

**ILLEGAL
STAY:
FINE OR
EXPULSION?**



**Improve your information
and the defense of your
rights**



**ILUSTRE
COLEGIO
DE ABOGADOS
DE MADRID**



This guide has been prepared by Pueblos Unidos and the Ilustre Colegio de Abogados in Madrid, with the aim of offering people without documents updated information on the rights they are entitled to, their obligations, the types of offenses committed, etc... We encourage you to distribute this document as widely as possible.



Why did the police stop me?

Because Spanish immigration Law says that it is a **serious offense** to be in Spain without work and/or residence authorization (that is to say, **“without papers”**).

If the Police have stopped you on the street, it is normally for this reason. They will take you to the police station and initiate disciplinary proceedings or if you already have an expulsion order, they will attempt to run it. We will explain both situations in this guide.

Persons “without papers” are those who enter Spain irregularly and do not regularize their situation. Persons “without papers” are also those who enter regularly but do not obtain an extension of their stay or renew their residence authorization on time. They also may be working without the authorization to do so.

If I do not have papers...



... is it recommended that I show my passport?

To be identified at all times is not only recommended but it is also mandatory. If you have entered through an authorized location (airport, port, train station...), you should display the entry stamp and this can provide that instead of being expelled, you will receive a fine, or this will even be taken into account when deciding whether or not you will be detained.

... what other documents should I take when I go out on the street?

In case the police stop you and ask for your papers, it is recommended that you always take with you the following:

1 The registration certificate (‘certificado de empadronamiento’) of where you live. It is very advisable that you register in the village or town where you live

to demonstrate a known address while you are without papers. Registering is what permits you to have access to healthcare, send your children to school and demonstrate the amount of time that you have been in Spain when requesting your papers through a process known as 'arraigo'.



Remember: They cannot refuse registration even if you do not have papers.

2 The document shows that you are married and if you have children who are minors in Spain.

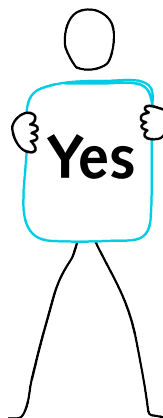
3 The document shows that you have requested residence in Spain.

... can I get papers?

Yes. The most common way is by 'arraigo social'-social ties. You are eligible for this after **3 years of permanent continuous** residence in Spain. You must lack criminal convictions, and have an employment contract for one year. Other ways to obtain papers are:

- The need for international protection (asylee or refugee).
- Humanitarian reasons.
- Collaboration with administrative or judicial authorities.
- "Arraigo familiar": this means family in Spain that has "papers".

Inform yourself on the Legal Guidance Services for Foreigners (Servicios de Orientación Jurídica de Extranjeros-SOJE) through the College of Lawyers in Madrid (C/Serrano 9. Madrid. Phone number: 900 814 815), consult our guide on 'Arraigo' (www.pueblosunidos.org) or other social organizations that offer free legal assistance.





What rights and duties do I have if I am detained?

The detainee has **rights** that the police must respect:

- 1 The right to be informed** about the reason for arrest/detention.
- 2 The right to be put in contact with a family member** or the person that you want, to inform them of your detention and where you are being kept in custody, and also to contact the Consular Office in your Country.
- 3 The right to a lawyer.** If you have your own lawyer, tell the police and provide them with the lawyers contact information. They will notify him/her so that your lawyer can assist you. If you do not have one, they will designate a lawyer on official duty that will be free, if you lack financial resources. You can fully trust in him/her.
- 4 They must assign you an interpreter** if you do not speak or understand Spanish well.
- 5 They will provide food, drink,** and the minimum conditions of hygiene.
- 6 The right to be attended by a doctor,** if you are injured or sick.
- 7 The right to not make a statement to the police,** leaving the statement for when you are in front of your lawyer or the judge.

Also, you should be aware of your **obligations** in the case that you are detained:

- **You should identify yourself**, as is explained in page 1 of this guide.
- **Provide your permanent address.**
- **Report on your administrative status** in Spain.

What will happen if they take me to the police station for not having papers?



If the police detain you and you do not have papers, you will receive a letter saying that they have initiated disciplinary proceedings for illegal stay. Then, the file will be processed, and this can lead to an **administrative, not criminal, sanction**. The penalty can be a fine or deportation:

- A **fine** is the penalty generally provided.
- **Deportation** from the Spanish territory is reserved for the most serious cases. Taking with you all of the documentation described in page 1 and explaining very well to your lawyer and to the competent authorities your personal circumstances can help to ensure that the penalty is a fine rather than deportation.

The maximum time for detention in the police station is **72 hours**. After this stay in the police station, there are two possibilities:

- You are released. In this case, remember that the disciplinary proceedings continue to move forward. Read pages 4 to 6 to understand what you need to do.
- The Police request that a judge send you to an Internment Center for Foreigners (Centro de Internamiento de Extranjeros-**CIE**), where you can be held for a **maximum of 60 days**. If the police request your internment in a CIE, you will be taken before a judge and a lawyer will assist you in defending your case.



How do I defend myself? What does my lawyer need to know?

To defend yourself, you will need a lawyer. If you have your own lawyer, tell the police and they will notify him/her so that he/she can go to see you. If you do not have one, they will assign you a lawyer officially on call who will be free if you do not have the financial resources to pay for their services yourself. Your lawyer

has a period of **only 48 hours** (two days) or 15 days, depending on the case, to present written arguments/allegations explaining your particular case. Next, the police will study your case and will recommend to the authority if it is appropriate to give you a fine (that you must pay) or if deportation from Spain is appropriate. You need to be certain that your lawyer has presented the arguments in time to defend your case. Ask him/her!

It is very important that you tell your lawyer and give him/her the documents that prove the following:

- 1** If you have attempted to request political asylum or if you have a fear of returning to your country and for what reasons.
- 2** Since when have you been in Spain and how did you enter.
- 3** Give your lawyer a copy of your passport and a certificate of registration (empadronamiento).
- 4** If you have requested at any moment work authorization and/or residence.
- 5** If you have family in Spain or Spanish family members and if they have legal residence, if you have minor children who are your dependents, or children in school.
- 6** If you have completed courses in Spain.^(*)
- 7** If you belong to an association.^(*)
- 8** If you are sick and receive medical treatment.
- 9** If you are pregnant.
- 10** If you are employed.
- 11** If you have a rent contract for your housing/apartment.
- 12** If you already have a previous deportation order and if it is under appeal. The name and phone number of the lawyer that assisted in the deportation order.
- 13** If you are a victim of domestic violence or trafficking.
- 14** Any other aspect that you consider important.

(*) Do not forget to request a certificate of the courses you have attended/ from the associations that you belong to. This will help you to demonstrate your ties.





Remember: you have a short period of time to gather this information, therefore it is advisable to have this documentation prepared in case you are detained, give it to the lawyer as soon as possible so that he/she can prove what you have told him/her.
Provide an address and a telephone number where your lawyer can reach you and he/she should also give you their address and telephone number as well. Do not lose it!

On some occasions, the police can withdraw your passport as a precautionary measure. They may also demand that you regularly visit the police station, while the disciplinary proceedings are being processed. If the police withdraw your passport, ask them for a certificate.

What is the standard procedure and the preferred procedure?



In the case of illegal stay, the procedure that is followed to decide whether to penalize with a fine or deportation can be standard or preferred.

What are the differences?

There are many important differences. In general, the Law provides that a **standard procedure (procedimiento ordinario)** is one that gives a period of 15 days to the lawyer to present timely claims and whose ultimate sanction usually is a fine. If they decide to deport you, they must justify why they adopted this more serious measure instead of a fine and must give you a period of time to leave the country voluntarily.

The **preferred procedure (procedimiento preferente)** has worse consequences for you. In this case, the period of time to make claims is only 48 hours, the sanction is almost always deportation and there is no period of time for voluntary departure but the obligation to leave is immediate and forced. Also, the use of

the preferred procedure enables the authorities to send the detained person to the CIE (see page 8 and the following). In the case of illegal stay, the authority can only use this procedure when they justify that there is a risk of your failure to appear, that you will avoid or obstruct deportation or that you represent a risk for public order or national security.

If it is decided that you will be deported, you should know that this also prohibits your entrance into Spain or other European countries for a period between 3 and 5 years.

How long is the procedure?

The maximum period of time that the authority has to communicate his/her decision is **six months** from when the person was detained and taken to the police station. There are two possible situations:

1 No decision is communicated. If six months pass since the moment of detention and they have not communicated a written decision (that can be a fine or deportation), they can no longer do so. Get in contact with your lawyer to communicate this. The lawyer will deliver a letter saying that the file has expired which you should save as proof.

However, if you remain in an undocumented situation, the police can detain you and initiate new disciplinary proceedings in the future.

2 A fine or deportation is imposed. You must pay the fine within the period of time that they offer. You can also apply for deferred payment.



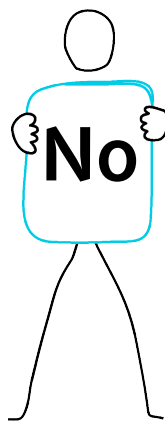
What is involved in a deportation order? Can I appeal it?

Deportation means that you must leave Spain, for which you will be given a period of time to leave voluntarily, except if the procedure used is preferred, in which case the expulsion must be immediate and the police can detain you and move you to your country immediately.

You can appeal the deportation order, presenting an application for **judicial review (recurso contencioso-administrativo)** before a judge, within a time **period of 2 months** from when they communicated their decision. Your lawyer will advise you and can present the appeal in your name for free if you do not have the financial resources to pay.

When I pay the penalty of a fine for undocumented stay, do I obtain authorization for residence?

No, when you pay the sanction of a fine you continue to be in Spain in an illegal situation, but the proceedings for deportation that were opened by the police “close.” For this reason, it is very advisable that you pay the fine. But if you are detained again for being undocumented in Spain, new disciplinary proceedings will open.



Internment Centers for Foreigners (Centros de Internamiento de extranjeros-CIE)

During the processing of your deportation through the preferred procedure or if you already have a previous deportation order and the police detain you, the police themselves can ask a judge to send you to an internment center for foreigners (hereinafter CIE), where they can deport you to your country. This means that you will be detained for a maximum of 60 days, and can be deported at any time by the police.

Who decides whether a person is sent to a CIE?

A judge decides. The police can ask a judge to send you to a CIE and the judge will see you within 72 hours from the time you were stopped.

During your appearance before a judge, you will be accompanied by the lawyer who visited you in the police station. **It is very important that you collabora-**

te with your lawyer, explaining your situation and helping him/her have access through the help of your family members and friends **to all of the documents that you own, that are mentioned on page 5** on this guide.

- Always have these documents organized and in a accessible place in your apartment so that, if you are detained and taken before a judge, a family member or friend will be able to deliver them to your lawyer quickly.
- It is very important that you keep a written record of the name and telephone number of your lawyer, in order to be in contact with him/her.

You are also able to make a statement before the judge and it is recommended that you do so and explain your situation. The judge must justify why he/she authorizes sending you to a CIE, so that he/she can take into account the specific circumstances of each case. If, despite everything, the judge finally decides upon sending you to a CIE, your lawyer can appeal the decision of the judge.

Who is my lawyer? What can they do?

If you are in a CIE **without a deportation order yet**, the lawyer that visited you in the police station is the same one that went with you before the judge that authorized your internment. You must present to the police a letter defending your case within a period of 48 hours from the time you were detained and you must also appeal before the judge the order of internment in the CIE. During your stay in the CIE, they will communicate your deportation order. Immediately notify your lawyer so that he/she can appeal before a judge.

If you already have a deportation order before you enter the CIE, you can have two lawyers, although it is ideal to attempt that everything is processed by only one of the lawyers:

- The **lawyer of internment**, who is the one that accompanied you before the judge that authorized your internment in the CIE.
- The **lawyer of deportation**, who is the one that defended you, when they gave you the deportation order. He/she should have appealed the deportation order before a judge and it is possible that he/she does not know you are in a CIE.

Notify your lawyer immediately so that they know you are detained for deportation in the CIE so that he/she can request the most "preventative" measure to suspend the deportation before the judge and talk with the internment lawyer.

Since the day you were interred in the CIE, your lawyer has a **maximum of 5 days** to appeal the deportation order before the Provincial Court. It is very important to give your lawyer all of the proof that demonstrates your 'arraigo' (ties) in Spain (see table on page 5).

What is the maximum amount of time that you can be in the CIE?

The maximum amount of time is **60 days**, during which the authorities will attempt to deport you as early as possible. After this time period, if your deportation has not been carried out for some reason, **they cannot attempt to re-inter you in the CIE.**

When the police know that it will not be possible to carry out your deportation before 60 days (because you requested political asylum, because your true nationality is unknown, because a repatriation treaty with your country of origin does not exist or for a simple delay in the processing of your file), **the police have the obligation to release you.**

If you received the deportation order while you were in the CIE and they have not deported you, **visit the lawyer of SOJE in the CIE** or as soon as you leave the CIE. Get the lawyer to present an appeal against the deportation order within the maximum period of two months from when they notified you about the deportation.

What happens if you are under 18 years old?

If you are a minor, **you cannot be sent to a CIE.** Instead, you must be placed in the protection services of the Autonomous Community where you live. **However**, if your parents or guardians are sent to a CIE and they request to be with you and also if there exists modules in the CIE that guarantee the unity and intimacy of your family, and if the judge authorizes it, it is possible that a minor might be sent to a CIE to be with their parents and eventually, for their deportation together.

What rights do persons who are sent to a CIE have?

You have to be clear that **you are not a prisoner in jail**, as a CIE is not a jail and in general, you are not there because you committed a crime. A judge sends people to the CIE exclusively because they do not have their papers in order and with the objective of being able to deport you to your country. During your stay in the CIE, **you maintain all of your rights except your freedom of movement**. In the CIE, **you have the right to:**

1 Written Information: when you enter the CIE, they must give you written information explaining (i) the organization and rules of operation in the Center where you have just been sent, (ii) the services that the Center offers and how to have access to them, (iii) the means to submit petitions and complaints and (iv) your rights and duties. This information must be in a language that you understand.

2 Present petitions and complaints to the Director of the CIE, by requesting a personal interview or by presenting a written petition. The petitions remain registered, and they ought to send you a receipt or a dated and signed photocopy.

3 Receive specialized medical attention, isolation from contagious patients and epidemics.

4 Receive social assistance to resolve problems that arise due to your internment situation; aid for families; processing of documents, interpreters. Inside the CIE in Madrid is the Red Cross, which can offer you this aid. Ask for them.

5 Receive the legal aid of a lawyer. ICAM has within the CIE in Madrid a legal aid service for all of those who are interned. Ask for the **Judicial Orientation Service for Foreigners (Servicio de Orientación Jurídica de Extranjeros-SOJE)**, they will counsel you on legal matters.

6 Receive visits from family and friends, during the established visiting hours and also you have **access to a public telephone** to make and receive calls.

7 To be put in contact with social organizations and NGOs. Various groups visit the CIE and offer free counseling.



Pueblos Unidos: C/Mártires de la Ventilla 78, to make an appointment 91 732 06 91. Metro Ventilla o Plaza de Castilla. Phone number for those interred at the CIE 690 822 387.

Ferrocarril Clandestino: Office of social rights. C/Pez 21. Metro Plaza de España or Noviciado. Phone number: 607 47 84 99.

SOS Racismo: C/Campomanes 13, 2º izquierda. Metro Ópera or Santo Domingo. Phone number: 91 559 29 06.

8 The right to **physical integrity and health**, you can not in any way be submitted to degrading treatment in word or deed and your dignity and intimacy must be preserved.

9 Adequate **food**.

10 Adequate **hygiene, heating, light and ventilation**.

11 Practice the **religion** you belong to.

12 Have access to **an interpreter** if you do not speak Spanish.



What happens if these rights are not respected? Who guarantees these rights in the CIE?

While you are interred, you are protected by the supervising **judge of the CIE (juez de vigilancia del CIE)**, who the Center must inform you about how to access him/her when you enter the CIE. These judges have the job of monitoring the conditions of internment and guaranteeing the rights of private persons in the CIE.

This judge decides regarding the **petitions and complaints** that all those who are interred put forth. Also, these judges visit the CIEs when they know about a serious non-compliance or breach of rights or when they consider it appropriate.

Your duties and obligations while in the CIE

It is also necessary that you know your obligations, as this way you can avoid problems and possible punishments or sanctions.

1 You ought to **respect the rules of operation** of the CIE and the particular orders that the officials give, provided that they do not violate your rights, which you already know.

2 You ought to maintain a **proper and respectful attitude with the officials**, provided that they follow their obligations and respect your rights. If not, do not be disrespectful but energetically complain, in word or through written means. Also you ought to respect your fellow inmates in the CIE, avoiding arguments, threats, etc. and maintaining the facilities of the CIE, as well as respecting the belongings of your fellow inmates.

3 It is also mandatory that you take the **medical exam** that is given by the CIE doctor, both upon your arrival at the CIE as well as at your departure.

4 The CIE officials **can adopt security measures and you ought to allow them** to as long as they do so with **respect**. These measures are:

- They can inspect the premises and belongings where you are, which could include registering you and your things.

- They can only use physical force to avoid fights between inmates, stop those who are fleeing, stop damage to the facilities or if you resist the instructions of the CIE staff.

- They can only use force when there is no other way to obtain the desired end and if they use force, it should always be proportional to the ends that they seek and only during the time strictly necessary. Force can never be used as a punishment.

- If they use force against you, the Director of the CIE must immediately communicate to the judge who authorized your internment, who will control the policing.

What information should you give to your lawyer?

- If you have requested political asylum.
- The amount of time that you have been in Spain.
- If you have requested work or residence authorization.
- Certificate of registration (empadronamiento) and a copy of your passport.
- If you have family in Spain and their status.
- If you are a victim of domestic violence or trafficking.
- If you have completed courses in Spain.
- If you belong to any associations.
- If you are sick.
- If you are pregnant.
- If you have work.
- If you have a previous deportation order.

What is the maximum time of internment?

60 days.



Who decides about entry into CIE?

The judge. Appeals may be filed within 5 days before the Provincial Court.

Can I appeal deportation?

Yes, before a Judicial review (Juzgado contencioso administrativo).

What rights do you have in the CIE?

- To receive written information about the rules of operation in the CIE.
- To present complaints and petitions to the Director of the CIE.
- To receive medical attention.
- To receive social assistance.
- To visit the SOJE at the CIE to receive legal assistance.
- To receive visits from friends and family members and to have Access to a public telephone.
- To be visited by social organizations that work with immigrants.
- Adequate nutrition/food.
- Adequate hygiene, ventilation, light, and heating.
- To practice your religion.
- To have an interpreter if you do not speak Spanish.
- And if any of these rights are not respected, ask how to submit a complaint to the supervising.

What obligations do I have while in a CIE?

- To respect the rules of operation and coexistence
- To maintain a respectful attitude before the officials and other inmates
- To submit yourself to the mandatory medical controls
- To allow the officials to adopt security measures provided that they carry them out with control.



Detention: for being “without papers”

Beginning of disciplinary proceedings

After a maximum period of 72 hours you can...

Be released... but the proceedings move forward

They take you before a judge to request your entry into the CIE

They open a period for arguments/claims

15 days if it's a standard procedure

48 hours if it's a preferred procedure

A maximum period of 6 months passes...

There is a penalty

There is no resolution

Deportation Order

Fine

End of the procedure

Administrative appeal must take place before 2 months since the notification

You ought to request expiration of the procedure. (Remember: you continue to be in an undocumented situation)



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