



MEMORANDUM

Date: May 7, 2019

To: The Honorable Richard Elfas, Chairman
Pima County Board of Supervisors

From: C.H. Huckelberry
County Administrator 

Re: **Review of Item Pulled for Separate Action of the December 18, 2007 Item E14 Consent Calendar – Resolution 2007-331 Approving Intergovernmental Agreement with US Border Patrol to Provide Law Enforcement Services**

This item was continued to the January 8, 2008 Board of Supervisors meeting under Item 12 – Sheriff Contract Resolution 2007-331, and then withdrawn from the Agenda.

I asked to Clerk of the Board to pull the intergovernmental agreement and any backup material that would have been available to the Board for the agenda item on December 18, 2007 (Attachment 1) and continued to the Agenda of January 8, 2008. Ms. Castañeda indicates there are no back up materials for any agenda item documents prior to 2013. Therefore, there is no specific information on this subject from the Agenda. I also asked the Sheriff if there was any material for this agenda item and they have no material.

Without any backup material, it is difficult to rule out if this item is related to a Memorandum of Agreement (MOA) dated February 25, 2008; however, the minutes indicate it is not. The only information available is the minutes of the January 8, 2008 meeting (Attachment 2). It is clear from the discussion, the list of individuals who testified and the summary of comments that this resolution and Intergovernmental Agreement (IGA) is related to the Sheriff Border Crimes Unit where there was an attempt to embed a member of the US Border Patrol in the Sheriff Border Crimes Unit as a deputized agent.

At the January 8, 2008 meeting, on Page 27 of the minutes(Attacment 2) , it is apparent that both Bureau Chief George Heaney and Captain Miranda indicated the focus of the action was not immigration enforcement. At the end of the discussion, the item was withdrawn, and based on the discussion, it is clear the intent of the action was to deputize a US Border Patrol Agent and embed that agent in the County Sheriff's Border Crimes Unit.

On May 2, 2019, I transmitted additional information from Chief Deputy Byron Gwaltney dated April 30, 2019 regarding documents forwarded to me related to a Memorandum of Understanding (MOU) as well as a MOA . The MOU is a two-page document. This document indicates that the US Immigration and Customs Enforcement agrees to designate employees of the Sheriff as Customs Officers, provide them training and designation as such. This document was approved by Bureau Chief Warren M. Alter on June 23, 2009 and approved

The Honorable Supervisor Richard Elfas

Re: **Review of Item Pulled for Separate Action of the December 18, 2007 Item E14 Consent Calendar – Resolution 2007-331 Approving Intergovernmental Agreement with US Border Patrol to Provide Law Enforcement Services**

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as to form by Deputy County Attorney Sean Holgin. How this document relates to the Memorandum of Agreement is unknown except that it appears the document specifically discusses Customs Officers, not US Border Patrol Agents.

The MOA that was entered into on February 25, 2008 appears to be a document that would allow up to eight Sheriff's Deputies to be nominated, trained and certified to perform certain immigration and enforcement functions. It also indicates that six deputies would be designated as Task Force Officers and up to two would be Jail Enforcement Officers. The authority for the agreement comes from Section 287G of the Immigration and Nationality Act, which allows written agreements with the State or any public subdivision of the State, such as the Sheriff's Department, to allow qualified personnel to perform certain functions of an Immigration Officer.

Therefore, both the MOU and MOA are the reverse of the item on the Board's Agenda of December 18, 2007 and, again, on January 8, 2008. This agenda item and IGA would have deputized a US Border Patrol Agent and embedded that agent in the Sheriff's Border Crime Unit based on the discussion in the minutes. The MOU and MOA relate to designating Sheriff's deputies as a Customs Officer or an Immigration Enforcement Officer.

One of the attachments to the May 2, 2019 communication is an October 18, 2007 letter from the Acting Deputy Assistant Director of the Investigative Services of the Department of Homeland Security Immigration and Customs Enforcement to former Sheriff Clarence Dupnik approving the request for 287G delegation of authority training for the Pima County Sheriff's Department. The letter also serves as notice of intent to negotiate a MOA; hence, the MOA for 287G authorization is referenced in the October 18, 2007 letter.

In the discussion portion of the memorandum from Deputy Chief Gwaltney, it is indicated that two deputies were certified under the 287G program. These certifications were revoked on June 27, 2012 (Attachment 3) for Deputy Vincent L. Lopez and Deputy David Obral. It appears both of these individuals were not certified as 287G Officers until February 2009 and both certifications were revoked on June 27, 2012. Hence, the discussion about certification and revocation of 287G personnel is consistent with the information provided by Chief Deputy Gwaltney.

The last issue you raised was why the County had billed for and received a payment for approximately \$3,900 in overtime reimbursement in 2019. This reimbursement is through a program known as SLOT (State and Local Overtime/Joint Operation Program) reimbursement. It is to provide local agencies with overtime in local joint operations. The US Department of Homeland Security in a letter dated November 27, 2013 (Attachment C of Gwaltney's April 30, 2019 memorandum) authorizes the approval by US Department of Homeland Security of participation in the SLOT/Joint Operations Program.

The Honorable Supervisor Richard Elías

Re: **Review of Item Pulled for Separate Action of the December 18, 2007 Item E14 Consent Calendar – Resolution 2007-331 Approving Intergovernmental Agreement with US Border Patrol to Provide Law Enforcement Services**

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In summary, the proposed IGA discussed by the Board of Supervisors on January 8, 2008 was for the purpose of deputizing a Border Patrol Agent and embedding them in the Sheriff's Border Crime Unit. This IGA was withdrawn. The MOU and MOA entered into in 2008 as well as 2009 was for the purpose of certifying eight County law enforcement personnel as US Customs or Immigration Enforcement Officers through the 287G program. It appears only two deputies were certified in 2009 and those certifications were revoked in 2012.

Finally, the reimbursement of \$3,900 in overtime in 2019 is related to the SLOT program from a joint narcotics investigation. Attachment 4 is a memorandum dated May 6, 2019 from Chief Deputy Byron Gwaltney regarding their program and the overtime reimbursed for 2019 as well as the highlights of our involvement in this federal drug investigation.

CHH/mp

Attachments

- c: The Honorable Chairman and Members, Pima County Board of Supervisors
The Honorable Mark Napier, Pima County Sheriff
Jan Leshner, Chief Deputy County Administrator
Byron Gwaltney, Chief Deputy, Pima County Sheriff's Department

ATTACHMENT 1

Chris Straub, Chief Civil Deputy County Attorney, stated this case involved a valuation appeal for tax year 2008. The proposed settlement would result in the full cash value decreased from \$394,744.00 to \$360,877.00, with the plaintiff dismissing the same property's currently pending valuation appeal for tax year 2007. The County Attorney's Office and Assessor recommended approval.

On consideration, it was moved by Supervisor Bronson, seconded by Chairman Elías and unanimously carried by a 5-0 vote, to accept the recommendation to approve the settlement.

9. **LITIGATION**

Pursuant to A.R.S. §38-431.03(A) (3) and (4), for legal advice and direction regarding delegation to the County Attorney, upon recommendation by the County Assessor, the authority to settle tax cases where the resulting decrease in taxes for a single year does not exceed \$5,000.00.

Chris Straub, Chief Civil Deputy County Attorney, stated the County Attorney's Office and Assessor recommended the delegation.

Without objection, this item was continued to 1/8/08 as a regular agenda item.

10. **CONSENT CALENDAR:**

The Chairman inquired whether anyone wished to be heard on any item listed for action on the Consent Calendar. No one appeared.

On consideration, it was moved by Supervisor Valadez, seconded by Supervisor Bronson and unanimously carried by a 5-0 vote, that the Consent Calendar be approved as presented, subject to the following.

PULLED FOR SEPARATE ACTION:

1. E. 14. RESOLUTION NO. 2007-331, approving an Intergovernmental Agreement with the U.S. Border Patrol, to provide law enforcement services, no cost (01-11-U-140467-1207)

Without objection, this item was continued to 1/8/08.

CONSENT CALENDAR ITEMS ARE AS FOLLOWS:

1. **CONTRACTS AND AWARDS**

A. **Community Development and Neighborhood Conservation**

1. RESOLUTION NO. 2007-330, approving an Intergovernmental Agreement with the Why Fire District, to provide for the purchase of fire safety equipment, CDBG Grant Fund, contract amount \$10,000.00 (01-70-W-140455-1007)
2. City of South Tucson, Amendment No. 2, to provide management and implementation of the Community Development Block Grant

12-18-07 (3)

ATTACHMENT 2

On consideration, it was moved by Supervisor Bronson, seconded by Supervisor Valadez and unanimously carried by a 5-0 vote, to approve the requests.

11. **COUNTY ATTORNEY**

The Board of Supervisors on 12/18/07, continued the following:

Direction/action regarding delegation to the County Attorney, upon recommendation by the County Assessor, the authority to settle tax cases where the resulting decrease in taxes for a single year does not exceed \$5,000.00.

On consideration, it was moved by Supervisor Bronson, seconded by Supervisor Valadez and unanimously carried by a 5-0 vote, to approve the recommendation.

12. **SHERIFF: CONTRACT**

The Board of Supervisors on 12/18/07, continued the following:

RESOLUTION NO. 2007 - 331, approving an Intergovernmental Agreement with the U.S. Border Patrol, to provide law enforcement services, no cost. (01-11-U-140467-1207)

Chuck Huckelberry, County Administrator, stated the Pima County Sheriff formed a Border Crimes Unit two years ago that included the informal cooperation of the Border Patrol to share intelligence regarding drug smuggling and other criminal actions. The Sheriff's Departments and the Border Patrol both want to have a more formal relationship where a member of the Border Patrol would become a part of the Border Crime Unit under the direction of the Border Crime Unit and that individual would share coordinating information and intelligence. He recommended approval.

The following individuals addressed the Board:

1. Melanie Nelson
2. Gene Lefebvre
3. Jennifer Allen
4. Most Reverend John Fife
5. Walt Staten
6. Jeff Rogers
7. Ray Figueroa
8. Harry Shaw, GOP Sheriff candidate
9. Zali Zalkind, Border Action Network
10. Robin Hoover, Fort Worth Clergy-Police Advisory Council Founder
11. Faviola Augustin, child abuse prevention educator
12. Kathryn Rodriguez
13. Susan Thorpe
14. John Brakey

01-08-08 (24)

15. Sebastian Quinac
16. Jose Gonzalez
17. Jason Stone
18. Andy Silverman, University of Arizona Faculty/Immigration Law
19. Roy Warden
20. Carolyn Trowbridge
21. Carlos Galvan Salaz
22. Margot Veranes
23. Joseph Sweeney
24. Isabel Garcia
25. Joyce Smith
26. Sarah Robinson
27. Michael Toney
28. Bill Katzel
29. Margo Cowan
30. Betts Putnam-Hidalgo
31. Eduardo Quintana
32. Danielle Alvarado
33. Julius Gordon

They provided the following comments:

- A. If this item was approved, the Board of Supervisors' would be making a decision that would affect the entire community without public input and consultation with the Sheriff's Department;
- B. The Pima County Interfaith Council that represents a broad and diverse alliance of religious institutions, non-profit organizations, unions and other community groups was not contacted or involved in discussions for the proposed action;
- C. The trust and confidence that rural communities may have with the Sheriff's Department would be jeopardized by having Border Patrol presence within the department;
- D. Approval of this action could potentially increase the financial liability of Pima County for civil and constitutional rights violations;
- E. Deputizing one Border Patrol agent to work with the Sheriff's Department could potentially increase to 20, 30 or more;
- F. Abuses by the Border Patrol and local law enforcement have been documented and there are many individuals in the County who would not call for help because they would be fearful of deportation, being illegally and temporarily detained, being illegally searched, property damage or seizure of property, physical injury or subjected to other forms of abuse or civil rights violations as well as decrease public cooperation;
- G. Deputizing Federal agents was not a tangible solution because it would bring conflict between Federal and State laws and could lead to an escalation of violations;

- H. They felt approval of the agreement would set a dangerous precedent and create an apparatus that would permit the enforcement of local laws by a Federal agency whose sole purpose has been the persecution of migrants;
- I. Law jurisdictions are divided for a reason and that separation of power should remain in place;
- J. Racist, criminal corporate control of government has created thousands, if not millions of economic refugees then scapegoats and brutalizes them;
- K. The placement of a fence or barrier at the border would inhibit illegal border crossings, prevent deaths and crimes against U.S. citizens and immigrants;
- L. County or government officials should not use their offices to promulgate their own political interests to prevent financial liability for the governing bodies;
- M. The Board was asked to stand up to the campaigns of hatred and misinformation that is tearing the community apart by police and Border Patrol presence as the situation could worsen if the two agencies were combined;
- N. The Board was asked to stand up for citizen taxpayers 80% of the time rather than 20% of the time;
- O. The Board was asked not to surrender local control and accountability by deputizing a Border Patrol agent whose agency has a long history of abuse;
- P. Support was expressed for deputizing a Border Patrol agent to give the Sheriff an extension to stem the illegal activity taking place in Southern Arizona;
- Q. The Border Patrol is a paramilitary organization that has minimal training in fundamental concepts of law while County Deputies, City Police Officers and Tribal Police Officers are certified as professionals and these professionals do not have training in the enforcement of immigration law;
- R. The Posse Comitatus Act was implemented to prohibit Federal military personnel under Federal authority from acting in a law enforcement capacity within the United States; and
- S. Rural Washington State Counties did not have adequate police personnel to cover all night shifts so they asked ICE (Immigration and Customs Enforcement) agents to fill in some of those open shifts which led to increased domestic violence and non-reporting of those and other crimes due to fear.

Supervisor Carroll asked what was the liability to the County in deputizing a Border Patrol agent.

Chris Straub, Chief Civil Deputy County Attorney, responded there was an indemnification provision within the body of the agreement to indicate Pima County would not be responsible for the acts of the Border Patrol agent if they committed a crime or other action that would create liability for the County.

George Heaney, Bureau Chief with the Pima County Sheriff's Department, stated the concerns expressed by the community was a very clear signal that the department needed to work with the community and other concerned groups to formulate another plan and come back to the Board. He also outlined how the Border Crimes Unit was formed, the reasons for the formation and their mission.

Captain Miranda, Border Crimes Unit, stated the primary focus of the unit was not immigration enforcement. He concurred that more collaboration and communication was required with the public and concerned groups to consolidate issues and present a package to the Board that was more comprehensive, offers collaboration, increases communication to allow the department to better serve and carry out their mission. His primary concern was for the safety of deputies working in isolation without backup.

Without objection, the request was withdrawn.

13. INDUSTRIAL DEVELOPMENT AUTHORITY

RESOLUTION NO. 2008-7, of the Board of Supervisors of Pima County, Arizona, approving the proceedings of the Industrial Development Authority of the County of Pima regarding the issuance of its not to exceed \$14,000,000.00 Charter School Revenue Bonds (Delaware Military Academy Project), Series 2008 and declaring an emergency.

On consideration, it was moved by Chairman Elías, seconded by Supervisor Bronson and unanimously carried by a 5-0 vote to adopt Resolution No. 2008-7, and declaring an emergency.

14. COMMUNITY DEVELOPMENT AND NEIGHBORHOOD CONSERVATION

A. RESOLUTION NO. 2008-8, relating to the allocation of \$125,000.00 from the Department of Housing and Urban Development (HUD) Home Investment Partnership (HOME) Program for an affordable housing project in Pima County, Arizona.

B. RESOLUTION NO. 2008-9, authorizing Pima County to apply for a grant from the 12% local revenue-sharing contribution of the Pascua Yaqui Tribe in the amount of \$685,000.00 to implement "Navigating the Health Care Maze - a Pilot Program for Women Challenged by the Health Care System" to be managed by University Physicians Healthcare and to enter into an Intergovernmental Agreement for such program in the event that the funding is awarded.

On consideration, it was moved by Supervisor Bronson, seconded by Supervisor Valadez and unanimously carried by a 5-0 vote, to adopt Resolution Nos. 2008-8 and 9.

ATTACHMENT 3

JUN 27 2012



Homeland
Security

Sheriff Clarence Dupnik
Pima County Sheriff's Department
1750 East Benson Highway
Tucson, Arizona 85714

Re: Letters of Revocation for 287(g) Task Force Officers

Dear Sheriff Dupnik:

Enclosed are letters of revocation for immigration officer authority that was bestowed upon Pima County Sheriff's Department personnel. On June 25, 2012, Gary Mead, Executive Associate Director for Immigration and Customs Enforcement, Office of Enforcement and Removal Operations, terminated your 287(g) Memorandum of Agreement. This termination is effective immediately. As such, authorization to perform the duties of an immigration officer is hereby revoked for all Pima County Sheriff's Department 287(g) personnel.

Be assured that your employees worked hard to attain immigration officer status. They completed four weeks of immigration law, regulation, and policy training prior to graduating from the Immigration Authority Delegation Program. Completion of this course of study alone attests to their dedication to duty and hard work. We thank them for their diligent efforts in this endeavor and appreciate Pima County Sheriff's Department's participation in the 287(g) program.

Please provide your 287(g) personnel with the enclosed letters of revocation and retain a copy for your files. Should you or your representatives have any questions, contact Homeland Security Investigations Special Agent Cathy David at phone number 602-514-7366, or by e-mail at cathy.a.david@ice.dhs.gov.

Thank you for your efforts in making our homeland safe.

Sincerely,

A handwritten signature in blue ink, appearing to read "Matthew C. Allen".

Matthew C. Allen
Special Agent in Charge

Enclosure



**Homeland
Security**

LETTER OF REVOCATION

The Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA), effective September 30, 1996, added Section 287(g), on performance of immigration officer functions by state officers and employees, to the Immigration and Nationality Act (INA). Section 287(g) of the INA, also codified at 8 U.S.C. § 1357(g), as amended by the Homeland Security Act of 2002, Public Law 107-296, authorizes the Secretary of the Department of Homeland Security, acting through the Assistant Secretary of United States Immigration and Customs Enforcement (ICE), to enter into written agreements with state and local law enforcement agencies, so that qualified personnel can perform certain functions of an immigration officer. Pursuant to 287(g)(7), the officer is only treated as a Federal employee for the purposes of the Federal Tort Claims Act (28 U.S.C. sec. 2671-2680 and worker's compensation claims (5 U.S.C. sec. 8108 et seq) when performing functions authorized by Section 287(g).

As authorized in the Memorandum of Agreement (MOA) between ICE and the Pima County Sheriff's Department, the 287(g) authorization of participating Law Enforcement Agency (LEA) personnel may be revoked at any time by ICE. After careful evaluation, the Special Agent in Charge (SAC) is revoking the authority granted to you, Vincent Lopez, of the Pima County Sheriff's Department, to perform certain immigration enforcement functions as specified in the MOA. The Pima County Sheriff's Department has been notified that your immigration authorities conferred by the MOA have been revoked.

In accordance with the MOA, you must immediately return any issued Immigration Officer Identification, Immigration Officer designation form(s) and/or ICE issued equipment, if you have not done so already. You may retain your certificate of course completion from the authorizing ICE Training Division.

Your authorization to perform 287(g) immigration officer functions may be reinstated by the SAC at a later date and any reinstatement costs will be incurred by the LEA.

Sincerely,

A handwritten signature in blue ink, appearing to read "Michael A. ...", written over a horizontal line.

Special Agent in Charge

DATE: June 25, 2012



Homeland
Security

LETTER OF REVOCATION

The Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA), effective September 30, 1996, added Section 287(g), on performance of immigration officer functions by state officers and employees, to the Immigration and Nationality Act (INA). Section 287(g) of the INA, also codified at 8 U.S.C. § 1357(g), as amended by the Homeland Security Act of 2002, Public Law 107-296, authorizes the Secretary of the Department of Homeland Security, acting through the Assistant Secretary of United States Immigration and Customs Enforcement (ICE), to enter into written agreements with state and local law enforcement agencies, so that qualified personnel can perform certain functions of an immigration officer. Pursuant to 287(g)(7), the officer is only treated as a Federal employee for the purposes of the Federal Tort Claims Act (28 U.S.C. sec. 2671-2680 and worker's compensation claims (5 U.S.C. sec. 8108 et seq) when performing functions authorized by Section 287(g).

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Your authorization to perform 287(g) immigration officer functions may be reinstated by the SAC at a later date and any reinstatement costs will be incurred by the LEA.

Sincerely,

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Special Agent in Charge

DATE: June 25, 2012

ATTACHMENT 4



PIMA COUNTY SHERIFF'S DEPARTMENT

Mark D. Napier, Sheriff

M E M O R A N D U M

Date: May 6, 2019
To: Mr. C.H. Huckelberry, County Administrator
From: Chief Deputy Byron Gwaltney
Subject: State and Local Overtime/Joint Operations Program (SLOT) Reimbursement

The Pima County Sheriff's Department has had a standing agreement with the State and Local Overtime/Joint Operations Program (SLOT) administered by ICE since 2013. This program is specifically used to seek reimbursement for overtime expenses for joint ICE/ Sheriff's Department operations that would be pursued by the Sheriff's Department regardless of overtime reimbursement. This reimbursement is specific to task force officers (TFOs) involved in investigating a criminal enterprise or other forms of organized criminal activity with an illegal drug nexus. These investigations are strictly drug related and do not involve immigration issues or enforcement. As of May 2, 2019, the Pima County Sheriff's Department has been reimbursed \$3,899.17 for federal fiscal year 2019 (October 1, 2018-present). The Pima County Sheriff's Department bills ICE each pay period and is subsequently reimbursed several pay periods later.

Our records demonstrate that the all of the 2019 ICE reimbursement for the SLOT program was for one detective assigned to our Narcotics and Special Investigations Section (NSIS) who worked a variety of drug related investigations during this time. It is important to note that SLOT reimbursement is not for a single operation, nor for any specific ICE driven investigation, but to simply reimburse overtime for local law enforcement when their investigations share priorities with federal drug interdiction efforts.

SLOT funding provides an avenue for seeking reimbursement for drug related investigations the Sheriff's Department would be engaged in regardless of federal reimbursements. Our detective, in collaboration with federal partners has had a significant impact on criminal activity. 2019 highlights of our detective's involvement includes:

- Weapons: 50+ and ammunition
- Money: 3.261 million (550,000 plus to Pima County recently)
- Arrests: 101
- Fentanyl: 12.05 lbs
- Heroin: 39 lbs
- Cocaine: 46.5 lbs
- Meth: 1,075 lbs
- Marijuana: 10,999 lbs
- Vehicles: 25