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Motivations, experiences and consequences of returns and readmissions policy: revealing and developing effective alternatives



## *Executive Summary*

# Returns and Readmission on the ground.

## Case Study: **Spain**

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### **Disclaimer:**

*This document provides a concise summary of the key findings from the national report on Spain regarding the current legal and practical situation of non-deportable migrants and alternatives to deportation. The study was conducted as part of Work Package 4: Returns and Readmissions policy on the ground, implementation of the returns and readmission policy, its impact, and state agent's assessment and perceptions of the project MORE: Motivations, Experiences and Consequences of Returns and Readmissions Policy. Revealing and developing effective alternatives. The report is based on in-depth interviews and focus groups with a total of 17 participants among agents enforcing returns in Spain including judges, social workers in detention, prosecutors and police officers. For detailed analysis, evidence, and comprehensive insights, please refer to the full report. The information in this summary should not be considered complete or fully representative of the entire study.*

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# 1. Introduction

Grounded on ethnographic fieldwork conducted between October 2024 and March 2025, this executive summary reviews the experiences and perceptions of state and third-party actors enforcing detention and deportation in Spain. Fieldwork participants include police officers, judges, prosecutors and social workers implementing forced expulsions and enforcement mechanisms, notably detention. The aim of the fieldwork conducted with these agents has been to understand how immigration policy is 'made-real' on the ground through the daily work of frontline agents. Their experiences are crucial to understand how the deportation regime is rationalised and executed by those that are ultimate responsible for these life-defining decisions.

Each of these enforcement agents play a different role in the deportation regime and, which is understood and lived accordingly. The qualitative research and the empirical findings grounding this report highlight these different experiences and their impact on the ground.

First and foremost, the analysis reveals a discontent of all groups with deportation as the main response to administrative irregularity, albeit for very different reasons depending on the role of the agent within the deportation chain. Police officers and prosecutors express a clear dissatisfaction with a mismatch between policy intentions, resources and bureaucratic procedures. Other critical actors, such as judges and social workers, put much more emphasis on the lack of protection of irregularised migrants' rights during the deportation process. Still, all actors tend to consider that deportation should not be the main response to irregularity among foreign citizens but rather should be applied as an exceptional measure only. Overall, most participants perceive regularisation as the main mechanism that should be prioritised to manage irregularised migration. Through revealing the experience of frontline agents, the investigation exposes how detention and deportation are both, perceived and deployed, as punitive instruments.

The research also investigates the impact of the 'effectiveness' discourse regarding the returns and readmissions policy at EU-level, by looking at how each of these agents conceptualises '(in)effectiveness' in their enforcement efforts. Results demonstrate how most enforcement agents consider the returns policy ineffective and inefficient. Participants recognise that such policy fails to address the very issue that it is trying to solve and rather leads to further irregularity.

Furthermore, the investigation exposes how these agents present themselves within the deportation regime, unveiling interesting contradictions between complying with duties and maintaining a certain moral image of themselves. The research also takes an intersectional approach in its analysis of the representations that enforcement agents make of irregularised migrants. This reveals the construction of hierarchical gendered and racialised distinctions between 'good' and 'bad' migrants used to rationalise the moral dilemmas of frontline enforcement.

## 2. Evidence and analysis

**Expanding investment in return and detention measures is seen as ineffective and inappropriate due to contradictions with fundamental rights and overarching regulations.**

Amongst all participating agents, only National Police officers openly recognise holding a degree of discretion in their work. This is particularly regarding decisions to initiate a deportation procedure against certain foreign citizens and not others. Most of the other participants attribute decision power to further instances. For instance, prosecutors and judges identify each other as the one with the power to take the final decision over deportation cases. Still, all agents recognise “the law” as the primary basis for decision-making, with repeated declarations stating that “I’m not in a position to say yes to this one and no to that one. I must apply the law” (police officer).

Ethnographic findings indicate a clear opposition to the returns and readmission policy, from most frontline enforcement actors, albeit to varying degrees and with certain caveats. The most prominent example is the opposition to the use of detention as a preventive measure. Participating judges and detention social workers defend that detention not only constitutes serious breaches of fundamental rights and dignity, because of implementation shortcomings and deficiencies, but also because of the overall unsuitability of this mechanism. This is particularly in reference to cases where detention is enforced as a preventive measure in response to administrative irregularity, in which both detention and deportation are clearly considered excessive penalties for the fault committed. However, there was also an opposition to detention for deportations under the Penal Code pathway, with the argument that such deportations could be executed directly from prison as the state has enough time to plan the deportation before the end of imprisonment.

### **Detention and deportation often fail to achieve their intended purposes**

Conversely, police officers do not oppose detention as far as this is meant to facilitate enforcement of certain deportations (mainly criminal cases) but believe it should be avoided unless it is evident that it will contribute to the deportation process. However, they concede that this condition is not always achieved, as many detainees are released from detention prior to the enforcement of deportation orders. Police Officers thus, considered that detention is often “absurd” and frustrating for them as well as detrimental to those detained, as this officer explains: “I am not going to detain someone [...] if I know they cannot be deported because it’s absurd. I am not going to keep someone there for 60 days, the [detention centre] won’t accept them.” (ES-FG2-P1). While officers openly acknowledge the existing inherent contradictions between detention practices and the respect for fundamental rights, they interpret these contradictions as obstacles to their work, rather than as essential guarantees of rights.

As a result, detention is generally regarded by enforcement agents as an inadequate and ineffective measure, even in terms of contributing to the enforcement of deportations, as corroborated by statistical data from Spain<sup>1</sup>. Enforcement agents consider that detention is totally unjustifiable as response to a mere administrative infraction, as it deprives individuals of their liberty and overrides their fundamental rights: “You never see this in other spheres [of law]. For administrative issues you can have your property confiscated, you can... well, basically, you can have your property confiscated. Yes... but going to the length of depriving someone of liberty, damn! This is not a judicial pathway.” (ES-IA-7)

Detention, as a mechanism for governing irregularity, is deemed excessive by most state actors. Even in the case of Spain where the maximum detention period of 60 days is much lower than the Returns Directive standard, it is still perceived as inappropriate and severely detrimental.

### **Deportations should be exceptional, not a standard tool for migration governance, limited to penal processes or serious public order concerns**

Despite the latter perceptions regarding detention, for most participants deportation is seen as a necessary tool within both the Penal Code and the *Ley de Extranjería*, as the logical conclusion of the procedure, as a judge explained: “I’m not sure whether it is the necessary response, that’s a political opinion [...] but, if you think not everybody can be regularised, then, it’s the only solution” (ES-IV-6). Similarly, other legal experts perceive that, from a legislative point of view, deportation is the ‘natural’ response to the infraction of entering or staying in the country irregularly, restoring the legal order completely by reversing the infraction committed by the foreigner. Within the current legal framework judges see deportation as “the most onerous sentence for an administrative infraction” (ES-IV-6) so “it should be considered if the deportation of foreigners is something that the Spanish society wants” (ES-IV-6). Thus, most judges do not see much room for questioning deportation but consider that a political debate on the issue is in order.

### **Deportation also an excessive measure, as adequate punitive measures exist to deal with criminality**

Deportation is not questioned nor challenged among National Police officers. On the contrary, it is regarded as one of the central and most important aspects of their job as police officers within the ‘foreigners’ section. Still, its importance does not lie on its role as an immigration control mechanism

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<sup>1</sup> In 2023: Pre-removal detention: 2.087  
Exit from detention via devolution: 201  
Exit from detention via expulsion: 919  
Exit from detention to freedom: 871

but on the possibility to remove those labelled as ‘criminals’ from Spanish territory. This allows them to make a distinction between ‘good’ and ‘bad’ migrants and, thus, position themselves in relation to the deportation chain in a morally positive manner. Being able to highlight the expulsion of ‘criminal’ migrants enables police officers to articulate their opposition to deporting individuals solely for irregular entry or residence in Spain.

### **Detention and deportation are used as punitive instruments**

Despite National Police officers insisting that they “don’t detain foreigners just for being foreigners” (ES-FG1-P1) and that “immigrants are not criminals, not at all; we even need them, a lot” (ES-FG1-5), their focus on what they refer to as ‘foreign criminals’ reinforces this idea. Officers do not consider ‘foreign criminals’ to be only those that are involved in a deportation process through the Penal Code, but also “repeat offenders and those who don’t adapt...” (ES-FG1-2) who can be deported through the administrative procedure for irregular stay with the aggravating factor of having a police or judicial record. This interest on criminality is rationalised through their policing role, understanding that anything that “doesn’t affect public safety, is not something that we, as police officers, need to be dealing with every day, especially when we have other priorities” (ES-FG2-1) but also that “I mean, I like [this job] because it’s very defining of police work, taking criminals out of the streets, it’s very defining of police work, I like it” (ES-FG2-2). This points to the key insight that deportation is used as a punitive response to behaviours deemed uncivil or non-normative. This is corroborated by interviews with local police officers, who indicate that they refer individuals to the National Police to initiate deportation proceedings in cases of perceived recidivism of minor offences.

Furthermore, this understanding and use of deportation underscores a concerning possibility in the rationalisation of this mechanism by officers as a tool for addressing criminal activity, which may lead to its enforcement to administer punishment without due legal process or guarantees.

### **This punitive approach is gendered and racialised**

Applying an intersectional perspective to the analysis of data has been crucial to unearth several issues, mainly regarding gender and racialisation, which impact the enforcement of the returns and readmissions policy. Several judges point at racialised profiling as a significant factor in the decision-making process of police officers in the enforcement of detention and deportation, noticing clear trends on the countries of origin of those that appear in court for administrative detention cases. A clear association is made between gender and criminality, as those construed as criminals are commonly also construed as male, while women are recurrently presented solely as victims of crime.

## **Concluding remarks**

As the ethnographic data reveals, from the enforcement agents' perspective, detention and deportation fail to achieve their own stated objectives. On the contrary, they are frequently deployed as punitive instruments informed by racialised and gendered hierarchies of 'good' and 'bad' migrants. This punitive logic, which stands in evident contradiction to the broader aims of migration governance, is deeply embedded in expulsion and deportation mechanisms. The vast majority of frontline implementing actors, including police officers, judges and prosecutors regard deportation mechanisms as punitive instruments that are ineffective, costly, and impractical within the context of migration governance, particularly when applied as a blanket solution for all foreign nationals without residence permits. Professionals working on the ground consider that deportation should be an exceptional measure, not a tool for migration governance. Contrary to dominant policy discourses, they frame regularisation as the most effective policy option to address administrative irregularity.

Those professionals working on the ground clearly view expulsion and deportation tools as confined to contexts such as penal processes or cases involving serious public order concerns, rather than as the routine instruments of migration management. They consider that such mechanisms should only be enforced under extraordinary circumstances. However, some voices also consider that even in these cases, detention, expulsion and deportation are excessive measures as adequate mechanisms to address criminality already exist. Finally, enforcement agents argue that expanding investment in return and detention measures is ineffective and does not provide a substantive solution, given the insurmountable contradictions between detention and deportation, and fundamental rights, as well as other overarching rules and regulations that supersede the implementation of returns.