



## UvA-DARE (Digital Academic Repository)

### Across the Sloping Meadow Floor

*An Empirical Analysis of Detention of Deportable Non-Citizens*

Vallbé, J.-J.; González-Beilfuß, M.; Kalir, B.

**DOI**

[10.2139/ssrn.2994123](https://doi.org/10.2139/ssrn.2994123)

**Publication date**

2017

**Document Version**

Submitted manuscript

[Link to publication](#)

**Citation for published version (APA):**

Vallbé, J.-J., González-Beilfuß, M., & Kalir, B. (2017). *Across the Sloping Meadow Floor: An Empirical Analysis of Detention of Deportable Non-Citizens*. Paper presented at Law at the Crossroads, Toronto, Ontario, Canada. <https://doi.org/10.2139/ssrn.2994123>

**General rights**

It is not permitted to download or to forward/distribute the text or part of it without the consent of the author(s) and/or copyright holder(s), other than for strictly personal, individual use, unless the work is under an open content license (like Creative Commons).

**Disclaimer/Complaints regulations**

If you believe that digital publication of certain material infringes any of your rights or (privacy) interests, please let the Library know, stating your reasons. In case of a legitimate complaint, the Library will make the material inaccessible and/or remove it from the website. Please Ask the Library: <https://uba.uva.nl/en/contact>, or a letter to: Library of the University of Amsterdam, Secretariat, Singel 425, 1012 WP Amsterdam, The Netherlands. You will be contacted as soon as possible.

# Across the Sloping Meadow Floor

## An empirical analysis of detention of deportable non-citizens

Joan-Josep Vallbé\*

Markus González-Beilfuß†

Barak Kalir‡

June 28 - Early draft

### Abstract

In many countries, the law permits state authorities to detain non-citizens who have pending deportation orders. As a measure against the right of liberty, international law, the EU legal framework and states establish a number of procedural safeguards, such as legal aid and judicial review. Typically the judicial decision about detention must be made within a short period of time during which deportable non-citizens are held in police premises, and depending on the country detention may last just one month (e.g., France) or up to 18 months (the Netherlands). While previous research has explored various dimensions of non-citizen detention including the legal procedure, health consequences, the condition of detention centers, and the lives of deportable non-citizens, the empirical assessment of the determinants of decisions on deportation are largely unexplored. Using data from court proceedings of police petitions of detention and a quantitative strategy, in this paper we undertake an empirical analysis of non-citizen detention combining personal background of deportable non-citizens, legal factors of the case, and the behavior of different actors involved in the procedure. To do it, we fit multilevel logistic regression models that take into account variation occurred at both court and judicial district levels. Results indicate, on the one hand, that relevant actors involved in the procedure use different informational cues to decide on cases. On the other hand, the role of attorneys during hearings proves also relevant to predict detention.

## 1 Introduction

The conditions under which the police can detain deportable non-citizens, as well as the length of the detention and the rights of detainees, vary among EU member states, sometimes dramatically (European Migration Network, 2014). For example, in the Netherlands, non-citizens can be detained for an uninterrupted term of up to six months. This term may be applied up to three times, leading to a maximum detention term of 18 months. In France, in sharp contrast, the maximum detention term stands at 32 days. Spanish law permits the detention of deportable non-citizens for a period of up to 60 days. Although these numbers imply serious consequences

---

\* Associate professor of political science, Department of Political Science, University of Barcelona. Corresponding author, [vallbe@ub.edu](mailto:vallbe@ub.edu).

† Professor of constitutional law, Department of Political Science, University of Barcelona, [markusgonzalez@ub.edu](mailto:markusgonzalez@ub.edu).

‡ Associate professor and co-director of the Institute for Migration and Ethnic Studies of the University of Amsterdam, Department of Anthropology, University of Amsterdam, [b.kalir@uva.nl](mailto:b.kalir@uva.nl).

on the liberty of non-citizens, detention is part of an administrative procedure. Therefore, not only deportation *but also* detention in centers for deportable non-citizens can have serious consequences on the lives of thousands. In recent years, the detention and deportation of non-citizens is increasingly being studied from different disciplines. Important studies have been conducted on the conditions in detention centers (Bosworth, 2014), the impact of detention on detainees' health and well-being (Puthoopparambil and Bjerneld, 2016; Robjant et al., 2009; Storm and Engberg, 2013), the role of NGO's in the process of detention and deportation (Kalir and Wissink, 2016; Fischer, 2012), the lives of deportable subjects before and after their expulsion (De Genova and Peutz, 2010; Kalir, 2010), the effect of deportability on attitudes toward state authorities (Cavanagh and Cauffman, 2015), as well as the legal infrastructure that regulates detention and permits deportation (Kanstroom, 2007).

A persistent dearth in the literature on deportation processes is the study of the decisions by the various actors involved, that lead to the detention and possible deportation of non-citizens. In particular, while the issue has already been studied from a legal perspective (Requejo Rodríguez, 2006), very few empirical assessments of actual detention processes have been carried out, especially due to lack of available data. As an exception, González-Beilfuß et al. (2017) and Kalir et al. (2017) have recently undertaken an analysis of police petitions for the detention of non-citizens in the province of Barcelona, Spain. Mostly descriptive, these studies have allowed the examination of the work of all actors involved: the police, the state prosecutor, the attorney and the judge. The authors conclude, first, that in Spain the institutions of detention and deportation of non-citizens fails according to its own standards. Secondly, results seem to indicate that there is a systemic discrepancy in the factors according to which the police decide on the initiation of a legal procedure for the detention of non-citizens and the criteria applied by judges in ruling on the same matter.

Decisions over detention are surrounded by high levels of uncertainty: a decision on a person's liberty must be reached within a typically short time relying on incomplete information—typically the one provided by courtsheets or police petitions. Empirical evidence shows that, especially under these circumstances, judges and other legal actors—as boundedly rational individuals—rely on “fast and frugal heuristics” (Gigerenzer and Goldstein, 1996; Dhami and Ayton, 2001; Ryo, 2016), that is, on just a few cues of information that help them make quick decisions. The extent to which legal actors use such cues (and if so, which ones) in decisions over non-citizen detention is still a largely unexplored field.

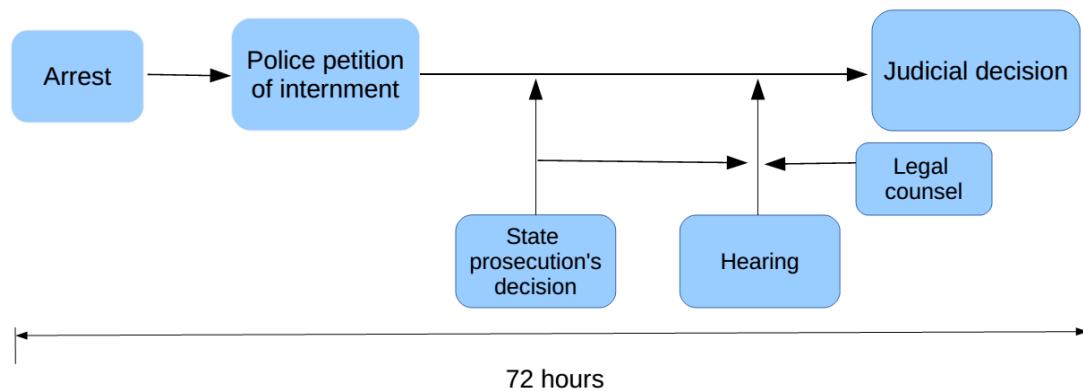
Using data from non-citizen detention court cases in Spain, this paper intends to start filling this gap. In the next section we provide context to the Spanish case and outline the theoretical framework regarding the heuristic model of judicial decision-making. Once the framework is set, we derive a number of hypotheses from the model. Section 3 provides a description of the dataset used to test the hypotheses, and results are presented in Section 4.

## 2 Theory

### 2.1 Context: detention of deportable non-citizens in Spain

The Spanish Immigration Act provides a specific proceeding through which non-citizens who have been issued a deportation order, and have not left voluntarily the Spanish territory within

**Figure 1.** Structure of the proceedings for non-citizen detention before deportation in Spain.



the accorded period of 30 days, can be subjected to detention in centers of detention for foreign population (*Centro de Internamiento de Extranjeros*, CIE) for processing their forced removal from the country (González-Beilfuß, 2016; Kalir et al., 2017). There are currently seven operating CIE which are run and controlled by the Spanish National Police.

Figure 1 depicts the proceeding that starts with the arrest of a non-citizen holding an executable deportation order, until a judge decides over his detention in a CIE. Once a non-citizen is arrested, everything must happen within 72 hours. The procedure starts off with the Spanish National Police Force—the only police force with the capacity to deal with this matter—who must decide whether they issue a petition for detention against the arrested non-citizen, in order to execute a pending deportation order. If the petition is issued, a State prosecutor must proceed to provide an assessment of its legal grounds. After the prosecutor’s report is issued, the petition is considered by an investigating judge who will both hear the deportable non-citizen in court, and substantiate and document a decision for or against detention. Although the petition for detention is part of an administrative procedure, the judges who preside over these cases are otherwise devoted to criminal cases. Deportable non-citizens have the right to legal counsel prior and during the hearing (and afterwards if they are eventually detained in a CIE), which usually is state-appointed free legal aid. Once the hearing is finished, the judge issues a decision. If the judge denies detention, the non-citizen must be released immediately and can never be detained again for the purpose of executing the same deportation order. If authorized by the judge, detention in a CIE can last up to a maximum of 60 days. In case the defendant has not been removed from the country after that period, he must be released.

According to the Spanish Immigration Act, a judge may authorize detention in a CIE when recognizing a risk that non-citizens escape a planned deportation and/or disrupt the process of deportation if in liberty. The parameters according to which this risk is to be evaluated negatively are: any criminal record, administrative sanction or a pending judicial procedure that justifies detention or can suggest that non-citizens would escape an attempt to deport them. Judges should also consider mitigating factors such as family roots in Spain, the existence of a fixed domicile, and no prior evidence for evading the legal system.

## 2.2 Bounded rationality and judicial decision

The 72-hour process that leads to a decision about the detention or release of a deportable non-citizen represents a good example of an on-call situation (Vallbé, 2015). The number of tasks a judge must pay attention to while on call take the form of parallel issues (March, 1990)—typically raised by the police, lawyers, and public prosecution. These situations demand quick decisions—with high levels of uncertainty—in contrast with routinized, rule-based decisions that characterize most legal proceedings in ordinary judicial decision-making.

These are situations where judges and other actors involved resort to typical mechanisms of bounded rationality such as heuristics (Simon, 1957; March, 1978; Newell and Simon, 1972; Newell, 1990; Kahneman, 2003; Gigerenzer and ABC-Research-Group, 2008; Gigerenzer and Engel, 2006) that help decision-makers to deal with complex problem spaces (Newell, 1990). The model of a boundedly rational decision-maker depicts an individual who cannot perceive the world's complexity in a granular, detailed manner. Rather, she works with a simplified image of it, from which she can make decisions using relatively simple rules of thumb—heuristics. Heuristics are simplified strategies to adapt to complex environments imposed by problem-solving situations (Simon, 1996) that allow for quick decision-making (Kahneman et al., 1982; Kahneman and Tversky, 1979).

Heuristics are based on a limited number of pieces of information (cues) that provide simplified paths to decision (Gigerenzer and Goldstein, 1996). These cues have values (given by the decision-maker) that are essential both to determine the direction of the decision and to establish when the decision process should stop (Gigerenzer and Selten, 2001; Gigerenzer and ABC-Research-Group, 2008).

The use of heuristics in legal reasoning has received some theoretical attention in the last years (Guthrie et al., 2001; Bainbridge and Gulati, 2002; Gigerenzer and Engel, 2006; Rachlinski et al., 2012) and there is growing empirical evidence of its relevance in judicial decision-making. For instance, Vallbé (2015) carried out an empirical analysis of the extent to which the lack of organizational routines providing tested heuristics (routinized rules of thumb) for inexperienced judges to deal with highly uncertain decision processes produced stressful conditions and inefficient organizational memories.

The role of specific cues for judicial decision have been empirically tested in several environments, although to our knowledge only very few studies have provided empirical assessments of detention decisions of deportable non-citizens. In this sense, González-Beilfuß et al. (2017) and Kalir et al. (2017) have recently provided descriptive analyses of the main actors and decisions involved in non-citizen detention in Spain, highlighting several sources of inefficiency and lack of legal safeguards. On the other hand, the scant existing empirical assessment of cues in pretrial custody decisions (Dhmi and Ayton, 2001; Dhmi, 2003; Ryo, 2016) offers also a very valuable background to our research. In their study of bail decisions by British courts, Dhmi and Ayton (2001) and Dhmi (2003) found that judges tend to use one single cue (usually related to the defendant's criminal record), and that their decisions rely heavily on previous decisions made by other actors such as prosecutors and the police. However, this last result was not systematic. On the other hand, Ryo (2016) explored the role of heuristics in bond hearings specifically from U.S. immigration courts, which raised differences and similarities from what Dhmi and Ayton (2001) and Dhmi (2003) had found. On the one hand, Ryo (2016) found that the defendants' criminal record was also a significant factor determining both bond granting and bond amount

in immigrant courts. On the other hand, though, unlike regular bail decisions in the UK, the study of immigration courts in the U.S. highlight the role of attorneys: defendants with legal representation were 3.5 times more likely to be granted bond (and in smaller amounts) than unrepresented immigrants. However, none of the previous studies have found that the defendants' personal characteristics play any significant role in decisions.

Our contribution adds to this literature in at least two different ways. The first one is that the previous research on the matter has focused on decisions made by courts within common-law legal systems, while our study focuses on a typical case of Civil law tradition—Spain. In this context, one relevant difference refers to the way judges are appointed as well as their legal background. For instance, the judges studied by Dhami and Ayton (2001) are lay magistrates who “are members of the local community who are appointed to perform judicial duties on a part-time, unpaid basis”, and “who are not required to have any formal legal training”. In contrast, judges in Spain must have formal legal training and pass a competitive examination exclusively based on legal knowledge (Poblet and Casanovas, 2005; Vallbé, 2015). In addition, as tenured civil servants most judges have life-long careers in the judiciary.

A second contribution deals with the role of other actors in decisions. As commented above, while the role of previous decisions made by the police and prosecutors have been found to be relevant to explain bail decisions in the UK (Dhami, 2003), the study by Ryo (2016) on immigration courts points out that legal representation is crucial when defendants do not hold regular legal status. With the aim of providing an even richer picture, our study will take into account the role of both attorneys and prosecutors in decisions regarding non-citizen detention.

### 2.3 Hypotheses

According to the previous theoretical framework, we test three sets of hypotheses regarding the role of heuristic cues in decisions over detention of deportable non-citizens.

Our first hypothesis ( $H_1$ ) deal with the defendants' personal characteristics and, according to the previous researchj commented above, we expect to find that personal characteristics of the detainees (e.g., age or nationality) should not have an effect on detention.

Our second set of hypotheses refer to legal factors. According to the Spanish Immigration Act, detention is legally justified under circumstances that allude to a “risk of absconding”, whereby non-citizens may evade their upcoming deportation if not in police custody (by changing their domicile, taking on a forged identity and so forth). Beyond that, non-citizens holding prison sentences for serious crimes (prison terms longer than 1 year) are also eligible for deportation. This leads to two different hypotheses. The first one ( $H_{2_1}$ ) expect to find that defendants with records indicating risk of absconding deportation should have higher chances to be detained in a CIE than defendants without such records. In our second hypothesis related to legal factors ( $H_{2_2}$ ) we expect to find that defendants holding records indicating serious criminality will have higher changes to be detained in a CIE than defendants without such records.

Finally, our third set of hypotheses deal with the role of prosecutors and attorneys. In the first one ( $H_{3_1}$ ), following Dhami (2003) we expect to find that judges rely heavily on the State prosecution's previous decision over the case—i.e., that judges tend to agree with the prosecution. Secondly ( $H_{3_2}$ ), in accordance with Ryo (2016), we expect that attorneys play a significant role: those defendants with legal representation should have higher chances to be released than those without.

### 3 Data and method

To test these hypotheses we use a unique dataset containing information of the court proceedings of all the police petitions to detain deportable non-citizens in the province of Barcelona (Spain) during 2015. With 5.5 million inhabitants, the province of Barcelona is the most populated area of the Spanish region of Catalonia (totalling 7.5 million), the second most populated in Spain after Madrid (6.4 million), and one of the areas with a higher percentage of non-citizens living and working. Although Catalonia is an autonomous region within the Spanish decentralized state, judicial procedures and immigration policy are central state-dependent and homogeneous across the country.

The authors were granted access to court proceedings in paper form. In order to transform them into data, a database interface was set up so that three students of the University of Barcelona's Master's degree in Law could carry out the codification process of all case information in the court premises.

In 2015, 587 police petitions of non-citizen detention were admitted to court in the province of Barcelona, from which we coded data regarding: the profile of the defendant (age, nationality), the occasion on which the police arrested the defendant (e.g., place of arrest), the grounds on which the police petitioned a detention in a CIE, the statements and documents presented by the State prosecutor, the statements and documents presented by the defendant and/or their attorneys, and the final decision and argumentation of the investigating judge.

Our main dependent variables are the decisions of the prosecutor and of the judge, which take value 0 if they favor detention in CIE and 1 otherwise. In our data, prosecutors decide in favor of detention 75.3% of the time (which is around the average in Spain), while judges authorize detentions in only 48.9% of cases.<sup>1</sup> The unit of analysis is a case file corresponding to one single individual, and data have a hierarchical structure: cases are nested in courts within judicial districts. Although in less populated areas of Spain judicial districts may have only one court, in the province of Barcelona, districts gather several courts. Police petitions are brought to court to be processed by the court whose judge is on call. Petitions are then randomly assigned to a court within that judicial district. Each court has one single judge, although one prosecutor attends several courts.

In our data, the number of cases per court and district present high variation, with an average of 4.4 per court and a standard deviation of 3.8. The maximum number of cases per court is 22, and the minimum is 1. In addition, there is significant variation of our dependent variables across courts and districts. Table 1 presents an example of variation of judicial decisions in three different judicial districts. There is variation in both the number of cases assigned to each court and the rate of detention authorization across courts within (and between) districts. In order to take that variation into account and get unbiased estimates, we fit multilevel logistic regression models and let intercepts vary by court within judicial districts.

Multilevel models can better deal with unbalanced samples at the second and third level (Gelman and Hill, 2007). In this kind of models court-level and district-level intercepts are given a probability distribution, which relates them to the average intercept and in consequence court-level estimates are less biased than the ones we would get by fitting, say, pooled or standard fixed-effects models. Given the modeling of each court's intercept, multilevel models deal much better with courts with fewer observations, and therefore take nested variation into account.

---

<sup>1</sup>There are no officially published data on the rate of judicial authorizations of detention throughout Spain.

**Table 1.** Variation of judicial decisions across courts within judicial districts. Data from the province of Barcelona (Spain), 2015.

Court	District	N	Authorized	Denied
El Prat de Llobregat 1	El Prat de Llobregat	12	100.0 (12)	0.0 (0)
El Prat de Llobregat 5	El Prat de Llobregat	22	90.91 (20)	9.09 (2)
El Prat de Llobregat 2	El Prat de Llobregat	11	72.73 (8)	27.27 (3)
El Prat de Llobregat 3	El Prat de Llobregat	13	61.54 (8)	38.46 (5)
Martorell 1	Martorell	12	66.67 (8)	33.33 (4)
Martorell 5	Martorell	11	36.36 (4)	63.64 (7)
Martorell 4	Martorell	10	10.00 (1)	90.00 (9)
Terrassa 1	Terrassa	17	52.94 (9)	47.06 (8)
Terrassa 2	Terrassa	14	42.86 (8)	57.14 (14)
Terrassa 3	Terrassa	12	33.33 (8)	66.67 (12)

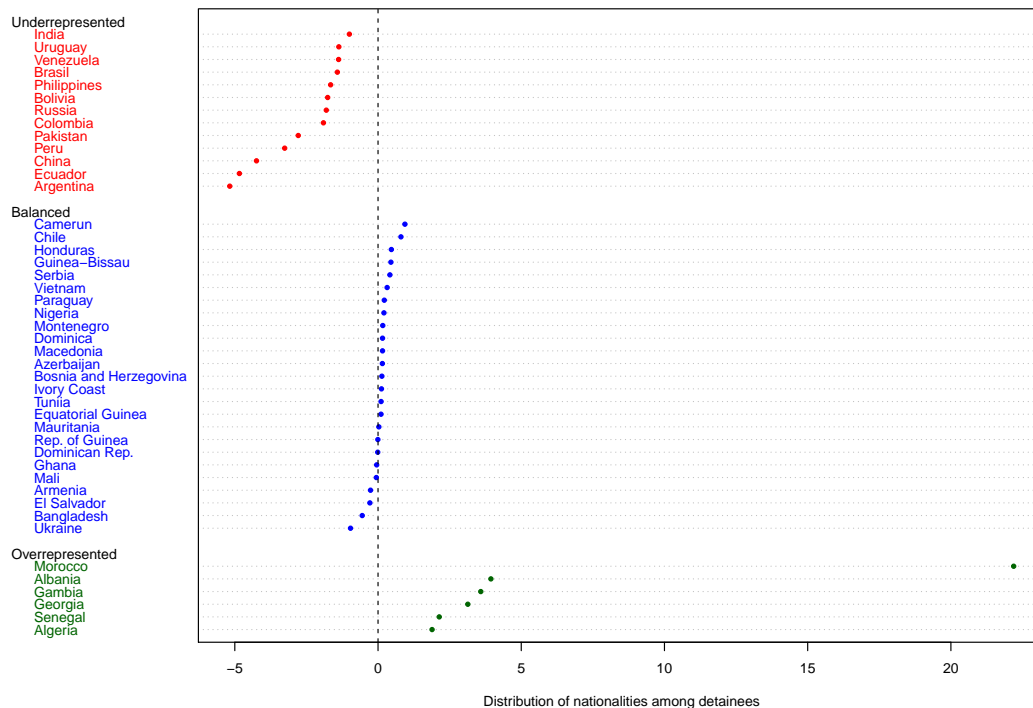
**Table 2.** Nationalities with at least 10 individuals represented in the dataset.

Nationality	N	Percentage
Morocco	224	39.16
Ecuador	29	5.07
Gambia	25	4.37
Albania	23	4.02
Dominican Rep.	23	4.02
Colombia	22	3.85
Georgia	21	3.67
Bolivia	20	3.50
Senegal	20	3.50
Chile	16	2.80
Peru	16	2.80
Argelia	14	2.45
Honduras	13	2.27
Pakistan	13	2.27
Paraguay	11	1.92
<i>Rest of the world (33)</i>	82	14.33

The first set of hypotheses test the detainees' background, and our models include age (see Table 3) and the place where they were detained: on the street, at the exit of prison, or otherwise. Sex is not included in the models because an overwhelming majority of defendants is male (96%), the main reason being that the detention center of the province of Barcelona has no premises for female detainees. Should a judge order the detention of a female defendant, she would have to be transported to the nearest CIE having a female area, which is about 300 km away from Barcelona, and incur in additional costs.

The models do include nationality. As seen in Table 2, Morocco is the most represented nationality among arrested non-citizens (39%), and 8 out the 15 nationalities with at least 10 individuals correspond to Latin America and two to sub-Saharan Africa. In addition, Figure 2 shows that nationalities are not represented according to their actual distribution within the immigrant population of the province of Barcelona. Precisely, Morocco is highly overrepresented among arrested non-citizens along with Albania, Gambia, Georgia, Senegal and Algeria. On the other hand, nationalities such as China, Ecuador, Russia, Argentina and Peru are underrepresented. Apart from the detention process on which we focus here, the chances that a detained non-citizen is finally deported to his country after being held 60 days in a CIE are dependent on the extent to which the defendant's country of origin is willing to admit deported nationals back into their





**Figure 2.** Distribution of nationalities in relation to their actual distribution in the population of the province of Barcelona.

country. Although we have no information about arrest targeting due to ease of actual deportation, we cannot rule out potential bias in the data. Back to Figure 2, the list of underrepresented countries contains cases known to have no agreement with the Spanish government to make deportations possible—e.g., Russia and China. Regarding the overrepresented nationalities, Morocco and Algeria do have deportation agreements with Spain. However, considering that around around half of those who are detained in CIE’s are eventually not deported (Kalir et al., 2017), selection bias does not seem to play a crucial role.

In the second and third set of hypotheses, the models include variables regarding legal factors and behavioral elements from prosecutors and attorneys. Regarding the former, we include the time passed between the deportation order and arrest—measured in days and then transformed into logarithmic scale—in order to control for length of irregular stay. Data yield great variation, with deportation orders issued just one day before arrest while we may find defendants that were issued deportation orders 15 years ago. However, 60% of petitions refer to orders less than one year old, and 80% are less than 2 years old. The model also includes the cause of deportation mentioned in the court proceeding, which has been classified into three main categories that sum up the two major causes established by law: illegal stay in the country (art. 53.1a of Immigration Act), and being convicted with a 1+ year prison term (art. 57.2 of Immigration Act). 98.4% of petitions are grounded on one of these two general causes for deportation. The rest have been coded as “Other causes”.

Regarding the “criminal profile” of the defendant, petitions contain both the number of police and criminal records produced by the databases, and the types of police and criminal records.

**Table 3.** Descriptive statistics of the continuous variables included in the models.

Statistic	N	Mean	St. Dev.	Min	Max
Age	509	34.9	13.3	19	101
Time since deportation order	430	617.4	675.9	1	5,678
Number of police records	505	9.1	11.5	0	95
Percent of immigrants in district	568	9.8	4.8	3.9	19.2

Table 3 shows that the average number of police records is around 9, but with high variation. There is also variation on the types of records (police petitions mentioned more than 70 different types). When defendants do hold police and/or criminal records, the petitions contain a list of these records, each one identified by a short description provided by the police officer—e.g., “DUI-driving under the influence (2003)”. There is no minimum or maximum number of records to be mentioned in a petition, and in cases with a fairly high number of records (especially police records), officers may mention the most recent ones or the ones they consider more relevant to ground their petition. For each individual, we recorded up to five police and five criminal records—the five most recent ones—and their dates.

In addition, since there is not a list of keywords or short descriptions to define police or criminal records shared across police offices (there is no single template for petitions, either), naming variation is extreme. We classified the types of records into six different categories. Given that the law explicitly refers to the need that the risk that non-citizens escape a planned deportation and/or disrupt the process of deportation should be taken into account by both prosecutors and judges, a first category in our classification contains records that might lead to such “risk of absconding”. Examples are pending arrest warrants, forgery of ID document, fraudulent marriage, obstruction of justice, escape from prison, disobedience, and resisting arrest. A second type of record mentioned in the police petition refers to violations of the Immigrant Act, such as illegal stay in Spanish territory or generally the “violation of the Immigrant Act”, and they have been classified as “Immigration”. It should be noted that these are just administrative violations—precisely the ones justifying the police petition itself—and that it is in no way clear that these should count as either police or criminal records. Yet, they are so in many petitions. The rest of police records have been classified according to their seriousness in Spanish criminal law: felony, lesser crime and misdemeanor. Finally, in cases where the petition mentioned that a non-citizen had a number of records but the police failed to identify the type, it was classified as “No motive”.

Table 4 presents the distribution of each type of police record across those detainees whose petitions mentions police records. Each individual may have more than one type of police record. It is worth mentioning that among those with police records, the police mentions mostly felonies. Moreover, one third of petitions with police records contain the “risk of absconding” type. Finally, models also control for the percentage of foreign population within a district. Foreign population in the average judicial district of the province of Barcelona constitutes around 9.8% of the total population, and variation across districts is not large. However, there are districts with very low percentages (the minimum is 3.9%) while others present number well above the mean (the maximum is 19.2%).

Finally, in order to test our third set of hypotheses, we code the behavior of the prosecution and of the attorney. Prosecutors should be present in detention hearings, but sometimes they

**Table 4.** Distribution of types of police records among arrested deportable non-citizens who hold police records.

<i>Type of record</i>	No	Yes
Felony	34.24	65.76
Lesser crime	66.27	33.73
Risk of absconding	68.14	31.86
Immigration	73.08	26.92
Misdemeanor	88.41	11.58
No motive	91.82	8.18

are not, and then judges must rely on the prosecutor’s written report. Our data shows that prosecutors actually attend hearings 60% of the time. In the models of decision by judges we include a control for the prosecutor’s presence during the hearing. We also include whether the prosecutor is in favor or against detention, expecting that judges will tend to agree with prosecutors. On the other hand, in Spain defendants have the right to legal counsel before, during and after the hearing, which usually takes the form of state-appointed attorneys. Legal counsel during hearings is, therefore, most usual. However, court records contain information about the arguments used by legal counsel to defend their clients’ interests in court. Our data indicate that in 20% of the cases attorneys did provide no arguments whatsoever during the hearing, which suggest a passive defense of the defendant. In order to test the effects of passive defense on detention, we include a dummy variable that takes value 1 if an attorney provides passive defense, and 0 otherwise.

## 4 Results

All regression tabular results in this paper are presented so that negative coefficients indicate the worst-case scenario for the defendant (i.e., detention in a CIE), while positive coefficients indicate effects toward his release. We test our hypotheses for both the State prosecutor and the judge separately. Table 5 presents the results of the model that links the decision by the State prosecution and the judge to the defendant’s personal characteristics. Results give overall support to our first hypothesis and are in accordance with previous research. On the one hand, the nationality of the defendants has no effect whatsoever on the decisions by the prosecution or the judge, suggesting that prosecutors and judges tend instead to use legally related cues to decide over detention cases. On the other hand, age seems to have a negative effect on the defendant’s chances of being released (the prosecutor opposing internment and the judge finally denying it).

Our second set of hypotheses deal with legal factors, and relevant results are presented in Table 6 for the prosecution and Table 7 for judicial decisions. In both models we still control for the defendant’s personal characteristics. Although we do not show full results to make tabular material more readable, it is worth commenting that once legal factors are accounted for, age is no longer a significant predictor of internment. A first result requires our attention is that the time passed since the release of the deportation order increases the chances of the prosecutor agreeing on detention (Table 6). This runs against intuition, because there are no legal grounds on prioritizing older expulsion orders. It could be argued that longer time since the release of the

**Table 5.** Multilevel logistic regression models of prosecutor and judge decisions on personal characteristics of the detainees. Intercepts vary by court within judicial district.

	Prosecutor agrees on internment (1)	Judge authorizes internment (2)
Age	-0.048* (0.028)	-0.065** (0.028)
Age squared	0.0005* (0.0002)	0.001** (0.0002)
Morocco	-0.305 (0.320)	-0.294 (0.291)
Albania	0.322 (0.772)	-0.444 (0.730)
Bolivia	0.483 (0.742)	0.310 (0.750)
Colombia	-0.112 (0.647)	0.849 (0.616)
DomRep	-0.537 (0.687)	0.784 (0.624)
Ecuador	-0.291 (0.596)	-0.427 (0.552)
Gambia	-0.607 (1.293)	-0.891 (1.056)
Georgia	0.323 (0.671)	0.759 (0.631)
Senegal	-0.898 (0.877)	-0.688 (0.726)
<i>Place of detention</i> [Ref. Street]		
Prison exit	-0.166 (0.357)	-0.316 (0.364)
Other	-0.361 (0.440)	-0.432 (0.408)
Constant	0.087 (0.733)	1.963*** (0.726)
Observations	389	433
Log Likelihood	-218.597	-278.076
Akaike Inf. Crit.	469.195	588.151
Note:	*p<0.1; **p<0.05; ***p<0.01	

order increases chances for non-citizens to be eventually arrested. For instance, longer irregular stay could mean higher chances to accumulate police or criminal records. Besides, it could be the case that those with older deportation orders are the ones who are detained at the exit of prison—their order cannot be enforced until their sentence is served. On the contrary, longer stay could mean higher odds of being rooted in the local community and of finding more stable means of living.

Our data seems to rule out the first line of argument, since there is only a very weak relationship between older deportation orders and the number of police records held by defendants ( $r = 0.104$ ,  $p < 0.05$ ), and those who are arrested at prison exit actually tend to have more recent deportation orders than the ones arrested in the street.<sup>2</sup> Although the effect identified is not strong, results suggest that prosecutors tend to prioritize older deportation orders over more recent ones, keeping all other things constant, but judges do not (Table 7).

Continuing with legal factors, a first difference arises between prosecutors and judges regarding the purely legal grounds of deportation. As commented above, the Spanish Immigration

<sup>2</sup>The t-test comparing the average length of deportation orders by place of detention yields significant differences, with those being arrested in the street. Results are  $t = 6.9803$ ,  $df = 534.45$ ,  $p = 0$  for log transformed time, and  $t = -18.661$ ,  $df = 429.21$ ,  $p = 0$  when time is not transformed. Besides, there is only weak correlation ( $r = 0.31$ ) between a defendant's number of police records and his number of criminal records.

**Table 6.** Multilevel logistic regression models of prosecutor decisions including legal and behavioral factors. Intercepts vary by courts within districts.

	<i>Prosecutor opposes internment</i>					
	(1)	(2)	(3)	(4)	(5)	(6)
<i>Personal characteristics</i>	Yes	Yes	Yes	Yes	Yes	Yes
<i>Place of detention</i> [Ref. Street]						
Prison exit	-0.092 (0.510)	-0.252 (0.492)	-0.253 (0.479)	-0.280 (0.475)	-0.347 (0.482)	-0.167 (0.498)
Other	-0.562 (0.543)	-0.470 (0.536)	-0.469 (0.525)	-0.446 (0.524)	-0.552 (0.532)	-0.445 (0.536)
Time since expulsion order (ln)	-0.204** (0.101)	-0.189* (0.100)	-0.189* (0.099)	-0.191* (0.099)	-0.185* (0.100)	-0.200** (0.101)
Number of police records	-0.013 (0.017)	-0.016 (0.018)	-0.016 (0.018)	-0.015 (0.018)	-0.012 (0.018)	-0.015 (0.018)
<i>Cause of expulsion</i> [Ref. 53.1.a]						
Art. 57.2	-1.237*** (0.476)	-1.137** (0.462)	-1.136** (0.451)	-1.117** (0.447)	-1.122** (0.451)	-1.090** (0.462)
Other cause	-15.137 (724.078)	-16.696 (418.047)	-17.983 (6,389.310)	-16.433 (2,891.517)	-15.432 (1,723.361)	-15.869 (323.817)
Attorney passive defense	-0.639 (0.500)	-0.552 (0.492)	-0.555 (0.481)	-0.617 (0.484)	-0.528 (0.487)	-0.576 (0.493)
Prosec. appears in hearing	0.810** (0.358)	0.810** (0.353)	0.812** (0.352)	0.809** (0.350)	0.805** (0.355)	0.851** (0.359)
Perc. immigrants (district)	-0.035 (0.040)	-0.044 (0.039)	-0.044 (0.039)	-0.042 (0.039)	-0.051 (0.040)	-0.028 (0.043)
<i>Type of police records</i>						
Absconding	-0.667* (0.351)					
Lesser crime		0.008 (0.312)				
Felony			-0.013 (0.371)			
Misdemeanor				-0.410 (0.451)		
Migration status					0.343 (0.395)	
No motive						-1.004 (0.620)
Constant	1.161 (1.168)	1.255 (1.169)	1.272 (1.256)	1.387 (1.227)	1.586 (1.246)	0.962 (1.207)
Observations	280	280	280	280	280	280
Log Likelihood	-143.935	-145.805	-145.805	-145.380	-144.288	-145.426
Akaike Inf. Crit.	335.869	339.610	339.609	338.760	336.575	338.852

Note:

\*p<0.1; \*\*p<0.05; \*\*\*p<0.01

Act establishes irregular stay—living in Spain without a visa or beyond the period of voluntary exit after a visa is due—as the first ground for deportation (art. 53.1.a). Beyond that, foreigners holding prison sentences for serious crimes (sentece terms of more than 1 year) are also eligible for deportation (art. 57.2). Results show that in cases when the deportation order is grounded on article 57.2 (prison sentence), the odds of the prosecution agreeing on detention are significantly higher than when the order is grounded just on irregular stay (art. 53.1.a). In fact, while in cases of irregular stay the probability of the prosecution opposing detention is 0.26, it drops to 0.09 when a petition is grounded on article 57.2. However, again this pattern of decision is not followed by judges who according to our results do not take these legal grounds into significant consideration (Table 7).

In order to get a more thorough understanding of the relationship between a defendant's record and his chances of detention, our models also include the number of police records and the types of records cited in the police petition. Focusing on the former, Table 6 shows that the

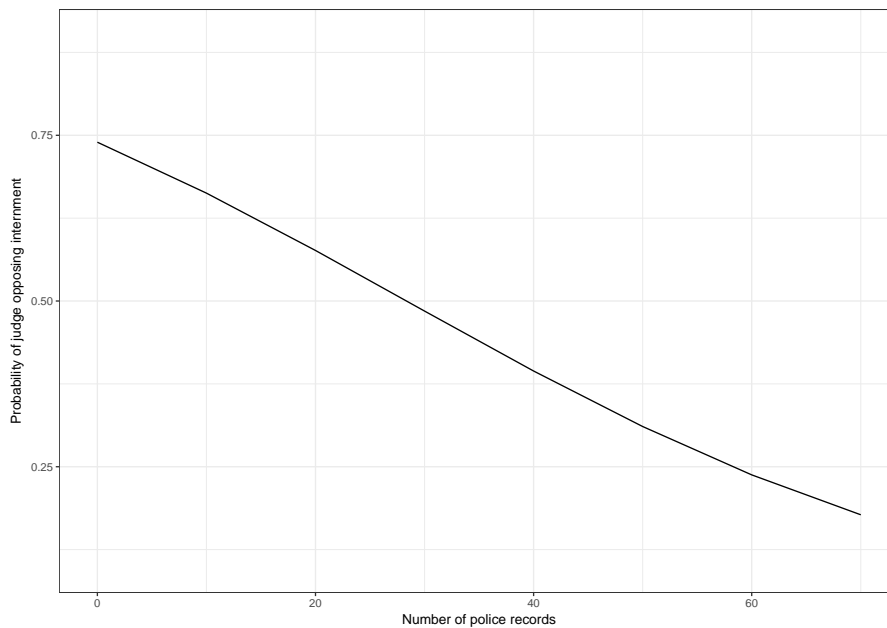
**Table 7.** Multilevel logistic regression models of judicial decisions including legal and behavioral factors. Intercepts vary by courts within districts.

	<i>Judge denies internment</i>					
	(1)	(2)	(3)	(4)	(5)	(6)
<i>Personal characteristics</i>	Yes	Yes	Yes	Yes	Yes	Yes
<i>Place of detention</i> [Ref. Street]						
Prison exit	-0.060 (0.534)	0.017 (0.585)	0.009 (0.551)	-0.028 (0.532)	0.072 (0.589)	0.020 (0.533)
Other	0.026 (0.567)	-0.008 (0.588)	-0.0005 (0.583)	0.049 (0.567)	0.061 (0.595)	-0.002 (0.566)
Time since expulsion order (ln)	0.115 (0.108)	0.102 (0.109)	0.122 (0.112)	0.099 (0.107)	0.100 (0.110)	0.101 (0.108)
Number of police records	-0.040** (0.017)	-0.038** (0.017)	-0.041** (0.017)	-0.037** (0.016)	-0.041** (0.017)	-0.038** (0.016)
<i>Cause of expulsion</i> [Ref. 53.1.a]						
Art. 57.2	0.336 (0.442)	0.284 (0.458)	0.378 (0.454)	0.279 (0.438)	0.281 (0.462)	0.296 (0.442)
Other cause	0.127 (1.090)	0.201 (1.137)	0.197 (1.112)	0.185 (1.073)	0.259 (1.139)	0.153 (1.093)
Attorney passive defense	-1.248** (0.509)	-1.302** (0.510)	-1.504*** (0.532)	-1.407*** (0.519)	-1.309** (0.513)	-1.304*** (0.504)
Prosec. appears in hearing	-0.634 (0.388)	-0.634 (0.407)	-0.693* (0.404)	-0.662* (0.390)	-0.643 (0.412)	-0.628 (0.389)
Prosecutor opposes internment	3.814*** (0.640)	3.763*** (0.657)	3.937*** (0.655)	3.760*** (0.637)	3.840*** (0.671)	3.760*** (0.636)
Perc. immigrants (district)	0.031 (0.059)	0.035 (0.066)	0.035 (0.063)	0.035 (0.059)	0.039 (0.066)	0.037 (0.061)
<i>Type of police records</i>						
Absconding	0.353 (0.346)					
Lesser crime		0.024 (0.351)				
Felony			-1.106*** (0.425)			
Misdemeanor				-0.463 (0.460)		
Migration status					0.077 (0.421)	
No motive						0.547 (0.558)
Constant	0.403 (1.442)	0.423 (1.456)	1.472 (1.530)	0.509 (1.445)	0.273 (1.461)	0.361 (1.473)
Observations	277	277	277	277	277	277
Log Likelihood	-140.586	-141.084	-137.775	-140.603	-140.594	-141.071
Akaike Inf. Crit.	331.172	332.167	325.550	331.206	331.188	332.142
Bayesian Inf. Crit.	421.773	422.768	416.151	421.807	421.789	422.743

Note:

\*p<0.1; \*\*p<0.05; \*\*\*p<0.01

amount of police records held by a defendant has no significant weight into the prosecutor's decision. However, when we look at the types of police records annotated by the police in the petition, prosecutors are sensitive to those that indicate certain risk of absconding, while no other types of police records (even holding a felony record) seem to affect the direction of the prosecution's decision. In contrast, Table 7 shows that the number of police records does affect judicial decision making, and the effect is robust to the control for all kinds of records. Figure 3 plots the predicted probabilities of a judge releasing a defendant at different numbers of police records. The model predicts that the critical point is around 30 police records—i.e., when the line crosses the 0.5 probability threshold. With less than that, on average defendants have higher chances to be released than interned, keeping the other factors constant. Also in contrast with the prosecution, police records indicating risk of absconding are not determinant in the judicial



**Figure 3.** Predicted effect of the number of police records held by a defendant on the probability of judge denying detention.

decision, while serious criminality (felony) is. However, the effect is very small. If instead of the types of police records we use the different types of criminal records explicitly mentioned in the case files (see tables 9 and 10 in the Appendix), none of the types yield significant results, although this might be due to the very reduced number of cases where particular types of criminal records are mentioned at all.

In conclusion, legal factors do affect decisions on the detention of non-citizens, but judges and prosecutors do not present a homogeneous decision-making pattern in terms of cues: while prosecutors do not take police record history into account, judges do; while prosecutors do take risk of absconding into account, judges don't. Yet, judges take defendants' serious crime history into consideration. This gives, again, only partial support to our second set of hypotheses.

Finally, we turn now to the context in which the deportation process takes place and the behavior of other actors. We focus first on the role of public prosecutors. Although they should always be present during hearings, data show that they appear in only 60% of the hearings. Table 6 shows that prosecutors tend to appear in those cases where they oppose detention, while Table 7 shows that their presence has only weak (though negative) effect on the judicial decision, suggesting that prosecutors might have incentives to appear in hearings they perceive as more contested. However, our results also show that in cases when the prosecutor opposes detention, judges tend to agree, as we expected. In particular, the probability of a judge releasing a defendant is 0.97 when the prosecutor opposes detention, but it drops to 0.44 when the prosecutor agrees on the defendant being detained. Our hypothesis  $H3_1$ , therefore, receives full support from our data.

The second factor to be considered is the role of attorneys. As commented above, detainees have the right to (usually free, state-appointed) legal counsel to attend the hearing, but sometimes attorneys only provide passive defense strategies. Results show that while inactive counsel has no effect on the prosecution's decision, it does in the judge's. In particular, keeping all other

factors constant, the probability of a judge denying detention when attorneys provide active defense is around 0.7 but it drops to 0.4 when attorneys are not active during the hearing.

It might be argued that the role of attorneys might be endogenous to their perceived chances of success. In other words, attorneys might tend to be active only in cases they perceive they can win and less active where release chances look very bad for the defendant for “objective” reasons. However, data show that the average number of police records held by defendants whose attorneys provide active defense are actually a bit higher than of those whose attorneys are passive, although the differences are not statistically significant.<sup>3</sup>

On the other hand, if we model passive attorney defense on the same factors that we used for the decisions of the prosecution and the judge (through a multilevel model with varying intercepts by district), there is significant variation in attorneys delivering passive defense across judicial districts.

**Table 8.** Determinants of attorney passive defense. Multilevel model with varying intercept by judicial district.

	<i>Attorney passive defense</i>			
	(1)	(2)	(3)	(4)
Non-citizen’s background	Yes	Yes	Yes	Yes
<i>Place of arrest</i> [Ref. Street]				
Prison exit	−0.217 (0.465)	0.950 (0.602)	1.146* (0.631)	0.860 (0.523)
Other	−1.224* (0.653)	−1.667** (0.840)	−1.629* (0.854)	−1.564* (0.843)
Time since deportation order (ln)		0.261* (0.134)	0.211 (0.141)	0.198 (0.142)
Number of police records		−0.025 (0.019)	−0.029 (0.020)	−0.031 (0.020)
<i>Cause of deportation</i> [Ref. Art. 53.1.a]				
Art. 57.2		−1.264** (0.573)	−1.574** (0.628)	−1.395** (0.594)
Other cause		0.650 (0.994)	0.286 (1.246)	0.119 (1.221)
Prosec. appears in hearing		−0.743* (0.427)	−0.309 (0.479)	−0.157 (0.396)
Prosecutor opposes detention			−0.543 (0.469)	−0.454 (0.464)
Perc. immigrants (district)				0.132*** (0.041)
Constant	−2.739*** (0.898)	−3.494** (1.387)	−2.739* (1.410)	−4.079*** (1.448)
Observations	358	296	280	280
Log Likelihood	−158.949	−116.557	−102.942	−98.924
Akaike Inf. Crit.	347.898	273.113	247.884	241.848

Note: \*p<0.1; \*\*p<0.05; \*\*\*p<0.01

Table 8 presents the results of the model. The most robust results (the ones that preserve significance across the table’s columns) refer to the cause of deportation mentioned in the police petition, and the context in which defendants live. On the one hand, the model points out that attorneys get especially active when the cause of deportation is the special one—i.e., when it is grounded on an existing conviction with a 1+ year prison term (art. 57.2 of Immigration Act). Secondly, the last column shows that judicial districts with larger share of immigrant population are also the ones where passive defense by attorneys is more likely. It could be argued that this might be due to lack of resources—i.e., attorneys get too many cases and cannot prepare cases

<sup>3</sup>The t-test comparing the means between both groups yields:  $t = 1.1765$ ,  $df = 130.27$ ,  $p = 0.2415$ .



properly—but the analysis of the residuals of the model indicate that there is no correlation between passive defense and variation in the number of police petitions per district.

## 5 Conclusions

This paper offers an empirical analysis of detention processes. In particular, it uses data from Spanish court proceedings related to non-citizen detention to assess what factors determine decisions made by prosecutors and judges in these cases. As decisions over detention are made under conditions of uncertainty (typically time pressure and incomplete information), the paper shows what cues are determinant to boundedly rational decisions.

According to this theoretical framework and previous literature on comparable settings, three sets of hypotheses were tested through multilevel logistic regression models that take into account variation occurred at both court and judicial district levels. First, we expected to find that the defendants' personal characteristics would not have an effect on their chances of detention in centers of detention for foreign population. Results give overall support to this, thus aligning with previous literature. In effect, neither age nor nationality have a significant weight on the decisions made by prosecutors or judges.

A second set of hypotheses refer to legal factors. According to the Spanish Immigration legislation, detention is legally justified under circumstances when defendants present certain risk of evading or escaping their upcoming deportation if not in police custody. In addition, having a serious criminal record also makes defendants eligible for deportation. These legal conditions led to two different hypotheses. On the one hand, we expected to find that defendants with records indicating risk of absconding deportation should have higher chances to be detained. On the other hand, defendants holding records indicating serious criminality would also have higher chances to be detained.

When legal factors were considered controlling for other variables, a first noticeable result was that length of stay (measured as the time passed since deportation order was issued) is a significant cue for prosecutors favoring detention, although no legal grounds support it. We also found that length of stay does not affect judges' decisions. We checked whether longer irregular stay is associated with higher chances to incur in criminal activities, but our data ruled out this possibility. Another difference between judges and prosecutors was also found regarding the purely legal grounds mentioned in the police petition of deportation. Results show that in cases when the deportation order is grounded on the defendant serving prison terms over 1 year, the odds of the prosecution agreeing on detention are significantly higher than when the order is based just on irregular stay. However, this cue of decision is not shared by judges.

To further test our second set of hypotheses, we added the types of police record held by defendants into the model, and results indicate that apart from the purely legal grounds of the police petition, prosecutors are also sensitive to those records that suggest risk of absconding from the defendant, but no other types of police records (even holding a felony record) affects the direction of the prosecution's decision. In contrast, risk of escaping deportation is not a significant factor in the decisions made by judges, who instead rely heavily on the defendants' criminal profile. On the one hand, our model predicted a strong effect of the number of police records held by the defendant, which was robust to further controls. On the other hand, records indicating serious criminality (felony) is also a predictor, though not strong, of a judge authorizing

non-citizen detention.

Finally, a third set of hypotheses looked at decisions in the context of other actors' behavior. In particular, we expected that judges considered the position taken by the State prosecution regarding a defendant's detention, and that legal counsel defense had a positive effect on the defendant's chances to be released. Our results give ample support to these two hypotheses. On the one hand, judges are highly sensitive to prosecutorial behavior and judges tend to agree with the prosecutor. In particular, when the prosecutor opposes detention, the probability of a judge releasing a defendant is almost 1, while defendants whose detention is supported by the State prosecution have on average a probability of only 0.44 to have the judge denying detention. Turning to the role of attorneys, our results align with previous literature in finding that when attorneys do not provide effective defense the probability of a defendant being released is rather small, while active defense provides good chances for a non-citizen to be set free. These findings are consistent with other previous research on immigration courts (Ryo, 2016) and suggest that restrictions on the access to legal advice in processes of detention and deportation can have serious consequences on the well-being of non-citizens. Some European countries such as Hungary, Luxembourg, Germany, Estonia and Malta do actually restrict access to legal advice for non-citizens under certain circumstances (European Migration Network, 2014).

Overall our results suggest that despite a few similarities the decision processes followed by prosecutors and judges do not conform to a common pattern. Despite being experienced legal experts (due to the demanding recruiting policy adopted in Spain for both judges and prosecutors), both actors rely on just a very few cues, which resembles the pattern followed by lay magistrates in other legal systems (Dhami, 2003). Therefore, legal expertise does not seem to provide more complex decision processes.

Regarding the main differences between judges and prosecutors, on the one hand prosecutors seem to adopt a view closer to the police than to the judge. Police petitions demand restrictions of liberty to assure the execution of an administrative procedure, and results show that prosecutors precisely decide based on cues that signal higher risk of escaping eventual deportation. In this sense, prosecutors would mostly decide to minimize that risk. On the other hand, judges do not seem especially concerned about the effectiveness with which pending deportation orders are eventually enforced. Instead, their almost unique focus on the defendant's felony profile indicates that they tend to authorize those detentions that they perceive minimize threats to public safety.

## Acknowledgements

The work presented in this paper has received funds from the project *The Social Life of State Deportation Regimes: A Comparative Study of the Implementation Interface* (ERC-2013-StG-336319), University of Amsterdam. The first line of the title of this paper corresponds to a verse in Robert Graves's poem "Country at war" from his book *Country at War* (1920). The authors would like to thank Júlia Terés, Martí Bonilla and Paula Regueira for their work in the data collection process for this project.

## References

- Bainbridge, S. M. and Gulati, G. M. (2002). How do judges maximize-the same way everybody else does-boundedly: Rules of thumb in securities fraud opinions. *Emory Law Journal*, 51:83.
- Bosworth, M. (2014). *Inside immigration detention*. Oxford University Press, Oxford.
- Cavanagh, C. and Cauffman, E. (2015). The land of the free: Undocumented families in the juvenile justice system. *Law and human behavior*, 39(2):152–161.
- De Genova, N. and Peutz, N. (2010). *The Deportation Regime: Sovereignty, Space, and the Freedom of Movement*. Duke University Press, Durham, NC.
- Dhimi, M. K. (2003). Psychological models of professional decision making. *Psychological Science*, 14(2):175–180.
- Dhimi, M. K. and Ayton, P. (2001). Bailing and jailing the fast and frugal way. *Journal of Behavioral Decision Making*, 14(2):141–168.
- European Migration Network (2014). Synthesis report—the use of detention and alternatives to detention in the context of immigration policies. Technical report, European Migration Network.
- Fischer, N. (2012). Negotiating deportations: An ethnography of the legal challenge of deportation orders in a french immigration detention centre. In *The Social, Political and Historical Contours of Deportation*, pages 123–141. Springer.
- Gelman, A. and Hill, J. (2007). *Data Analysis Using Regression and Multilevel/Hierarchical Models*. Cambridge University Press, Cambridge, MA.
- Gigerenzer, G. and ABC-Research-Group, editors (2008). *Simple Heuristics that Make Us Smart*. Oxford University Press, New York, NY.
- Gigerenzer, G. and Engel, E., editors (2006). *Heuristics and the Law*. The MIT Press, Cambridge, MA.
- Gigerenzer, G. and Goldstein, D. G. (1996). Reasoning the fast and frugal way: models of bounded rationality. *Psychological review*, 103(4):650–669.
- Gigerenzer, G. and Selten, R., editors (2001). *Bounded Rationality: The Adaptive Toolbox*. Dahlem Workshop Reports. The MIT Press, Cambridge (MA) / London, UK.
- González-Beilfuß, M., Vallbé, J.-J., and Kalir, B. (2017). El internamiento de extranjeros: ¿Qué dicen los datos? [*Under Review*].
- González-Beilfuß, M. (2016). El régimen jurídico de los centros de internamiento de extranjeros: evolución normativa y cuestiones pendientes. In Fernández-Alles, J. J., editor, *Los centros de internamiento de extranjeros. Régimen jurídico tras el Reglamento de 2014 y la STS de 10 de febrero de 2015*. Tirant lo Blanch, València.
- Guthrie, C., Rachlinski, J. J., and Wistrich, A. J. (2001). Inside the judicial mind. *Cornell Law Review*, 86:777–830.

- Kahneman, D. (2003). Maps of bounded rationality: psychology for behavioral economics. *The American Economic Review*, 93(5):1449–1475.
- Kahneman, D., Slovic, P., and Tversky, A., editors (1982). *Judgment Under Uncertainty: Heuristics and Biases*. Cambridge University Press, Cambridge.
- Kahneman, D. and Tversky, A. (1979). Prospect theory: An analysis of decision under risk. *Econometrica*, 47(2):263–291.
- Kalir, B. (2010). *Latino migrants in the Jewish state: Undocumented lives in Israel*. Indiana University Press.
- Kalir, B., González-Beilfuß, M., and Vallbé, J.-J. (2017). Scrutinizing the detention of non-citizens in Spain: An analysis of the internment orders of to-be-deported subjects. *[Under Review]*.
- Kalir, B. and Wissink, L. (2016). The deportation continuum: convergences between state agents and ngo workers in the dutch deportation field. *Citizenship Studies*, 20(1):34–49.
- Kanstroom, D. (2007). *Deportation nation: Outsiders in American history*. Harvard University Press.
- March, J. G. (1978). Bounded rationality, ambiguity, and the engineering of choice. *The Bell Journal of Economics*, 9(2):587–608.
- March, J. G. (1990). *Decisions and Organizations*. Basil Blackwell, Oxford, UK; Cambridge, Ma.
- Newell, A. (1990). *Unified Theories of Cognition*. Harvard University Press, Cambridge, Mass.
- Newell, A. and Simon, H. A. (1972). *Human Problem Solving*. Prentice-Hall, Englewood Cliffs, NJ.
- Poblet, M. and Casanovas, P. (2005). Recruitment, professional evaluation and career of judges and prosecutors in Spain. In Di Federico, G., editor, *Recruitment, professional evaluation and career of judges and prosecutors in Europe: Austria, France, Germany, Italy, The Netherlands and Spain*, pages 185–213. IR, Bologna (IT).
- Puthoopparambil, S. J. and Bjerneld, M. (2016). Detainees, staff, and health care services in immigration detention centres: a descriptive comparison of detention systems in sweden and in the benelux countries. *Global health action*, 9.
- Rachlinski, J. J., Wistrich, A. J., and Guthrie, C. (2012). Altering attention in adjudication. *UCLA Law Review*, 60:1586.
- Requejo Rodríguez, P. (2006). *El internamiento de extranjeros*. Tirant lo Blanch, València.
- Robjant, K., Hassan, R., and Katona, C. (2009). Mental health implications of detaining asylum seekers: systematic review. *The british journal of psychiatry*, 194(4):306–312.
- Ryo, E. (2016). Detained: A Study of immigration bond hearings. *Law and Society Review*, 50(1):117–153.
- Simon, H. A. (1957). *Models of Man, Social and Rational*. John Wiley and sons, New York, NY.
- Simon, H. A. (1996). *The Sciences of the Artificial*. The MIT Press, Cambridge (MA), 3rd edition.

Storm, T. and Engberg, M. (2013). The impact of immigration detention on the mental health of torture survivors is poorly documented—a systematic review. *Danish medical journal*, 60(11):A4728–A4728.

Vallbé, J.-J. (2015). *Frameworks for Modeling Cognition and Decisions in Institutional Environments. A Data-driven Approach*. Number 21 in Law, Governance and Technology. Springer.

**Table 9.** Multilevel logistic regression models of prosecutor decisions including criminal records. Intercepts vary by courts within districts.

	<i>Prosecutor opposes interment</i>					
	(1)	(2)	(3)	(4)	(5)	(6)
Age	-0.033 (0.037)	-0.032 (0.043)	-0.037 (0.039)	-0.036 (0.037)	-0.027 (0.041)	-0.033 (0.043)
Age squared	0.0002 (0.0003)	0.0002 (0.0004)	0.0003 (0.0003)	0.0003 (0.0003)	0.0002 (0.0004)	0.0002 (0.0004)
Morocco	0.222 (0.398)	0.227 (0.396)	0.196 (0.406)	0.212 (0.400)	0.248 (0.397)	0.198 (0.397)
Albania	-0.644 (1.187)	-0.593 (1.198)	-0.619 (1.202)	-0.606 (1.188)	-0.601 (1.180)	-0.664 (1.199)
Bolivia	0.291 (0.874)	0.316 (0.860)	0.267 (0.886)	0.238 (0.880)	0.311 (0.873)	0.278 (0.859)
Colombia	-0.015 (0.805)	-0.059 (0.798)	-0.069 (0.822)	0.037 (0.810)	0.020 (0.802)	-0.027 (0.801)
Dominican Rep.	0.102 (0.813)	0.142 (0.804)	0.068 (0.823)	0.117 (0.815)	0.107 (0.808)	0.081 (0.805)
Ecuador	0.228 (0.691)	0.173 (0.678)	0.172 (0.699)	0.209 (0.692)	0.226 (0.687)	0.177 (0.681)
Gambia	1.768 (1.903)	1.800 (1.867)	1.631 (1.894)	1.816 (1.906)	20.853 (611.958)	1.739 (1.896)
Georgia	0.443 (0.760)	0.411 (0.739)	0.461 (0.771)	0.436 (0.760)	0.408 (0.753)	0.375 (0.741)
Senegal	-0.118 (0.936)	-0.072 (0.929)	-0.185 (0.953)	-0.097 (0.941)	-0.122 (0.934)	-0.144 (0.933)
<i>Place of detention</i> [Ref. Street]						
Other	-0.470 (0.535)	-0.475 (0.524)	-0.494 (0.543)	-0.478 (0.538)	-0.382 (0.536)	-0.486 (0.525)
Prison exit	-0.209 (0.498)	-0.135 (0.495)	-0.395 (0.544)	-0.320 (0.499)	-0.240 (0.490)	-0.267 (0.478)
Time since expulsion order (log)	-0.192* (0.101)	-0.187* (0.099)	-0.194* (0.102)	-0.195* (0.101)	-0.169* (0.102)	-0.191* (0.099)
No. police records	-0.015 (0.018)	-0.015 (0.018)	-0.015 (0.018)	-0.018 (0.018)	-0.015 (0.018)	-0.016 (0.018)
<i>Cause of expulsion</i> [Ref. Art. 53.1.a]						
Art. 57.2	-1.152** (0.464)	-1.149** (0.453)	-1.269** (0.514)	-1.129** (0.463)	-1.044** (0.462)	-1.141** (0.450)
Other cause	-16.550 (362.039)	-16.887 (3,629.453)	-17.051 (512.001)	-17.007 (512.001)	-20.260 (757.774)	-17.858 (6,035.515)
Attorney speaks during hearing (No)	-0.555 (0.489)	-0.569 (0.478)	-0.565 (0.496)	-0.587 (0.495)	-0.589 (0.493)	-0.562 (0.479)
Prosecutor appears in hearing (Yes)	0.814** (0.352)	0.805** (0.350)	0.824** (0.359)	0.842** (0.358)	0.786** (0.353)	0.799** (0.351)
Perc. immigrants	-0.043 (0.039)	-0.044 (0.039)	-0.043 (0.040)	-0.045 (0.039)	-0.045 (0.039)	-0.046 (0.039)
<i>Type of criminal records</i>						
Absconding	-0.640 (1.188)					
Lesser crime		-0.543 (0.647)				
Felony			0.373 (0.555)			
Misdemeanor				0.722 (0.952)		
No motive					-32.726 (893.822)	
Migration status						-16.255 (5,479.193)
Constant	1.248 (1.150)	1.227 (1.214)	1.331 (1.182)	1.350 (1.157)	0.984 (1.207)	1.284 (1.218)
Observations	280	280	280	280	280	280
Log Likelihood	-145.648	-145.436	-145.581	-145.534	-144.651	-145.481
Akaike Inf. Crit.	339.295	338.873	339.162	339.067	337.302	338.961

Note:

\*p<0.1; \*\*p<0.05; \*\*\*p<0.01

**Table 10.** Multilevel logistic regression models of judicial decisions including criminal records. Intercepts vary by courts within districts.

	<i>Judge denies internment</i>					
	(1)	(2)	(3)	(4)	(5)	(6)
Age	-0.035 (0.044)	-0.038 (0.044)	-0.036 (0.048)	-0.035 (0.047)	-0.040 (0.047)	-0.037 (0.047)
Age squared	0.0003 (0.0004)	0.0003 (0.0004)	0.0003 (0.0004)	0.0003 (0.0004)	0.0004 (0.0004)	0.0003 (0.0004)
Morocco	-0.226 (0.427)	-0.244 (0.427)	-0.202 (0.418)	-0.273 (0.412)	-0.251 (0.413)	-0.282 (0.413)
Albania	-0.347 (1.086)	-0.353 (1.093)	-0.413 (1.072)	-0.386 (1.063)	-0.361 (1.058)	-0.422 (1.053)
Bolivia	0.588 (1.018)	0.604 (1.014)	0.690 (1.014)	0.358 (0.975)	0.588 (0.984)	0.556 (0.982)
Colombia	0.427 (0.880)	0.412 (0.887)	0.565 (0.867)	0.506 (0.854)	0.442 (0.856)	0.392 (0.856)
Dominican Rep.	1.137 (0.884)	1.147 (0.887)	1.265 (0.872)	1.157 (0.855)	1.138 (0.859)	1.095 (0.857)
Ecuador	-0.684 (0.815)	-0.787 (0.807)	-0.752 (0.795)	-0.738 (0.790)	-0.772 (0.790)	-0.800 (0.789)
Gambia	16.668 (724.080)	14.802 (724.083)	17.095 (4,343.650)	16.192 (3,150.779)	14.650 (1,674.347)	15.279 (2,097.187)
Georgia	0.268 (0.877)	0.140 (0.875)	0.048 (0.868)	0.202 (0.863)	0.142 (0.853)	0.108 (0.851)
Senegal	-0.241 (1.012)	-0.239 (1.017)	-0.092 (1.010)	-0.168 (1.018)	-0.235 (1.009)	-0.305 (1.006)
<i>Place of detention</i> [Ref. Street]						
Prison exit	0.128 (0.591)	0.052 (0.597)	0.202 (0.579)	-0.213 (0.557)	0.011 (0.529)	0.001 (0.526)
Other	-0.014 (0.586)	-0.007 (0.587)	0.019 (0.573)	0.012 (0.566)	-0.009 (0.565)	-0.031 (0.562)
Time since expulsion order (log)	0.100 (0.110)	0.100 (0.110)	0.103 (0.108)	0.097 (0.107)	0.102 (0.107)	0.099 (0.107)
No. police records	-0.036** (0.017)	-0.037** (0.017)	-0.040** (0.017)	-0.038** (0.016)	-0.038** (0.016)	-0.038** (0.016)
<i>Cause of expulsion</i> [Ref. Art. 53.1.a]						
Art. 57.2	0.225 (0.459)	0.274 (0.458)	0.454 (0.461)	0.327 (0.439)	0.275 (0.437)	0.265 (0.435)
Other cause	0.143 (1.126)	0.178 (1.130)	0.210 (1.089)	0.236 (1.074)	0.188 (1.079)	0.204 (1.077)
Attorney speaks during hearing (No)	-1.309*** (0.508)	-1.309** (0.511)	-1.307** (0.513)	-1.367*** (0.514)	-1.301*** (0.505)	-1.316*** (0.502)
Prosecutor appears in hearing (Yes)	-0.615 (0.406)	-0.633 (0.407)	-0.706* (0.399)	-0.581 (0.392)	-0.636 (0.387)	-0.643* (0.386)
Prosecutor opposes internment	3.777*** (0.665)	3.754*** (0.657)	3.819*** (0.641)	3.790*** (0.641)	3.768*** (0.637)	3.738*** (0.634)
Perc. immigrants (district)	0.036 (0.066)	0.036 (0.066)	0.027 (0.062)	0.025 (0.062)	0.035 (0.059)	0.033 (0.058)
<i>Type of criminal record</i>						
Absconding	-1.123 (1.041)					
Lesser crime		-0.166 (0.576)				
Felony			-0.600 (0.513)			
Misdemeanor				1.214 (1.014)		
No motive					0.225 (1.624)	
Migration status						-18.401 (13,473.000)
Constant	0.299 (1.449)	0.429 (1.438)	0.472 (1.463)	0.473 (1.449)	0.465 (1.436)	0.494 (1.429)
Observations	277	277	277	277	277	277
Log Likelihood	-140.469	-141.044	-140.452	-140.441	-141.076	-140.655
Akaike Inf. Crit.	330.938	332.089	330.904	330.882	332.152	331.311

Note:

\*p<0.1; \*\*p<0.05; \*\*\*p<0.01