To:	Transition Team for Governor-elect Lamont and Lt. Governor-elect Bysiewicz
From:	Crim-Imm Working Group, Criminal Justice Committee
Re:	Crim-Imm Policy Recommendations
Date:	December 31, 2018

This memo provides guidance regarding the intersection between our state criminal legal system and federal immigration enforcement.

I. BACKGROUND

Nearly 15% of Connecticut residents were born in another country, and more than 14% are native-born with at least one immigrant parent. More than 120,000 undocumented immigrants are living in Connecticut. Immigrants comprise at least 17% of the state's labor force.[1]

With the rise of anti-immigration rhetoric and the escalation of immigration enforcement under President Trump, Connecticut's immigrants are living in terror of incarceration and deportation. The majority of immigration enforcement in Connecticut is occurring through our "crim-migration system," which refers to the growing coordination between local and state law enforcement and federal immigration agencies. Under President Trump, approximately 75% of ICE arrests nationwide have involved people detained by state or local law enforcement.[2]

In the past, Connecticut immigrants have been protected to some degree from ICE by the 2013 TRUST Act, which prohibits some forms of collaboration among state and local law enforcement. However, the protections of the TRUST Act have weakened with the rise of new ICE enforcement tactics. When the TRUST Act went into effect, Connecticut was the national leader on policies that protect immigrants from deportation. Now, we have fallen far behind our peers. Immediate executive and legislative action is needed to restore our status as a sanctuary state and to protect immigrant communities.

II. RECOMMENDED ACTIONS

- **Identify a point person within the administration to liaise with immigration advocacy groups.** The Connecticut Immigrant Rights Alliance (CIRA) is a coalition of immigrant, faith, labor, youth, community, and business dedicated to improving the lives of Connecticut's diverse immigrant community. Under Governor Malloy, CIRA maintained a direct line of communication with Under Secretary of Criminal Justice Mike Lawlor, who responded as necessary to immigration-related needs. It is advised that the Governor-elect identify an individual in his administration who can liaise directly with CIRA and its member organizations.

- **Support a strengthened TRUST Act in the legislative session.** Although the 2013 TRUST Act (Public Act No. 13-155) limits state and local law enforcement from

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[1] American Immigration Council, https://www.americanimmigrationcouncil.org/research/immigrants-connecticut
[2] TRAC Immigration, http://trac.syr.edu/immigration/reports/529/.

detaining some individuals at the request of ICE, ICE has greatly expanded its deportation dragnet in recently years, utilizing backdoor database access, vague administrative forms, and other means to exploit state and local resources to target individuals. Federal courts have deemed many of ICE's actions illegal and unconstitutional. We recommend adopting a stronger state policy that prohibits a broad set of law enforcement agencies from honoring any ICE detainer requests, absent a valid federal judicial warrant to legally compel such detention. The updated TRUST Act, which will be advanced in the 2019 legislative session, does as follows: (1) prohibits state and municipal police departments, Department of Correction staff, Judicial and State Marshals, and probation officers from holding or facilitating transfer of individuals to ICE without a judicial warrant; (2) prohibits state and municipal law enforcement agents from performing any functions of immigration officers; (3) restricts ICE access to state and municipal databases; (4) restricts the transfer of confidential information about individuals to ICE; (5) restricts ICE access to incarcerated individuals; (6) requires the State of Connecticut to make public all state and local communications with ICE; and (7) requires cities to furnish monthly reports regarding any ICE access to individuals, including demographic and detainer data.

- **Support the Misdemeanor Sentencing Bill in the legislative session.** Presently, Connecticut's 365-day maximum sentence for class-A misdemeanors creates major, disproportionate consequences for noncitizens, turning some state misdemeanors into "aggravated felonies" under federal immigration law. A Green Card holder convicted of a single low-level, nonviolent misdemeanor offense can be subject to mandatory detention and deportation. Reducing the maximum sentence for class A misdemeanors by a single day (from 365 days to 364 days) will limit the disproportionate consequences for Connecticut's immigrants and their families. Four states have already enacted similar changes to protect families, save costs, and simplify plea-bargaining in state court. In the 2018 legislative session, a bill addressing this issue (HB5544) was recommended by the Connecticut Sentencing Commission and passed out of committee with bipartisan support.

- **Pursue the below-listed reforms in the Department of Correction (DOC).** In the past few years, DOC collaboration with ICE has increased. In the past year alone, it has become impossible for anyone with an immigration detainer to be bailed out of Connecticut pretrial detention (despite DOC Administrative Directive 9.3, which forbids detention solely on the basis of an immigration detainer, barring certain enumerated conditions, such as placements on terrorist databases). These ongoing practices violate Connecticut state law (the TRUST Act), DOC administrative policy, and possibly the U.S. Constitution, which places Connecticut at risk of civil litigation. Additionally, several advocacy groups have reported that ICE agents are regularly operating in our jails, sometimes misrepresenting themselves as removal defense attorneys to obtain information from incarcerated individuals. To address these and other issues with DOC facilities, we advise:

    o *Prohibit DOC staff from detaining individuals on the basis of an immigration detainer or an administrative warrant.* Several federal courts, state courts, and

district courts have continued to rule that holding someone solely on the basis of an immigration detainer is unconstitutional. ICE has clarified that immigration detainers are only requests—not judicial warrants. Any law enforcement agency that prolongs the detention of anyone on the basis of an administrative warrant or an immigration detainer is likely in violation of the U.S. Constitution.

o *Eliminating the notification of ICE of release dates and times or other information about inmate status.* Presently, DOC staff have a practice of notifying ICE about release dates and times for incarcerated individuals. Notably, this includes "courtesy calls," delivered to ICE when an individual is being bailed out from DOC facilities. These courtesy calls are responsible for numerous ICE arrests on a daily basis, and they are contrary to the spirit of the Trust Act and Administrative Directive 9.3.

o *Prohibit DOC staff from communicating confidential information about individuals, like immigration status, to ICE.* ICE officers decide who they will interview, target, and arrest through access to confidential information that is collected by the DOC and shared with ICE. Collecting and sharing this information incentivizes racial profiling not only by ICE officers, who will routinely interrogate people based on where they were born, but within DOC. Unless required by federal law, the state of Connecticut is under no obligation to share this information with the federal government.

o *Prohibit ICE from entering DOC facilities for the purposes of interrogating an individual while in custody.* ICE agents have been known to use deceptive practices to elicit information to arrest individuals and place them in removal proceedings. Individuals in custody have reported that ICE agents questioned them without identifying themselves as such, or, worse, misrepresented their identity. This enforcement tactic creates mistrust, stress, and anxiety in people under DOC custody. Additionally, by allowing ICE to access jails, DOC is complicit in the deportation of members of our community. Several local jurisdictions, like Washington, DC, have enacted policies that prohibit the entrance of ICE agents into jails without a court order.

o *DOC shall provide the appropriate training for all relevant officers, agents, and employees to ensure that the policies called for are disseminated and properly enforced.* Since the inception of the Trust Act and the Administrative Directive 9.3, DOC staff has violated these policies on multiple occasions. DOC should provide regular trainings to its staff to avoid violations.

- **Pursue the below-listed reforms within the State Judicial Branch.** State judicial marshals are not required by federal law to enforce immigration law. However, state marshals (under the Judicial Branch) are enforcing ICE detainers, thereby diverting state resources to assist enforcement of federal immigration law. These practices discourage victims of crime, witnesses, and family members from reporting crimes or appearing in court due to fear of deportation. By contrast, DOC (discussed above) has effected

policies that limit ICE detainer enforcement to instances when: (1) the detainer indicates a serious felony conviction, (2) the detainer indicates placement on a terrorist watch list, or (3) the detainer, accompanied by a judicial warrant, indicates a final order of deportation or removal. At least 78% of detainers that the judicial marshals enforced between September 2016 and October 2017 would not have been enforced under DOC policy.[3] Individual judicial marshals currently have broad discretion to enforce these detainers, which invites disparities and the potential for abuse. Between September 2016 and October 2017, nearly 56% of individuals detained pursuant to ICE detainers enforced by marshals in Connecticut had their detention authorized by a one individual judicial marshal.[4] Although these matters fall under the Judicial Branch, the Governor could address these issues through conversation and education with key stakeholders. To address escalating ICE enforcement in state courthouses, we advise the following:

- o *Strengthen the TRUST Act* (as discussed above) so that it explicitly applies to judicial marshals.

- o *Conform Judicial Marshal Service policy to the DOC policy.* This includes limiting enforcement of ICE detainers to select categories.

- o *Provide clearer guidance and better training to Judicial Marshals.* The Judicial Branch must provide clearer guidance and better training to individual marshals to minimize disparities between individual marshals and between geographic areas in enforcing civil immigration detainers.

In addition, individuals detained by ICE with pending state criminal charges—and those already deported—are receiving additional charges for failure to appear for state court proceedings. (Failure to appear in the first degree is a class D felony and failure to appear in the second degree is a class A misdemeanor). These individuals have no ability to physically appear in state court if they are in immigration detention or have been deported. Coordination and communication should occur to prevent this result.

III.   PRIORITIES & IMPACT

The prison-to-deportation pipeline is rapidly expanding in Connecticut, causing serious trauma in immigrant communities and jeopardizing public trust in our court system. The Governor has the immediate power to (1) identify a point person in his administration to liaise with immigration advocacy organizations, and (2) effect changes within the policies and practices of the Department of Correction to protect incarcerated immigrants from excessive punishment. The Governor also has the power to provide critical support in the legislative effort to pass the updated TRUST Act and Misdemeanor Sentencing Bill. Enacting these bills will go a long way towards protecting our communities and restoring our past status as a national leader on immigrant rights.

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[3] Data supplied by the Connecticut Immigrant Rights Alliance.
[4] *Id.*