

Cultivating Immigrant Trust in the Garden State:

A Report on the Implementation of the New Jersey Immigrant Trust Directive

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About CILPJ

The Center for Immigration Law, Policy and Justice (CILPJ) at Rutgers Law School is an academic center that employs interdisciplinary collaborative research methods, promotes student learning opportunities, and engages with the public to advocate for the adoption of laws that are more inclusive of immigrants and other non-citizens.

Using an interdisciplinary approach, CILPJ explores ways that law and society should and could be more welcoming of immigrants and their families. Through research that examines how law intersects with race, history, theology, anthropology, and other disciplines, CILPJ seeks to better understand how law and society have defined who belongs in the United States. This interdisciplinary research lens informs CILPJ's law and policy initiatives that seek to protect the due process and equal protection rights of immigrants.

CILPJ supports student learning and development in the areas of immigration, citizenship law, and civil rights. By providing fellowships to students, CILPJ offers students the opportunity to conduct legal and policy research and writing projects that highlight current issues facing non-citizens and recommend statutory and policy changes. CILPJ also participates in pro bono projects, including naturalization clinics, which offers students practical experience in both immigration and citizenship law.

Committed to public engagement and knowledge production, CILPJ aims to make its research and findings accessible to communities and a broad audience. Public engagement on immigration and citizenship laws is essential for strengthening and deepening our understanding of the development and adoption of laws that determine who may enter, reside, and become full members of the United States polity and the rights to which they are entitled. By hosting colloquia series, conferences, forums, and other events that are open to the public, CILPJ hopes to advance more equitable and inclusive laws and policies for all, citizens and non-citizens alike.

CILPJ was founded by Professor Rose Cuison-Villazor in 2018, with the generous support of Rutgers University Newark Chancellor Nancy Cantor and the Chancellor Impact Program.

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CILPJ undergraduate fellow Tiffany Fahmy and former CILPJ fellow Alexandra Tran provided research support in collecting and processing records used in this report, conducting research, and maintaining correspondence with law enforcement agencies. Additional support was provided to CILPJ by Rutgers Law School pro-bono volunteers in the process of collecting and processing records.

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About the Funder

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at the municipal, county and state levels of government. The secondary purpose of the Pratt Program is to improve and facilitate the democratic governance of private organizations. Since inception, income from the Pratt Program has sponsored a number of projects related to freedom of information and government transparency.

1. Executive Summary

I. The Immigrant Trust Directive

On November 29, 2018, then-Attorney General of the State of New Jersey Gurbir Grewal issued Attorney General Law Enforcement Directive No. 2018-6, the Immigrant Trust Directive (Directive).¹ The Directive, which first became effective on March 15, 2019, limits certain voluntary assistance that local law enforcement agencies (LEAs) can provide to federal agencies tasked with enforcing U.S. immigration law. It contends that the federal government's increased reliance on state and local agencies to enforce immigration law challenges law enforcement officers' efforts to build trust with immigrant communities. As such, the Directive takes the position that states should not be "responsible for enforcing civil immigration violations except in narrowly defined circumstances" and maintains that "such responsibilities instead fall to the federal government."²

By issuing the Directive, the Attorney General, as New Jersey's chief law enforcement officer³ empowered to issue "guidelines, directives and polices that bind law enforcement throughout"⁴ the state, placed limitations on certain interactions between New Jersey's LEAs and non-citizens and created certain reporting and training obligations. These LEAs include New Jersey's 564 municipalities as well as prosecutors' offices across New Jersey's 21 counties.

The Directive's goals of limiting the involvement of LEAs in law enforcement activities for the sole purpose of enforcing civil immigration law is expressly articulated in a number of sections of the Directive. At the outset, it prohibits LEA officers from engaging in "racially-influenced policing"⁵ and then specifically places limitations on LEA activities. First, it prohibits LEAs from stopping, questioning, arresting, searching, or detaining "an individual based solely on actual or suspected immigration status."⁶ Second, with some exceptions, LEAs are prohibited from inquiring about an individual's immigration status.⁷ LEAs are also proscribed from assisting federal immigration authorities "when the sole purpose" is to enforce immigration law.⁸ Thus, with some exceptions, LEAs shall not participate in civil immigration enforcement, provide federal immigration authorities access to their database or property that are not available to the public, "provide access to a detained individual," provide "notice of a detained individual's upcoming release from custody," or continue the "detention of an individual past the time he or she would otherwise be eligible for release from custody based solely on a civil immigration detainer request."⁹ Third, the Directive prohibits LEAs from entering into agreements with the federal government to enforce immigration law based on Section 287(g) of the Immigration and Nationality Act.¹⁰

The Directive not only imposes limitations but also creates some obligations that LEAs must follow with respect to certain non-citizens with whom they interact. For example, LEAs must create processes to assist individuals who are victims of certain crimes

1 N.J. Office of the Att'y Gen., *Attorney General Law Enforcement Directive No. 2018-6* (Nov. 29, 2018), https://www.nj.gov/oag/dcj/agguide/directives/ag-directive-2018-6_v2.pdf [hereinafter Directive].

2 *Id.*

3 N.J. Stat. Ann. § 52:17B-98.

4 Criminal Justice Act of 1970, N.J. Stat. Ann. §§ 52:17B-97 to -117; *Paff v. Ocean Cty. Prosecutor's Office*, 192 A.3d 975, 986 (N.J. 2018).

5 See Directive, *supra* note 1, at I.

6 See *id.*, at II.A.

7 See *id.*, at II.A.2.

8 See *id.*, at II.B.

9 See *id.*, at II.B.

10 See *id.*, at III.A.

and who cooperate with law enforcement by providing information that aids in the prosecution of those crimes to apply for U and T visas.¹¹ Prosecutors must advise criminal defendants that certain charges and convictions may result in immigration consequences.¹² LEAs are required to notify individuals in their custody “in writing and in a language the individual can understand” when federal immigration authorities seek to interview the individual or obtain information about their release.¹³

The Directive also includes provisions that are designed to ensure that LEAs comply with the Directive. First, it requires them to submit an annual report to the Office of the Attorney General (OAG) any instances in which the LEA assisted immigration authorities in enforcing immigration law,¹⁴ which the OAG is required to publish online. This appears to be the primary method that the public may obtain information regarding LEAs’ compliance with the Directive. Second, LEAs “shall provide training” to its officers regarding the provisions of the Directive before March 15, 2019. Third, LEAs shall adopt or revise, before March 15, 2019, “their existing policies and practices” to be consistent with the Directive.¹⁵

Notably, the Directive provides the general public opportunities to obtain information about compliance with the Directive. First, as already noted, the OAG is required to annually publish reports from LEAs regarding any instances in which the agency assisted immigration authorities.¹⁶ Second, the Directive requires prosecutors to “educate the public about the provisions of the [Directive]” to strengthen trust between law enforcement authorities and immigrant communities.¹⁷

In sum, the OAG, through the Directive, seeks to limit LEAs’ ability to enforce civil immigration laws, creates certain obligations designed to further trust between LEAs and non-citizens, and imposes reporting and training protocols to ensure that LEAs comply with the Directive.

II. Research and Findings

The Center for Immigration Law, Policy and Justice (CILPJ) examined the extent to which LEAs have complied with the Directive over the first three years of its implementation (2019–2021). Using the New Jersey Open Public Records Act¹⁸ and common law right of access, CILPJ sought various records from New Jersey LEAs.¹⁹ These records requests, addressed to records custodians of each LEA, asked for policies, regulations, memorandum, guidance, and forms related to the Directive, including any agreements (such as 287(g) agreements), contracts, or memorandum of understanding in existence between the U.S. Department of Homeland Security, U.S. Immigration and Customs Enforcement (ICE), Homeland Security Investigations, or U.S. Customs and Border Protection (CBP), and the LEA for the date range of November 29, 2018 to the present. CILPJ also requested from LEAs copies of their training records, incident reports, and any records containing quantitative data reports regarding departmental assistance to ICE and CBP as well as any reports, emails, and memorandum that explain the reason, purpose, policy basis, or goal for which the Department accommodated ICE or CBP requests from November 29, 2017 to the present. CILPJ also requested detainee movement logs, which demonstrate how inmates are moved through detention facilities, and communications records such as emails about how the LEA implemented the Directive, how the LEA interacts with or assists ICE and CBP, and how the LEA makes inmate release information available to the public.

Of the 610 LEAs to which CILPJ sent records requests letters, a total of 536 agencies (87%) responded. Of these 536 LEAs, 416 (68% of agencies requested) provided at least one responsive record and 41 agencies (6%) expressly denied the request in its entirety. For more specific information on the records request and response outcomes, see Section 4 of this report.

In general, data collected suggests that the Directive led to a reduction in LEAs cooperating with ICE with

11 See *id.*, at IV.

12 See *id.*, at V.

13 See *id.*, at VI.

14 See *id.*, at VI.B.

15 See *id.*, at VIII.

16 See *id.*, at VI.B.4.

17 See *id.*, at VIII.B.

18 See N.J.S.A.47:1A-1, et seq. [hereinafter OPRA].

19 For additional explanation of the research goals and the process for collecting data as part of the research, see Section 4.

respect to ICE removals assisted by jails and carceral facilities in New Jersey. However, data also demonstrates that LEAs have not consistently complied with the Directive's requirements. In particular, data submitted and analyzed demonstrates that LEAs: failed to adopt compliant policies; failed to meet the Directive's training deadline; failed to maintain required notification forms and consent forms for detainees targeted by ICE for interviews and arrests; shared resources, facilities, and information with ICE; and did not post U-visa and T-visa procedures on their websites. Moreover, based on our review, policy exceptions within the Directive itself may allow LEAs to continue cooperating with immigration authorities.

Notable findings detailed in the report include:

- Of the 416 law enforcement agencies that responded to CILPJ's request by providing records,
 - 221 agencies (53%) adopted an agency-specific Directive-related policy to implement new procedures;
 - 93 LEAs (22%) provided neither a Directive-related, agency-specific policy, rule, or regulation, any other agency policy revised to be compliant with the Directive, or the Directive itself;
 - 102 LEAs (25%) kept on file the Directive itself *without* modifying their existing policies and procedures *and without* adopting any new Directive-related agency policies;
 - 195 LEAs (47%) – those that a) only kept the Directive on file without modifying pre-existing non-compliant agency policies and b) those that did not provide adopted or revised agency policies or the Directive – were not compliant with section VIII.A of the Directive given that neither group made the required revisions to render their internal policies compliant.
- Among those LEAs that did adopt a local Directive-related policy, a large number of them adopted policies that nonetheless did not comply with the Directive for a variety of reasons, including omitting certain prohibitive provisions of the Directive, modifying policy language of the Directive in the agency policy in a way that permits a greater amount of cooperation with ICE, or creating entirely new additions to the outlined permissive cooperation provisions of the Directive. For more in-depth analysis of this issue, see Section 5 of this report.
- One hundred and thirty LEAs used a template policy, "Dealing with the Immigrant Community," primarily drafted by a third party private contractor. In reviewing the template, CILPJ determined that while the template policy was largely compliant with the Directive, the contractor included certain provisions that were not. LEAs in turn developed their policies that were not in full compliance with the Directive. For further information, see Section 5 of this report.
- Of the 32 LEAs identified as Prosecutor's Offices of the State or of one of its counties, only six (19%) provided evidence of having explicitly adopted an agency-specific policy instituting the Directive and directed their subordinate agencies to do likewise. For further information, see Section 5 of this report.
- Of the 290 LEAs analyzed for U-visa and T-visa compliance, only 72 agencies, roughly 28%, correctly posted information about gaining assistance from the LEA with applying for U and T-visas, and related policies, procedures, or forms on their agency or county websites. For further information, see Section 15 of this report.
- Regarding training compliance, of the 220 LEAs analyzed for training compliance, only 26 LEAs complied with the Directive's training provisions by the March 15, 2019 deadline. A total of 79 LEAs had at least one officer who did not complete the training by the March 15, 2019 deadline, eight LEAs had less than five officers who were not trained in time, and 31 LEAs had five or more officers who were not trained in the provisions of the Directive in time. Seventy-five of these 79 LEAs trained their officers within the following two weeks after the March 15, 2019 deadline. Notably, in one case, an LEA obtained training from ICE after March 15, 2019, on a previous OAG directive that facilitated LEA immigration enforcement assistance and that the Directive had replaced. For further information, see Section 6 of this report.
- Two counties in New Jersey remained party to a 287(g) agreement well into late 2019 after the Directive's implementation: the Sheriff's Offices

of Monmouth and Cape May Counties.²⁰ Both counties were set to have their agreements expire on June 30, 2019, and each county signed an addendum just prior to the implementation of the Directive offering a sole change to the original memorandum of agreement: a change in the date of expiration from June 30, 2019 to June 30, 2029. In late 2019, these agencies canceled their 287(g) agreements following communication with the New Jersey Office of the Attorney General. For further information, see Section 10 of this report.

Despite the significant types of violations that CILPJ found in the course of its review through the New Jersey Open Public Records Act (OPRA), none of the above have been known to the public. As discussed earlier, the sole measure of LEA compliance with the Directive has remained an annual report by the OAG outlining instances where LEAs “provided assistance to federal civil immigration authorities for the purpose of enforcing federal civil immigration law.”²¹ This OAG report is based upon data that LEAs self-report to the OAG. As of February 2022, the Attorney General’s office has only released a 2019 Annual Report.

Although CILPJ found that the data suggests inconsistent compliance with the Directive, CILPJ also found that there has been a plateauing of the rates of ICE removals assisted by jails and carceral facilities in New Jersey beginning in 2019, after the Directive was implemented. To measure this, CILPJ analyzed data from the Syracuse University Transactional Access Records Clearinghouse regarding removals effected under ICE’s Secure Communities program wherein jails hold and transfer custody of inmates to ICE. Removals under this program rose 45.7% from 2016 to 2017 (409 to 596 removals), 70.3% from 2017 to 2018 (to 1015) before dropping 29% (to 711) in 2019, the year in which the Directive became operational (see section 8 of this report for more details).

III. Recommendations

The New Jersey Attorney General, as the chief law enforcement officer in the state, has the ability to correct the Directive implementation short-comings identified in this report using his broad authority to direct law enforcement agencies in carrying out policies of the OAG. This report focused on the assessment of the Directive’s implementation primarily at a policy level and programmatic or “structural” level. CILPJ puts forth the following recommendations based upon its findings. For detailed recommendations, see the Recommendations section at the end of this report.

A. Recommendations to the New Jersey Attorney General

1. Create a Robust Oversight Program

This review found a high degree of divergence in implementation of the Directive throughout the state, which has led to agency practices potentially or clearly in violation of the Directive. CILPJ recommends that the OAG devote more institutional infrastructure to ensure compliance, including an accessible and transparent complaints process, proactive enforcement, and measures to deter noncompliant policies and practices.

This report recommends that the OAG strengthen implementation through oversight by creating in-person and online complaints intake processes for the public to report violations of the Directive and dedicating a full-time OAG staff position to focus on the implementation of the Directive. CILPJ recommends an OAG audit of all LEA policies throughout the state to examine their conformity with the Directive. It should also increase oversight into the training of LEA officers on the Directive and issue guidance disallowing LEAs from utilizing ICE to conducting trainings for LEA officers on Attorney General directives and immigration enforcement. The OAG should also consider auditing the immigration enforcement cooperation activities of LEA applicants for the U.S. Department of Justice’s Community Oriented Policing Services (COPS) grants that certified

20 See Addendum to Extend Memorandum of Agreement, U.S. Customs and Immigration Enforcement and Cape May County, (2019), <https://www.ice.gov/doclib/287gMOA/287gCape-MayNj2017-04-10.pdf>; Addendum to Extend Memorandum of Agreement, U.S. Customs and Immigration Enforcement and Monmouth County, (2019), https://www.ice.gov/doclib/287gMOA/287gJEM_MonmouthCoNj2016-06-08.pdf.

21 See Directive, *supra* note 1, at VI.B.4.

their immigration enforcement cooperation activities by submitting an “Illegal Immigration Cooperation Certification.” The cooperation activities that they certified as enacting potentially violate the Directive. Finally, CILPJ recommends that the OAG elaborate clear accountability measures in the Directive for violations, including penalties for offending agencies.

Additional steps that the OAG can take to oversee full implementation of the Directive are: 1) resend LEAs the forms that the OAG requires LEAs to provide to detainees when ICE seeks to interview the individual and when the LEA notifies the detainee that ICE seeks to detain them; 2) facilitate compliance with Directive’s U-visa and T-visa provisions throughout the state as a great number of agencies have not published information about their U-visa and T-visa processes on their websites; 3) issue a memo to all LEAs reminding them of their obligation to create their own Directive-compliant department policies, revise policies to render them compliant with the Directive, and require them to submit such policies to the OAG for review; and 4) communicate directly with LEAs examined in this report regarding the implementation problems and violations identified and work with them to modify their policies and implementation practices to bring them into compliance with the Directive.

2. Revise the Immigrant Trust Directive and Issue a Third Version with the Following Changes

This report finds that the Directive contains policy exceptions which, despite the Directive’s prohibitions, allow LEAs to cooperate with ICE in a very widespread manner, undermining the aims of the directive. CILPJ recommends removing certain exceptions from the Directive which allow LEAs to cooperate in immigration enforcement, provide ICE access to interview individuals, share information such as an individual’s release time and location with ICE, and transfer custody of individuals to ICE. This also includes discontinuing cooperation with ICE (a) even when the sole purpose of the activity is not for immigration enforcement operations, (b) when a targeted individual has been accused of or convicted of crimes, and (c) when exigent circumstances arise. Scholarly studies have shown that local law enforcement cooperation in immigration enforcement targeting individuals on the basis of their criminal charges or record does not in fact reduce crime rates or make localities safer.

This report also recommends additional policy language to prohibit LEAs from permitting ICE to use LEA facilities in all instances, prohibiting LEAs

from asking about immigration status when notifying individuals of their consular rights in certain types of arrests or detention, and prohibiting LEA participation in federally funded LEA-implemented programs related to immigration enforcement such as the State Criminal Alien Assistance Program.

Third, this report calls upon the OAG to update language in accordance with new state legislation, including a 2021 law that prohibits LEAs from entering into Intergovernmental Service Agreements, which are agreements wherein LEAs utilize their detention facilities for housing federal immigration detainees.

This report found that many LEAs turned to a third party private contractor that provided them with a template “standard operating procedures” policy to implement the Directive. This report found that many of the LEA policies that were created by the third party private contractor policy were inconsistent with the Directive. Therefore, this report recommends that the OAG, in addition to issuing a third version of the Directive, also provide a model standard operating procedures document fully consistent with the Directive that agencies can use to create and adopt Directive-compliant local agency general orders.

B. Recommendations to the New Jersey Government Records Council

Investigate the denial practices of certain LEAs identified in this report

Among its responsibilities, the New Jersey Government Records Council (Council) is charged with responding to inquiries and complaints about the Open Public Records Act from public and public agency records custodians; issues advisory opinions on the accessibility of government records; delivers training on the law; provides mediation of disputes about access to government records; and resolves disputes regarding access to government records.

CILPJ recommends that the Council conduct an investigation of the records request denial practices of law enforcement agencies that provided outright denials to the requests made in this project. Forty-one agencies or 6% of agencies outright denied CILPJ’s public records request in its entirety, including the New Jersey Department of Corrections, which is involved in transferring detainees in its prisons to ICE custody. This report recommends that the Government Records Council open an investigation into the denial practices of these agencies to assess whether their denials were justified and permitted by OPRA and subsequent case law.

C. Recommendation to the State Governor

Limit the pandemic State of Emergency exception for public agencies to respond to OPRA public records requests to no longer than two months

On average, it took 38 days for law enforcement agencies that CILPJ requested records from to either provide the requested records or deny the request, with the shortest response time of 1 day and the longest response time of 278 days. Sixty-three percent of the LEAs or 260 responded to CILPJ within one month. Many of these agencies cited the Governor's state of emergency exception as the basis for their delayed response. Recognizing that the COVID-19 pandemic has put an unexpected burden upon public agencies whose personnel may need to stay home or recover from illness, CILPJ recommends that the Governor qualify the state of exception decree by limiting the time frame for public records responses to no longer than two months.

D. Recommendations to the State Legislature

1. Pass the New Jersey Values Act

This bill, New Jersey Values Act,²² would accomplish much of the same goals of the Directive through a statutory framework. Additionally, the New Jersey Values Act requires the OAG to promulgate model standard operating procedures for LEAs to use to craft their own policies consistent with the Act. This will help eliminate the need for LEAs to contract with other third parties in drafting their own policies and ensure uniformity and consistency across jurisdictions.

2. Require law enforcement agencies to make all records pertaining to cooperation, interactions, and communications with ICE "open data" and freely downloadable on their agency website

In order to narrow the number of OPRA requests necessary to gain visibility into implementation of the Directive and potentially the Values Act, and in keeping with the goals of the directive to increase public understanding and trust in law enforcement, law enforcement agencies should be required to keep their full departmental handbook, policies, and standard operating procedures available on their websites. Further, all records including communications

such as email pertaining to interactions with ICE should be made available as "open data" and downloadable on an agency's website as well.

3. Streamline the Records Request Process in New Jersey

CILPJ recommends that the State Legislature amend the OPRA law to create a single records submission website for all public agencies in the state wherein all public agencies are listed, and members of the public can submit their requests and all communications and responses are published publicly. Require all public agencies to publish the name and contact information of their records custodians, including the mailing address, office address, email address, and direct phone number on their agency website. CILPJ also recommends that the state require that public agency records custodians accept emailed records requests.

²² N.J. Senate, New Jersey Values Act, S4289 (Sen. Cryan, Dec. 16, 2021), <https://www.njleg.state.nj.us/bill-search/2020/S4289>; N.J. State Assembly, New Jersey Values Act, A622 (Dec. 13, 2021); <https://www.njleg.state.nj.us/bill-search/2020/A6222>.

2. Acronyms

ACLU	American Civil Liberties Union
ACPO	Atlantic County Prosecutor's Office
AG	Attorney General
AHTF	Anti-Heroin Task Force Program
BJA	Bureau of Justice Assistance
BOP	Bureau of Prisons
CAMP	COPS Anti-Methamphetamine Program
CBP	U.S. Customs and Border Protection
CHP	Cop Hiring Program
CILPJ	Center for Immigration Law, Policy and Justice
CMCSO	Cape May County Sheriff's Office
COPS	Community Oriented Policing Services
CPD	Community Policing Development
DCJ	Division of Criminal Justice
DHS	U.S. Department of Homeland Security
DOA	Division of Administration
DOJ	U.S. Department of Justice
DOS	U.S. Department of State
EPD	Elizabeth Police Department
ERO	Enforcement and Removal Operations
FBI	Federal Bureau of Investigation
FOP	Field Office of Philadelphia
FY	Fiscal Year
ICE-HSI	Homeland Security Investigations

Acronyms

ICE	U.S. Immigration and Customs Enforcement
IDENT	Automated Biometric Identification System
IGSA	Intergovernmental Service Agreement
IICC	Illegal Immigration Cooperation Certification
INA	Immigration and Nationality Act
ITD	Immigrant Trust Directive
JAG	Justice Assistance Grant
LEA	Law Enforcement Agency
MCSO	Monmouth County Sheriff's Office
MOA	Memorandum of Agreement
N.J.A.C.	New Jersey Association of Counties
N.J.S.A.	New Jersey Statutes Annotated
NCIC	National Crime Information Center
OAG	Office of the Attorney General
OPRA	Open Public Records Act
PASS	Preparing for Active Shooter Situations Program
SCAAP	State Criminal Alien Assistance Program
SCSO	Salem County Sheriff's Office
SOP	Standard Operating Procedure
TRAC	Transactional Records Access Clearinghouse
U.S.C.	United States Code
US-VISIT	U.S. Visitor and Immigrant Status Indicator Technology
USCIS	U.S. Citizenship and Immigration Services
VCCR	Vienna Convention on Consular Relations
VPD	Vineland Police Department
WASPC	Washington Association of Sheriffs & Police Chiefs

3. Background of the Issue

I. The New Jersey Immigrant Trust Directive

On November 29, 2018, in response to the federal government’s increased reliance on state and local governments to enforce immigration law, then-Attorney General of New Jersey Gurbir Grewal issued Attorney General Law Enforcement Directive No. 2018-6, the Immigrant Trust Directive (Directive).²³ The articulated goals of the Directive were simple: to build trust between immigrant communities in New Jersey and state and law enforcement officers by limiting the kinds of voluntary assistance that state and local law enforcement agencies (LEAs) can provide to federal government officials tasked with enforcing federal immigration law.

By issuing the Directive, the Attorney General (AG), as New Jersey’s chief law enforcement officer²⁴ empowered to issue “guidelines, directives and policies that bind law enforcement throughout”²⁵ the state, places some limitations on certain interactions between New Jersey’s LEAs and non-citizens and creates certain reporting and training obligations. Importantly, by adopting the Directive, Attorney General Grewal effectively took a different approach from a directive adopted in 2007 by a different AG. Specifically, in 2007, then-Attorney General Anne Milgram issued Directive No. 2007-3, which recognized that LEA officers may inquire about the immigration status of individuals whom officers suspected of residing in the United States without lawful status

and report those findings to federal immigration authorities.²⁶ By contrast, Attorney General Grewal’s Directive places limitations on information gathering of this sort as well as imposes additional restrictions on activities that LEAs may engage in during their interactions with the public and which could aid immigration enforcement. In other words, the Directive seeks to distinguish between the functions of local LEAs—police departments, correctional facilities, county sheriffs, etc.—and those of federal civil immigration authorities.

As the chief law enforcement officer in the state of New Jersey, the AG’s decision to adopt the Directive has far-reaching implications in terms of scope because the Directive applies to all 36,000 state and local law enforcement officers and staff, including police officers, correctional officers working in state prisons and county jails, and state and county prosecutors.²⁷

As the following discussion explains, the Directive is subdivided into eight broad sections, which collectively seek to accomplish its goals of building trust between law enforcement officers and immigrant communities. The first part of the Directive prohibits LEAs from engaging in “racially influenced” policing, a term articulated by Directive No. 2005-1. Namely, Section I of the Directive proscribes LEAs from using a person’s race or ethnicity to support an “inference or conclusion” that such an individual has committed a crime.²⁸

23 N.J. Office of the Att’y Gen., *Attorney General Law Enforcement Directive No. 2018-6* (Nov. 29, 2018), https://www.nj.gov/oag/dcj/agguide/directives/ag-directive-2018-6_v2.pdf [hereinafter Directive].

24 N.J. Stat. Ann. § 52:17B-98.

25 *Paff v. Ocean Cty. Prosecutor’s Office*, 192 A.3d 975, 986 (N.J. 2018).

26 N.J. Office of the Att’y Gen., *Attorney General Law Enforcement Directive No. 2007-3* (Aug. 22, 2007), [dir-le_dir-2007-3.pdf](https://www.nj.gov/oag/dcj/agguide/directives/ag-directive-2007-3.pdf) (nj.gov).

27 State of New Jersey, Dept. Law & Public Safety, Office of the Attorney General’s Office, <https://www.njoag.gov/about/>.

28 N.J. Office of the Att’y Gen., *Attorney General Law Enforcement Directive No. 2005-1* (June 28, 2005), <https://www.nj.gov/lps/dcj/agguide/directives/racial-profiling/pdfs/law-enforce-dir-2005-1.pdf>.

The subsequent sections focus more specifically on immigration-related interactions and aims to reinforce trust between LEAs and immigrant communities. It aims to achieve this by (1) limiting state and local LEAs from voluntarily assisting federal immigration authorities in enforcing immigration law, (2) creating certain obligations that LEAs must follow with respect to certain non-citizens with whom they interact, and (3) including provisions designed to ensure that LEAs comply with the Directive. Section II limits enforcement of federal civil immigration law in a number of ways. It prohibits an officer from stopping, questioning, arresting, searching, or detaining individuals based solely on actual or suspected immigration status or federal civil immigration violations. It also limits voluntary assistance to federal immigration authorities in enforcing civil immigration law, including eliminating participation in operations such as raids and home arrests, providing non-public personal information, providing access to non-public agency resources such as office space, providing access to detained individuals without their consent, and prolonging detention based solely on a civil immigration detainer. Section II outlines limitations on the ability of LEAs to make agreements with the federal government, forbidding 287(g) agreements, which deputize local law enforcement officers such as police and sheriff's deputies as federal agents who are empowered to enforce civil immigration law.

The Directive not only imposes limitations on LEAs but also creates obligations that they must follow with respect to certain non-citizens with whom they interact. Section IV of the Directive requires the establishment and publication of certification procedures for the U-visa and T-visa for immigrants who are victims of certain kinds of crimes or of trafficking, and who are helpful to police in the investigation or prosecution of those crimes.²⁹ Under the Directive, prosecutors are responsible for ensuring defendants are advised on record that criminal charges and convictions may have immigration consequences.³⁰ With regards to pretrial detention, prosecutors are forbidden from assuming a non-citizen is a flight risk based solely on their non-citizen status.³¹ Moreover, a prosecutor may only present evidence of immigration status to the jury in the rare case where it is relevant and admissible.³² The issue must be raised

with the court before presentation, and a prosecutor is required to request limiting instruction, in which the court specifies to the jury the context in which they should consider immigration status.³³ LEAs are required to notify detained persons when federal civil immigration authorities request interviews, extended detention, or notification of an individual's release date.³⁴ It also sets out requirements for training, public outreach, and department adoption and revision of policy to align with the Directive.

The Directive also includes provisions that are designed to ensure that LEAs comply with the Directive. It requires LEAs to provide, annually, any instances of assistance they provided to federal civil immigration authorities. Moreover, the Directive requires the AG to publish a consolidated report each year for the previous year.³⁵

The Directive has been issued in two versions, with the second version issued on September 27, 2019, and which became effective on October 4, 2019, retaining all provisions of the first version except for three changes. The first change was that in the 2019 version, the OAG removed an exception from its 2018 general prohibition on all 287(g) agreements that allowed LEAs to still enter into, modify, renew, or extend a 287(g) agreement upon the OAG's approval or if the agreement was deemed necessary to address threats to public safety or welfare of New Jersey residents arising out of a declaration of a state or national emergency. As such, the Directive's prohibition on 287(g) agreements was modified in 2019 to be total and without exception.

The second version of the Directive allowed LEA officers to additionally provide notice of a detained individual's upcoming release to U.S. Immigration and Customs Enforcement (ICE) if an individual not only had been convicted of or adjudicated delinquent for certain violent or serious offenses listed in the Directive, but also if the person had ever been found not guilty by reason of insanity of one of the violent or serious offenses. In this sense, the OAG broadened the category of individuals whom LEAs could assist ICE in making immigration arrests.

29 See Directive, *supra* note 1.

30 *Id.*

31 *Id.*

32 *Id.*

33 *Id.*

34 *Id.*

35 *Id.*

Third, the second version of the Directive added four additional offenses to the Directive’s list of “violent or serious offenses” that would make an individual eligible for LEA to detain the individual past their release time to transfer custody of them to immigration authorities or share information such as the individual’s release time with immigration authorities.

II. Contextualizing the Directive Within Immigration Federalism

As an exercise in state power that impacts non-citizens, the Directive operates within an overlap of state autonomy and federal immigration authority. As such, the Directive, similar to other state and local laws that engage in some form of non-cooperation with federal immigration authorities, raises federalism concerns.³⁶ On the one hand, according to the Constitution’s Supremacy Clause,³⁷ federal law is the “supreme law of the land,” and therefore when a conflict arises between state and federal law, it is the provision of federal law which is “supreme” and courts consider the conflicting state law to be preempted and thus, “without effect.”³⁸ In this case, the argument would be that because Congress is considered to have absolute power over immigration law³⁹ and had passed the Immigration and Nationality Act (INA),⁴⁰ then any state or local law that conflicts with federal immigration laws would be invalidated.

Amidst this backdrop, many jurisdictions – states, cities, localities – have adopted non-cooperation policies that are sometimes referred to as “sanctuary policies,” in which policymakers have sought to limit cooperation and coordination between local law enforcement (tasked by these localities with public safety and enforcement of criminal law) and federal immigration enforcement (the civil regulation and enforcement of the immigration laws of the United States).⁴¹ There is no agreement on the precise definition of the term “sanctuary”⁴² and this report does not seek to engage in that debate. Notably, although sanctuary laws and policies often have the appearance of state action regulating some aspect of immigration, which need not necessarily be the case. As Professor Bill Ong Hing has explained:

[S]anctuary policies appear immune from preemption if we accept that their goals are about public safety and represent economic decisions on how to spend policing resources and are not about regulating immigrants. Indeed, the language of most sanctuary policies speaks in terms of not expending resources and personnel time asking about immigration status.⁴³

As described earlier, the Directive emphasizes the need for public safety and building trust between law enforcement officers and immigrant communities. In so doing, the Directive constitutes the allocation of government resources and a state government regulation of the behaviors of local law enforcement. Notably, in its text, the Directive is clear that “nothing in this new Directive limits New Jersey LEAs or officers from enforcing state law – and nothing in this

36 Several legal scholars have explored federalism issues in the context of immigration law. See, e.g., Jennifer Chacon, *Immigration Federalism in the Weeds*, 66 UCLA L. Rev. 1330 (2019); Stella Burch Elias, *The New Immigration Federalism*, 74 Ohio St. L.J. 703 (2013); Huyen Pham, *The Constitutional Right Not To Cooperate? Local Sovereignty and Federal Immigration Power*, 74 U. Cin. L. Rev. 1373 (2006).

37 U.S. Const., Art. VI, cl. 2.

38 *Murphy v. Nat’l Collegiate Athletic Ass’n*, ___ U.S. ___, 138 S. Ct. 1461, 1479; *Atkinson v. Luitpold Pharms., Inc.*, 448 F. Supp. 3d 441, 2020 U.S. Dist. LEXIS 49603, 2020 WL 1330705, at *3 (E.D. Pa. Mar. 23, 2020).

39 See *Chae Chan Ping v. United States*, 130 U.S. 581, 604-606 (1889) It should be noted, however, that the Supreme Court has recognized limitations to Congress’s power over immigration. See *Sessions v. Morales-Santana*, 137 S. Ct. 1678, 1693-94 (2017); *INS v. Chadha*, 462 U.S. 919, 940-41 (1983).

40 8 U.S.C. 1101.

41 See Pratheepan Gulasekaram, et al., *Anti-Sanctuary and Immigration Localism*, 119 Colum. L. Rev. 837 (2019); Chris Lasch, et al., *Understanding ‘Sanctuary Cities,’* 59 B.C. L. Rev. 1703 (2018); Ming Chen, *Trust in Immigration Enforcement: State Non-Cooperation and Sanctuary Cities After Secure Communities*, 91 Chi-Kent L. Rev. 13 (2016).

42 See Ava Ayers, *Missing Immigrants in the Rhetoric of Sanctuary*, 2021 Wisc. L. Rev. 473; Hiroshi Motomura, *Arguing About Sanctuary*, 52 U.C. Davis L. Rev. 435, 437-444 (2018). For earlier exploration of the term “sanctuary,” see Rose Cuison Villazor, *What is a Sanctuary*, 61 SMU L. Rev. 133, 147-150 (2008).

43 Bill Ong Hing, *Immigration Sanctuary Policies: Constitutional and Representative of Good Policing and Good Public Policy*, 2 U.C. Irvine L. Rev. 247 (2012).

[Directive] should be read to imply that New Jersey provides “sanctuary” to those who commit crimes in this state.”⁴⁴ As such, in so doing, it seeks to distance itself from being described as a sanctuary law or policy.

Indeed, the Directive contains exceptions that permit voluntary cooperation by LEAs in federal immigration enforcement, grant ICE access to interview detained persons, and allow LEAs to inform ICE of release times and locations and directly transfer custody of certain individuals to ICE. Those exceptions include “enforcing the criminal laws of New Jersey, complying with all applicable federal, state, and local laws, complying with valid judicial warrants or court orders, and participating with federal authorities in joint law enforcement taskforces where the primary purpose is unrelated to immigration enforcement.”⁴⁵ The Directive allows for:

- information sharing to federal immigration authorities for individuals who have been charged, but not convicted, of certain “violent or serious offenses,” as defined by the AG Directive, or for detainees who have been “adjudicated as a delinquent,” the latter being unbounded by a statute of limitations that puts those with adolescent offenses at risk;⁴⁶
- for LEAs to stop, question, arrest, search, or detain individuals on the basis of suspected undocumented status or suspected violations of immigration law if it is “necessary to the ongoing investigation of an indictable offense by that individual and relevant to the offense under investigation;” and
- for LEAs to cooperate with federal immigration authorities if the purpose of the assistance is not solely for enforcing federal civil immigration law.

Despite these exceptions, a few New Jersey counties have decried the Directive as part of a “sanctuary scam.”⁴⁷ In particular, as the next section explains, two counties – Ocean County and Cape May County – filed suit against the state, contending that the Directive is unconstitutional and preempted.

III. The Unsuccessful Legal Challenge Against the Immigrant Trust Directive

The Ocean County Freeholders unanimously approved a measure to sue the state over the Directive⁴⁸ and filed suit against Attorney General Grewal on September 18, 2019.⁴⁹ About one month later, the Cape May County Sheriff Robert Nolan initiated the county’s lawsuit.⁵⁰ In light of commonalities between the two cases, they consolidated the action against then-Attorney General Grewal.⁵¹ The United States Department of Justice first joined the lawsuits but then filed its own complaint, arguing that such restrictions hurt public safety and prevent the enforcement of federal immigration law.⁵²

In *County of Ocean v. Grewal*, the plaintiff counties argued that the Directive is unconstitutional based on three categories of preemption: (1) express; (2)

44 See Directive, *supra* note 1.

45 Rose Cuison-Villazor & Alma Godinez-Navarro, “Sanctuary States,” 49 *Southwestern L. Rev.* 503, 515 (2020), <https://www.swlaw.edu/sites/default/files/2020-10/48SwLRev503.pdf>.

46 *Id.* at 516.

47 See Tracey Tully, *In Blue New Jersey, A Conservative Backlash on Immigration*, N.Y. Times, Nov. 8, 2019, <https://www.nytimes.com/2019/11/08/nyregion/nj-immigration-ice.html>.

48 Bill Duhart, *N.J. county that wants to work with ICE plans to sue the state over it*, NJ.com (Aug. 9, 2019), <https://www.nj.com/cape-may-county/2019/08/nj-county-that-wants-to-work-with-ice-plans-to-sue-the-state-over-it.html>.

49 *Cty. of Ocean v. Grewal*, 475 F. Supp. 3d 355, 365-366 (D.N.J. 2020).

50 See *id.*

51 *Cty. of Ocean*, 475 F. Supp. 3d at 361. Plaintiffs included the County of Ocean, the Board of Chosen Freeholders of the County of Ocean, Robert A. Nolan who is the Cape May County Sheriff, and the County of Cape May.

52 *Cty. of Ocean*, 475 F. Supp. 3d at 366 (“United States filed a Statement of Interest pursuant to 28 U.S.C. §§ 517, 518(b), which authorizes the United States Department of Justice ‘to attend to interests of the United States’ by ‘argu[ing] any case in a court of the United States in which the United States is interested.’”); Blake Nelson, *N.J. can restrict what information police share with ICE, judge rules*, NJ.com (Jul. 30, 2020), <https://www.nj.com/news/2020/07/judge-allows-nj-to-keep-its-restrictions-on-what-police-can-share-with-immigration-officials.html>.

conflict; and (3) field preemption. In particular, they argued that the Directive was preempted by two sections of the Immigration and Nationality Act (INA), including Section 1373, which prohibit government entities from complying with requests for information from federal immigration authorities regarding immigration status.⁵³ The AG moved to dismiss the complaints.⁵⁴

The court ultimately granted the AG’s motion and rejected the counties’ claims. First, the Court held that the Directive is not expressly preempted by federal immigration law and that those INA provisions only require that local governments share, at the request of federal authorities, specific information about individuals’ immigration status, which the Directive expressly allows.⁵⁵ Therefore, the Directive’s limitations on local cooperation with federal immigration authorities is not preempted by these INA sections.

Second, the Directive is not invalid because of conflict preemption.⁵⁶ Conflict preemption refers to situations in which a jurisdiction cannot follow both the state and federal law or the state law “stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.”⁵⁷ In *County of Ocean v. Grewal*, the Court makes clear that localities are not required to assist the federal government with immigration enforcement and the provisions of the INA; rather, the arrest and removal of non-citizens imposes duties solely upon the federal government, not the states. Therefore, states are free to limit the extent to which localities may voluntarily assist in the enforcement of federal immigration law.⁵⁸

Last, the Court rejected the claim that the Directive is unconstitutional.⁵⁹ The Court, however, concluded that, “[w]hile Congress has the exclusive province to regulate federal civil immigration law, the INA itself contemplates that States shall have the ability to determine the extent to which they participate in the enforcement of such laws.”⁶⁰ Therefore, the Directive is not preempted by federal immigration law and is

a constitutional exercise of state power, even in the realm of immigration law where Congress wields significant authority.

The counties appealed and, similar to their case below, lost. In *Ocean County Board of Commissioners v. the Attorney General of New Jersey*, the U.S. Court of Appeals for the Third Circuit affirmed the lower court and upheld the constitutionality of the Directive.⁶¹ As the Court noted, “regardless of the wisdom of the [Directive], it is not preempted.”⁶²

53 8 U.S.C. §1373.

54 *Cty. of Ocean*, 475 F. Supp. 3d. at 361.

55 *Id.* at 376; Directive No. 2018-6 § II.C(10).

56 *Id.* at 382.

57 *Farina v. Nokia, Inc.*, 625 F.3d 97, 122 (3d Cir. 2010).

58 *Cty. of Ocean*, 475 F. Supp. 3d. at 380-82.

59 *See id.*, at 384.

60 *See id.*

61 *Ocean Cty. Bd. Comm. v. Attorney General*, 8 4th 176 (3rd Cir. 2021); see also David Wildstein, *N.J. Immigrant Trust Directive upheld by federal appeals court*, *New Jersey Globe* (Aug. 9, 2021), <https://newjerseyglobe.com/judiciary/n-j-immigrant-trust-directive-upheld-by-federal-appeals-court/>.

62 *Ocean Cty. Bd. Comm.*, 8 4th at 182.

4. Overview of the Research Goals and the Data and the Data Collection Process

I. Goals of the Research Project

The AG’s Immigrant Trust Directive (Directive) became effective on March 15, 2019, for the purpose of building trust between immigrant communities and law enforcement agencies (LEAs).⁶³ First issued on November 29, 2018 and updated on September 27, 2019, the Directive intends to curtail state and local participation in federal immigration enforcement, ensure effective policing, and foster relationships between LEAs and immigrants.

CILPJ at Rutgers Law School is an academic center committed to the adoption and implementation of laws and policies in New Jersey designed to protect the due process, equal protection, and civil rights of immigrants and their families. CILPJ supports the goals of the Directive to build trust between LEAs and immigrant communities. Moreover, we believe that effective implementation of the Directive requires the consistent compliance of all LEAs in New Jersey as well as effective oversight and monitoring of the Directive by the Office of the Attorney General (OAG). Importantly, CILPJ believes that public awareness regarding the LEAs’ overall compliance with the Directive facilitates not only government transparency but also the successful achievement of the goals of the Directive.

To better understand the extent to which the OAG is ensuring that LEAs are complying with the Directive, CILPJ decided to engage in a research project that examines the statewide implementation of the Directive. This statewide research required obtaining information from LEAs regarding the extent to which they have adopted the Directive and/or changed their

policies and practices, if any, regarding their interactions with non-citizens as well as gaining information regarding the manner in which the OAG has communicated with the LEAs to ensure their compliance. We at CILPJ understood that obtaining the information we needed may be done through the New Jersey Open Public Records Act (OPRA).⁶⁴

CILPJ applied for a grant from the Lois and Samuel Pratt Program for Freedom of Information (Pratt Program). Some two decades ago, Rutgers Law School in Newark received a generous bequest from Dr. Lois Pratt to create the Pratt Program. The primary purpose of the Pratt Program is to improve and facilitate appropriate access by the people of the State of New Jersey to the meetings, records, and information generated by New Jersey governing bodies at the municipal, county, and state levels of government. CILPJ successfully obtained an initial \$50,000 grant to engage in this empirical research in June 2020 and another \$50,000 in June 2021 to further support the project.

II. Records Requested

At the outset, to efficiently identify contact information for LEAs throughout the state where CILPJ could send its request letter, CILPJ requested and obtained from the OAG a comprehensive list of law enforcement agencies, which contained over 600 agencies. This list was then reviewed by CILPJ’s fellows who then created a spreadsheet, including each LEA to track all records requests CILPJ made.

CILPJ crafted a records request letter addressed to records custodians of each LEA in New Jersey for these

63 N.J. Office of the Att’y Gen., *Attorney General Law Enforcement Directive No. 2018-6* (Nov. 29, 2018), https://www.nj.gov/oag/dcj/agguide/directives/ag-directive-2018-6_v2.pdf [hereinafter Directive].

64 See OPRA – N.J.S.A.47:1A-1, et seq. [hereinafter OPRA].

records and additionally requested any agreements, contracts, or memorandum of understanding in existence between the U.S. Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE), Homeland Security Investigations (ICE-HSI), or U.S. Customs and Border Protection (CBP) and the LEA for the date range from November 29, 2018 to the present. CILPJ sent records requests letters over the course of eight months from October 2020 through June 2021, which asked for LEA training records, incident reports, and any records containing quantitative data reports regarding departmental assistance to ICE and CBP as well as any reports, emails, and memorandum that explain the reason, purpose, policy basis, or goal for which the Department accommodated ICE or CBP requests from November 29, 2017 to the present. CILPJ also requested detainee movement logs, which demonstrate how inmates are moved through detention facilities, and communications records such as emails about how the LEA implemented the Directive, how the LEA interacts with or assists ICE and CBP, and how the LEA makes inmate release information available to the public.

In order to send such a large volume of request letters, the CILPJ utilized the OPRA records request submission website OPRAMachine.com which was developed to facilitate en masse emailed records requests in a manner that makes all correspondence and disclosed records available to the public. OPRAMachine.com also provided CILPJ with an additional manner for fellows to track outstanding requests and records received. There were limitations with the utilization of the [OPRAMachine](http://OPRAMachine.com) website, however. After the initial round of sending the first 300 records requests to LEAs, over 30 automatic response emails were generated indicating a delivery error due to outdated LEA records custodian contact information stored in [OPRAMachine](http://OPRAMachine.com). Many LEAs additionally notified CILPJ of staffing changes, of new records custodians, and of out of date records custodian contact information stored in [OPRAMachine](http://OPRAMachine.com). Changes to staff and point of contact for record requests had to be tracked internally and correspondence with them happened over email. We found 97 agencies were not available to be requested on [OPRAMachine](http://OPRAMachine.com) and an immense manual effort to identify the contact information of the appropriate records custodians and the proper records request submission websites was required due to the fact that the LEA list provided by the OAG contained only mailing addresses.

III. Tracking Responses

CILPJ organized volunteers from Rutgers Law School to conduct research to find the proper contact information and records submissions websites of the additional LEAs and to conduct follow-up correspondence pertaining to requests that had been made. CILPJ hired additional law students to begin processing both the responses from LEAs and the documents provided. CILPJ also hired an undergraduate student to further assist with communications with LEAs pertaining to processing records request responses, identifying records custodian contact information, and submitting records requests on submissions portals on LEA websites.

Additional barriers to submitting the request letter were due to some LEA submission portals limiting the length of records requests by requiring requestors to make requests within a certain text character limit. CILPJ was, in these circumstances, required to manually divide its request letter into smaller portions, which it then submitted in parts so as to maintain the integrity of the full request. CILPJ's undergraduate student research assistant also sent nearly 10 of the records requests via postal mail after being informed that no electronic submission of records requests was permitted.

All fellows sent follow-up correspondence to the law enforcement agencies to obtain any information and documents that were not provided. CILPJ made from one to five requests attempts for each agency with an average of 1.6 request attempts before the agency provided either a denial or a responsive record. This amounted to making one request attempt to 377 LEAs, two request attempts to 104 LEAs, three requests attempts to 60 LEAs, four request attempts to 34 LEAs, and five request attempts to 13 LEAs. Many agencies requested extensions and many were due to COVID-19 office closures and staff shortages. Performing such requests and follow-ups during the pandemic made the process arduous in a way that was not originally anticipated.

Of those LEAs that provided CILPJ either a denial letter or a responsive record, on average, it took the LEAs 38 days to do so, with the shortest response time of one day and the longest response time of 278 days. Sixty-three percent of the LEAs or 260 responded to CILPJ within one month, 81% or 336 agencies

within two months, 87% or 361 agencies within three months, and 93% or 385 within four months. The greatest number of responses came within the second week after CILPJ made the request with 91 responses.

Of the 610 LEAs to which CILPJ sent records requests letters, a total of 536 agencies (87%) responded by providing requested documents, denying the request, or asking for clarification but did not end up sending documents. Of these 536 LEAs, 416 (68% of agencies requested) provided at least one responsive record. Forty-one agencies (6%) expressly denied the request in its entirety, which the following section examines. CILPJ's analysis of the responses received are detailed in various chapters of this report.

IV. Reasons Provided for Denials to the Request Letter

As previously mentioned, 41 agencies of the 536 LEAs that responded to CILPJ's requests for records denied the provision of records requested. Notably, among those that expressly denied the request in its entirety and provided no records was the New Jersey Department of Corrections, which runs the state's prison system. The Department of Corrections, contrary to the response of the 416 LEAs which did provide some responsive record,

contended that the request was invalid because it claimed the request did not identify specific records.⁶⁵ LEAs provided different reasons for denying the requests, including that they needed additional time to respond, that the requests were too "vague" or "overbroad," caselaw supported denying the request, or that they did not have responsive records.

A. Extension of Time to Respond

Many of CILPJ's requests were met with LEA responses exercising the option for extra time according to N.J.S.A. 47:1A-5.i(2). Under this section of the Public Records statute, the requirement that the OPRA custodian comply within seven days is relaxed when under a state of emergency, requiring only a "reasonable effort" to provide access "within seven business days or as soon as possible thereafter." Generally, we saw a wide range of request responses leaning on this law, referencing the COVID-19 pandemic. Many LEAs named a specific date they would provide their documents and met that date, some named a particular timeframe they would need (ex: 30 days), and in some cases, we saw a complete dismissal of the seven day requirement under section 5.i, with no follow up time supplied.

B. "Vague," and "Overly Broad"

Fourteen agencies claimed that some portion of our request was overly or impermissibly broad.⁶⁶ For the most part, a number of these LEAs denied CILPJ's

⁶⁵ See OPRA Request - Tracking #18349," October 16, 2020, available online at https://opra-machine.com/request/open_public_records_act_and_comm_50.

⁶⁶ These LEAs include Brick Township Police, Cedar Grove Township Police, Chatham Borough Police, East Brunswick Township Police, Essex County Prosecutor's Office, Gloucester Township Police, Hanover Township Police, Hillside Police, Mercer County Correction Center, Oaklyn Police, Port Authority of N.Y. & N.J., Springfield Township Police, Wildwood Police, and Woodbury Police.

records request items #13⁶⁷ and #14⁶⁸ on the basis of vagueness or that these requests were “overly broad” under New Jersey public records case law. Specifically, these LEAs cited these requests as amounting to requests for “information” or research involving discretion on the part of the records custodian, a demand for records not “reasonably described,” or as a request for the “creation” of records in response to our request. Some agencies requested clarification on our request based on these rationales and some denied them outright. In doing so, these LEAs relied largely upon a few cases and administrative rulings, which they held out as arguing that the language we used in our request rendered them impermissibly broad.

However, as we contend below, many of the LEAs in their formal responses oversimplified the holdings of these cases and decisions. In short, many of the cases cited merely emphasize that requests must identify some document or document types that are discernible, from a time range that is reasonable, rather than a request that the records custodian exercise discretion in culling information from a survey of documents to produce new records in response to a request.

1. MAG Entertainment v. Division of Alcoholic Beverage Control

The principal case that a number of these agencies cited in justifying a denial of our request was *MAG Entertainment, LLC v. Division of Alcoholic Beverage Control*.⁶⁹ At least four separate agencies cited this case, and the courts in a number of other cases which additional LEAs cited to justify denying these requests themselves cite *MAG Entertainment* as controlling. Those agencies which cited *MAG Entertainment*, justified their denials largely upon the partial quotations from the case indicating that (1) OPRA “is not intended as a research tool . . . to force government officials to identify and siphon useful information;” and (2) that requestors must “identify with . . . specificity or particularity the government records sought.”⁷⁰

In this case, MAG Entertainment, LLC, brought suit against the Division of Alcoholic Beverage Control and appeared to the Court to be using records requests under OPRA as an alternative means of discovery for trial. In their request, MAG Entertainment sought “all documents or records evidencing that the [the Division] sought, obtained or ordered revocation of a liquor license for the charge of selling alcoholic beverages to an intoxicated person in which such person, after leaving the licensed premises, was involved in a fatal auto accident” as well as “all documents or records evidencing that the ABC sought, obtained or ordered suspension of a liquor license exceeding 45 days for charges of lewd or immoral activity.”⁷¹ The lower court had found the request “burdensome,”

67 CILPJ’s request #13 asked for “All communications (herein, “communications” refers to emails, texts, faxes, letters, social media posts) about implementing the Directive in the Department, how the Department interacts with or assists ICE and CBP, or making inmate release information available to the public between Department Command Staff or Supervising Staff and the following types of Department employees:

- a. Those who contribute to the development of department policy;
- b. Those who directly interact with the public;
- c. Those who directly interact with people in Department custody; and
- d. Those who directly interact with federal immigration agencies Date Range: November, 29, 2018 to the present.”

68 CILPJ’s request #14 asked for “All communications about implementing the Directive in the Department, how the Department interacts with ICE and CBP, or making inmate release information available to the public between Department Personnel and individuals in the following external agencies:

- a. ICE;
- b. CBP;
- c. The U.S. Department of Justice;
- d. The White House;
- e. The New Jersey Department of Justice;
- f. The Sheriffs Association of New Jersey; or
- g. The New Jersey State Association of Chiefs of Police Date Range: November, 29, 2018 to the present.”

69 375 N.J. Super. 534 (App. Div. 2005).

70 These agencies are Englewood Cliffs Borough Police, Hackenstown Police, Hanover Township Police, and Mercer County Correction Center.

71 375 N.J. Super. at 540.

requiring the records custodian to “manually search through every document filed with the village for the past 45 years.”⁷² The New Jersey Supreme Court, in analyzing what the request on the part of MAG Entertainment was improper, highlighted that the request included, “neither names nor any identifiers other than a broad generic description of a brand or type of case prosecuted by the agency in the past” and that the request would require the records custodian to locate all possible responsive documents and then to “evaluate, sort out, and determine the documents to be produced and those otherwise exempted.”⁷³

Determining that MAG Entertainment’s request was not proper under OPRA, the Court noted that, rather than requesting identifiable documents, MAG Entertainment’s request had amounted to, “a broad-based demand for research and analysis.”⁷⁴

We maintain that the four agencies’ reliance on *MAG Entertainment* lacks merit. Unlike the records requested in that case, the records that CILPJ requested from LEAs were identifiable and not complex. CILPJ requested documents such as agreements or memoranda that included the “Immigrant Trust Directive” that showed interactions between the LEA and specific federal agencies, including ICE and CBP. The requests specified the relevant period when such agreements would have been adopted or implemented. Such requests for these records provided specific and particular information that would allow custodians to determine and produce them. Indeed, the fact that CILPJ received multiple documents from other agencies that received similar requests illustrate that the documents were neither vague nor overbroad.

In sum, in denying CILPJ’s requests for documents, LEAs cited no other case with the frequency of citations to *MAG Entertainment*. Relying on this case, however, is misplaced.

2. Other Case Law Offered as Justification for Denials

There were a few other cases that LEAs offered as justification for denials. At least one LEA cited *Bent v. Stafford Police Department*⁷⁵ in asserting that our request was overly broad, the records custodian is not required to create new records in responding to a records request, and our request is properly denied as a request for “data, information, and statistics” rather than records.⁷⁶

The facts of *Bent*, however, were much more specific than these broad strokes. The Court in *Bent* upheld the Government Record Council’s denial of request because the requestor was seeking (1) documents already disclosed to him; (2) documents that didn’t exist; and (3) the factual basis for an investigation against him, with the Court noting that requestor, here, made “no request for specific documents.”⁷⁷ Instead, he sought the custodian’s response to his allegation of police misconduct, borne of his belief that certain unidentified and unnamed documents on file with the township were wrongfully concealed or withheld from him.⁷⁸

One LEA cited an unpublished case, *Shipyards Associates v. City of Hoboken*,⁷⁹ as simply standing for the proposition that requests which include the phrase “any and all” and “not limited to” are improper requests under OPRA.⁸⁰ The Court in *Shipyards* determined that when requests are made for “any and all documents” that are “relied upon, considered, reviewed or otherwise utilized” by the agency during a decision making process are indeed impermissibly broad.⁸¹ However, the Court clarified that what is not acceptable is a request for “access to an entire type of record over an unlimited period of time.”⁸²

As applied to CILPJ’s request, we maintain that the requests were appropriate under OPRA because the

72 *Id.* at 548.

73 *Id.* at 549.

74 *Id.* at 550.

75 *Bent v. Stafford Police Dept.*, 381 N.J. Super. 30, 37 (App Div. 2005).

76 One such law enforcement agency that relied on *Bent v. Stafford Police Dept.*, 381 N.J. Super. at 37, was the Middlesex County Prosecutor’s Office.

77 381 N.J. Super. at 40.

78 *Id.*

79 2015 WL 10352982, *5 (App. Div. Sept. 15, 2015).

80 The Hanover Township Police cited *Shipyards Associates v. City of Hoboken* in their letter denying the Center for Immigration Law, Policy, and Justice (CILPJ)’s records request, stating that “significant portions of your request are overbroad under OPRA as they do not sufficiently identify records and would require extensive interpretation and research by the custodian to determine which records might be responsive to your request.”

81 See *Shipyards Assoc. v. Hoboken*, 2015 WL 10352982 at *4.

82 *Id.*

requests provided not only discernible governmental records and provided particularized dates.

C. “No Responsive Records”

Many LEAs replied that they had “no responsive records,” i.e., no documentation prompted by our requests.⁸³ Under the Directive’s requirements, the minimum amount of documentation an LEA should have provided pursuant to our requests includes template consent forms for ICE/HSI/CBP interviews of LEA detainees, department training logs for the NJ LEARN portal trainings or other Directive training, and evidence of adoption of the Directive as Department policy or other policy put in place according to the Directive.

D. Other Issues

The circumstances of the pandemic prompted many requests for additional time to respond, but CILPJ also received responses referencing a shortage of staff, the agency’s OPRA attorney on leave, or responses with undefined reasons such as “due to events in the Police Department.” In one case, Fort Lee Borough Police also claimed an uncited “law enforcement exemption.” While many agencies denied our requests based on the assertion that their custodian would have to do research, one agency offered to satisfy our OPRA request only after we provided a full advance deposit covering an estimated 30 hours of staff time at \$70 per hour.⁸⁴ Our OPRA requests were made primarily through the website OPRAma-

chine.com. However, many agencies denied the CILPJ request made in this manner given that the OPRA-machine.com submits the request to the agency via email. These LEAs redirected CILPJ to make OPRA submissions through unique LEA-specific records requests portals, some of which required registering accounts and establishing login credentials.

Though most agencies were able to provide training logs (records of all employees that completed training in the Directive that include training dates) several LEAs did not provide training materials, stating that the NJ LEARN trainings are completed on an “external web platform.”⁸⁵ In one case, an LEA responded to this request for training materials by referring CILPJ to the State’s Office of Homeland Security;⁸⁶ and in another, an LEA indicated that “all files are stored in [an] electronic database and cannot be accessed by specific officers.”⁸⁷ Several agencies denied CILPJ’s requests by asserting that criminal investigatory reports are exempt from public records requests, despite the CILPJ request letter not requesting criminal investigatory materials, but rather interoffice communications and policies.⁸⁸

We also saw denials that referenced the New Jersey Administrative Code sect 13: 1E-3.2. This section of the administrative code enumerates seven separate kinds of records that are exempt from disclosure. These bases include potentially revealing the identity of a government informant, disclosing attorney work products, employee records, collective bargaining strategy records, and the potential disclosure of strategic information, which could hamper the state’s ability to protect its citizens from acts of terrorism.

83 Some of these LEAs include Bergen County Juvenile Detention Center, Bogota Borough Police, Bradley Beach Borough Police, Brick Township Police, Burlington County, Chatham Borough Police, Elizabeth Police, Essex County Prosecutor’s Office, Essex County Sheriff’s Office, Fort Lee Borough Police, Gibbsboro Borough Police, Hanover Township Police, Harrison Township Police, Hillside Police, Mendham Township Police, Mercer County Correction Center, Mercer County Juvenile Detention Center, Mercer County Police Academy, Mercer County Prosecutor’s Office, Middlesex County Department of Parks and Recreation - Ranger Unit, Morris County Juvenile Detention Center, Morristown Police, Mount Ephraim Police, Ramapo College of New Jersey, Richard Stockton College of New Jersey Police (“Stockton University”), Sussex County Community College Police, Verona Police, Voorhees Township Police, Warren County Sheriff’s Office, Washington Township - Warren County Police, Wayne Township Police, and Woolwich Township.

84 On January 19th, 2021, the records custodian for the police department of Ramsey Borough sent CILPJ a message through the OPRA Machine portal requesting a deposit and advising us of these costs. Ten days after we advised them that we had received records free of charge under OPRA from 300 other LEAs of comparable size to the Ramsey Police Department, they provided us with responsive records.

85 This LEA was the Bedminster Township Police.

86 The Bradley Beach Borough explained that “[t]he Borough refers the Requestors to the State of New Jersey, Office of Homeland Security and Preparedness for the training logs stored in NJ Learn.”

87 This LEA was the Burlington City Police.

88 These LEAs include Middlesex County Prosecutor’s Office, Rutgers University Police - Newark, Vineland Police, Wallington Police.

The agencies that cited this exception did not provide a reason why our request into communications regarding the implementation of the Directive as well as inter-agency correspondence or correspondence with federal agencies regarding information about a jail inmate's release falls into one of these narrow categories.

V. Other Information

A. Review of LEA Websites

In addition to reviewing records responsive to CILPJ's records request letter, law students also examined LEA websites and county government websites to assess compliance with the Directive's provisions requiring LEAs to publish on their websites information about assisting immigrants with filing nonimmigrant U and T visa applications.

B. Data Storage and Analysis

CILPJ created a large repository to store, organize, and review the responsive records electronic files. CILPJ utilized law student pro-bono volunteers to download these files from email responses and responses on the OPRAMachine.com website, and to organize these documents which were then reviewed by CILPJ's six working fellows. For LEAs that sent physical documents by postal mail, such documents were scanned and uploaded for review to the electronic files repository.

5. Revisions of Agency Policies and Adoption of Policies Consistent with the Directive

In Section VIII.A of the Immigrant Trust Directive (Directive), the AG directed law enforcement agencies (LEAs) to “adopt and/or revise their existing policies and practices, consistent with this Directive.”⁸⁹ In particular, the Directive provides that by its effective date (March 15, 2019), all LEAs’ existing policies and practices needed to be consistent with the Directive “either by rule, regulation, or standard operating procedure.”⁹⁰ Thus, to be fully compliant with the Directive, all policies must conform to the Directive’s mandates by March 15, 2019.

Without doubt, the Directive supersedes any existing policies or practices that are inconsistent with the Directive. But language from the Section VIII.A requires LEAs to actively change their policies and practices by adopting or modifying their current policies to be “consistent with the Directive.” Thus, if LEAs did not adopt or modify their existing policies by March 15, 2019, then they would not be fully compliant with the Directive. Crucially, if during the process of modifying their current policies the LEAs omitted provisions of the Directive, then their existing policies and practices would be inconsistent with the Directive. Such inconsistencies create confusion among LEA officers and could lead them to violate the Directive.

To determine compliance with Section VIII.A of the Directive, CILPJ requested copies of rules, regulations, or standard operating procedures (SOPs) from LEAs before and after the effective date of the Directive. Of the 536 LEAs that responded to CILPJ’s records request, 416 shared at least one record. In our review of the records provided, we found inconsistent adoptions of the Directive.

Of the 416 LEAs that provided records, 221 of the LEAs (53%) adopted an agency-specific Directive-related policy, rule, or regulation to implement new procedures.

CILPJ also found that many agencies did not conform their existing policies and practices so that they are compliant with the Directive.

- 93 LEAs (22%) provided neither a Directive-related agency-specific policy, rule, or regulation, any other agency policy revised to be compliant with the Directive, or the Directive itself.
- 102 LEAs (25%) kept on file the Directive itself *without* modifying their existing policies and procedures *and without* adopting any new Directive-related agency policies.

As such, 195 LEAs (47%)—those that a) only kept the Directive on file without modifying pre-existing non-compliant agency policies and b) those that did not provide adopted or revised agency policies or the Directive—were not compliant with section VIII.A of the Directive given that neither group made the required revisions to render their internal policies compliant.

Among those LEAs that did adopt a local Directive-related policy, many adopted policies that nonetheless did not comply with the Directive for a variety of reasons described below. In reviewing the records provided, we determined key problems.

89 N.J. Office of the Att’y Gen., *Attorney General Law Enforcement Directive No. 2018-6 VIII.A* (Nov. 29, 2018), https://www.nj.gov/oag/dcj/agguide/directives/ag-directive-2018-6_v2.pdf [hereinafter *Directive*].

90 See *id.*

I. Policies Inconsistent with the Directive – Omissions, Modifications, and Additions

CILPJ identified instances of LEA policies that are not consistent with the Directive due to their omissions, modifications, and additions, or which provide very cursory implementation of the Directive through the issuance of mere guidelines.

A. Atlantic Highlands Police Department

While the Atlantic Highlands Police Department did not adopt a new Directive-specific SOP, it modified its “Arrest and Transportation” general order so that one minimal mention of the Directive was made.⁹¹ In this case, the general order’s section II. “General Provisions” was modified to include a section B stating that officers must comply with the Directive and that it “prohibits certain notifications to Immigration and Customs Enforcement (ICE),” without stating that it also prohibits certain immigration status related investigations, arrests, questioning, or prolonged detention for immigration purposes. It also failed to include the Directive’s obligations made upon LEA officers to provide consent forms to individuals that ICE requests to interview, or notices to individuals that ICE seeks to detain or for whom they seek release information. Further, section IV. “Arrest Without a Warrant” of the same general order contains no prohibitions on making arrests on the basis of immigration status or perceived violations of immigration law as required by the Directive.

B. Bernards Township Police

A second case is that of The Bernards Township Police. This agency amended its policies by adding section H. “Arrest of Undocumented Immigrants”

to its “Arrest Procedures” Departmental Directive.⁹² This section included the Directive’s prohibition on investigations on the basis of immigration status and inquiries into immigration status. However, it included no prohibitions on stopping, arresting, or detaining individuals on the basis of immigration status or suspected violations of immigration law included in Directive section A.1. It also did not prohibit officers from participation in civil immigration enforcement operations, providing non-public personally identifying information regarding an individual, providing access to the LEA’s equipment, office space, databases, or property not available to the public, or providing access to the individual for an interview.

C. West Caldwell Police Department

The final case to mention is that of West Caldwell Police Department. The Department’s Chief of Police issued a memorandum instituting Directive procedures maintaining the Directive’s prohibition on providing notice to ICE of a detained individual’s upcoming release from custody. However, it modified the language that specified who the LEA could provide notice to ICE about. In Directive section II.B.5, an LEA may notify ICE of an individual’s scheduled release time if the individual is currently charged with, has ever been convicted of, has ever been adjudicated delinquent for, or has ever been found not guilty by reason of insanity of, a violent or serious offense “as that term is defined in Appendix A.” Appendix A of the Directive lists a limited number of violent or serious offenses. In the Chief’s Memorandum however, sections 5 and 6 do not contain this limiting language “as that term is defined in Appendix A” and therefore allows officers to provide notice to ICE for and to detain an individual past their point of release for ICE for an individual who had been charged with, convicted of, adjudicated delinquent for, or found not guilty by reason of insanity for any type of violent or serious offense; a wider group of individuals therefore than allowed by the Directive.⁹³

91 See CILPJ OPRA Documents, Borough of Atlantic Highlands Police Department General Order, “Arrest and Transportation,” December 11, 2019.

92 See CILPJ OPRA Documents, Bernards Township Police, “Department Directive: Arrest Procedures,” July 30, 2019.

93 See CILPJ OPRA Documents, Township of West Caldwell Department of Police, “Chief of Police Memorandum #19-01,” January 25, 2019.

II. Prosecutor's Offices and Immigrant Trust Directive Policy Adoption

The Directive reaffirms *Padilla v. Kentucky*,⁹⁴ and requires prosecutors to confirm on record at the defendant's initial court appearances that the defendant has been advised that their charges and convictions may carry immigration consequences (section V.A.1) and that they may have rights to consular notification pursuant to the Vienna Convention on Consular Relations (VCCR, section V.A.2).⁹⁵ The Directive directs prosecutors to make individualized assessments about the flight risk of the individual when assessing whether to seek pretrial detention or not, and not to assume that non-citizens inherently pose a flight risk (section V.B). Prosecutors may not in most instances present evidence of immigration status to a jury and if it is relevant and admissible, the prosecutor must first raise the issue with the Court outside of the jury's presence and request that the Court give an appropriate limiting instruction (section V.C). Finally, the Directive instructs prosecutors to be mindful of potential collateral consequences and consider them in attempting to reach a just resolution of the case (section V.D).⁹⁶

Of the 32 LEAs identified as prosecutors' offices of the state or of one of its counties, six provided evidence of having explicitly adopted the Directive as the policy of the prosecutor's office and directed their subordinate agencies to do likewise.⁹⁷ Eight agencies denied all aspects of the Open Public Records Act (OPRA) request or indicated that they had no responsive documents with regards to the part of our

OPRA request asking for their Directive-based policies.⁹⁸ Three prosecutors' offices provided the Directive in response to the request for policy, but did not provide their own SOP.⁹⁹ One prosecutor's office had a policy that lacked any of the prosecutor guidance from the Directive.¹⁰⁰

The Atlantic County Prosecutor's Office Policy

In some cases, county prosecutor offices sent out their own Directive-related office policies to all LEAs in their county, instructing them to implement the Directive and the prosecutor office's policy. However, in one case, that of the Atlantic County Prosecutor's Office (ACPO), the prosecutor policy that was sent out to all LEAs in Atlantic County did not include all of the accurate provisions, prohibitions, and obligations of the Directive. The ACPO policy, which was adopted in full by agencies such as Egg Harbor Police and the Township of Hamilton Police, left out Directive section II.A.b prohibiting officers from stopping, questioning, arresting, searching, or detaining any individual on the basis of actual or suspected violations of federal civil immigration law.¹⁰¹ Further, the ACPO policy did not contain certain language contained in Directive section A.2.a that prohibits inquiries into the immigration status of any individual unless doing so is necessary to the ongoing investigation of an indictable offense *by that individual*. The ACPO policy did not contain the words "by that individual;" as a result, the policy would allow police officers in the county to inquire into immigration status in the case that it was necessary to any ongoing investigations of an indictable offense not by the individual being questioned but by any other individual, potentially exposing witnesses or related individuals to immigration status checks.¹⁰² The ACPO also removes Directive section II.B.2 entirely from its office policy.

94 559 U.S. 356 (2010).

95 See Directive, *supra* note 1, at V.A.

96 See *id.*

97 These were the prosecutors' offices of Atlantic County, Bergen County, Burlington County, Middlesex County, Morris County, Salem County, and Somerset County.

98 These agencies that denied CILPJ's requests include Cumberland County Prosecutor's Office, Essex County Prosecutor's Office, New Jersey Division of Consumer Affairs, New Jersey Division of Law, New Jersey Division on Civil Rights, State Ethics Commission; "No responsive records": Mercer County Prosecutor's Office, Ocean County Prosecutor's Office.

99 These included Bergen County Prosecutor's Office, Hudson County Prosecutor's Office and Warren County Prosecutor's Office.

100 This agency is the Morris County Prosecutor's Office.

101 See CILPJ OPRA Documents, Egg Harbor Township Police Departmental Directive 07-31, updated on March 15, 2019; Township of Hamilton Police Departmental Directive 2020-02 "Instructional Order: Revisions to Immigration Enforcement"; and Atlantic County Prosecutor's Office Prosecutor's Directive PD-00423-07 section II.A.1.a.

102 See Atlantic County Prosecutor's Office Prosecutor's Directive PD-00423-07 section II.A.1.b.

Section II.B.2 prohibits “providing any non-public personally identifying information regarding any individual” to ICE.

Further, the ACPO in its policy section II.A.2 incorrectly assigns the Directive’s II.B.4 prohibitions only to correctional officers when in actuality, the Directive extends these prohibitions to all LEA officers. Directive section II.B.4 prohibits all LEAs from providing access to a detained individual for an interview, unless the detainee signs a written consent form that explains the purpose of the interview, the interview is voluntary, the individual may decline to be interviewed, and the individual may choose to be interviewed only with his or her legal counsel present. The ACPO’s policy would therefore potentially allow for officers who are not correctional officers to provide ICE access to the individual, for instance when police are detaining an individual in the course of an arrest. The ACPO’s policy completely removes Directive section II.B.5, which prohibits LEAs from providing ICE notice of a detained individual’s upcoming release from custody unless the detainee is charged or convicted of certain crimes or is subject to a final order of removal.

The ACPO policy also alarmingly reduces the Directive’s provisions for prosecutors to two provisions. The ACPO’s policy merely instructs prosecutors to not “attack a witness’s credibility at trial based on his or her immigration status” (section II.A.3.a) and to not seek pretrial detention of an individual based solely on his or her immigration status (section II.A.3.b). As such, the instructions in the ACPO policy make no mention of prosecutors needing to confirm that the defendant has been advised of the immigration consequences of his or her charges or consular rights, the inadmissibility of immigration status evidence in court unless relevant and after raising it with the Court or being mindful of the collateral consequences in the process of reaching a just resolution with the case.

While the ACPO mentions in its instructions for police, corrections officers, and prosecutors to “refer to directive for further details,” the abridged version of the Directive’s provisions that it places in its own policy prioritizes certain provisions and de-empha-

sizes other very important prohibitions through its omissions in this official policy text.

And while the ACPO’s policy abridges the Directive in the prohibitions sections heavily, it nonetheless maintains the exactitude of the Directive’s exceptions, which outline when LEAs can cooperate with ICE without making any abridgements.

Further research is needed to assess the degree to which the ACPO action of sending out its office policy with prohibitions aimed at particular types of law enforcement officers had an effect on the drafting of Atlantic County Justice Facility’s policy, which in turn, does not include any of the provisions from Directive section II.A that ACPO had assigned merely to police officers.¹⁰³ The Atlantic County Justice Facility is a detention facility and prohibitions from section A of the Directive are still relevant to the facility but are nonetheless not included in the LEA’s policy. Directive section A.1 prohibits law enforcement from questioning and searching individuals based on actual or suspected citizenship or immigration status or actual or suspected violations of federal civil immigration law. Section A.2 prohibits inquiring about immigration status of any individual unless it is necessary to an ongoing investigation of an indictable offense by that individual and is relevant to the offense under investigation. Questioning and searching activities are possible within custodial environments and as such, not including these sections in their LEA policy, violates Directive section VIII.A which require the facility to change its policies in full accord with the Directive. If such prohibitions are not adhered to in practice, agency officers also violate Directive sections A.1. and A.2.

The ACPO’s direction to LEAs stands in stark contrast to that of other prosecutors’ offices such as Monmouth County Prosecutor’s Office which distributed the Directive itself and repeated all of the provisions in an email sent to all Monmouth County Police Chiefs.¹⁰⁴

103 See CILPJ OPRA Documents, Atlantic County Department of Public Safety Division of Adult Detention, “Institutional Directive 19- 1.17.03 #1”, March 1, 2019.

104 See CILPJ OPRA Documents, Little Silver Police Department, email from Lori Linskey to Monmouth County Police Chiefs, December 3, 2018, “Fw: 2018-6 Immigration [sic] Trust Directive.”

III. Template Standard Operating Procedures Policy

with the Immigrant Community” (hereinafter “Template Policy”), which was created by a third party private company.¹⁰⁵

Dealing with the Immigrant Community

Among the 416 LEAs that responded to CILPJ’s records request and provided a SOP that they had adopted to implement the Directive, 130 LEAs created their SOP from a template policy, entitled “Dealing

¹⁰⁵ The following LEAs all provided an SOP apparently drafted from the *Dealing with the Immigrant Community* template policy by a third party private contractor: Allendale Police Department, Asbury Park Police Department, Audubon Police Department, Avon-By-The-Sea Police Department, Bay Head Police Department, Beachwood Police Department, Boonton Township Police Department, Branchburg Police Department, Brick Township Police, Brielle Police Department, Carneys Point Township Police, Cedar Grove Township Police, Chester Police Department, Cliffside Park Police Department, Closter Borough Police, Cumberland County Sheriff’s Office, Denville Township Police Department, the Department of Public Safety at New Jersey Institute of Technology (NJIT), Dover Police Department, Dumont Police Department, East Greenwich Township Police Department, Elizabeth Police Department, Elmwood Park Borough Police, Englewood Police Department, Fair Lawn Police Department, Florham Park Police Department, Fort Lee Police Department, Franklin Borough Police Department, Franklin Lakes Police Department, Franklin Township Police, Galloway Township Police Department, Glen Ridge Borough Police Department, Glen Rock Police Department, Hackensack Police Department, Hanover Township Police Department, Harding Township Police Department, Harrison Police Department, Harvey Cedars Police Department, Haworth Police Department, Hightstown Police Department, Ho-Ho-Kus Police Department, Howell Police Department, Jackson Township Police Department, Kenilworth Police Department, Kinnelon Police Department, Lakehurst Police Department, Lakewood Township Police Department, Lincoln Park Police Department, Linwood City Police, Little Falls Police Department, Little Ferry Police Department, Long Hill Township Police Department, Longport Police Department, Lower Alloways Creek Police, Lumberton Police Department, Lyndhurst Police Department, Madison Police Department, Manalapan Township Police Department, Manchester Township Police, Mantoloking Police Department, Maywood Police Department, Mercer County Sheriff’s Office, Middlesex County College Police Department, Midland Park Police Department, Milltown Police Department, Monroe Township Police Department (Gloucester County), Montvale Police Department, Moorestown Police Department, Morris County Park Police Department, Morristown Bureau of Police, Mountainside Police Department, Neptune Township Police Department, New Brunswick Police Department, New Providence Police Department, New Milford Police, Newton Police Department, North Arlington Police Department, North Brunswick Police, Nutley Police Department, Oakland Borough Police, Ocean Township Police Department, Ogdensburg Police Department, Oradell Police Department, Palisades Interstate Parkway Police Department, Parsippany-Troy Hills Police Department, Pennington Borough Police Department, Penns Grove Police Department, Pennsville Police Department, Pequannock Township Police Department, Piscataway Township Police, Princeton Police Department, Prospect Park Police Department, Ramsey Police, Randolph Township Police, Raritan Police Department, Robbinsville Township Police Department, Saddle River Police Department, Salem County Prosecutor’s Office, Scotch Plains Police Department, Sea Isle Police Department, Seaside Park Police Department, Secaucus Police Department, Seyreville Police Department, Ship Bottom Police Department, South Amboy Police Department, South Hackensack Police, South Toms River Police Department, Spotswood Police, Spring Lake Heights Police Department, Stafford Police Department, Summit Police Department, Teaneck Police Department, Tenafly Police Department, Totowa Police, Tuckerton Police Department, Upper Saddle River Police Department, Ventor City Police Department, Wall Township Police Department, Wallington Police Department, Washington Township Police Department, Watchung Police Department, Wayne Township Police Department, Westfield Police Department, Westwood Police Department, Woodcliff Lake Police, Wood-ridge Police Department, Woodland Park Police Department, Woodstown Police Department, and Wyckoff Township Police.

Some LEAs (Lumberton Township Police Department, Ocean Township Police Department, and Brielle Borough Police Department) provided emails between their agencies and the third party contractor’s staff. In addition, the SOP document provided by Salem County Prosecutor’s Office refers to a PDF file from a third party contractor.

Indeed, most of these LEA-adopted policies that relied on the Template Policy used the same or similar titles such as “Dealing with Immigrants.”¹⁰⁶

The Template Policy consists of boilerplate language about the Directive’s goals and basis,¹⁰⁷ which is followed by five general sections: definitions, including the Directive’s list of serious and violent crimes that permit LEAs to communicate custody release information to ICE; general disclaimers; “Enforcement of Federal Civil Immigration Law”; “Agreements with the Federal Government,” which in some LEA policies was incorporated into the “Enforcement” section; and a section discussing U-visa and T-visa information procedures. For LEAs that provided an SOP based upon this Template Policy, the structure was largely consistent with only slight alterations such as with differently ordered sections.

While for the most part the model policy was faithful to the Directive, a few substantive elements were worth noting that went beyond the Directive’s requirements. The Template Policy contains language permitting officers to inquire about immigration status to comply with consular notification requirements under the VCCR and in some cases, it included language extending the definition of “exigent circumstances” that might allow LEAs to cooperate with ICE and share LEA resources and information. These two differences are discussed in greater detail in the following two subsections.

A. Claim of Permissible Inquiry into Immigration Status to Comply with the Requirements of Vienna Convention on Consular Relations

Section V of the Directive concerns special considerations for prosecutors and charges prosecutors with the responsibility of (1) advising defendants of their rights to effective assistance of counsel under *Padilla v. Kentucky*, 559 U.S. 356 (2010) as well as (2) ensuring that defendants are advised that they have potential rights under the Vienna Convention on Consular Relations. However, the Template Policy creates an additional exception to the Directive’s prohibition on inquiring into immigration status by instructing officers to inquire into immigration status in order to comply with the Convention. This exception is not contemplated by the Directive and may violate it. For further discussion of this issue, see section 7.I.B of this report.

B. Exigent Circumstances Language Additions

Among the Directive’s exceptions is one that allows LEAs to provide federal immigration authorities with aid or assistance, including access to non-public information, equipment, or resources when required by exigent circumstances (section II.C.9). As the Directive does not clearly define what an “exigent circumstance” is, and much if not most of the issues that police address in their daily work consists of situations that could be considered “exigent” or requiring immediate or urgent action on their part especially when responding to a 911 call, this exception potentially allows for a great degree of immigration enforcement assistance. Some agencies using tem-

106 Some LEAs provided a heavily truncated version of this SOP as well. The SOP provided for Watchung Police Department as well as the SOP provided by Galloway Township Police Department contained only the U-visa and T-visa sections of the Template Policy. At least two LEAs provided 12 out of 13 pages of the Template Policy with page 10, for some reason, omitted from their records.

107 The language reads:

It is the policy of the [Law enforcement agency] to deal with the immigrant community in compliance with New Jersey Attorney General Directive 2018-6.

Immigrants are less likely to report a crime if they fear that the responding officer/detective will turn them over to immigration authorities. This fear makes it more difficult for officers/detectives to solve crimes and bring suspects to justice.

Law enforcement officials protect the public by investigating state criminal offenses and enforcing state criminal laws. They are not responsible for enforcing civil immigration violations except in narrowly defined circumstances. Such responsibilities instead fall to the federal government and those operating under its authority.

Although this agency should assist federal immigration authorities when required to do so by law, all officers/detectives should also be mindful that providing assistance above and beyond those requirements threatens to blur the distinctions between state and federal actors and between federal immigration law and state criminal law. It also risks undermining the trust between the law enforcement community and the public.

plate language have further clarified for their officers in their SOP what this portion of the Directive is referring to. In the case of Brooklawn Police Department, the agency has added policy language stating further that

Nothing in this policy shall restrict Brooklawn Police Officers from providing emergency assistance to both state and federal law enforcement (including Immigration and Customs Enforcement) officers, whenever exigent circumstances arise *and the safety of fellow officers or the public is in jeopardy*.¹⁰⁸

Collingswood Borough Police and Gloucester Township Police use this template language in their Directive-related policies as well.

Nonetheless, such policy language is not included in the Directive itself and may broaden the Directive's definition of exigent circumstances beyond what is allowed by its provisions that otherwise limit LEA cooperation with ICE.

108 CILPJ OPRA Documents, Brooklawn Police Department, General Order: Immigration Enforcement, March 26, 2019.

6. LEA Compliance with Immigrant Trust Directive Training Requirements

The Immigrant Trust Directive (Directive) required that all state, county, and local law enforcement agencies (LEAs) provide training to their officers regarding the provisions of the Directive before March 15, 2019; this date was still included on current version of the Directive issued on September 27, 2019. The Directive outlined that such training should be made available through the NJ Learn system or by other electronic means.

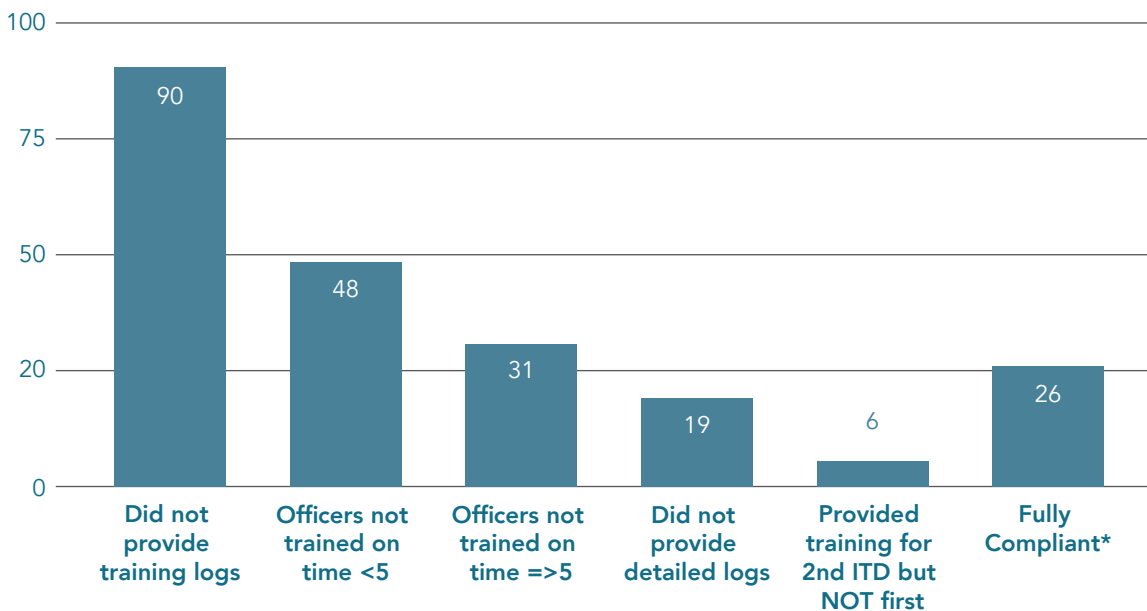
on time, at or before the March 15, 2019 deadline. Ninety LEAs failed to provide CILPJ with any form of detailed training logs of their officers regarding the Directive. Of the 128 LEAs that provided some sort of documentation regarding proof of training, a total of 19 LEAs failed to provide detailed training logs that listed the individual officers within the department and the completed training dates. And six LEAs only provided training regarding the second version of the Directive and did not provide training logs regarding the first version of the Directive to indicate timely training by the March 15, 2019 deadline.

I. Training Compliance

Of the 416 LEAs that provided records, CILPJ analyzed 220 LEAs for training compliance. Only 26 LEAs, or just under 12% of the total, were fully compliant and provided detailed training logs of all relevant officers that indicated they were trained

A total of 79 LEAs had at least one officer who did not complete the training in time. Of those 79 LEAs, CILPJ concluded that officers from four LEAs were late in the completion of the training because of suspected new hires based on training dates in 2020. Among the remaining 75 LEAs, training was completed within the two weeks after the March 15, 2019

Figure A: 220 LEAs' Training Compliance



deadline. Forty-eight LEAs had less than five officers who were not trained on time and 31 LEAs had five or more officers who were not trained on time.

Among the violations and troubling implementation practices regarding the completion of the training, the following were most notable:

- The Chief of Police of the Newton Police Department in an email dated February 27, 2019, informed his officers that “with the format I’m providing, it [the training] can play in the background while you are able to do other activities, while also receiving the training information provided in the video.” Despite this guidance to multi-task during the training, roughly 10 officers or a fourth of the department, still were not trained in time of the first Directive implementation.
- The Egg Harbor City police department completed officer training in the Directive in May of 2020, well beyond the release of the second version of the Directive.
- A sergeant from Mountain Lakes Police had failed the multiple-choice section twice before passing the training on October 7, 2019, a completion date well past both the first and second version of the Directive.
- The Somerdale Police Department seemingly trained its officers on the Directive after CILPJ submitted its OPRA request to the agency on October 13, 2020. Training documents from the LEA indicate that all officers were trained between October 27, 2020 and December of 2020.

II. Minimal Training on the Second Version of the Directive

When submitting the required training logs to ensure compliance with the most recent version of the Directive, most of the departments that submitted such logs indicated that their officers were being trained on either the original version or the updated version of the Directive. However, two LEAs only provided training logs pertaining to a generalized list of legal updates for 2019 and not to a Directive-specific training.

For example, Mountain Lakes Police Department’s multiple-choice test covering legal updates for

2019 included 25 questions. Only two questions pertained to the Directive, one of which was a true/false question. The first of the two questions asked, “As noted in the [Directive], New Jersey law enforcement officers are not required to enforce civil ICE detainers or administrative warrants issued by federal immigration officers.” The second question asked whether “New Jersey law enforcement officers may not ___ any individual based solely on actual or suspected citizenship or immigration status, or actual or suspected violations of federal civil immigration law.” The Mountain Lakes Police Department submitted no further records of training on either the first or second version of the Directive.

The Delaware River Port Authority Transit Police listed a video linking an NJ Learn training video that was based on the original Directive, as a part of their mandatory training. In addition to providing a training log based on the original version, the LEA also submitted training logs regarding the generalized legal updates of 2019 with the same two questions pertaining to the Directive found in the training provided by Mountain Lakes Police. There is no indication that this LEA was trained on the most recent version of the Directive.

III. ICE Conducted Training for an LEA on Immigration Enforcement After the Directive Implementation

Finally, in April 2019, soon after the implementation of the first version of the Directive, the Gloucester County Police Department Academy hired ICE officers to perform training on immigration enforcement to the Police Department’s officers. Though the Directive was in effect, ICE trained the local officers on the prior 2007 AG Directive (2007-3) that facilitated local cooperation in immigration enforcement and that the Directive had replaced. The training highlighted the need to “properly identify foreign nationals and notify ICE pursuant to any arrest involving them.” This is counter to the Directive’s explicit language, as notification to ICE is only allowed under enumerated exceptional circumstances found in the Directive.

7. Law Enforcement Agency Stops, Arrests, Searches, Detentions

One of the ways that the Immigrant Trust Directive (Directive) seeks to establish trust between law enforcement agency (LEA) officers and immigrant communities is its prohibition on inquiring about an individual's immigration status. In particular, Section II.A.1. forbids any state, county, or local law enforcement agency or official from stopping, questioning, arresting, searching, or detaining any individual based *solely* on their actual or suspected immigration status, or on an actual or suspected violation of federal civil immigration law.¹⁰⁹ Additionally, Section II.A.2. prohibits state and local LEAs from asking an individual about their immigration status.

However, there are instances when asking about an individual's immigration status is allowed. First, an LEA may inquire about such status if it is a) necessary to the ongoing investigation of an indictable offense by that individual *and* b) it is relevant to the offense under investigation.¹¹⁰

Section II.C clarifies that Section II.A will not "be construed to restrict, prohibit, or in any way prevent a state, county, or local law enforcement agency or official" from completing certain tasks, such as:

- (2) Complying with all applicable federal, state, and local laws.
- (3) Complying with a valid judicial warrant or other court order or responding to any request authorized by a valid judicial warrant or other court order. . .
- (5) Requesting proof of identity from an individual during the course of an arrest or when legally justified during an investigative stop or detention.
- (6) Asking an arrested individual for information necessary to complete the required fields of the LIVES-CAN database (or other law enforcement finger-

printing database), including information about the arrestee's place of birth and country of citizenship.¹¹¹

(7) Inquiring about a person's place of birth on a correctional facility intake form and making risk-based classification assignments in such facilities.

(8) Sending to, maintaining, or receiving from federal immigration authorities information regarding the citizenship or immigration status, lawful or unlawful, of any individual. See 8 U.S.C. §§ 1373, 1644.

The above provisions attempt to find the right balance of restricting when LEA officers may inquire about a non-citizen's immigration status and when they are allowed to do so. In practice, as described below, that proper balance is difficult to find in at least two instances and may lead to violations of the Directive. The first instance takes place in situations involving state obligations to comply with the Vienna Convention on Consular Relations (VCCR). The second addresses day-to-day traffic stops between LEA officers and individuals.

I. The Directive Does Not Explicitly Address How LEAs Can Comply with the Vienna Convention Without Violating the Directive

CILPJ has found that both the Directive and the Office of the Attorney General (OAG) communication

109N.J. Office of the Att'y Gen., *Attorney General Law Enforcement Directive No. 2018-6* (Nov. 29, 2018), https://www.nj.gov/oag/dcj/agguide/directives/ag-directive-2018-6_v2.pdf [hereinafter Directive].

110 *Id.*, II.A.2.

111 *Id.* at 6 (emphasis added).

about the Directive have left unclear instructions about how LEAs might implement the Directive and the VCCR, an international law that is binding on state law enforcement.¹¹²

The Directive's language and the implementation do little to clarify the complex web of federal, state, and local laws and resources about how to comply with the Convention. At the federal level, this includes the VCCR, federal regulations, and U.S. Department of State (DOS) training resources. At the State and local-level, this includes the Directive, the County Prosecutor's guidance as well as department-wide SOPs and training material. Unclear guidance can lead to questions about immigration status that are impermissible under the Directive.

A. The Directive Only Addresses the Consular Notification Process In "Prosecutorial Considerations" Even Though Other LEAs Must Also Follow the Convention

As an extension of DOS policy and international agreement, certain foreign nationals who are arrested or detained at length must be advised that they have a right to notify their consulate or embassy. Under the VCCR, when a foreign national is arrested or detained, they must be advised of their right to have their consular official notified.¹¹³ The VCCR is a bilateral agreement between the United States and another country regarding the legal obligations that countries have towards foreign nationals in certain situations. Thus, if the United States signed a "Vien-

na Convention" agreement with a particular country, and the person being arrested or detained is from that country, the notification may be mandatory.

Article 36(b)(1) of the VCCR provides, "Any communication addressed to the consular post by the person arrested, in prison, custody or detention shall be forwarded by the said authorities without delay."¹¹⁴

In the Directive, the only mention of the Vienna Convention is Section V.A.2., "Consideration for Prosecutors."¹¹⁵ This section provides: "The defendant may have rights to consular notification pursuant to the Vienna Convention on Consular Relations." However, compliance of this matter is not limited to prosecutors.¹¹⁶ In practice, state and local police department officers must also comply with the Vienna Convention during arrests or detention. For instance, the Atlantic City Police Department's Directive No. 3.25 (2010) highlights:

All personnel must be aware that they are required to provide prompt notification to a foreign national's consular officials. Failure to provide prompt notification may result in the reversal of any criminal conviction.¹¹⁷

In Open Public Records Act (OPRA) responses to CILPJ's records request, many local LEAs have provided the fifth edition of the State Department Consular Notification and Access Manual, which describes an LEA's duty under the Convention, lists countries that require mandatory notification, and provides template forms for the foreign national and

112 A U.S. Dep't of State guidance document on Consular Notification & Access indicates "State and local governments must comply with consular notification and access obligations because these obligations are embodied in treaties that are the law of the land under the Supremacy Clause in Article VI of the U.S. Constitution." U.S. Dep't of State, Consular Notification and Access 16 (5th ed. 2018) [hereinafter U.S. State Dep't Consular Notification and Access], https://travel.state.gov/content/dam/travel/CNAtrainingresources/CNA%20Manual%205th%20Edition_September%202018.pdf.

113 Vienna Convention on Consular Relations, Apr. 24, 1964, 596 U.N.T.S 261, TIAS 6820, 21 U.S.T 77.

114 *Id.*

115 See *infra* "Revision of Agency Policies."

116 For more information, refer to corresponding federal regulations and U.S. State Department website. See 28 C.F.R. § 50.5 (2022) (describing notification of Consular Officers upon the arrest of foreign nationals); 8 C.F.R. § 236.1 (2022) (describing procedures for apprehension, custody, and detention of noncitizens); *Steps to Follow When a Foreign National Is Arrested or Detained in the U.S.*, Bureau of Consular Affairs, U.S. Dep't of State <https://travel.state.gov/content/travel/en/consularnotification.html> (last visited Mar. 6, 2022); see also U.S. State Dep't Consular Notification and Access, *supra* note 4, at 15 (noting federal regulations require federal prosecutors "to notify consular officers in cases involving arrests by officers of the U.S. Department of Justice).

117 CILPJ OPRA Documents, Atlantic City Policy Department, *Consular Notification & Immigration Enforcement* (last revised Mar. 7, 2019); *State v. Cevallos-Bermo*, 333 N.J. Super. 181 (App. Div. 2000). For a case after Directive was in effect, see *State v. Terrero*, No. A-1287-18T4, 2020 N.J. Super. Unpub. LEXIS 1658 * (App. Div. Aug. 31, 2020).



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**STRENGTHENING TRUST BETWEEN LAW ENFORCEMENT AND IMMIGRANT
COMMUNITIES**
ATTORNEY GENERAL LAW ENFORCEMENT DIRECTIVE 2018-6

Resources for Directive

- Resource A:** Appendix A – Violent or Serious Offense definitions
- Resource B:** 1 Page Fact Sheet: Arresting a Non-U.S. Citizen
- Resource C:** U.S Department of State – Consular Notification & Access
- Resource D:** U-Visa and T-Visa Law Enforcement Resource Guide (DOJ)
- Resource E:** U-Visa Immigration Relief Overview for Law Enforcement (DOJ)
- Resource F:** ICE Warrant for Arrest Form I-200 Sample (Non-Judicial Warrant)
- Resource G:** ICE Detainer Form I-247A Sample (Non-Judicial Detainer)
- Resource H:** 1 page Fact Sheet – How the Immigration Trust Directive Changes L.E. Practices

the respective consulates and excerpts of the Vienna Convention.¹¹⁸ A brief traffic stop or an arrest resulting in a citation for a misdemeanor and release at the scene generally does not trigger such consular notification requirements. On the other hand, requiring a foreign national to accompany a law enforcement officer to a detention center may trigger the consular notification requirements, particularly if the detention lasts for a number of hours or overnight.¹¹⁹

B. The New Jersey Attorney General's Office Provided a Federal Fact Sheet for Arresting Non-U.S. Citizens that Encourages LEAs to Ask "Are You A U.S. Citizen?"

When Attorney General Grewal issued the first Directive in November 2018, the Office attached additional resources, including Resource B, a fact sheet on arresting a non-U.S. citizen. Resource B is an excerpt from the DOS's manual on consular notification and access.¹²⁰

118 U.S. State Dep't Consular Notification and Access, *supra* note at 4.
119 CILPJ OPRA Documents, Egg Harbor City – 2019 Directive and Training Resources – Atlantic County Prosecutor's Office at 17. As a comparison, a San Francisco Police Manual requires certain consular notification policies when SFPD has arrested or detained a foreign national for more than two hours. See San Francisco Police Dep't, Booking and Detention Manual 36-37 (2008), <https://www.sanfranciscopolice.org/sites/default/files/2019-04/SFPD-DM-12-Booking-and-Detention-Manual-July2008.pdf>.

120 U.S. State Dep't Consular Notification and Access, *supra* note 4.

ARRESTING A NON-U.S. CITIZEN

Consular Notification Process



Q. Are you a U.S. citizen?

A. "YES, I am a U.S. citizen."

(No further action required.)



"NO, I am not a U.S. citizen."



Q. Are you a national of one of these countries?

Albania	Costa Rica	Kazakhstan	Russia	Tunisia
Algeria	Cyprus	Kiribati	St. Kitts and Nevis	Turkmenistan
Antigua and Barbuda	Czech Republic	Kuwait	St. Lucia	Tuvalu
Armenia	Dominica	Kyrgyzstan	St. Vincent and the Grenadines	Ukraine
Azerbaijan	Fiji	Malaysia	Seychelles	United Kingdom ³
Bahamas	Gambia	Malta	Sierra Leone	Uzbekistan
Barbados	Georgia	Mauritius	Singapore	Zambia
Belarus	Ghana	Moldova	Slovakia	Zimbabwe
Belize	Grenada	Nigeria	Tajikistan	
Brunei	Guyana	Philippines	Tanzania	
Bulgaria	Hungary	Poland ²	Tonga	
China ¹	Jamaica	Romania	Trinidad and Tobago	

1. Includes Hong Kong and Macao. Does not include Republic of China (Taiwan).
 2. Mandatory only for non-permanent residents in the United States (i.e., those not holding a "green card"); for green card holders, notification is upon request.

3. UK includes Anguilla, British Virgin Islands, Bermuda, Montserrat, and the Turks and Caicos islands. Residents' passports bear the name of their territory and may also bear the name "United Kingdom." Whether or not the passport bears the name "United Kingdom," consular services for these persons are provided by UK consulates.

A. "YES."

Step 1. Inform detainee that he or she may communicate with consulate, and that you must notify consulate of arrest/detention.

Step 2. Notify nearest consulate **without delay**.

Step 3. Make record of notification in case file. Where fax or email sent, keep fax confirmation or sent email.

Step 4. Allow consular officers access to detainee if they subsequently request access.

(No further action required.)



"NO."

Inform detainee, **without delay**, that he or she may have consulate notified of arrest/detention.



Q. Do you want your consulate notified of your arrest/detention?

A. "YES."

Step 1. Make note in case file.

Step 2. Notify nearest consulate **without delay**.

Step 3. Make record of notification in case file. Where fax or email sent, keep fax confirmation or sent email.

Step 4. Allow consular officers access to detainee if they subsequently request access.

(No further action required.)



"NO."

Step 1. Make note in case file.

Step 2. Do **NOT** inform the consulate.

(No further action required.)



IN ALL CASES:

- Do not inform consulate about detainee's refugee or asylum status.
- Detainee may communicate with consular officer and may request consular access at any time (whether previously declined or not).

Consular officers may have access to detainee

- regardless of whether detainee requests it. Even if detainee does not want to be visited, consular officers may still have one face-to-face visit.

Consular Notification & Access (CNA)
 U.S. Department of State
 CA/P
 SA-17, 12th Floor
 Washington, DC 20522-1712

P: 202-485-7703
 consnot@state.gov

For more information visit: travel.state.gov/CNA

The document encourages LEAs to ask “Are you a U.S. Citizen?” This question contravenes Directive section II.A.2.’s prohibition about asking questions related to immigration status. In practice, a traffic stop likely does not require a consular notification pursuant to the Vienna Convention. However, the AG’s provision of Resource B without explicit directions on its relation to the Directive, will likely create confusion amongst the LEAs and may even lead officers to ask the question “Are you a U.S. citizen?” in situations beyond those that the Vienna Convention pertains to.

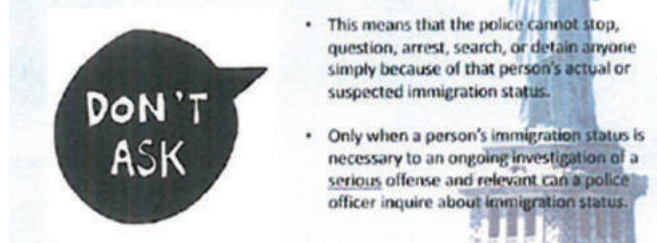
Since the AG sent these resources to all county prosecutors, the impact of this confusion could affect all LEAs in different interactions of arrests, searches, and detentions. For example, as shown in one OPRA response, the Atlantic County prosecutor provided CILPJ with records demonstrating that it distributed the AG’s “additional resources” to all ACPO employees and municipal, county, and state law enforcement agencies.¹²¹ This document was likely sent at least twice, as it was created on January 14, 2019, and re-issued April 28, 2020 after the AG’s revised Directive dated September 27, 2019.

On January 10, 2019, the Department of Law and Public Safety, Division of Criminal Justice issued a memorandum for all chiefs of police and chiefs of county detectives on “Training Materials for the Immigrant Trust Directive (2018-6).”¹²² The PowerPoint slide that discusses the Directive’s Section II.A.2. exceptions – when immigration enforcement assistance is allowed – does not mention procedures related to the Vienna Convention.¹²³

The OAG Directive training video for all law enforcement officers in New Jersey did include a module on consular notifications under the Vienna Convention and its relation to the Directive. However, it stated that “AG Directive 2018-6 does not affect the notification requirements created by the Vienna Convention on Consular Relations. Officers should continue to follow departmental policy.”¹²⁴ Such language did not explicitly state that asking about immigration status is not required under the Convention, nor that following the guidance provided on Resource B may contravene the Directive.

What has changed for the police under the Immigrant Trust Directive?

Investigating or inquiring about the immigration status of an individual is generally prohibited by the Immigrant Trust Directive.



- This means that the police cannot stop, question, arrest, search, or detain anyone simply because of that person's actual or suspected immigration status.
- Only when a person's immigration status is necessary to an ongoing investigation of a serious offense and relevant can a police officer inquire about immigration status.

Source: OPRA Request - Office of the New Jersey Attorney General, *Community Immigration Directive Presentation*, Slide 10, January 7, 2019.

The confusion in complying with both the Directive and the VCCR consular notification procedures can also be found across many LEA departments’ SOPs. CILPJ found that a substantial number of LEAs that used “Dealing with the Immigrant Community,” a template SOP produced by a third party private contractor, included some form of policy language including the template policy’s following exception to the Directive’s prohibition on asking about immigration status (see text in red on p.39).

As can be seen in the policy text on the following page, the third party private contractor’s template policy includes language that frames the action of asking about immigration status information when carrying out compliance with the VCCR as an allowable exception to the Directive’s general prohibition on asking about immigration status. This exception is not in the Directive itself. Even though the “Dealing with Immigrant Community” SOPs all reference “department’s SOP on Consular Notification and Access,” CILPJ has only received one such document from Atlantic City Police Department, out of all local police departments whom CILPJ sent OPRA requests.¹²⁵

121 CILPJ OPRA Documents, Egg Harbor City – 2019 Directive and Training Resources – Atlantic County Prosecutor’s Office.

122 CILPJ OPRA Documents, Hightstown Police Department – Notice from Mercer County Prosecutor and Presentation.

123 *Id.* at 5.

124 CILPJ OPRA Documents, Evesham Township Police, “Police Officer Training on Immigration Directive 2018-6 (16-32),” at 00:42:00 in the training video.

125 CILPJ OPRA Documents, Atlantic City Police Department, *Consular Notification & Immigration Enforcement* (last revised Mar. 7, 2019).

Immigrant Trust Directive No.2018-6 v2.0	"Dealing with Immigrant Community" Standard Operating Procedure Model Policy* (created by a third-party private contractor)
<p>[Subject to certain exceptions] no state, county, or local law enforcement agency or official shall inquire about the immigration status of any individual, unless doing so is: unless it is:</p> <p>a) necessary to the ongoing investigation of an indictable offense by that individual; and</p> <p>b) relevant to the offense under investigation</p>	<p>An officer may not inquire about immigration status of any individual, unless doing so is:</p> <p>a) Necessary to the ongoing investigation of an indictable offense by that individual; and</p> <p>b) Relevant to the offense under investigation; or</p> <p>c) Necessary to comply with the requirements of the Vienna Convention on Consular Relations (see this department's SOP on Consular Notification and Access).</p>

* This specific example is from Englewood Police Department, though many departments use this template language. See *infra* Section V. Revision on Agency Policies.

II. Traffic Stops

Traffic stops are a common interaction between local police and the public. While the Immigrant Trust Directive prohibits LEA officers from initiating a stop, search, arrest, or detention of an individual on the sole basis of actual or suspected immigration status, CILPJ has found in this review that a routine traffic stop made on the basis of a minor infraction or violation can present a variety of scenarios in which LEA officers have cooperated with ICE. Compare the two different outcomes of local police responding to a motor vehicles accident below.

A. Westfield – Union County

In Westfield, a town in Union County, an individual named Joseph,¹²⁶ who was a driver, was involved in a motor vehicle collision on September 26, 2019, well after the implementation of the Directive. A Westfield Police Department officer looked up Joseph’s information in INFOcop, a software system that allows local law enforcement to access local, state, and federal databases. Through this search, the officer saw that U.S. Immigration and Customs Enforcement

(ICE) had issued an “ICE warrant” for his arrest for failure to appear for removal. A Westfield Police Department officer arrested him based on the warrant and transferred him to ICE custody.

The Directive forbids LEAs from reinforcing ICE’s administrative warrants such as the ones issued in the above example. The ground for which Joseph was detained – “Failure to appear for removal” – did not include an underlying criminal statute violation. And 8 U.S.C. 1229 states that when a non-citizen fails to appear for his removal hearing, an immigrant judge can issue a removal order *in absentia*.¹²⁷ Absent Joseph violating any a criminal statute included in the Directive as one that permits an LEA to assist ICE in sharing his release date information to facilitate a custody transfer, the NJ LEA’s actions violated the Directive.

B. Successful Implementation of the Directive: South Amboy Police Department’s Response to a Car Accident¹²⁸

In contrast to the above case in Westfield, the South Amboy Police Department followed the Directive’s required protocols. On October 20, 2020, a South

126 The name of this individual has been replaced with a pseudonym to protect his identity in this report.

127 See 8 U.S.C. § 1229a (b)(5)(A) (this regulation makes no mention of criminal offenses under failure to appear for deportation proceeding). For an example of administrative warrant, see an example: *NCIC Immigration Violator File and the Wanted Person File - Administrative vs. Criminal Warrants*, Washington Ass’n of Sheriffs & Police Chiefs (WASPC) <https://www.waspc.org/assets/docs/april%20article%20-%20immigration.pdf> (last visited Mar. 6, 2022); see also Lindsay Nash, *Deportation Arrest Warrants*, 73 Stan L. Rev. 433 (2021), <https://review.law.stanford.edu/wp-content/uploads/sites/3/2021/02/Nash-73-Stan.-L.-Rev.-433.pdf> (highlighting potential constitutional violations related to warrants and deportation-related arrests).

128 The names of the passengers in the following case example have been changed to maintain their anonymity.

Amboy police officer on local patrol stopped to help an occupied red car on the side of the road in which the airbags were deployed. Another officer in the area located the passengers Jonathan and Sarah who had been walking around the neighborhood asking for help. The officers offered to have medical staff check them both for injuries. While Sarah refused, Jonathan asked for his knee to be checked out because it had hit the steering wheel during the collision. As basic medical services arrived, Jonathan opened his car door and the police officer saw a bag of marijuana on the floor of the car. When Jonathan admitted the marijuana was his, they arrested him, and they escorted Sarah home.

At the station, Jonathan was charged with possession of less than 50 grams of marijuana. While the LEA processed Jonathan, ICE issued an immigration detainer and sent it to the department asking them to hold Jonathan for them. When the LEA officers examined the detainer and saw that it was not signed by a judge, they complied with the Directive and released Jonathan once they no longer had a reason to hold him on his criminal charges.

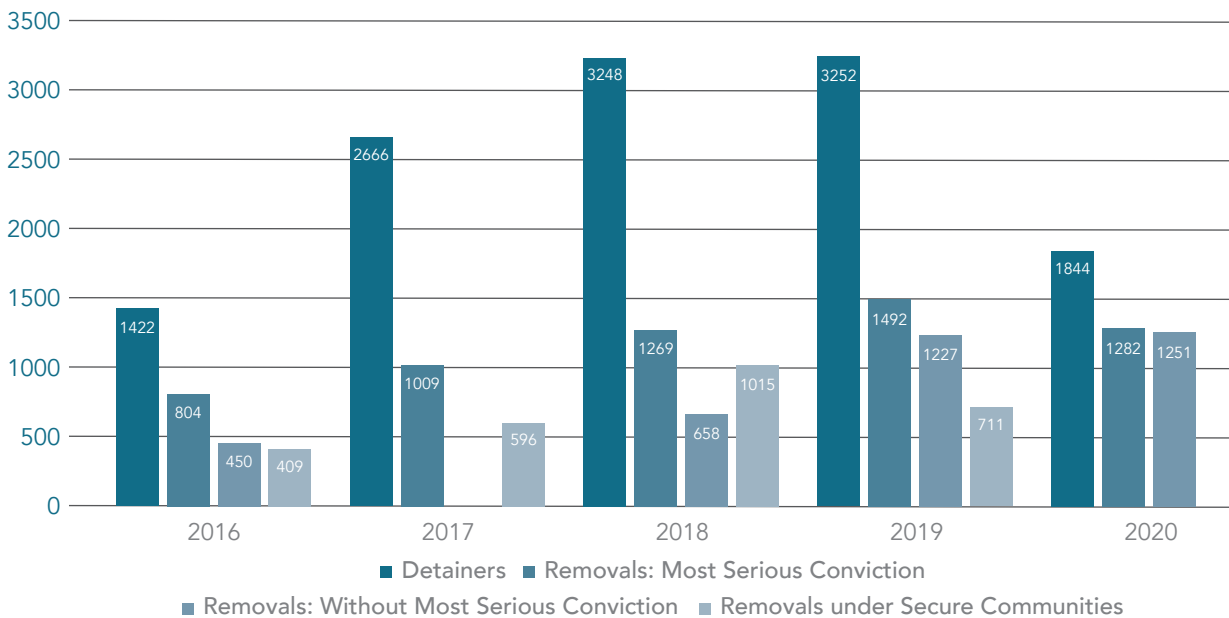
8. Detainers and Removals in New Jersey Before and After the Directive

Data suggests, at least correlatively, that the implementation of the Immigrant Trust Directive (Directive) corresponded with a plateauing of the rates of U.S. Immigration and Customs Enforcement (ICE) detentions assisted by jails and carceral facilities in New Jersey. Data collected by the immigration project of the Transactional Records Access Clearinghouse (TRAC) at Syracuse University provide insight into the correlative relationship between the issuance of the Directive in 2018 and its reissuance in 2019 and potential effects upon the rates of detainers and removals by ICE as well as the interaction between these effects and the rates of detainers issued under ICE’s Secure Communities Program.

I. ICE Detainers Issued

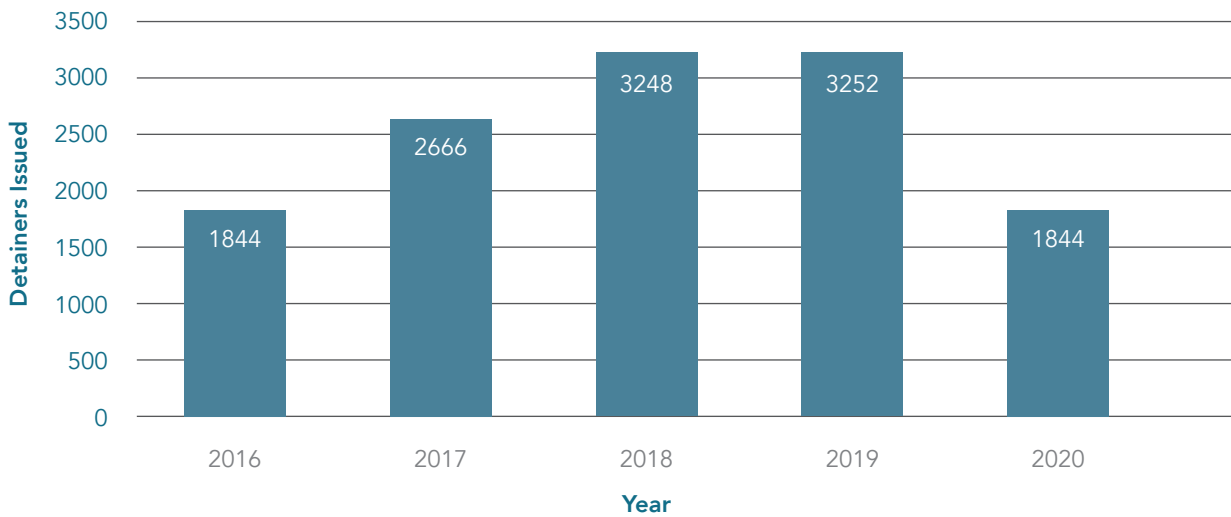
First, the rate of detainers issued by ICE for immigrant arrests in New Jersey rose precipitously, representing a 87.4% increase from 2016 to 2017 (1,422 in 2016 to 2,666) and a 21.8% increase from 2017 to 2018 (3,248).¹²⁹ Then, in the first year of the Directive’s implementation, detainers were issued at a rate representing only a 0.01% increase from 2018 (to 3,252), before decreasing by 43.3% in 2020 (down to 1,844 that year). When looking at the month by month data, the highest instances of ICE-issued detainers occurred between 200 and around 600 per month between April 2017 and March 2018 and fluctuated between the mid-200s and mid-300s between March 2018 and March 2020, demonstrating little month by month deviation.

Detainers and Removals in New Jersey, 2016-2020



¹²⁹ Percentages represent year-to-year increase or decrease.

Detainers Issued for ICE Arrests in New Jersey



II. Removals

TRAC also traces the rates of removal for those with and without convictions for the most serious crimes, which render individuals removable by immigration officials.¹³⁰ For those convicted of these offenses, the rates of removal rose 25.4% from 2016 to 2017 (804 in 2016 to 1009), 25.7% from 2017 to 2018 (to 1269), and 17.5% from 2018 to 2019 (to 1492) before slightly dropping by 14% between 2019 and 2020 (to 1282). Similarly, the rates of removals for those without convictions for these offenses climbed 46.2% from 2016 to 2018 (450 in 2016 to 658 in 2018) and then rose sharply by 86.4% between 2018 and 2019 (to 1227) before increasing by just under 2% between 2019 and 2020 (to 1251).

III. Removals Under Secure Communities

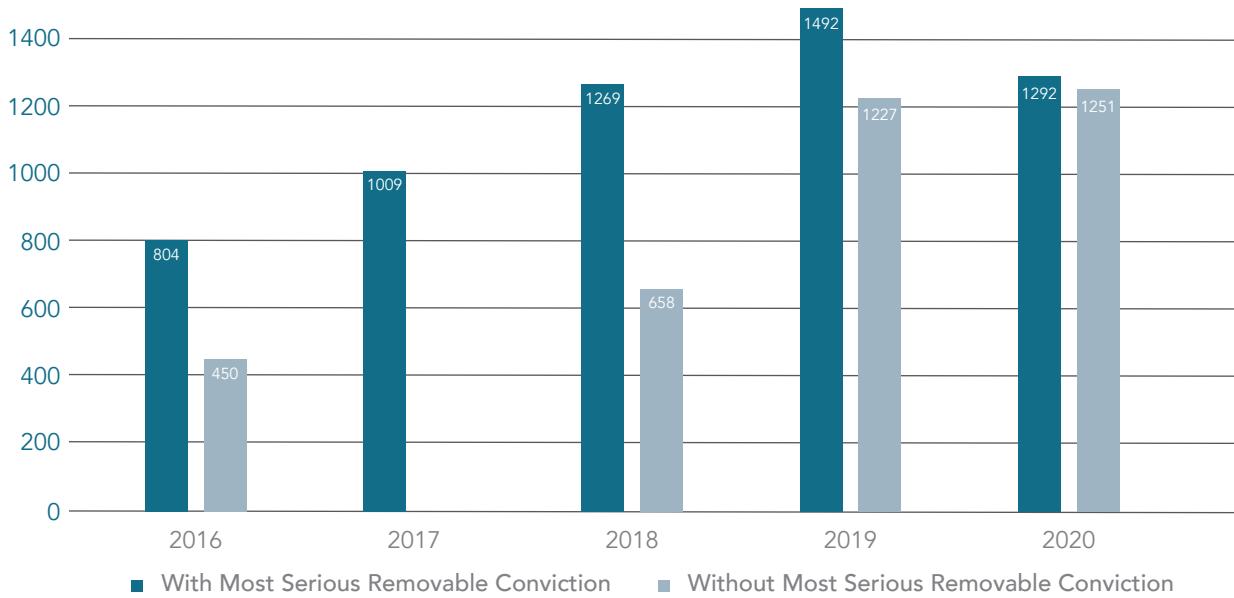
Last, TRAC also traced the rates of removals by ICE as part of the Secure Communities Program in New Jersey. Secure Communities is a partnership between U.S. Department of Homeland Security (DHS) and local law enforcement agencies in which local agencies, including jails, submit fingerprints to ICE where “they are checked against the U.S. Visitor and Immigrant Status Indicator Technology Program (US-VISIT) and the Automated Biometric Identification System (IDENT)” to identify whether the individual is in the United States with an undocumented status.¹³¹ Data provided by TRAC indicates that these removals show the greatest correlative connection with the issuance of the Directive, with removals under this program rising 45.7% from 2016 to 2017 (409 to 596), 70.3% from 2017 to 2018 (to 1015) before dropping 29% (to 711) in 2019, a decrease but still well above 2016 numbers.

¹³⁰ Latest Data: Immigration and Customs Enforcement Detainers, TRAC Immigration, <https://trac.syr.edu/phptools/immigration/detain/>.

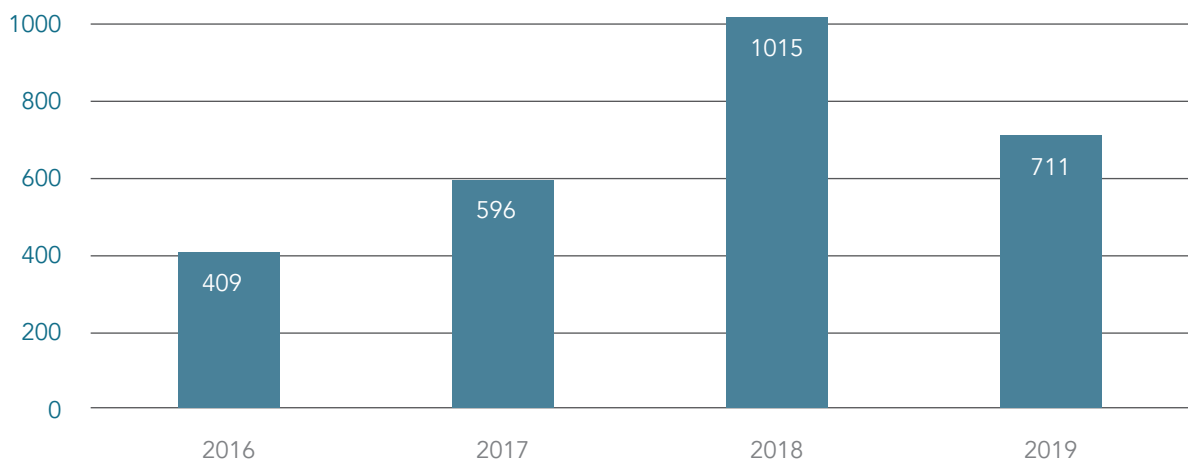
TRAC describes this category of offenses as “The recorded most serious offense the individual was convicted for. Offense categories utilize the National Crime Information Center (NCIC) coding system maintained by the Federal Bureau of Investigation. Where there are multiple convictions, ICE identified the most serious offense. Note that ICE has improved its methods for recording criminal convictions so that data for earlier years may be less comprehensive.” See About the Data, TRAC Immigration, https://trac.syr.edu/phptools/immigration/secure/about_data.html.

¹³¹ Fact Sheet, Secure Communities: A Fact Sheet, American Immigration Council, <https://www.americanimmigrationcouncil.org/research/secure-communities-fact-sheet>.

ICE Removals in New Jersey, 2016-2020



Removals Under the Secure Communities Program in New Jersey



9. Intergovernmental Service Agreements

The Directive exempts any agency, “currently party to an Intergovernmental Service Agreement (IGSA) to detain individuals for civil immigration enforcement purposes” from implementing the Directive’s provisions which limit immigration enforcement assistance.¹³² An IGSA is an agreement between a local law enforcement agency and U.S. Immigration and Customs Enforcement (ICE) in which the federal government compensates local detention facilities including jails for housing federal immigration detainees. Usually, this entails that the law enforcement agency (LEA) modify the infrastructure of a portion of their detention facility or dedicate an entire facility not only to provide housing and services for these federal immigration detainees but also to create offices for ICE officers to use in the facility alongside LEA officers who staff the immigration detention wing. This also includes building an information technology infrastructure to share information with ICE. IGSAs provide a financial incentive for these jails, “nett[ing] millions of dollars for local governments, who have charged ICE as much as \$120 a day per detainee.”¹³³

There have been long standing efforts in New Jersey to end IGSAs and the jurisdictional partnerships they create. In late November 2020, the Hudson County Board of Chosen Freeholders, despite making a pledge to the contrary, and with only two-day’s notice to the public, voted 6-3 to renew its IGSA.¹³⁴

In July 2021, the New Jersey Legislature passed S3361/A5207, a law that outlawed the state and its LEAs from entering into or renewing contracts with ICE, including IGSAs. This law was eventually signed by Governor Murphy on August 27, 2021.¹³⁵ The Directive, however, has not been updated to reflect this law change.

Journalistic publications indicated that, as of the Governor’s signing, only Hudson County, Bergen County, and a privately-run jail in Elizabeth were parties to IGSAs with ICE.¹³⁶ Despite this, neither Bergen County nor Hudson County provided CILPJ with any records responsive to its records request pertaining to their current IGSAs or gave any indication of these agreements in written correspondence or documents.

132 See Immigrant Trust Directive, III.B.

133 Brent Johnson, *N.J. bans jails from new ICE contracts as Murphy signs law*, NJ.com, August 20, 2021, <https://www.nj.com/politics/2021/08/nj-bans-jails-from-new-ice-contracts-as-murphy-signs-law.html>.

134 *Hudson County Freeholders Break Commitment To End ICE Contract by 2020*, Insider NJ, November 25, 2020, <https://www.insidernj.com/press-release/hudson-county-freeholders-break-commitment-end-ice-contract-2020/>. (Note that this vote came after around 200 people provided testimony urging the county to not renew the IGSA.)

135 See Johnson, *supra* note 2. Here, it is important to note the complications created for immigrant detainees and their families when jurisdictions conclude these arrangements. When New Jersey required its political subdivisions to sever their agreements with ICE to house federal immigrant detainees, ICE merely transferred the detainees to other facilities out of state, oftentimes quite far from their families and attorneys. See Sofia Nieto-Muñoz, *Bergen County Jail transfers last ICE detainees to facility 300 miles away*, New Jersey Monitor, November 17, 2021, <https://newjerseymonitor.com/2021/11/17/bergen-county-jail-transfers-last-ice-detainees-to-facility-300-miles-away>. In working to end these kinds of contracts between local law enforcement and federal civil immigration authorities, it is necessary for policymakers to be keenly aware of these unintended consequences. Though New Jersey’s counties ending their agreements to house ICE detainees is certainly a goal in the spirit of that which the Directive seeks to achieve, policymakers need to keep in mind the long-term effects such decisions might have for those currently affected.

136 See Johnson, *supra* note 2.

10. 287(g) Agreements

Under section 287(g) of the Immigration and Nationality Act (INA), the U.S. Department of Justice (DOJ) may enter into an agreement with local law enforcement agencies (LEAs) that allow those LEAs to perform the work of federal immigration authorities “in relation to the investigation, apprehension, or detention of” non-citizens in the United States and that they may “carry out such function at the expense” of the State or local government “to the extent consistent with State or local law.”¹³⁷ In effect, INA 287(g) grants to the federal government the power to deputize non-federal law enforcement, endowing them with authority to perform the work of federal agents responsible for the enforcement of federal civil immigration law.

The first version of the Immigrant Trust Directive (Directive), issued in 2018, restricted LEAs not currently party to a 287(g) agreement from forming such an agreement with the federal government unless one of two conditions were met: either (1) the Attorney General of New Jersey gave that LEA permission in writing to make, modify, renew, or extend such an agreement or (2) entering a 287(g) agreement would be “necessary to address threats to public safety or welfare of New Jersey residents arising out of a declaration of a state or national emergency.”¹³⁸ This section also allowed LEAs to maintain any 287(g) agreements that pre-dated the Directive but disallowed those LEAs from renewing

or extending those agreements, unless the Office of the Attorney General (OAG) gave written approval for the renewal or extension or the renewal or extension was “necessary to address threats to public safety or welfare of New Jersey residents arising out of a declaration of a state or national emergency.”¹³⁹ The first version of the Directive that was passed in 2018 exempted LEAs from implementing the Directive’s limitations on immigration enforcement assistance if they were already party to a 287(g) agreement prior to the implementation of the Directive.

On April 1, 2019, the OAG issued a memorandum to all New Jersey law enforcement chief executives delineating the process by which LEAs that wished to extend, modify, or renew their current 287(g) could receive approval by the AG. This process required (1) the LEA to submit their request for approval to the Director of the Division of Criminal Justice well in advance of the renewal (45–90 days, depending on the renewal timeline); (2) that the request include a statement of justification from the LEA chief executive; (3) that the DCJ Director review the request, in consultation with the County Prosecutor in the requesting jurisdiction, considering especially which consequences “approval may have on the public safety goals outlined in the Immigrant Trust Directive” and make a recommendation regarding approval to the AG; and (4) that the

¹³⁷ I.N.A. § 287(g); 18 U.S.C. § 1357(g).

¹³⁸ N.J. Office of the Att’y Gen., *Attorney General Law Enforcement Directive No. 2018-6* (Nov. 29, 2018), https://www.nj.gov/oag/dcj/agguide/directives/ag-directive-2018-6_v2.pdf [hereinafter Directive].

¹³⁹ *Id.*

AG shall then make a determination and transmit approval or disapproval to the LEA.¹⁴⁰

In revising the Directive in 2019, the OAG decided to amend section III and completely prohibit LEAs from making these agreements with the federal government or from exercising any authority under 287(g) agreements that were still in force.¹⁴¹ There would be no longer any process by which LEAs could obtain the AG's permission to keep, enter into, or modify a 287(g) agreement, nor were they any longer exempt from implementing the Directive's immigration assistance limiting provisions. In a letter written to LEAs explaining this amendment, then-Attorney General Gurbir Grewal noted his ultimate conclusion that these agreements "undermine public trust without enhancing public safety . . . they blur the distinction between federal civil immigration enforcement and local law enforcement." The obscuring of that critical distinction, Attorney General Grewal concluded, "creates confusion regarding the distinct roles of local law enforcement and federal agents and makes it less likely that victims and witnesses will cooperate with local police in criminal investigations." In short, as the AG explained, 287(g) agreements make it very difficult for immigrant communities to trust local authorities.

I. Findings

After the implementation of the Directive in 2019, two counties in New Jersey remained party to a 287(g) agreement without OAG approval well into late 2019 and then subsequently cancelled their 287(g) agreements: the sheriff's offices of Monmouth and Cape May Counties.¹⁴² When the Directive was first issued in 2018, all LEAs in New Jersey that remained party to these agreements were due to have their 287(g) agreements expire in June 2019. However, both LEAs signed addenda to their Memorandum of Agreement (MOA) with ICE extending their 287(g) agreements by ten years until June 30, 2020. The Cape May Sheriff's Office signed theirs on February 8, 2019, and Monmouth County followed a month later on March 8, 2019, just prior to the operational implementation date of the Directive on March 15, 2019.

In the case of Cape May County's renewal, no public forum or opportunity for public input had taken place prior to the renewal.

The OAG provided CILPJ with correspondence with both sheriff's offices, indicating that the OAG followed up individually with them after their renewals. In letters to both LEAs, the OAG reminded each office of the problematic nature of 287(g) agreements for the goals of the Directive, that, as of the issuance

140 Memorandum from Att'y Gen. Gurbir S. Grewal to All Law Enforcement Chief Executives (April 30, 2019) (hereinafter April 30, 2019 Memo from the Atty. Gen.) (on file with CILPJ). The memorandum required the request to contain: "An analysis of the costs and benefits to the agency and to the public of participation in the proposed 287(g) Agreement; An analysis of the impact that participation in the proposed 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; 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; A summary of the public's views on the proposed 287(g) Agreement, based on at least one public forum hosted by the agency, held at a location within the agency's jurisdiction; and at least two years of annual reports prepared by the agency regarding assistance to federal civil immigration authorities, pursuant to Section VI.B.1 of the Immigrant Trust Directive, or if the agency has not yet prepared such reports, then the same or similar data maintained by the agency."

141 The updated Section III.A reads: "No state, county, or local law enforcement authority shall 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), and they shall not exercise any law enforcement authority pursuant to a preexisting Section 287(g) agreement." (emphasis added). N.J. Office of the Att'y Gen., Attorney General Law Enforcement Directive No. 2018-6-v2 (Nov. 29, 2018), https://www.nj.gov/oag/dcj/agguide/directives/ag-directive-2018-6_v2.pdf.

142 Memorandum of Agreement (MOA) between U.S. Immigration and Customs Enforcement (ICE) and Cape May County Sheriff's (February 28, 2019), <https://www.ice.gov/doclib/287g-MOA/287gCapeMayNj2017-04-10.pdf>; Memorandum of Agreement (MOA) between U.S. Immigration and Customs Enforcement (ICE) and Monmouth County Sheriff's (February 28, 2019), https://www.ice.gov/doclib/287gMOA/287gJEM_MonmouthCoNj2016-06-08.pdf. Cancellation of the 287(g) agreements in late 2019 was confirmed by Andrew Macurdy, the Counsel to the Acting Attorney General, on April 1, 2022, by email.

of the Directive, their agreement was set to expire in June, and that the OAG had promulgated policies for seeking approval for renewals in April 2019. The OAG then stated, “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.”¹⁴³

A. Monmouth County Sheriff’s Office

The OAG in its communications with Monmouth County Sheriff’s Office (MCSO) noted that the LEA’s 287(g) agreement appeared to authorize “Designated Immigration Officers” with power and authority to serve warrants of arrest for immigration violations; interrogate detainees regarding federal civil immigration violations; take evidence regarding such violations; prepare charging documents; and transport detainees to ICE detention facilities. The OAG requested that MCSO provide specific information about what functions U.S. Immigration and Customs Enforcement (ICE) officers are responsible for performing and requested any policies or memoranda which limited that activity. MCSO replied by merely restating the authority delegated to officers in the 287g agreement and indicated that, in terms of limiting the duties of these officers, no written policy was adopted but “policy and practice” limits ICE activity to the correctional facility.

Notably, MCSO reported that one question was concerned with what Designated Officers do with immigrants awaiting trial, without convictions for serious offenses, and MCSO reported that the answer given was that “[i]f it is determined that ICE wants the inmate, regardless of the current charges, an ICE

detainer is placed on the inmate. Nothing is done with the inmate until all charges are satisfied, then the inmate is placed in ICE custody within 24 hours.” MCSO further stated that the Newark ICE Enforcement and Removal Office conducts steering sessions annually on 287(g) agreements and that public input was provided at Monmouth County Freeholder meetings.

B. Cape May County Sheriff’s Office

In response to the OAG’s first letter of July 6, 2019, Cape May County Sheriff’s Office (CMCSO) notified the OAG that the 287(g) agreement, like that of MCSO, was only in effect in the corrections facility context. In its communications with the OAG, CMCSO provided a justification for its 287(g) agreement by referencing five individuals against whom the LEA issued detainers having been “egregious by ICE standards.” Nonetheless, after March 5, 2019, just before the operational implementation date of the Directive, CMCSO ceased holding inmates past midnight on the date they were due to be released when ICE issued a detainer for them.

C. Salem County Sheriff’s Office

The only other jurisdiction party to a 287(g) agreement at the time the Directive was issued was Salem County Sheriff’s Office (SCSO). This LEA provided CILPJ with a copy of its own MOA with ICE that was extended in 2016 as well as a memorandum that the office sent to ICE on June 27, 2019, in which the LEA informed ICE that in conformity with the requirements of the Directive, SCSO would not be renewing its 287(g) agreement with ICE.

143 See April 30, 2019 Memo from the Atty. Gen., *supra* note 2.

11. LEA Information Sharing with ICE

Under the Immigrant Trust Directive’s (Directive) provisions, a law enforcement agency (LEA) is prohibited from providing the U.S. Immigration and Customs Enforcement (ICE) with non-public, personally identifying information.¹⁴⁴ Non-public personally identifying information includes a social security number, credit card number, unlisted telephone number, driver’s license number, vehicle plate number, insurance policy number, and active financial account number of any person.¹⁴⁵ It may also include the address, telephone number, or email address for an individual’s home, work, or school, if that information is not readily available to the public. Additionally, New Jersey LEAs are prohibited from providing ICE notice of a detained individual’s upcoming release, except under certain circumstances.

I. Instances of Information Sharing with ICE that LEAs Reported to the New Jersey Attorney General’s Office

Based on the New Jersey AG’s annual report on the implementation of the Directive, all corrections facilities either provided to ICE the release dates and times of detained individuals or non-public personal information about these individuals or both.¹⁴⁶

From the period of March 15 to December 31, 2019, these county correctional facilities provided ICE with non-public information about 32 individuals and provided notice to ICE of an anticipated release of 779 individuals.¹⁴⁷ For counties that did provide documents responsive to the CILPJ public records request, none provided documentation on the individual instances of the LEA providing notification to ICE of an individual’s upcoming release that were reported in the AG’s Directive annual report. Of the 416 LEAs that provided documents to CILPJ, only the Lakewood Township Police department reported to the AG a single instance of sharing non-public personally identifiable information with ICE but nonetheless did not provide records to CILPJ pertaining to this instance.

In this group of LEAs is also the Burlington County Prosecutor’s Office, which has an SOP outlining procedures for the LEA to share citizenship or immigration status information with ICE. The LEA’s detectives are required to document “when and by what means notification to ICE was made” and document the “factual basis for believing that the person may be an undocumented immigrant” for the notification. Based on the AG’s annual Directive report, the LEA provided ICE access to a single detained individual for an interview and provided notice on 11 individuals’ releases. The LEA, however, did not provide CILPJ individual reports pertaining to the mentioned instances.

144 N.J. Office of the Att’y Gen., *Attorney General Law Enforcement Directive No. 2018-6 II.B* (Nov. 29, 2018), https://www.nj.gov/oag/dcj/agguide/directives/ag-directive-2018-6_v2.pdf [hereinafter Directive].

145 See N.J.S.A. 47:1A-1.1, N.J. Court Rule 1:38-7(a).

146 The State of New Jersey: Office of The Attorney General, *Immigrant Trust Directive Reporting Form (2019)*, https://nj.gov/oag/trust/downloads/OAG-2019-ITD-Reporting_111620.pdf.

147 *Id.*

II. SCAAP and LEA Information Sharing with the U.S. Department of Justice

The State Criminal Alien Assistance Program (“SCAAP”) is managed by the Bureau of Justice Assistance (“BJA”) in conjunction with ICE and the U.S. Department of Homeland Security (DHS).¹⁴⁸ SCAAP provides federal funding to LEAs for instances in which a local, county, or state correctional facility incarcerates undocumented individuals with either at least one felony conviction or two misdemeanor convictions for state or local law violations and was incarcerated for at least four days during the reporting period. Counties that want to receive this award must submit an application for the prior year. For example, for fiscal year 2020, a county may submit a report of individuals who fall under this category from July 1, 2018 to June 30, 2019. The funds are to be used “only for correctional purposes.”¹⁴⁹ The information that LEAs provide the BJA to seek reimbursement for an undocumented individual’s incarceration costs through SCAAP are the following:

- Alien number (A-number assigned by DHS)
- Last name
- First name
- Middle name
- Date of birth
- Unique inmate identifying number assigned by the applicant government¹⁵⁰
- Foreign country of birth
- Date incarcerated
- Date released
- FBI number

The final detailed award statement outlines how much each county has received in SCAAP funding and lists the following information per awardee (based on the fiscal year (FY) 2019 SCAAP Award Detail):¹⁵¹

- State of the LEA
- Applicant Name
- Final Award Amount (amount determined by the BJA)
- Total Correctional Officer Staff (number of individuals whose primary role is in correctional facilities)
- Total Correctional Officer Salary
- Total Bed Count
- Total All Inmate Days
- Unique Inmate Records
- ICE - Eligible Inmates
- Illegal Inmate Days (total of the number of days in which all of the inmates were incarcerated combined)
- ICE - Unknown Inmates
- Unknown Inmate Days
- ICE - Ineligible Inmates

In other states such as California, the Department of Justice allows LEAs to submit not only records for individuals who are known undocumented migrants in local jails but also records for any foreign born individual of any immigration status detained in the jail.¹⁵² The LEAs then leave the immigration status determination and therefore the inmate’s SCAAP eligibility up to the federal government. The information provided by the LEAs to ICE, if not already made public, would fall under the category of non-public information under the Directive, and the data being collected and submitted through the SCAAP program provides the U.S. Department of Justice (DOJ) with the most current information on this list of individuals.

Based on the FY 2019 awards list, all counties in New Jersey participated in SCAAP to some degree and provided information on 4,255 ICE eligible individuals and 3,123 ICE ineligible individuals. While the awards for FY 2020 have yet to be released by the BJA, the list is expected to be released in 2022.

Further investigation is needed into the process for submitting inmate records from New Jersey LEAs to the DOJ through the SCAAP program to assess whether they are submitting information about individuals that would be protected by the Directive.

148 Bureau of Justice Assistance, *State Criminal Alien Assistance Program (SCAAP)*, www.bja.org, <https://bj.a.ojp.gov/program/state-criminal-alien-assistance-program-scaap/overview> (last visited Dec. 1, 2021).

149 See 8 U.S.C. § 1231(i)(6).

150 Number that the state uses to keep track of inmates.

151 Bureau of Justice Assistance, *SCAAP FY 2019 Award Detail*, <https://bj.a.ojp.gov/sites/g/files/xyckuh186/files/media/document/SCAAP-FY2019-Award-Details.pdf>.

152 Peter Mancina, *The State of Immigrant and Refugee Rights in Alameda County: Final Report of the Ad Hoc Committee on Immigrant and Refugee Rights* (Dec. 20, 2021) (report to the Alameda County Board of Supervisors), https://district2.acgov.org/wp-content/uploads/sites/15/2022/03/FinalReport_AHCIRR.pdf.

12. Sharing Agency Resources with Federal Immigration Agencies

The Immigrant Trust Directive (Directive) prohibits law enforcement agencies (LEAs) from providing access to any state, county, or local law enforcement equipment, office space, database, or property not available to the general public.¹⁵³ There are exceptions and exclusions for “exigent circumstances” wherein the Directive allows LEAs to provide federal immigration authorities with aid or assistance, including access to non-public information, equipment, or resources. However, the Directive does not clarify the parameters of what LEAs can consider exigent circumstances, leaving this up to LEA interpretation in the course of implementation.

I. City of Vineland’s Contractual Arrangements May Violate the Directive’s Prohibitions on Sharing LEA Facilities and Resources

The Directive only permits LEA contracts with federal immigration enforcement agencies in limited circumstances. In Section III, the Directive addresses

permissible and prohibited agreements with federal immigration agencies. Section II specifies that the Directive does not apply to LEAs exercising authority pursuant to a current Intergovernmental Service Agreement (IGSA).¹⁵⁴ The Directive does not address any other type of contracts between LEAs and federal government entities. For any LEAs whose existing policies and practices did not conform with the directive, LEAs had a deadline of March 15, 2019, to “adopt and/or revise their existing policies and practices, consistent with this Directive, either by rule, regulation, or standard operating procedure.”¹⁵⁵ In the course of this review, CILPJ has identified certain contractual arrangements between LEAs and U.S. Immigration and Customs Enforcement (ICE) that may violate the Directive’s prohibition on LEAs sharing of agency facilities and resources that were not pursuant to any IGSA agreement.

One city, Vineland in Cumberland County, continued to lease its gun range and provide specialty weapons to ICE at Vineland Police Academy at 3369 Mays Landing Road, likely in violation of the Directive.

ICE’s Enforcement and Removal Operations (ERO) at the ICE Field Office of Philadelphia (FOP) first requested permission to access the range to conduct firearms training and required qualification activities. Since the City of Vineland owned and operated that facility, the City Council first passed Resolution No. 2017-335 on August 22, 2017, “authorizing the

153 N.J. Office of the Att’y Gen., *Attorney General Law Enforcement Directive No. 2018-6 11.B.3* (Nov. 29, 2018), https://www.nj.gov/oag/dcj/agguide/directives/ag-directive-2018-6_v2.pdf [hereinafter Directive].

154 See *id.* See also U.S. Gov’t Accountability Office, *GAO-21-149, Immigration Detention: Actions Needed to Improve Planning, Documentation, and Oversight of Detention Facility Contracts 7-8* (2021) <https://www.gao.gov/assets/720/711798.pdf> (“ICE uses a Department of Homeland Security (DHS) authority under the Immigration and Nationality Act to enter into IGSA’s with state or local entities (e.g., a county sheriff or a city government). These entities in turn may contract the provision of detention services to a private company, or provide the services using local law enforcement (such as a local jail that holds local criminal populations and ICE detainees). A DHS’s IGSA authority is separate from the statutory framework governing federal contracts. . .”).

155 See Directive, *supra* note 1, at VIII.

execution of an amended agreement for the Vineland Police Department Training Facility.”¹⁵⁶ On August 22, 2017, ICE and City of Vineland Police Department (VPD) signed a five-year MOA, that would last from August 2017 until 2022. This MOA is not an IGSA, the only type of contract that the Directive explicitly allows between LEAs and federal immigration entities.

Every quarter, ICE sends an invoice of \$2,000, totaling \$8,000 per year for access to the gun range. Either party could terminate the MOA as long as the party provides the other with a thirty-day notice. CILPJ received invoices for January 1, 2018 through March 26, 2019. However, no sources indicate that Vineland has ended this contract.

In exchange for access, ICE officers are granted “unlimited access to the range without pre-schedule, on a first-come, first-served basis,” approximately six scheduled dates per quarter as well as “instructor days,” with a capacity of 30–40 officers at one time. While hours of operation of the range are 7:00am to 5:00pm, ICE officers can use the range as late as 11:00pm. Other services include Vineland providing ICE the “use of specialty weapons and long guns”¹⁵⁷ despite the VPD-ICE MOA stating that ICE is responsible for supplying its own materials.

As evidenced by the invoices Vineland provided to CILPJ, there is no clear “exigent circumstance” involved that would permit the LEA to provide

access to the range or use of the firearms under the provisions of the Directive, and the gun range is not available to the public.¹⁵⁸

The City of Vineland contended that its granting access to ICE to its resources was not prohibited by the Directive because the Directive only prohibits this form of assistance when it is given for the sole purpose of enforcing immigration law.¹⁵⁹ Vineland contended its assistance was not.¹⁶⁰

This position highlights the pitfalls of the Directive’s lack of clear language regarding what constitutes “assistance to ICE” that is for the “sole purpose of enforcing immigration law.” The specific ICE entity in the MOA, the ERO at the FOP, is one of 24 national field offices that conduct the ERO’s enforcement and removal efforts.¹⁶¹ ERO’s stated mission is to “protect the homeland through. . . arrest and removal . . .”¹⁶² The required qualification activities and firearms training are for the purpose of ICE ERO staff to execute its duties in enforcing and removing certain non-citizens.¹⁶³ It is unclear what other purposes Vineland might have for assisting ICE in this manner in addition to assisting in the enforcement of immigration law.

On September 4, 2019, the City Council announced: “The City of Vineland. . . will continue to honor a contract with U.S. Immigration and Customs Enforcement allowing its agents to use the police firing range. . .”¹⁶⁴ Local news coverage of the August and

156 Previously on March 28, 2017, the City of Vineland had enacted a resolution, No. 2017-167, in addressing a similar arrangement. No. 2017-225 added a provision that delineates how a person or entity alleging damages could pursue a claim against the Federal Government “from activity of Government employees in connection with its use of property owned or managed by VPD.” See CILPJ OPRA Documents, City of Vineland.

157 Notably, while ICE does reimburse Vineland, the MOA contains a qualifier that such funding is “contingent upon availability of funds,” creating the possibility of a federal government’s unfunded use of local facilities. See CILPJ OPRA Documents, City of Vineland.

158 See Directive, *supra* note 1, at II.B.3.

159 Joseph Smith, *ICE Trains at Vineland Shooting Range, State OKs It But Activists Fear for Immigrants*, Daily Journal, Aug. 29, 2019, <https://www.thedailyjournal.com/story/news/2019/08/29/nj-vineland-ice-immigration-council-meeting-protest-police-firing-range-contract/2137068001/>.

160 *Id.*

161 *Enforcement and Removal Operations*, U.S. Immigration & Customs Enft, <https://www.ice.gov/about-ice/ero#fieldOps> (last updated Dec. 30, 2021).

162 *Id.*

163 See the Purchase Order and Memorandum of Agreement between ICE and the City of Vineland, CILPJ OPRA Documents, City of Vineland. ICE’s activity in these documents is described as firearms training and qualification activities. The purchase order describes “unlimited use of Vineland Police Weapons Range for [federal] law enforcement officers practice and required Quarterly Qualification Training.” Similarly, the Memorandum of Agreement states ICE is responsible for “supplying all ammunition, targets, and related range supply materials consumed during firearms training and qualification activities.”

164 Joseph P. Smith, *Vineland to honor ICE contract despite activists’ concerns*, Daily Journal (Sept. 4, 2019), <https://www.thedailyjournal.com/story/news/2019/09/04/nj-vineland-ice-immigration-customs-enforcement-police-range-contract-vineland-council-spinelli/2204262001/>

September 2019 City Council meetings report that the City of Vineland's City Council, Police Department, and legal team had guidance from Cumberland County Prosecutor's Office that the contract does not "fall within the spirit of the [Immigrant Trust Directive]" but nevertheless, the ICE-Vineland MOA was renewed.¹⁶⁵

The VPD reported zero (0) instances of providing access to ICE for Civil Immigration Enforcement Purposes to the Office of the Attorney General (OAG) on its annual Directive implementation report for the reporting period March 15 to December 31, 2019.

CILPJ finds that ICE's use of Vineland's facilities to train officers for the purpose of enforcing immigration law is a definitional case of local assistance to immigration enforcement activities even if indirect and is very likely a violation of the Directive. Further, if such assistance is deemed to be a violation, the LEA's failure to report such assistance to the OAG may also consist of a violation of the Directive.

165 Chris Franklin, *Don't allow ICE to use our city's shooting range. We don't trust them, residents say*, NJ.com (Aug. 28, 2019), <https://www.nj.com/cumberland/2019/08/dont-allow-ice-to-use-our-citys-shooting-range-we-dont-trust-them-residents-say.html>; Joseph P. Smith, *ICE trains at Vineland shooting range; state OKs it, but activists fear for immigrants*, Daily Journal (Aug. 29, 2019), <https://www.thedailyjournal.com/story/news/2019/08/29/nj-vineland-ice-immigration-council-meeting-protest-police-firing-range-contract/2137068001>.

13. Notifications to Detainees of ICE Requests

Section II.B.4 of the Immigrant Trust Directive (Directive) states that no law enforcement agency (LEA) shall provide assistance to U.S. Immigration and Customs Enforcement (ICE) or U.S. Customs and Border Protection (CBP) in the form of “providing access to a detained individual for an interview, unless the detainee signs a written consent form that explains: a) the purpose of the interview; b) that the interview is voluntary; c) that the individual may decline to be interviewed; and d) that the individual may choose to be interviewed only with his or her legal counsel present.”¹⁶⁶ Further, section VI.A of the Directive states that LEAs “shall promptly notify a detained individual, in writing and in a language the individual can understand, when federal civil immigration authorities request: 1) To interview the detainee 2) To be notified of the detainee’s upcoming release from custody or 3) To continue detaining the detainee past the time he or she would otherwise be eligible for release.”¹⁶⁷

To ensure compliance with these provisions, the Office of the Attorney General (OAG) in late February 2019 sent a memo to all Chiefs of Police and Chiefs of County Detectives providing them with one set of mandatory-use template forms in multiple languages for notifying detainees of an ICE request to interview the detainees and a second set of forms for use

in notifying detainees of an ICE request to obtain release date notifications and to hold individuals past their point of release.¹⁶⁸ It is unclear whether the OAG also provided these forms to LEAs that were not police departments or county detectives agencies. The OAG Directive training video for all law enforcement officers did however state that sample forms would be provided to “all law enforcement agencies prior to the effective date of the Immigrant Trust Directive.”¹⁶⁹

CILPJ requested from all LEAs in New Jersey, “All records of policies, regulations, memorandum, guidance, or forms that the Department has adopted related to the implementation of the New Jersey Attorney General Gurbir Grewal’s Immigrant Trust Directive 2018-6 version 1 (issued on November 29, 2018) and version 2 (issued on March 15, 2019) from November 29, 2018 to the present.”

Of the 416 agencies that provided responsive records to CILPJ, 108 agencies (26%) provided these forms for inmates to consent to ICE interviews and notification forms of the LEA providing release information to ICE. As such, many agencies throughout the state have not retained these forms provided by the OAG and are not using them to notify detainees of ICE requests.

¹⁶⁶ N.J. Office of the Att’y Gen., *Attorney General Law Enforcement Directive No. 2018-6 II.B.4* (Nov. 29, 2018), https://www.nj.gov/oag/dcj/agguide/directives/ag-directive-2018-6_v2.pdf [hereinafter Directive].

¹⁶⁷ *Id.*, at VI.A.

¹⁶⁸ See Letter from Joseph F. Walsh, Deputy Attorney General, Special Assistant to the Attorney General to Chiefs of County Detectives and Chiefs of Police, “Forms and Training Materials for Immigrant Trust Directive (2018-6),” February 21, 2019.

¹⁶⁹ CILPJ OPRA Documents, Evesham Township Police, “Police Officer Training on Immigration Directive 2018-6 (16-32),” at 00:17:00 in the training video.

14. Community Oriented Policing Services Federal Funding Certification and LEA Compliance with the Immigrant Trust Directive

The Immigrant Trust Directive (Directive) limits law enforcement agency (LEA) participation in open-ended federal “dragnet” immigration programs that may serve the federal government but which ultimately have the potential for undermining local law enforcement objectives. One area in which the federal government has sought the commitment of LEAs in its dragnet programs are through soliciting this commitment on federal grant application submissions. On application forms, the federal government has offered privilege points for winning federal grants to agencies that commit to providing information about immigrants or providing the government access to them in local carceral facilities. LEAs that make these sort of commitments may be in violation of Directive sections II.B.3, II.B.4, II.B.5, II.C., and III.A as outlined below.

I. What is the Cop Hiring Program?

First created in 1994, the Community Oriented Policing Services (COPS) office of the U.S. Department of Justice (DOJ) awards grants to state and local

governments for a variety of enumerated purposes.¹⁷⁰ One funding stream, the Cop Hiring Program (CHP), provides grant funding directly to state, local, and tribal law enforcement agencies (LEAs) to support hiring additional law enforcement officers for three years to address specific crime problems through community policing strategies. According to the DOJ, the purpose of collaborative partnerships between the law enforcement agency and the individuals and organizations is to develop solutions to problems and increase trust in police.¹⁷¹

On September 7, 2017, the DOJ announced that funding applications would receive “additional points” in the application scoring process for local law enforcement agencies that would certify their willingness to cooperate with federal immigration authorities within detention facilities.¹⁷² The purpose of this new criteria was to “ensure that federal immigration authorities have the full ability to enforce immigration laws and keep our communities safe.”¹⁷³ The DOJ noted that “cooperation may include providing access to detention facilities for an interview of aliens in the jurisdiction’s custody and providing advance notice of an alien’s release from custody upon request.”

170 Under the COPS program, \$14 billion has been awarded since 1994. In 2005, the COPS program was reauthorized by the Violence Against Women and Department of Justice Reauthorization Act of 2005. See Cong. Research Serv., IF10922, Community Oriented Policing Services (COPS) Program 1-2 (2021) (summarizing legislative history); 34 U.S.C. §10381(b) (describing authorized uses of COPS grants as related to public safety and community policing); see also Lauren-Brooke Eisen, *The 1994 Crime Bill and Beyond: How Federal Funding Shapes the Criminal Justice System*, Brennan Ctr. for Justice (Sept. 9, 2019), discussing negative consequences of 1994 crime bill. Available online at <https://www.brennancenter.org/our-work/analysis-opinion/1994-crime-bill-and-beyond-how-federal-funding-shapes-criminal-justice>.

171 Office of Comty. Oriented Policing Serv., U.S. Dept. of Justice, Community Policing Defined 1 (2014) (emphasis added), <https://cops.usdoj.gov/RIC/Publications/cops-p157-pub.pdf>.

172 Press Release, Department of Justice Announces Priority Consideration Criteria for COPS Office Grants (Sept. 7, 2017), <https://www.justice.gov/opa/pr/departement-justice-announces-priority-consideration-criteria-cops-office-grants>.

173 *Id.*

II. LEAs Signaled Potential Violations of the Directive When They Voluntarily Agreed to Cooperate with the Federal Government to Enforce “Illegal Immigration”

For the FY 2017 grant cycle (2017–2020), six New Jersey law enforcement agencies were awarded CHP funding out of the 72 LEAs that applied.¹⁷⁴ While “illegal immigration” was an option as a “problem focus area,” none of the New Jersey LEAs listed illegal immigration as a purpose, but instead: Protecting Critical Infrastructure Problems, Rape, Assault, and Combatting Illegal Drug Use. Eighty percent of the awarded agencies nationwide received additional points based on their certifications of willingness to cooperate with federal immigration authorities.¹⁷⁵ Of the six New Jersey awardees, only the Borough of Paramus included in its Open Public Records Act (OPRA) response to CILPJ a signed “Illegal Immigration Cooperation Certification” (IICC) form. Based on the high percentage of awardees signing the Certification of Cooperation, it is also possible that the five other New Jersey awardees had submitted the Certification of Cooperation. However, further research is needed to confirm this.

III. Modifying Policies to Comply with the Directive after Submitting IICCs

If LEAs enact practices that substantiate the IICC stipulations and that do not fall within the Directive’s exceptions, they violate the Directive. Five days after the DOJ announced the new “additional bonus points” for applicants that sign an IICC, the City Council in the Borough of Paramus in Bergen County swiftly passed a resolution authorizing Mayor LaBriera and Paramus Chief of Police Kenneth Ehrenberg to certify that if Paramus received the COPS CHP funding, the Borough would:

- “implement rules, regulations, policies, and/or practices that ensure DHS personnel have access to any of the governing body’s correctional or detention facilities in order to meet with an alien (or an individual believed to be an alien) and inquire as to his/her right to be or remain in the United States.” (**Access Provision**)
- “implement, rules, regulations, policies, and/or practices that ensure that any of the governing body’s correctional and detention facilities provide advance notice as early as practicable (at least 48 hours, where possible) to DHS regarding the scheduled release date and time of an alien in the jurisdictions’ custody when DHS requests such notice in order to take custody of the alien. The certification does not require holding an alien beyond his/her scheduled time of release.” (**Notice Provision**)¹⁷⁶

The Access Provision in Paramus’s resolution is not limited in a manner that only allows ICE interviews of immigrants who the Directive permits the LEA to let ICE interview under section II.B.4.; namely, those who fall within the Directive’s exceptions and exclusions list in section II.C and who have also signed a consent form allowing the interview with or without the individual’s counsel present. The resolution language and

174 COPS Hiring Program (CHP) 2017 Applicant Ratings, Office of Comty. Oriented Policing Serv., U.S. Dept. of Justice, https://cops.usdoj.gov/pdf/2017AwardDocs/chp/Applicant_Rankings.pdf (last visited Mar. 6, 2022).

175 Press Release, Attorney General Sessions Announces \$98 Million To Hire Community Policing Officers (Nov. 20 2017), <https://www.justice.gov/opa/pr/attorney-general-sessions-announces-98-million-hire-community-policing-officers>.

176 CILPJ OPRA Documents, Paramus - Exhibit D - Resolution No. 17-09-595 (Sept. 2017).

the IICC language is open ended and can be understood to allow for interviews with any individual in the LEA's facility. Allowing this kind of access would not only violate section II.B.4 but also Directive section II.B.3 prohibiting providing access to any state, county, or LEA property not available to the general public when the exceptions in section II.C are not present.

If the Borough of Paramus were to enact its promise made in the Notice Provision, it would violate Directive section VIII.A, the "Establishment of Policy" section, which requires LEAs to revise their policies or adopt new policies consistent with the Directive. This is so because providing notice to the DHS of the release date and time of an "alien in the jurisdiction's custody" without limitation, as promised in the Notice Provision also violates Directive section II.B.5, which limits such notification for only certain individuals who have been charged, convicted of, adjudicated delinquent for, or found not guilty by reason of insanity of a limited number of criminal offenses listed in the Directive, convicted of certain serious or violent crimes in the past five years, or who is subject to a Final Order of Removal signed by a federal judge.

The Borough of Paramus and any other LEA who completed an IICC should have updated its policies and procedures by March 2019 to end these open-ended immigration enforcement cooperation practices that would be in violation of the Directive, including those stated in their IICC and in Borough of Paramus resolution. The Borough of Paramus made no effort documented in its records provided to CILPJ to remediate its COPS IICC or to notify the DOJ that it will not engage in open-ended immigration enforcement cooperation provisions required for this certification by the Directive's explicit deadline.

CILPJ, also received no responsive records from Paramus regarding it changing its policies to comply with the COPS IICC or communication with the COPS Office about updating its policies or procedures. Nor did CILPJ receive responsive records regarding Paramus requesting legal guidance from the County Prosecutor or the OAG. Thus, further research is needed to determine whether the Borough of Paramus implemented policies in violation of the Directive and whether it violated the Directive by failing

to update its practices and policies by the Directive's implementation deadline in March 2019.

IV. FY 2020 CHP Certification of 287(g) Partnership and Certification of Illegal Immigration Cooperation

In the FY 2020 round for CHP funding, the DOJ announced that "priority consideration may be given" for jurisdictions that "cooperate with federal law enforcement to address illegal immigration" by certifying compliance with section 287(g) of the Immigration and Nationality Act.¹⁷⁷ Priority consideration was also provided for groups that completed the Certification of 287(g) Partnership and Certification of Illegal Immigration Cooperation Priority wherein state or local applicants have certified that they cooperate with federal law enforcement to address illegal immigration.

The Directive, however, does not allow LEAs to carry out law enforcement activities pursuant to a 287(g) agreement.¹⁷⁸ Submitting a 287(g) COPS CHP Certification would indicate that an LEA in New Jersey was already carrying out the activities governed by a 287(g) agreement in direct violation of the Directive's prohibition on 287(g) agreements.¹⁷⁹

Since the Directive was already in effect during the period when LEAs were to provide such 287(g) certification in a COPS grant application process, any LEA that signed these certifications would likely be violating the Directive through 287(g) participation. CILPJ did not receive any certifications from LEAs in response to its records request. Further research is needed to verify if any of the FY 2020 grantees or applicants in New Jersey signed either or both certifications.

Further research is needed to assess potential violations of the Directive by LEAs who completed similar certifications in applications for *other* COPS-related funding. Other COPS-related funding include:

177 Office of Comty. Oriented Policing Serv., U.S. Dept. of Justice, 2017, User Guide: Submitting an Application Under the FY 2020 COPS Hiring Program (CHP) 14 (2020), <https://cops.usdoj.gov/pdf/2020AwardDocs/chp/UserGuide.pdf>.

178 See N.J. Office of the Att'y Gen., *Attorney General Law Enforcement Directive No. 2018-6 III* (Nov. 29, 2018) (prohibiting 287(g) agreements), https://www.nj.gov/oag/dcj/agguide/directives/ag-directive-2018-6_v2.pdf.

179 See *id.*, at III.A.

- FY17–FY20 COPS Anti-Methamphetamine Program (CAMP)
- FY17–FY20 COPS Anti-Heroin Task Force (AHTF) Program
- FY17–FY20 Preparing for Active Shooter Situations (PASS) Program
- FY17–FY20 Community Policing Development (CPD) Program, including Microgrants¹⁸⁰

Table 1: COPS CHP Grant Recipients in FY 2017 and FY 2020

2017				2020 ¹⁸¹		
Agency Name	# of officers	Problem Focus Area ¹⁸²	Grant Amount	Agency Name	# of officers	Grant Amount
Essex County Sheriff's Office	15	Protecting Critical Infrastructure Problems	\$1,875,000	Belleville, Township of	11	\$1,375,000
Long Branch Police Department	5	Assault	\$625,000	Berkeley Police Department	10	\$1,250,000
Moonachie Police Department	1	Protecting Critical Infrastructure Problems	\$125,000	Bogota, Borough of	1	\$125,000
Nutley Police Department	4	Drug Abuse Education, Prevention, and Intervention	\$500,000	Camden County Police Department	10	\$2,141,041
Paramus Police Department	5	Protecting Critical Infrastructure Problems	\$625,000	Essex County Sheriff's Office ¹⁸³	15	\$1,875,000
West Orange Police Department	4	Rape	\$500,000	Garfield, City of	3	\$375,000
				Newark, City of	15	\$1,875,000
				Orange Township, City of	15	\$1,875,000
				Passaic, City of	8	\$1,000,000
				Paterson, City of	10	\$1,886,048
				Salem Police Department	2	\$291,396
				Sayreville Police Department	8	\$1,000,000
				Trenton, City of	10	\$1,250,000
				Wildwood Police	6	\$750,000

180 Important: Revised Guidance Impacting Your DOJ Cops Grant Award, Office of Comty. Oriented Policing Serv., U.S. Dept. of Justice, <https://cops.usdoj.gov/content/important-revised-guidance-impacting-your-doj-cops-grant-award> (last visited April 28, 2022).

181 No "problem focus area" listed for 2020 funding. COPS Hiring Program (CHP) 2020 Award, Office of Comty. Oriented Policing Serv., U.S. Dept. of Justice, https://cops.usdoj.gov/pdf/2020AwardDocs/chp/Award_List.pdf (last visited Mar. 7, 2022).

182 COPS Hiring Program (CHP) - 2017 Awards, Office of Comty. Oriented Policing Serv., U.S. Dept. of Justice, https://cops.usdoj.gov/pdf/2017AwardDocs/chp/Detailed_Award_List.pdf (last visited Mar. 7, 2022).

183 Essex County Sheriff's Office is the only LEA that received funding in both FY 2017 and 2020 grant cycles.

V. DOJ Discontinued Illegal Immigration Cooperation Certifications in COPS Grant Applications Under the Biden Administration in FY 2021

Consistent with an April 14, 2021 memorandum from the U.S. Attorney General,¹⁸⁴ the DOJ revised its guidance regarding conditions on COPS grants, and accordingly, will no longer be applying or enforcing the following in existing or future grants: IICCs, 287(g) partnerships, and conditions related to 8 U.S.C. § 1373, a provision prohibiting local governments from prohibiting their employees from transmitting immigration status information to the federal government.¹⁸⁵

While the FY 2017–FY 2020 cycle has concluded and the Certification has since been rescinded, this section highlights the need for ongoing scrutiny of federal grant programs to local law enforcement and whether certifications, conditions, and practices pursuant to the federal grant program violate the Directive. Since the DOJ has a degree of discretion in setting grant conditions, additional scrutiny is needed to assess if individual LEAs are voluntarily agreeing to conditions that would violate the Directive.

184 Memorandum from the U.S. Att’y Gen. on Recission of Att’y Gen. Memorandum Implementing Exec. Order 13768 (Apr. 14, 2021), <https://www.justice.gov/ag/page/file/1389046/download>. Thus, the FY 2021 grant cycle, which ended in June 2021, did not contain an Illegal Immigration Cooperation Certification in the application. See generally 2021 COPS Hiring Program (CHP) Award Owner’s Manual, Office of Comty. Oriented Policing Serv., U.S. Dept. of Justice, <https://cops.usdoj.gov/pdf/2021AwardDocs/chp/AOM.pdf> (last visited Mar. 7, 2022).

185 *Important: Revised Guidance Impacting Your DOJ Cops Grant Award*, Office of Comty. Oriented Policing Serv., U.S. Dept. of Justice, *supra* note 11.

Certification of Illegal Immigration Cooperation

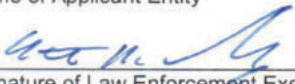
On behalf of the applicant entity named below, I certify under penalty of perjury to the Office of Community Oriented Policing Services, U.S. Department of Justice, that all of the following is true and correct:

- (1) As the Law Enforcement Executive or Government Executive for the applicant entity named below, I have the authority to make this certification on behalf of the applicant entity (that is, the entity applying directly to the Office of Community Oriented Policing Services) and its governing body (i.e., city, county, or state).
- (2) The applicant entity and/or its governing body has implemented or, before drawing down grant funds if awarded, will implement rules, regulations, policies, and/or practices that ensure that U.S. Department of Homeland Security ("DHS") personnel have access to any of the governing body's correctional or detention facilities in order to meet with an alien (or an individual believed to be an alien) and inquire as to his or her right to be or to remain in the United States.
- (3) The applicant entity and/or its governing body has implemented or, before drawing down grant funds if awarded, will implement rules, regulations, policies, and/or practices that ensure that any of the governing body's correctional and detention facilities provide advance notice as early as practicable (at least 48 hours, where possible) to DHS regarding the scheduled release date and time of an alien in the jurisdiction's custody when DHS requests such notice in order to take custody of the alien. This certification does not require holding an alien beyond his or her scheduled time of release.

I acknowledge that a false statement in this certification, or in the application that it supports, may be the subject of criminal prosecution (including under 18 U.S.C. §§ 1001 and/or 1621, and/or 42 U.S.C. § 3795), of administrative action, and/or of civil action in court. I also acknowledge that Office of Community Oriented Policing Services awards, including certifications provided in connection with such awards, are subject to review by the Office of Community Oriented Policing Services and/or by the Department of Justice's Office of the Inspector General.

BOROUGH OF PARAMUS

Name of Applicant Entity


Signature of Law Enforcement Executive

CHIEF OF POLICE
KENNETH R. EHRENBERG
Printed Title and Name of Law Enforcement Executive

9/13/17
Date Signed


Signature of Government Executive

MAYOR
RICHARD LaBARBIERA
Printed Title and Name of Government Executive

9/13/17
Date Signed



BOROUGH OF PARAMUS
County of Bergen
State of New Jersey

RESOLUTION NO. 17-09-595

Dated: September 12, 2017

At a Regular Meeting of the Mayor and Council of the Borough of Paramus, County of Bergen, State of New Jersey, held on September 12, 2017.

RESOLUTION AUTHORIZING THE EXECUTION OF CERTIFICATION OF ILLEGAL IMMIGRATION COOPERATION

WHEREAS, the U.S. Department of Justice makes funding available to local law enforcement agencies for the hiring, rehiring and retention of law enforcement officers through the Community Oriented Policing Services (COPS) Hiring Grant Program; and,

WHEREAS, the Paramus Police Department made application through the FY 2017 COPS) Hiring Grant Program for the hiring of new police officers; and,

WHEREAS, FY 2017 COPS Office application materials state, that the COPS Office may give additional consideration to applicants that agree to cooperate with federal law enforcement to address illegal immigration; and,

WHEREAS, in order to receive additional consideration for funding applicants must execute the document titled "Certification of Illegal Immigration Cooperation" and submit said document back to the U.S. Department of Justice.

NOW THEREFORE BE IT RESOLVED, by the Borough of Paramus Mayor & Council:

1. The Borough is hereby authorized to execute the document titled "Certification of Illegal Immigration Cooperation."
2. Mayor Richard LaBarbiera and Chief Kenneth Ehrenberg are authorized to sign said document.

Approved by a roll call vote: September 12, 2017

I hereby certify that this is a true and exact copy of resolution adopted by the Mayor and Council of the Borough of Paramus on the 12th day of September 2017

Annemarie Krusznis, RMC
Borough Clerk

Motion: Councilwoman Bellinger
Second: Councilwoman Tedesco-Santos
Yeas:
Councilman Amato
Councilwoman Bellinger
Councilman Garcia
Councilwoman Tedesco-Santos
Councilman Verile
Councilwoman Weber

Nays:

Abstain:

Absent:

15. U-Visa and T-Visa Information Provided by LEAs to the Public

The Immigrant Trust Directive (Directive) requires that law enforcement agencies (LEAs) establish certification procedures for assisting non-citizen victims of certain crimes with applying to the federal government for U-visas and T-visas when they cooperate with LEAs by providing information used to solve the crimes.¹⁸⁶ LEAs are required by the Directive's section IV.A to additionally post information about its U-visa and T-visa procedures on their websites.

CILPJ reviewed the websites for 290 LEAs (47% of all LEAs in the state) to determine whether or not the agencies posted departmental U-visa or T-visa procedures on their websites, or on the municipality's website. In 208 of the 290 agencies (72%), CILPJ found a complete absence of departmental U-visa and T-visa information, policies, procedures, or forms accessible to the public.¹⁸⁷ In one case, that of Raritan Township Police, the LEA website provides general information about U and T-visas, and directs visitors

186 N.J. Office of the Att'y Gen., *Attorney General Law Enforcement Directive No. 2018-6 IV* (Nov. 29, 2018), https://www.nj.gov/oag/dcj/agguide/directives/ag-directive-2018-6_v2.pdf.

187 These agencies included Absecon City Police, Allendale Borough Police, Allenhurst Borough Police, Allentown Borough Police, Alpine Borough Police, Andover Township Police, Atlantic City Police, Atlantic County Justice Facility, Atlantic County Prosecutor's Office, Atlantic County Sheriff's Office, Atlantic Highlands Borough Police, Audubon Borough Police, Avalon Police, Barrington Borough Police, Bay Head Borough Police, Bayonne Police, Beach Haven Borough Police, Bellmawr Police, Berkeley Heights Police, Berkeley Township Police, Berlin Borough Police, Bernardsville Borough Police Blairstown Township Police, Bloomfield Township Police, Bloomingdale Borough Police, Bogota Borough Police, Boonton Township Police, Brielle Borough Police, Brigantine City Police, Brookdale Community College, Buena Borough Police, Burlington City Police, Camden County Sheriff's Office, Cape May City Police, Cape May Point Borough, Carneys Point Township Police, Chester Township Police, Cumberland County Department of Corrections, Cumberland County Sheriff's Department, Delaware River Port Authority - Transit Police, East Greenwich Township Police, Edgewater Borough Police, Egg Harbor City Police, Egg Harbor Township Police, Elk Township Police, Elmer Borough Police, Elmwood Park Borough Police, Englewood City Police, Englewood Cliffs Borough Police, English-town Borough Police, Essex County College Police ("Essex County College"), Essex County Corrections, Essex County Juvenile Detention Center, Essex County Prosecutor's Office, Essex County Sheriff's Office, Evesham Township Police, Far Hills Borough Police, Fair Lawn Borough, Fair Lawn Police Department, Fairfield Township (Cumberland), Fairfield Township Police (Essex), Fairview Borough Police, Flemington Borough Police, Florham Park Borough Police, Fort Lee Borough Police, Franklin Borough Police, Franklin Lakes Police, Franklin Township (Warren), Franklin Township Police (Franklin, Buena Borough, and Newfield), Franklin Township Police (Hunterdon), Freehold Borough Police, Freehold Township Police, Galloway Township Police, Garfield City Police, Garwood Borough Police, Gibbsboro Borough Police, Glassboro Borough Police, Glen Gardner Borough, Glen Ridge Borough Police Department, Green Brook Police, Greenwich Township Police (Gloucester), Greenwich Township Police (Cumberland), Guttenberg Town Police, Hackensack Police, Haddonfield Borough Police, Haledon Borough Police, Hightstown Police, Hillsdale Borough Police, Ho-Ho-Kus Police, Hoboken Police, Howell Township Police, Hudson County Prosecutor's Office, Hunterdon County Sheriff's Office, Irvington Police, Island Heights Police, Jackson Township Police, Jamesburg Police, Kean University, Keyport Police, Lacey Township Police, Lakehurst Police, Lambertville Police, Laurel Springs Police, Lavallette Police, Lindenwold Police, Linwood City Police, Little Falls Police, Little Ferry Borough Police, Little Silver Police, Logan Township Police, Long Beach Township Police, Long Branch City Police, Lopatcong Township Police, Lower Township Police, Lumberton Township Police, Manchester Township Police, Mantua Township Police, Mercer County Correction Center, Mercer County Juvenile Detention Center, Middlesex County Department of Parks and Recreation - Ranger Unit, Montclair Police, Moonachie Police, Morris County Parks Commission, Mount Arlington Police, Mount Ephraim Police, Mount Holly Township Police, Mountain Lakes Police, Mountainside Police, Mullica Township Police, N. J. Division of Alcoholic Beverage Control, Investigations Bureau ("New Jersey Division of Alcoholic Beverage Control"), N. J. Division of Criminal Justice Academy, N. J. DOC - Training Academy, N. J. Institute of Technology, N. J. Juvenile Justice Commission, N. J. Office of Homeland Security and Preparedness, N. J. State Park Police, N. J. State Parole Board, N. J. Transit Police Department, Neptune City Police, Neptune Township Police, Netcong Borough Police, New Hanover Township Police, New Jersey Department of Environmental Protection, Compliance & Enforcement ("New Jersey Department of Environmental Protection"), New Jersey Division of Consumer Affairs, New Jersey Division of Criminal Justice, New Jersey Division of Gaming Enforcement, New Jersey Division of Law, New Jersey Division on Civil Rights, New Jersey Racing Commission, New Milford Police, New Providence Police, Newark Police, Newfield Borough Police, Newton Police, North Haledon Police, Northfield City Police, Northvale Police, Norwood Police, Nutley Police, Oakland Borough Police, Oaklyn Police, Ocean City Police, Ocean County College, Ocean County Department of Corrections, Old Bridge Police, Orange Police, Paterson Police, Paulsboro Police, Peapack & Gladstone Police, Pemberton Borough Police, Pennsauken Police, Pequannock Township Police, Perth Amboy Police, Pine Valley Police, Pitman Police, Plumsted Township Police, Pohatcong Township Police, Rahway Police, Ramapo College of New Jersey, Ramsey Police, Raritan Township Police, Richard Stockton College of New Jersey Police ("Stockton University"), Red Bank Police, Ridgefield Police, Ridgewood Police, River Vale Police, Riverdale Police, Rochelle Park Police, Rockaway Borough Police, Rockaway Township Police, Roselle Borough Police, Rumson Borough Police, Runnemede Police, Saddle River Police, Salem County Correctional Facility (under authority of the Sheriff), Salem County Prosecutor's Office, Salem County Sheriff's Office, Scotch Plains Police, Sea Bright Police, Seaside Heights Police, Seaside Park Police, Ship Bottom Borough Police, Shrewsbury Police, Somerdale Borough Police, Somers Point City Police, Tuckerton Borough Police, Voorhees Township Police.

to the U.S. Citizenship and Immigration Services (USCIS) website for U-visa and T-visa applications, but does not offer a certification or review process.¹⁸⁸ The New Jersey Division of Gaming Enforcement, the New Jersey Division of Law, the New Jersey Division on Civil Rights, and the New Jersey Racing Commission all lack U-visa and T-visa information on their websites. In the case of these state agencies, a member of the public who utilizes these agencies' website search tools and searches for "u-visa" is directed to visit the New Jersey State Police webpage about U and T visas.¹⁸⁹

In seven cases, LEAs that did post some U-visa and T-visa material on their websites, nonetheless still violate the Directive.¹⁹⁰ For example, the Bergenfield Police website contains a "Visa" section that contains external links to the U.S. Department of Homeland Security (DHS) and other resources, with no departmental-specific U-visa or T-visa policy or procedural guidance for processing visa requests.¹⁹¹ Similarly, Berlin Township Police has an easily-visible U-visa and T-visa section on its homepage, however it only supplies two links to USCIS documents and does not identify a set of procedures for processing requests for U-visa and T-visa certifications.¹⁹² Likewise, Demarest Borough Police website directly links to USCIS without providing an explanation of its own required processes.¹⁹³

All of these violations are best contrasted with the example of compliance exhibited by Bernards Township Police in which "T&U Visa Information" is a link at the top of their website's "Documents" section and leads the end user to a document detailing the Bernards Township Police U-visa and T-visa certification procedures as required by the Directive.¹⁹⁴

188 See Raritan Township Police, Non-Immigrant Crime Victims, <https://raritantownshippolice.com/nonimmigrant-crime-victims> (last visited April 29, 2022).

189 See State of New Jersey, New Jersey State Police, *State Police Certifications for T & U Visas*, <https://www.nj.gov/oag/njsp/certifications-t-and-u-visas.shtml> (last visited April 29, 2022).

190 These LEAs included Bergenfield Police, Berlin Township Police, Bound Brook Borough Police, Burlington County, Demarest Borough Police, Hopewell Township Police, New Jersey Department of Environmental Protection, Compliance & Enforcement ("New Jersey Department of Environmental Protection").

191 See Bergenfield Police, U & T Visas Information, <https://bergenfieldpd.org/policies/visas> (last visited April 29, 2022).

192 See Berlin Township, Berlin Township Police Department, <https://berlintwp.com/berlin-township-police-department/> (last visited April 29, 2022).

193 See Demarest Borough Police, <https://www.demarestpd.org> (last visited April 29, 2022).

194 See Bernards Township Police, *U and T Visa Procedures*, <https://www.bernards.org/government/documents/department-documents/police/1232-t-u-visa-information/file> (last visited April 29, 2022).

16. Annual Reporting of Immigration Enforcement Assistance Data to the New Jersey Office of the Attorney General

The Immigrant Trust Directive (Directive) mandates the AG to require all state, county, and local law enforcement agencies (LEAs) to complete a report annually which states any instances in which the “agency provided assistance to federal civil immigration authorities for the purpose of enforcing federal civil immigration law.”¹⁹⁵ The AG provided a blank form that local and county enforcement agencies may use to report back any assistance provided if applicable. The LEAs must submit their report to the County Prosecutor who is then required to compile all reports submitted by local and county law enforcement agencies in a consolidated report to the AG. All New Jersey State Police and other state law enforcement agencies that provided assistance shall submit a report to the AG that includes details of such assistance.

The categories that all LEAs must provide a numerical answer to are the following:

- “Participated in Civil Immigration Enforcement Operation with ICE”
- “Provided Non-Public Personally Identifying Information to ICE”
- “Provided Access to LE Assets to ICE for Civil Immigration Enforcement Purposes”
- “Provided Access to ICE to a Detained Individual for an Interview”
- “Provided Notice to ICE of a Detained Individual’s Upcoming Release”
- “Continued Detention for ICE of a Detained Individual Past the Time Otherwise Eligible for Release”

The AG issues an annual report then summarizing all immigration enforcement assistance incidents that have happened in the previous year throughout the

state. To date, the OAG has published only one annual report summarizing LEA immigration enforcement assistance in 2019 and has yet to publish data for 2020 and 2021.¹⁹⁶

Of all the LEAs that CILPJ analyzed through its OPRA request, seven provided in their response the blank report forms, 28 provided a completed reporting form, while 183 did not provide any reporting form in their OPRA response. Of the six prosecutors’ offices analyzed in this review, only one provided a completed reporting form while one other provided only a blank form in their OPRA responses.

For LEAs that did not provide the form to the CILPJ, some agencies such as Franklin Lakes Police and North Wildwood Police maintained standard operating procedure documents which outlined the mandatory annual reporting but did not provide the report in their records disclosure to CILPJ.

I. Agencies that Provided Assistance to ICE but did not Report it to the County Prosecutor or the Attorney General in Violation of the Directive

In some cases, CILPJ found discrepancies in what LEAs reported to county prosecutors and the actual

¹⁹⁵N.J. Office of the Att’y Gen., *Attorney General Law Enforcement Directive No. 2018-6 VI.B* (Nov. 29, 2018), https://www.nj.gov/oag/dcj/agguide/directives/ag-directive-2018-6_v2.pdf.

¹⁹⁶New Jersey Office of the Attorney General “Immigrant Trust Directive Annual Reporting Form: Reporting Period March 15, 2019 to December 31, 2019,” https://nj.gov/oag/trust/downloads/OAG-2019-ITD-Reporting_111620.pdf

assistance that they were providing to U.S. Immigration and Customs Enforcement (ICE) as is evidenced in their responsive records.

Cape May County Prosecutor's Office is responsible for compiling the reports from each of the police departments in its county and in 2019, reported zero instances across all categories listed above. However, the Cape May County Sheriff's Office (CMCSO), which also falls under the same jurisdiction, had a Memorandum of Agreement to extend its 287(g) agreement to June 30, 2029, and kept this agreement in place until the fall of 2019 despite 287(g) agreements being prohibited by the Directive after March 15 of that year. There is no exemption for filing an annual report for an agency with a 287(g) agreement, and as such, immigration enforcement assistance provided to ICE or U.S. Customs and Border Protection (CBP) should have been reported by CMCSO to the county prosecutor's office and to the AG.

17. Recommendations

New Jersey law enforcement agencies have made many efforts to achieve the goals of the AG’s Immigrant Trust Directive (Directive) and there is great potential for the Directive’s full implementation if further efforts are made by the Office of the Attorney General (OAG), the State Legislature, and law enforcement community in New Jersey. While CILPJ also discovered barriers for public access to government records that could be removed, open records remain a priority of state agencies and it is within their capacity to further extend records transparency. To aid in the process of the full implementation of the Directive, to further foster the trust between immigrant communities in government, and for more open public records disclosure in the state, CILPJ puts forth the following recommendations to the OAG, the New Jersey Government Records Council, the state Governor, and the State Legislature.

I. Recommendations for the Office of the Attorney General

1. Remove certain exceptions from the Directive which allow LEAs to cooperate in immigration enforcement, provide U.S. Immigration and Customs Enforcement (ICE) access to interview individuals, share information such as an individual’s release time and location with ICE, and transfer custody of individuals to ICE. This also includes discontinuing cooperation with ICE when the purpose of the activity is not solely for immigration enforcement operations, when a targeted individual has been accused of or convicted of crimes, and when exigent circumstances arise.

While it may seem intuitive that local law enforcement assisting the federal government in deporting individuals held on criminal charges

or who have been convicted of crimes will make local communities safer, comprehensive scholarly studies have found that deporting these individuals does not reduce crime rates in any effective manner.¹⁹⁷ When LEAs allow ICE to interview individuals in their jails, provide information to ICE about their release date and place so that ICE may either obtain custody of the individual through a custody transfer or arrest the individual after they are released, individuals may be transferred to out of state immigration detention facilities away from family, loved ones, and their attorneys. Individuals should be able to adjudicate their criminal cases and immigration cases outside of detention to ensure proper access to community resources and legal aid. This report recommends the following changes are made to the Directive to discontinue LEA immigration enforcement cooperation practices:

- 1.1 Change section II.A. of the directive by removing “Except pursuant to Sections II.C and III below” from the sentence “Except pursuant to Sections II.C and III below, no state, county, or local law enforcement agency or official shall:”
- 1.2. Remove the word “solely” from section II.A.1.
- 1.3. Remove from section II.A.2 the language “unless doing so is: a) necessary to the ongoing investigation of an indictable offense by that individual; and b) relevant to the offense under investigation.”
- 1.4. Remove from the section B. introductory paragraph “when the sole purpose of that assistance is to enforce federal civil immigration law.” Without this language, the section still outlines the instances when civil immigration enforcement is the focus. This clause we are recommending to be removed allows for LEAs to provide assistance to ICE such as leasing out agency training facilities such as gun ranges to

¹⁹⁷ See Chris Lasch, et al., *Understanding “Sanctuary Cities,”* 59 B.C. L. Rev. 1703 (2018).

ICE when they contend it is not for the “sole purpose of enforcing civil immigration law.”

1.5. Remove from section II.B “Except pursuant to Sections II.C and III below” and “when the sole purpose of that assistance is to enforce federal civil immigration law” from the sentence “Except pursuant to Sections II.C and III below no state, county, or local law enforcement agency or official shall provide the following types of assistance to federal immigration authorities when the sole purpose of that assistance is to enforce federal civil immigration law:”

1.6. Replace language in section II.C.4. “the primary purpose of which is unrelated to” with the following language “that does not include federal civil immigration enforcement activities.”

1.7. This report recommends removing all assistance provisions based in the criminal charges and convictions of individuals.

1.7.1. Remove from section II.B.5 “unless the detainee: a) is currently charged with, has ever been convicted of, has ever been adjudicated delinquent for, or has ever been found not guilty by reason of insanity of, a violent or serious offense as that term is defined in Appendix A; b) in the past five years, has been convicted of an indictable crime other than a violent or serious offense; or c) is subject to a Final Order of Removal that has been signed by a federal judge and lodged with the county jail or state prison where the detainee is being held.”

1.7.2. Remove from section II.B.6 “based solely on a civil immigration detainer request, unless the detainee: a) is currently charged with, has ever been convicted of, has ever been adjudicated delinquent for, or has ever been found not guilty by reason of insanity of, a violent or serious offense as that term is defined in Appendix A; b) in the past five years, has been convicted of an indictable crime other than a violent or serious offense; or c) is subject to a Final Order of Removal that has been signed by a federal judge and lodged with the county jail or state prison where the detainee is being held. Any such detention may last only until 11:59 pm on the calendar day on which the

person would otherwise have been eligible for release.”

1.7.3. Remove Appendix A from the Directive

1.8. The Directive’s provisions that allow for LEAs to provide assistance to ICE in exigent circumstances grants open-ended and undefined parameters for LEA cooperation in immigration enforcement operations. This has included providing perimeter security to ICE when they enforce administrative immigration warrants at home arrests that they deem even a potential exigent circumstance. Given that LEAs must respond to certain circumstances pertaining to actual emergency scenarios involving crimes in progress, the language of section II.C.9 is unnecessary and confusing for LEAs, as it may be interpreted to provide permission to cooperate in immigration enforcement and share information and resources to a degree not otherwise permitted by the Directive. To maintain the integrity of the Directive’s limitations upon LEA immigration cooperation, remove Directive section II.C.9.

Additionally, issue guidance to all LEAs that any ICE requests for perimeter security or backup assistance absent any criminal matter is not a request to which LEAs can respond.

1.9. This report recommends not providing ICE access to detained individuals in any circumstance. Remove from section II.B.4 “unless the detainee signs a written consent form that explains a) the purpose of the interview; b) that the interview is voluntary; c) that the individual may decline to be interviewed; and d) that the individual may choose to be interviewed only with his or her legal counsel present.”

2. Reinforce existing provisions prohibiting the use of LEA facilities by ICE.

Certain LEAs have interpreted the Directive prohibitions on ICE use of LEA resources and facilities as allowing ICE use of LEA facilities and resources for activities such as general firearms training. While firearms training is not a field operation targeting an individual for deportation, it is a necessary activity for ICE to effectively carry out immigration enforcement operations. These immigration enforcement preparatory activities should be prohibited as well and as such this report recommends that

under no circumstances or purposes should ICE be allowed to utilize LEA facilities and resources.

To effect this recommendation, modify section II.B.3 to read: “Providing or sharing funds, property, equipment, personnel, or access to or leasing out of any real property, office space, gun range, training facility, training material, detention facility, or database not available to the general public.”

3. Modify the language of the Directive to reflect existing state law prohibiting IGSA agreements.

In July 2021, the New Jersey Legislature passed S3361/A5207, which outlawed the State from entering into or renewing contracts with ICE, including IGSA's. As the Directive allows for LEAs with IGSA's to engage in immigration enforcement activities otherwise prohibited by the Directive, this report recommends that the OAG modify section III.B. to state: “No state, county, or local law enforcement authority shall enter into, modify, renew, or extend any Intergovernmental Service Agreement (IGSA) to detain individuals for the federal government and they shall not exercise any law enforcement authority pursuant to a preexisting IGSA.”

4. Prohibit LEAs from asking about immigration status information in the course of notifying an individual of their consular rights.

While LEAs are required under the Vienna Convention to inform individuals of their consular rights when they are detained or in criminal court proceedings and need to assess whether the individual is a foreign national of a particular country, LEAs have been asking about immigration status information of the individual. To stop this practice, add to section II.A.2 of the Directive the following language: “including in the process of notifying an individual of their consular rights or notifying a consulate about the individual.” Also add to section V.A.2: “In the course of advising a defendant regarding consular notification rights, the prosecutor should not inquire into immigration status information.”

Issue a memo to all LEAs informing them that the document titled “Resource B: 1 Page Fact Sheet: Arresting a Non-U.S. Citizen”

that the OAG sent to all LEAs with the March 2018 Directive improperly instructs them to ask individuals “Are you a U.S. Citizen?” to comply with the Vienna Convention on Consular Notification. Inform them that they are only required to identify the nationality of the individual, not the immigration status and that asking questions about immigration status is in violation of Directive section II.A.2. They should replace this question with “Are you a national of another country?” or “Are you a citizen of another country?”

The AG should further provide model guidance on carrying out the mandates of the Vienna Convention while remaining in compliance with the Immigrant Trust Directive and such guidance should be incorporated into the Police Training Commission's regular course of updating training curricula.

5. Prohibit participation in the State Criminal Alien Assistance Program.

Through the State Criminal Alien Assistance Program (SCAAP), LEAs submit a variety of personally identifying information about foreign nationals, including undocumented immigrants, in local jails to the U.S. Department of Justice's (DOJ) Bureau of Justice Assistance (BJA). This includes information that might not be known to the federal government such as an individual's full name, date of birth, inmate number assigned by the LEA, foreign country of birth, and the date of incarceration and release, among other information. While the program is intended to reimburse LEAs for incarcerating qualifying undocumented immigrant inmates, LEAs are allowed to submit information on any foreign national regardless of immigration status. To ensure the privacy of individuals' information which might potentially be input in federal databases available to ICE and which can potentially be used for immigration enforcement operations, this report recommends further investigation into the federal government's use of this information and until this is known, prohibiting such information sharing required for participation in the SCAAP reimbursement program.

To effect this recommendation, add the following policy text to section II.B.2: “This includes submitting non-public personally identifying information to the federal government as a

part of federal grant programs such as the State Criminal Alien Assistance Program.”

6. Create in-person and online Directive violations complaints submissions processes and a submissions webpage.

To ensure that LEAs continue to comply with the directive over time, this report recommends that the OAG create a formal process wherein individuals and their advocates can lodge formal complaints of violations of the Directive directly to the OAG. This should be an in-person process at the OAG’s office and the OAG should also create a new page on its website with a webform where complaints can be lodged electronically. Complainants should be allowed to remain anonymous and complaints should also be allowed to be submitted by advocates and attorneys on behalf of the complainant, as many might otherwise remain silent in fear of immigration enforcement related retribution.

7. Create a full-time position in the OAG that focuses on immigrant issues, Directive implementation, compliance, and the reception of complaints of alleged violations.

This report recommends that the OAG designate a full-time position that focuses on LEA implementation and compliance with the Directive. First, this staff member would collect LEA-specific policies that implement the Directive, review them, and work with the agencies to bring them into compliance. The staff member could receive complaints from the public regarding violations of the Directive by LEAs, and remit the complaints to the appropriate agencies to investigate the allegations. Following the conclusion of a complaints investigation, the OAG staff person could follow up with the investigating agency, prepare a findings report, and publish it on the OAG website.

Second, this staff member could collect training logs from the LEAs pertaining to trainings that LEAs have done to comply with the directive, notice agencies that have not trained appropri-

ately, and work with them to ensure full compliance with the Directive’s training mandates.

As part of this work, the staff member could, third, maintain a page of the OAG website that publishes an annually updated list of non-compliant LEAs and highlight the “ten worst” LEAs in a similar manner to the New York City’s Public Advocate’s annual “2021 worst-landlord watchlist.” As with the worst landlord watchlist, the staff member could coordinate an accompanying press event with community advocates to bring attention to the worst offending agencies.¹⁹⁸ This method incentivizes compliance and provides the public with a transparent way to measure LEA compliance to the Directive.

8. Initiate an OAG audit of all LEAs’ implementation of the Directive that examines the conformity of LEA policies with the Directive.

This report provides an extensive examination of the Directive’s implementation in New Jersey. However, there were major limitations based on the power of the research team to obtain records from LEAs regarding their implementation efforts. This examination relied on the OPRA to make public records requests to obtain the records it sought and documented the manifold ways that LEAs denied records requests and withheld records in their possession. Of primary note was the New Jersey Department of Corrections which operates the state’s jails. As such, this report provides a partial picture of the actual implementation efforts and problems that LEAs in the state are enacting. This report recommends that the OAG open a wide-scale audit of LEAs, utilizing its legal authority to obtain LEA-created, Directive-related policy records, procedures, protocols, guidance, general orders, memorandum, contracts, and agreements; LEA communications with ICE pertaining to implementation of the Directive; training logs, records, and materials; incident and arrest reports pertaining to individuals that have been transferred to ICE custody; records pertaining to individuals

198 New York City Public Advocate, *New York City Public Advocate Unveils 2021 Worst Landlord List* (Dec. 16, 2021), <https://advocate.nyc.gov/press/nyc-public-advocate-unveils-2021-worst-landlord-watchlist/>. To see this method to deter and publicize violations of workplace health and safety, see Matthew Johnson, *Regulation by Shaming: Deterrence Effects of Publicizing Violations of Workplace Safety and Health Laws*, 110 *Am. Econ. Rev.* (2020), <https://pubs.aeaweb.org/doi/pdfplus/10.1257/aer.20180501>.

that were arrested and deported following joint LEA-ICE joint operations; and detainee movement logs for individuals who were detained by an LEA and transferred to ICE. The OAG could issue subpoenas for these records, analyze them, and issue a comprehensive implementation report.

9. Increase oversight of the training of LEA officers on the Directive and disallow ICE from conducting trainings for LEA officers on AG directives and immigration enforcement

This report found many violations of the Directive's training provisions, including training occurring in a period well after the deadline for training to be completed, training that allowed for LEA officers to play the online training videos in the background while they completed other work, and even ICE conducted trainings for LEAs on how to assist in the enforcement of immigration law in a manner inconsistent with the Directive's provisions.

This report recommends adding to the Directive section VII.B: "All employees hired after March 15, 2019, must undergo the training on the Directive and training logs and a summary report of all Directive training completion of new employees must be submitted to the Attorney General annually. This report must include the employee's name, date of hire, and date of completion of the training. Training on the directive for new employees must occur no later than one month after the date of hire. New Jersey law enforcement officers are prohibited from receiving training from Federal immigration enforcement agencies including Immigration and Customs Enforcement and U.S. Customs and Border Protection."

10. Audit the COPS application process and illegal immigration cooperation certification that potentially violates the Directive.

This report found that certain applicants for federal funding through programs such as the Community Oriented Policing Services (COPS), Cops Hiring Program (CHP) awards program, submitted application statements declaring that they would notify ICE of the release of any individual that ICE sought to target for immigration enforcement purposes. If the LEAs that signed this actually acted in

accordance with this declaration they would be in violation of the Directive.

The OAG should take inventory of federal-state funding streams for LEAs to affirmatively identify potential violations such as was found in this report with the COPS CHP program. This includes monitoring the grant conditions and implementation of the grants for any LEA violations of the Directive in their participation, including the application and reimbursement processes for programs such as SCAAP, and COPS-related grants programs such as, but not limited to: CHP and Community Policing Development (CPD) Program. In such cases, the OAG should assess if the funding is being used to achieve the stated purpose, if accepting the funding will violate the purpose of the Directive, and if LEAs acting in accordance with grant conditions or statements that it makes about fully cooperating with immigration enforcement agencies violates the Directive.

The OAG could begin this work by requesting that LEAs in the state provide the OAG application materials for COPS grants that they have received since March 2018. These should include any forms pertaining to signing "Illegal Immigration Cooperation Certification forms" or "Certification of 287(g) Partnership" and "Certification of Illegal Immigration Cooperation Priority" forms, or receipt of having signed and submit such forms. Request that the LEAs confirm with the OAG's office whether they signed certification forms certifying that they provide access to DHS personnel to LEA correctional facilities to meet with an undocumented person or provide notice of release dates to DHS of undocumented people.

11. Elaborate clear accountability measures for violations and non-compliant agencies in the Directive, including penalties for offending agencies.

When an LEA violates the Directive, the consequence can be very severe for the individual who is subsequently reported to or transferred to ICE custody. They might be removed from their home, their family, and their community, and they might lose their job and their financial stability. Currently, there are no financial or legal consequences levied upon the agencies that violate the directive unless an individual is deprived of his or her constitutional rights and takes legal action on an individual basis. This

report recommends that the OAG make it a matter of policy that violations of the Directive have impactful consequences for agencies to reinforce the efficacy of the directive and minimize violations. The report recommends that the OAG work to levy predictable and codified financial penalties for violations of the Directive, and that the funds generated from such violations be utilized for OAG efforts to further implement and oversee the Directive. The OAG should establish a standardized process to assist the violating LEA in its compliance correction plan and for periodically evaluating the LEA's corrective progress over time.

12. Create a model “standard operating procedures” template for LEAs to use to create their own Directive-related policies.

A private consultancy agency provided LEAs throughout the state with a template “standard operating procedures” policy for implementing the Directive. However, this report found that many of the policies that emanated from this template policy were out of compliance with the Directive due to the nature in which they allowed for broader immigration enforcement cooperation activities. This report recommends that the OAG create its own model policy that is fully compliant with the Directive and send it to all LEAs in the state to use when adopting their own agency specific policies. Further the OAG should issue its own memo to all LEAs that are clients of the consultancy agency that they need to make updates to their policies to bring them into compliance with the Directive. The OAG should assist them in this policy updating process when needed and these agencies should submit their policies to the OAG for review upon issuing the policies.

13. Resend LEAs the forms that the OAG requires LEAs to provide to detainees when ICE seeks to interview the individual and when the LEA notifies the detainee that ICE seeks to detain them.

As discussed in section 13. “Notifications to Detainees of ICE Requests,” in response to CILPJ’s records request, only 108 LEAs (26%) provided CILPJ the template consent forms that the OAG distributed to use for ICE interviews of LEA detainees or forms that the

LEA should use to notify the detainee that ICE would like to obtain custody of them. As such, as much as 74% of LEAs may be operating without providing these forms to detainees. In order to ensure the use of these necessary documents, the AG should re-send the template consent forms in all languages to every LEA with a memo reminding them that use of these forms is mandatory.

14. Facilitate compliance with Directive’s U-visa and T-visa provisions throughout the state.

This report found that a large number of LEAs throughout the state do not have U-visa and T-visa procedures webpages on their websites, as required by the Directive. This report recommends that the AG send a memo to all LEAs reminding them of their obligation under the Directive to create internal processes for assisting individuals with filing U-visa and T-visa applications, and to post those department-specific application procedures on the agency’s website. The OAG could assist the agencies by providing them with template language that they may use to create these processes and for making these webpages. Moreover, the New Jersey Office of Information Technology could offer scalable technical assistance and web templates to ensure maximum user experience.¹⁹⁹

15. Issue a memo to all LEAs reminding them of their obligation to create their own Directive-compliant department policies, to revise policies to render them compliant with the Directive, and to require them to submit such policies to the OAG for review.

While the Directive calls upon LEAs to create policies to implement the Directive and adopt and/or revise policies to make them compliant with the Directive, many agencies did not. In response to CILPJ’s records request, many responded to our request for LEA policies by providing the Directive itself with no further evidence that a LEA-specific policy had been made or any of their other policies had been amended to comply with the Directive. Among those that did provide an LEA-specific policy in response to CILPJ’s request, there was great variance across LEAs in the policies’ fidelity to the Directive’s detailed provisions.

199 New Jersey Office of Technology, <https://www.nj.gov/it/>.

This report recommends that the OAG issue a memo to all LEAs reminding them of their obligation to adopt their own LEA-specific policies that implement the Directive and revise those that might not be in compliance with the Directive. Require LEAs to submit to the OAG all policies that have been created or amended to implement the Directive within two months of the issue of the memo and ensure that prosecutors' offices comply as well.

The OAG could assist LEAs with adopting Directive-compliant SOPs by issuing a model SOP itself.

When issuing a third version of the Immigrant Trust Directive, add to section VIII.A: "All LEA policies that have been revised or created to implement the Directive to date must be submitted to the Attorney General by _____ date (two months after the issuing of this Directive v.3)."

16. Communicate directly with LEAs examined in this report regarding the implementation problems and violations identified and work with them to modify their policies and implementation practices to bring them into compliance with the Directive.

The OAG should utilize this report to address implementation issues throughout the state. To maximize the efficacy and utility of the findings of this report, CILPJ has included footnote references identifying the agencies that it found to be in need of implementation assistance and the OAG should directly work with these agencies to ensure that they modify their policies and procedures to comply with the Directive.

II. Recommendations for the New Jersey Government Records Council

1. Conduct an investigation of the records request denial practices of LEAs that provided outright denials to the requests made in this project.

This project sent public records request letters to 610 law enforcement agencies in the state and received responsive records from 536 agencies or 87% of the agencies that received requests. Forty-one agencies or 6% of agencies outright denied the request in its entirety, including the New Jersey Department of Corrections, which is involved in transferring detainees in its prisons to ICE custody. These agencies gave a variety of reasons for denying CILPJ's request letter, as outlined in the Data and Data Collection section of this report. This report recommends that the Government Records Council open an investigation into the denial practices of these agencies to assess whether their denials were justified and permitted by OPRA and subsequent case law. The Government Records Council could further review denials made by these agencies to other requestors who have made their requests via www.opramachine.com, which publishes public records requests communications and responsive records to assess whether these agencies are routinely denying valid requests that conform to OPRA's requirements.

2. Issue guidance to all LEAs reminding them that they are prohibited from charging hourly salary costs as a condition of fulfilling a public records request.

In the course of this project, CILPJ records request letters were responded to by law enforcement agencies such as the Passaic Police Department that attempted to abrogate responsibility for fulfilling the request by asking CILPJ to pay the agency a full-time, full-salary rate for a law enforcement officer for many hours of work. In the case of Passaic Police Depart-

ment, the agency attempted to charge CILPJ \$32 per hour for 28 hours of work amounting to a charge of \$896 to respond to the records request. OPRA requires²⁰⁰ “that records custodians respond to and fulfill OPRA records request in accordance with the law.” The assessed fee for the duplication of the record is limited to “\$0.05 per letter-size page or smaller, and \$0.07 per legal-size page or larger.”²⁰¹ While custodians may charge accordingly for pages, they may not charge based on “cost of labor or other overhead expenses associated with making the copy except as provided.”²⁰²

This report recommends issuing a guidance letter to all LEAs in New Jersey informing them that they are not permitted to request hourly staff fees from public records requestors as a condition of fulfilling the public records request.

III. Recommendations for the State Governor

1. Limit the pandemic State of Emergency exception for public agencies to respond to OPRA public records requests.

On average, it took 38 days for law enforcement agencies that CILPJ requested records from to either provide the requested records or deny the request, with the shortest response time of 1 day and the longest response time of 278 days. Sixty-three percent of the LEAs or 260 responded to CILPJ within one month, an additional 76 agencies within two months, 25 more agencies within three months, and 24 more agencies in four months. Many of these agencies cited the Governor’s state of emergency exception as the basis for their delayed response.

As the greatest number of responses came within the second week after CILPJ made the request with 91 responses, it is likely that

many more have the capability to provide responsive records to requestors within a month’s time.

Recognizing that the COVID-19 pandemic has put an unexpected burden upon public agencies whose personnel may need to stay home or recover from illness, CILPJ recommends that the Governor qualify the state of exception decree by limiting the time frame for public records responses to no longer than two months.

IV. Recommendations for the State Legislature

1. Pass the New Jersey Values Act.

Acknowledging the need to expand and build upon the progress made under the Directive, this report recommends that the Legislature pass the New Jersey Values Act, which has been introduced by Assemblymember Raj Mukherji in the State Assembly and Senator Joseph Cryan in the Senate.²⁰³ The New Jersey Values Act seeks to ensure that many of the Directive’s requirements are codified into law. This bill would accomplish much of the same goals of the Directive—namely, disentangling local law enforcement from federal civil immigration enforcement by restricting the kinds of permitted cooperation—through a statutory framework. Additionally, the New Jersey Values Act would require the OAG to promulgate model SOPs for LEAs to use to craft their own policies consistent with the Act, which will help eliminate the need for LEAs to contract with other third parties in drafting their own policies and ensure uniformity and consistency across jurisdictions.

However, despite efforts to codify the Directive to ensure that immigrant communities feel safe in New Jersey, gaps still exist with the way the New Jersey Values Act is written currently. One

200 State of New Jersey, Government Records Council, <https://www.nj.gov/grc/custodians/>.

201 New Jersey Governments Council, *The New Jersey Open Public Records Act, Handbook for Records Custodians* (May 2020), [https://www.nj.gov/grc/custodians/handbook/Custodians%20Handbook%20\(Sixth%20Edition%20-%20May%202020\)\(Final\).pdf](https://www.nj.gov/grc/custodians/handbook/Custodians%20Handbook%20(Sixth%20Edition%20-%20May%202020)(Final).pdf).

202 *Id.*

203 N.J. Senate, New Jersey Values Act, S4289 (Sen. Cryan, Dec. 16, 2021), <https://www.njleg.state.nj.us/bill-search/2020/S4289>; N.J. State Assembly, New Jersey Values Act, A622 (Dec. 13, 2021); <https://www.njleg.state.nj.us/bill-search/2020/A6222>.

of the main issues that both the New Jersey Values Act and the most current version of the Directive do not address is an oversight mechanism of these provisions outside of individual LEAs self-reporting instances when they cooperate with ICE. To fill this gap, this report has recommended to the OAG that it create an internal staff position specifically to receive complaints of violations of the Directive, and if authorized, it could also oversee implementation of the New Jersey Values Act. Both forms of review should happen on an annual basis. Regarding funding for this initiative, the Division of Administration (“DOA”) contains a grants unit, which has granted a total of “\$84.5 million, to nonprofit organizations, county and local governments, and other entities.”²⁰⁴

2. Pass a law requiring that law enforcement agencies make all records pertaining to cooperation and interactions with ICE “open data” and freely downloadable on their agency website.

In order to narrow the number of OPRA requests necessary to gain visibility into implementation of the Immigrant Trust Directive and potentially the Values Act, and in keeping with the goals of the directive to increase public understanding and trust in law enforcement, law enforcement agencies should be required to keep their full departmental handbook, policies, and standard operating procedures available on their websites. Further, all records, including communications such as email pertaining to interactions with ICE should be made available as “open data” and downloadable on an agency’s website as well.

3. Amend OPRA to create a single records submission website for all public agencies in the state similar to www.opramachine.com.

In the process of conducting records requests under OPRA to law enforcement agencies throughout the state, this report found that records requests submissions portals on LEA websites had outdated records custodians contact information and a variety of other barriers to lodging records requests poses a significant challenge for the public to obtaining public records. This report recommends that the State

Legislature amend the OPRA law to create a single records request portal along the lines of www.opramachine.com in which all public agencies throughout the state are listed, and individuals can submit their requests through the website in a manner in which the request is sent to the target agency and all communications and responses are published publicly. Agencies should be required to keep records custodian contact information stored in the submissions portal up to date. The portal submission form should not limit the character count of the request, require login credentials to access the responsive records, or charge a fee for obtaining the records electronically.

4. Amend OPRA to require all public agencies to publish the name and contact information of their records custodians, including the mailing address, office address, email address, and direct phone number on their agency website.

Accessibility to the contact information of records custodians of New Jersey public agencies and institutions is vital for the public to obtain the records it seeks, to implement transparent data practices, and to ensure public agency compliance with the policies they are charged with implementing. Thus records custodian contact information needs to be promptly updated when changes in personnel occur.

5. Amend OPRA to require that public agency records custodians accept emailed records requests.

This project utilized the website www.opramachine.com to submit many of its records request letters to public agencies. Submitting requests to the agencies through this public website included uploading the request letter and filling out an email text that the website sends as an email to the public agency’s records custodian. Many of the requests submitted in this manner were rejected by the agency, which did not accept email as a valid form of a public records request, and therefore directed CILPJ fellows to re-submit their requests on the LEA’s own submission portal. However, in many cases, this process proved a barrier to CILPJ getting the records due to technical

204 State of New Jersey, Office of the Attorney General, Division of Administration, <https://www.njoag.gov/about/divisions-and-offices/division-of-administration-home/>.

problems registering in the portal or accessing the responsive records in the portal after the agency posted them.

With the ubiquity of the internet and access to email, LEAs at the town, city, county, and state levels should have the capacity to accept emailed records requests and to respond to requestors via email. LEA-specific records portals

that provide an additional digital wall between the public and the records may deter the public from leveraging their right to request documents covered under OPRA. Therefore, this report recommends that the state require public agency records custodians to accept and respond to emailed public records requests made under OPRA.

18. Conclusion

The New Jersey Immigrant Trust Directive represents a promising start to the state's efforts to build trust between law enforcement throughout New Jersey and the immigrant communities they serve. The Directive distinguishes the roles of local law enforcement from the roles of federal agencies in civil immigration enforcement, narrows the circumstances under which LEAs may have contact with those agencies, and lays the groundwork for disentangling New Jersey's public safety apparatus from the federal immigration enforcement machine. However, due to the Directive's exceptions, in some cases ambiguous requirements, and the apparent weakness of the oversight mechanisms established by the Directive, the policy as is currently written lacks the strength to deliver the AG's vision. Further, the wide variety of implementation strategies across New Jersey's law enforcement agencies produces inconsistencies that do not strengthen the valuable trust that is the Directive's goal.

To best address these shortcomings and ensure that the Directive lives up to the important goals of re-establishing trust throughout New Jersey's many communities, the AG should establish policies to better audit compliance with the Directive's requirements and to monitor Directive implementations across the state. In order to give the Directive statutory grounding, the Legislature should adopt the Values Act. Codifying the Directive will help with its implementation without disruption between administrations.

The Immigrant Trust Directive is a vital policy for ensuring that the public safety and community trust of New Jerseyans is prioritized and that the line between local and state policing and federal immigration enforcement is clearly drawn and upheld. Adopting these changes can ensure that the implementation of the Immigrant Trust Directive's goals is more complete, consistent, and grounded in law.

Appendix: New Jersey Immigrant Trust Directive



State of New Jersey

OFFICE OF THE ATTORNEY GENERAL
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Attorney General

VERONICA ALLENDE
Director

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: Directive Strengthening Trust Between Law Enforcement and Immigrant Communities

In recent years, the federal government has increasingly relied on state and local law enforcement agencies to enforce federal civil immigration law. This trend presents significant challenges to New Jersey's law enforcement officers, who have worked hard to build trust with our state's large and diverse immigrant communities.

It is well-established, for example, that individuals are less likely to report a crime if they fear that the responding officer will turn them over to immigration authorities. This fear makes it more difficult for officers to solve crimes and bring suspects to justice, putting all New Jerseyans at risk.

It is therefore crucial that the State of New Jersey makes very clear to our immigrant communities something that may seem obvious to those of us in law enforcement: there is a difference between state, county, and local law enforcement officers, who are responsible for enforcing *state criminal law*, and federal immigration authorities, who enforce *federal civil immigration law*.

Put simply, New Jersey's law enforcement officers protect the public by investigating state criminal offenses and enforcing state criminal laws. They are not responsible for enforcing civil immigration violations except in narrowly defined circumstances. Such responsibilities instead fall to the federal government and those operating under its authority.

Although state, county, and local law enforcement officers should assist federal immigration authorities when required to do so by law, they should also be mindful that



providing assistance above and beyond those requirements threatens to blur the distinctions between state and federal actors and between federal immigration law and state criminal law. It also risks undermining the trust we have built with the public.

In August 2007, Attorney General Anne Milgram issued Attorney General Law Enforcement Directive No. 2007-3 (AG Directive 2007-3) to “establish the manner in which local, county, and state law enforcement agencies and officers shall interact with federal immigration authorities.” AG Directive 2007-3 recognized that “enforcement of immigration laws is primarily a federal responsibility,” and that “[t]he overriding mission of [New Jersey] law enforcement officers ... is to enforce the state’s criminal laws and to protect the community that they serve.” That Directive also acknowledged that “[t]his requires the cooperation of, and positive relationships with, all members of the community,” including immigrants.

Since 2007, technological advances and changes in federal immigration enforcement priorities have rendered AG Directive 2007-3 less effective at “establish[ing] the manner in which local, county, and state law enforcement agencies and officers shall interact with federal immigration authorities.” Today’s new Directive seeks to ensure effective policing, protect the safety of all New Jersey residents, and ensure that limited state, county, and local law enforcement resources are directed towards enforcing the criminal laws of this state.

To be clear, nothing in this new Directive limits New Jersey law enforcement agencies or officers from enforcing state law – and nothing in this Directive should be read to imply that New Jersey provides “sanctuary” to those who commit crimes in this state. Any person who violates New Jersey’s criminal laws can and will be held accountable for their actions, no matter their immigration status.

Similarly, nothing in this Directive restricts New Jersey law enforcement agencies or officers from complying with the requirements of Federal law or valid court orders, including judicially-issued arrest warrants for individuals, regardless of immigration status. For the purposes of this Directive, a “judicial warrant” is one issued by a federal or state judge. It is not the same as an immigration detainer—sometimes referred to as an Immigration and Customs Enforcement (ICE) detainer—or an administrative warrant, both of which are currently issued not by judges but by federal immigration officers. *See, e.g.,* U.S. Immigration and Customs Enforcement Policy Number 10074.2: Issuance of Immigration Detainers by ICE Immigration Officers (Effective Apr. 2, 2017). Under federal and state law, local law enforcement agencies are not required to enforce civil administrative warrants or detainers issued by federal immigration officers rather than federal or state judges.

Finally, nothing in this Directive prohibits state, county and local law enforcement agencies from imposing their own additional restrictions on providing assistance to federal immigration authorities, so long as those restrictions do not violate federal or state law or impede the enforcement of state criminal law. This Directive does not *mandate* that law enforcement

officials provide assistance in any particular circumstance, even when, by the terms of the Directive, they are *permitted* to do so.

Pursuant to the authority granted to me under the New Jersey Constitution and the Criminal Justice Act of 1970, N.J.S.A. 52:17B-97 to -117, which provides for the general supervision of criminal justice by the Attorney General as chief law enforcement officer of the state in order to secure the benefits of a uniform and efficient enforcement of the criminal law and the administration of criminal justice throughout the state, I hereby direct all law enforcement and prosecuting agencies operating under the authority of the laws of the state of New Jersey to implement and comply with the following directives. This Directive repeals and supersedes the provisions of AG Directive 2007-3.

I. Racially-Influenced Policing

No law enforcement officer shall at any time engage in conduct constituting racially-influenced policing as defined in Attorney General Law Enforcement Directive No. 2005-1.

II. Enforcement of Federal Civil Immigration Law

A. ***Use of immigration status in law enforcement activities.*** Except pursuant to Sections II.C and III below, no state, county, or local law enforcement agency or official shall:

1. Stop, question, arrest, search, or detain any individual based solely on:
 - a) actual or suspected citizenship or immigration status; *or*
 - b) actual or suspected violations of federal civil immigration law.
2. Inquire about the immigration status of any individual, unless doing so is:
 - a) necessary to the ongoing investigation of an indictable offense by that individual; *and*
 - b) relevant to the offense under investigation.

B. ***Limitations on assisting federal immigration authorities in enforcing federal civil immigration law.*** Except pursuant to Sections II.C and III below, no state, county, or local law enforcement agency or official shall provide the following types of assistance to federal immigration authorities when the sole purpose of that assistance is to enforce federal civil immigration law:

1. Participating in civil immigration enforcement operations.
2. Providing any non-public personally identifying information regarding any individual.¹
3. Providing access to any state, county, or local law enforcement equipment, office space, database, or property not available to the general public.
4. Providing access to a detained individual for an interview, unless the detainee signs a written consent form that explains:
 - a) the purpose of the interview;
 - b) that the interview is voluntary;
 - c) that the individual may decline to be interviewed; *and*
 - d) that the individual may choose to be interviewed only with his or her legal counsel present.
5. Providing notice of a detained individual's upcoming release from custody, unless the detainee:
 - a) is currently charged with, has ever been convicted of, has ever been adjudicated delinquent for, or has ever been found not guilty by reason of insanity of, a violent or serious offense as that term is defined in Appendix A;
 - b) in the past five years, has been convicted of an indictable crime other than a violent or serious offense; *or*
 - c) is subject to a Final Order of Removal that has been signed by a federal judge and lodged with the county jail or state prison where the detainee is being held.
6. Continuing the detention of an individual past the time he or she would otherwise be eligible for release from custody based solely on a civil immigration detainer request, unless the detainee:

¹ Non-public personally identifying information includes a social security number, credit card number, unlisted telephone number, driver's license number, vehicle plate number, insurance policy number, and active financial account number of any person. *See* N.J.S.A. 47:1A-1.1, N.J. Court Rule 1:38-7(a). It may also include the address, telephone number, or email address for an individual's home, work, or school, if that information is not readily available to the public.

- a) is currently charged with, has ever been convicted of, has ever been adjudicated delinquent for, or has ever been found not guilty by reason of insanity of, a violent or serious offense as that term is defined in Appendix A;
- b) in the past five years, has been convicted of an indictable crime other than a violent or serious offense; *or*
- c) is subject to a Final Order of Removal that has been signed by a federal judge and lodged with the county jail or state prison where the detainee is being held.

Any such detention may last only until 11:59 pm on the calendar day on which the person would otherwise have been eligible for release.

C. ***Exceptions and exclusions.*** Nothing in Sections II.A or II.B shall be construed to restrict, prohibit, or in any way prevent a state, county, or local law enforcement agency or official from:

1. Enforcing the criminal laws of this state.
2. Complying with all applicable federal, state, and local laws.
3. Complying with a valid judicial warrant or other court order, or responding to any request authorized by a valid judicial warrant or other court order.²
4. Participating with federal authorities in a joint law enforcement taskforce the primary purpose of which is unrelated to federal civil immigration enforcement.
5. Requesting proof of identity from an individual during the course of an arrest or when legally justified during an investigative stop or detention.
6. Asking an arrested individual for information necessary to complete the required fields of the LIVSCAN database (or other law enforcement

² As noted earlier, a “judicial warrant” is one issued by a federal or state judge. It is not the same as an immigration detainer (sometimes referred to as an ICE detainer) or an administrative warrant, both of which are currently issued not by judges but by federal immigration officers. Under federal and state law, local law enforcement agencies are not required to enforce civil administrative warrants or civil detainers issued by federal immigration officers.

fingerprinting database), including information about the arrestee's place of birth and country of citizenship.

7. Inquiring about a person's place of birth on a correctional facility intake form and making risk-based classification assignments in such facilities.
8. Providing federal immigration authorities with information that is publicly available or readily available to the public in the method the public can obtain it.
9. When required by exigent circumstances, providing federal immigration authorities with aid or assistance, including access to non-public information, equipment, or resources.
10. Sending to, maintaining, or receiving from federal immigration authorities information regarding the citizenship or immigration status, lawful or unlawful, of any individual. *See* 8 U.S.C. §§ 1373, 1644.

III. Agreements with the Federal Government

- A. ***Section 287(g) agreements.*** No state, county, or local law enforcement authority shall 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), and they shall not exercise any law enforcement authority pursuant to a preexisting Section 287(g) agreement.
- B. ***Intergovernmental Service Agreements.*** Nothing in Section II of this Directive shall apply to law enforcement agencies that are currently party to an Intergovernmental Service Agreement (IGSA) to detain individuals for civil immigration enforcement purposes when they are acting pursuant to such an agreement.

IV. Requests for T and U Nonimmigrant Status Certifications

- A. ***Establishing certification procedures.*** Before March 15, 2019, all state, county, and local law enforcement agencies must put in place a set of procedures for processing requests for T- and U-visa certifications (*see* 8 U.S.C. §§ 1101(a)(15)(T) and 1101(a)(15)(U)) from potential victims of crime or human trafficking within 120 days of the request being made. Each police department shall post information about its procedures on its website, or, if the department does not have its own website, then on the municipality's website when feasible.

- B. ***T-visa certifications.*** For T-visa certification requests, each agency's certification procedure shall include a determination of whether, pursuant to the standards set forth in federal law and instructions to USCIS Form I-914 Supplement B, the requester:
1. Is or has been a victim of a severe form of trafficking in persons; *and*
 2. Has complied with requests for assistance in an investigation or prosecution of the crime of trafficking.
- C. ***U-visa certifications.*** For U-visa certification requests, each agency's procedure shall include a determination of whether, pursuant to the standards set forth in federal law and instructions to USCIS Form I-918 Supplement B, the applicant:
1. Is a victim of a qualifying criminal activity; *and*
 2. Was, is, or is likely to be, helpful in the investigation or prosecution of that activity.
- D. ***Inquiry into and disclosure of immigration status.*** Notwithstanding any provision in Section II, state, county, and local law enforcement agencies and officials may ask any questions necessary to complete a T- or U-visa certification. They may generally not disclose the immigration status of a person requesting T- or U-visa certification except to comply with state or federal law or legal process, or if authorized by the visa applicant. However, nothing in this section shall be construed to restrict, prohibit, or in any way prevent a state, county, or local law enforcement agency or official from sending to, maintaining, or receiving from federal immigration authorities information regarding the citizenship or immigration status, lawful or unlawful, of any individual. *See* 8 U.S.C. §§ 1373, 1644.

V. Considerations for Prosecutors

- A. ***Initial court appearances.*** At a defendant's initial court appearance before a judge, the prosecutor shall confirm that the defendant has been advised on the record that:
1. Potential charges and convictions may carry immigration consequences, *see Padilla v. Kentucky*, 559 U.S. 356 (2010); *and*

2. The defendant may have rights to consular notification pursuant to the Vienna Convention on Consular Relations.
- B. ***Pretrial detention.*** In assessing whether to seek pretrial detention of an arrestee under N.J.S.A. 2A:162-15 to -25, the prosecutor shall make an individualized assessment based on the specific facts presented in each case, and shall not simply assume that a non-citizen presents a risk of flight.
- C. ***Admissibility of immigration evidence.*** In most instances, evidence of a defendant's immigration status is not relevant to the crime charged or to a witness's credibility and therefore may not be presented to a jury. *State v. Sanchez-Medina*, 231 N.J. 452, 462-63 (2018). In the rare cases where proof of a person's immigration status is relevant and admissible at trial, the prosecutor should not seek to admit such evidence without first raising the issue with the Court outside of the jury's presence, under N.J.R.E. 104, and requesting that the Court give an appropriate limiting instruction.
- D. ***Charging, resolving, and sentencing cases.*** As in all cases, the prosecutor should be mindful of potential collateral consequences and consider such consequences in attempting to reach a just resolution of the case. Nothing in this Directive shall be construed to require any particular charge or sentence, to limit prosecutorial discretion in reaching a just resolution of the case, or to prevent the prosecutor from making any argument at sentencing.

VI. Notifications and Recordkeeping

- A. ***Notifications to detained individuals.*** State, county, and local law enforcement agencies and officials shall promptly notify a detained individual, in writing and in a language the individual can understand, when federal civil immigration authorities request:
1. To interview the detainee. (*See* § II.B.4.)
 2. To be notified of the detainee's upcoming release from custody. (*See* § II.B.5.)
 3. To continue detaining the detainee past the time he or she would otherwise be eligible for release. (*See* § II.B.6.)

When providing such notification, law enforcement officials shall provide the detainee a copy of any documents provided by immigration authorities in connection with the request.

- B. ***Annual reporting by law enforcement agencies.*** On an annual basis, each state, county, and local law enforcement agency shall report, in a manner to be prescribed by the Attorney General, any instances in which the agency provided assistance to federal civil immigration authorities for the purpose of enforcing federal civil immigration law described in Sections II.B.1 to II.B.6. Each year:
1. Any local or county law enforcement agency that provided assistance described in Sections II.B.1 to II.B.6 during the prior calendar year shall submit a report to the County Prosecutor detailing such assistance.
 2. Each County Prosecutor shall compile any reports submitted by local or county law enforcement agencies pursuant to Section VI.B.1 and submit a consolidated report to the Attorney General detailing the agencies' assistance.
 3. The New Jersey State Police and all other state law enforcement agencies that provided assistance described in Sections II.B.1 to II.B.6 during the prior calendar year shall submit a report to the Attorney General detailing such assistance.
 4. The Attorney General shall post online a consolidated report detailing all instances of assistance by all state, county, and local law enforcement agencies, as submitted to the Attorney General pursuant to Sections VI.B.2 and VI.B.3, during the prior calendar year.

VII. Training

- A. ***Development of training.*** The Division of Criminal Justice, shall, within 30 days of the issuance of this Directive, develop a training program to explain the requirements of this Directive as they pertain to state, county, and local law enforcement agencies and officers. Such program shall be made available through the NJ Learn System or by other electronic means.
- B. ***Training deadline.*** All state, county, and local law enforcement agencies shall provide training to all officers regarding the provisions of this Directive before March 15, 2019.

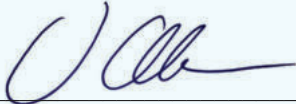
VIII. Other Provisions

- A. ***Establishment of policy.*** All state, county, and local law enforcement agencies shall, before March 15, 2019, adopt and/or revise their existing policies and practices, consistent with this Directive, either by rule, regulation, or standard operating procedure.
- B. ***Community relations and outreach programs.*** Each County Prosecutor shall undertake efforts to educate the public about the provisions of this Directive, with a specific focus on strengthening trust between law enforcement and immigrant communities. Within 120 days of the effective date of this Directive, each County Prosecutor shall report to the Attorney General on such public education efforts.
- C. ***Non-enforceability by third parties.*** This Directive is issued pursuant to the Attorney General's authority to ensure the uniform and efficient enforcement of the laws and administration of criminal justice throughout the state. This Directive imposes limitations on law enforcement agencies and officials that may be more restrictive than the limitations imposed under the United States and New Jersey Constitutions, and federal and state statutes and regulations. Nothing in this Directive shall be construed in any way to create any substantive right that may be enforced by any third party.
- D. ***Severability.*** The provisions of this Directive shall be severable. If any phrase, clause, sentence, or provision of this Directive is declared by a court of competent jurisdiction to be invalid, the validity of the remainder of the Directive shall not be affected.
- E. ***Questions.*** Any questions concerning the interpretation or implementation of this Directive shall be addressed to the Director of the Division of Criminal Justice, or his or her designee.
- F. ***Effective date.*** In order to give state, county and local law enforcement agencies sufficient time to implement the provisions of this Directive and to conduct the required trainings, this Directive shall become operational on March 15, 2019. The revisions in the Second Version of the Directive take effect on October 4, 2019. Once effective, this Directive shall remain in force unless it is repealed, amended, or superseded by Order of the Attorney General.



Gurbir S. Grewal
Attorney General

ATTEST:



Veronica Allende
Director, Division of Criminal Justice

Dated: September 27, 2019

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

APPENDIX A

**(Issued November 29, 2018)
(Revised September 27, 2019)**

For the purposes of Sections II.B.5 and II.B.6, the term “violent or serious offense” is defined as follows:

1. Any first or second degree offense, as defined in N.J.S.A. 2C:43-1;
2. Any indictable domestic violence offense defined in N.J.S.A. 2C:25-19, as well as any domestic violence assault defined in N.J.S.A. 2C:25-19A(2);
3. Any other indictable offense listed in the chart below; *or*
4. Any indictable offense under the law of another jurisdiction that is the substantial equivalent to an offense described in paragraphs 1-3 above.

Chart of Additional Violent & Serious Offenses
(For indictable offenses as referenced in Paragraph 3 Above)

Statute	Description
2C:12-1	Assault
2C:12-1.1	Knowingly Leaving Scene of Motor Vehicle Accident Involving Serious Bodily Injury
2C:12-10	Stalking
2C:12-13	Throwing Bodily Fluid at Officers
2C:14-3	Criminal Sexual Contact
2C:14-4B	Exposing Genitals to Minors Under the Age of 13 and Other Vulnerable Populations
2C:16-1	Bias Intimidation
2C:17-1	Arson
2C:17-2	Causing Widespread Injury or Damage
2C:18-2	Burglary of a Dwelling
2C:24-4	Endangering the Welfare of Children
2C:28-5	Witness Tampering and Retaliation
2C:29-2B	Eluding a Law Enforcement Officer
2C:29-3A(5), 3B(2), 3B(3)	Hindering Apprehension or Prosecution
2C:29-9	Criminal Contempt (Violation of Restraining Orders, Domestic Violence Orders, Etc.)

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2C:39-3, 2C:39-5, 2C:39-7, 2C:39-9	Manufacture, Transportation, or Possession of Weapons
2C:40-3B	Aggravated Hazing

Cultivating Immigrant Trust in the Garden State:

A Report on the Implementation of the New Jersey Immigrant Trust Directive

Fellows Samantha S. Hing, Patrick Johnson, Joseph F. Lin, Diana Woody
and Visiting Scholar Peter Mancina

May 2022