



# Globalisation, migration and bail: a challenge for justice in the 21<sup>st</sup> Century

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# Introduction

- Focus of the paper is on bail decisions involving foreign nationals
- The proportion of foreign nationals in the prison remand population in England and Wales and the rest of the EU is increasing
- Context
  - Ease of movement between EU member states
  - Movement around the globe (business, travel, leisure)
  - Migration
  - Immigration agendas
  - Moral panics – crime and immigration
  - Discrimination



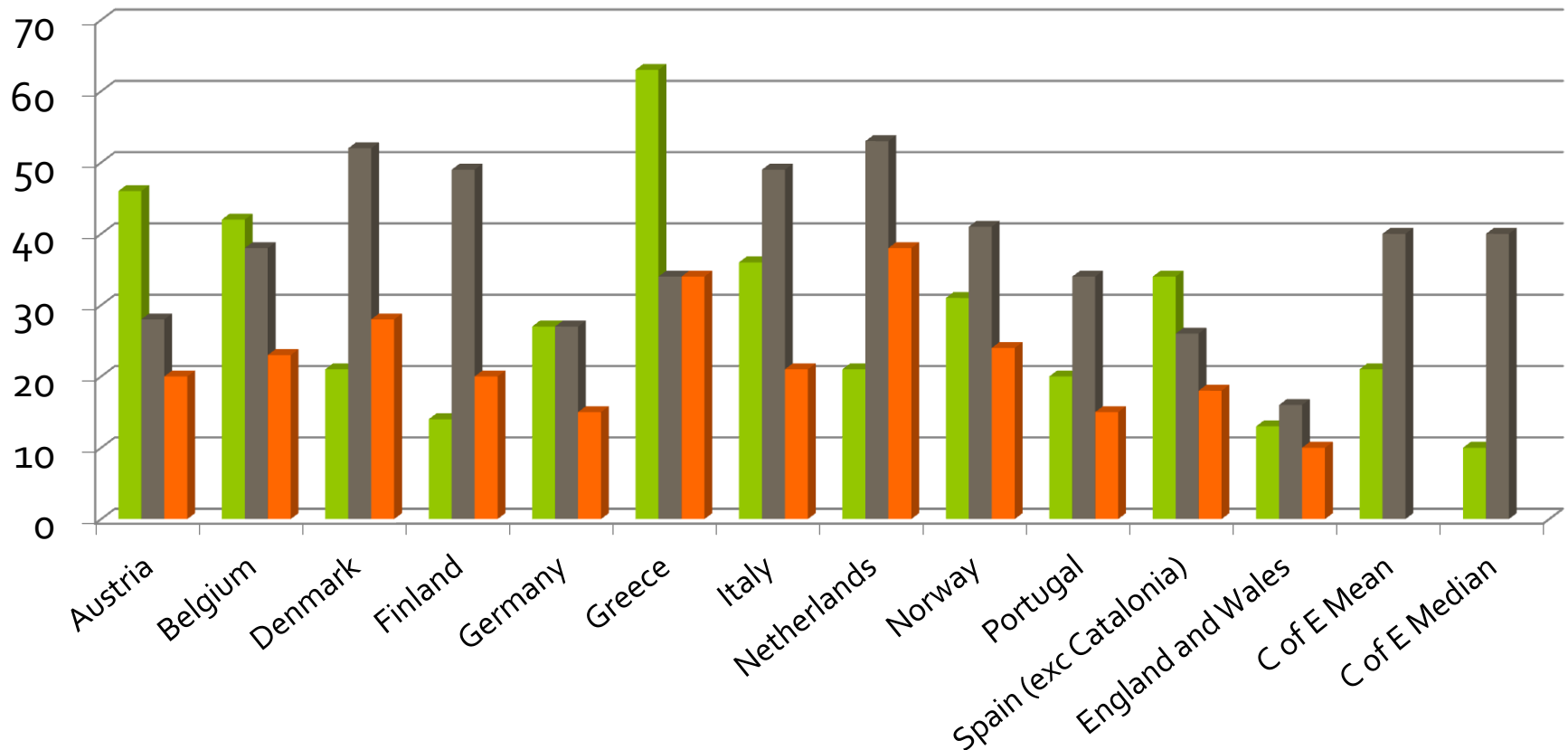
# Outline

- This paper suggests that foreign nationals in the remand process is a crisis in the making
- It focuses upon how bail law and practice provide considerable structural impediments to the right to bail for this group of defendants.

# Definitions

- Described as a homogenous group
- Experiences of the prison system are similar (HMIP, 2006)
- But diversity
  - Non-resident
  - Asylum seekers with indefinite leave to remain
  - European Citizens
  - Residents
- Overlaps with issues of race and discrimination

# Proportion of Foreign Prisoners (Council of Europe, SPACE 1 2011.3.2/2011.4)

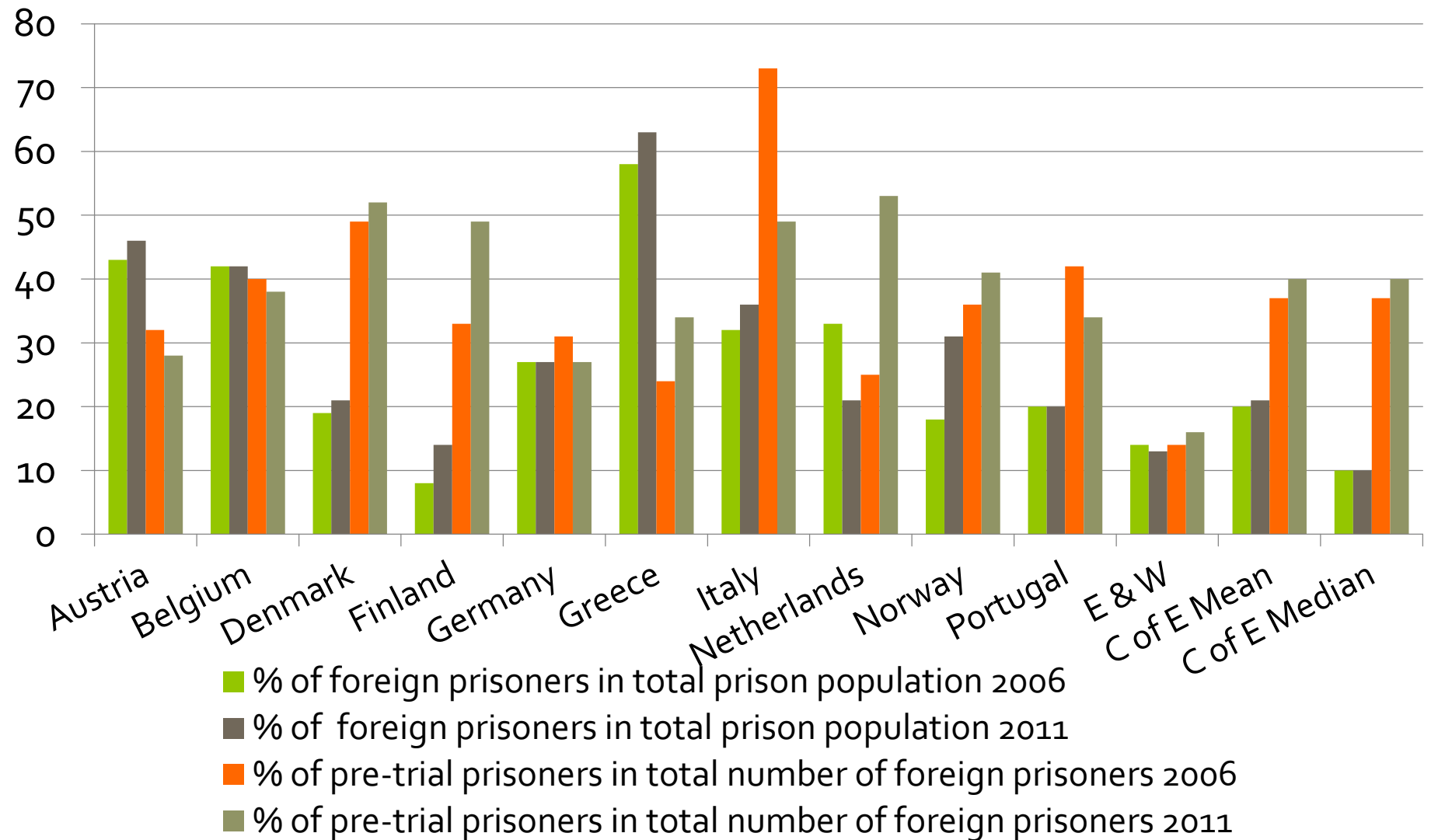


■ % of foreign prisoners in total prison population

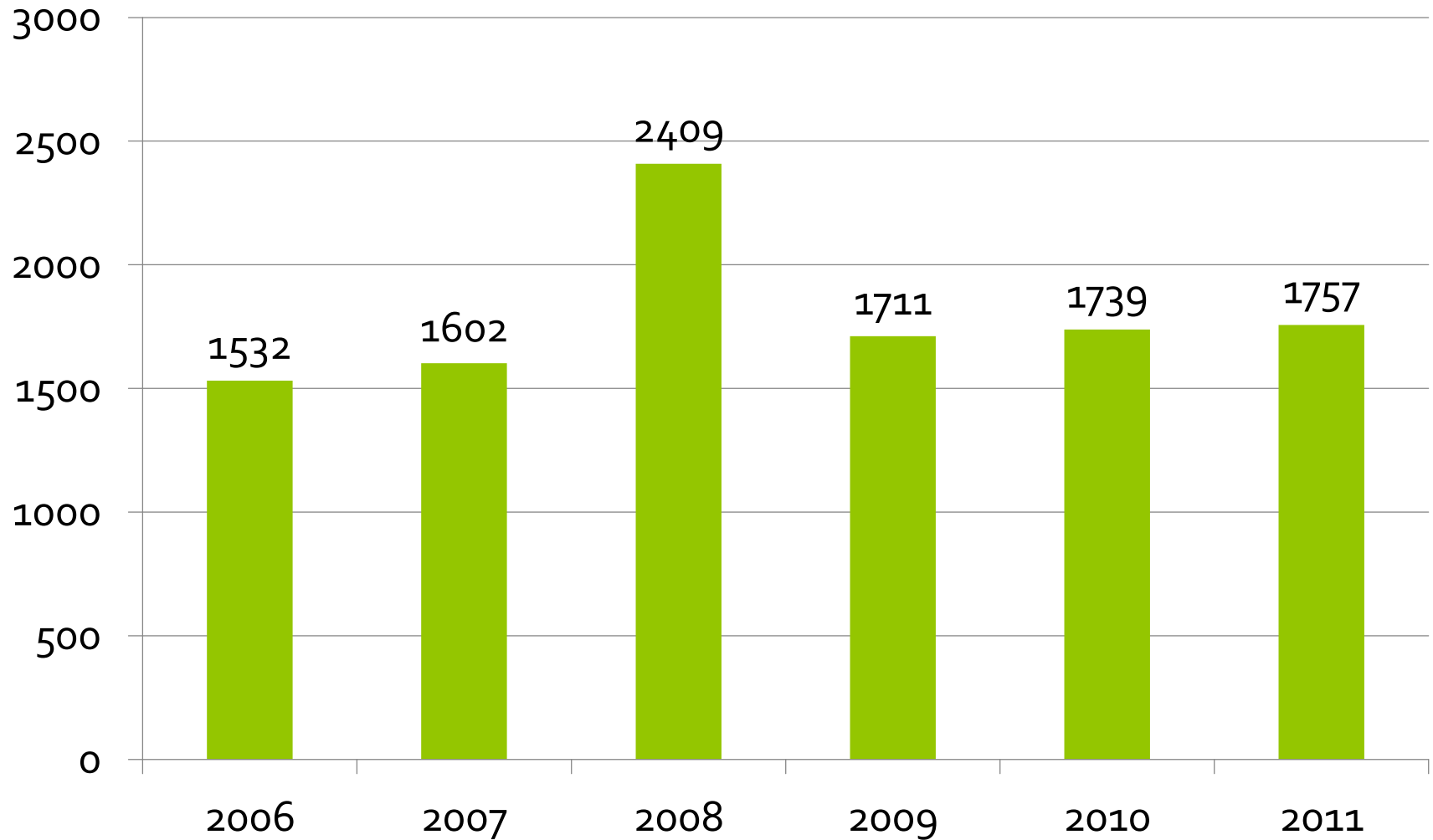
■ % of foreign pre-trial prisoners in total number of foreign prisoners

■ % pre-trial prisoners in total prison population

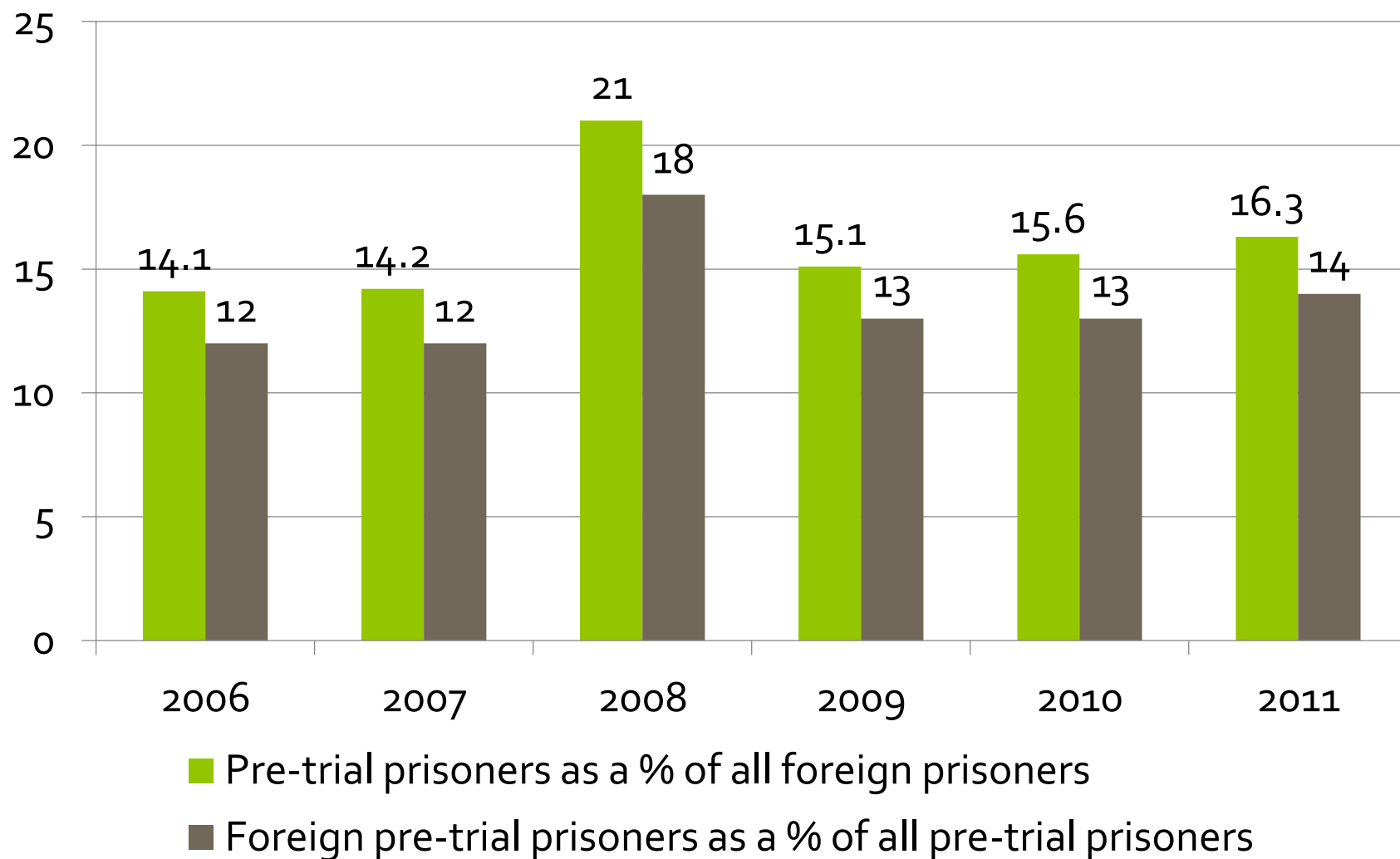
# Proportion of Foreign Prisoners 2006/2011 (C of E, SPACE 2006.3/2011.3.2)



# Number of Foreign National pre-trial prisoners in E and W (C of E, SPACE, 2008-2013.3)

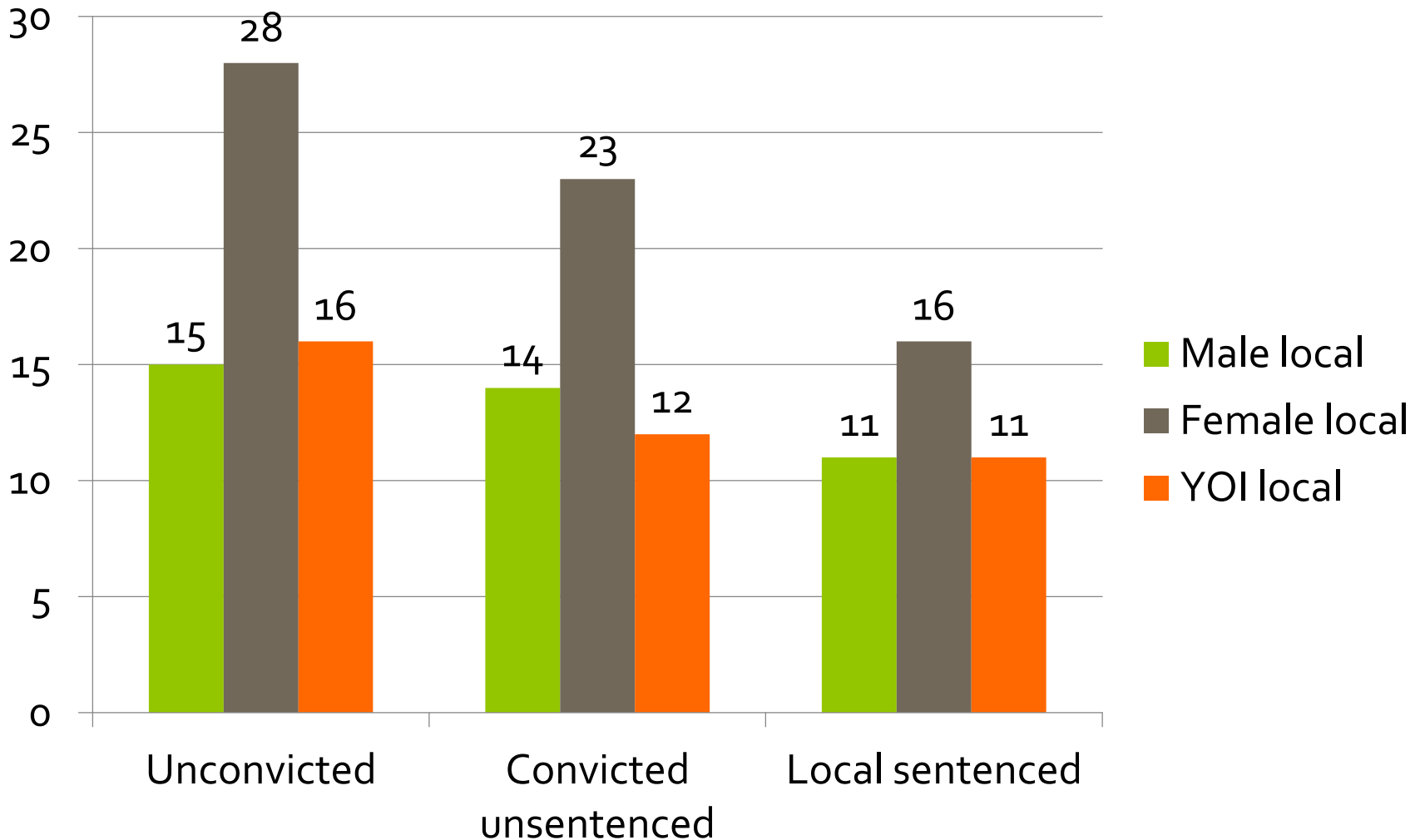


# Proportion of Foreign national pre-trial prisoners in E and W (C of E, SPACE, 2008-13. 4)

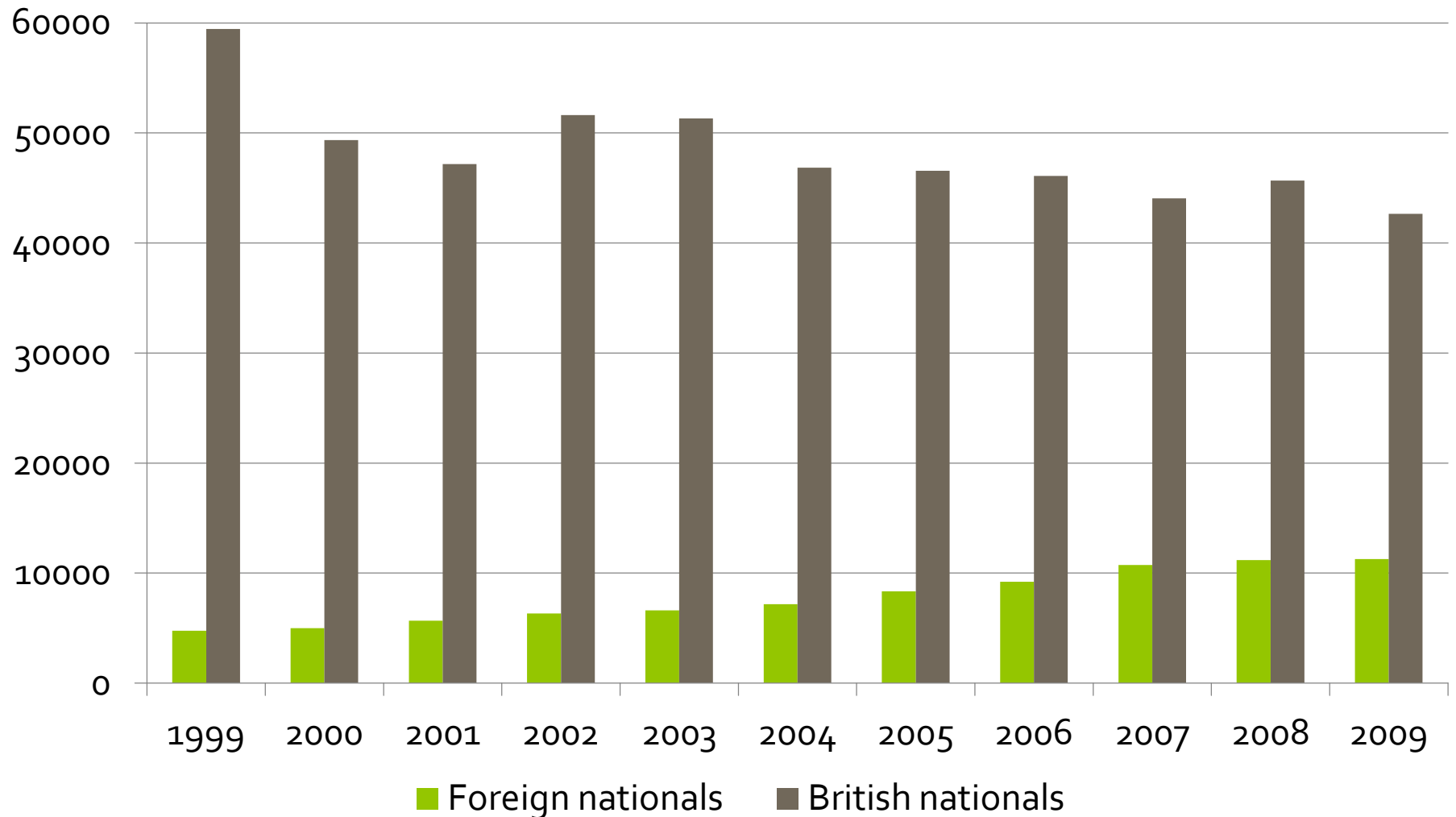




# Percentage of local prison population who identified as foreign national in England and Wales (HMIP, 2012: 37)



# Untried receptions by nationality in E and W (MoJ, 2010)



# Additional pains of imprisonment for Foreign National remand prisoners

- Language
- Family contact /distance from home
- Immigration
- Culture (food, religion etc)
- Unfamiliar legal system/access to advice
- (Non) participation in prison life
- Trauma

(HMIP, 2006)

- No specific research on remand prisoners!
  - resettlement

# Legal framework

- Presumption in favour of bail?
- Are they a more risky population?
- Particular concerns about ensuring attendance at trial
- Risk of flight is likely to be substantiated
- De facto presumption in favour of custodial remand for foreign national defendants
- Challenges human rights standards
  - Right to liberty
  - Equality before the law

# Barriers to release

- Lack of information esp. offending and bail history
- Police bail/detention
- Immigration status/deportation
- Language
- Stable life in UK
  - Travel back 'home'
    - FN is anyone who does not have a legal right to live or reside in the UK
  - Residence/Accommodation
- Community ties
  - Employment
  - Family
- Defence representation (criminal/immigration)
- Bail Information

# Recent custodial remand management

- Focus on reducing risks of offending on bail
- Ingredients of successful management of the prison remand population in England and Wales
  - Judicial discretion in favour of release
  - Conditional bail
    - Electronic monitoring of curfews

# Judicial willingness to release

- Police bail/CPS
- Defensive decision-making
- Trust in defendants
- Trust in, and treaties, with country of origin
- Immigration meets criminal justice

# Conditional bail

- An ineffective solution
  - Surrender passport
  - Report to the police station
  - Bail hostels
  - Bail Accommodation and Support Scheme
  - Electronic monitoring
  - Money bail (surety/security)



# Conclusion

- Growing problem in England and elsewhere
- Currently not on the political/campaigning agenda
- Data are not published
- The law enables high numbers of foreign nationals to be remanded in custody
- Conventional measures to reduce remand populations are largely ineffective
- Problem across the EU but unlike elsewhere EU nationals make up a small minority of those remanded in custody (6%).