

JOINT TERRORISM TASK FORCE
MEMORANDUM OF UNDERSTANDING (MOU)

PREAMBLE

This MOU is entered into by the Federal Bureau of Investigation (FBI) and the [CITY/STATE] Police Department (PD) and outlines a cooperative effort to combat terrorism. The authority for the FBI to enter into this agreement is contained in 28 U.S.C. § 533; 42 U.S.C. § 3771; and 28 C.F.R. § 0.85 [and any other provisions considered necessary].

ARTICLE ONE:

Authority

The authority for entering into this MOU can be found at 28 U.S.C. § 533; 42 U.S.C. § 3771; and 28 C.F.R. § 0.85 (and any other provisions considered necessary).

[In addition, other participating agencies should be given the opportunity to include their applicable authority for entering into this MOU]

Purpose of MOU

This MOU establishes and delineates the mission and structure of the [CITY/STATE] Joint Terrorism Task Force (JTTF) in addressing the complex problem of terrorism affecting the [LOCALITY] region of [STATE]. This MOU is not intended, and should not be construed, to create any right or benefit, substantive or procedural, enforceable at law or otherwise by any third party against the parties, the United States, or the officers, employees, agents, or other associated personnel thereof.

The purpose of this MOU is to set out a common understanding of the policies and procedures that the [CITY/STATE] PD and the FBI will follow in providing law enforcement service to the citizens of [STATE] and the United States of America.

ARTICLE TWO:

MISSION OF THE JTTF

The JTTF will investigate terrorist organizations planning or carrying out terrorist acts occurring in or affecting the state of [_____] and will apprehend individuals committing such violations. The organizations to be investigated will be specifically identified and agreed upon beforehand by JTTF member agencies. All parties agree to abide by the United States Attorney General's Guidelines on General Crimes, Racketeering Enterprise and Terrorism Enterprise Investigations (AG Guidelines) effective on 5/30/2002, and the Attorney General Guidelines for FBI Foreign Intelligence Collection and Foreign Counterintelligence Investigations as they pertain to International Terrorism matters. In addition, it is understood that personnel of the [CITY/STATE] PD shall be required to utilize only those investigative techniques consistent with their given standards and procedures.

ARTICLE THREE:

ORGANIZATIONAL STRUCTURE AND MANAGEMENT OF THE TASK FORCE

A. MEMBERS

The JTTF shall consist of a combined body of investigators from each participating agency.

B. IDENTIFICATION OF OBJECTIVES

The Special Agent in Charge (SAC) of the FBI and the Chief of the [CITY/STATE] PD, or their designees, shall identify, agree upon, and articulate specific organizations and investigative objectives or matters assigned to the JTTF.

C. DIRECTION OF JTTF AND RESOURCE CONTROL

Responsibility for the overall policy and direction of the JTTF shall rest with an Assistant Special Agent in Charge (ASAC) of the FBI, who will closely coordinate with the Chief of [CITY/STATE] PD or their designees, on matters of mutual concern relating to such policy and direction, thus ensuring the absence of conflict.

Specific control over their JTTF resources and the continued dedication of these resources to the JTTF shall be retained by the participating agency heads, who will be kept fully apprised of all investigative developments by their respective subordinates.

D. SUPERVISION OF JTTF

Day-to-day supervision for matters assigned to the JTTF shall be the responsibility of the designated FBI Supervisory Special Agent (SSA) in conjunction with the designated supervisory personnel of the [CITY/STATE] PD. Responsibility for the conduct of the JTTF members shall remain with the respective agency heads. All JTTF personnel will keep their respective superiors completely informed of pertinent developments.

Each agency member who is a JTTF participant will be subject to the personnel rules, regulations, laws and policies applicable to those of their respective agencies. FBI participants will continue to adhere to the Bureau's ethical standards and will remain subject to the Supplemental Standards of Ethical Conduct for employees of the Department of Justice.

E. PHYSICAL LOCATION AND SUPPORT

Subject to availability, the FBI will provide office space for all JTTF members and support staff. In addition, the FBI will provide all necessary secretarial, clerical, automation and technical support for the JTTF.

F. COMMITMENT OF PERSONNEL

The FBI will assign [number and positions/title of personnel assigned]. [CITY/STATE] PD will assign [number and position/title of personnel assigned] from the [CITY/STATE] PD Intelligence Unit.

All members of the JTTF will be assigned full-time to the JTTF. Continued assignment of members will be made at the discretion of their respective agencies consistent with FBI and [CITY/STATE] PD guidelines.

ARTICLE FOUR:

VEHICLES

The JTTF agrees to provide the [CITY/STATE] PD task force member with a vehicle. The purpose of these vehicles is for surveillance, case management and investigation in connection with any JTTF investigation. The vehicle provided by the FBI can be used for official use only in connection with matters investigated by the JTTF.

In furtherance of the mission of the JTTF and in compliance with existing FBI policy for operation of U.S. Government vehicles, the FBI hereby agrees and authorizes members of the [CITY/STATE] PD participating in the JTTF to operate vehicles owned or leased by the FBI.

The [CITY/STATE] PD agrees to be responsible for tortious acts or omissions on the part of the [CITY/STATE] PD or their employees, and for any liability resulting from use of FBI owned or leased vehicles utilized by the [CITY/STATE] PD Task Force member, and for any damage to said vehicles as a result of any action or omission on the part of the [CITY/STATE] PD or their employees.

ARTICLE FIVE:

RECORDS AND REPORTS

All JTTF investigative records will be maintained at the [field office] of the FBI. Investigative reports will be prepared on FBI forms. Decisions for placement of all or part of said investigative records into [CITY/STATE] PD files or data bases shall rest with supervisory personnel of the FBI and the [CITY/STATE] PD in compliance with applicable standards and procedures governing the respective parties. Classified information shall not be placed in [CITY/STATE] PD files.

ARTICLE SIX:

SECURITY CLEARANCE/DEPUTATION

Due to various United States, Department of Justice and FBI regulations and laws regarding classified information, prospective members of the JTTF who do not possess Top Secret

clearances previously granted by the FBI/DOJ will be subjected to full background investigation(s) with assignment contingent upon receipt of appropriate security clearances(s). All non-FBI personnel will be federally deputized as Special Deputy United States Marshals. Security clearances will be granted for any applicable and relevant [CITY/STATE] PD managers or Supervisors up to, and including, the Chief of Police. Investigative restrictions imposed by the [CITY/STATE] PD shall not be voided by deputation of their respective personnel. All members of the JTTF shall agree not to disclose any classified or sensitive information to non JTTF members without the express permission of the FBI and shall agree to execute any applicable non-disclosure agreements, including SF-312 and FD-868, as may be necessary or required by the FBI.

ARTICLE SEVEN:

INVESTIGATIVE EXCLUSIVITY

It is agreed that matters designated to be handled by the JTTF will not knowingly be subject to non-JTTF law enforcement efforts. Recognizing the amount of specialized entities within each member agency, it is incumbent upon each agency to make proper internal notification regarding JTTF existence, including its areas of concern. All information developed by the individual member agency, in the course of investigations prior to the JTTF, will be referred to the JTTF for review and coordination, with approval of the command staff of each member agency. The non-specialized entities of each member agency handle a myriad of different law violations; therefore, JTTF members should make an effort to keep abreast of law enforcement developments within their respective agencies, to ensure information involving JTTF members is referred to the JTTF.

It is also agreed there shall be no unilateral action taken on the part of any participating agency relating to JTTF investigations. All law enforcement actions will be coordinated and cooperatively carried out.

ARTICLE EIGHT:

SALARY/COMPENSATION

Salaries of JTTF members will be paid by their respective

agencies. Overtime incurred in the performance of JTTF responsibilities, when allowable under federal law and to the extent that federal funding is available for such purposes, will be reimbursed by the FBI so long as a separate overtime agreement is executed between the parties. Otherwise, overtime shall be compensated in accordance with applicable [CITY/STATE] PD overtime provisions and shall be subject to the prior approval of appropriate personnel.

The FBI shall report to the [CITY/STATE] PD supervisor all payments made to non-FBI JTTF members including but not limited to overtime.

ARTICLE NINE:

PROSECUTION

JTTF investigations will conform to the requirements of federal prosecution rules and regulations and will generally be prosecuted in federal courts. It is recognized, however, that specific circumstances may, on a case-by-case basis, indicate that prosecution should be in a state court. The criteria for making such decisions will focus upon achieving the greatest overall benefit to law enforcement and the public, and effecting the greatest impact on terrorism.

ARTICLE TEN:

FUNDING

This MOU is not an obligation or commitment of funds, nor a basis for transfer of funds, but rather is a basic statement of the understanding between the parties hereto of the tasks and methods for performing the tasks described herein. Unless otherwise agreed in writing, each party shall bear its own costs in relation to this MOU. Expenditures by each party will be subject to its budgetary processes and to the availability of funds and resources pursuant to applicable laws, regulations, and policies. The parties expressly acknowledge that the above language in no way implies that Congress will appropriate funds for such expenditures.

The FBI cannot guarantee the United States will provide legal representation to any Federal or state law enforcement officer or employee.

Congress has provided that the exclusive remedy for the negligent or wrongful act or omission of an employee of the United States government, acting within the scope of his/her employment, shall be an action against the United States under the Federal Tort Claims Act (FTCA), 28 U.S.C. Section 1346(b), and Sections 2671 - 2680.

For the limited purpose of defending claims arising out of JTTF activity, state officers who have been specifically deputized and who are acting within the course and scope of their official duties and assignments pursuant to this MOU, may be considered an "employee" of the United States government as defined in 28 U.S.C. Section 2671. See 5 U.S.C. Section 3374(c)(2).

Under the Federal Employees Liability Reform and Tort Compensation, Act of 1998 (commonly known as the Westfall Act), 28 U.S.C., Section 2679(b)(1), the Attorney General or his/her designee may certify that an individual defendant acted within the scope of his employment at the time of the incident giving rise to the suit. id., 28 U.S.C. Section 2679(d)(2). The United States can then be substituted for the employee as the sole defendant with respect to any tort claims. 28 U.S.C. Section 2679(d)(2). If the United States is substituted as defendant, the individual employee is thereby protected from suits in his official capacity.

If the Attorney General declines to certify that an employee was acting within the scope of employment, "the employee may at any time before trial petition the court to find and certify that the employee was acting within the scope of his office or employment." 28 U.S.C. Section 2679(d)(3).

Liability for any negligent or willful acts of JTTF members, undertaken outside the terms of this MOU will be the sole responsibility of the respective employee and agency involved.

Liability for violations of federal constitutional law rests with the individual federal agent or officer pursuant to Bivens v. Six Unknown Named Agents of the Federal Bureau

of Narcotics, 403 U.S. 388 (1971) or pursuant to 42 U.S.C. Section 1983 for state officers or cross-deputized federal officers.

Both state and federal officers enjoy qualified immunity from suit for constitutional torts, "insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." Harlow v. Fitzgerald, 457 U.S. 800 (1982).

JTTF officers may request representation by the U. S. Department of Justice for civil suits against them in their individual capacities for actions taken within the scope of employment. 28 C.F.R. Sections 50.15, 50.16.

An employee may be provided representation "when the actions for which representation is requested reasonably appear to have been performed within the scope of the employee's employment and the Attorney General, or his/her designee, determines that providing representation would otherwise be in the interest of the United States." 28 C.F.R. Section 50.15(a).

A JTTF officer's written request for representation should be directed to the Attorney General and provided to the Chief Division Counsel (CDC) of the FBI division coordinating the task force. The CDC will then forward the representation request to the FBI's office of General Counsel (OGC) together with a letterhead memorandum concerning the factual basis for the lawsuit. FBI/OGC will then forward the request to the Civil Division of DOJ together with an agency recommendation concerning scope of employment and Department representation. 28 C.F.R. Section 50.15 (a) (3).

If a JTTF officer is found to be liable for a constitutional tort, he/she may request indemnification from DOJ to satisfy an adverse judgement rendered against the employee in his/her individual capacity. 28 C.F.R. Section 50.15 (c) (4). The criteria for payment are substantially similar to those used to determine whether a federal employee is entitled to DOJ representation under 28 C.F.R. Section 50.15(a).

ARTICLE FOURTEEN:

DURATION OF THE TASK FORCE

The term of this MOU shall be for the duration of the JTTF's operations, contingent upon approval of necessary funding, but may be terminated at any time upon the written mutual consent of the agency involved. An agency retains the right to terminate its participation by giving 30 days written notice of its intent to terminate. Upon the termination of the JTTF's operations and the MOU, all equipment will be returned to the supplying agencies. In addition, when an entity withdraws from the MOU, the entity will return equipment to the supplying agency/agencies. Similarly, remaining agency/agencies will return to a withdrawing agency any unexpended equipment the withdrawing agency may have supplied during any JTTF participation.

Any modification of this MOU will be effected with the written mutual consent of the agencies involved.

SIGNATORIES:

[NAME]
SPECIAL AGENT IN CHARGE
Federal Bureau of Investigation
[CITY], [STATE]

[NAME]
CHIEF
[CITY/STATE] Police Department

Office of the Chief Contracting Officer
Federal Bureau of Investigation
Washington, D.C.