

## **“FRANCE, LOVE IT OR LEAVE IT”: NEW FRENCH LAW RESTRICTS FAMILY REUNIFICATION**

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### **ABSTRACT**

This article will demonstrate that the new French immigration law, “On the Control of Immigration, Integration, and Asylum,” does not accomplish the country’s intent of inhibiting illegal immigration, and instead, restricts family reunification, which violates French laws, European Union laws, and promotes an underlying discriminatory policy to deter North Africans from migrating to France. Therefore, this new law should not be enacted; rather, France should address illegal immigration in a manner similar to Spain’s current directives.

### **INTRODUCTION**

There is widespread uneasiness over “illegal immigration” around the world. The topic involves rights of inclusion and exclusion that are as arbitrary as the selection of the boundaries that outline a nation. Illegal immigration is a fairly new concept—in Europe the term was not used until after World War I, with the creation of nation states and the invention of passports.<sup>1</sup> The words alone are convoluted, politically-charged, and difficult to define. Most illegal immigrants have either crossed into another nation unlawfully or have overstayed their legal visa.<sup>2</sup> Illegal immigration has become a pressing matter for most developed nations as they attempt to balance security concerns burdened by a trend of terrorism and a highly competitive economic market.<sup>3</sup> Annually,

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<sup>1</sup> Frank Düvell, *Irregular Migration: A Global, Historical and Economic Perspective*, in *ILLEGAL IMMIGRATION IN EUROPE: BEYOND CONTROL?* 23 (Frank Düvell, ed., 2006).

<sup>2</sup> STEPHEN H. LEGOMSKY, *IMMIGRATION AND REFUGEE LAW AND POLICY* 1192 (4th Ed., 2005).

<sup>3</sup> Eva Dadrian, *French Fox*, *EL-AHRAM WEEKLY*, Sept. 27 – Oct. 3, 2007, available at <http://weekly.ahram.org.eg/2007/864/in2.htm>.

governments debate the issue, coming up with resolutions that hardly go beyond applying superficial solutions. For many of these immigrants, reuniting with their families is the underlying purpose for immigrating. Family reunification “is the largest source of immigration” in France, and without feasible procedures to follow, laws are inevitably violated.<sup>4</sup> As a result, there is a dichotomy between the theory and the practice of immigration laws. The issue is difficult to regulate and rectify as is apparent in France.<sup>5</sup>

France’s new law “On the Control of Immigration, Integration, and Asylum” requires any foreigner who seeks permanent residence in France based on family reunification to pass an assessment on the French language and values of the Republic.<sup>6</sup> Furthermore, the family member in France must meet a financial income criterion to prove economic stability.<sup>7</sup> Finally, if the consular agent expresses any “serious doubt” about the legitimacy of the claimed relation, the applicant must undergo a DNA test that proves biological relation to the mother before allowed entry.<sup>8</sup> However, France’s new law does not apply to all immigrants. It mostly applies to immigrants from Africa, especially those who are from the Maghreb countries including Morocco, Algeria, and Tunisia, which comprise the largest number of immigrants in France.<sup>9</sup>

This article will demonstrate that the new French immigration law, “On the Control of Immigration, Integration, and Asylum,” does not accomplish the country’s intent of inhibiting illegal immigration. Instead, it restricts family reunification, which violates French law, European Union laws, and promotes an underlying discriminatory policy to deter North Africans from migrating to France. Therefore, the new law should not be enacted; rather, France should address illegal immigration in a manner similar to Spain’s current directives.

Part I of this paper examines the history of France’s immigration policy with respect to Maghreb migration, briefly focusing on the successes and failures of the previous regulations, and demonstrates how the current social and economic conditions within France influence the coun-

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<sup>4</sup> Katrin Bennhold, *Sarkozy Moves Quickly on Immigration Curbs*, INT’L HERALD TRIB., June 13, 2007, at 3.

<sup>5</sup> See Robert Marquand, *Europe Tightens Immigration Rules*, CHRISTIAN SCI. MONITOR, Oct. 17, 2007, at 6.

<sup>6</sup> CC decision no. 2007-557DC, Nov. 15, 2007, J.O. 19001.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> See Robert Marquand, *France’s Open Door is Closing*, CHRISTIAN SCI. MONITOR, Sept. 18, 2007, at 1.

try's immigration laws. Part II discusses the provisions of this new immigration law and the likely effects that will ensue, particularly upon non-citizens as well as legal and illegal immigrants from the Maghreb. Part III analyzes the validity of this new law and how it violates French laws, including France's bioethics law and Civil Code, European Union doctrines including Article 63 of the European Community Treaty and Article 8 of the European Convention on Human Rights, and promotes a discriminatory policy. Finally, Part IV illustrates Spain's 2005 Regularization program, the current Spanish directives addressing illegal immigration, and how France can learn from Spain, a country with similar immigration issues and conditions, to rectify its illegal immigration problem.

## I. HISTORICAL OVERVIEW OF MAGHREB IMMIGRATION IN FRANCE

This section will examine the history of France's immigration policy with respect to Maghreb migration, briefly focusing on the successes and failures of previous immigration regulations, and demonstrating how the current social and economic conditions within France influence the recent immigration law.

### A. DEVELOPMENT OF IMMIGRATION LAWS

Throughout its history, France's economic and social conditions have altered the way in which it has approached immigration laws. Initially, France had a record of liberal immigration laws towards its former colonies in North Africa, which later became increasingly restrictive.<sup>10</sup> However, not unlike the new law, France's immigration laws throughout have not provided a solution to illegal immigration, rather they have exacerbated the problem and expanded a discriminatory policy.<sup>11</sup>

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<sup>10</sup> Barry James, *UN Rights Report Flays France for Its 'Racist' Immigration Laws*, INT'L HERALD TRIB., Apr. 12, 1996, [http://www.iht.com/articles/1996/04/12/france\\_t\\_4.php](http://www.iht.com/articles/1996/04/12/france_t_4.php); Elaine Sciolino, *Plan to Test DNA of Some Immigrants Divide France*, N.Y. TIMES, Oct. 11, 2007, at A3. See Düvell, *supra* note 1, at 19;

<sup>11</sup> See Kumaran Rahul & Pierre Mabut, *French Immigration "Reform": An Attack on Human Rights*, INT'L COMMITTEE OF THE 4<sup>TH</sup> INT'L, Oct. 4, 2007, <http://www.wsws.org/articles/2007/oct2007/immi-o04.shtml>.

The immigration system in France, like in many other European countries, is “based upon past colonial ties.”<sup>12</sup> The Maghreb countries were colonies of France until the mid-twentieth century.<sup>13</sup> In the 1960s, France was in dire need of workers to fill the population gaps lost during World War II.<sup>14</sup> France especially welcomed large-scale immigration from the Maghreb, which led to a French economic boom.<sup>15</sup> However, after an oil crisis in 1973, there was an economic recession, and the need for foreign labor decreased with the increase of a large unemployed workforce.<sup>16</sup>

In 1993, Parliament passed the “Act on Immigration Control and the Act on Conditions on Entry and Residence of Foreigners in France,” proposed by Interior Minister Charles Pasqua. Later, this series of laws became known as the Pasqua laws.<sup>17</sup> The Pasqua laws brought a wave of xenophobia and racism,<sup>18</sup> and changed the status of a significant number of legal immigrants, classifying them as illegal immigrants.<sup>19</sup> The Pasqua laws permit police officers to check the identities of individuals without requiring any suspicious behavior.<sup>20</sup> Foreign graduates are prohibited from accepting job offers, denied stable residence status, and required to wait for a longer period before allowed to bring their family members.<sup>21</sup> Children born in France are no longer automatically considered French citizens if their parents were illegal immigrants, unless the children affirmatively declared themselves French at the age of sixteen.<sup>22</sup> The laws resulted in unequal access for immigrants to jobs, education, health care,

<sup>12</sup> Düvell, *supra* note 1, at 19.

<sup>13</sup> Allison Tarwater, French Colonization in the Maghreb: A Central Influence in Both Regions Today, *available at* [http://www.howardcc.edu/academics/academic\\_divisions/english/instructional/pdf/French\\_Colonization\\_in\\_the\\_Maghreb.pdf](http://www.howardcc.edu/academics/academic_divisions/english/instructional/pdf/French_Colonization_in_the_Maghreb.pdf).

<sup>14</sup> Dirk Hegen, NAT'L CONFERENCE OF STATE LEGISLATURES, RECENT IMMIGRATION DEVELOPMENTS IN GERMANY AND FRANCE (Oct. 2001), *available at* <http://www.ncsl.org/programs/immig/eupaper.htm#france>.

<sup>15</sup> *Colonial ghosts come back to haunt France*, WEEKEND AUSTRALIAN, Sept. 30, 1995.

<sup>16</sup> *Id.*

<sup>17</sup> Sarah Verbosky, *Immigration in France: The Economics and Politics of a Sensitive Issue*, PERS. ON BUS. & ECON. 1997, *available at* [www.lehigh.edu/~incntr/publications/perspectives/v15/verbosky.pdf](http://www.lehigh.edu/~incntr/publications/perspectives/v15/verbosky.pdf).

<sup>18</sup> On file with author.

<sup>19</sup> Christian E. O'Connell, *Plight of France's Sans-Papiers Gives a Face to Struggle Over Immigration Reform*, THE HUM. RTS. BRIEF, Fall 1996, <http://www.american.edu/ted/hpages/human/pasqua41.htm>.

<sup>20</sup> Verbosky, *supra* note 17.

<sup>21</sup> VIRGINIE GUIRAUDON, BROOKINGS INST., *IMMIGRATION POLICY IN FRANCE* (2002), *available at* [www.unc.edu/depts/europe/francophone/brookings\\_immig.pdf](http://www.unc.edu/depts/europe/francophone/brookings_immig.pdf).

<sup>22</sup> Verbosky, *supra* note 17.

and legal services.<sup>23</sup> Consequently, the laws intensified tensions between the French government and the immigrant population.<sup>24</sup> Surprisingly, in a recent international survey, France had the “most immigrant-friendly population of the major European powers.”<sup>25</sup> However, the survey may be misleading since French law prohibits any studies based on race or ethnicity of citizens.<sup>26</sup>

It is difficult to know the extent of discrimination in France due to a 1978 law, which prohibits any study “which directly or indirectly reveals racial or ethnic origins”, because it “undermine[s] the principle of equal citizenship.”<sup>27</sup> Despite harsh restrictions and the official inability to examine discriminatory practices, the Pasqua laws did not curtail illegal immigration.<sup>28</sup> Today, France’s population includes 4.9 million immigrants, just over 8 percent of France’s population, with the largest group of immigrants coming from those countries consisting of the Maghreb.<sup>29</sup> An estimated 200,000 to 400,000 are illegal immigrants.<sup>30</sup> A large majority of illegal immigrants are part of the unemployed and struggle to find adequate living arrangements.<sup>31</sup>

In 2003, Nicolas Sarkozy, then Interior Minister, assisted in the enactment of the “Law for the Control of Immigration and Stay of Foreigners in France and Nationality” (Sarkozy Law). Sarkozy’s law enabled stricter, more detailed restrictions and a lengthier process for immigrants to legally join relatives in France. The government’s attempt to prohibit illegal immigration only instigated illegal methods of family reunification. There are reports of large number of immigrants forging birth and marriage certificates as a way to enter France.<sup>32</sup> These methods “illicit chain migration” and contributes to the continuation of a cycle of

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<sup>23</sup> See Hegen, *supra* note 14.

<sup>24</sup> See *id.*

<sup>25</sup> Meg Bortin, *French are More Positive on Immigrants, Poll Shows*, INT’L HERALD TRIB., May 25, 2007, at 3.

<sup>26</sup> *Racial Profiling Angers French*, NEWS24, Sept. 4, 2006, [http://www.news24.com/News24/World/News/0,,2-10-1462\\_1993289,00.html](http://www.news24.com/News24/World/News/0,,2-10-1462_1993289,00.html).

<sup>27</sup> *Id.*

<sup>28</sup> On file with author.

<sup>29</sup> Katrin Bennhold, *Expulsion of Illegals Stepped up by France*, INT’L HERALD TRIB., Sept. 2, 2006, at 3.

<sup>30</sup> *French Immigration Minister Says Illegal Immigration to France is Declining*, INT’L HERALD TRIB., June 1, 2008, <http://www.iht.com/articles/ap/2008/06/01/europe/EU-GEN-France-Immigration.php>.

<sup>31</sup> On file with author.

<sup>32</sup> Peter Allen, *Illegal Immigrants to be DNA Tested Under New Crackdown in France*, DAILY MAIL ONLINE, Jan. 26, 2009, <http://www.dailymail.co.uk/news/worldnews/article-1127823/Illegal-immigrants-DNA-tested-new-crackdown-France.html>.

illegal immigrants within France that attracts their relatives to join them.<sup>33</sup>

In 2007, in the first months of his presidency, Nicolas Sarkozy offered to pay illegal immigrants to return to their original country of residence, especially targeting immigrants from the Maghreb.<sup>34</sup> Such an incentive was the government's attempt to remove poor, uneducated illegal immigrants.<sup>35</sup> Although many illegal immigrants accepted this offer, the current immigration laws are inadequate and do not address the intricate root causes that initiate the process of illegal immigration. Immigrants from the Maghreb, not unlike other regions, leave their home country because of the laws and the way of life in their home country. The root causes, such as economic disparities, violence, persecution, and lack of educational opportunities must be confronted within the home country of the immigrants for the incentives of illegal immigration to be removed. Otherwise, when immigrants arrive in France, they will want to make France their home country.

## B. SOCIAL AND ECONOMIC INFLUENCES ON IMMIGRATION

Once considered a source of wealth and benefits, immigrants now are deemed a burden.<sup>36</sup> President Sarkozy clearly revealed his view of immigrants by stating that:

[i]n all the world's great democracies, immigration presents the possibility of new skills, new talents and new verve . . . But here at home, immigration still carries negative connotations. Why? Because it's not regulated and because it's not linked to our economic needs.<sup>37</sup>

However, France's economy does need immigrants, as does most of Europe. The European Union Commissioner, in October 2007, stated there would be a need for 20 million skilled immigrants over the next twenty years.<sup>38</sup> Furthermore, immigrants will continue to migrate to France

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<sup>33</sup> Düvell, *supra* note 1, at 19.

<sup>34</sup> *Migrants Offered Money to Go*, NEWS24, May 23, 2007, [http://www.news24.com/News24/World/News/0,,2-10-1462\\_2118014,00.html](http://www.news24.com/News24/World/News/0,,2-10-1462_2118014,00.html).

<sup>35</sup> *See id.*

<sup>36</sup> *See* Alexander Parker, *The Sarkozy Government is Acting with a Powerful Mandate from the French People*, BUS. DAY (South Africa), Oct. 27, 2007, at 8.

<sup>37</sup> *Id.*

<sup>38</sup> Workpermit.com, *EU's Franco Frattini to Unveil "Blue Card" Immigration Scheme*, Oct. 23, 2007, <http://www.workpermit.com/news/2007-10-23/europe/european-union-blue-card-scheme-unveiled-in-strasbourg-franco-frattini.htm>.

since the situation in France is economically better than most of the immigrants' home countries.<sup>39</sup> The Immigration Minister, Brice Hortefeux, asserts "immigration is a source of concern" to the French people who see illegal immigration "a threat to [their] security, their jobs, and their lifestyle."<sup>40</sup> These opponents easily claim illegal immigration is the cause of France's economic decline and high unemployment.<sup>41</sup> The number of Maghreb immigrants, the largest minority in France, has surged recently, and many are unemployed and live in ghettos.<sup>42</sup> Immigration Minister Hortefeux estimates more than 20 percent of immigrants are unemployed in France, which is twice the nation's unemployment rate.<sup>43</sup> Furthermore, the French government uses illegal immigrants as a scapegoat for the country's increase in crime and terrorism.<sup>44</sup> The Maghreb's different race, religion, and culture also amplify the xenophobic attitude towards illegal immigrants from the Maghreb.<sup>45</sup>

Numerous riots in 2005 influenced many of the anti-immigration sentiments within the population.<sup>46</sup> The majority of the rioters were immigrants from African countries, outraged by the discrimination they face, which has led to their inability to integrate into French culture, and has left them short of opportunities, further causing them to remain in poor conditions.<sup>47</sup> Immigration advocates urge lawmakers to focus on the root causes and issues that motivate immigrants to leave their home country to mitigate the illegal immigration issue.

In 2007, France's new law, "On the Control of Immigration, Integration, and Asylum," was proposed to complement France's existing laws to meet the concerns of the public. However, Sarkozy also faces opponents who feel that the laws are violating the Universal Declaration of Human Rights of which France is a signatory.<sup>48</sup> France earned the title as the "homeland of human rights," because the Universal Declara-

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<sup>39</sup> On file with author.

<sup>40</sup> Dadrian, *supra* note 3.

<sup>41</sup> *Id.*

<sup>42</sup> On file with author.

<sup>43</sup> Brice Hortefeux, Minister of Immigration, Integration, National Identity and Co-Development, Introductory Remarks (excerpts) at the National Assembly (Sept. 18, 2007), *available at* [http://www.ambafrance-uk.org/Brice-Hortefeux-introduces.html?var\\_recherche=deportation](http://www.ambafrance-uk.org/Brice-Hortefeux-introduces.html?var_recherche=deportation).

<sup>44</sup> Dadrian, *supra* note 3; James, *supra* note 10.

<sup>45</sup> James, *supra* note 10.

<sup>46</sup> Angela Doland, *France Cracks Down on Illegal Immigration*, WASH. POST, Aug. 31, 2006, <http://www.washingtonpost.com/wp-dyn/content/article/2006/08/31/AR2006083101076.html>.

<sup>47</sup> *See id.*

<sup>48</sup> James, *supra* note 10.

tion of Human Rights was signed in Paris in 1948.<sup>49</sup> Opponents also claim the new law is not for economic reasons, but due to political agendas that furthers a discriminatory policy.<sup>50</sup>

## II. NEW LAW RESTRICTS FAMILY REUNIFICATION

“On the Control of Immigration, Integration, and Asylum,” is an attempt to control migration flows and end illegal immigration by restricting family reunification. The new law requires any person who attempts to reunite with family members legally residing in France to meet three main requirements along with a fourth voluntary requirement.<sup>51</sup> These requirements are particularly detrimental to immigrants from the Maghreb, and most importantly, do not rectify the underlying problems that cause illegal immigration.

### A. ELEMENTS OF THE NEW LAW

The new immigration law details the procedure on immigration, integration, and asylum.<sup>52</sup> This article will only discuss immigration. The new law added four principles in regards to family immigration. Chapter I of the bill, “Provisions relating to immigration on the grounds of private and family life and integration,” requires any family member who attempts to reunite with relatives legally residing in France to meet three main requirements along with a fourth requirement only required upon request.<sup>53</sup> Articles 1, 2, and 3 articulate the first three requirements. The first requirement under Article 1 states that any applicant over the age of sixteen and under sixty-five who requests residence longer than two months in France based upon family reunion must pass an assessment that evaluates knowledge of the French language and the values of the Republic, including history and customs.<sup>54</sup> The second requirement under Articles 2 and 3 require the future applicant to have a certain level of income, and such “resources must reach an amount that takes into account family size of the applicant” and “must be at least equal to the min-

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<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> CC decision no. 2007-557DC, Nov. 15, 2007, J.O. 19001.

<sup>52</sup> *See id.*

<sup>53</sup> *Id.*

<sup>54</sup> *Id.* art. 1.



imum wage.”<sup>55</sup> The third requirement is to ensure that the applicants will integrate their children under the “Reception and Integration Contract for Families.”<sup>56</sup>

The fourth requirement described by Article 13 is to apply on an experimental basis until December 31, 2009.<sup>57</sup> Article 13 allows consular officers who express “a serious doubt about the authenticity” of claimed kinship to request that the applicant give their consent to undergo DNA testing to prove biological family ties.<sup>58</sup> The law limits the test to applicants from twenty specific countries; the majority of those countries are located in Africa, including every country in the Maghreb.<sup>59</sup> After much criticism and opposition, the French Parliament modified Article 13 to require the state to pay for the test and to require the applicant to prove maternal kinship only to avoid paternal disputes.<sup>60</sup>

The DNA test ignores step-children and extended families, which are a fundamental part of one’s family in many African cultures.<sup>61</sup> As a result, many immigrants feel that the DNA test is a degrading method for verifying family links.<sup>62</sup> There are many family units that are formed beyond biological ties.<sup>63</sup> Furthermore, many immigrants, especially from the Maghreb, fear this law will make it more difficult to find jobs and housing because of discriminatory biases against people from those countries.<sup>64</sup> Opponents argue that the law is part of a political agenda that does not solve immigration issues, but instead violates basic rights and laws.<sup>65</sup>

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<sup>55</sup> *Id.* art. 2, 3.

<sup>56</sup> *Id.*

<sup>57</sup> *Id.* art. 13.

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> Doreen Carvajal, *Paris Allows DNA Tests for Some Immigrants*, INT’L HERALD TRIB., Nov. 16, 2007; *Africans in France Say Bill Calling for DNA Tests for Immigrants is Racist*, HAARETZ, June 10, 2007, [http://www.haaretz.com/hasen/pages/ShArtStEng.jhtml?itemNo=909901&contrassID=1&subContrassID=1&title=%27Africans%20in%20France%20say%20bill%20calling%20for%20DNA%20test%20for%20immigrants%20is%20racist%27&dyn\\_server=172.20.5.5](http://www.haaretz.com/hasen/pages/ShArtStEng.jhtml?itemNo=909901&contrassID=1&subContrassID=1&title=%27Africans%20in%20France%20say%20bill%20calling%20for%20DNA%20test%20for%20immigrants%20is%20racist%27&dyn_server=172.20.5.5).

<sup>62</sup> Noopur Tiwari, NDTV.com, *Fury at French Immigration Law*, Oct. 25, 2007, <http://www.ndtv.com/convergence/ndtv/story.aspx?id=NEWEN20070030492&ch=10/25/2007%208:03:00%20AM>.

<sup>63</sup> Carvajal, *supra* note 61.

<sup>64</sup> Tiwari, *supra* note 62.

<sup>65</sup> James, *supra* note 10.

After President Nicolas Sarkozy became president he created the Immigration and National Identity Ministry and selected Brice Hortefeux as its director.<sup>66</sup> President Sarkozy, like other world leaders, has used fear to push forward this new law that restricts family reunification.<sup>67</sup> President Sarkozy holds immigrants, specifically from the Maghreb, responsible for the increase in crime, unemployment, and cultural tensions.<sup>68</sup> On July 4, 2007, Hortefeux presented Sarkozy's bill to the National Assembly, France's lower house of parliament.<sup>69</sup> The bill was subsequently approved and passed in the Senate, the upper house parliament.<sup>70</sup> Thereafter, a second draft was formulated to eliminate some of the harsher elements such as requiring the immigrant to pay out of pocket for DNA testing, and thereafter, was ultimately signed by the French Parliament on October 23, 2007.<sup>71</sup> After much protest, the new law went before the Constitutional Council, the highest French administrative court, to ensure that the law conformed to the French Constitution.<sup>72</sup> On November 15, 2007, the French Constitutional Council approved a watered down version of the new immigration law.<sup>73</sup> The Constitutional Council asserted that since the DNA test was voluntary it did not violate the French Constitution.<sup>74</sup> The law does not come into effect until the appropriate minister signs the legislation.<sup>75</sup>

This law is France's fourth attempt in the past five years to restrict illegal immigration.<sup>76</sup> This time, the law attacks family reunification, an issue that affects anyone with a family member that lives outside

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<sup>66</sup> Sciolino, *supra* note 10.

<sup>67</sup> On file with author.

<sup>68</sup> On file with author.

<sup>69</sup> See Press Release, Prime Minister, Conditions for Selective Immigration (July 4, 2007), [http://www.premier-ministre.gouv.fr/en/information/latest\\_news\\_97/conditions\\_for\\_selective\\_immigration\\_56823.html](http://www.premier-ministre.gouv.fr/en/information/latest_news_97/conditions_for_selective_immigration_56823.html).

<sup>70</sup> *French Bill to Allow DNA Testing of Immigrants Wins Backing*, MORNING STAR (London), Oct. 6, 2007.

<sup>71</sup> Grace Annan, *Controversial Immigration Law Passed in French Parliament*, GLOBAL INSIGHT, Oct. 24, 2007, available at WMRCNW (LEXIS).

<sup>72</sup> See Nathalie Schuck, *Contested French Immigration Bill Passes*, ASSOCIATED PRESS, Oct. 23, 2007, available at [http://www.immigrationwatchcanada.org/index.php?module=pagemaster&PAGE\\_user\\_op=view\\_page&PAGE\\_id=2371&MMN\\_position=92:90](http://www.immigrationwatchcanada.org/index.php?module=pagemaster&PAGE_user_op=view_page&PAGE_id=2371&MMN_position=92:90).

<sup>73</sup> CC decision no. 2007-557DC, Nov. 15, 2007, available at [http://www.conseil-constitutionnel.fr/conseil-constitutionnel/root/bank\\_mm/anglais/a2007557dc.pdf](http://www.conseil-constitutionnel.fr/conseil-constitutionnel/root/bank_mm/anglais/a2007557dc.pdf)

<sup>74</sup> *Id.* para. 15-23.

<sup>75</sup> Allen, *supra* note 32.

<sup>76</sup> Kumaran Rahul & Pierre Mabut, *French Immigration "Reform": an Attack on Basic Human Rights*, WORLD SOCIALIST, Oct. 4, 2007, <http://www.wsws.org/articles/2007/oct2007/immi-o04.shtml>

of France. As a result, the law is hotly contested by all sides, including leftist politicians, human rights groups, six hundred pro-immigrant groups, the Vatican, and the French police. Additionally, twenty-two members within Sarkozy's own party abstained from voting.<sup>77</sup> A recent newspaper poll revealed that 49 percent of the French population is in favor of the test, while 43 percent are opposed.<sup>78</sup> This poll makes it clear that the French are closely divided on the immigration issue.

### III. VIOLATIONS OF THE NEW LAW

The new immigration law denies immigrants the right to family reunification, violates French laws, European Union laws, and promotes an underlying discriminatory policy to deter North Africans from migrating to France.

The DNA requirement determines how family is defined; however, biological links are only one bond that forms a family. This raises the question why the French government has the authority to define what constitutes a family unit. Once family has been defined, one may question whether family reunification is a right. Family "is recognized as the most natural and fundamental unit of society."<sup>79</sup> Human rights law obliges countries to recognize and facilitate the reunification of parents and children residing in different countries "in a humane and expeditious manner."<sup>80</sup> Furthermore, the right of reunification is to be restricted only for "reasons of national security and public order."<sup>81</sup> France's new immigration law does not comply with human rights laws.

#### A. VIOLATION OF FRENCH LAWS

The DNA test contradicts France's protective privacy and family laws.<sup>82</sup> The new immigration law violates the legal use of DNA testing

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<sup>77</sup> Sciolino, *supra* note 10; *French Passport in DNA*, HERALD SUN (Australia), Oct. 25, 2007; Lisa Bryant, *France Tightens Immigration Requirements*, U.S. FED. NEWS, Sept. 20, 2007; Marquand, *supra* note 9.

<sup>78</sup> On file with author.

<sup>79</sup> Asmita Naik, *The Right to Family*, HUMAN RIGHTS EDUCATION ASSOCIATES (2003), <http://www.hrea.org/learn/guides/family.html>.

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

<sup>82</sup> Elaine Sciolino, *France Honors Immigrants and Debates DNA; Sarkozy Asks 'Calm' Over Family Testing*, INT'L HERALD TRIB., Oct. 11, 2007, at 2.

in France. France's Civil Code delineates when DNA testing may be used and these laws only allow DNA testing for specific purposes.<sup>83</sup> Article 16-10 states that "[a] genetic study of the particulars of a person may be undertaken only for medical purposes or in the interest of scientific research," and that "[t]he consent of the person must be obtained before the carrying out the study."<sup>84</sup> Article 16-11 also allows DNA testing when directed by the court.<sup>85</sup> Furthermore, Article 16-13 states that "[n]o one may be discriminated against on the basis of his genetic features."<sup>86</sup>

The new immigration law acknowledges that the applicant must give consent before DNA testing occurs; however, the DNA test in this context is neither for medical purposes, scientific research, nor court ordered. Furthermore, the test is discriminatory on race and class since it does not apply to all immigrants, but only to those from twenty, mostly poor African countries, including all of the Maghreb and Asia.<sup>87</sup> The DNA test does not apply to immigrants from countries within Europe or to immigrants from other developed countries.<sup>88</sup> Therefore, the new immigration law breaches France's bioethics laws, which are also part of the Civil Code. The purpose of the DNA testing requirement is to prove a maternal bond to justify family reunification. Many immigrants will not meet this requirement because their family unit was not created by blood.

France's Civil Code does not limit the definition of familial bonds to genetics. Pursuant to Title VII, Section I, Articles 311-2, entitled "Of Presumptions Regarding Parentage," the status of a child shall include how the parents have treated the child and how the child has treated them as his father and mother.<sup>89</sup> The new law ignores the Civil Code and allows a consular agent to request DNA to prove "affiliation with the mother of the visa applicant."<sup>90</sup> The new law noticeably attacks the African concept of family, which extends beyond the nuclear unit to

<sup>83</sup> C. CIV arts. 16-10, 16-11 (Fr.), available at <http://195.83.177.9/code/liste.phtml?lang=uk&c=22&r=214> (last visited Apr. 8, 2009).

<sup>84</sup> *Id.* art. 16-10.

<sup>85</sup> *Id.* art. 16-11.

<sup>86</sup> *Id.* at art. 16-13.

<sup>87</sup> Christopher Caldwell, *Border Control With a Needle*, FIN. TIMES, Oct. 27, 2007; Dadrian, *supra* note 3, at 1.

<sup>88</sup> Dadrian, *supra* note 3, at 1.

<sup>89</sup> C. CIVIL art. 311-2 (Fr.), available at <http://195.83.177.9/code/liste.phtml?lang=uk&c=22&r=7855> (last visited Apr. 8, 2009).

<sup>90</sup> CC decision no. 2007-557DC, Nov. 15, 2007, J.O. 19001, at para. 5.

distant cousins, uncles, aunts, and step-children.<sup>91</sup> Many opponents of the new law agree that the DNA testing provision is a barrier to immigrants from those countries, and that these laws were created to appease the far-right nationalists that supported President Sarkozy in his election.<sup>92</sup>

## B. VIOLATION OF SUPRANATIONAL LAWS

The DNA test provision of the new French law violates the Convention for the Protection of Human Rights and Fundamental Freedoms, the International Covenant on Civil and Political Rights, and the Convention on the Rights of the Child.

The Convention for the Protection of Human Rights and Fundamental Freedoms, also known as the European Convention on Human Rights (European Convention) was signed in Rome on November 4, 1950.<sup>93</sup> The European Convention is a regional human rights agreement that grants a high level of individual protection.<sup>94</sup> The European Convention created the European Court of Human Rights, which provides an individual an opportunity to a remedy. Article 8 of the European Convention provides that “[e]veryone has the right to respect for his private and family life . . .” and that “[t]here shall be no interference by a public authority” unless necessary for the “economic well-being of the country.”<sup>95</sup> Although President Sarkozy views immigrants as a burden to the economy, he presented the DNA test provision of the new French law as a means to speed up visa applications. President Sarkozy stated that his “goal is to facilitate, and not to make more difficult, movement between the two countries and, beyond that, between France and the countries of the Maghreb.”<sup>96</sup> For this reason, the Senate and the National Assembly accepted the new law.<sup>97</sup> Yet, Article 8 is violated because a family has a right not to be separated. Further, Article 4 within Protocol 4 of the European Convention also “prohibits the collective expulsion of foreigners.” Sarkozy stated that France will not provide mass legalization for

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<sup>91</sup> See *Racial Profiling Angers French*, *supra* note 26.

<sup>92</sup> On file with author.

<sup>93</sup> Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, Europ. T.S. 5.

<sup>94</sup> See Naik, *supra* note 79.

<sup>95</sup> Convention for the Protection of Human Rights and Fundamental Freedoms, *supra* note 93.

<sup>96</sup> *French President Interviewed on Eve of Algeria Visit*, EL WATAN, July 10, 2007.

<sup>97</sup> See *id.*

undocumented immigrants, and as Interior Minister in 2006 he vowed to send home at least 25,000 illegal immigrants before the end of the year.<sup>98</sup> Although the potential expulsion is not part of the newly passed law, it is part of Sarkozy's new transition to crack down on illegal immigration.

The International Covenant on Civil and Political Rights (ICCPR) was created in 1966 as a United Nations treaty based on the Universal Declaration of Human Rights.<sup>99</sup> Article 23 of the ICCPR guarantees the right to a family: "The family is the natural and fundamental group unit of society and is entitled to protection by society and the State."<sup>100</sup> A family's right to be together falls within this article. France ratified this treaty in 1981 and is therefore legally bound to respect the right of family reunification.<sup>101</sup> "On the Control of Immigration, Integration, and Asylum," violates this legal duty to protect the right of family reunification by restricting families from the Maghreb.

Finally, Articles 10 and 22 of the United Nations Convention on the Rights of the Child (CRC) ratified by France in 1990, specifically recognizes a child's right to be with his or her parents. Article I of the CRC defines a child as any human being under the age of eighteen. While Title XI of the French Civil Code also recognizes eighteen as the age of majority, "On the Control of Immigration, Integration, and Asylum" applies to all applicants over the age of sixteen.<sup>102</sup> CRC Article 10 explicitly states that States have the obligation to review immigration applications for family reunification "in a positive, humane and expeditious manner."<sup>103</sup> Further, Article 10 describes that the submissions of requests of immigration applications "shall entail no adverse consequences for the applicants and for the members of their family."<sup>104</sup> Most importantly, CRC Article 10 says, "States Parties shall respect the right of the child and his or her parents to leave any country, including their own, and to enter their own country."<sup>105</sup> CRC Article 22 ensures that children

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<sup>98</sup> Angela Doland, *France Cracks Down on Illegal Immigration*, ASSOCIATED PRESS, Aug. 31, 2006.

<sup>99</sup> Naik, *supra* note 79.

<sup>100</sup> United Nations International Covenant on Civil and Political Rights art. 23, Dec. 16, 1966, 999 U.N.T.S. 171.

<sup>101</sup> OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS, STATUS OF RATIFICATIONS OF THE PRINCIPAL INTERNATIONAL HUMAN RIGHTS TREATIES, June 9, 2004, <http://www.unhchr.ch/pdf/report.pdf>.

<sup>102</sup> CC decision no. 2007-557DC, Nov. 15, 2007, J.O. 19001.

<sup>103</sup> United Nations Convention on the Rights of the Child art. 10, Nov. 20, 1989, 1577 U.N.T.S. 3.

<sup>104</sup> *Id.*

<sup>105</sup> *Id.*

who seek refugee status, whether accompanied by their parents or not, shall "receive appropriate protection and humanitarian assistance . . . necessary for reunification with his or her family."<sup>106</sup> Thus, pursuant to CRC, it is unacceptable for France's residents to be refused reunification with their family members who are outside of France.

Family reunification is the largest category of immigration in the world, and it will continue without restraint; therefore, simply enforcing stricter procedures on family reunification will not prevent illegal immigration. For example, Steve Synder, chief executive of energy giant TransAlta Corp, recognized the issue of illegal immigration in Canada, which applies to the instant issue.<sup>107</sup> Furthermore, as stated in the text, "when you carefully select an immigrant worker, you are also brining in her family . . . The idea that you can allow a worker to enter, as if he were a machine part, without allowing his mother or children is pure mythology."<sup>108</sup> The new French law applies to immigrants only from certain countries—specifically northern Africa, and specifically attempts to limit northern African families from reuniting with their families in France. This discriminatory policy does not mitigate illegal immigration. Consequently, "On the Control of Immigration, Integration and Asylum" will not fulfill its purpose of precluding illegal immigration, but will only deepen divisions between French born citizens and the immigrant population.

### C. LAW'S DISCRIMINATORY POLICY ON ILLEGAL IMMIGRANTS FROM MAGHREB

The French new law is what President Sarkozy describes as a "chosen immigration" policy that is geared towards curtailing immigration for the purpose of family reunification and boosting immigration of skilled workers.<sup>109</sup> The new law also reflects President Sarkozy's slogan before he became president "France: love it or leave it" that addresses illegal immigrants.<sup>110</sup> There are an estimated 200,000 to 400,000 illegal

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<sup>106</sup> *Id.* art. 22.

<sup>107</sup> Doug Saunders, *Why Our Thinking About Immigration Remains Borderline*, GLOBE AND MAIL, Nov. 3, 2007, at F3.

<sup>108</sup> *Id.*

<sup>109</sup> Lisa Bryant, *France Tightens Immigration Requirements*, VOICE OF AMERICA NEWS (Paris), Sept. 20, 2007.

<sup>110</sup> James Graff, *Love It or Leave It: Xenophobia Goes Mainstream*, TIME, May 1, 2006.

immigrants in France.<sup>111</sup> Family reunification “is the largest source of immigration in France” with 94,500 permits issued to family members in 2005, compared to 14,000 immigrants who came on work visas.<sup>112</sup> Although Sarkozy claims the aim of the new immigration law is to “curb illegal immigration and inter-ethnic social tensions,” the fundamental effect of the law is to restrict immigration due to family ties, especially family ties from the Maghreb.<sup>113</sup> Supporters of the new law “bluntly said it is aimed at African applicants for family-reunification visas who could not otherwise provide credible supporting documents.”<sup>114</sup> The twenty specific countries the DNA test provision applies to do not include European, American, or Japanese immigrants, but it does pertain to all of the Maghreb.<sup>115</sup> Thierry Mariani, a deputy from Sarkozy’s Union pour un Mouvement Populaire (Union for a Popular Movement, UMP) justifies the bill as a means to “root out” false claims of kinship from African immigrants that he alleges account for 80 percent of forged identity papers.<sup>116</sup>

A few weeks before the law was passed, Franco Frattini, Vice President of the European Commission for Justice, revealed the need for twenty million new workers throughout Europe in the next decade and recommended that barriers to immigration be lifted.<sup>117</sup> Opponents of the new law argue that the new law is “rooted in a reductive, utilitarian view of immigration.”<sup>118</sup> Under the new law, France only welcomes those immigrants that will be profitable to France’s economy, leaving all other immigrants without many options.<sup>119</sup> The law particularly targets immigrants from the Maghreb, because most are poor and uneducated and come to France to perform low-skilled jobs. By preventing Maghreb immigrants from entering France, the law attempts to prevent their families from joining them. However, human beings are not machine parts

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<sup>111</sup> Elaine Genley, *Fear Grips Illegal Immigrants Hunted and Tracked in France*, ASSOCIATED PRESS, Sept. 22, 2007, available at <http://www.live-pr.com/en/fear-grips-illegal-immigrants-hunted-and-r1048155253.htm>.

<sup>112</sup> Katrin Bennhold, *Sarkozy moves quickly to tighten immigration laws*, INT’L HERALD TRIB., June 12, 2007, at 2.

<sup>113</sup> Annan, *supra* note 71.

<sup>114</sup> Susan Sachs, *New French Law Allows DNA testing of Visa Applicants*, GLOBE AND MAIL, Oct. 25, 2007, at A19.

<sup>115</sup> *Supra* note 88.

<sup>116</sup> Dadrian, *supra* note 3, at 1.

<sup>117</sup> Marquand, *supra* note 9.

<sup>118</sup> *Uni(e)s contre une immigration jetable*, <http://www.contreimmigrationjetable.org/spip.php?article258> (last visited Apr. 10, 2009).

<sup>119</sup> *Id.*



and by selecting an immigrant worker, France should also accept his or her family. Supporters of the new law assert that the DNA test provision will speed up visa applications, and that it does not discriminate against the poor because the country pays for the test. How the new law will speed the visa procedure exactly is not revealed, neither does the law outline what will happen to those that refuse to take the test.

Meanwhile, the effects of the new laws are detriment to illegal immigrants. Patrick Weil, a Sorbonne historian, affirmed that France has unequally applied its immigration laws, and he emphasized that “[o]ur laws should be neutrally applied, and national origins should not bear on the matter.”<sup>120</sup> Weil continues by explaining that “the sentiments of the people are not neutral. In the polarized politics here, we have an anti-Muslim, anti-black feeling that is playing out through the policies of Sarkozy.”<sup>121</sup> In Paris, it is especially difficult to obtain work if you have an African name or dark skin.<sup>122</sup> The new law only legalizes these discriminatory practices.<sup>123</sup>

The discriminatory policy towards immigrants from the Maghreb encompasses other services and rights as well. Illegal immigrants do not meet the requirements to receive health care in France.<sup>124</sup> The law also ignores gravely ill relatives of legally residing immigrants within France.<sup>125</sup> In France, health care is only available for “persons with stable and legal residence in France.”<sup>126</sup> Illegal immigrants are not considered to have stable or legal residence in France. The majority of the *banlieus* (French ghettos) consist of immigrants from the Maghreb.<sup>127</sup> Without legalization, illegal immigrants are also barred from services such as public benefits, housing, and education.

The new law also negatively affects immigrants from the Maghreb that are in France legally as well those immigrants who attempt to enter legally. For example, the new law requires relatives in France to earn a minimum income, prove their ability to provide, and support those

<sup>120</sup> Marquand, *supra* note 5.

<sup>121</sup> *Id.*

<sup>122</sup> *See id.*; Dadrian, *supra* note 3, at 1.

<sup>123</sup> In 1995, Chief Policy Adviser for Immigration in the Ministry of the Interior, Jean-Claude Barreau, made a striking comparison, commenting “Algerians for France are the same problem as Mexicans for the United States.” *Colonial Ghosts Come Back to Haunt France*, *supra* note 15.

<sup>124</sup> *See Uni(e)s contre une immigration jetable*, *supra* note 118.

<sup>125</sup> *See id.*

<sup>126</sup> National Coalition on Health Care, *Health Care in France*, <http://www.nchc.org/facts/France.pdf> (last visited Apr. 10, 2009).

<sup>127</sup> On file with author.

trying to enter.<sup>128</sup> Many of the Maghreb immigrants in France work at low skilled jobs and barely survive on their income; however, it is better than what is offered in their home country.<sup>129</sup> Many immigrants need their family members to join them to look after their small children so that they can go to work because they cannot afford childcare.<sup>130</sup> It becomes a circular dilemma. The law also requires proof of maternity, neglecting the requests of immigrant fathers to bring their children from their homeland to France.<sup>131</sup>

Although the new law has a provision to provide French language and culture training to immigrants to prepare for the republic assessment, the training will only be offered in select cities.<sup>132</sup> As a result, relatives of immigrants residing in poor countries who do not live in a city where the training are offered will be at a disadvantage if they are without the financial resources to access those trainings. The new law may force many immigrants to look to other means, whether unlawful or not, to reunite with their loved ones, which will fuel the illegal immigration dilemma.

On September 18, 2007, before the National Assembly, Immigration Minister Hortefeux discussed six underlying motives for the creation of the new law.<sup>133</sup> First, Hortefeux said that the integration system is not functioning. He supported this claim with statistics on the concentration of foreigners in urban ghettos and the unemployment rate among foreigners.<sup>134</sup> Second, Hortefeux said that France has the highest fertility rate in Europe and no longer requires mass immigration to fill population gaps.<sup>135</sup> Hortefeux's last four motives for the creation of the new law are that France has limited capacity to host immigrants, the failure of mass legalization, the effects of the brain drain, and finally the urgent need to control migration flows to France.<sup>136</sup> However, the government will pay for DNA testing, which costs a minimum of \$420.<sup>137</sup> This will help relieve some of the cost on the immigrant. Nonetheless, Hortefeux's reasons are not sufficient arguments for the creation of a discriminatory law.

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<sup>128</sup> CC decision no. 2007-557DC, Nov. 15, 2007, J.O. 19001.

<sup>129</sup> On file with author.

<sup>130</sup> On file with author.

<sup>131</sup> On file with author.

<sup>132</sup> On file with author.

<sup>133</sup> Hortefeux, *supra* note 43.

<sup>134</sup> *Id.*

<sup>135</sup> *Id.*

<sup>136</sup> *Id.*

<sup>137</sup> On file with author.

Spain is in a similar situation, with an influx of African immigrants as well as Latin American and South American illegal immigrants. However, Spain has not used methods that violate a person's fundamental rights, such as family reunification. Instead, Spain recently incorporated a process that is equally applied to all immigrants regardless of the immigrant's origin. The different approaches to immigration were also apparent in the public opinion where 19 percent of the French as opposed to 42 percent of the Spanish believed immigration helps their economy.<sup>138</sup> Spain's current directives go beyond the superficial level of inhibiting illegal immigration by attempting to resolve the root causes, and create a more realistic legal procedure. If France follows Spain's example, illegal immigration in France will be curbed, without restricting family reunification.

#### IV. LOOKING TO SPAIN AS AN EXAMPLE

The immigration issues and conditions in France and Spain are very similar. Therefore, France should look to Spain as a prime example of how to achieve its objective of inhibiting illegal immigration, while also preserving immigrants' right to family reunification. Like France, the majority of illegal immigrants in Spain come from North Africa. Spain is a haven for low-skilled immigrants looking for jobs and to establish a new home.<sup>139</sup> Likewise, integration and discrimination are significant issues for Spanish residents. In Spain, prior to 2005, many of the laws and policies were similar to France, and Spain had hopes that stringent procedures and frequent deportations would deter illegal immigration.<sup>140</sup> Like France, Spain used security and border controls to eliminate the number of illegal immigrants, and, more frequently, Spain used methods of regularization and amnesty.<sup>141</sup> However, also like France, the

<sup>138</sup> *Spain: Immigrants Welcome*, BUSINESSWEEK, May 21, 2007, available at [http://www.businessweek.com/magazine/content/07\\_21/b4035066.htm](http://www.businessweek.com/magazine/content/07_21/b4035066.htm).

<sup>139</sup> See Joaquin Arango & Maia Jachimowicz, *Regularizing Immigrants in Spain: A New Approach*, MIGRATION INFO. SOURCE, Sept. 2005, <http://www.migrationinformation.org/Feature/display.cfm?id=331>.

<sup>140</sup> *See id.*

<sup>141</sup> Regarding the Rights and Freedoms of Foreign Nationals Living in Spain and Their Social Integration (B.O.E. 2000, 8) available at <http://www.unhcr.org/refworld/topic,4565c22553,4565c25f695,402237554,0.html> (last visited Apr. 12, 2009).

effects of legislation and discrimination did not solve the illegal immigration problem.

Finally, in 2005, Spain passed a “narrowly defined” regularization program that incorporated the underground economy into the formal labor market, strengthened border and law enforcement, and expanded the methods of legal immigration.<sup>142</sup> Most importantly, since 2005, Spain began to implement reformed directives that confront the root causes of illegal immigration in an effort to curtail illegal immigration.<sup>143</sup> The new directives include incorporating companies and businesses as part of the solution of eliminating illegal immigration. The directives have changed Spain’s relationship with Africa by assisting the economic and education sectors and creating integration programs within Spain.<sup>144</sup> These new directives do not violate Spanish laws or EU laws.<sup>145</sup> Furthermore, by removing the incentives to immigrate illegally, the directives have thus far provided more positive and longer lasting results than other methods.<sup>146</sup> Instead of constructing more stringent physical and procedural barriers, Spain is making access to legal immigration easier.<sup>147</sup> This section briefly examines Spain’s history of immigration law, which led to the 2005 Regularization Program and the current directives.

### A. BRIEF HISTORY OF IMMIGRATION LAW IN SPAIN

Beginning in the 1800s, Spain was mostly a country of emigration, until after World War II when people no longer needed to leave Spain to find a job.<sup>148</sup> After the Franco regime ended in 1975, the economy grew rapidly and people began to immigrate to Spain to find jobs.<sup>149</sup>

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<sup>142</sup> Arango & Jachimowicz, *supra* note 139.

<sup>143</sup> Gemma Pinyol, *The External Dimension of the European Immigration Policy: A Spanish Perspective*, 13 AGORA WITHOUT FRONTIERS 323, 334-38, 342 (2008).

<sup>144</sup> *See id. passim.*; *See also* Zapatero Urges Fresh European Approach to Africa’s Migration Woes, EXPATICA.COM, Dec. 10, 2007, [http://www.expatica.com/es/news/local\\_news/Zapatero-urges-fresh-European-approach-to-Africa\\_s-migration-woes.html](http://www.expatica.com/es/news/local_news/Zapatero-urges-fresh-European-approach-to-Africa_s-migration-woes.html) (hereinafter *Zapatero Urges Fresh European Approach*); *Immigration: Spain’s Novel Approach*, EXPATICA.COM, Jan. 1, 2007, [http://www.expatica.com/es/lifestyle\\_leisure/lifestyle/immigration—spains-novel-approach-44471.html](http://www.expatica.com/es/lifestyle_leisure/lifestyle/immigration—spains-novel-approach-44471.html) (hereinafter *Spain’s Novel Approach*).

<sup>145</sup> *See* Pinyol, *supra* note 143, at 3-4.

<sup>146</sup> *See id.*

<sup>147</sup> Graff, *supra* note 110.

<sup>148</sup> KITTY CALAVITA, IMMIGRANTS AT THE MARGINS: LAW, RACE, AND EXCLUSION IN SOUTHERN EUROPE 3 (2005).

<sup>149</sup> *Id.* at 4.

The number of immigrants from 1996 to 2006 grew from 500,000 to 4.48 million.<sup>150</sup> Now Spain has the largest growth of immigration in the European Union as well as the largest informal economy in the European Union.<sup>151</sup>

In 1985, Spain passed its first immigration law, entitled “Organic Law on the Rights and Liberties of Foreigners in Spain.” The law focused on granting workers the rights of residents and integrating the immigrants into society.<sup>152</sup> This was the same year that Spain joined the European Community, which many suggest is the reason Spain enacted such legislation.<sup>153</sup> Immigrants from the Maghreb were free to enter Spain until 1991, when, for the first time, Spain began to require visas for immigrants from the Maghreb.<sup>154</sup> Finally in 1996, there was an amendment that established a permanent resident category and formally included family reunification in the law.<sup>155</sup> In January 2000, Spain passed the “Organic Law 8/2000, Law on the Rights and Liberties of Foreigners in Spain and their Social Integration,” which focused on “respect for cultural diversity” and eliminating “racism and xenophobia.”<sup>156</sup> Despite these laws, the numbers of illegal immigrants grew.<sup>157</sup>

## B. 2005 REGULARIZATION PROGRAM

The 2005 Regularization Program was passed in 2004, but was not implemented until 2005.<sup>158</sup> The Regularization Program (*regularización*) is a form of amnesty that granted temporary legal status to undocumented immigrant workers who met certain conditions of employment and residency requirements.<sup>159</sup> More than 600,000 undocumented immi-

<sup>150</sup> *Spain to Increase Immigration Budget*, WORKPERMIT.COM, Oct. 10, 2007, <http://www.workpermit.com/news/2007-10-10/spain/spanish-immigration-budget-increases.htm>.

<sup>151</sup> See Carlos Alfieri, *Spain: Immigrants Make the Economy Grow*, Aug. 30, 2006, IPS INTER-PRESS SERVICE NEWS, <http://ipsnews.net/news.asp?idnews=34509>.

<sup>152</sup> CALAVITA, *supra* note 148, at 5; See Nieves Ortega Pérez, *Spain: Forging an Immigration Policy*, MIGRATION INFO. SOURCE, Feb. 2003, <http://www.migrationinformation.org/Feature/display.cfm?ID=97>.

<sup>153</sup> Maria Pabon Lopez, *Immigration Law Spanish-Style: A Study of Spain's Normalization of Undocumented Workers*, 21 GEO. IMMIGR. L.J. 571, 575 (2007).

<sup>154</sup> ILLEGAL IMMIGRATION IN EUROPE, *supra* note 1, at 192.

<sup>155</sup> On file with author.

<sup>156</sup> See CALAVITA, *supra* note 148, at 30, 94.

<sup>157</sup> See Marquand, *supra* note 5.

<sup>158</sup> Graff, *supra* note 110.

<sup>159</sup> Amanda Levinson, *Why Countries Continue to Reconsider Regularization*, MIGRATION INFO. SOURCE, Sept. 2005, <http://www.migrationinformation.org/Feature/display.cfm?id=330>. See Rickard Sandell, *Spain's Quest for Regular Immigration*, 64/2005 ANALYSIS OF THE REAL

grants were legalized in 2005.<sup>160</sup> Although Spain had had numerous regularization programs in the past that gave amnesty to illegal immigrants within Spain, the 2005 Regularization Program redefined the immigration laws by reducing illegal employment from regularizing foreign workers.<sup>161</sup>

This was the first program construed and managed by the Ministry of Interior and Ministry of Labor and Social Issues, which may have strengthened its impact.<sup>162</sup> The program only applied to workers, rather than the immigrants themselves; therefore, this requirement encouraged immigrants to become part of the workforce and leads towards integration.<sup>163</sup> The regularization program applied to foreign workers who resided in Spain for over six months and had no prior criminal record in Spain or their home country.<sup>164</sup> Once the immigrant was eligible, he or she could receive a one-year renewable work and residence visa. The regularization program also changed the procedure for family reunification and allowed immigrants after one year of residing within Spain to obtain family reunification permits that last as long as the working immigrant's visa.<sup>165</sup>

In addition to regulating the work force of immigrants, the 2005 Regularization Program also strengthened immigration enforcement and border control.<sup>166</sup> Spain began checking employers and deporting their employees without documentation. Border control was also an important aspect because Morocco is only nine miles away from Spain. Furthermore, unlike France, Spain not only shares a geographical connection with Africa, but also a cultural connection with Latin America and South America.<sup>167</sup> As a result, there are many immigrants from other Spanish

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INSTITUTO ELCANO, May 18, 2005, available at [http://www.realinstitutoelcano.org/wps/portal/rielcano\\_eng/Content?WCM\\_GLOBAL\\_CONTENT=Elcano\\_in/Zonas\\_in/Demography+Population/ARI+64-2005](http://www.realinstitutoelcano.org/wps/portal/rielcano_eng/Content?WCM_GLOBAL_CONTENT=Elcano_in/Zonas_in/Demography+Population/ARI+64-2005).

<sup>160</sup> See Sarah Wildman, *Strain on Spain*, AM. PROSPECT, Oct. 6, 2006, [http://www.prospect.org/cs/articles?article=strain\\_in\\_spain](http://www.prospect.org/cs/articles?article=strain_in_spain).

<sup>161</sup> Arango & Jachimowicz, *supra* note 139.

<sup>162</sup> Victoria Burnett, *To Curb Illegal Migration, Spain Offers a Legal Route*, N.Y. TIMES, Aug. 11, 2007, at A3.

<sup>163</sup> Arango & Jachimowicz, *supra* note 139.

<sup>164</sup> Regarding the Rights and Freedoms of Foreign Nationals Living in Spain and Their Social Integration (B.O.E. 2000, 8) available at <http://www.unhcr.org/refworld/topic,4565c22553,4565c25f695,402237554,0.html> (last visited Apr. 12, 2009).

<sup>165</sup> *Id.* art. 18(2).

<sup>166</sup> Arango & Jachimowicz, *supra* note 139.

<sup>167</sup> See *ILLEGAL IMMIGRATION IN EUROPE*, *supra* note 1, at 194.

speaking countries. Ecuadorians are the second largest immigrant group within Spain.<sup>168</sup>

However, the 2005 regularization program is not enough to eliminate illegal immigration to Spain. The numbers of immigrants attempting to reach Spain from Africa by water increased immensely, which parallels the numbers of those who died attempting to reach Spain.<sup>169</sup> In 2006, the immigration issue divided Spain and France, and after witnessing the riots in France, Spain asserted that they had “‘no lesson’ to learn from France.”<sup>170</sup> France responded that Spain had enhanced their own problem because they are encouraging illegal immigration.<sup>171</sup> Spain’s government did concede that the regularization program was not adequate, and the number of illegal immigrants did increase as people came in hopes of acquiring amnesty.<sup>172</sup> In fact, Spain’s immigrant population went from 500,000 immigrants in 1996 to 4.48 million in 2006.<sup>173</sup> Consequently, this led Spain to look to new methods of tackling the problem.

### C. CURRENT DIRECTIVES

The previous section of this comment discussed the inadequacies of Spain’s regularization program and other stringent procedures Spain once employed. Drawing on this analysis, this section examines Spain’s current directives, and what France can learn from Spain to improve its illegal immigration dilemma, and respect family reunification rights. The Spanish Foreign Ministry’s Director-General for Africa, Alvaro Iranzo, best explains Spain’s current directives as a “modern, comprehensive approach to migration” that aims to “win the cooperation of countries of origin . . . to find solutions in which everyone benefits.”<sup>174</sup> The new directives include encouraging companies and businesses to

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<sup>168</sup> Brad Jokisch, *Ecuador: Diversity in Migration*, MIGRATION INFO. SOURCE, Feb. 2007, <http://www.migrationinformation.org/Profiles/display.cfm?ID=575>.

<sup>169</sup> See Alfieri, *supra* note 151.

<sup>170</sup> *EU Ministers to Discuss Illegal Immigration Solution*, WORKPERMIT.COM, Oct. 2, 2006, [http://www.workpermit.com/news/2006\\_10\\_02/eu/illegal\\_immigration\\_solution.htm](http://www.workpermit.com/news/2006_10_02/eu/illegal_immigration_solution.htm).

<sup>171</sup> *Id.*

<sup>172</sup> See Rickard Sandell *supra* note 159.

<sup>173</sup> *Spain to Increase Immigration Budget*, *supra* note 150.

<sup>174</sup> *Spain Takes Aim at Illegal Immigration by Offering Visas & Jobs*, WORKPERMIT.COM, June 28, 2007, <http://www.workpermit.com/news/2007-06-28/spain/business-job-visa-senegal-workers.htm> (hereinafter *Spain Takes Aim*).

participate towards eliminating illegal immigration, changing Spain's relationship with Africa by assisting the region's economic and education conditions, and creating integration programs within Spain.

### 1. NEW LABOR PLAN

Implemented in 2007, the New Labor plan proposes that large companies travel to African countries to hire immigrants directly. Those companies participating include large companies like McDonald's, grocery store chains, and other business executives, especially in the fields of fishing, construction companies, hotels, and restaurant chains.<sup>175</sup> The plan provides immigrants with legal passage and a renewable one-year work permit. Once immigrants receive a work contract, they have the right to bring their family members to join them.<sup>176</sup> Peter Sutherland, the United Nations Special Representative for Migration, commended the plan as "advanced thinking in terms of migration policy."<sup>177</sup> The new plan deters people from attempting to enter illegally by reducing the incentive for Africans to risk their lives in attempts to cross the dangerous Strait of Gibraltar, and squashes smuggling businesses that take advantage of such immigrants.<sup>178</sup>

### 2. CHANGING SPAIN'S RELATIONSHIP WITH AFRICA

Spain is also taking active measures to change the country's relationship with other African countries. In 2006, Spain presented a three year Africa plan that included the creations of new Spanish embassies in Cape Verde, Mali, Niger, Guinea, and Guinea-Bissau.<sup>179</sup> Spain's Secretary of State for Foreign Affairs, Bernardino León Gross, explained that the reason for such action is to "completely change the parameters of Spain's relationship with Africa" and "maintain a long view and deal with the factors that prompt migrants to leave home in the first place."<sup>180</sup>

In January 2007, Spain's Labor Minister, Jesús Caldera asserted Spain would open schools that would provide training in areas of construction, agriculture, fishing, tourism, healthcare, hotels, and catering

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<sup>175</sup> Burnett, *supra* note 162.

<sup>176</sup> *Id.*

<sup>177</sup> *Id.*

<sup>178</sup> *See id.*

<sup>179</sup> *Id.*

<sup>180</sup> *Id.*



throughout Northern Africa.<sup>181</sup> About one thousand people will be trained annually in nine countries.<sup>182</sup> For example, five vocational schools will open in Senegal to train immigrants for such jobs.<sup>183</sup> Caldeira also signed agreements with Gambia in August 2007 to invest \$1.3 million to train Gambians for work in Spain.<sup>184</sup> Mali and Mauritania have also entered a similar agreement.<sup>185</sup> Prime Minister Zapatero in December 2007, at an EU-Africa Summit in Lisbon, once again stressed Spain's commitment to improve conditions in Africa by creating schools for children and jobs once they graduated.<sup>186</sup> Spain's new labor plan is a dignified way of helping Africa to benefit economically.<sup>187</sup> Furthermore, the plan is supported and promoted by both Spanish and African governments, and creates an environment where top officials cooperate to resolve the issues surrounding illegal immigration instead of unilateral efforts from the receiving countries that do not succeed long term.<sup>188</sup>

### 3. CREATING INTEGRATION PROGRAMS WITHIN SPAIN

Spain has also taken measures to allow immigrants to integrate economically.<sup>189</sup> In 2006, Latin American immigrants in Spain transferred funds of more than \$5 billion to their home countries.<sup>190</sup> Therefore, Spain has built ATMs that allow users to pay for products in Spain such as groceries, medical treatment, and cell phones and have their purchases delivered to their home country.<sup>191</sup> Banks in Spain now have transfer systems set up to allow immigrants to send money home, which can then be used to fund the education of those back home, and loans are easier to obtain for immigrants with work permits.<sup>192</sup> Thus far, Spain's new directives have presented positive results. The number of illegal immigrants has dropped. Spain's undocumented immigrant population

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<sup>181</sup> *Spain's Novel Approach*, *supra* note 144.

<sup>182</sup> *Id.*

<sup>183</sup> *Spain Takes Aim at Illegal Immigration by Offering Visas & Jobs*, *supra* note 174.

<sup>184</sup> Burnett, *supra* note 162.

<sup>185</sup> *Id.*

<sup>186</sup> *Zapatero Urges Fresh European Approach*, *supra* note 144.

<sup>187</sup> *See id.*

<sup>188</sup> *Immigration: Spain's Novel Approach*, *supra* note 144.

<sup>189</sup> *Many Latin American Immigrants Opting for Spain*, (NPR radio broadcast Mar. 17, 2009), available at <http://www.npr.org/templates/story/story.php?storyId=12555928>.

<sup>190</sup> *Id.*

<sup>191</sup> *See id.*

<sup>192</sup> *See 'Immigration Encourages Prosperity,' WORKPERMIT.COM*, Jan. 4, 2008, <http://www.workpermit.com/news/2008-01-04/world/immigration-encourages-prosperity.htm>.

increased by only 400,000 people in 2007, which is the smallest increase in seven years.<sup>193</sup> Also, in 2006, more than 35,000 migrants arrived illegally in Spanish Canary Islands, but at the end of June 2007 only 4,000 immigrants arrived.<sup>194</sup> There are not only humanitarian reasons to allow immigrants to come to Spain and France, but economic ones as well.<sup>195</sup> Spain's economy has grown 2.6 percent per year over the past decade but would have fallen to .6 percent without immigrants.<sup>196</sup> For example, France's economy dropped from 1.6 to .3 percent.<sup>197</sup> Furthermore, the gaps in agriculture, domestic service, tourism, construction, and other low paying jobs are being successfully filled by trained immigrants.<sup>198</sup> With such results, the European Union has followed Spain's lead and has pledged 40 million euros to "boost job creation and training in Africa."<sup>199</sup> Likewise, France should be encouraged to learn from Spain's approach by focusing on the root causes of illegal immigration as a way of eliminating it.

## CONCLUSION

France's new law "On the Control of Immigration, Integration, and Asylum" does not accomplish the country's intent of reducing illegal immigration, instead, the law restricts family reunification which violates French laws, European Union laws, and promotes an underlying discriminatory policy to deter North Africans from migrating to France. In the last decade, France has aggressively enacted anti-immigrant legislation. However, this most recent law does not accomplish the objectives of preventing illegal immigration. Simply deterring North Africans from immigrating to France is a discriminatory and xenophobic policy that is not adequate to mitigate the issue of illegal immigration. France should examine Spain's current directives in hopes of obtaining similar positive

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<sup>193</sup> Robert Duncan, *Paradise Lost: Illegal Immigration in Spain*, SPERO NEWS, Jan. 16, 2008, available at <http://www.speroforum.com/site/article.asp?id=13671&t=Paradise+Lost%3A+Illegal+immigration+in+Spain>.

<sup>194</sup> *Spain Takes Aim*, *supra* note 174.

<sup>195</sup> *See id.*

<sup>196</sup> Alfieri, *supra* note 151.

<sup>197</sup> *Id.*

<sup>198</sup> CALAVITA, *supra* note 148, at 4.

<sup>199</sup> *EU Unveils New Immigration Plans*, BBC NEWS, <http://news.bbc.co.uk/2/hi/europe/6160633.stm> (last visited Mar. 18, 2009).

results that will benefit the French and the immigrants migrating to France. The regulatory scheme Spain utilizes may appear to be a short-term solution to unauthorized migration; however, it introduces a system that is more flexible and accessible for immigrants to follow. Also important, is Spain's initiative to work with the governments of the countries of its immigrants. There needs to be cooperation on both sides for an effective and successful process. Furthermore, Spain acknowledges that immigrants are human beings and not machines that can be separated from their families. It is inevitable that families will follow each other, regardless of the barriers. Therefore, it important for France to recognize that precluding family reunification for immigrants will not provide successful results in eliminating illegal immigration. France's role in immigration issues becomes more important when it acquires the European Union presidency in 2008, as other countries within in the EU look to France as an example of how to address illegal immigration.