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## An Analysis of Regularizations of Undocumented Residents in Spain and the Underground Economy: Insight for United States Policy Makers

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# **An Analysis of Regularizations of Undocumented Residents in Spain and the Underground Economy:**

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**Insight for United States Policy Makers.**

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**4/17/2012**

**Master of Public Administration  
Capstone Project**

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## **Executive Summary**

There were an estimated 11 million undocumented residents in the United States in 2010. The issue of undocumented migration and how it should be addressed is a contentious topic in the United States. However, the discussions about how to address illegal migration into the United States rarely include any comparisons to other measures that have been taken in other countries. There are many countries, such as Spain, that have large undocumented resident populations.

This analysis looks at policies that have been enacted in Spain since 1985 to enable undocumented residents to receive legal resident status, referred to as regularizations and whether or not there was an increase in social security tax revenue attributable to undocumented residents moving out of the shadow work force. One expectation of these regularizations in Spain was that undocumented residents would become part of the legitimate labor force if given the legal right to remain and work in Spain.

This analysis could not conclusively link regularizations to increases in social security revenue in Spain or a reduction in the underground work force. There was also significant economic growth during the 1990s until 2007 similar to that which was taking place in the U.S. during the same time period which was also a factor in increased tax revenue. Other factors such as the tax wedge, labor restrictions, and lack of employer cooperation interfered with the success of regularization policies. However, there are reasons that immigration policy reforms should be pursued in the United States, such as reducing demand for smugglers that bring migrants into the U.S., as well as the

potential increasing tax revenues even though this is a small portion of the total U.S. population.

## Introduction

In 2010, the bodies of 252 persons attempting to enter the United States without authorization were found in Arizona near the Mexico-U.S. border.<sup>1</sup>

This record number of deaths represents a small fraction of the estimated number of migrants taking this hazardous journey across the southwestern border into the United States every year. These migrants are often in search of greater opportunities than exists in the country that they are leaving behind. The Pew Institute estimates that there were 11.2 million undocumented residents<sup>2</sup> in the United States in 2010.<sup>3</sup>

Undocumented immigration or migration is the process of individuals relocating from their country of citizenship or legal residence to another without going through the legal process to obtain authorization from the destination country or remaining beyond the time limitations, or in violation of the terms of the visa. Illegal immigration has the same literal meaning. The terms 'undocumented' and 'illegal' are used interchangeably, without implying a value judgment.

Although the 2010 estimates represent a decline in the undocumented resident population from its peak in 2007, undocumented migration continues to be an issue in the United States and how to address it is a subject of great contention. This is not a uniquely American issue. It affects many countries around the world. Spain, in tandem

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<sup>1</sup> (Medrano, 2010)

<sup>2</sup> An undocumented or illegal migrant, immigrant, or resident is any person who is present in a country of which they are not a citizen, and who is not authorized to be in that country at all or in their present role (e.g. as a worker). Though these terms are synonymous, there is often a negative connotation associated with the term "illegal immigrant." For this reason, I use the term "undocumented" to reference the lack of documentation allowing the person to migrate to the destination country.

<sup>3</sup> (Passel, 2011)

with the United States, has been the destination of undocumented migration over much of the last two decades. In both countries undocumented migration has been the result of better opportunities for employment and compensation in the destination country. Undocumented migrants who embark on the journey in search of work opportunities are not able to work in the marketplace in the same manner in which a legal resident or citizen would be able to participate. Instead, they participate in the underground economy, bypassing the payroll taxes that would be a revenue source for the central and local governments, including social tax contributions<sup>4</sup>.

The underground economy, also referred to as the shadow economy, is defined as economic activities and the income derived from them that circumvent or otherwise avoid government regulation, taxation, or observation."<sup>5</sup> Underground economic activities occur within the economies of most, if not all, countries. The underground economy is not limited to illegal activities such as drug dealing, gambling or prostitution. It also includes activities that would otherwise be legitimate and legal in the formal economy, except they avoid the regulations and restrictions that are imposed on the activities. One problem that results, from the government's point of view, is that activity in the underground economy escapes taxation. "When informal firms fail to pay taxes, it can lead to a vicious circle of declining tax revenues and an increasing tax burden on the remaining firms. Higher tax rates can harm the productivity advantage of large

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<sup>4</sup> Payroll taxes are defined by the OECD as Tax charged on an employer's payroll (i.e. gross salaries, wages and other remunerations) paid to his employee without regard to their domicile, family status or other individual circumstances. **Social Security Contributions (taxes)** are Charges levied on employees, employers or self-employed or on all persons subject to individual income tax to cover the cost of providing future social security payments. (OECD)

<sup>5</sup> (Schneider F. e., 2010, p. 5)

Regularization is a policy process in which a migrant that had not entered the country through the proper legal process, remained past approved time period, or did not comply with the limitations of the visa (such as working while in country on tourist or student visa) has the opportunity through the creation of specific policies to receive legal permission to remain in the country in which they migrated. This can also be referred to as amnesty. However, due to political connotations that are often associated with reference to amnesty for undocumented residents, this term is avoided. Regularization is the common terminology used among European research on the topic of irregular migration.

formal firms as well as the incentive to innovate and invest.”<sup>6</sup> Legal restrictions on immigration or the employment of foreign residents can be expected to lead to a greater underground economy, other things equal, as employers and workers may choose to engage in economic transactions despite legal restrictions. This is similar, in principle, to expected increases in tax evasion following an increase in the tax burden, assuming that the level of enforcement remains constant.

One policy that has the potential to reduce the size of the underground economy and consequently enlarge the tax base is the regularization of foreign residents without legal status or employment authorization. Regularization has been implemented in Spain on six occasions since 1985 compared to the United States where the last broad based regularization was implemented in 1986 under the Immigration Reform and Control Act (IRCA). While policy makers often work under the assumption that a regularization program will lead to increased tax revenues, little is known whether this hypothesis bears out in practice. In this analysis I exploit the evidence from the four regularization programs that have occurred in Spain since 1995 to test whether regularization programs are followed by increased social security tax revenues. I examine how

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<sup>6</sup> (OECD, 2010)

inflation-adjusted social security tax receipts have evolved since 1995 and whether there have been any changes following the regularization programs. I analyze the incentives for employers and employees in Spain to join the underground economy and compare them to those in the United States. Social security contributions are not the only taxes are potentially affected by regularization policies. However, social security has been a constant rate since 1995. Additionally, taxes are often deducted automatically through the employer and as of 2007 it is not necessary to file a tax return if annual wages are below €22,000. Tax payable is reduced by employer throughout the year.<sup>7</sup> Since the undocumented residents often work in low skilled occupations and earn low wages, they would often fall below this threshold. In light of this comparison, I then discuss which findings from my research contain insights for immigration policy makers in the United States.

Comparability of undocumented residents in Spain and the United States exists because of the proximity to nations whose citizens emigrate in search of economic opportunity. Morocco predominates as the origination country of the greatest portion of undocumented residents in Spain. There were 5.7 million residents of foreign nationality registered in the *Padrón (Municipal Register)*<sup>8</sup> in 2010.<sup>9</sup> Excluding the European Union, the majority come from the continents of South America and Africa. Geographic proximity is one factor that attracts migration from Africa. At the narrowest point of the Strait of Gibraltar, there are only 9 miles separating Morocco and Spain.

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<sup>7</sup> (Personal Taxes. Spain, 2011, p. 49)

<sup>8</sup> The *Municipal Register (El Padrón)* is an administrative register for maintaining community level population data. All inhabitants of a locality are required to register in the community where they reside. The *Municipal Register* documents the name, gender, nationality, birth place, and place of domicile for each inhabitant in Spanish municipalities. After the passage of Organic Law 4/2000, registration, regardless of immigrant status, enabled access to social services.

<sup>9</sup> (National Institute of Statistics, 2010)

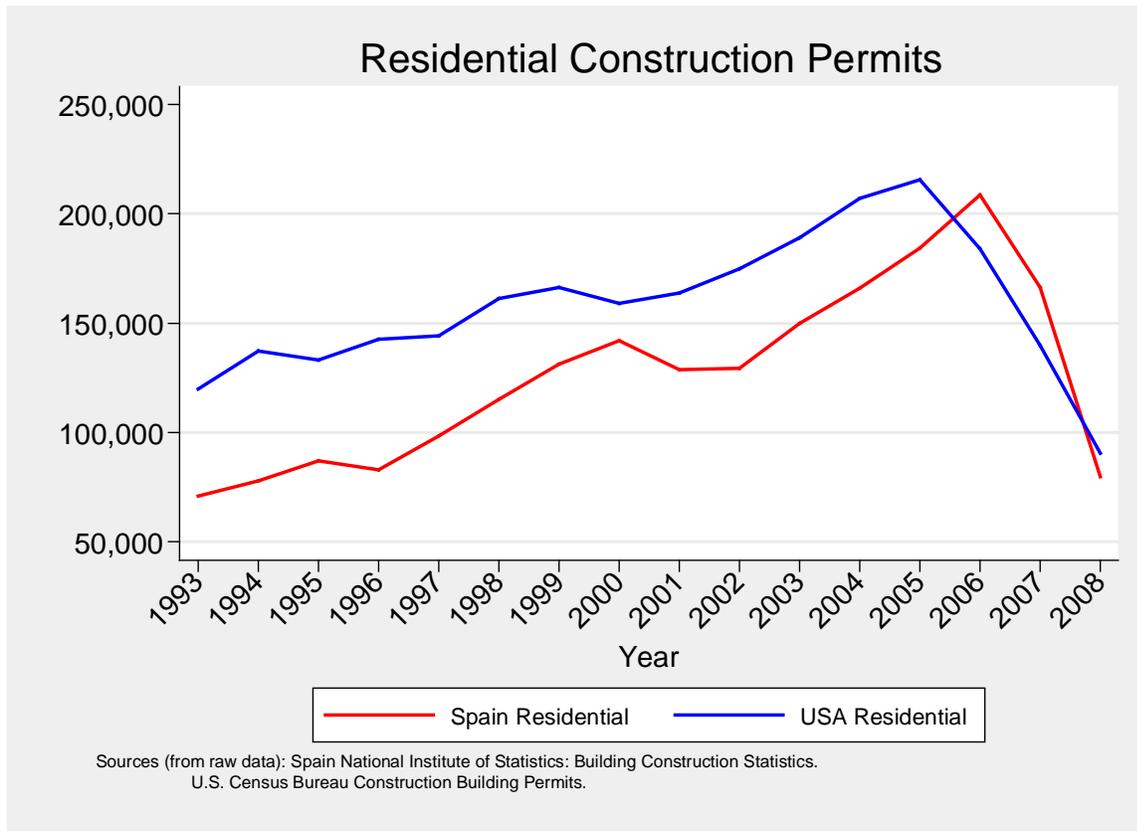
Common linguistic and cultural links draw migrants to Spain from South America. The foreign populations, with the highest levels of representation in Spain according to the Municipal Registry are Morocco at 13%, followed by Ecuador composing 7% of the total foreign population.<sup>10</sup> Morocco functions as an origination country as well as a pass through or gateway country for migrants from other African countries in search of better opportunities in Spain and Europe than exist in their native country.

Much like the United States, Spain has attracted undocumented migration due to the demand for inexpensive labor in agriculture, construction, and service sectors. Both countries experienced a real estate boon throughout the 1990s and until 2008. Similar to the situation in the United States, the housing bubble also burst in Spain after 2007. In *Figure 1*, the similarities in residential construction growth are remarkable. The USA residential constructions are in 100's for scale.

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<sup>10</sup> The population data from the Spain Municipal Register includes residents regardless of status as a result of Ley Organica 4/2000. Article 14 guarantees the right to social services, Article 9 guarantees access to education if registered.

Figure 1.



This economic boon acted as a pull factor for potential workers from abroad to leave their homeland behind to seek out the increased opportunities available in the destination countries of Spain and the United States. As a byproduct of this increased migration, concerns developed among the citizens of the destination countries that the undocumented residents were adversely affecting the wages in the legal market as well as increasing the costs on the public services that were funded by taxpayers. As a result of these concerns, enhanced border controls were implemented with the intended purpose of reducing the inward flow of undocumented migration.

In the United States, enhanced border controls have been implemented since the early 1990's with measures such as the increase of Border Patrol agents that began in 1993,

under the Illegal Immigration Reform & Immigrant Responsibility Act of 1996. Further efforts to secure the border were implemented after the terrorist attacks on September 11, 2001. The effect has been to divert unauthorized migration routes into the United States into more dangerous areas such as the deserts of the American Southwest that encompass much of the U.S. border with Mexico. American Immigration scholar, Douglas Massey suggests that "U.S. efforts to deter undocumented migrants through unilateral police actions have had either very weak effects in the expected direction or relatively strong effects in the opposite direction."<sup>11</sup> Massey refers to the phenomenon that despite the efforts to deter undocumented migration the population growth of undocumented residents in the United States continued to increase. The enhanced border security measures may actually prevent the return of migrants to their originating country due to the increased costs and risks associated with undocumented entry. The two decade trend of growth in the undocumented resident population in the United States ended after 2007<sup>12</sup>, which coincided with the downturn in the United States economy.

Enforcement measures have also been taken to reduce undocumented migration into Spain. These measures include enhanced fencing at land border crossings such as at the cities of Ceuta and Melilla, which are Spanish territories that occupy the North African coast and have been a point of entry into Spain for undocumented migration. In addition, Spain has been utilizing technology to thwart migrants attempting undocumented entry across the Mediterranean Sea. The Integrated System of External

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<sup>11</sup> (Massey D. a., 2010) p. 317

<sup>12</sup> (Passel, 2011)

Vigilance (SIVE) uses sensors and cameras to detect inbound boats that can be apprehended before arriving on Spanish soil.<sup>13</sup>

These enhanced enforcement measures in the United States and Spain had the effect of increasing the danger of crossing into the respective destination country. However, unlike the United States, Spain has also instituted measures of "regularization" to address the undocumented resident population already present in the country.

### **The Underground Economy.**

The Underground economy covers many aspects of economic activity that occur in the shadows outside of government regulation or taxation. However, this analysis concentrates on the labor that takes place within the underground economy. Providing labor for pay is a normally legal activity that becomes part of the underground economy when legally established taxation of this labor does not take place or when employers and workers circumvent legal restrictions on who is allowed to work.<sup>14</sup>

Aspects of the underground economy exist in many, if not all countries. A number of variables increase the rates of participation in the underground economy of a country. Among these, tax rates and social security contributions are "key factors driving the growth of the shadow economy" due to the impact that they have on the cost of labor in countries that have high contribution rates in social security and income taxes.<sup>15</sup> High rates of taxation incentivize employers to seek out cheaper labor costs in the shadow

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<sup>13</sup> (Carling, 2007)

<sup>14</sup> (Schneider F. a., 2002, p. 2)

<sup>15</sup> (Schneider F. a., 2002, p. 5)

economy. Employees also benefit financially through tax avoidance.<sup>16</sup> The tax avoided is referred to as the tax wedge. The tax wedge is defined as "the sum of personal income tax combined with employee and employer social security contributions plus any payroll tax less cash transfers, expressed as a percentage of labor costs".<sup>17</sup>

Total wages and high levels of regulation create an incentive for participation in the underground labor market. When the total cost of wages (including taxation and social security contributions) becomes excessive, an employer is more likely to seek labor outside of the regulations and wage requirements in an effort to reduce expenditures on labor. While regulations and tax rates are not the only determinants of the size of the underground labor market, Schneider and Enste concluded that "countries with relatively low tax rates, fewer laws and regulations, and a well-established rule of law tend to have smaller shadow economies."<sup>18</sup>

Payroll taxes are taxes on wages that are earned through labor. These taxes include contributions that are assessed to both the employee and the employer. Payroll taxes are a component in both predominant methods of estimating the underground economy discussed below. Schneider concluded that "In almost all studies the increase of the tax and social security contribution burdens is one of the main causes for the increase in the shadow economy." <sup>19</sup> The difference between the gross wages of an employee and the amount that is received after taxes are deducted is known as the tax wedge.

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<sup>16</sup> (Schneider F. a., 2002, p. 5)

<sup>17</sup> (OECD)

<sup>18</sup> (Schneider F. a., 2002, p. 2)

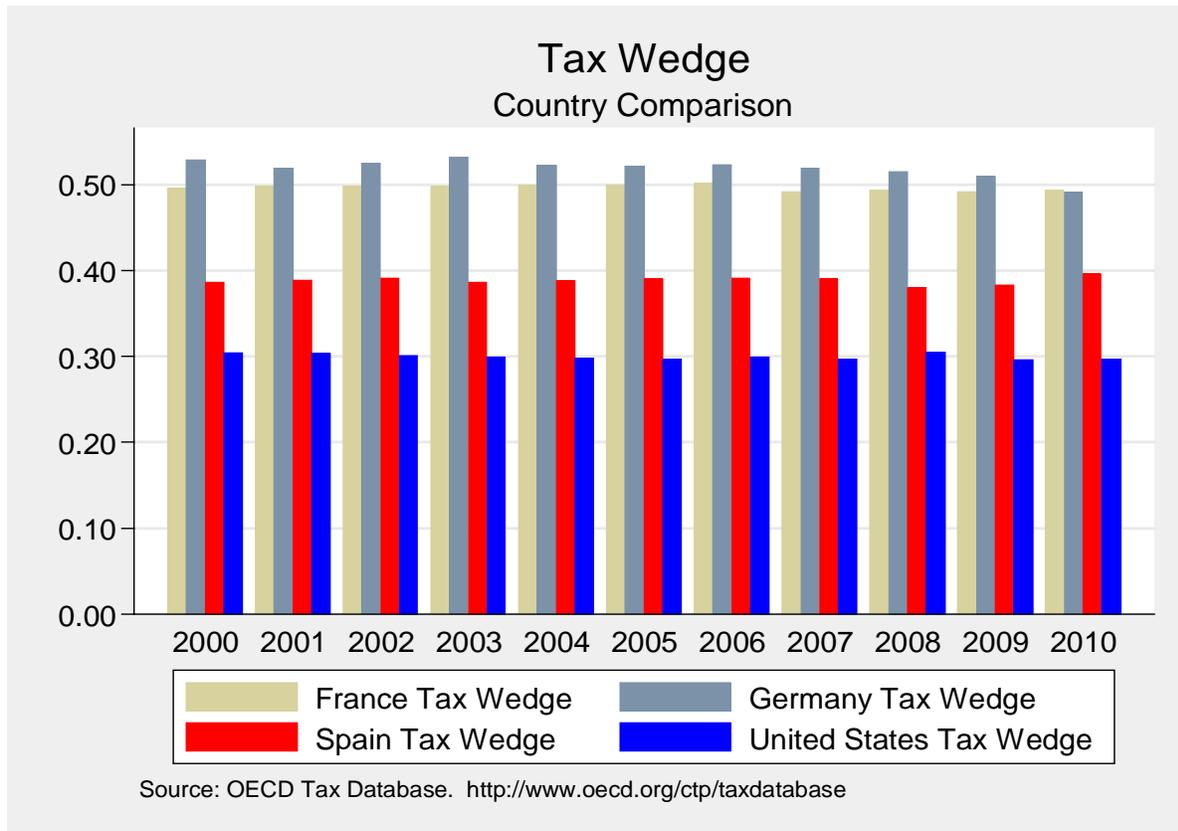
<sup>19</sup> (Schneider F. a., 2000, p. 19)

The tax wedge can influence the decisions of an employer to participate in the underground labor market. *Figure 2* provides comparative data on the tax wedge for Spain and the United States, as well as the two largest European economies, Germany and France. It is apparent that the tax wedge in Spain (39.6%) is comparatively lower than that of France (49.3%) and Germany (49.1%), but it is higher than the U.S. tax wedge (29.7%) at the average wage. The tax wedge amounts derived from OECD data include an "all-in" rate which includes the average income tax rate at the central (federal) government level, and sub-central (state or province, city, and local) tax rates, and social security contributions. The rates that are used in *Figure 2* are at 100% average annual wage for a single person without dependents.<sup>20</sup>

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<sup>20</sup> (OECD)

Figure 2.



Since these tax wedges are costs on labor, as they increase, the incentive for seeking out labor in the shadow economy also increases. “The bigger the difference between the total cost of labor in the official economy and the after-tax earnings from work, the greater the incentive for employers and employees to avoid this difference and participate in the shadow economy.”<sup>21</sup>

The composition of the tax wedge can also be a factor in who has the greatest incentive to participate in the underground labor. In the case of Spain, the proportion of the Social Security tax wedge placed on the employer is significantly higher than that of Germany or the United States. A relatively heavy tax burden provides workers with the

<sup>21</sup> (Schneider F. a., 2002, p. 6)

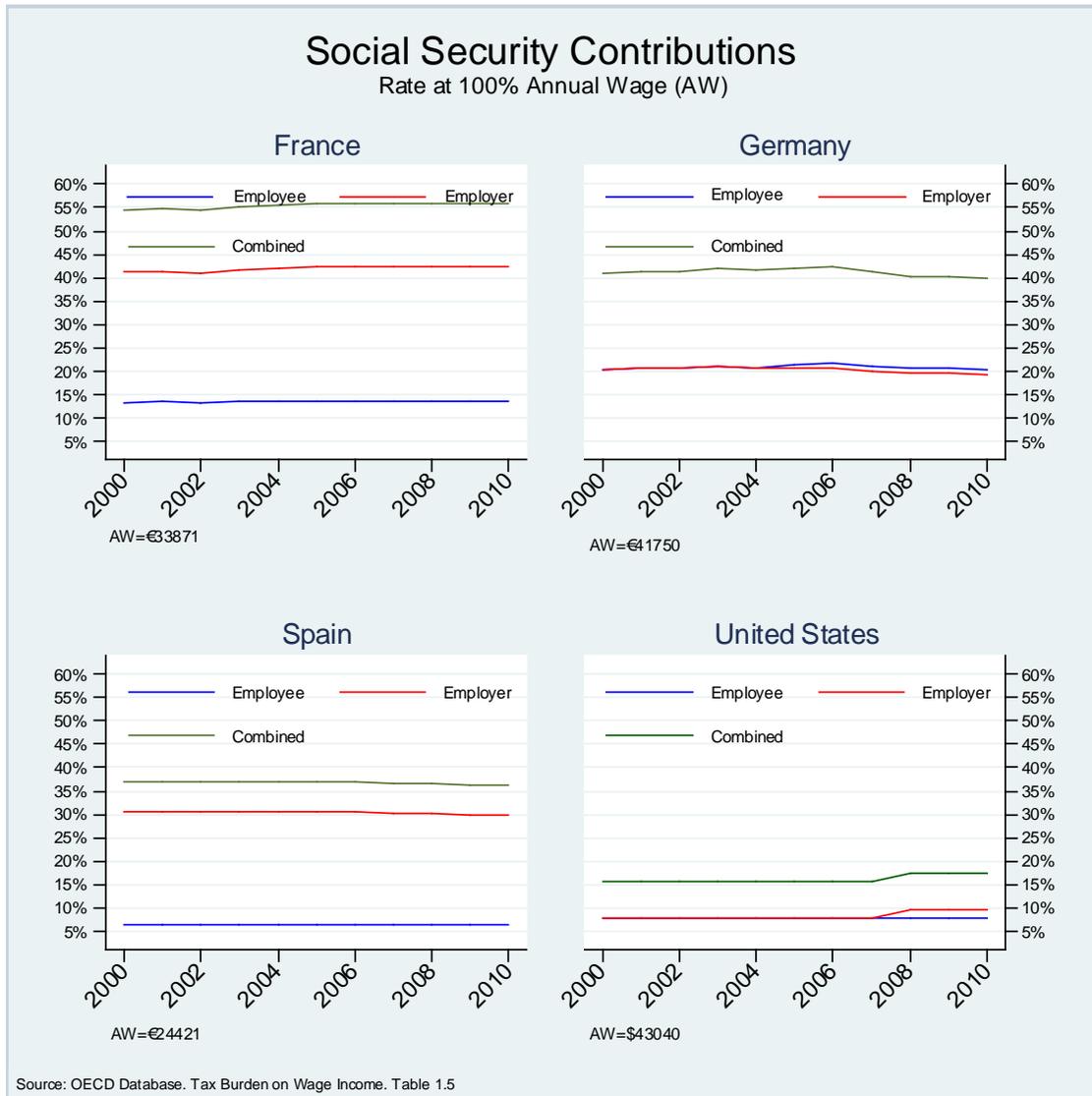
incentive to work in the shadow economy to avoid the reduced net pay due to the tax burden. If the composition of the tax wedge is concentrated on the employer, the employer has greater incentive to avoid the high labor costs by hiring outside of the legal labor force. Employers offset the costs with lower wages if the labor market will allow this. However, a portion of these costs may be absorbed by the employer, reducing revenue, if it is not possible to find workers in the legal labor market at this wage. This difference can shift the demand or the supply of participants in the underground economy. The higher costs on the employer offer an incentive for the employer to avoid hiring in the official market if the employer portion of the tax wedge can be avoided.<sup>22</sup>

The tax wedge plays an important role in decision of either the employer or employee to work outside of the law in the underground economy or to be a legal participant and tax payer in the legally recognized labor force.

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<sup>22</sup> Social Security tax comparisons from [OECD Tax On Wages](#) do not match exactly to the tax rates that are identified in the [Annual Tax Bulletin](#) due to other factors that are added into the calculation, unemployment funding, the Wage Guarantee Fund, and professional training are included in the calculation for Spain.

Figure 3.



To compensate for the tax wedge as an incentive for conducting transactions in the shadows, legal and financial penalties exist as a disincentive for participation in the shadow labor market. Fear of punishment for violating employment and tax regulations, or lack thereof, influences the decision to participate in the underground economy either as an employee or employer. Even if the probability of being caught is relatively small a

sufficiently large punishment will reduce likelihood that potential workers or employers will risk participating in the shadow economy.<sup>23</sup>

In the case of Spain, access to health insurance is not contingent on employment status. After the passage of Organic Law 4/2000, the only requirement to access the Spanish health care system is that the individual has registered with the *Municipal Register*.<sup>24</sup> This is quite different from United States where health insurance is based largely on employer sponsored group insurance plans in which the costs of insurance is shared between the employee and the employer.

In the United States, undocumented residents do not have access to social services such as Medicaid, Social Security, or welfare benefits except under limited circumstances. Emergency Medicaid provides access to medical services in the case of emergencies without regard to whether or not the person has obtained legal residency in the United States. This is only an option in emergency situations and is subject to the same income requirements as legal residents or citizens. Overall, undocumented residents have lower rates of participation in employer sponsored health-insurance and are less likely to rely on publicly-sponsored coverage programs.<sup>25</sup>

Although the perception that undocumented residents are creating a large burden on health care in the United States persists, David Griswold of the Cato Institute disputed the notion that undocumented residents are a significant burden on health care in the United States using research from the Rand Corporation that indicated an annual cost

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<sup>23</sup> (Scholz, 1995)

<sup>24</sup> (Ley Organica 4/2000) Article 14 guarantees the right to social services, which includes access to health care which is provided by the government.

<sup>25</sup> (Kaiser Foundation, 2006)

of \$1.1 billion for health care for undocumented residents age 18-64 in the United States compared to \$88 billion for all adults in the same age group. "While illegal immigrants account for about 5 percent of the workforce, they account for 1.2 percent of spending on public health care for all working-age Americans."<sup>26</sup>

### **Estimating the Underground Economy.**

Several methods have been used in studies to estimate the size of the underground economy. Arnold Zellner developed the Multiple Indicator, Multiple Impact (MIMIC) method in 1970. This method quantifies the influence of multiple causal variables such as social security and income taxes, unemployment, and price indexes in relation to gross domestic product (GDP) that explain the size of the underground economy. This method of estimation is sensitive to the indicators that are used, such as total tax rates, social security tax rates, unemployment rates, and full time employment rates.<sup>27</sup> Depending on the variables that are considered, there may be a different outcome if an independent variable is omitted from the calculations. The MIMIC method of estimation attempts to account for all of the variables that impact the underground economy. Additionally, for the estimation of the underground economy using the MIMIC model, it requires a base year to estimate the changes in subsequent years. This base year derives from the currency model of estimation.

The "Currency Demand Model" of estimation of the underground economy uses the demand for money to estimate the size of the underground economy, assuming the

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<sup>26</sup> (Griswold, 2007)

<sup>27</sup> (Pickhardt, 2006, pp. 1708-9)

necessity for cash to conduct transactions in the underground economy to avoid tracking of the exchanges by legal authorities. This method is criticized because of its emphasis on taxes, just one cause of the underground economy and does not take into account other independent variables that are addressed in the MIMIC estimation of the underground economy.<sup>28</sup>

The estimates provided by Pickhardt are higher using the currency demand model than when using the MIMIC method of estimating the shadow economy.<sup>29</sup> However, this is not always true when comparing the methods of estimation. In comparisons of the various methods of estimating the shadow economy, Schneider and Enste<sup>30</sup> find inconsistent patterns, which indicate the sensitivity of the estimation processes due to base estimates and variables measured.

Looking specifically at the participation in the shadow labor market in Spain, the estimated share of the labor force within the underground economy of Spain was between 12% and 32% from 1997-1998, compared to France at between 3% and 6%, or Germany's estimated underground labor force at 22% for the same time period.<sup>31</sup> Freidrich provides further estimates, derived from the 2009 OECD International Migration Outlook and 2010 Economic Outlook Database, indicating that 1.45% of the Spanish labor force is undocumented residents employed in the shadow economy. In the United States, it is estimated that undocumented residents make up 3.2% of the

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<sup>28</sup> (Pickhardt, 2006) p. 1707-8.

<sup>29</sup> (Pickhardt, 2006, pp. 1711, fig. 1)

<sup>30</sup> (Schneider F. a., 2000, pp. 43, table 12)

<sup>31</sup> (Schneider F. a., 2000, pp. 16, table 9)

total work force.<sup>32</sup> These estimates assume the same employment rate that exists within the legally present and undocumented resident population.

Furthermore, estimates from Sanromá, Ramos, and Simón show that there is a pay differential between the documented and undocumented residents working in Spain. These estimates used data from the National Immigrant Survey 2007, which was a supplement to the *Municipal Register* with additional socio-economic characteristics of immigrants. Through a Mincerian wage equation, it is estimated that there is a 15.1% wage gap between documented and undocumented residents with the average monthly salary of all immigrants reporting wage earnings in the survey at € 995.00.<sup>33</sup>

Though there is limited data available regarding wage data for undocumented residents in the United States, the *Mexican Migration Project*<sup>34</sup> does conduct annual surveys in 134 Mexican communities that are known to have large populations that migrate to the United States for work. Of the 111 participants that reported hourly earnings in the 2009 survey, the average hourly rate of pay was \$7.92 at the conclusion of their last migration with a median wage of \$8.00 per hour.<sup>35</sup> This is substantially lower than the 2009 Bureau of Labor Statistics wage estimates which average \$20.90 hourly, with a median rate of \$15.95.

This wage differential between legal employees and the undocumented residents is not entirely the result of legal status. Educational attainment is also a factor that affects wage earning potential. Matthew Hall et. al. concluded that 1/3 of the pay differential

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<sup>32</sup> (Schneider F. , 2011, pp. 82, figure 6.)

<sup>33</sup> (Sanromá, 2009, p. 11)

<sup>34</sup> The Mexican Migration Project (MMP) is a collaborative research project based at the Princeton University and the University of Guadalajara to gather socioeconomic data pertaining to Mexico-US migration.

<sup>35</sup> (MMP134, Personal Level Data, 2012)

between male Mexican immigrants and U.S. natives can be attributed to education level, as 40% over age 25 have less than a 9th grade education.<sup>36</sup> Furthermore, U.S. natives are more likely to be in higher paying occupations, such as management, professional, or technical occupations while Mexican immigrants are often engaged in agriculture and service jobs.<sup>37</sup>

Some of the wages earned by undocumented residents working in the United States are contributing to Social Security. It is estimated that in 2007 that \$112 billion (1.8%) in U.S. wages were earned by head of households that are Mexican and Central American immigrants. Of this amount, \$53 billion (47%) avoided Social Security contributions.<sup>38</sup> Though this is a small portion of total U.S. earnings, this represents lost revenue to Social Security of nearly \$3 billion at the standard rate of 6.2%.

Legalization of currently undocumented residents in the United States would increase the costs on federal government expenditures such as Social Security, food stamp programs, and other social services by increasing the burden on the program since legalization would presumably allow for participation in Social Security in the future. Additionally, current contributions that are made by undocumented residents (through use of fraudulently obtained Social Security numbers) will not result in future benefits under current law.

It has been argued that this increase in workers eligible for social services would be an unsupportable financial burden on social services being offered to legal residents or citizens. . There is the possibility that tax revenue could be adversely affected by

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<sup>36</sup> (Hall, 2010, p. 493)

<sup>37</sup> (Hall, 2010, p. 499)

<sup>38</sup> (Burtless, 2010, p. 21)

refundable tax credits. Due to the design of current tax policy, with the deductions for children and the Earned Income Tax Credit that is available to low wage earners, many legalized migrants would experience a negative federal income tax liability. According to the United States Treasury, 72% of taxes filed with an Individual Taxpayer Identification Number (ITIN)<sup>39</sup>, received refunds in excess of their total income tax contribution at a cost of \$4 billion in 2010.<sup>40</sup>

However, Daniel Griswold argued that the net gains through increased tax revenue and fees could exceed the increased costs on social services using analysis from the CBO<sup>41</sup> for S.2611, the 2006 Comprehensive Immigration Reform Act that showed a \$53.6 billion increase in spending based on increased tax credits, Medicaid spending, and other welfare programs. These estimates would be offset by \$65.7 billion in increased Social Security and income taxes as well as an increase in visa fees.<sup>42</sup>

The Comprehensive Immigration Reform Act of 2006 would have allowed for 325,000 temporary workers annually. There was a provision to temporarily increase the number of work related visas to 450,000 for 10 years which would be reduced to 290,000 per year thereafter. Undocumented residents that had been present in the United States for at least 5 years prior to 2006 would be legalized if they paid back taxes, passed a

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<sup>39</sup> Individual Taxpayer Identification Numbers are a proxy for a social security number for tax purposes. This allows those that are participating in labor without their own social security number to comply with the IRS requirements to file taxes.

<sup>40</sup> (Phillips, 2011)

<sup>41</sup> (CBO, 2006)

<sup>42</sup> (Griswold, 2007)

background check, and possessed English and civics knowledge or were pursuing this knowledge.<sup>43</sup>

### **Becoming an Undocumented Resident.**

An undocumented resident is a person who has taken up residence in a country, in this case Spain, without having the proper legal status granting the immigrant or migrant permission to reside and work in the country. Undocumented residents who search out opportunities for work outside of their native country are not able to work legally in the destination country due to the lack of legitimate work authorization in the form of a work permit or the rights afforded to a citizen. Undocumented residents have little choice but to participate in the underground labor market in the destination country unless they are able to obtain either legitimate or forged work authorization documents.

There are four common ways in which people become undocumented residents.

1. Overstay of Visa. The individual may enter the country with valid authorization such as a work visa, tourist visa, or student visa, or asylum application. The visa recipient then stays in the destination country in spite of failure to obtain a visa extension or denial for asylum.
2. Visa term violation. Individuals enter the destination with legal authorization to do so through mechanisms such as a student or tourist visa and then obtain employment in the destination country, in violation of the visa terms. A recipient of a temporary stay or tourist visa is not authorized to obtain employment while

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<sup>43</sup> (Gelatt, 2006)

residing in Spain. The holder of a student visa may obtain employment for no more than 3 months between school sessions.<sup>44</sup>

3. Clandestine Entry. A person may use false documentation for admittance into a country without inspection. Persons may enter a country at locations other than the authorized entry points because they have not gone through the legal processes to obtain permission for entry. Instead, they enter with the intent of avoiding detection when they enter a destination country.
4. Fraudulent Entry. A person may obtain falsified documents that allow them to cross the border at an authorized entry point under false pretenses.

Differences in economic conditions between neighboring countries are a predictor for being a destination country for undocumented migration. Undocumented migration frequently involves a poor country that shares a border or close geographic proximity with a wealthier country, such as the United States and Mexico or Spain and Morocco.

Nevertheless, there are other countries that do not have significant wealth or highly developed economies that also experience significant levels of undocumented migration. The comparative differences in wages between countries within close proximity tend to influence migratory inflows into the higher paying country. South Africa, which is not as economically prosperous as Spain or the United States, provides an example of one such scenario. “There are several million unauthorized immigrants in South Africa, which itself is not a wealthy country and is the source of

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<sup>44</sup>The Labor Guide from the Ministry of Work and Immigration, Article 8 section 21.7 allows that a student visa holder can work for up to 3 months as long as it does not coincide with academic terms or periods.

unauthorized immigrants to high income countries, but South Africa offers much higher wages than most of its neighbors.”<sup>45</sup>

### **History of Regularizations in Spain.**

Regularizations have been a legal process of policy implementation that allowed for undocumented residents meeting criteria established by each specific policy, such as residing in Spain over a specified period of time, to apply for residency and gain the legal right to work and reside in Spain for a specified period of time if their application obtains approval. Once an undocumented resident gained legal status through the regularization policies, they were able to renew their visa or apply for Spanish citizenship, allowing for the continuation of residence in Spain.

There have been four regularizations in Spain since 1996. Each of these regularizations was intended as a one-time process. In other words, the regularizations addressed undocumented residents for a specified period and the policy did not create a permanent legalization policy that would address the issue of undocumented residents in perpetuity. Each regularization scheme was a singular policy event and future regularizations would be addressed separately. The one time regularization schemes “target a finite number of migrants who have specific residency and work requirements; such programs also have deadlines for applications. Since 1980, the

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<sup>45</sup> (Bodvarsson, 2009, p. 288)

United States and eight European Union (EU) countries have implemented 22 “one-time” regularization programs.”<sup>46</sup>

The analysis of the impacts of regularization on the underground economy begins in 1995, due to a lack of earlier Social Security revenue data. The 1996 regularization was based on Royal Decree (Real Decreto) 155/1996, which went into effect on February 11, 1996. The history of undocumented migration into Spain and the transition of Spain from a country of emigration to one of immigration are helpful for understanding the motivations for the regularization policies that took place in Spain beginning in 1985.

Until the 1970s Spain had been a nation of emigration. However, this began to change and emigration from Spain decreased. By the 1980s, Spain began experiencing an increase in the flow of inward migration as a result of tighter border controls among other European countries, historical connections to South America and Northern Africa, and demand for migrant labor in Spain’s underground economy according to Amanda Levinson’s research on regularization in Spain.<sup>47</sup> Prior to this increase in immigration there was not a need to consider policies such as regularization or work programs for undocumented residents as there was not enough inward flow to raise concern for the policy makers.

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<sup>46</sup> (Levinson, 2005) In the United States, there was the Immigration Reform and Control Act (IRCA) of 1986 which was a one-time regularization that gave amnesty to undocumented residents already residing in the United States, establishing the requirement that employers verify the legal status of employees. The second US policy was the Special Agricultural Workers (SAW) program of 1986 which gave temporary residence to undocumented agricultural workers that spent at least 90 days in agricultural work from 1985-1986, resided in the United States since January 1992. Refer to National Agricultural Workers Survey at <http://www.doleta.gov/agworker/report/ch4.cfm>.

<sup>47</sup> (Levinson, 2005, p. 47)

The first regularization program introduced in 1985 by the Socialist Party, the Ley de Extranjería (Foreigners Law), was an attempt at regulating undocumented residents in Spain. This law was introduced to “conform to European Community legislation that restricted non-European Community citizen immigration”<sup>48</sup> since Spain was about to join the European Community in 1986. This law did not have measures to move migrants toward a permanent residency status. One of the features of the Foreigners Law was that it introduced sanctions on employers who hired undocumented residents. Article 27 of the Foreigners Law allowed for a fine of up to 2,000,000 pesetas.<sup>49</sup> For comparison, the average annual wage for industry and services in 1985 was 1,023,372 pesetas.<sup>50</sup> The undocumented residents were perceived as temporary workers under this legislation and were not offered permanent residency as a result of this regularization. The requirements to qualify for this one-time regularization were a job offer and arrival in Spain prior to July 24, 1985. As a result of the narrow criteria for regularization only 23,000 of the 44,000 or 52% of all applicants were given work permits. Approved applicants would receive a one year residency and work permit.<sup>51</sup>

Though the visa and work permit were renewable in concept, in practice very few renewed their visa and returned to an undocumented status when the visa expired. Of the 23, 000 that received work permits, by 1989 only 56% retained their legal status. This lack of renewals is attributed to difficulty in providing proper documentation to meet the eligibility requirements to have a valid job offer. Since "there would be stricter controls to prevent employers from hiring unauthorized immigrants, some employers

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<sup>48</sup> (Ortega-Perez, 2003)

<sup>49</sup> (Organic Law 7/1985)

<sup>50</sup> (National institute of Stastics, 2011)

<sup>51</sup> (Levinson, 2005, p. 49)

simply eliminated most of their migrant labor force rather than face the consequences of violating the law and/or be forced to formally hire them." <sup>52</sup> Furthermore, since many of the recipients worked as seasonal workers, they may not have the same job that had allowed them to qualify initially due to the impermanent nature of migrant labor in agriculture.

The next regularization of undocumented residents occurred in 1991. This program was targeted toward the undocumented residents who had been living and working in Spain since May 15, 1991 or had been seeking asylum that was still pending or had been rejected. Of the 135,393 applicants 109,135 (81%) were approved for a 3 year residence. <sup>53</sup>

In 1996, the third regularization policy was implemented to address the migrants who had obtained legal status through the previous regularization schemes but had failed to renew their work and resident visas and reverted back to an undocumented resident status. Requirements to apply for the 1996 regularization were; "an applicant had to be working in the country since January 1, 1996, have a working or residence permit issued after May 1986, or to be a member of the family of a migrant living in Spain before January 1996." The numbers of applicants for this attempt at regularization were smaller than had been the case in 1991 since it was a much more tightly defined population group with more specific criteria. Most of these applicants were not new

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<sup>52</sup> (Reyneri, 2001, p. 52)

<sup>53</sup> (Levinson, 2005, p. 49)

undocumented residents, but previously approved applicants from the 1991 program. Of the 25,000 applicants, 21,300 (85%) were approved for a 5 year residency.<sup>54</sup>

In 2000, there was yet another regularization program. Similar to the 1996 program, this was an attempt to return those from previous regularizations who had failed to renew their work and residency visas to a legal status. The window was from March 21, 2000 to July 31, 2000 for undocumented residents who had arrived in Spain prior to June 1, 1999 to obtain legal status. In order to be eligible they would need to have had previously applied or received a work or residency permit within the previous 3 years.

After the passage of the 2000 regularization legislation, the undocumented residents were provided with social services such as public education and access to health care, provided by the Spanish government, so long as the undocumented resident had registered with the *Padrón*, referred to as the *Municipal Register* in English, which is a registry for persons to report their location of domicile and demographic information. Each municipality maintains data that is provided to the central government annually. This change allowed for tracking the undocumented resident population since it incentivized registration by making it a condition for receiving social services.

The passage of Organic Law<sup>55</sup> 4/2000 guaranteed equal access for foreign children less than 16 years of age residing in Spain, regardless of legal status, to attend public school. This included access to scholarships and aid. Upon completion of obligatory

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<sup>54</sup> (Levinson, 2005, p. 49)

<sup>55</sup> Organic laws are defined in the Spain Constitution as those relating to fundamental rights and civil liberties, similar to the Bill of Rights within the U.S. Constitution. An overall majority vote in congress (which consists of 350 members) is necessary for passage. (Constitution of Spain, 1978)

education, foreign residents were also guaranteed the right to apply for acceptance into higher levels of education with the same conditions as Spanish citizens.<sup>56</sup>

For comparison, in the United States, access to public education through the 12th grade is guaranteed without regard to immigration status. In 1982, the U.S. Supreme Court decision in *Plyler vs. Doe* overturned a Texas state law that had passed in 1975 that allowed school districts in the state to charge tuition for educating children of undocumented residents. Despite attempts by other states such as California to deny access to public education with Proposition 187 in 1994, this court decision has been upheld and continues to protect access for children to primary and secondary education without regard to immigration status.<sup>57</sup>

This court decision has not been extended to include post secondary education. In 1996, the U.S. Congress passed the *Illegal Immigration Reform and Immigration Responsibility Act (IIRIRA)*, which declared under section 505 that undocumented residents "shall not be eligible on the basis of residence within a State for any postsecondary education benefit unless a citizen or national of the United States is eligible for such a benefit without regard to whether the citizen or national is such a resident."<sup>58</sup> This allowed states deny in-state tuition or acceptance to an institution arguing that the undocumented applicant is a resident in their home country. As of the end of 2011, only 12 states had provisions that allowed for undocumented residents to

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<sup>56</sup> (Ley Organica 4/2000) Article 14 guarantees the right to social services, Article 9 guarantees access to education.

<sup>57</sup> (Olivas, 2010)

<sup>58</sup> (Konet, 2007)

pay in-state tuition rates if they can establish that they have met the residency criteria established by the state.<sup>59</sup>

The Dream Act, which has been proposed to the U.S. Congress several times, would overturn the provisions of IIRIRA section 505. The primary purpose of the bill has been to allow for the education beyond the 12th grade and provisional legalization of undocumented residents that were brought to the United States as children by no choice of their own. This differs from Spain's passage of Organic Law 4/2000 which allowed access to public education but not a path toward legalization based on education.

This would be followed by another attempt at addressing the undocumented resident population in 2001 with the 5<sup>th</sup> regularization program. This program was more generous in its requirements compared to previous programs. Under previous regularizations the scope was limited to those migrants that had been working in Spain during a specifically defined time period. This effort was broader in scope and not limited to the connections to the labor force. To be eligible under this program, the migrant had to establish "roots" to Spain. These "roots" could be based on integration into the labor force or family connections to Spain either through a Spanish citizen or legal foreign resident. Of the 350,000 applicants, 63% at a total of 221,083 were granted a temporary visa for 1 year.<sup>60</sup>

Generally, a resident can only apply for citizenship if they have resided in Spain legally for 10 consecutive years. However, the 2001 regularization targeted the regularization

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<sup>59</sup> (Morse, 2011)

<sup>60</sup> (Levinson, 2005, p. 49)

of undocumented residents with historical connections to Spain. Residents from Latin America and countries that are linked historically to Spain—Portugal, Andorra, the Republic of the Philippines, Equatorial Guinea—or are Sephardic Jews (descendants of the Jews expelled from Spain in the 15th century)” can apply for citizenship after 2 years of legal residency.<sup>61</sup> However, if the beneficiary of the regularization failed to renew their work and residency visa they reverted to their undocumented resident status.

The 6th regularization program came in February 2005 when the Spanish government announced the "Proceso de Normalización" (Regularization Process) as a necessity to control the underground economy created by undocumented resident population and increase compliance with taxation requirements. Tax avoidance acts as an incentive for participation in the shadow economy. As the underground economy pertains to undocumented residents and their employers, participants in the underground labor market were avoiding the payroll taxes that are required in the legitimate economy. By addressing this segment of the population the Spanish government hoped to be able to obtain the tax revenue that the labor provided by undocumented residents had been able to avoid.

This program differed from the previous programs by requiring that the employers facilitate the process rather than being facilitated by government officials as had been the case with previous regularizations. The migrant worker was required to apply

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<sup>61</sup> (Annual Report on Migration and Asylum Statistics., 2006, p. 13)

through the employer, who then was responsible for proving that they were paying the appropriate taxes on the behalf of the employee/migrant.<sup>62</sup>

The *Figure 4* below shows the participation in the numerous regularization programs implemented by Spain.

**Figure 4.**

Spain Regularization Participation			
Year of Program	Number of Applicants	Number Approved	Approval Rate
1985	44,000	23,000	52%
1991	135,393	109,135	81%
1996	25,000	21,300	85%*
2000	247,598	153,463	62%
2001	350,000	221,083	63%
2005	700,000	573,270	82%

\*1996 regularization was specifically addressing the former participants in regularizations that had failed to renew their visas, returning to an illegal status.  
 Years 1985-2001 provided by chart from:  
 Levinson, Amanda. "Why Countries Continue to Consider Regularization."  
 2005 derived from:  
 Pabon Lopez, Maria. "Immigration Law Spanish Style: A Study of Spain's Normalización of Undocumented Workers." Georgetown Immigration Law Journal. Vol. 21:271, p. 571

Those who perform labor and are not reporting it to the proper agencies and paying the income taxes and Social Security taxes as mandated in Spanish Law are participants in the underground economy. The participation can vary from someone who performs a

<sup>62</sup> (Levinson, 2005, p. 49)

side job for cash after work hours to the person who works exclusively outside of view of the tax authority.

There is a significant incentive for the employer in Spain to seek out labor in the underground economy. Employers are required to contribute toward Social Security Taxes at a rate of 23.6% of the employee's wages.<sup>63</sup> To put this into perspective, German employers contribute at a rate of 19.61% for Old Age; Disability; Survivor benefits; Illness and Maternity; Work Injury; Unemployment; and Family Allowances. The contribution rate for French employers is 8.3% of employee wages or 32.68% when considering employer contributions toward Old Age; Disability; Survivor benefits; Sickness and Maternity; Work Injury; Unemployment; and Family Allowances. In Germany, the employee shares an equal Social Security tax burden of 9.95% but the total contribution becomes 19.25% when considering employer contributions toward the other required contributions mentioned above. The employee contribution rate in France is 6.65%.<sup>64</sup>

Comparatively, in the United States, Social Security Tax rates average 6.2% for the employer. The employee's Social Security Tax contribution had also been 6.2% prior to the passage of the Job Creation Act of 2010, which reduced the rate temporarily to 4.2% through the end of 2012<sup>65</sup> compared to a contribution rate of 4.7% for a worker in Spain.

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<sup>63</sup> [http://www.seg-social.es/Internet\\_1/Trabajadores/CotizacionRecaudaci10777/Basesytiposdecotiza36537/index.htm](http://www.seg-social.es/Internet_1/Trabajadores/CotizacionRecaudaci10777/Basesytiposdecotiza36537/index.htm)

<sup>64</sup> (U.S. Social Security Administration)

<sup>65</sup> (Social Security Administration, 2012)

The underground labor market is not limited to undocumented residents in Spain. Spanish citizens may also participate in the underground economy, evading the tax requirements as well as allowing legal residents to continue to earn unemployment benefits, supplementing the wages that they can earn through working under the table. The duration of unemployment benefits under the contributory scheme, in which the recipient had paid social security contributions, is determined by the period of contribution prior to the loss of employment. The minimum contribution, 360 to 539 days within the 6 years prior to loss of employment, entitles the recipient to up to 120 days of benefits at 70% of the wages received in the last 180 days of employment. After 6 months the benefit is awarded at 60%. The maximum benefit duration is 720 days for those that had been contributing for at least 2160 days in the proceeding 6 year period.<sup>66</sup> Due to this requirement to have maintained a work history for a period of time, undocumented residents are not able to utilize the unemployment benefits that are available for other individuals that are legally present in Spain. This is a consideration for the overall participation in the underground economy.

While the incentives for natives and legal residents to participate in the shadow economy are greater than those for undocumented residents. The latter were targeted in the government's attempt to reduce the workforce within the underground economy. When an undocumented worker works within the underground economy they are able to avoid the mandated taxation that would have occurred if they were employed and

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<sup>66</sup> (OECD, 2009)

paid in the legitimate labor market. The employee circumvents the obligatory tax contribution rate, 4.7% for 2011 which is determined annually.<sup>67</sup>

The employer of the undocumented resident receives a greater incentive than that of the employee by employing an underground work force, as the employer is required to contribute at a rate of 23.6% of the employee's labor earnings for Social Security taxes. The rates are pertaining to payment within a base amount of pay up to a ceiling amount that is determined annually. This high rate of Social Security tax provides a disincentive for hiring through legal channels, which may be cost-prohibitive for some employers who may choose to hire within the underground economy to avoid paying the legally required taxes.

The passage of Organic Law 4/2000 specifically attempted to address the participation of Spain's undocumented resident population in the workforce. It was argued that by legalizing undocumented residents they would become tax contributing laborers. Penalties were also increased in an effort to curb the participation in underground labor.

There are three classifications of offenses defined by the Organic Law 4/2000, Title 3, Article 51; minor, serious, and very serious. With each classification, there are ranges of penalties that are defined for the commission of immigration violations. The hiring of persons that do not have Spanish work authorization is classified as a serious offense.<sup>68</sup>

The limited data available from the Spanish Ministry of Work and Immigration shows the costs of sanctions levied against employers that were in violation of employment regulations pertaining to foreign residents, beginning in 2003 which is represented

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<sup>67</sup> (Gonzalez, 2009)

<sup>68</sup> (Organic Law 4/2000)

graphically in *Figure 5*. There is not a conclusive trend in the costs of the sanctions from year to year. However, when looking at the corresponding data in *Figure 5* showing the inspections and number of violations increases in the number of inspections did occur following the 2005 regularization. Despite a greater number of inspections, the number of violations has remained somewhat constant over the time period.

With the greater number of inspections, it would be expected that the revenue from sanctions would decrease if employers were no longer willing to engage in employment of undocumented residents. However, by 2006 there were a record number of undocumented residents and sanctions had again increased to its peak level in 2006. The subsequent 2007 decline in the undocumented resident population coincides with the decline in residential construction that was indicated in *Figure 1* and economic decline that was beginning at that time.

There is not sufficient data of the overall underground economy and the effects of these sanctions on employers. However, by looking at the total foreign population registered with the *Municipal Register*<sup>69</sup> and subtracting the number of foreign residents with residency permits<sup>70</sup>, it is possible to observe the change in the undocumented resident population over this time period. There is a drop in the undocumented resident population following the passage of the 2005 regularization measures. However, in 2007 this population segment began to rise again. Data is not available after 2008 indicating the number of foreigners holding a valid resident card.

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<sup>69</sup> (National Statistics Institute, 2012)

<sup>70</sup> (National Statistics Institute, 2012)

The Organic Law 4/2000 was amended by Organic Law 2/2009 on December 11, 2009, referred to as the Alien Law, to meet the minimum requirements established by the European Parliament's provisions for penalties for employers that hire undocumented residents that were outlined in Directive 2009/52/EC.<sup>71</sup> The Alien Law increased the penalty for a serious offence from a range of €301.00-€6,000 to €501.00-€10,000.<sup>72</sup> In addition to the increased fines, Directive 2009/52/EC, article 6 mandates that the employer will be liable for any taxes and social security contributions that would have been collected if the employee had been of a legal status. To further discourage the hiring of undocumented residents, the business can be closed down or banned from public contracts, public aid, and subsidies funded by the European Union or member state under Article 7.

Based on the number of undocumented residents reported in the *Municipal Register*, there appears to have been some impact on the undocumented resident population. Another possibility is that the employers have been able to counter the inspections through evasive measures and avoid detection. Data is not yet available to see the effects, if any, resulted from the increased penalties on the employers that resulted from Directive 2009/52/EC.<sup>73</sup>

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<sup>71</sup> (Directive 2009/52/EC of the European Parliament and Council, 2009)

<sup>72</sup> The fines for serious infractions are outlined in (Organic Law 4/2000), Title 3, Article 55. The amended fines are outlined in the (Official Bulletin of the State, 2009, p. 105014)

<sup>73</sup> (European Migration Network, 2010)

Figure 5.



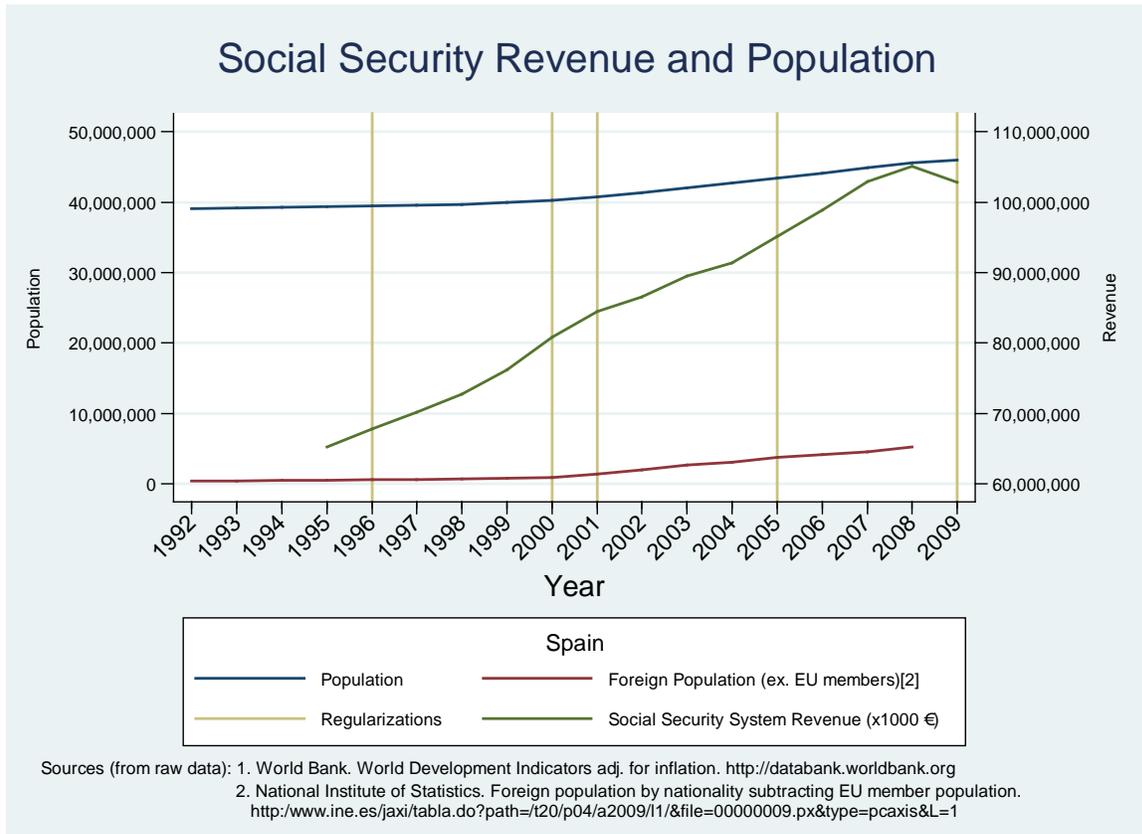
The percentage of wages that must be contributed by both, the employer and the employee to Social Security tax have been constant since 1995. Due to this consistency, the Social Security taxes are a consistent measure for evaluating the effects on the underground economy instead of income taxes. For the purpose of analyzing regularizations, the focus will be revenue received by Social Security, which is a mandatory contribution of both the employer and the employee working in the legitimate workforce.

Income taxes are also avoided if a laborer receives wages paid within the underground economy. However, there are a large variety of factors that can affect the income tax revenue that Spain receives through work. There is a minimum wage threshold that is

exempt from income tax. Since many of the undocumented residents are of lower skill and education levels they are likely to fall below the minimum threshold for paying income taxes. The advantage of looking at Social Security contributions is that there is not a wage threshold exempt from payroll contributions. Social Security data reflects contributions from low wage workers who would not be included in income tax revenue.

Comparing Spanish population data to Social Security tax revenue indicate that the taxes have increased at a more rapid rate than the population. The data in *Figure 6* are adjusted for inflation. The more rapid ascent of the Social Security income could be the result of formerly underground labor moving into the legal workforce resulting in an increase in revenue that was not previously captured in Social Security taxes. Social security revenue increases could also be the result of increases in wages and higher rates of work force participation resulting from population growth or previously unemployed finding work which would be expected in a strong economy as existed from the 1990s through 2007.

Figure 6.



1995-Real Decreto 155/1996, 2/11/96

2000-1/2000 Law on the Rights and Freedoms of Foreigners in Spain and their Integration

2001-12/22/2000, Law 4/2000

2005Royal Decree 2393/2004, 12/30/2004

\*\*Bulgarians and Romanians have been excluded as they became regulars from 1 January 2007 due to the accession of their home countries to the European Union.

Thirty percent of the Spanish labor force is made up of workers on temporary contracts.<sup>74</sup> The high rate of participation in temporary labor in the Spanish labor market can be attributed to collective bargaining rules and employment protection legislation which make it difficult for employers to dismiss employees. Severance payments for dismissal are 20 days for each year of service and even higher for terminations that are determined to be unfair by Spain's strict laws. This differs from the

<sup>74</sup> (Jaumotte, 2011, p. 5)

severance pay for temporary workers in Spain that receive only 8 days per year of service.<sup>75</sup> This further incentivizes employers to seek temporary workers or participate in the underground labor market.

As a result of the rigidity of the regular labor market, many of those who gained the right to legal employment as a result of regularizations would have caused greater impact to the temporary labor market. Though there was a significant increase in the assignments of temporary employees in the mid 1990's the regularization of undocumented residents in the 1996 regularization measure only resulted in 21,300 immigrants receiving work permits which can only account for a small portion of the increase.

### **The Impact of Regularization Policies on Social Contributions.**

If the regularization programs had the desired effect of reducing the participation in the underground economy, we should be able to observe an increase in social security tax revenues. These revenues did increase over time from 1995-2010. Nevertheless, this increase cannot be conclusively attributed to increases in the foreign population. Instead, increases to social contributions appear to be due primarily to economic growth. During much of this time period Spain was experiencing a boon in construction similar to that of the United States, as had been indicated earlier in *Figure 1*. They cannot be directly attributed to the regularization of undocumented residents in Spain. The economic growth that took place over this time period would cause an increase in the social contributions that occurred.

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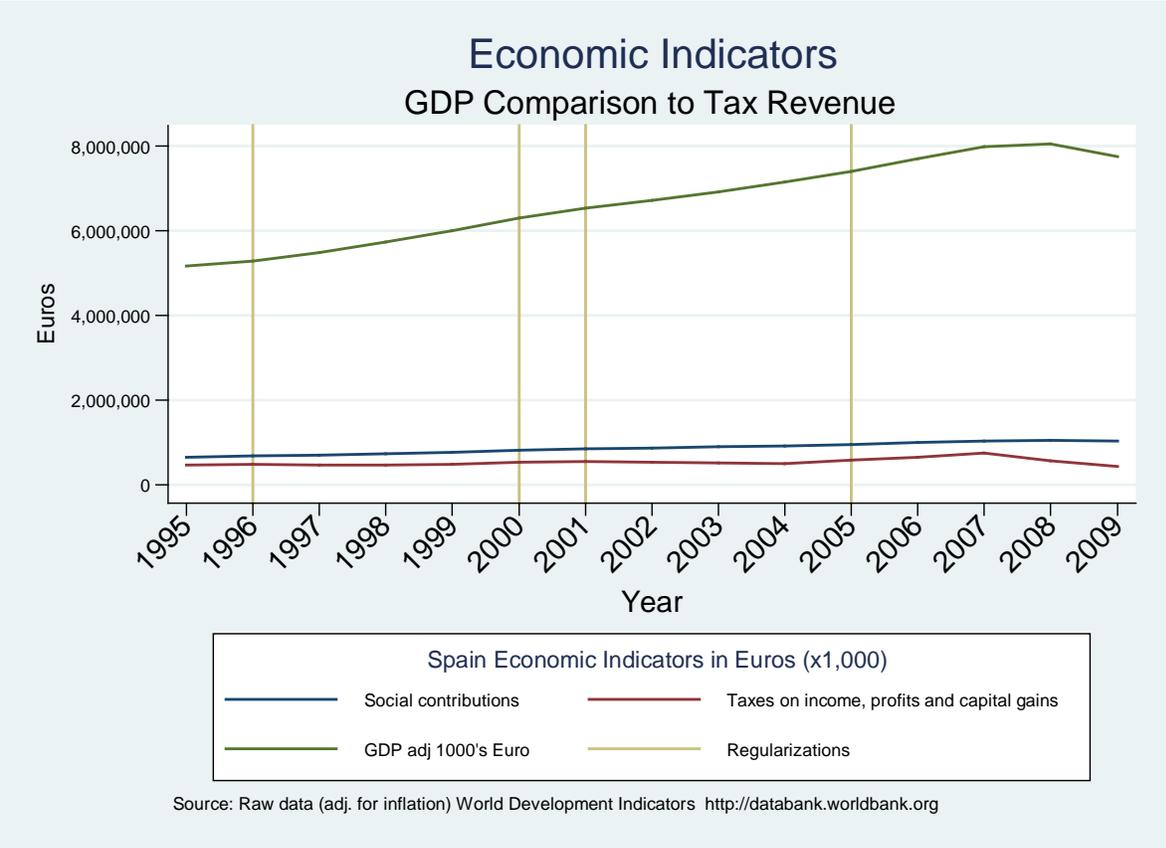
<sup>75</sup> (Jaumotte, 2011, p. 9)

The regularized segment of the foreign population is an even smaller segment of those workers that have the potential of impacting social security tax revenue as a result of their legalized residency status. The increase in the social security tax revenue can more accurately be attributed to normal economic growth as measured in the per capita gross domestic product. Regularization affects the GDP of Spain since this does increase the counted population in the GDP equation. If the legalized population continues to work in the shadow economy, the impact on the GDP will be negative.

There would also be an expectation that the increased social security enforcement would have resulted in an increase in the quantity of penalties reported for social security violations. There was a significant increase in inspections from 34,301 in 2004 to 79,481 inspections in 2005. Despite more than a 100% increase in inspections there was a 69% decrease in the number of reported violations from 13,800 in 2004 to 9,535 in 2005. This contradicts what would be expected when the employers and employees that were participating in the underground labor force if the new legislation that gave 573,270 previously undocumented residents legal residency. Many that may have previously been employed illegally were now authorized to reside in the country and working legally. There was also a decrease in revenue from sanctions that resulted from these reported infractions that could be correlated to the decreased number of violations found. However, over the time period that is evaluated there is not a discernible trend in the revenue that resulted from the imposed penalties over the longer term. From 2006-2008, revenue from sanctions increased despite a reduction in the number of inspections.

When comparing the growth of Spain’s gross domestic product GDP to the country’s tax revenue, the latter does not increase at a rate that would correspond with the growth of the economy. This is an indicator that there may be an increase in the shadow economy. It would be expected that the tax revenue would also be increasing with economic growth indicated by the GDP. However, tax on income, profits, and capital gains, as well as social contributions remained relatively flat over the same time period as indicated in *Figure 7*.

*Figure 7.*



## **Lessons from Spain for Implementation of Regularization Policies in United States.**

Regularization policies in Spain were identified as “one-time” regularizations since they were only to give legal status to undocumented residents over a limited time period. However, regularization schemes have occurred every 4-6 years since the first passage of Ley de Extranjería (Foreigners Law) in 1985.

Under the political system that exists in the United States, with its separation of powers, passage of legislation is more difficult than in Spain’s parliamentary system, especially in a situation of divided government in the U.S. Spain’s parliamentary system gives more control to the majority party.

Despite the expectation of significant debate over legislation pertaining to immigration reform the Pew Institute’s recent survey concluded that the public does favor immigration reform that includes both, tougher border controls and a path to citizenship for undocumented residents in the United States.<sup>76</sup> Though 55% of Republicans think border control should be the priority, compared to 22% of Democrats and 34% of Independent voters, overall, 42% of the survey sample favors legislation that includes better border controls and a path for citizenship. In total, across the political party affiliations, 35% wanted only better security and 21% only wanted a path for citizenship to be created. Based on this survey, willingness by the American people to pass reform that included regularization of undocumented residents exists. However, the support proportions may differ if the data were broken down into legislative districts, an important factor for those legislators who may be looking at reelection.

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<sup>76</sup> (Pew Research Center, 2011)

Additionally, Stuart Anderson of the National Foundation for American Policy concluded that for immigration reform to be effective at reducing future undocumented migration, it must have components to address undocumented residents who are already in the United States as well as establishing a guest worker program to allow for future migration. “Without such an approach, ten years from now, both sides of the debate will still decry the status quo.”<sup>77</sup> We have seen this with the passage of IRCA in 1986. Adequate measures to allow for a legal method for low skilled labor to enter the U.S. despite labor needs. The undocumented resident population continued to grow through 2007. Spain also failed to address future needs for migrant labor in the various regularization programs implemented. Each addressed the undocumented residents already in Spain but failed to adopt a process in which future low skilled migrants could enter the country legally and enter the workforce.

According to the Pew Hispanic Center estimates, the average increase of undocumented residents over the last decade has been 280,000 in the United States.<sup>78</sup>

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<sup>77</sup> (Anderson, 2003)

<sup>78</sup> (Passell, 2011)

**Figure 8.**

United States Estimated Undocumented Resident Population 2000-2010		
Year	Total Undocumented Resident Population	Change in United States Undocumented Resident Population
2000	8,400,000	
2001	9,300,000	900,000
2002	9,400,000	100,000
2003	9,700,000	300,000
2004	10,400,000	700,000
2005	11,100,000	700,000
2006	11,300,000	200,000
2007	12,000,000	700,000
2008	11,600,000	-400,000
2009	11,100,000	-500,000
2010	11,200,000	100,000

Source: Pew Hispanic Center <http://pewhispanic.org/files/reports/133.pdf>

Under the assumption that the trends over the last decade will continue, Douglas Massey argues that “if 300,000 two-year visas were issued annually, there would be 600,000 temporary migrants working in the United States at any time.” A guest worker program would eliminate the need for any employer sanctions and, based on Pew Hispanic Center data, this would absorb almost all of the annual inflow of undocumented migration, providing that the undocumented residents that are already residing in the United States are allowed to remain.<sup>79</sup>

Although the trend over the last decade has been an increase, on average, of 280,000 undocumented residents in the United States, 2008-2010 presents a change in the pattern of undocumented migration. The 2008 and 2009 estimates actually show that undocumented residents are leaving the United States. Some of this outward

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<sup>79</sup> (Massey D. , Understanding America's Immigration 'Crisis.', 2007)

emigration is likely the result of reduced opportunities in the United States due to the economic downturn that began in 2008.

Enhancement of border enforcement is also a likely catalyst for this change in migration pattern. Since the record number of almost 388,000 deportations in 2009<sup>80</sup> there may be more reluctance of migrants to enter the United States due to increased fear of repatriation to their home countries and risk of injury and death as entry points attempt to evade detection by moving into more dangerous terrain.

Compared to Spain, the underground economy of the United States is significantly less of a proportion of the total population than that of Spain. Estimates using the MIMIC approach, estimate the underground economy in the United States at 8.4% of the GDP compared to Spain's estimate of 22.2% for the same year.<sup>81</sup> Additionally, the tax burden in the United States is lower than the burden on Spanish labor. These factors affect the willingness to participate in the underground economy. Schneider reiterated the influence that taxation has on the underground labor market indicating that for each 1% of increase in the marginal tax rate, an increase of 1.4% in the underground economy would result.<sup>82</sup>

Despite the large number of undocumented residents and subsequent participation in the shadow workforce, the percentage of the population is quite small. The estimated undocumented resident population for 2010 is less than 4% of the total United States population.<sup>83</sup> This limits the directly measurable effect that successful regularizations

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<sup>80</sup> (Medrano, 2010)

<sup>81</sup> (Schneider F. e., 2010, pp. table 2, p. 456.)

<sup>82</sup> (Schneider F. a., 2000, p. 21)

<sup>83</sup> (Passell, 2011)

could have on tax revenue in the United States. However, there is still adequate justification to address the issue on fiscal and humanitarian grounds.

Though a significant change in tax revenue did not occur in Spain that could be directly attributable to the regularizations, there are a large number of potential tax payers that could be accessed if the undocumented residents could be moved toward legalization and making income tax and social security contributions. Despite this cost, it is possible to create a policy that would avoid increases in overall cost to the federal government. If the CBO analysis of the costs for Comprehensive Immigration Reform Act of 2006 (S. 2611) showing a net increase in revenue of \$12.1 billion were correct, then similarly modeled legislation could be fiscally sound as well as addressing this ongoing immigration issue.

### **Recommendations.**

There is no simple solution for ending undocumented migration into the United States. This is an issue that many nations experience when the opportunities as a receiving country are better than what is available if a person is to remain in their country of origin. In many cases, increases in undocumented migration can indicate a prosperous economy if there are not enough workers to meet the labor needs. The undocumented resident population increased in the U.S. in tandem with the housing boom and need for low skilled labor, particularly in construction throughout the 1990s until the housing bubble burst in 2007. Along with the collapse, undocumented entry into the United States slowed. When the economy is poor, as has been the case since late 2007, undocumented migration is likely to decrease as the need for their labor diminishes. The push factors such as a lack of economic opportunities, political instability and

corruption, or fear of violence combined with the pull factors, such as demand for inexpensive labor in undesirable occupations are catalysts that promote migration in search of a better life or income.

There have been numerous attempts to control borders through enhanced enforcement by both Spain and the United States. Both countries, despite these efforts to control the borders, have continued to experience an increase in the numbers of undocumented residents on average and over time. Border control efforts alone have failed to address the numerous factors that drive undocumented migration and are quite expensive.

If regularization programs intend to deter workers from participating in underground labor there must also be recognition of other influences that affect the underground workforce in general, such as the effects that the tax wedge have on labor and the employer's that may choose to hire workers outside of the legal market. More specifically, pertaining to undocumented residents, the push and pull factors of demands for labor in fields such as agriculture that are not as desirable to the higher skill levels that United States citizens and legal residents are likely to exhibit must be recognized.

Successful immigration reform should offer the opportunity for less skilled workers to migrate legally. A work program as demonstrated by Douglas Massey that included 300,000 annually would be able to address the needs of employers as well as offer enough permits to meet the needs of migrant workers. A secondary benefit that would likely result would be a decreased demand for "coyotes" or smugglers that bring the migrants across the border for a fee.

Legalized residents may also become greater tax contributors in the future if provided with the opportunity to advance in the legal economy. As a person advances, the hope is that their income will increase and the legalized resident will be a part of the tax base that the United States needs to meet future funding obligations.

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