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Motivations, experiences and consequences of returns and readmissions policy: revealing and developing effective alternatives



Executive Summary

Alternative policy approaches to RR: regularisation and other recognised statuses

Case Study: **Spain**

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This document provides a concise summary of the key findings from the national report on Spain regarding the current legal and practical situation of non-deportable migrants and alternatives to deportation. The study was conducted as part of WP2 Alternative Policy Approaches to Return and Readmission of MORE Horizon Europe research project. The report is based on exhaustive documentary research of the literature as well as policies, regulations, law and transcription of the parliamentary debates, statistical data extracted from the Ministry of Interior, and five in-depth interviews with experts on the rights of third-country nationals in Spain that have received an expulsion or return order but cannot be deported. For detailed analysis, evidence, and comprehensive insights, please refer to the full report. The information in this summary should not be considered complete or fully representative of the entire study.

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1. Rights of non-deportable third country nationals (TCNs) in Spain

In Spain, a third-country national (TCN) will be considered non-deportable if they have received an expulsion order but cannot be deported due to either legal or practical reasons. Legal obstacles include cases where a person's return may be harmful, such as protections under non-refoulement, humanitarian and medical grounds (e.g., victims of labour exploitation, hate crimes or discrimination, serious illnesses, victims of domestic violence, and pregnancy). Practical obstacles are related to impediments in implementing deportation, such as the impossibility of obtaining travel documents, the lack of agreements with the country to which deportation would be enforced to, or the inability to locate the person who has been issued the expulsion order, among others.

The number of executed deportations is significantly low compared to the number of expulsion orders issued. In the past five years (2019–2023), according to data from Policia Nacional, 38,325 expulsion orders were issued, of which 6,281 resulted in deportation and 1,691 were suspended or postponed¹. It is unclear what happened with the remaining 30,353 cases, although ethnographic data indicate that most expulsion orders are unknown to those subject to them and emerge only during regularisation processes, when the payment of a fine will generally suffice to close the file.

Those who cannot be deported for the previously stated reasons are considered to be in administrative irregularity and are thus subjected to the same regulations as irregularised migrants. Beyond those who are non-deportable, irregularised migrants include rejected asylum seekers, those who overstay their visa or residency, and individuals living in Spain undetected by authorities. By 2019, it was estimated that Spain hosted between 391,000 and 469,000 irregularised migrants². Spain has historically adopted an inclusive approach regarding access to basic rights and

¹ Data obtained through a petition of information under Ley 19/2013.

² For more information on how the number of irregularised migrants are estimated, see project MIRREM, i.e. Kierans and Vargas-Silva (2024) [MIRREM Working Paper 11/2024: The Irregular Migrant Population in Europe](https://irregularmigration.eu/category/publications/working-papers/) Accessed at: <https://irregularmigration.eu/category/publications/working-papers/>



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services for those without regular status. All residents in Spain, including irregularised migrants, are obligated to register with their municipality. This registration, in turn, provides irregularised migrants with access to basic rights and services such as education and healthcare, barring practical barriers such as variances in access to registry across municipalities, lack of knowledge about these rights among irregularised migrants, language difficulties, and discriminatory practices, among others.

2. Alternatives to Detention

The case of Spain illustrates the possibility of a shift from detention to less coercive tools in dealing with pre-removal cases. When a third country national is given an expulsion order, Spanish law recognises three precautionary measures alternative to detention: the withdrawal of passports or other identity documents, the obligation to reside in a specific location, and the requirement to report regularly to the authorities.

In the current framework, where non-confinement alternatives exist, detention should be considered a last resort, maintaining coherence with the principles of proportionality and necessity. Yet, according to data from the Ministry of the Interior (2015–2023), a total of 24,548 individuals were held in detention centres, only to be released later as their expulsion could not be executed due to legal and or practical impediments. Adopting alternatives to detention could prevent this unnecessary time in detention, along with the associated risks of human rights violations and abuses.

Evidence from the MORE project shows that detention remains the most used preventive measure, except during 2020 and 2021, when detention centres were partially inoperative due to the COVID-19 pandemic.

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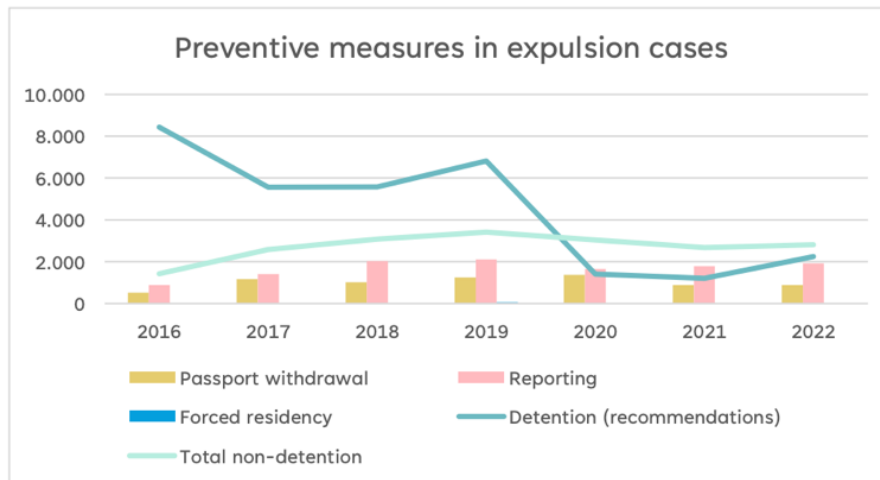


Figure 1 : Graph created by the authors based on data obtained through a petition of information under Ley 19/2013

However, a significant downward trend in the use of detention is observable, with post-pandemic numbers remaining well below pre-2019 levels. Moreover, when aggregated, non-detention measures showed an upward trend until 2019, followed by stagnation³. Ethnographic data suggest that, because non-detention measures can be implemented without judicial authorisation, poor record-keeping may misrepresent the actual frequency of their use.

3. Alternatives to Deportation

There is an individual pathway for regularisation for non-deportable TCNs in Spain based on social, economic and family roots. This legal provision, available since Law 4/2000 came into force, aims to provide people living in Spain without a recognised status with a means to regularise their administrative situation. It also serves as a significant alternative to deportation, as having an open process of residency application based on roots can be yielded as an argument to obtain the suspension of an expulsion order. Depending on the category of rootedness, those who prove their stay in Spain for 2 to 3 years (e.g., via the municipal registry) or comply with other

³ For a more detailed explanation on these trend changes, please see our blog post: Tunaboylu and Rué (2025) [Questioning the Necessity of Pre-Removal Detention, the Case of Spain](https://www.moreproject-horizon.eu/publications/), MORE Website. Accessed at: <https://www.moreproject-horizon.eu/publications/>



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requisites, such as an integration report for social rootedness or present a job contract for economic rootedness, may regularise their status.

Spain regularised significantly more TCNs than deported. Between 2013 and 2023, a total of 1,175,993 TCNs have become regularised via this route⁴. In comparison, 48,358 people were deported between 2015 and 2023⁵.

Another way to achieve regularisation is by applying for international protection. Applying for international protection will automatically suspend the expulsion order until the procedure concludes, ensuring compliance with the non-refoulement principle. An international protection application can be filed after the issuing of an expulsion order within a detention centre. In such case, the application will be subject to a fast-track procedure. If the application is rejected, the applicant may still be eligible to apply for a residence permit, based on social roots or other qualifying

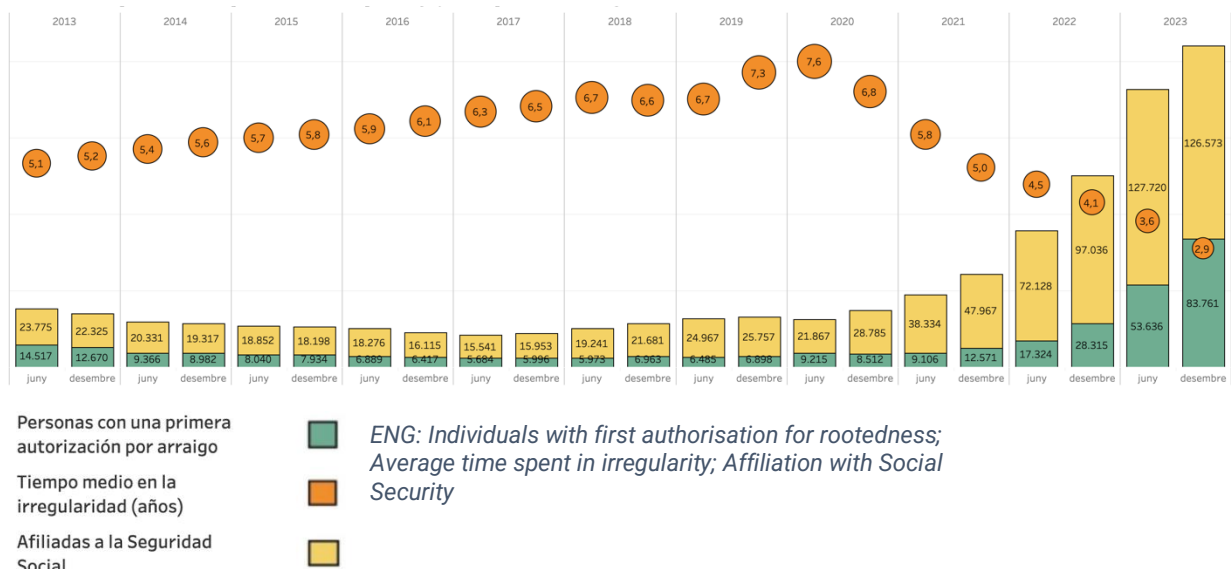


Figure 2. Evolution of people with a first authorisation through rootedness and average time spent in irregularity. Both genders. All ages. Source: Ministerio de Inclusión, Seguridad Social y Migraciones, Spain

criteria.

⁴ Calculated based on the data provided by the Ministry of Inclusion, Spain. Open Access. Accessed at: <https://www.inclusion.gob.es/web/opi/estadisticas/catalogo/arraigo?tab=resultados>

⁵ This number is aggregated from the data provided upon request requested to the Ministry of the Interior through Ley 19/2013 [open government legislation].



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Individual regularisation pathways through social, family and economic roots provide a sustainable alternative to deportation and is transferable to other EU countries.

Nonetheless, these regularisation campaigns faced criticism from leaders in Northern Europe, who feared that regularised migrants would freely move to other EU member states⁶. The most repeated counter argument for regularisation practices is that it creates a 'pull effect' for irregular migration and that is an unpopular policy for electoral interest. Nevertheless, studies show that regularisation practices did not result in significant increases in irregular immigration⁷.

In order to avoid a public backlash, Spain may have strategically downplayed its role in regularisation while maintaining a restrictive discourse towards irregular migration. For example, in the past Spain has undertaken general regularisation processes, aimed at incorporating migrant workers into the formal economy, under both right- and left-wing governments. Yet, a criminalisation of migration in discourse, a securitisation narrative, and a priority of return over regularisation put a stop to these extraordinary processes in the early 2000s. Thus, Spain's shift can be seen as a strategy to remove itself from large-scale regularisation while maintaining the possibility of regulation but via individual regularisation mechanism through social, familiar and economic roots.

Further research is needed to accurately verify public opinion on the issue of return versus regularisation of irregular migrants in Spain. One recent development that challenges the assumption that the public demands more restrictive policies is the Regularización Ya ("Regularisation Now") movement. This movement aims to revive large-scale regularisation and has collected 700,000 signatures from citizens demanding the regularisation of all individuals who have been living long-term in Spain without regular status (specifically those present in Spain since November 1, 2021). In April 2024, the Spanish Parliament voted in favour of considering the proposal.

⁶ Finotelli and Rinken (2023) A pragmatic Bet: The Evolution of Spains Immigration System. Accessed at: <https://www.migrationpolicy.org/article/spain-immigration-system-evolution>

⁷ For an extensive study on the role of regularisation policies as a pull factor, see Elguezabal and Martínez-Zarzoso (2024) Are Immigration Regularization Programs a Pull Factor? Evidence for OECD Countries. Accessed at : <https://infer-research.eu/wp-content/uploads/2024/10/WP2024.14.pdf>

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Currently, the parliamentary committee of the Congress of Deputies is working on amending the policy.⁸

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⁸ All information related to the initiative can be found here: <https://regularizacionya.com/>