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ATTORNEY GENERAL LAW ENFORCEMENT DIRECTIVE NO. 2018-6 v2.0

TO: All Law Enforcement Chief Executives

FROM: Gurbir S. Grewal, Attorney General

DATE: November 29, 2018 (Issued)
September 27, 2019 (Revised)

SUBJECT: Letter Regarding the Immigrant Trust Directive

Issued almost one year ago, Attorney General Directive 2018-6, known as the Immigrant Trust Directive, established new rules to help build trust between New Jersey's state and local law enforcement agencies and our state's large and diverse immigrant communities. As the Directive explained, building trust is important to promoting public safety: when communities do not believe that they can trust law enforcement, they are less likely to report crimes and cooperate as witnesses, thus depriving officers and prosecutors of necessary help in solving crimes and bringing suspects to justice. That makes all New Jersey residents less safe. For that reason, the Directive established clear lines between state, county, and local law enforcement officers, who enforce state criminal law, and federal immigration authorities, who enforce federal civil immigration law.

But the Immigrant Trust Directive was equally clear about what it did not do. Because the focus of the Directive was on public safety, the Directive explicitly rejected the establishment of any "sanctuary" for criminals in New Jersey. Not only did the Directive empower law enforcement officers to enforce all state criminal laws, no matter an individual's immigration status, it also authorized law enforcement (i.e., correctional authorities) to notify Immigration and Customs Enforcement (ICE) about individuals in their custody who have been charged with or convicted of a range of violent or serious offenses—such as murder and sexual assault—and to transfer custody of such individuals to ICE when federal agents pick them up as described in the Directive. In short, under the Immigrant Trust Directive, there was no reason that New Jersey law enforcement agencies would ever have to release an individual who committed a violent or serious offense back into the community rather than into federal custody.

Nevertheless, a number of questions have arisen regarding the ability of state and local law enforcement to notify ICE about individuals who have committed violent or serious offenses. To



address these concerns, and to enhance public safety, I am making two revisions to the Immigrant Trust Directive, both of which are effective on October 4, 2019.

First, the revised Directive updates the list of violent and serious offenses where notice to ICE is permitted, and now includes such crimes as the manufacture and possession of unlawful weapons and all domestic violence assaults. These revisions reflect the ongoing conversations between the Department of Law and Public Safety and law enforcement agencies—who all share a commitment to protecting the public from the most dangerous offenders.

Second, the revised Directive addresses “287(g) agreements,” which allow ICE to deputize county and local law enforcement officers to enforce federal immigration law pursuant to Section 287 of the Immigration and Nationality Act. The Immigrant Trust Directive issued in November 2018 required law enforcement agencies to seek approval from the Attorney General before renewing existing 287(g) agreements or entering into new ones. After learning more about how the state’s two remaining 287(g) agreements work in practice, I have concluded that 287(g) agreements undermine public trust without enhancing public safety—and that any asserted benefits are already being achieved by the Immigrant Trust Directive. Therefore, to ensure statewide uniformity, I am directing that New Jersey’s state, county, and local law enforcement agencies may no longer enter into or operate under 287(g) agreements.

Some context regarding this second revision is helpful. As my Department has noted, the problem with 287(g) agreements is that they blur the distinction between federal civil immigration enforcement and local law enforcement. That blurring ultimately creates confusion regarding the distinct roles of local law enforcement and federal agents, and it makes it less likely that victims and witnesses will cooperate with local police in criminal investigations. *See* Letter from Veronica Allende, Director, Division of Criminal Justice (July 8, 2019) (available at https://www.nj.gov/oag/trust/2019-0927_Letters_To_Monmouth_Cape_May_County_Sheriffs.pdf.) That is part of the reason why, at the time I issued the Immigrant Trust Directive in November 2018, only three law enforcement agencies in New Jersey—all County Sheriff’s Offices—continued to rely on such agreements. Since that time, that number has dropped to two.

According to the county law enforcement agencies that still rely on 287(g) agreements, the primary purpose of these arrangements is to ensure the efficient transfer of violent offenders from county jails to ICE custody. These agencies claim that a 287(g) agreement is necessary to ensure that dangerous individuals are not released “back onto the streets.” That is simply incorrect. The November 2018 Directive explicitly allows any state, county, or local law enforcement agency to refer any individual to ICE who has been charged with a “violent or serious offense,” a term that includes murder, rape, arson, and domestic violence crimes. There is no need for a New Jersey law enforcement agency to enter into a 287(g) agreement—and threaten public trust by blurring the lines between ICE and local law enforcement—when that agency already has the ability to provide federal authorities with the information necessary to protect public safety.

The reality is, most offenders who have been turned over to ICE in New Jersey pursuant to a 287(g) agreement—and, indeed, *all* of the most serious offenders—could have been referred to ICE under the plain terms of the Directive. That is part of the reason why the vast majority of New Jersey’s 21 counties have already proven able to protect public safety without entering into 287(g) agreements of their own.

Ultimately, the Immigrant Trust Directive ensures that anyone who violates New Jersey’s criminal laws can and will be held accountable for their crimes, no matter their immigration status. No additional agreements between state and local law enforcement and federal civil immigration authorities are necessary in order to achieve that goal.



Gurbir S. Grewal
Attorney General

ATTEST:



Veronica Allende
Director, Division of Criminal Justice

Dated: September 27, 2019