

# ALIGNING IMMIGRATION AND CRIMINAL SYSTEM DEMANDS FOR COVID-19

Without immediate and large-scale decarceration and decriminalization, the US death toll from COVID-19 is at risk of doubling. Yet police departments continue to carry out arrests and channel more people into jails and prisons, and Immigration and Customs Enforcement (ICE) continues to detain and deport people.

Communities working to transform the criminal legal and immigration systems are taking action to prevent massive loss of life in prisons, jails, and detention centers. Police arrests and criminal prosecution open a pipeline to ICE detention and deportation, for documented and undocumented people alike. Just as in jails and prisons, physical distancing is impossible for tens of thousands of immigrants in detention centers. Public health guidelines are callously flaunted on a daily basis.

When a detained person is exposed to COVID19, ICE places groups of people who may have shared jail spaces or come into contact with that person in close-quarter “cohorts,” against CDC recommendations for social distancing. People behind bars in unsafe conditions include those who cannot pay bonds granted by the immigration judge or whose release is delayed because of this “cohorting” policy, and people held in jail because they can't make bail. The emerging data paints a terrifying picture: on a recent deportation flight, a shocking total of 70% of the people onboard tested positive for COVID19.

As we work toward dismantling these unjust systems, there is opportunity to highlight the intersections of our efforts and identify shared goals. Below is a chart of related demands across criminal and immigration issues aimed at reducing the number of people that enter, and releasing as many people as possible from jails and prisons, and detention centers. The chart below organizes COVID-19 demands by target and has three fields. On the left, broad criminal system demands. On the right, specific criminal system demands that can impact immigrants at risk of being funneled into ICE detention and deportation during this public health emergency. In the middle, some context for how those demands intersect. This is not a complete list, but rather a starting point for us all to consider our demands more broadly.

Criminal System Demands	Intersectional Impact for Immigrants	Immigration-Specific Demands in the Criminal System
<b>Target: Police</b>		
<ul style="list-style-type: none"> <li>• Reduce arrests by reducing disparate policing, using diversion programs, and referring people to social services.</li> <li>• Give citations instead of taking people into custody.</li> <li>• Do not make arrests based solely on bench warrants for unpaid fines or incomplete community service.</li> <li>• Do not cite or arrest people for offenses related to curfew, shelter in place or quarantine orders (e.g. disorderly conduct, obstruction of justice, reckless endangerment).</li> </ul>	<p>Immigrants are doubly impacted by an arrest because it often starts the pipeline to deportation. Some local police communicate with ICE about individuals and help facilitate their transfer into ICE's hands.</p> <p>ICE also has access to law enforcement data, so once an immigrant is in criminal custody, they are at risk of transfer into ICE custody, where ICE has refused to release people during the COVID-19 crisis, even though it has the discretion to do so.</p> <p>For documented and undocumented immigrants, convictions for these charges are very often the trigger for deportation and ICE detention.</p>	<ul style="list-style-type: none"> <li>• Suspend collaboration with ICE and Border Patrol, both formal agreements and informal cooperation.</li> <li>• Do not hold people so that ICE can come pick them up or inform ICE of release dates, pursuant to detainers or other requests.</li> <li>• Do not conduct joint operations with ICE to arrest people for immigration violations.</li> <li>• Do not ask for interpretation assistance from Border Patrol during traffic stops.</li> <li>• Do not use local resources to support federal prosecution for immigration-related offenses, which results in a direct line to ICE detention and deportation.</li> </ul>



Criminal System Demands	Intersectional Impact for Immigrants	Immigration-Specific Demands in the Criminal System
<b>Target: Prosecutors</b>		
<ul style="list-style-type: none"> <li>• <b>Prevent people from going into jail:</b> Decline to prosecute, dismiss charges, refer to social services, consent to alternatives to incarceration, defer prosecution. Consent to release on recognizance (ROR) -- quick release without bail.</li> <li>• <b>Facilitate getting people out of jail:</b> Consent to ROR. Agree to resentencing to facilitate release.</li> </ul>	<p>A criminal case often triggers deportation. It can make a person lose their green card, DACA, TPS (Temporary Protected Status) or asylum. It can be the sole roadblock preventing an otherwise eligible person from getting immigration status.</p> <p>Alternatives to prosecution can help disrupt this pipeline. In some places, ROR can prevent transfers into ICE custody (depending on local laws and policies on responding to immigration detainers and working with ICE).</p>	<ul style="list-style-type: none"> <li>• Agree to requests for post-conviction relief for problematic convictions and resentencing motions.</li> <li>• Work with defense attorney to find a plea with neutral immigration consequences. These can help get immigrants released from detention and allow people to keep or remain eligible for lawful status.</li> </ul>
<b>Target: Parole and Probation Agencies</b>		
<ul style="list-style-type: none"> <li>• Suspend in-person check-in requirements.</li> <li>• Suspend reporting people for technical violations, such as failure to report (especially given the need for social distancing and transportation shutdowns).</li> </ul>	<p>ICE has targeted parole and probation check-ins to detain immigrants, leading to fear in immigrant communities that complying with requirements will mean detention and deportation.</p>	<ul style="list-style-type: none"> <li>• Do not call or collaborate with ICE officers trying to pick people up on immigration violations.</li> </ul>

Criminal System Demands	Intersectional Impact for Immigrants	Immigration-Specific Demands in the Criminal System
<b>Target: Courts</b>		
<ul style="list-style-type: none"> <li>• Order ROR, or use the least restrictive measures of supervision available.</li> <li>• Do not issue bench warrants.</li> <li>• Do not sentence people to imprisonment for probation violations or nonpayment of fines and fees.</li> <li>• Grant defense motions to resentencing people to facilitate release.</li> </ul>	<p>ICE has targeted immigrants attending court, leading to widespread fear in immigrant communities.</p> <p>In many cases, being held in jail or prison ends in a direct transfer to ICE detention.</p> <p>Post-conviction relief can mean the difference between an immigrant facing detention and deportation and being free to remain in the U.S.</p>	<ul style="list-style-type: none"> <li>• Protect access to courts by refusing to let ICE arrest people in courthouses.</li> <li>• Expedite post-conviction relief motions.</li> </ul>
<b>Target: Sheriffs</b>		
<ul style="list-style-type: none"> <li>• Use any existing authority to release people.</li> </ul>	<p>Some detained immigrants are held at local jails, not at federal detention centers. These local jails individually contract with the federal government to incarcerate people for ICE.</p> <p>Immigrants held in criminal custody are at risk of transfer into ICE custody if/when they are released, and ICE has refused to release people in their custody during the COVID-19 crisis, even though it has full discretion to do so.</p>	<ul style="list-style-type: none"> <li>• For sheriffs with ICE contracts: stop accepting people detained by ICE. As the resident healthcare provider, flag high-risk individuals to ICE for release.</li> <li>• Suspend collaboration with ICE and Border Patrol, both formal agreements and informal cooperation. If a person is to be released, do not hold people so that ICE can come pick them up.</li> <li>• Do not use local resources to support federal prosecution for immigration-related offenses.</li> </ul>

Criminal System Demands	Intersectional Impact for Immigrants	Immigration-Specific Demands in the Criminal System
<b>Target: Governors</b>		
<ul style="list-style-type: none"> <li>Grant pardons, clemency, commutations to facilitate getting people out of jail and prisons</li> </ul>	<p>A pardon can completely remove the basis for someone's deportation, and help facilitate their release from detention.</p>	<ul style="list-style-type: none"> <li>Include immigration impact as a factor in granting pardons and clemency requests to immigrants facing detention and deportation.</li> </ul>
<b>Bail Payment - Immigration and Criminal Systems</b>		
<ul style="list-style-type: none"> <li>Allow remote or online posting of bail, so people do not have to risk their health or hunt for limited transportation options to win the freedom of their loved ones in pre-trial detention.</li> </ul>	<p>When immigrants cannot post bail during pre-trial detention in the criminal system, they are also more likely to be transferred into ICE custody after their criminal case if dismissed or sentence, if any, is completed.</p> <p>In the immigration bond system, ICE requires nonprofit bond funds and individuals to pay bonds in person even though it has an electronic system. At the same time, they are closing bond windows to foreclose even that options. These barriers put people paying bond at risk and leads to more immigrants remaining in detention.</p>	<ul style="list-style-type: none"> <li>Allow individuals and organizations to post remote bond (e.g. through eBond, currently limited to registered sureties only), and allow in-person bond payments where permitted by public health recommendations.</li> <li>Do not block the release of immigrants through a dangerous "cohorting" policy.</li> </ul>
<p><b>Include immigration detention centers in any demands for safety and hygiene supplies, medical care, COVID-19 tests, access to counsel, communication with family and friends, etc. This should include detention centers that are operated by the federal government, local jails with ICE contracts and private facilities.</b></p>		