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ROBERT A. NOLAN, in his official
capacity as Cape May County
Sheriff, and COUNTY OF CAPE MAY,

Plaintiffs,

v.

GURBIR S, GREWAL, in his official
capacity as Attorney General of
the State of New Jersey, and
OFFICE OF THE STATE OF NEW
JERSEY, DEPARTMENT OF LAW, AND
PUBLIC SAFETY, DIVISION OF
CRIMINAL JUSTICE,

Defendants.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Civil Action No.

COMPLAINT

Plaintiffs, Cape May County Sheriff Robert Nolan ("Sheriff Nolan"),
and the County of Cape May ("County"), by and through the undersigned
counsel, brings this civil action for declaratory and injunctive
relief, and avers as follows:

PRELIMINARY STATEMENT

1. Sheriff Nolan is a constitutionally elected official sworn
to enforce the constitutions of both the United States of America
and the State of New Jersey. Sheriff Nolan was duly elected by
the residents of Cape May County to serve and protect them

consistent with his sworn oath.

2. In furtherance of that oath, Sheriff Nolan entered an agreement with the United States Department of Homeland Security, Immigration and Customs Enforcement ("ICE") pursuant to Section 287(g) of the Immigration and Nationality Act, 8 U.S.C. §1357(g) ("287(g) Agreement" or "287(g) Program"), which was designed to enhance the safety and security of communities by creating partnerships with state and local law enforcement agencies to identify and remove aliens who are subject to removal from the United States.

3. The 287(g) Program was added to the Immigration and Nationality Act in or about 1996 and authorized the Director of ICE to enter into agreements with state and local law enforcement agencies to permit designated officers to perform limited immigration law functions.

4. Directive 2018-6, known as the Immigration Trust Directive ("Directive"), was issued by the Defendant, New Jersey Attorney General Gurbir S. Grewal ("Attorney General"), and is a deliberate effort to obstruct the enforcement of laws the Attorney General also swore an oath to uphold.

5. The Directive selectively prohibits, *inter alia*, local law enforcement agencies, including the Cape May County Sheriff's Office ("CMCSO"), from cooperating with ICE as well as voluntarily participating in the 287(g) Program.

6. The Directive puts the public safety of Cape May County's residents and visitors at risk by selectively restricting the Sheriff's communication and cooperation with federal immigration authorities. Furthermore, the authority conferred by Congress upon Sheriff Nolan to disclose information to federal immigration authorities is being eviscerated by the Directive.

7. Additionally, the Directive will preclude the Sheriff's department from having access to the following services provided to Cape May County pursuant to 287 (g):

- a. Person Centric Query System (PCQS): permits CMCSO to search for inmates that are not in the country legally.
- b. EAGLE: permits CMCSO to write immigration charges. It also allows the department to use biometrics to determine a person's identity and immigration status.

- c. TECS: permits CMCSO to perform criminal history searches (similar to NCIC).
- d. PALMS: free service used by ICE and DHS which allows for continuous training and documentation of that training.
- e. DHS/ICE Computer Systems: access to DHS websites and Outlook allows the free flow of information and intel between CMCSO and ICE/DHS
- f. FLETC Training: free training at the Federal Law Enforcement Training Center, wherein every eighteen (18) months officers are sent for training in immigration law, interrogation, human trafficking and how to assist those who have been a victim of a crime.

8. The loss of these programs would make the identification of individuals who have been charged with a crime and lodged in the Cape May County Jail much more difficult. Said individuals have either entered the country in violation of federal law or have not followed the conditions of their Visa. The Directive will increase the odds of a criminal, who is in the United States illegally, being released into Cape May County; thus, severely impacting the Sheriff's ability to keep Cape May County safe.

9. The Directive is a deliberate effort by Defendants to interfere with an agreement to implement the 287(g) Agreement in the Cape May County Correctional Facility. Accordingly, the Attorney General has interfered with and obstructed Sheriff Nolan's ability to undertake his sworn oath, despite having neither the authority to issue this Directive nor any other directives that obstruct or otherwise conflict with immigration enforcement efforts.

10. Because Sheriff Nolan has taken an oath to support and uphold the United States Constitution and believes the Directive to be unconstitutional, he is being forced to choose between violating his oath of office by abiding by the Directive or refusing to comply with a directive imposed by the Attorney General, which could result in his expulsion from office.

11. This lawsuit challenges the Attorney General's authority to preempt the exclusive governance of the federal government with regard to immigration. It challenges the Directive's impermissible interference with the Plaintiffs' voluntary communication and cooperation with federal immigration

officials. Further, it challenges the validity of the Directive as it was issued without due process and impermissibly interferes with a legal contract entered by and between CMCSO and DHS.

12. For these reasons, Sheriff Nolan and the County are filing this lawsuit to protect the residents that Sheriff Nolan swore an oath to represent and serve.

PARTIES

13. Plaintiff, Cape May County Sheriff Robert A. Nolan, is a constitutional officer of the State of New Jersey duly elected by the residents of Cape May County to serve and protect this jurisdiction consistent with the powers and responsibilities imposed by the New Jersey Constitution and state law.

14. Plaintiff, County of Cape May, is a body corporate and politic with its principal offices located at 4 Moore Road, Cape May Court House, New Jersey, 08210.

15. Defendant Gurbir S. Grewal serves as the Attorney General of the State of New Jersey and, for all intents and purposes herein, a state official as contemplated 8 U.S.C. §1373(a), with his principal business address at Richard J. Hughes Justice Complex, 25 Market Street, P.O. Box 080, Trenton, New Jersey 08624-0080.

16. Defendant State of New Jersey, Office of the Attorney General, Department of Law and Public Safety, Division of Criminal Justice, is the state entity from which the Attorney General issued Directive 2018-6, with its principal business address at Richard J. Hughes Justice Complex, 25 Market Street, P.O. Box 080, Trenton, New Jersey 08624-0080.

JURISDICTION AND VENUE

17. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1346 and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202.

18. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e) because Plaintiffs are located in this district and the actions or omission giving rise of this action occurred herein.

STATEMENT OF THE CLAIM

FEDERAL IMMIGRATION LAW

19. The Supremacy Clause of the Constitution mandates that "[t]his Constitution, and the Laws of the United States which shall be made in pursuance thereof ... shall be the supreme Law of the Land ... any thing in the Constitution or Laws of any State to the contrary notwithstanding." U.S. Const., art. VI, cl. 2. Thus, a state enactment is invalid if it "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress," Hines v. Davidowitz, 312 U.S. 52, 67 (1941), or if it "discriminate[s] against the United States or those with whom it deals," South Carolina v. Baker, 485 U.S. 505, 523 (1988).

20. Based on its enumerated powers and its constitutional power as a sovereign to control and conduct relations with foreign nations, the United States has broad authority to establish immigration laws, the execution of which the States cannot create any obstacle to the accomplishment and execution of the full purposes and objectives of those laws. See Arizona v. United States, 567 U.S. 387, 394-95 (2012).

21. The nation's immigration laws reflect a careful and considered balance of national law enforcement, foreign relations, and humanitarian interests. Congress has assigned to the United States Department of Homeland Security, Department of Justice, and Department of State, along with other federal agencies, the task of enforcing and administering these immigration-related laws. In administering these laws, the federal agencies balance the complex - and often competing - objectives that animate federal immigration law and policy. Although states may exercise their police power in a manner that has an incidental or indirect effect on aliens, a state may not enforce state laws or rules in a manner that interferes or conflicts with the federal immigration laws. The Constitution and the federal immigration laws do not permit the development of a patchwork of state and local immigration policies throughout the country.

22. Indeed, Congress has exercised its authority to make laws governing the entry, presence, status and removal of aliens within the United States by enacting various provisions of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 et seq., the Immigration Reform and Control Act of 1986 ("IRCA"), Pub. L. No. 99-603, 100 Stat 3359, codified at 8 U.S.C § 1324(a) et seq., and other laws regulating immigration.

23. These laws codify the Executive Branch's authority to inspect, investigate, arrest, detain, and remove aliens who are suspected of

being, or found to be, unlawfully in the United States. See 8 U.S.C. §§ 1182, 1225, 1226, 1227, 1228, 1231, 1357.

24. Congress has also codified basic principles of cooperation and comity between state and local authorities and the United States. "Consultation between federal and state officials is an important feature of the immigration system." See *Arizona*, 567 U.S. at 411. Congress has therefore directed federal, state, or local government entities or officials from prohibiting, or in any way restricting, any government entity or official from sending to, or receiving from, DHS "information regarding the citizenship or immigration status of an individual." 8 U.S.C. § 1373(a); see 8 U.S.C. § 1644 (same); see also 8 U.S.C. § 1357(g)(10)(A) (providing for state and local "communicat[ion] with [DHS] regarding the immigration status of any individual, including reporting knowledge that a particular alien is not lawfully present in the United States"). Congress also authorized states and localities "to cooperate with the [Secretary] in the identification, apprehension, detention, or removal of aliens not lawfully present in the United States." *Id.* § 1357(g)(10)(B).

25. Through a variety of programs, ICE works cooperatively with states and localities to accomplish its mission to enforce the federal immigration laws. Among these efforts is the 287(g) Program with CMCSO.

26. But the opportunity that federal law provides for participation by state and local officials does not provides states will the ability to enact their own immigration policies to rival the national immigration policy; the formulation of immigration policy and balancing of immigration enforcement priorities is a matter reserved for the federal government. Such regulations do not fall within the state's traditional police powers and remain within the exclusive province of the federal government.

DIRECTIVE 2018-6

27. The Criminal Justice Act of 1970, codified at N.J.S.A. 52:17B-97, *et seq.*, in part, designated the Attorney General as the Chief Law Enforcement Officer in the State. The Act further declared it to be public policy of this State to *encourage cooperation among law enforcement officers*. See N.J.S.A. 52:17B-98.

28. Defendant Grewal, in his official capacity as Attorney General of the State of New Jersey, issued Directive 2018-6 with an effective date of March 15, 2019, in violation of the Supremacy Clause of the United States as it is preempted by federal immigration law.

29. The Directive selectively prohibits state and local cooperation with federal immigration enforcement in a number of ways. The Directive prohibits CMCSO from cooperating and sharing information with ICE. It further prohibits CMCSO from providing notice to ICE of a detained individual's upcoming release from custody unless such detained individual is currently charged, or has even been convicted of certain offenses as defined in the Directive. Lastly, it hampers CMCSO by denying it access to important records and information previously available under 287(g).

30. On April 30, 2019, the Attorney General issued a supplemental memorandum outlining the process any law enforcement agency must undertake to enter into or renew a 287(g) agreement.

31. Directive 2018-6 v2.0 was issued on or about September 27, 2019 with an effective date of October 4, 2019. The revised Directive further prohibits state and local cooperation with federal immigration enforcement and ended the use of "287(g) Agreements" throughout the State of New Jersey.

CAPE MAY COUNTY

32. CMCSO initially entered into an agreement with ICE on April 10, 2017 implementing the 287(g) Program in the Cape May County Correctional Facility for the purpose of enhancing the safety and security of Cape May County.

33. Sheriff Nolan renewed the agreement with ICE effective February 28, 2019. The renewal agreement maintained all the provisions of the April 10, 2017 agreement, with the exception of the term.

34. Sheriff Nolan renewed the agreement to protect the residents of Cape May County from dangerous individuals who commit violent acts against residents of our community.

35. Sheriff Nolan also adopted CMCSO Standard Operating Procedure 1525 that required the implementation of the 287(g) Program at the Cape May County Correctional Facility to fully comply with Directive 2018-6 since its effective date. It further confined implementation of the 287(g) Program to the confines of the correctional facility.

36. By letter dated August 16, 2019, Sheriff Nolan advised the Attorney General of the importance of the 287(g) agreement to Cape May County and the problems that would be created by termination of the program, the implementation of SOP 1525 and identified the dangerous individuals who were incarcerated in the Cape May County Correctional Facility and on a detainer from ICE at that time, one of whom was incarcerated for aggravated sexual assault on a minor.

37. On September 27, 2019, Sheriff Nolan received a letter from Veronica Allende, Director of the Division of Criminal Justice, advising him of the Attorney General's revised Directive and directing him to "wind down" his agreement with ICE within seven (7) days of the letter.

CAUSES OF ACTION

COUNT ONE - THE DIRECTIVE VIOLATES THE SUPREMACY CLAUSE OF THE UNITED STATES CONSTITUTION

38. Plaintiffs, Sheriff Nolan and Cape May County, repeat and reiterate each and every allegation in paragraphs 1 through 37 and incorporate same herein.

39. The Directive, issued under the purported cloak of the Attorney General's state constitutional and statutory authority, concomitantly frustrates and impedes the federal government's regulation and enforcement of immigration laws. In particular, the Directive conflicts with federal law and foreign policy, disregards federal policies, interferes with federal enforcement priorities in an area committed to the discretion of the United States, and otherwise impedes the accomplishment and execution of the full purposes and objectives of federal law and foreign policy.

40. The Directive violates the Supremacy Clause and, therefore, is invalid.

WHEREFORE, Plaintiffs, Sheriff Nolan and Cape May County, request judgment against Defendants declaring that the Attorney General's Directive No. 2018-6 and 2018-6 v2.0 are unconstitutional, invalid and unenforceable and for such other relief as the court deems just and equitable.

COUNT TWO - THE DIRECTIVE IS PREEMPTED BY FEDERAL LAW

41. Plaintiffs, Sheriff Nolan and Cape May County, repeat and reiterate each and every allegation in paragraphs 1 through 40 and incorporate same herein.

42. The Directive is preempted by federal law, including 8 U.S.C. § 1373 and 8 U.S.C. § 1644.

WHEREFORE, Plaintiffs, Sheriff Nolan and Cape May County, request judgment against Defendants declaring that the Attorney General's Directive No. 2018-6 and 2018-6 v2.0 are unconstitutional, invalid and unenforceable and for such other relief as the court deems just and equitable.

COUNT THREE - INTENTIONAL INTERFERENCE

43. Plaintiffs, Sheriff Nolan and Cape May County, repeat and reiterate each and every allegation in paragraphs 1 through 42 and incorporate same herein.

44. Directive 2018-6 and 2018-6 v2.0 are rules as defined by the New Jersey Administrative Procedure Act ("APA"), N.J.S.A. §52:14B-1, et seq.

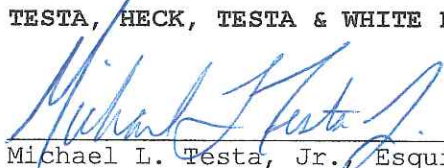
45. Directive 2018-6 and 2018-6 v2.0 was implemented by the Attorney General without being adopted in substantial compliance with the APA, as required by N.J.S.A. 52:14B-4.

46. Directive 2018-6 v2.0 directed Sheriff Nolan to terminate the 287(g) agreement entered by and between CMCSO and DHS.

47. Plaintiffs suffered damages as a result of the Attorney General's intentional interference with the 287(g) agreement.

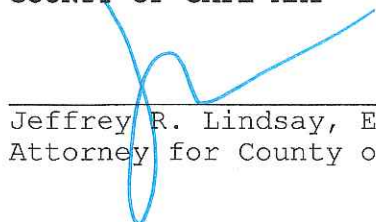
WHEREFORE, Plaintiffs, Sheriff Nolan and Cape May County, request preliminary and permanent injunctions that prohibit Defendants, as well as his successors, agents and employees, from enforcing Directive 2018-6 and 2018-6 v2.0, as well as any other relief its deems just and proper.

TESTA, HECK, TESTA & WHITE P.A.



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COUNTY OF CAPE MAY



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