




MEMORANDUM

Date: June 15, 2018

To: The Honorable Chairman and Members
Pima County Board of Supervisors

From: C.H. Huckelberry
County Administrator 

Re: **Continuation of Stonegarden and HIDTA Grants to the Agenda of July 3, 2018**

I am requesting both of these Agenda Items be continued to the Board meeting of July 3, 2018. The purpose of this continuance is to obtain additional information. Additional information is requested as follows:

For the Operation Stonegarden Grant

- 1.) **Review of Sheriff Policy** – I will request review and comment by the American Civil Liberties Union (ACLU) Mr. Billie Peard with regard to the Pima County Sheriff's Department (PCSD) General Order 2018-001 (Attachment 1) regarding international border related issues. This policy was requested by the Board, I believe it has been revised a number of times in meetings between the Sheriff and interested parties including the ACLU, however I would like to have written confirmation from the ACLU of their position on the policy and if they have concerns regarding the policy as it is now written.
- 2.) **Obtain Data and Information** - The approval of Stonegarden's condition on five items these five are in summary in response are attached to this memorandum for the Board information. Condition 3 required obtaining certain criminal justice data and information to allow the County to analyze the cost impacts on Operation Stonegarden on the balance of the County's Criminal Justice System. The request for this information, first denied, then requested through a Federal Freedom of Information Act request. A subsequent meeting was held between Lu Maheda, Assistant Chief Patrol Agent, U.S. Customs and Border Protection, Thomas Martin Director, U.S. Customs and Border Protection and myself occurred on April 23, 2018, where it was agreed that information would be provided.

Assistant Chief Maheda was the Criminal Justice Reform Unit (CJRU) point of contact in obtaining the requested records. The following time line occurred:

- **April 25, 2018**, CJRU sent him a fillable form with the fields they needed to complete this project (e.g., Agency; Date; Authorizing Officer; Outbound Operation at a Port of Entry; specific name of operation; Joint Agency / Border Patrol etc.). They received an email back right away indicating he would review their request with his team.
- **April 27, 2018**, the CJRU sent an email asking for an update.
- **May 15, 2018**, CJRU had a conference call with Chief Maheda and his team during this time period. Apparently, they did not understand what they needed to do with the form CJRU sent. Members of his team indicated that it would take many man-hours and overtime for them to provide this information to them. At the end of the call, it was agreed that they would send CJRU a "sample" of information to see if that information met their needs. Assistant County Administrator Wendy Petersen let Chief Maheda know she was going to be out of town for several days in May but he could pass along the responsive documents to Spencer Graves and Dana Morales.
- **May 18, 2018**, the CJRU received an email from Chief Maheda indicating his agency had computer problems. He did send a document he characterized as a "sampling" of the PCSD's activity for January.
- **May 22, 2018**, before CJRU had much of a chance to review that document, the CJRU received an email from Chief Maheda asking them to disregard the previous "sampling" he sent and informed them that he would get CJRU a "new product" that week.
- **May 25, 2018**, Chief Maheda sent what he referred to as a "snapshot" of January 2016 information from PCSD.

This snapshot is an excel spreadsheet which contains information with hours worked, vehicles and narcotics seized, overtime hours, etc. for PCSD in January 2016. This was **one month's** worth of information out of a fiscal year's worth of information that the CJRU had originally requested months before.

Additionally, during this intervening time, CJRU had already received the requested information directly from PCSD for the entire year and the assigned summer intern for CJRU had already inputted the PCSD information in our Stonegarden database. What's more, during that same time frame, the intern already inputted all of the data we'd already received from the other six agencies who provided us with the requested information.

What the CJRU really needed at this point, were the Daily Activity Reports (DARs) and narratives for the remaining two agencies who had previously deferred to Border Patrol in response to CJRU's request for documents: South Tucson Police Department and the Tohono O'Odham Police Department.

- **On June 6, 2018**, CJRU sent an email to Chief Maheda and email telling him they reviewed the material he sent and pointed out they really needed information from the two police agencies:
 - Since we've started this project, we've received redacted versions of DARs and narratives from all of the Southern Arizona Law Enforcement agencies except from South Tucson Police Department and Tohono O'Odham Police Department. In fact, our summer intern has been able to input all the data from the other six Law Enforcement agencies for FY 2016-17 since we last spoke to you.
 - At this point, all we need are the DARs and narratives from those two agencies. It would be helpful to us if those remaining agencies would provide us with redacted versions of the documents.

The CJRU have not heard back from Chief Maheda since that June 6, 2018 email requesting information from South Tucson Police Department and Tohono O'Odham Police Department.

As you can see, obtaining useful information has been problematic and If this request for data continues to be as difficult as it has been to date I will recommend that the Board terminate the Stonegarden Grant.

- 3.) Conversion to off duty Deputy employment for Stonegarden** - Today, Operation Stonegarden pays the overtime of County law enforcement personnel, this simply leads to pension spiking which then costs the taxpayers significant additional money in paying the pension obligations for our law enforcement employees. An alternative to direct employment is to employ our Law Enforcement Personnel through the existing off duty program. I will request the Sheriff and Federal officials make those necessary modifications to the Grant such that it employs off duty law enforcement and they paid directly through the off duty program which does not add to the taxpayer's pension obligations.

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For the HIDTA Grant

Information requested relates to specific data and reports that ensures HIDTA operations do not take law enforcement actions against individuals who have possession of drugs for their personal use only.

CHH/mp

c: The Honorable Mark Napier, Pima County Sheriff Department
Julie Castañeda, Clerk of the Board
Wendy Petersen, Assistant County Administrator for Justice and Law Enforcement
John Voorhees, Assistant County Administrator

ATTACHMENT 1

XII. INTERNATIONAL BORDER RELATED ISSUES

Pima County shares approximately 125 miles of border with Mexico which allows trans-national traffic to pass, including illegal drug and human trafficking. The Department will act to detect, deter, and investigate State and local crimes related to cross-border traffic while also cooperating with Federal authorities.

A. Definitions

1. **RACIAL OR BIAS-BASED PROFILING:** An inappropriate reliance on factors such as race, ethnicity, national origin, religion, sex, sexual orientation, economic status, age, cultural group, disability, or affiliation with any other similar identifiable group as a factor in deciding whether to take law enforcement action or to provide service.

2. **FEDERAL IMMIGRATION AUTHORITIES:** Law enforcement officers authorized by the Federal government under title 8 U.S.C. § 1357 to verify or ascertain immigration status including Immigration and Customs Enforcement (ICE), U.S. Customs and Border Protection (CBP), and U.S. Border Patrol (USBP).

- B. Department members shall **NOT** proactively pursue investigations regarding Federal immigration law.
1. Members shall not inquire as to how a person entered the United States unless it is a valid element of a criminal investigation.
 2. Members shall not inquire about immigration status while on the grounds of a public or private educational institution unless such inquiry is a valid part of a criminal investigation.
 3. Members shall not inquire about immigration status during consensual contacts.
- C. Department members shall not engage in racial or bias-based profiling.
1. In establishing reasonable suspicion or probable cause, members shall not consider race, color, or national origin except when it is part of a specific suspect description.
 2. No single factor, other than an admission, is sufficient to develop reasonable suspicion that a person is in the United States without proper documentation and would give rise to a request for Federal immigration authorities.
 3. Members shall document the existing reasonable suspicion in a case report.
- D. When reasonable suspicion exists that a person is unlawfully present in the United States, a reasonable attempt shall be made to determine the immigration status of the person.
1. Members shall not inquire of victims and witnesses about immigration status unless the crime involved includes an element related to immigration status.
 2. Such efforts should not be made if determination of immigration status may hinder or obstruct an investigation.
 3. Attempts to determine the immigration status of a person should not prolong the time it takes to complete the original investigation or other enforcement action.
 4. Persons determined, by Federal immigration authorities, to be in the United States unlawfully shall be turned over to Federal custody.
 5. Members shall not transport or deliver an individual to Federal

immigration authorities unless Federal immigration authorities verify the person is wanted for a criminal immigration violation or the person has a civil immigration violation only and consents to a transport.

6. All persons booked into the Pima County Adult Detention Center shall have their immigration status determined prior to release from custody.

E. Verification

1. Immigration status shall be verified with Federal immigration authorities.
2. A person is presumed to be lawfully present in the United States if the person provides any of the following.
 - a. A valid Arizona driver license
 - b. A valid Arizona non-operating identification
 - c. A valid Tribal enrollment card or other form of Tribal identification
 - d. Any other valid United States government – Federal, State, or local – issued identification, if such entity requires proof of legal presence before issuance.

F. Interaction with Federal Immigration Authorities

1. Members shall cooperate with Federal immigration authorities.
2. Members shall not participate in immigration checkpoints except when requested to respond and enforce a specific State or local statute.
3. Members may participate in border security missions when approved by a Chief.
4. Members shall comply with all Federal and Department reporting requirements.

- G. Requests for assistance from Federal immigration authorities shall be made via the Department's Communications Section.
 - 1. Communications shall track Department requests for Federal immigration authority assistance or response.
 - 2. The Communications Section Commander shall complete a monthly synopsis of this data.
 - 3. Unless absolutely necessary, requests for Federal immigration authorities shall not be made by personal or Department-issued cell phones.

XIII. CONSULATE NOTIFICATIONS ON ARREST OF FOREIGN NATIONALS

Certain treaties between the United States and other countries require that local law enforcement officials make notification to consulates when a foreign citizen is taken into custody. Failure to make the appropriate notifications may result in the suppression of statements or other evidence against the defendant. The following procedures shall be followed when a foreign citizen is taken into custody.

A. General

- 1. Deputies are required to notify foreign citizens who are taken into custody of their right to consular notification.
- 2. This requirement does not allow deputies to ask persons whether or not they are citizens or whether they are legally or illegally in this country. Consular notification procedures should be followed only if an arrestee self-identifies as a foreign national or if the arresting deputy has reasonable grounds to believe the person is not a citizen and has verified that with the person. Consular notification shall be done whether or not a person is legally within the United States.
- 3. This Order applies only in those situations where a foreign national has been taken into custody and will be detained for more than a brief period of time. This Order does not apply in most situations in which a person is arrested, cited, and field released. The Order applies to all foreign citizens, including permanent resident aliens. This Order does not apply to persons who are both citizens of the United States and another country (dual citizenship).

ATTACHMENT 2

Update to the Five Conditions of the Reconsideration and Authorization of the Stonegarden Grant

The following is an update to the five conditions the Board of Supervisors required for Operation Stonegarden fund approval:

- 1. The E.R.E., employee related expenses, for this grant be modified to reflect the analysis of the Finance and Sheriff's department to jointly determine the correct E.R.E. to be used by the Sheriff's department. Furthermore, I ask that the Sheriff and the finance staff review the last three years or more, if possible of Stonegarden grants to determine if the County applied the current E.R.E. and was appropriately reimbursed for its expenses, if the amount was less than we request reimbursement for the actual expenditure.*

Finance provided a memorandum dated February 15, 2018 (Attachment 1a) from the Pima County Sheriff's Department explaining the reimbursement of EREs. The Finance Director confirmed that the Finance Department has verified that all of the individual officers ERE rates used for Operation Stonegarden grant reimbursement, as enumerated in the memo, were correct.

- 2. I would direct the County Administrator to develop a grant coordination process for the Sheriff and the County Attorney, for federal or state grants, not directly administered by existing county grant staff so that these grants are monitored by a centralized county grant staff under the direction of the County Administrator.*

The establishment of the Grants Management and Innovation Office (GMI) was approved by the County Administrator on February 23, 2018. This department incorporates the Grants and Data Office and the Grants Division of Finance and Risk Management. Effective July 1, 2018, GMI will provide centralized oversight and support across the grants lifecycle including: application development; award negotiation; internal controls; monitoring; cash management; draw-down; reporting; and close-out. Regarding the issue of monitoring, GMI will provide comprehensive programmatic and fiscal monitoring in order to ensure audit-readiness for departments and their sub-recipients. In Fiscal Year 2018/19 GMI will work closely with departmental leadership and County Administration to design policies and procedures to ensure the successful and uniform application of this comprehensive monitoring in support of all departments, elected officials, and courts.

- 3. Direct the County Administrator to ensure a process exists for collecting appropriate data, and information that both confirms a specific benefit of a criminal justice grant such as Stonegarden, but also establishes a data and*

information reporting system such that the cost of accepting such a grant on other elements of the County-funded criminal justice system as prosecution defense and adjudication through the County may be fully and transparently disclosed. This is inclusive, obviously, of the information we talked about; who is being stopped and why.

The Criminal Justice Reform Unit prepared a memo dated May 22, 2018 (Attachment 1b) updating the County Administrator regarding their efforts to secure data used to analyze the benefit of the grant.

4. *That the Sheriff develop a written policy that is to be provided to this Board, that indicates specifically how, when and under what circumstances County law enforcement agents will interact with Federal immigration officials including Border Patrol, Customs, and Immigration officials, including at the border patrol station stops.*

The Sheriff's Department has provided a copy of their latest published policy regarding immigration issues. This policy (Attachment 1c) is posted on the Sheriff's department website.

5. *That we put together and compose and populate a Board of Supervisors committee to report to both the Board of Supervisors and the Sheriff's Department with two members from each Board member to oversee the issue of potential racial profiling in this and other instances.*

The County has established the Community Law Enforcement Partnership Commission (CLEPC) and appointed eight of the 10 voting Commissioners. At the Board of Supervisor June 12, 2018 meeting, the County Administrator will propose the addition of a second ex-officio member of the CLEPC. The Tohono O'odham Director of Public Safety will join the Pima County Sheriff as a non-voting member of the Commission. The Commission attempted to hold its first meeting on May 30, 2018, unfortunately due to a lack of quorum the meeting was cancelled.