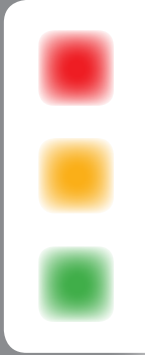


Guide for undocumented immigrants



Document prepared by:

Asociación Pro Derechos Humanos de Andalucía
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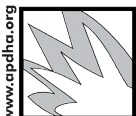


Presentación

There are different guides for people who live in Spain and do not have papers. In the Human Rights Association of Andalucía (APDHA – Asociación Pro Derechos Humanos de Andalucía), we consider it necessary to have a new version adapted to the changes presented by the immigration law.

We propose this short guide based on other guides (see references at the end) and updated information from March 2013. We hope this will be helpful to you. We encourage you to distribute, copy and use it etc.

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When am I considered to be an “undocumented” immigrant?

1. When you have legally entered Spain but you have not obtained permission to extend your stay (you came as a tourist for three months and you stayed).
2. When you have entered Spain illegally (for example: hidden in cars or trucks, with a passport that is not yours, in dugouts or small boats, etc.).
3. When you have not been able to renew your residence permit.

The sanctions are administrative, and not criminal. They involve a fine or expulsion from Spanish territory and possibly a refusal of re-entry for a long period of time.

Even if I am an “undocumented” immigrant, I have the right to (among other things)

- Education, if I am under the age of 18. Including access to scholarships and study grants.
- Association, assembly, to join a union and to strike.
- Free legal assistance: the appointment of a lawyer and/or court representative for your defense.



With respect to medical assistance, you need to know the following:

According to State legislation, medical assistance has been limited (since September 2012) to the following:

- Emergency Care.
- Serious illness or accident, whatever the cause, until a doctor has officially certified your recovery.
- Medical care during pregnancy, childbirth and the postpartum period.

But, **in any case**, all foreigners under the age of 18 will receive medical assistance under the same conditions as Spaniards.

Nevertheless, if you live in Andalusia, the Administration of Andalusia has established that the "Servicio Andaluz de Salud" will continue to provide all types of medical attention to immigrants, regardless of their legal or illegal status. **You should inform immigrant support organizations about any problems you encounter at health care centres.**

What is the Municipal Register (el Padrón)?

Do I have to register?

The "padrón" is an administrative population register that the local council uses to record the number of people who live in a village or town (Spanish people or foreigners, with or without documents).

Even though you are undocumented it is a good idea to register at the council of the village or town where you live, because:


- Normally, you will need to be registered to be able to enrol your children at school.
- It is one of the best ways to prove how long you have been living in Spain at the moment of regularizing your situation through "arraigo" (as further explained below).
- Remember that nobody can refuse your registration even if you are undocumented. Simply show your passport (it does not matter if you do not have a visa or if it is expired) and demonstrate that you have an address in this town or city.

You should take into account that:

- If the address you give is not really yours, the person who provided it to you can be penalized.
- The police have the right to access the census figures, although it is unusual that they will visit your residence. And even then, they still cannot enter your home without consent, unless they have a court order or knowledge of a criminal offence taking place.

If I am an undocumented immigrant, where should I go if I misplace my passport or if I am the witness or victim of an offence or an unfair situation?

You have the right to report all these situations and bring them to the attention of the police like any other citizen. However, you have to take into account that during the complaint process the police may find out that you are "undocumented", and then they could initiate proceedings that could lead to your expulsion, as we will see further explained below.



EXCEPTION: If you want to report that you are a female victim of gender-based or domestic violence (see following point). Therefore, in these cases it is recommended that you register a complaint at the public prosecutor's office (Juzgado de Guardia). You can also find help and assistance in immigrant support organizations or human rights organizations.

Finally, there are two institutions, the "**Defensor del pueblo andaluz**" (Andalucian Ombudsman) and the "**Defensor del Pueblo español**" (National Ombudsman) that prosecute human rights violations and to whom you can turn regardless of the fact you are "undocumented".

If I do not have proper legal documentation, what can I do if I have been the victim of gender-based violence?

You can report your situation without fear that they will initiate disciplinary proceedings (nor try to execute a previous expulsion). To make a report, you can go to:

- A local or national police station.
- Social Services.
- The Spanish Institute for Women's Affairs (El Instituto de la Mujer).
- The Public Prosecutor's office (El Juzgado de Guardia).
- Associations for women, immigrants, human rights, etc.

Why would the police arrest me?

You may be arrested because living in Spain without a residence permit or authorization to stay (that is, "undocumented") is a serious infringement of Spanish immigration law.

Which legal documents should I carry with me when I am walking in the street as an undocumented immigrant?

When you walk on the street, the police can stop you and ask for your legal documents. In this case, it is recommended that you show them:

- The receipt for a residence application. That way you can show a document with an official stamp (a copy of it is not valid).
- Proof of address (el certificado de empadronamiento).

Am I obliged to show my passport to the police?

If you are currently not legally resident in Spain, and you show your passport, it could possibly be confiscated (they should give you a stamped receipt). But this will not prevent you from obtaining your residence permit on the basis of work and social ties "arraigo".

If you entered Spain through a frontier post, and you have been given an entry stamp on your passport, this could help, as the outcome could be the imposition of a fine instead of an expulsion order (orden de expulsión). The judge can also take this into consideration when deciding whether to place you in an immigration detention center for foreigners (Centro de Internamiento para Extranjeros o CIE) or to let you go free.

Which rights can I exercise if I am arrested?

1. The right to know the reason for your arrest.
2. The right to call one of your relatives or friends.
3. The right to an interpreter if you do not understand or do not speak Spanish.
4. The right to a lawyer (he can be a court-appointed lawyer, that is to say free, or a private lawyer of your choice).
5. The right to medical care if you are injured or sick.
6. The right to refuse to make a statement to the police, the right to remain silent.
7. The right to notify your country's Consular Office that you have been arrested and where you are being detained.
8. The right of habeas corpus, in other words, to appear before a judge immediately. You can only exercise this right if you believe that you are the victim of an illegal arrest or if you were mistreated by the police when they arrested you.

If I am arrested, what will happen?

- If, at any time, the police ask to see your papers and you cannot produce them, they will take you to the police station.
- First of all, a court-appointed lawyer will be called in order to help you and you will be given a letter saying that proceedings have been initiated against you. If you have your own lawyer, tell the police and give them his/her name and address. The police will contact your lawyer so that he/she can visit you.
- Custody may not exceed 72 hours.
- After your detention at the police station, there are **two possibilities**:
 1. You are released, or
 2. The police ask the judge to transfer you to an immigration detention center for foreigners (CIE), where you may be held up to a maximum of 60 days. In Andalusia, currently there is only one immigration detention center for foreigners, which is in Algeciras (province of Cadiz), with additional facilities in the municipality of Tarifa.
- Then your case will be examined in order to determine what action will be taken against you, which may be a fine or expulsion, for being in Spain without the required documents.

What preventative measures can be taken by the police if they arrest me?

The main ones are:

- Detention, which may not exceed 72 hours.
- Request a Judge to detain you in a CIE.
- Passport withdrawal, supplying a receipt.
- Regular reporting.

What are the differences between a court-appointed lawyer, the lawyers of associations or immigration center lawyers, and a lawyer that I pay?

The court-appointed lawyer is available to people of modest means and is automatically assigned to defend you if you do not have any other lawyer.

You can trust them and you must give them all possible information so they can help you. It is very important that you ask for their telephone number and know their name so you can send them documents and be in constant contact.

The lawyers of associations or immigration centers are also free, they are specialized in this branch of Law (Immigration Law), and you can have complete confidence in them.

If you choose a private lawyer, you will have to pay for their services. Therefore, you will have to find a lawyer you can trust and one that is specialized in Immigration Law.

What does my lawyer need to know?

In order to be able to defend you, your lawyer has to present a written submission to the police explaining your particular situation no more than 48 hours after your arrest. Since you do not have much time to bring all the information together, you must give them your phone number so they can locate you, or you can make a note of theirs.

Is very important to tell to your lawyer:

- If you have tried to seek political asylum previously or if you wish to request international protection because you are afraid of returning to your country, and explain why.
- How long you have been in Spain and how you entered.
- Where you live and if you have registered your address (Empadronamiento).
- Civil Status and family in Spain: shared living with a Spaniard or resident EU citizen, children, etc.
- Economic situation: if you have a job and/or someone that could give you a contract.
- If you have had training in Spain.*
- If you are a member of an organization.*
- If you are ill and are currently receiving medical treatment.
- If you are pregnant.
- If you have previously been subjected to an expulsion order.
- If you have been in other European Union countries.
- Etc.

It is recommended that you have all these documents ready beforehand in order to provide your lawyer with them as quickly as possible in case of your arrest.

**** You are advised, if need be, to request the certificates of the training courses that you have done from the organizations that provide them (associations, unions...) as well as the certificates that prove you are a member of an association or group which describe the activities you perform.***

If I do not have legal documents, will I be deported?

No siempre, dependiendo de las circunstancias personales y familiares, la sanción puede acabar en una multa. Por eso es muy importante que, si te detiene la policía, expliques bien al abogado/a tus circunstancias y le des toda la documentación que pueda ayudarle a defender tu caso.

Además, debes saber que las expulsiones van acompañadas de una Prohibición de Entrada en España u otro país de la Unión Europea por un periodo de tres a cinco años (ampliable a diez años en casos excepcionales), lo que dificultará enormemente que puedas regularizar tu situación en un futuro próximo; incluso aunque finalmente te quedes en España porque la expulsión no llegue a ejecutarse.

How long do preliminary immigration proceedings last? (in other words, the time it takes to decide what will happen to me)

The authorities have a maximum of 6 months from the date of your arrest and custody to communicate their decision to you. There are two possible outcomes:

1. **No action is taken:** if six months have passed since your arrest and you have not been informed in writing of any sanction (a fine or expulsion), no further action can be taken against you. Contact your lawyer so he/she can apply to have your case closed. Then, the lawyer must give you a document that certifies that the case has been closed. You need to keep this document, as it can be used as proof. But, if you stay in Spain illegally, the police can arrest you again in the future and reopen the case.
2. **A penalty is imposed, of either a fine or expulsion:** In this case, you have to contact your lawyer.

What does an expulsion order “orden de expulsión” involve?

This authorizes the police to arrest you and to send you back to your country immediately. Moreover, the expulsion order involves an entry ban into Spain as well as most other European countries for a maximum period of five years (that could be extended to ten years in exceptional cases), in accordance with immigration law.

If you decide to leave the country voluntarily after receiving notification of the expulsion order and you do so before the execution of the order, the additional re-entry ban will not apply.

Can I appeal against the expulsion order?

Yes, you can. Your lawyer will advise you and will appeal before the courts for you.

Once I have paid a fine for being “undocumented” in Spain, can I obtain a residence permit?

No, once you have paid a fine you are still in Spanish territory without proper, legal documentation, but the expulsion procedure is suspended and you can, when possible, apply for “regularization”. That is why it is highly recommended that you pay the fine.

If you are arrested again for being undocumented in Spanish territory, a new expulsion procedure will be started.

If I am subjected to an expulsion order, can I take steps to “regularize” my situation?

As a general rule, no. If an expulsion procedure has been initiated against you, you cannot take steps to regularize your situation. First of all you have to ask for the suspension of the expulsion order, which may be granted but is dependent on the decision of each individual Immigration Office (Oficina de Extranjería).

However, you may be able to have the expulsion order revoked (cancelled) if you meet the appropriate prerequisites for a residence permit based on Special Circumstances, such as: “Arraigo Social” (proof of social integration) which proves that you have been living in Spain for three years, that you have a contract of employment and a favorable report of social integration; if you are a female victim of gender-based violence; if you collaborate with organizations that work against organized networks, or if you are a victim of human trafficking.

What are the differences between priority and ordinary expulsion proceedings (procedimiento de expulsión preferente y ordinario)?

The priority expulsion proceedings only allow your lawyer 48 hours to submit his/ her arguments.

The ordinary expulsion proceedings concern undocumented immigrants who can prove that their situation in Spain is stable (registration with the Municipal Register where they live with their family, residing several years in Spain, etc.) In this case, your lawyer has 15 days to submit his/her arguments.

Moreover, instead of executing the expulsion order by force, a minimum period of 15 days is granted so you can leave the country voluntarily (this way, you will not be placed in an immigration detention center for foreigners).

However, if you do not leave the country within 15 days, you can be expelled by force or placed in an immigration detention center.

Immigration Detention Centers for Foreigners (CIE)

If the police arrest you for being an irregular immigrant (for being “undocumented”), they can ask the judge to place you in an immigration detention center for foreigners (CIE) in order to send you back to your country.

In addition, the police may request that you be placed in an immigration detention center (CIE) if you are already subject to an expulsion order and you remain in Spain. This can only happen if you were not placed in an immigration detention center the first time they arrested you. In this case, it is important to know what happened with the expulsion proceedings, if you have appealed, what was the judge’s decision, so you can provide the police with details of the lawyer who dealt with the previous proceedings. Your lawyer will help you with all of this.

Who decides to place you in a CIE?

A judge makes this decision. When the police arrest you, they can request that the judge sends you to an immigration detention center. However, it is the judge who makes this decision within 72 hours after your arrest.

That is why it is very important that you meet with your lawyer as soon as possible and give him/her, with help from your family or your friends, the documents certifying that you have a fixed address and proof that you have “arriago” (are integrated) in Spain, for example:

- Registration in the Municipal Register and a social security card.
- Family living legally in Spain.
- Children enrolled in school.
- Accommodation.
- A certificate of membership with an association.
- Any training you’ve done (studies).
- A document certifying that you have sought residence or political asylum in Spain.
- A savings book or a current account (cuenta) in a bank.

Very important:

- Make sure you always keep these documents in an accessible place in your apartment so that, in case you are arrested and brought before a judge, a member of your family or a friend could quickly give them to your lawyer.
- It is very important that you always have the name and phone number of your lawyer with you and written down, so that you can contact him/her.

What is the maximum period of time I may be held in a CIE?

The maximum period is 60 days, although it may be less as they will try to expel you as soon as possible once the expulsion order has been served.

If you reach the legal limit of 60 days in an immigration detention center, they cannot place you in a detention center for the same case again. However, they can start new proceedings in the future and you could be detained again.

If you have not been expelled yet, then as soon as you leave the immigration detention center, you must call your lawyer so he/she can appeal against the expulsion order. This has to be done within 2 months from the notification of the expulsion order.

What happens when the maximum duration of your stay in an immigration detention center is about to finish?

When the police know that it is not going to be possible to carry out your expulsion before the 60 day limit, they are obliged to release you.

Your rights within the CIE

You should be clear in your own mind, that when you are in a detention center you are not, legally speaking, an inmate in a prison, because a detention center is not a prison and you have not been transferred there because you have committed a crime. The judge authorizes your transfer to the detention center because you are "undocumented" and his/her objective is to repatriate you to your country.

While you are detained in the center, you are protected by the judge, the police are only there to watch over you. The police are obliged to communicate to the judge any circumstance that may alter your situation (serious illness, containment or protective measures, etc.) Currently, with the new reform of the immigration law, NGOs (Non Governmental Organizations) have a right of access to these centers and you have the right to get in contact with them.

In the center, you have the right to:

1. Written information (in a language that you understand) on your rights and obligations, the organization and rules of the center and the means of filing an administrative appeal or filing complaints (to the director of the detention center or to a judge).
2. The right to medical and social care.
3. The right to receive legal assistance from a lawyer and to have an interview with him/her.
4. The right to have one visitor per day within the established schedule and to make phone calls (in the center, there are public pay phones that you can use any day).
5. The right to your physical integrity and health, without ever being subjected to degrading treatment or any verbal or physical ill-treatment, and your right to dignity and privacy.

6. The right to food, hygiene, heating, lighting and adequate ventilation as well as freedom of religious practice.
7. The right to only be physically contained or separated in exceptional circumstances, when there are no other means available to resolve the situation (for example, if you put at risk the physical integrity of other foreign detainees, or for the effective enforcement of protective measures of the detention center, or if the order and security of the center is in jeopardy). If force is used against you, the Director of the center must immediately inform the judge who authorized your detention, who has control over the actions of the police.
8. The right that searches (personal, clothing and belongings) be conducted with the following safeguards:
 - They are only permitted in specific situations that pose a threat to the maintenance of security at the detention center.
 - The Administration must justify (the reason for) its actions: this will permit you, where relevant, to make use of your right to submit complaints and claims, or to call on the assistance of your lawyer.
 - They must inform you of the scope and intensity of the search and of the objects seized as a result of the search. As a general rule you should be informed of the search beforehand.

In addition, with respect to personal searches, they must be carried out with minimum invasion of privacy and as a general rule they should be limited to a simple examination or inspection.



Your obligations in a CIE

It is also important that you are aware of your obligations, so you can avoid possible sanctions or punishments.

1. You have to respect the rules of the immigration detention center as well as any specific orders the officials of the center give you, but only when they do not violate your own rights.
2. You must maintain proper and respectful behavior towards the officials of the center and the other detainees.
3. It is mandatory that you allow yourself to be subjected to medical examination prescribed by the detention center doctor, when you enter as well as when you leave.
4. The officials of the center can, provided that they do so respectfully and properly, examine your room and search you.