



Fighting for equal justice for all immigrants  
at risk of detention and deportation

[www.caircoalition.org](http://www.caircoalition.org)

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## **IN SUPPORT OF SB 265**

**To: Senate Judicial Proceedings Committee**

**From: Capital Area Immigrants' Rights (CAIR) Coalition**

**Date: January 31, 2022**

**Re: Written Testimony in support of Senate Bill 265, Probation Not Deportation**

The Capital Area Immigrants' Rights (CAIR) Coalition—the only non-profit organization in Maryland with a legal services program focused exclusively on assisting detained immigrants—urges the Maryland legislature to vote in favor of SB 265 and amend the Maryland Probation Before Judgment (PBJ) statute so that this disposition in state criminal court will no longer be considered a conviction under federal immigration law. The passage of this bill would significantly benefit the state of Maryland by reducing the state's detained immigrant population and reforming a judicial mechanism that disproportionately harms Black and brown immigrants in the state.

Each year, the U.S. government detains nearly 500,000 immigrants.<sup>1</sup> It operates more than 200 immigration detention centers, which hold a daily average of over 50,000 people.<sup>2</sup>

At any given time, approximately 1,600 adults are detained by Immigration and Customs Enforcement (ICE) in DC, Maryland, and Virginia.<sup>3</sup> Immigration detention is a form of

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<sup>1</sup> Immigration Detention 101, Detention Watch Network, <https://www.detentionwatchnetwork.org/issues/detention-101>.

<sup>2</sup> Rachel Trafford & Peter Markham, *Immigration Detention: The Mental Health Impacts*, MAD IN AMERICA (Nov. 19, 2020), <https://www.madinamerica.com/2020/11/immigration-detention-mental-health/>.

<sup>3</sup> Detained Adult Program, Cap. Area Immigrants' Rts. Coal., <https://www.caircoalition.org/what-we-do/detained-adult-program>.



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systematized, often lethal<sup>4</sup> cruelty that physically and mentally traumatizes immigrants.<sup>5</sup> This cruelty has only worsened and expanded its reach during the COVID-19 pandemic, as ICE has deported COVID-infected immigrants to other countries,<sup>6</sup> contributed to COVID-19 outbreaks in U.S. communities,<sup>7</sup> and facilitated the COVID-related deaths of detained immigrants.<sup>8</sup> Detention centers in Maryland and Virginia have seen multiple major COVID-19 outbreaks.<sup>9</sup>

SB 265 will ease the horrific impact of immigration detention during the COVID-19 pandemic and beyond by reducing the number of Maryland immigrants detained by ICE after receiving a Maryland PBJ. Of CAIR Coalition clients or potential clients who received Maryland PBJs, at least 53% were detained by ICE after time spent in criminal custody, at a probation office, or after leaving court.<sup>10</sup> Amending the PBJ statute would reduce the number of Maryland immigrants who are detained because their PBJ is a conviction under federal immigration law. By granting power to prosecutors and judges to impose a more equitable PBJ disposition for

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<sup>4</sup> Deaths at Adult Detention Centers, American Immigration Lawyers Association, <https://www.aila.org/infonet/deaths-at-adult-detention-centers>.

<sup>5</sup> César Cuauhtémoc García Hernández, *Abolish Immigration Prisons*, NY TIMES (Dec. 2, 2019), <https://www.nytimes.com/2019/12/02/opinion/immigration-detention-prison.html>.

<sup>6</sup> Human Rights Watch, *US: Suspend Deportations During Pandemic*, HUMAN RIGHTS WATCH, (June 4, 2020, 9:00 AM), <https://www.hrw.org/news/2020/06/04/us-suspend-deportations-during-pandemic>.

<sup>7</sup> Stephen Stock, *COVID-19 Outbreaks May Arise From Immigrant Detention Centers, Doctors Say*, NBC BAY AREA, <https://www.nbcbayarea.com/investigations/covid-19-outbreaks-may-arise-from-immigrant-detention-centers-doctors-say/2289775/>.

<sup>8</sup> Caroline Lee, *COVID-19 deaths in ICE detention demand medical action now*, THE HILL (June 4, 2020, 7:30 PM), <https://thehill.com/opinion/immigration/501261-covid-19-deaths-in-ice-detention-demand-medical-action-now>.

<sup>9</sup> Dean Mirshahi, *Amid Major COVID-19 Outbreak, Judge Blocks Transfers Into ICE Detention Center In Farmville*, ABC 8 News, (Aug. 11, 2020, 12:12 PM), <https://www.wric.com/news/virginia-news/cdc-team-begins-work-to-address-covid-19-outbreak-at-ice-detention-center-in-farmville/>; Brad Petrishen, *Worcester County jail on modified lockdown: Uptick in COVID-19 cases prompts facilities to limit inmate movements*, TELEGRAM & GAZETTE (Jan. 4, 2021, 8:20 PM), <https://www.telegram.com/story/news/courts/2021/01/04/worcester-county-jail-modified-lockdown-after-uptick-covid-19-cases/4134940001/>.

<sup>10</sup> Internal CAIR Coalition data.



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noncitizen Marylanders, Probation Not Deportation will ensure that more Maryland residents can remain healthy, safe, and free from the harmful confines of immigration detention.

Furthermore, Probation Not Deportation will help protect Black and brown immigrants disproportionately harmed by the U.S. criminal legal system. The U.S. criminal legal system has long served as a direct funnel to the immigration legal system. Black and brown immigrants are more likely to have encounters with law enforcement and to be charged and prosecuted for crimes which lead to deportation.<sup>11</sup> While in custody, black immigrants are six times more likely to be sent to solitary confinement and are more likely to lose their legal cases for immigration relief.<sup>12</sup> Black and brown immigrants are more likely to be deported because of the prevalence of racial profiling and discriminatory policing in the United States.<sup>13</sup> Of CAIR Coalition clients or potential clients who received Maryland PBJs, 99% were Black or brown.<sup>14</sup> The passage of Probation Not Deportation will help protect Black and brown noncitizen Marylanders from disproportionate detention and deportation because a Maryland PBJ would no longer be a conviction under federal immigration law.

Finally, though the Biden administration is now working to undo many of President Trump's harmful immigration policies, this is an enormous undertaking that will last several

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<sup>11</sup> UndocuBlack Network and Cap. Area Immigrants' Rts. Coal., Fact Toolkit, <https://www.caircoalition.org/sites/default/files/5KforJustice%20-%20Toolkit%20FULL%20LINKS.pdf>.

<sup>12</sup> *Id.*

<sup>13</sup> The discriminatory and broken criminal justice system has cascading immigration consequences, IMMIGRANT JUSTICE NETWORK & NATIONAL IMMIGRANT JUSTICE CENTER, [https://www.ilrc.org/sites/default/files/resources/criminal\\_racial\\_justice\\_background\\_final1.pdf](https://www.ilrc.org/sites/default/files/resources/criminal_racial_justice_background_final1.pdf).

<sup>14</sup> Internal CAIR Coalition data.



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years.<sup>15</sup> In addition, the immigration consequences of a PBJ disposition cannot be addressed by the federal executive branch alone. The definition of a conviction under federal immigration law is codified in the Immigration and Nationality Act.<sup>16</sup> It would therefore require an Act of Congress to change this definition at the federal level so that Maryland's existing PBJ disposition would no longer be considered a conviction under federal immigration law. Considering the elusive nature of congressional consensus, state legislatures are uniquely equipped to take action in defense of immigrant communities. This bill is a nimble and effective adjustment that the Maryland Legislature can make to its criminal procedure to protect noncitizens.

For the foregoing reasons, the CAIR Coalition strongly urges the passage of this bill. Please do not hesitate to contact me with any questions about this bill or for further discussion.

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<sup>15</sup> Editorial Board, *Trump's Overhaul of Immigration is Worse Than You Think*, NY TIMES (Oct. 10, 2020), <https://www.nytimes.com/2020/10/10/opinion/sunday/trump-immigration-child-separations.html>.

<sup>16</sup> 8 USC 1101(a)(48)(A).