



Actuarial Analysis of Comparative Criminal Policy: A Study on Immigration

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Abstract

This study examines the social exclusion potential of immigration-related criminal policies across thirteen jurisdictions using the RIMES instrument. Although the RIMES framework does not explicitly include an immigration dimension, three items were validated as highly capable of generating social exclusion: discriminatory policing practices, deportation of legal foreign residents for minor offenses, and deportation of minors. Results indicate that Anglo-Saxon countries (California, Florida, New York, Texas, and England & Wales) and Germany exhibit the highest exclusionary potential, scoring positively on all three items, while Spain, Finland, and France occupy an intermediate position, and Italy, Poland, Portugal, and Romania are least exclusionary. Notably, discriminatory policing based on ethnic characteristics is prevalent across most jurisdictions and represents the most frequent and impactful form of exclusion, whereas deportation practices, though discriminatory, occur less frequently. The findings highlight the importance of analysing specific dimensions of criminal policy to capture nuanced cross-country differences and underscore the need for targeted reforms to reduce ethnic-based discrimination in public space policing, promoting more inclusive societies.

Key words. *Comparative criminal justice policy, RIMES instrument, social exclusion, migrations*

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1. Introduction

Within the historical framework of migratory movements, whose contemporary specificity is not so much linked to the increase in population flows as to the repressive responses adopted by destination countries (Baumann, 2016), the reaction of criminal policy emerges as a pertinent object of analysis as it contributes to the production of social exclusion. The reaction of destination countries is currently characterized by labelling immigrants as dangerous (Aas, 2011), embedding migration policy within a security context, and employing coercive means for its repression (Muller, 2010; Villegas, 2015). Likewise, criminal law is increasingly being instrumentalized to achieve the aims of migration policy (Brandariz et al., 2025). Hence the importance of paying attention to the different mechanisms and public institutions in charge of migration control (Bosworth, Liebling, & Maruna, 2017).

In a previous work (García-España, 2017), I highlighted the elements that, from a qualitative perspective and within the Spanish context, are prone to generate social exclusion for migrants who are suspected, convicted, and formerly convicted in Spain. Specifically, I referred to how fear of the foreigner, along with stereotypes and prejudices about their allegedly dangerousness, lead countries to arm themselves administratively and criminally against this population. These cognitive biases serve a basic defensive function. At times, such defence employs means that violate fundamental human rights and basic principles of the system. In that work, I also outlined various administrative and criminal responses to foreigners in contact with the Spanish Criminal Justice System, as well as the arguments used to attempt to justify them. Through those insights, I demonstrated that certain public policies act as centripetal force vectors, drawing foreigners into the sphere of penal control, while others function as centrifugal force vectors, pushing foreigners to the margins of society once their passage through the criminal justice system has ended. The result of both forces depicts a scenario of social exclusion that is more than evident for the group under study (García-España, 2017).

On this occasion, however, I aim to carry out a comparative analysis of the responses that different national systems provide to migrants when they come into contact with the criminal justice system. For this purpose, I will rely on the RIMES instrument for measuring the social exclusion generated by state criminal policies, which operationalizes the theoretical framework proposed by Díez-Ripollés (2011, 2013) and which we will briefly revisit in the following section.

I therefore intend to conduct a comparative analysis of the social exclusion generated by the criminal policies of the thirteen European and American

jurisdictions in which RIMES has been applied, focusing attention on the items that measure the social exclusion of the migrant and/or foreign population. To this end, my specific objectives are: (1) to analyse the responses obtained for each of the RIMES items related to migration across the different jurisdictions; (2) to assess the discriminatory capacity of the migration-related items; (3) to position countries along a continuum ranging from lower to higher social exclusion according to the results of the items concerning migrants; and (4) to compare each jurisdiction's position in relation to the exclusion of the migrant population with its overall position based on the total evaluation of its criminal policy as measured by the instrument's items.

With these objectives, I seek to highlight the criminal policy treatment of migration by the different countries analysed, as well as the distinct positions that countries occupy on the continuum from less to greater social exclusion when it comes to responding to migrants.

2. The rimes instrument and measuring social exclusion in comparative criminal policy

Comparative criminal policy has consistently constituted a subject of special interest for research in the fields of criminal law and criminology. In recent decades, there has been a strong politico-criminal trend toward contrasting different national systems of penal control in terms of their greater or lesser punitive rigor (see, e.g., Lacey, 2010). Díez-Ripollés (2011) has questioned not only the advisability of using, as the most common indicator of punitiveness, the incarceration rate of each country, but also whether that approach—focused on punitiveness—is the most suitable one. As an alternative, he proposes a theoretical model based on the capacity for social exclusion of national criminal justice systems (Díez-Ripollés, 2011, 2013), and advocates for conducting comparative criminal policy analyses by taking as a reference the capacity of each national system to minimize the social exclusion of individuals who come into conflict with criminal law. For Díez Ripollés, a criminal justice system is socially exclusionary when it substantially aims to achieve the incapacitation of suspects, convicts, and ex-convicts, which entails ensuring that such individuals, after their contact with penal institutions, find themselves in individual and social conditions that make it more difficult for them to break the law or to avoid being detected.

To operationalize the central aim of this theoretical framework—namely, placing countries along a continuum ranging from lower to higher social exclusion and enabling international comparisons—an instrument has been developed over the years to measure the social exclusion generated by criminal policy, called RIMES (Díez-Ripollés & García-España, 2020; Arenas García, 2021). This

instrument is presented as the best tool to provide the international community with a comparison of the various national models of penal intervention, from whose results less exclusionary national criminal policies can be designed. The instrument consists of 39 items (rules and practices), validated by internationally renowned experts, and distributed across the following nine pools or thematic areas: control of public spaces; legal safeguards; sentencing and sanction system; harshest penalties; prison rules; preventive intervention; legal and social status of offenders and ex-offenders; police and criminal records; and youth criminal law¹.

The pools are designed to characterize the different penal systems from a comprehensive perspective of criminal policy. To this end, potential thematic areas or pools that could distort comparisons due to their limited discriminatory capacity—such as drug-related criminal policy—have been excluded (Díez-Ripollés, 2013).

The RIMES instrument has already been tested through its application in thirteen different jurisdictions. In seven of these—namely Germany, California, Spain, England and Wales, Italy, New York, and Poland—results have already been published (García-España & Cerezo Domínguez, 2022). The results achieved so far are presented in Figure 1:

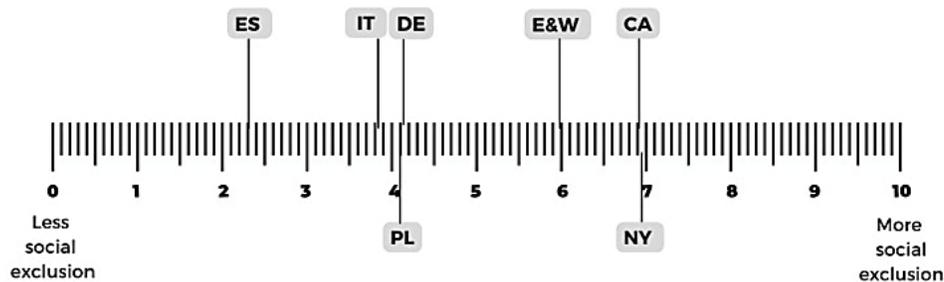


Figure 1: Position of the 7 jurisdictions on a continuum from lower to higher social exclusion

Source: García España & Cerezo Domínguez, 2003

As can be observed, none of the countries studied are located at the extremes of the scale, but it is possible to note differences between them in general terms:

¹ A detailed list of the 39 rules and practices of the RIMES instrument, grouped into pools, is available at <https://rimesproject.uma.es/rimes-instrument/>

the U.S. states analysed are clearly more exclusionary than any of the European countries studied. Furthermore, the Anglo-Saxon jurisdictions—which include England and Wales along with the two U.S. states—are noticeably more socially exclusionary than the continental European countries. It is also worth noting that most of the continental European countries studied achieve very similar scores, except for Spain. Additionally, the two Mediterranean European countries show the lowest levels of social exclusion, although Italy is not too far from the two Central European countries. Finally, Spain stands apart from the rest of the continental European countries due to its low levels of social exclusion (García-España & Cerezo Domínguez, 2022).

Following these initial results, the RIMES instrument has been applied to six more countries: Finland, Florida, France, Portugal, Romania, and Texas. With data from thirteen different jurisdictions, this article aims to analyse the items related to issues concerning migrants, since the richness of the RIMES instrument is not limited to positioning countries along a continuum of higher to lower exclusion. On the contrary, the instrument allows for much more detailed comparisons and analyses, both by pools (see García-España & Cerezo Domínguez, 2022) and by individual items.

3. Comparative analysis of migration-related criminal policy using the rimes instrument

The RIMES instrument does not include a pool specifically dedicated to migration or foreigners, but it does contain three validated items—out of the 39 that make up the instrument—related to the migrant population, distributed across three of the nine pools. These three migration-related items consist of two practices and one rule, distributed in three different pools, as shown in table 1:

Table 1. Rules and practices on migration by pools

Pools	Rules	Practices
Pool 1: Control of public space		11. Discriminatory Street police interventions (stop and search, arrests, frisks/body searches...) targeting specific groups occur regularly
Pool 7: Legal and social status of offender and ex-offenders	88. Legally resident foreigners may be deported if they receive a custodial sentence up to one year or a non-custodial sentence	

Pool 9: Youth criminal justice	126. Alien minors are deported because of an offence
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The following section analyses the migration-related items, situated within the specific pool or area of criminal policy to which each belongs.

3.1. Migration and Control of Public Space (Item 11)

Pool 1, on the control of public space, refers to the use of penal or administrative sanctioning techniques to intervene in behaviours displayed in urban public spaces by certain individuals perceived as suspicious or troublesome (von Hirsch & Shearing, 2000). People who are migrants or who have a differentiated ethnic profile often fall into this category (Crocitti & Selmini, 2017; García España, 2017).

Although public space control often focuses on individuals already in a situation of social exclusion for being perceived as dangerous, it can also relate to behaviours that, in some countries, are defined as criminal, such as vagrancy, loitering, or prostitution (Doherty et al., 2008). In any of these cases—whether targeting “troublesome” groups or prohibited behaviours—these techniques cause cities to cease being privileged spaces of social interaction and cooperation, subjecting parts of the population to intense police control and producing, consequently a reorganization of the urban space (Díez-Ripollés, 2014).

The items validated in RIMES for this pool include three rules and one practice. The three rules refer to the possibility for police to detain individuals engaged in repeated street begging (Item 1), to detain for loitering (Item 2), and to restrict access to certain public spaces at their discretion (Item 3). The practice (Item 11), on the other hand, addresses discriminatory street policing interventions targeting specific groups, particularly based on differentiated ethnic traits. Figure 2 shows the scores of the countries in this pool.

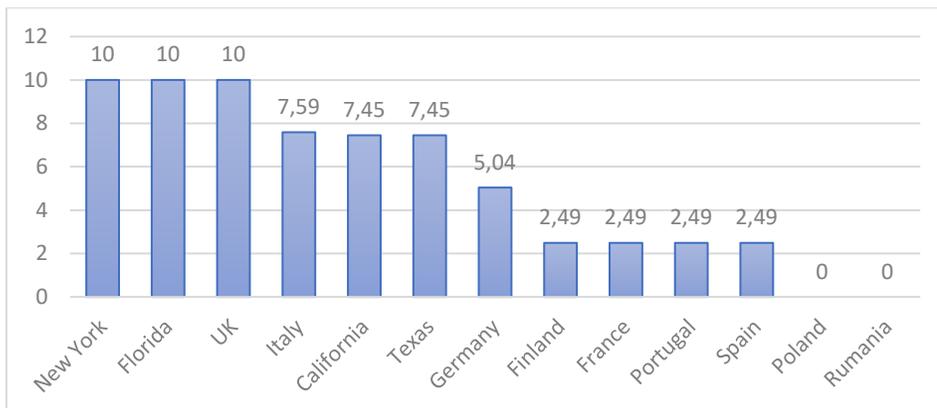


Figure 2. Scores from 0 to 10 in pool 1: Control of Public Spaces

In New York, Florida, and England and Wales, which score 10, all four items in this category are present, whereas in Poland and Romania none are observed. Spain, where only one item has been verified— item 11—scores low in this category, like Finland, France, and Portugal. Germany, with two concurrent items, occupies an intermediate position. California, Italy, and Texas, with three out of four items present, are in a high zone of social exclusion.

Among the four items that comprise this category, we focus here on item 11, concerning discriminatory street-level police interventions targeting specific groups. With this approach, we aim to determine whether discriminatory police practices are regularly carried out against certain citizens in public spaces, such as identity checks, detentions, or searches based on ethnic profiling criteria.

To address this item, secondary sources were used. For each jurisdiction, a search was conducted for empirical studies or data sources from official institutions, national and international organizations, and academic researchers. As complementary reference sources, web resources and media outlets were also consulted. In cases of uncertainty, experts in the country or state under examination were contacted.

The findings for item 11 indicate that in all countries analysed we identified studies affirming that police conduct discriminatory practices in public spaces against migrants or individuals with distinct ethnic features, except for Poland and Romania. The sources reviewed confirm the existence of discriminatory bias in policing, going beyond the mere observation that ethnic minorities are subjected to police stops more frequently. Indeed, when control variables were introduced—particularly police efficiency, but also other sociodemographic factors—the discriminatory component of police action persisted (Rando Casermeiro, 2022).

This pattern is evident in Anglo-Saxon countries. In California (Lofstrom et al., 2018; Hetey et al., 2016; Chanin et al., 2016; Armentrout et al., 2007; Ayres & Borowsky, 2008) and in New York (Gelman, Fagan, & Kiss, 2007; Ridgeway, 2007; Goel, Rao, & Shroff, 2016), although the study by Coviello and Persico (2013) did not find evidence of discriminatory bias. In this regard, studies conducted in Florida reveal consistent disparities in arrests and police stops by race and ethnicity, although they do not always directly establish discriminatory bias (Abrahams, 2020; Abreu et al., 2021; Burch, 2023; Lehmann & Meldrum, 2024). In Texas, the data are limited to speeding controls, which restricts the

scope of conclusions. Nevertheless, there is sufficient evidence to consider that racial biases were employed in traffic stops (Cai et al., 2022; Pierson et al., 2020).

In European countries, the trend is similar, with some exceptions. In Germany, qualitative studies (notably Pühl, 2019) reveal that the item is present in that country, as do the data from the *European Union Minorities and Discrimination Survey* or EU-MIDIS –FRA, 2010–. In Spain, racial bias in police discrimination has also been studied using control variables, and results confirming discrimination have been found (Wagman, 2005; Schmitt and Pernas, 2008; FRA, 2010, p. 31; García Añón et al., 2013; García España, Arenas García and Miller, 2016), as in Italy (FRA, 2017), and in England and Wales (Borooah, 2011; Miller, 2010; Parmar, 2011; Quinton, 2011, and with some qualifications Ariel and Tankebe, 2016). Likewise, in Finland (Keskinen et al., 2018); France (De Maillard, 2022); and Portugal (FRA 2010, 2017, and 2021).

The exceptions to these dynamics are Romania and Poland. In Romania, the data show that although police stops were similar between the majority and minority populations, more recent data (FRA, 2021) indicate that the general population suffers more police stops than the predominant ethnic minority, the Roma. In the case of Poland, the result needs to be clarified because it does not mean that police discrimination in public spaces does not exist, but rather that it has not been possible to obtain data corroborating it. The RIMES team faced the absence of specific studies related to the item, though they did find some information in a 2009 report by the European Union Agency for Fundamental Rights (FRA), which used a sample of 500 Roma people in Poland. According to this report, 20% of the sample stated that they had been stopped by the police. Of these, 51% believed they had been stopped because of their ethnic origin, with this percentage somewhat lower—though still relevant—in the case of stops carried out by border control authorities (44%) (FRA, 2009). In the second wave conducted by FRA on minorities and discrimination (EU-MIDIS-II), a sample of new immigrants—i.e., people who had arrived in Poland in the last ten years—was surveyed. The results showed that 14% of the sample had been stopped by the police in public spaces in the past five years (FRA, 2019, p. 4). Alongside these surveys, it is worth highlighting the 2019 final report on Poland by the UN Committee on the Elimination of Racial Discrimination, which expressed concern over “allegations of ethnically biased practices by law enforcement officers against the Roma” (UN, 2019, p. 6).

Despite the above data, the RIMES team considered that, by themselves, these do not prove the existence of regular discriminatory police treatment, as the comparison with majority population groups is absent. Nor were Polish experts able to shed light on this issue (Rando-Casermeiro, 2022). Hence, although the item was answered negatively to be rigorous with the employed methodology,

Poland's response has more to do with the difficulty of addressing the item than with the fact that the item does not occur.

3.2. Immigration and Deportation in the Criminal Justice Context

Pool 7 on the social and legal status of offenders and ex-offenders (Contreras Román, 2022) does not refer to deprivations of rights imposed as a principal penalty or as an ancillary consequence directly related to the nature of the crime committed or to the prison regime applied. On the contrary, this item concerns the withdrawal of rights (such as active or passive suffrage, legal residence in a country, marriage, parental authority, access to employment or public office, access to social subsidies or housing, or to health programs, among others) that result—either mandatorily or optionally—from the mere fact of having been convicted of an offense or group of offenses not directly, or only marginally, related to the right being restricted (Díez Ripollés, 2014).

These additional deprivations of rights—or *collateral consequences of conviction* in Anglo-American terminology—have gone largely unnoticed until recently or have been neglected by legal practitioners, which is why some scholars have referred to them as *invisible criminal sanctions* (Travis, 2002). The rationale behind this type of collateral consequence has little to do with retribution, since it is unrelated to the offense committed; nor with deterrence, as they remain unknown due to their invisibility; nor are they based on the individual's dangerousness, since they may be applied indiscriminately without considering the specific circumstances of the person.

The socially exclusionary effects already produced by imprisonment—or by subjection to penal control in general—are reinforced by an additional layer of control that can extend beyond the term of the principal sentence and entails hindering the access of convicted and formerly convicted persons to political and social participation and to the benefits of the welfare state. Instead, these groups come to be governed through penal logics, involving social agents external to the penal system, such as electoral or immigration authorities, various administrative and judicial bodies, employers, landlords, or those responsible for educational or health administration, among others. In fact, it is often said that these are not sanctions but rather administrative measures of social control (Díez Ripollés, 2014).

The items validated in RIMES for this pool consist of 5 rules and no practices. These rules concern the deprivation of the right to vote (item 86), deportation of legally resident foreigners upon conviction for a crime (item 88), prohibition on performing jobs unrelated to the offense committed (item 91), prohibition of access to public housing (item 92), and prohibition of access to social benefits

(item 93). In Figure 3, I present the results found for this pool in each of the jurisdictions studied.

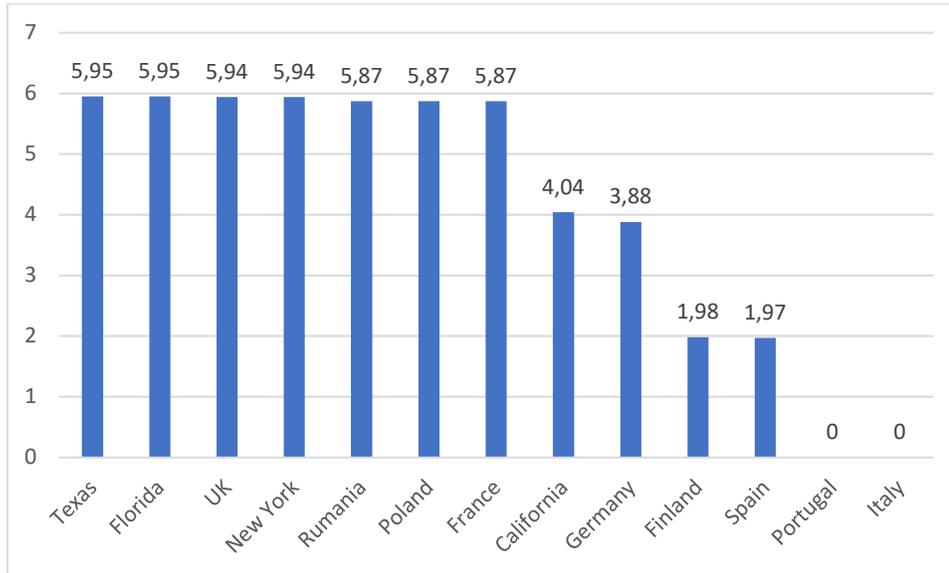


Figure 3. Scores from 0 to 10 in pool 7 on the Legal and Social Status of Offenders and Ex-Offenders

Texas, Florida, England and Wales, New York, Romania, Poland, and France proved to be the most exclusionary, with three affirmative items each, followed by Germany and California, with two affirmative items. Spain and Finland, with only one affirmative item, and Italy and Portugal, with none, are among the least exclusionary countries in this pool.

On this occasion, we focus on Rule 88, which refers to the deportation of foreigners in regular status for the commission of an offense punishable by a prison sentence of up to one year or by any non-custodial sentence. Deportation may occur before, during, or after the foreign national has served their sentence. It is not required that deportation be executed, since the exclusionary nature lies in the legal possibility of imposing this removal on the foreign citizen (Contreras Román, 2022).

The methodology used to resolve Item 88 in each country or state consisted, given that this is a rule, of analysing secondary sources, both in criminal legislation (to determine whether the deportation of legally resident foreigners is contemplated as a penalty—either as a direct sentence or as a substitute for it)

and in immigration legislation (to determine whether conviction itself is foreseen as grounds for administrative removal).

The exclusion of convicted and formerly convicted legal residents through deportation (Item 88) is common in all countries except Italy and Portugal. In Italy, immigration legislation (Legislative Decree of 25 July 1998, no. 286) provides for the possibility of expelling convicted foreigners through three different mechanisms: (1) as a security measure in cases of *flagrante delicto* or specifically enumerated offenses in the Penal Code, requiring a declaration of social dangerousness (art. 13); (2) as a substitute for imprisonment, provided that it concerns an intentional offense, that the custodial sentence does not exceed two years, and that the conditions for granting a suspended sentence are not met (art. 16.1–4); and (3) as an alternative to imprisonment once the sentence is already being served and, after part of the sentence has been completed, less than two years remain before completion (art. 16.5–6). However, Italian law specifically establishes the non-removal of convicted foreigners when they hold a residence permit (art. 19.2.b). Thus, in Italy, deportation of convicted persons is only possible in the case of foreigners in irregular status. In Portugal, legislation provides for different ways to expel foreigners who have committed crimes. However, for those who legally reside in the country, the imposed sentence must exceed one year of imprisonment (Esposito & Caja, 2025; Sabito et al., 2010; Varela et al., 2021). Therefore, the exclusion measured by Item 88 does not apply.

In the other countries analysed, the item does apply, since it is possible to deport foreigners sentenced to prison terms of less than one year, or even to non-custodial penalties, although in the case of legally resident foreigners, certain considerations must be considered.

For example, Polish immigration legislation (art. 302 et seq.) provides for the possibility of imposing a non-return obligation, among other reasons: (a) when the foreigner is entered into the “list of foreigners whose stay in the territory of the Republic of Poland is undesirable,” which occurs if convicted by a final judgment to pay a fine or serve a custodial sentence for an intentional offense or a fiscal offense, without requiring a minimum duration; or (b) when the foreigner is sentenced to a custodial penalty subject to enforcement and there are grounds for transfer to serve the sentence abroad. Exceptions are established for foreigners with residence permits issued based on a Schengen visa for tourism, humanitarian reasons, those obliged to appear personally before a Polish authority, and EU citizens with permanent or long-term residence. However, deportation is accepted for all others, including those with residence permits for family reunification. It is expressly stated that the period of residence and the existence of cultural or social ties with the country of origin (the country

of deportation) must be considered when assessing the appropriateness of this measure.

In England and Wales, several regulations contemplate the possibility of deportation of non-British citizens who have been convicted. First, the Immigration Act 1971 establishes that the Secretary of State has the power to issue a deportation order against a non-British citizen if he considers deportation to be conducive to the public good (section 3.5), which may occur if, after the age of seventeen, the foreign national is convicted of an offense punishable by a custodial sentence and the court recommends deportation as part of the conviction (section 6). Second, the UK Borders Act 2007 (section 32.5) reiterates this discretion, specifying that it applies to a “foreign criminal” convicted to a custodial sentence of at least 12 months. Third, the “Immigration Rules” (part 13, art. 398) specify three criminal-related cases in which a foreign national may be deported on public interest grounds: (a) having been sentenced to a custodial penalty of at least 4 years; (b) having been sentenced to a custodial penalty of less than 4 years but at least 12 months; or (c) where the offense caused serious harm or the offender is a persistent offender showing particular disregard for the law, regardless of the sentence imposed. In cases (b) and (c), personal circumstances must be considered (art. 399), particularly where the foreigner has legally resided in the country for most of their life. In such cases, it must be assessed whether they are socially and culturally integrated, and whether there are very significant obstacles to their integration in the country to which deportation is proposed.

In Germany, the *Residence, Economic Activity, and Integration of Foreigners in the Federal Territory Act* (sec. 53) establishes that a foreign national whose presence endangers public security and order or other significant interests of the Republic shall be expelled if, after weighing the interests in the foreigner’s departure against the individual interests in remaining in the federal territory, and taking into account the circumstances of the particular case, there is a public interest in the foreigner’s removal. No distinction is made as to whether the foreigner holds a residence permit; rather, the authority competent to assess whether expulsion is in the public interest in each case is the Federal Office for Migration and Refugees. The same Act specifies that a particularly serious public interest exists where the individual has been sentenced to imprisonment or juvenile custody of at least one year for certain specifically enumerated crimes, or to at least two years for other intentional offenses, or where pre-trial detention has been ordered (art. 54.1). Likewise, such an interest exists where the foreigner has been sentenced to imprisonment of at least six months or to juvenile custody of at least one year and the execution of the sentence has not been suspended, or where the offense involves drugs (art. 54.2). Therefore, in Germany no distinction is made based on residence status; rather, the Federal Office for

Migration and Refugees must evaluate in each case whether expulsion serves the public interest, balancing removal against the individual's interest in remaining in the federal territory (Contreras Román, 2022).

Finnish immigration law provides for the deportation of legally resident foreigners if they are guilty of an offense punishable by at least one year of imprisonment (thus falling within the limits of our item). This criterion also applies in cases of repeated offenses, although in this instance the law does not specify the type or duration of the sentence. According to both provisions, the item is considered applicable in Finland. In fact, data collected by Könönen (2020, 2022) show that the deportation of legally resident foreigners takes place even for relatively minor crimes (such as property offenses and drug trafficking).

In Spain, the item also applies according to the RIMES team, though this requires some explanation. The deportation of convicted foreigners in Spain is provided for both in the Criminal Code (CP) and in the Immigration Act (LE). In the first case, it is established as a substitute for prison sentences exceeding one year imposed on a foreign national (art. 89 CP). In the second, it is established as grounds for expulsion that the foreigner has been convicted, either in Spain or abroad, of an intentional act that constitutes in Spain an offense punishable by more than one year of imprisonment (art. 57.2 LE). In both cases, expulsion applies to both legally resident and irregularly resident foreigners where the custodial sentence exceeds one year; therefore, strictly speaking, the item would not apply. However, in the case of administrative expulsion of foreigners based on conviction, the Supreme Court, in a judgment of 31 May 2018, held that expulsion “is appropriate where the penalty referred to in art. 57.2 is the sentence prescribed in abstract in the Criminal Code for the offense committed, and not the specific sentence imposed on the individual in the judgment.” Thus, with this interpretation of the law, it is possible to expel legally resident foreigners convicted of an offense carrying an abstract penalty exceeding one year, even if the actual sentence imposed is less than one year (for example, if there was a plea bargain or mitigating circumstances were applied, according to Contreras-Román, 2022).

In the United States, the Federal Immigration and Nationality Act establishes that any non-national residing in the country may be deported if found guilty of certain offenses, termed deportable offenses. No distinction is made between resident and non-resident foreigners, and among the five categories of deportable offenses, at least one falls within the scope of the item (domestic violence, stalking, child abuse, or human trafficking, regardless of sentence). Some offenses in this latter category are punishable under state criminal codes in Texas, Florida, California, and New York even with non-custodial penalties—

for example, section 260 of the New York Penal Code concerning the offense of child abandonment committed by an individual with no prior criminal record.

In sum, the deportation of foreign offenders in irregular status is provided for in the legislation of all the countries analysed and is mandatory in most of them. As for legally resident foreign offenders, except in Italy, deportation is also possible within the sentencing thresholds established by the item. However, the decision is not automatic but discretionary, requiring a greater degree of individualization by the authorities (penal or administrative). Such individualization is required by law and was analysed through RIMES, though its actual practice remains unknown.

3.3. Immigration, Juvenile Status, and Deportation

Pool 9 on the juvenile justice system refers to the sphere responsible for the criminal liability of individuals under 18 years of age. This age limit is itself a matter of criminal policy—that is, each national system must determine at what point in a person’s life a response through formal social control becomes necessary. In 1985, the United Nations General Assembly approved minimum rules on the administration of juvenile justice, known as the Beijing Rules. The age of criminal responsibility was set below 18 years. With the UN Convention on the Rights of the Child in 1989 and subsequent General Assembly resolutions (45/112 and 45/113 of 1990), the need to differentiate the penal response given to minors, as opposed to that provided for adults, was universally recognized and consolidated (Pérez Jiménez, 2022). Currently, comparative criminal policy discussions on juvenile justice revolve around which penal systems, or which specific tools within them, foster the appropriate treatment of minors who have offended to encourage their return to law-abiding behaviour (Dünkel, 2014).

Within this framework, the items validated in RIMES for pool 9 consist of 3 rules and 2 practices. The three rules concern the minimum age of criminal responsibility (item 113), custodial sanctions exceeding 10 years (item 117), and the effects of criminal records after reaching the age of majority (item 120). The practices relate to the frequency of custodial sanctions for minors (item 121) and the deportation of foreign minors for committing an offense (item 126). In Figure 4, I present the results found for this pool in each of the jurisdictions studied.

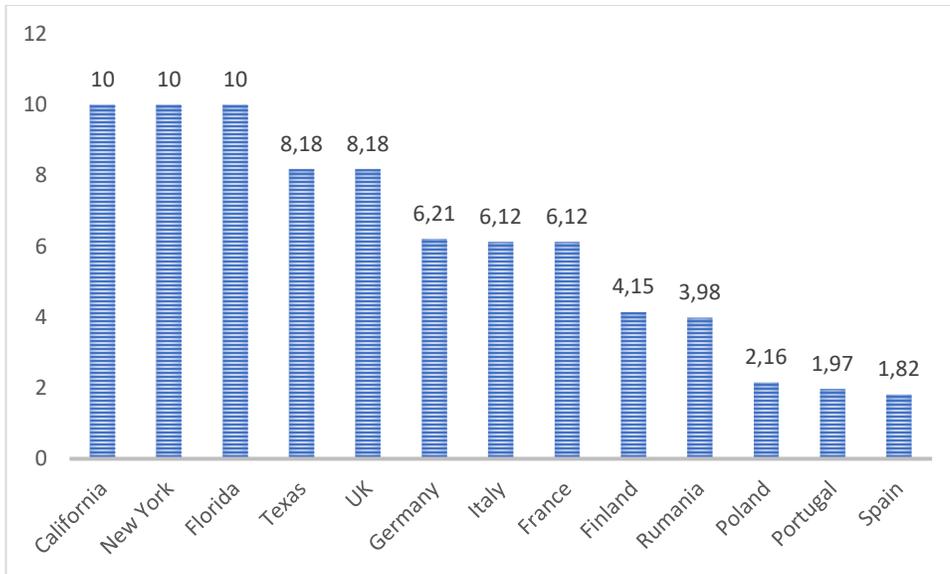


Figure 4. Score from 0 to 10 in pool 9 on the Juvenile Justice System

California, New York, and Florida are the most exclusionary jurisdictions, with all items in the pool affirmed. Texas and England and Wales follow closely, with four of the five items in the pool answered affirmatively. The least exclusionary countries in this pool are Poland, Portugal, and Spain.

Of all the items in this pool, Practice 126 is of particular interest due to its relation to migration. This item refers to the possibility of deporting foreign minors for committing an offense. A foreign minor is defined as any person under the age of 18 who resides in a country of which they are not a citizen, whether accompanied by adult family members. A conviction under the juvenile justice system following the commission of an offense must trigger the minor's deportation. This deportation may occur before the sentence or educational measure begins, during its execution, or after its completion, and it does not matter if the deportation takes place after the young person has turned 18. The practice is considered to occur whenever a country's judicial or administrative authorities deport foreign minors for the reason.

The methodology used to respond to this item relied on secondary sources. For each country or state, empirical studies or data sources were sought from official institutions, national and international organizations, and academic sources. Supplementary sources included web resources and media reports. In case of

uncertainty, experts in the subject from the relevant country or state were consulted.

In California, deportation is one of the measures that both the Juvenile Probation Department and the California Juvenile Courts can impose on minors who come into contact with the juvenile justice system, in accordance with the *Immigration and Nationality Act*, under which removal can be a consequence imposed for committing “bad acts.” Deportation can also be based on one of the behaviours listed in the deportation regulations (*US Code – Conduct-based and non-conduct-based grounds for deportation*), specifically drug use, violation of a domestic violence protective order, or falsifying U.S. nationality. This is not a criminal sanction, but a consequence derived from immigration law. Although the possibility of expelling minors for committing an offense exists, in practice the number of executions has declined in recent years (from 14 in 2010 to none in 2019).

In New York, the legal situation is the same, meaning that juvenile court decisions alone are not considered sufficient grounds to deport a minor under 18. In fact, in the *Matter of Devison*, it is explicitly established that a minor having committed an offense is not sufficient cause to mandate deportation. In practice, the *Historical Data on Immigration and Customs Enforcement* provides figures for 2003–2016. According to this source, three foreign minors were deported for falsely claiming U.S. citizenship in 2005, 2006, and 2010. The consulted expert also noted that most deportations of foreign minors in New York State are due to misconduct, although this rule generally applies only to unaccompanied foreign minors (Pérez Jiménez, 2022).

The situation is similar in Florida and Texas. Various reports indicate that juvenile delinquency in both states can result in deportation. In Florida, as of October 2023, 1,508 minors aged 12 to 17 were deported on criminal charges. Similarly, in Texas, as of August 2023, courts issued 33,116 deportation orders for persons aged 12 to 17, of which 6 corresponded to offenses classified as “aggravated crimes” and 120 to other criminal charges involving minors.

In England and Wales, the process for expelling minors does not differ in its essential elements from that for adults, as established in the *UK Borders Act 2007*, the *Immigration Act 1971*, and the *Early Removal Release Scheme* included in the *Criminal Justice Act 2003*. The Immigration Act includes a protocol regarding minors (*Managing foreign national offenders under 18 years old*). According to this protocol, to proceed with the deportation of a minor, their offending behaviour must be considered to pose a significant risk to society upon release. In statistical data on the application of the Immigration Act, no distinction is made between individuals expelled for committing an offense and those expelled for other

types of infractions. In any case, the number of minors expelled has declined over the years. For example, in 2018, 26 minors under 14 and 3 minors aged 14 to 17 were expelled.

In Germany, the 2008 *Residence, Economic Activity, and Integration of Foreigners Act* (*Gesetz über den Aufenthalt, die Erwerbstätigkeit und die Integration von Ausländern im Bundesgebiet – AufenthG*) stipulates that a foreign national who has endangered public security, public order, or other significant interests of the country shall be expelled after weighing the public interest in expulsion against the individual's interest in remaining in the country. The public interest in expulsion becomes significant if the foreign national has received a custodial sentence of at least two years for the commission of one or more offenses; or at least one year for an offense against life, physical integrity, sexual freedom, property committed in series, or for assault or resistance to authority. One of the individual interests considered in this balancing process is minority status. German police data show that immigrant minors commit offenses; however, there are no official data indicating whether they were subsequently expelled due to these offenses. German experts in the field (see Pérez Jiménez, 2022) agree that expulsion orders are indeed issued against offending minors in the country, although even parliamentary inquiries do not provide the exact number of minors who have been expelled from Germany for this reason.

In Spain, Organic Law 5/2000 on the criminal responsibility of minors does not provide for expulsion as a sanction for convicted foreign minors. This possibility is also not included in the Immigration Act. However, because this item concerns a practice, a qualitative exploration was conducted to assess the situation. Key informants from various sectors—police, judiciary, prosecution, civil society, child protection centres, detention centres, and the Spanish Ombudsman—were individually asked specific questions. The responses were unanimously negative: in Spain, foreign minors convicted of an offense are not deported. Nevertheless, a conviction within the juvenile justice system may result in non-renewal of a residence permit upon reaching the age of majority, which could lead to deportation due to irregular status. This circumstance falls outside the scope of item 126, as the offense itself is not the direct cause of removal.

In Poland, the 1982 Juvenile Penal Code also does not provide for deportation as a sanction following the commission of an offense, and therefore police statistics on juvenile sanctions do not record any such actions. Expert consultation confirms that offenses committed by minors under 16 do not generate a criminal record, and thus they cannot be expelled for committing an offense. The situation is slightly different for 17-year-olds: although expulsion is not included in the Penal Code as a sanction, residence permits can be denied

for this reason. However, this potential situation cannot be included under the item, as it constitutes an indirect administrative consequence of the conviction rather than a direct cause of deportation, as is the case in Spain.

In Italy, Legislative Decree 25 July 1998, n. 286, the consolidated text of immigration and foreigner statutes, establishes that the removal of foreigners under 18 is not permitted, except if authorized by the Ministry of the Interior for reasons of public order or national security. Statistics from this Ministry indicate that foreigners may be expelled for actions suspected of international terrorism, but these data are not broken down by age. To determine whether this practice applies to minors, the director of the Organizational Unit on Deprivation of Liberty and Migrants of the National Ombudsman's Office was contacted. He confirmed that no statistical data exist on this matter and stated that in the past five years no cases of deportation of offending minors had been reported, suggesting that such practice have never occurred in this population group.

In Finland, the Immigration Act, in its Article 6, specifies that the best interests of the child must always be considered when applying the law to minors. This criterion guides all deportation cases under the statute. Although the law does not explicitly exclude the possibility of deporting foreign minors for offenses, no cases are known in practice where minors have been expelled for committing an offense. This is confirmed by official statistics, press reports, and consulted experts.

In Romania, according to the Penal Code, accessory penalties can only be applied to adults, including the prohibition for a foreigner to remain in Romanian territory. Therefore, if a minor commits an offense, the criminal court cannot impose such a sanction. However, the Immigration Act does not exclude this possibility if the foreign minor is considered "dangerous," one of the criteria for danger being the commission of an offense, provided the parents do not have legal residence in the country. Consequently, the law does not explicitly preclude deporting foreign minors for committing an offense. Nevertheless, after reviewing official statistics, institutional websites, and news sources, no cases of deportation of minors for this reason were found in practice. Furthermore, the consulted Ministry of Justice confirmed that in the past five years no minors had been declared dangerous nor were any return orders issued against them, and that this likely has never occurred.

In France, deportation of foreign minors for offenses is neither legally provided for nor applied in practice. The *Code on the Entry and Residence of Foreigners and the Right of Asylum* establishes that a foreigner may be expelled if they constitute a serious threat to public order (art. L631-1), but art. L631-4 explicitly exempts

minors under 18 from removal. The official French administration portal confirms that minors cannot be deported, except when accompanying their parents in the event of parental deportation. Additionally, the *Juvenile Criminal Justice Code*, in force since September 2021, reinforces this protection by explicitly excluding any penalty of expulsion or residence prohibition for minors (art. L121-1). Experts consulted also indicated that, in practice, unaccompanied foreign minors are not expelled, even when they commit offenses.

In Portugal, although the law does not explicitly prohibit the removal of minors, in practice there is no evidence that such practice occur, and experts confirm that minors in general, and offending minors in particular, are not being deported from Portugal.

4. Discussion

It is a well-established fact in academia that migrants are in a disadvantaged position vis-à-vis the criminal justice system. It is often criticized that criminal policy, when addressing migrants, abandons its retributive and preventive objectives to focus instead on border control with a neutralizing effect.

The RIMES instrument did not include a pool on immigration/foreigner policy because, as in the case of drugs, this does not appear to be a field of criminal policy where meaningful cross-country discrimination can be assessed. Nevertheless, three items related to immigration were validated by international experts as highly capable of generating social exclusion. A summary of the results of these three items across the jurisdictions analysed is presented in the following Table 2:

Table 2. Results of items related to immigration by jurisdiction

Geographic scope	Jurisdictions	Item 11	Item 88	Item 126	Total
Anglo-Saxon jurisdictions	California	YES	YES	YES	3
	Florida	YES	YES	YES	3
	Nueva York	YES	YES	YES	3
	Texas	YES	YES	YES	3
	England & Wales	YES	YES	YES	3
Continental Europe	Germany	YES	YES	YES	3
	Spain	YES	YES	NO	2
	Finland	YES	YES	NO	2
	France	YES	YES	NO	2
	Italy	YES	NO	NO	1
	Poland	NO	YES	NO	1
	Portugal	YES	NO	NO	1
	Rumania	NO	YES	NO	1

If we consider the results summarized in Table 2, it can be observed that the group of Anglo-Saxon countries is highly exclusionary in immigration matters, as all scored positively on all three items. Germany joins this group, responding in the same way, and distancing itself from the rest of continental European countries. Discriminatory policing practices are present in all the geographic areas analysed except in Poland and Romania. However, the absence of evidence in the Polish case stems from an inability to obtain information, which is not equivalent to confirming the non-existence of discriminatory practices. This distinction is central: data invisibility—whether due to lack of collection, opacity in publication, or institutional reluctance to report sensitive indicators—can artificially lower exclusion scores and obscure structural problems. In this regard, item 11 should be interpreted cautiously, as it captures not only the presence of discriminatory policing but also the degree of transparency and institutional accountability of each jurisdiction. From this perspective, lack of transparency should itself be conceptualised as a risk factor for social exclusion, since it prevents effective oversight, impedes evidence-based policymaking, and tends to occur precisely in contexts where vulnerable groups are most exposed to discriminatory interventions.

Item 88 shows findings initially similar to the previous one. In all countries, except Italy and Portugal, legal foreign residents can be deported for committing a crime carrying a custodial sentence of less than one year or another type of penalty. The most notable difference compared to the previous item is that, while insufficient data were obtained to respond to item 11 in Poland, for item 88 it has been explicitly verified that this item does not occur in Italy and Portugal. This allows the discriminatory capacity of this item to be considered for international comparisons.

Of the three RIMES items related to immigration, item 126 has the greatest discriminatory capacity. Of the thirteen jurisdictions analysed, seven do not present this item (Spain, Finland, France, Italy, Poland, Portugal, and Romania) and four do (Germany, California, Florida, England and Wales, New York, and Texas). It is not surprising that the U.S. states (California, Florida, New York, and Texas) deport minors for committing a crime, considering that the U.S. is one of the few countries in the world (along with Somalia) that have not ratified the 1989 UN Convention on the Rights of the Child. More surprising is that this also occurs in Germany and England and Wales, which are signatories to the Convention. The case of Italy is also noteworthy: if this item were validated as a rule (and not as a practice), it would join the list of countries with the possibility of deporting immigrant minors for committing a crime, changing the outcome of this item, which currently does not score because Italy has not deported any minors in the last five years, although it could do so. In any case, it should be remembered that the number of deportations is extremely low in all jurisdictions

studied, with a downward trend in recent years, so the social exclusion capacity of this item is currently somewhat limited by its low applicability.

At the same time, the results confirm the presence of exclusionary criminal policy regarding immigration in all analysed countries. None responded negatively to all three immigration items. Importantly, this points to a shared feature across penal systems with significant social exclusion effects due to its high frequency: ethnic-based discriminatory policing. Although deportation of regular immigrants (item 88) is also exclusionary, practical limitations—verification of residency ties, proportionality assessments, and judicial oversight—reduce its frequency, a nuance not fully captured by RIMES. The same occurs with item 126: despite its strong discriminatory potential, its real-world application is extremely low.

As noted at the beginning, on the continuum from less to more social exclusion (Figure 1), Anglo-Saxon countries are closest to the extreme of highest exclusion. Spain, in contrast, is characterized by having the lowest social exclusion capacity, positioned near the extreme of least exclusion. This dynamic also appears in some pools, specifically pool 9 on the juvenile justice system, among others. However, in pool 1 on public space control, Poland is the least exclusionary country, and in pool 7 on the legal and social status of offenders and ex-offenders, it is Italy. Spain's loss of the position of lowest social exclusion in pool 1 is due to responses to item 11 on discriminatory policing in public spaces, and in pool 7 it is due to item 88 on the deportation of foreign offenders sentenced to less than one year of imprisonment or another type of penalty. In both cases, Spain's position shifts from the lowest social exclusion among all analysed jurisdictions to an intermediate position between Poland and Italy (lower social exclusion) and the Anglo-Saxon jurisdictions and Germany, which score on all three immigration-related social exclusion items.

Thus, it can be concluded that Spanish criminal policy tends to be more exclusionary than that of Poland, Portugal, Italy, and Romania in immigration matters, even though in the overall RIMES instrument ranking, Spanish criminal policy is closest to the pole of least exclusion (see Figure 1). Germany also diverges from its general position, leaning toward exclusionary practices in the migration domain despite a more moderate stance in other areas of criminal policy.

These findings confirm the modulating function of the RIMES instrument: analysing criminal policy by substantive pools provides a more nuanced and accurate understanding of national penal systems. This supports earlier hypotheses articulated by Díez Ripollés (2011, 2013), specifically regarding how

focusing on a single criminal policy area can distort comparative evaluations of penal systems.

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Given these findings, it is crucial for the international community to focus on a domain of migration-related penal intervention that is both widespread and highly exclusionary: discriminatory policing practices. In this regard, the experience of several jurisdictions offers good practices that could guide reform efforts, including: systematic collection and publication of stop-and-search data disaggregated by ethnicity, as implemented in the United Kingdom following the Equality Act 2010; independent oversight bodies empowered to investigate police discrimination, such as the *Independent Police Complaints Commission* (UK) or Spain's *Defensor del Pueblo* with expanded monitoring function; mandatory bias-awareness and anti-profiling training, which has shown positive impact in Scandinavian police forces; or clear legal prohibitions against ethnic profiling, adopted in Portugal and recommended by bodies such as the European Union Agency for Fundamental Rights (FRA). Correcting this international trend—one with substantial exclusionary potential—is essential for promoting more inclusive societies where public spaces can function as zones of social interaction, cohesion, and cooperation.

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