Vulnerable by Legal Design

The Recognition of Irregularity-Induced Vulnerability in Spain's 2026 Extraordinary Regularization

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Today, on 30 June 2026, the deadline expires for applications under Spain's extraordinary regularization program that made headlines around the world when announced in January 2026. Designed to provide a pathway to legal residence for hundreds of thousands of undocumented migrants already present in the country, Spain's regularization program was preceded by years of mobilization by migrant-led organizations organized around the Regularización Ya (Regularization Now) movement, which emerged during the COVID-19 pandemic and culminated in a popular legislative initiative supported by more than 700,000 signatures. The initiative allows people with irregular immigration status who arrived in Spain before 1 January 2026 to apply for legal residence, provided they can demonstrate continuous residence in the country since that date, have no criminal record, are not subject to an entry ban in the European Union, and do not pose a threat to national security or public order. With around 1.2 million applications submitted since the application period opened on April 14, it is the largest regularization initiative in the country's history, surpassing the six previous schemes of this kind.

Yet the program raises questions that extend well beyond the Spanish context. In particular, it invites reflection on the relationship between irregular status and vulnerability: where European immigration law distinguishes between "vulnerable" and "non-vulnerable" undocumented migrants, allocating rights and protections accordingly and thereby establishing hierarchies of deservingness, the Spanish regularization program appears to rest on a different premise: that irregular immigration status is itself a source of vulnerability.

Defining Vulnerability Through Irregular Status

According to the preamble of the regulation approving the extraordinary regularization program, the measure seeks, among other objectives, to "reduce situations of vulnerability and provide administrative status to individuals with proven ties to Spain." The link between irregular immigration status and vulnerability is reflected not only in the regulation's rationale but also in its legal design. While all applicants must satisfy the above-mentioned general eligibility requirements, the regulation provides three alternative grounds for obtaining regularization: employment (or an intention to work), family ties in Spain, or, as a residual category intended to capture those who cannot qualify under the other two grounds, vulnerability. The latter must be certified by the competent social assistance authorities or accredited third-sector organizations through a controversial vulnerability certificate. To this end, the regulation provides that:

> *"foreign nationals shall be considered to be in a situation of vulnerability if, given their irregular administrative status and the personal, economic, social, psychosocial, family, or housing circumstances arising therefrom, these factors affect their living conditions or their effective access to their rights" (emphasis added)*

This wording modified earlier versions of the text, which established a presumption equating, for the purposes of the regularization process, irregular status with vulnerability. Following observations by the Council of State – the advisory body responsible for reviewing draft legislation issued by the Government – the final version requires that the vulnerability associ-

ated with irregular status be reflected in additional circumstances of disadvantage or exclusion. Yet the breadth with which these circumstances are defined significantly limits the practical effect of this amendment. In other words, it is difficult to conceive of situations of prolonged administrative irregularity that would not fall within its scope.

Consequently, the revised definition does not appear to operate as a meaningful filter designed to exclude a hypothetical category of "non-vulnerable" undocumented migrants from the regularization process. Rather, it responds to concerns expressed by the Council of State regarding the alleged legal uncertainty arising from the absence of a specific legal definition of vulnerability. As argued by the legal clinics of the universities of La Rioja and Salamanca, this reasoning is open to question for at least two reasons. First, it is far from obvious that a presumption linking prolonged administrative irregularity to vulnerability creates any greater legal uncertainty than the open-ended definition ultimately adopted. Second, it requires applicants to demonstrate circumstances that are, to a significant extent, inherent in and foreseeable from the very condition of prolonged irregularity already known to the administration. Such an approach sits uneasily with the principle of administrative effectiveness and risks imposing evidentiary burdens with limited practical justification. And yet, the suggestion that vulnerability constitutes a novel or legally undefined concept in migration law is difficult to sustain.

Vulnerability in Spanish and European Migration Law

In fact, Spanish immigration law contains numerous references to the concept of vulnerability, giving rise to specific protective measures for the individuals or groups to whom it applies. This is the case, among other areas, with regard to safeguards prior to the enforcement of expulsions from the national territory, the identification of potential victims of human trafficking, reception facilities, and situations involving an unusual influx of foreign nationals. Similarly, Title V of the Asylum Act is devoted entirely to "minors and other vulnerable persons," including categories such as unaccompanied minors, persons with disabilities, the elderly, pregnant women, and victims of human trafficking.

The EU's New Pact on Migration and Asylum (NPMA), which is fully applicable throughout the European Union since June 12, 2026, furthers this trend by presenting the protection of "the most vulnerable" as a sort of counterbalance to the general tightening of migration and asylum policies. In this context, vulnerability emerges as a central criterion for establishing specific protection measures within a broader context of repression of migration flows and restriction of rights, including the introduction of a preliminary vulnerability assessment during the new screening procedure. Thus, individuals deemed vulnerable benefit from specific procedural guarantees and priority or specialized access to certain reception services and mechanisms, as well as exemptions or safeguards against some of the most pernicious consequences arising from the Pact's new instruments.

In all these cases, vulnerability is fundamentally constructed on the basis of certain criteria other than immigration status, such as age, gender, or disability. It thus functions as an additional layer of differentiation within existing immigration categories, which are not conceived in and of themselves as sources of vulnerability, but rather as frameworks within which other forms of vulnerability operate. Consequently, the legal system distinguishes between "vulnerable" and "non-vulnerable" asylum seekers, refugees, or undocumented migrants and establishes differentiated rights based on this classification.

Vulnerability as a Mechanism of Stratification

As a result, vulnerability functions as a mechanism of stratification among migrants without recognizing or questioning the centrality of immigration status as the basic criterion for inclusion and exclusion. Paradoxically, while contemporary European immigration law pays increasing attention to vulnerability, it is often conceived as an exceptional circumstance that justifies enhanced protection for certain individuals within each immigration category, rather than as a potential

consequence of the very legal architecture that produces and reproduces these categories.

From this perspective, scholars have warned that migration governance increasingly reflects an implicit acceptance that protecting only a fraction of those in need – the recognized vulnerable – is both morally and legally acceptable. This dynamic is closely linked to what Luc Leboeuf describes as the "humanitarization" of migration and asylum, whereby selective compassion towards certain "deserving" groups in contexts of insufficient resources becomes normalized. Consequently, vulnerability has become a "crucial" label for accessing assistance and protection in humanitarian settings, incentivizing migrants and refugees to perform forms of victimhood and powerlessness typically associated with it.

Making Legally Produced Vulnerability Visible

Against this background, the extraordinary regularization of 2026 marks a significant innovation: it places irregular status at the center of the analysis of vulnerability. This recognition is no minor issue, for – unlike the categories generally recognized in immigration law – the vulnerability associated with irregular status does not stem from preexisting personal characteristics but is directly produced by the very immigration policies that define and regulate it.

This insight resonates with scholarship that understands vulnerability not as an attribute inherent to specific groups, but as a universal and constant feature of the human condition. From this perspective, developed most prominently by Martha Fineman, the key question is not who is vulnerable, but how legal and institutional arrangements unevenly distribute exposure to harm and resilience across society. Vulnerability is therefore not simply discovered by law; it may also be produced, intensified, or alleviated by it. Applied to migration, this shifts attention from the personal characteristics that render certain migrants vulnerable to the ways in which immigration status itself structures access to rights, resources, and social participation.

It follows that if, as stated in the popular legislative initiative promoted by Regularización Ya, "irregular status amounts to a sentence of labor exploitation, invisibility to institutions, lack of legal protection, or de facto exclusion from essential public services such as education and healthcare," it is largely because our legal systems and institutional frameworks make access to fundamental rights, resources, and opportunities contingent upon holding a specific administrative status.

While this observation may appear almost self-evident, explicit legal recognition of the vulnerability associated with irregular status remains remarkably rare. More often, irregular status and the hardships that it brings are presented as a legitimate expression of states' immigration control prerogatives and therefore as a necessary response to the "problem" of irregular immigration. Therefore, the vulnerability caused or exacerbated by irregular status is not perceived as the result of specific legal and institutional decisions but rather appears as a natural or inevitable condition for those lacking a residence permit. Far from disappearing, this vulnerability is thus rendered legally invisible and politically normalized by the imperatives of immigration control.

The "visibility" of the vulnerability stemming from irregular status and its recognition as a subject of protection are therefore another reason to welcome a regularization process that, in this sense as well, runs against prevailing trends. At a time when vulnerability is becoming a prominent organizing principle in European migration law, recognizing irregular status as a source of vulnerability demonstrates that the concept is capable of capturing forms of disadvantage produced by migration law itself, rather than merely identifying migrants with preexisting protection needs. This recognition further marks a significant departure from dominant approaches to migration governance, characterized by deterrence-oriented policies, expanded border controls, and the growing securitization of irregular migration. Rather than viewing migrants primarily through the lens of control and risk management, it invites a perspective that shifts attention to the ways in which legal status conditions access to rights, resources, and social participation. More fundamentally, it enables a critical interrogation of the legal

and political structures that produce migrants' vulnerability, revealing irregularity as the outcome of regulatory choices that unevenly distribute precarity and exclusion across populations.

Beyond Exceptional Measures

The implementation of the regularization process has already begun to produce tangible outcomes, with the first applicants receiving positive decisions amid celebratory scenes, while thousands of others now await determinations on whether they will be granted legal residence. A positive decision results in the granting of a one-year temporary residence and work authorization under the "*arraigo*" framework, which regularizes the individual's stay, provides full access to the labor market (both employed and self-employed), and can be renewed or transformed into a more stable residence status subject to continued compliance with the applicable requirements.

Nevertheless, the broader significance of this initiative should not be overstated. The regularization program remains an exceptional measure and, as such, does not necessarily herald a new way of addressing – and understanding – migration policy. On the contrary, as long as irregular status remains a central instrument of migration management, the harms it produces will remain largely outside the field of legal concern, becoming visible – if so – only through occasional and extraordinary interventions such as the one we are currently witnessing in Spain. The broader challenge for European migration law is whether it is prepared to acknowledge that some forms of migrant vulnerability are not merely discovered by legal institutions, but actively produced and sustained by them.

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