



State of New Jersey
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CRIMINAL JUSTICE
PO BOX 085
TRENTON, NJ 08625-0085
TELEPHONE: (609) 984-6500

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

GURBIR S. GREWAL
Attorney General

VERONICA ALLENDE
Director

July 6, 2019

Sheriff Robert A. Nolan
Cape May County Sheriff's Office
9 North Main Street
Cape May Court House, New Jersey 08210

Dear Sheriff Nolan:

As you know, on November 29, 2018, Attorney General Gurbir S. Grewal issued Law Enforcement Directive 2018-6, also known as the "Immigrant Trust Directive," which limited the types of voluntary assistance that state, county, and local law enforcement officers could provide to federal immigration authorities, including Immigration and Customs Enforcement ("ICE"). Among other provisions, the Directive made clear that law enforcement agencies could not enter into, modify, renew, or extend any agreement to exercise federal immigration authority pursuant to Section 287(g) of the Immigration and Nationality Act, 8 U.S.C. § 1357(g) ("287(g) agreements"), unless the Attorney General granted written approval or the agreement was necessary to address a national emergency. Directive § III.A.

There were good reasons for this requirement. The Immigrant Trust Directive was designed to strengthen trust between New Jersey's law enforcement officers and the state's diverse immigrant communities, thereby ensuring that victims and witnesses felt safe reporting crimes. To accomplish this, the Directive drew a clear distinction between state, county, and local law enforcement officers, who enforce state criminal law, and federal immigration authorities, including ICE, who enforce federal civil immigration law.

The problem with 287(g) agreements is that they blur this distinction. By allowing county and local law enforcement officers to enforce federal civil immigration law, these agreements essentially deputize our state's police officers to operate like ICE agents. This blurring of responsibilities makes it more difficult for residents of New Jersey to understand how different law enforcement agencies operate, in turn undermining the hard-earned trust that New Jersey's law enforcement officers have built with the public. That is part of the reason why, at the time Attorney General Grewal issued the Immigrant Trust Directive, only three law enforcement agencies in New Jersey continued to rely on 287(g) agreements: the Sheriff's Offices in Cape May, Monmouth, and Salem Counties.

In issuing the Directive, the Attorney General sought to strike a reasonable balance between his significant concerns with 287(g) agreements and the operational needs of the three offices that continued to operate under them. Rather than immediately prohibiting New Jersey's state, county, and local officers from exercising their law enforcement authorities pursuant to 287(g) agreements – as the Attorney General clearly has the power to do under the Criminal Justice Act of 1970 – the Directive instead required that law enforcement agencies seek approval from the Attorney General before they renew existing 287(g) agreements or enter into new ones. The purpose of this provision was to give the Attorney General greater oversight of 287(g) agreements, thereby ensuring that such agreements were only used when truly necessary to serve compelling law enforcement purposes. The provision also ensured that the law enforcement agencies that had previously entered into 287(g) agreements had sufficient time to wind down their reliance on ICE resources before declining to renew these agreements.

As you know, most 287(g) agreements – including those entered into by Cape May, Monmouth, and Salem Counties – must be renewed every three years. At the time Attorney General Grewal issued the Immigrant Trust Directive in November 2018, all three agreements were due to expire on June 30, 2019. *See, e.g.*, Memorandum of Agreement between ICE and Cape May County Sheriff's Office, § XXI, Apr. 10, 2017, available at <https://www.ice.gov/doclib/287gMOA/287gCapeMayNj2017-04-10.pdf>. Although the Directive's effective date was March 15, 2019, you had clear notice of the new rules when the Directive was issued in November 2018, and the clear implication was that all three counties would be required to seek approval from the Attorney General if they wished to renew their agreements with ICE when they expired in June 2019.

In case there was any doubt, on April 30, 2019, Attorney General Grewal issued a supplemental memorandum outlining the process any law enforcement agency must undertake to enter into or renew a 287(g) agreement. Among other things, the document included special provisions for agencies whose agreements were expiring before July 1, 2019, so that the Attorney General could prioritize those requests for consideration. *See* Attorney General Memorandum to All Law Enforcement Chief Executives, April 30, 2019, available at https://www.nj.gov/oag/trust/downloads/2019-0430_AG-Memo_287g-Procedures.pdf. In addition, the Attorney General directed a member of his staff to email the memorandum directly to you and to the Sheriffs in Monmouth and Salem Counties to ensure that each of you were aware of the new requirements.

At no point during this process did you or a member of your office contact the Attorney General or his staff to discuss any aspect of the Immigrant Trust Directive or the supplemental memorandum of April 30, 2019. The Cape May County Sheriff's Office ("CMCSO") never submitted any of the information requested in the April 30 memorandum so that the Attorney General could assess the need for a renewal of CMCSO's 287(g) agreement.

For all of these reasons, I was surprised to learn on Friday, July 5, 2019 – after my office was contacted by a reporter seeking confirmation for an upcoming news story – that CMCSO had in fact renewed its 287(g) agreement in February 2019, after the Attorney General had issued the Immigrant Trust Directive but before the Directive had formally gone into effect. The fact that no one in your office ever notified the Attorney General's Office of its February 2019

renewal suggests that you deliberately declined to disclose this information over the past five months.

Given the lack of information provided thus far by your office, as well as the Attorney General's ongoing concern that 287(g) agreements undermine community trust, please be advised that, on August 6, 2019, the Attorney General intends to issue a directive pursuant to his authority under the Criminal Justice Act of 1970 prohibiting officers in Cape May County from exercising their law enforcement authority in connection with your recently renewed 287(g) agreement. The Attorney General will reconsider whether to issue such a directive if and only if your office provides the information listed below, which will allow the Attorney General to determine whether CMCSO's participation in its current 287(g) agreement serves a valid law enforcement purpose.

The requested information – which tracks the information sought in the Attorney General's April 30 memorandum – is as follows:

1. A copy of the 287(g) agreement currently in effect between CMCSO and ICE;
2. A statement, signed by you, justifying why the 287(g) agreement should remain in effect, which must include:
 - a. An analysis of the costs and benefits to CMCSO and to the public of participation in the 287(g) agreement;
 - b. An analysis of the impact that participation in the 287(g) agreement would have on law enforcement's relationship with immigrant communities, including the ability to secure the cooperation of victims and witnesses in law enforcement investigations and their appearance at judicial proceedings;
 - c. An examination of whether any neighboring jurisdictions do not participate in 287(g) agreements and, if they do not, a description of how those jurisdictions protect the safety of their communities without similar agreements;
 - d. A summary of the public's views on the 287(g) agreement, based on at least one public forum hosted by CMCSO, held at a location in Cape May County; and
 - e. At least two years of data regarding the types of assistance that CMCSO has provided to federal civil immigration authorities, similar to the request for information described in Section VI.B.1 of the Immigrant Trust Directive.

Please direct this information to me. In addition, please submit to Thomas J. Eicher, Director of the Office of Public Integrity & Accountability, a copy of any correspondence between CMCSO employees and any other federal, state, county, or local officials regarding the renewal of the current 287(g) agreement that were sent or received between October 1, 2018 and July 5, 2019. After reviewing your submission, our office will contact you if the Attorney

General decides to reconsider his intention to issue a directive limiting the ability of CMCSO officers to exercise their law enforcement authority pursuant to a 287(g) agreement.

Sincerely yours,



Veronica Allende
Director, Division of Criminal Justice

C: Hon. Jeffrey Sutherland, Cape May County Prosecutor
Thomas J. Eicher, Office of Public Integrity & Accountability