ecuadorians might go back to their country when they retire, but at the present moment they had obligations, kids in school, and a whole life in Spain that would prevent them from doing so.¹⁷⁷ He also regretted that the Spanish government did not request Ecuador's input in the creation of the plan.¹⁷⁸

Despite the initial lack of cooperation, Ecuador has developed the most friendly reception policies for returning immigrants.¹⁷⁹ This is particularly true when compared to Morocco and Colombia, the other two countries with most eligible immigrants returning from Spain.¹⁸⁰ 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.¹⁸¹

In addition, Ecuador funded cultural institutes in Spain, known as Casas Ecuatorianas, with the financial and administrative capacity to keep Ecuadorians

169. *Id.* at 4.

170. *Id.* at 5.

171. Plewa, *supra* note 108, at 5.

172. *Id.* at 4.

173. *Id.*

174. *Embajador ecuatoriano: "El plan de retorno voluntario no es atractivo,"* TRIBUNA LATINA, Sep. 26, 2008, http://www.tribunalatina.com/client/print/print_notice.php?IDN=14510.

175. *Id.*

176. *Id.*

177. *Id.*

178. *Id.*

179. Plewa, *supra* note 108, at 5.

180. *Id.*

181. *Id.*

informed about what they could expect in Ecuador following their return.¹⁸² These institutions facilitated contact between immigrants and potential employers in Ecuador, while also providing information for the educational reintegration of their children. They also assisted families with some administrative tasks associated with departure.¹⁸³

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.¹⁸⁴ He warned Spain that past experience has shown that return policies have not been successful.¹⁸⁵ 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.¹⁸⁶ Angel Gurria, OECD Secretary General, added that the success of return programs is conditioned upon existing opportunities in the countries of origin.¹⁸⁷

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

In its press release, the Labor and Immigration Ministry indicated that it introduced the *Plan de Retorno Voluntario* as a measure aimed at the following objectives: (1) to allow 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.¹⁸⁸

Similar objectives were behind the latest reform of Organic Law No. 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 into one that links the arrival of new immigrants to the necessities of the labor market.¹⁸⁹

Thus, although Spain has unilaterally attributed the *Plan de Retorno Voluntario* to the economic crisis, it appears that there are additional motives behind the plan. Clearly, the measure has not been designed exclusively for this

182. *Id.*

183. *Id.*

184. *La OCDE pide a España que no modifique su política migratoria, tras el anuncio de Corbacho*, LIBERTAD DIGITAL SA, Sep. 10, 2008, <http://www.libertaddigital.com/economia/la-ocde-pide-a-espana-que-no-modifique-su-politica-migratoria-tras-el-anuncio-de-corbacho-1276338246/>.

185. *Id.*

186. *Id.*

187. *Id.*

188. *See supra* note 83.

189. LO2/2009, de 11 de diciembre, de reforma de la Ley Orgánica 4/2000, de 11 de enero, sobre derechos y libertades de los extranjeros en España y su integración social.

economic juncture, because the program is permanent. The *Plan de Retorno Voluntario*, when combined with the latest reform of the Organic Law No. 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 policy: from open and welcoming to restrictive and encouraging only circular migration.

Spain appears to have adopted circular migration as a public policy aim. The term first appeared in the late 1960s and 1970s, mainly in anthropological and demographic literature, often referring to seasonal or periodic migration for work, for survival, or as a life-cycle process.¹⁹⁰ 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.¹⁹¹

It was not until the middle of the current decade that circular migration began to be seriously considered as a policy tool for governments.¹⁹² In 2006, the European Union used the concept in its attempt to develop both a global approach to migration and a neighborhood policy.¹⁹³ The United Nations also used it to launch a Global Forum on Migration and Development in 2007.¹⁹⁴ 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 for returning, at least temporarily, to their countries of origin.¹⁹⁵

Although no formal definition of circular migration yet exists, the European Union has defined it as "a form of migration that is managed in a way allowing some degree of legal mobility back and forth between two countries."¹⁹⁶ It is important to note that when the European Union defined circular migration, it clarified that "if not properly designed and managed, migration intended to be circular can easily become permanent and thus defeat its objective."¹⁹⁷ This statement clearly indicates that circular migration is analogous to temporary migration.¹⁹⁸

Viewing Spain's adoption of circular migration as its new immigration policy in light of the above EU's definition, we draw two conclusions. First, Spain appears willing to accept immigrants, but it wants *carte blanche* to decide in

190. KATHLEEN NEWLAND, CIRCULAR MIGRATION AND HUMAN DEVELOPMENT, UN DEV. PROGRAMME HUMAN DEV. RESEARCH PAPER 2009/42 5 (2009), available at http://hdr.undp.org/en/reports/global/hdr2009/papers/HDRP_2009_42.pdf.

191. *Id.* at 6.

192. *Id.*

193. *Id.*

194. *Id.*

195. NEWLAND, *supra* note 182, at 6.

196. CHRISTIANE KUPTSCH, CIRCULAR MIGRATION AND INTEGRATION: SQUARING THE CIRCLE? (2010), <http://migration.ucdavis.edu/rs/files/2010/kuptsch-circular-migration-and-integration.pdf> (background paper prepared for Conference Population, Integration, and Law: Implications for Immigration Policy, San Diego, Mar. 29-30, 2010).

197. *Id.*

198. *Id.*

advance which types of immigrants and what qualifications it will accept. Second, immigrants will be allowed to come to Spain temporarily, but they cannot 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.”¹⁹⁹

Spain’s change of heart coincides with the newly-adopted EU common immigration policy of closing doors to low-skilled immigrants, while welcoming highly- 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,²⁰⁰ commonly known as “The Return Directive,” and the European Pact on Immigration and Asylum.²⁰¹

The purpose of the Return Directive is to lay down EU-wide rules and procedures on the return of illegal immigrants.²⁰² The Return Directive covers periods of custody, as well as re-entry bans, but also includes a number of legal safeguards.²⁰³ Member States are banned from applying harsher rules to illegal immigrants, but allowed to keep or adopt more generous rules.²⁰⁴

This directive was harshly criticized by Amnesty International and the European Council on Refugees and Exiles (ECRE), among other NGOs, because it does not guarantee the fundamental rights of the immigrants being removed.²⁰⁵ It was also condemned by South American leaders Hugo Chavez from Venezuela, Lula Da Silva from Brazil, and Rafael Correa from Ecuador.²⁰⁶ 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.²⁰⁷

On the other hand, the European Pact on Immigration and Asylum (Pact) 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

199. Corbacho: “España no está en condiciones de absorber más inmigración,” TRIBUNA LATINA, Jan. 18, 2009, http://www.tribunalatina.com/es/notices/corbacho_en_condiciones_de_absorber_mas_inmigracion_16510.php

200. Council Directive 2008/115, 2008 O.J. (L 348) (EC).

201. *Fighting illegal immigration: The Return Directive*, EURACTIVE.COM (Aug. 26, 2008), <http://www.euractiv.com/en/social/europe/fighting-illegal-immigration-return-directive/article-174876>.

202. Press Release, European Parliament, Parliament adopts directive on return of illegal immigrants, (June 18, 2008), <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+IM-PRESS+20080616IPR31785+0+DOC+XML+V0//EN>.

203. *Id.*

204. *Id.*

205. Council Directive 2008/115, 2008 O.J. (L 348) (EC).

206. *Id.*

207. *Chavez Throws Down the Gauntlet to EU’s Racist Immigration Policy—Threatens to Cut Off Oil and Return Investments*, COMMITTEE FOR THE ABOLITION OF THIRD WORLD DEBT (June 20, 2008), <http://www.cadtm.org/Chavez-Throws-Down-the-Gauntlet-to>.

and cooperation in the management of migratory flows.²⁰⁸ This pact has five principal objectives: (1) to organize legal immigration, by taking account of the priorities, needs, and reception capacities 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 synergy between migration and development.²⁰⁹

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 increasing the attractiveness of the EU for highly qualified workers and the taking of new measures to further facilitate their reception.²¹⁰ Also, it bans generalized regularizations or mass amnesties, while mandating that illegal immigrants leave the EU territory.²¹¹ Spain, of course, has participated in such regularization programs, as recently as 2005.²¹²

VI. CONCLUSION

From the viewpoint of the Director of the Observatory of Immigration at Universidad de Alicante, the plan has absolutely failed.²¹³ His view seems accurate based on the number of applications filed to date, after a year and a half of the launching of the program, which only accounts for 13.4% of the expected applications, even when 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.

On a positive note, the *Plan de Retorno Voluntario* does demonstrate the Spanish government's prompt response to the economic crisis and attempt to assist the large immigrant population affected by high unemployment. Undoubtedly the Spanish government has shown great leadership in taking such swift and decisive action. In fact, according to a survey conducted by the newspaper *El Mundo*, policies that promote circular migration, like the *Plan de Retorno Voluntario*, may be good after all.²¹⁴ Half of the interviewed immigrants living in Spain denied

208. Press Release, European Commission, Justice and Home Affairs, 3018th Council meeting (June 3-4, 2010), available at http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/jha/114900.pdf.

209. EU Council, European Pact on Immigration and Asylum, Sept. 24, 2008, 13440/08, available at <http://www.unhcr.org/refworld/docid/48fc40b62.html>.

210. *Id.*

211. *Id.*

212. See generally Lopez, *supra* note 13.

213. *El Gobierno fracasa en su plan de retorno voluntario de inmigrantes*, LA VERDAD, Jan. 5, 2010, <http://www.laverdad.es/alicante/20100105/provincia/gobierno-fracasa-plan-retorno-20100105.html>.

214. *El 50% de los inmigrantes piensa en regresar a su país de origen*, EL MUNDO, Nov. 11, 2008, <http://www.elmundo.es/elmundo/2008/11/07/madrid/1226077659.html>.

wanting to remain in Spain indefinitely.²¹⁵ Of this group, eighty-two percent were planning to return to their homelands in the future, while only seventeen percent were willing to stay until retirement age.²¹⁶ 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 without 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 Voluntario*, however, appear to outweigh the positive ones. First, the plan excludes undocumented immigrants, who are the most vulnerable to the crisis because they have not been in Spain long enough and do not have family or friends willing to help them get back on their feet. Second, it links unemployment and immigration, exacerbating the division between Spaniards and immigrants. Third, it focuses on the problem of unemployment but not on its solutions, like education and training for low-skill immigrants, which would allow them to adapt to new market needs. Fourth, it does not remunerate immigrants adequately for the relinquishment of their residences, since the compensation offered comes from their unemployment fund, which already technically belongs to them.

Moreover, human beings are not like other parts of the economy; it is highly problematic to simply 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."²¹⁷ After evaluating the Spanish policy, it is clear that governmental return policies need to take into account the intense hardships of relocation and integration into a new environment that these programs place upon immigrants and their children. Only then will such policies reach their maximum utility, because only then will immigrants be likely to take advantage of them.

In the end, responses to the economic crisis like the *Plan de Retorno Voluntario* call attention to the issue of social responsibility that Spain and other developed countries have towards immigrants during times of economic hardship. Only the passage of time will show if Spain's experiment has been a success or a failure. Other countries with large immigrant populations that are experiencing an economic downturn might do well to analyze how Spain has done immigration law Spanish-style and how to reshape the *Plan de Retorno Voluntario* with the aim of avoiding its clear pitfalls.

215. *Id.*

216. *Id.*

217. MAX FRISCH, *SKETCHBOOK 1966-1971* 8 (Geoffrey Skelton trans., 1971).