



TRENTON POLICE DEPARTMENT MEMORANDUM



SUBJECT: Immigration Trust Directive (ITD) Re: Law Enforcement Directive 19-01		MEMORANDUM ORDER 2019-018
SUPERCEDES:	DATE: April 8, 2019	DISTRIBUTION: ALL COMMANDS

Pursuant to Attorney General Law Enforcement Directive 2018-6, the Mercer County Prosecutor's Office has issued Law Enforcement Directive 19-01, which is associated with the Immigration Trust Directive (ITD). The ITD went into effect on March 15, 2019 and was recently the subject of training via PowerDMS. The ITD repeals and supersedes Attorney General Law Enforcement Directive 2007-3, issued by former Attorney General Anne Milgram.

A copy of the directive and related documents are attached for your reference.

All personnel shall adhere to the tenets of directive 19-01.

By Order Of:

Christopher A. Doyle
Acting Police Director



OFFICE OF THE MERCER COUNTY PROSECUTOR

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LAW ENFORCEMENT DIRECTIVE 19-01

TO: ALL CHIEFS OF POLICE / POLICE DIRECTORS /
SHERIFF JACK KEMLER /

FROM: ANGELO J. ONOFRI
MERCER COUNTY PROSECUTOR 

RE: ATTORNEY GENERAL LAW ENFORCEMENT DIRECTIVE 2018-6:
IMMIGRATION TRUST DIRECTIVE

DATE: FEBRUARY 5, 2019

On November 29, 2018, Attorney General Gurbir Grewal issued Attorney General Law Enforcement Directive 2018-6, "Directive Strengthening Trust Between Law Enforcement and Immigrant Communities", more commonly known as the Immigration Trust Directive (ITD). The ITD goes into effect on March 15, 2019 and repeals and supersedes Attorney General Law Enforcement Directive 2007-3 issued by former Attorney General Anne Milgram.

OVERVIEW

In the preamble to the ITD, General Grewal make it abundantly clear that nothing in the ITD "limits New Jersey law enforcement officers or agencies from enforcing state laws – and nothing...should be read to imply that New Jersey provides 'sanctuary' to those who commit crimes in this state." Further, "any person who violates New Jersey's criminal laws can and will be held accountable for their actions, no matter their immigration status." Nothing in the ITD 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. A judicially-issued warrant is one issued by a federal or state judge. The judicially-issued warrant is not the same as an ICE detainer for the purposes of the ITD. An ICE detainer is classified as a civil, administrative warrant that is issued by an ICE officer and not a judge.

In many ways, the ITD does not change law enforcement practices in Mercer County.

RACIALLY INFLUENCED POLICING

The provisions of Attorney General Law Enforcement Directive 2005-1, prohibiting racially influenced policing remain in full force and effect.

ENFORCEMENT OF FEDERAL IMMIGRATION LAW

Under the ITD, law enforcement officers in New Jersey may not stop, question, arrest, search or detain an individual based **solely** on actual or suspected citizenship or immigration status and/or suspected violations of **federal civil immigration law**. However, law enforcement officers may inquire about immigration status when necessary to the ongoing investigation of an indictable offense and it is relevant to the offense under investigation. Law enforcement officers and agencies are not to provide assistance to federal immigration officials when the **sole purpose** of that assistance is to **enforce federal civil immigration law**. The following activities are prohibited in assisting in the enforcement of 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.

¹Non-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 1:30:7(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.

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 detained individual's upcoming release from custody, unless the detainee:
 - a) is currently charged with, has ever been convicted of, or has ever been adjudicated delinquent for 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:
 - a) is currently charged with, has ever been convicted of, or has ever been adjudicated delinquent for a violent or serious offense, as that term is defined in Appendix A of the ITD;
 - 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 p.m. on the calendar day on which the person would otherwise have been eligible for release.

Any civil detention may not extend beyond 11:59 p.m. on the calendar day which the person would have otherwise been released. This is the current practice in Mercer County. Further, the enumerated prohibited activities will have no impact in Mercer

County as we do not assist federal immigration authorities with civil immigration enforcement.

The ITD is crystal clear that law enforcement officers and agencies are in no way restricted or prohibited 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.
4. Participating with federal authorities in a joint law enforcement task force 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 LIVESCAN database (or other law enforcement 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.

AGREEMENTS WITH THE FEDERAL GOVERNMENT

The ITD prohibits state, county and local law enforcement agencies from entering into 287(g) agreements unless the Attorney General gives written approval. A 287(g) agreement permits local law enforcement agencies to exercise federal immigration authority. There are not any 287(g) agreements in Mercer County.

REQUESTS FOR T AND U VISAS

All law enforcement agencies are required to have in place policies and procedures to address T (human trafficking) and U (witness to or victim of a qualifying crime) Visa certification procedures. The Mercer County Prosecutor's Office has such policies and procedures in place. All law enforcement agencies are required to post these policies and procedures on their website. The ITD does not prohibit law enforcement agencies from sharing or receiving information from federal immigration officials relating to U or T Visas.

CONSIDERATIONS FOR PROSECUTORS

The ITD contains guidance for prosecutors at various stages of criminal proceedings.

Initially, at the first appearance before a judge, the prosecutor is now required to confirm that the defendant is aware that the criminal charges and any convictions may carry immigration consequences under Padilla and may have rights to a consular notification.

At the pretrial detention phase, the prosecutor, in determining whether to seek detention, is to make an independent assessment based on the facts of the case and is not to presume that a non-citizen poses a risk of flight. Further, in most cases, evidence of a defendant's immigration status is not relevant to the crime charged or the witness' credibility. A prosecutor should not seek to introduce this evidence. In the event that a person's immigration status is relevant and admissible, this issue should be raised to the Court through a R.104 motion and asking the Court for a limiting instruction if the R.104 motion is granted.

The ITD does not limit prosecutorial discretion concerning charging, plea or sentence recommendation issues. However, the ITD does suggest that prosecutors "be mindful of potential collateral consequences". In no way should this provision be read to require assistant prosecutors to treat non-citizens/undocumented persons differently from citizens/documentated person.

NOTIFICATIONS AND RECORDKEEPING

Under the ITD, state, county and local law enforcement agencies/officials are to *promptly* notify a detained individual, in writing and in a language the individual understands, when **federal civil immigration** requests:

- 1) to interview the detainee;
- 2) to be notified of the detainee's upcoming release from custody; and
- 3) to detain the detainee past the time they would otherwise be released (this is to be read to permit detention up to 11:59 p.m. on the day the individual would be released).

On an annual basis, law enforcement agencies, in a manner prescribed by the Attorney General, must report any instances where *federal civil immigration authorities* requested assistance. These reports are to be submitted to the county prosecutor who, in turn, will submit a consolidated report to the Attorney General.
