

COPY

**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE RICHARDSON POLICE DEPARTMENT
AND
THE FEDERAL BUREAU OF INVESTIGATION**

PREAMBLE:

Presidential Decision Directive 39 (PDD 39) states "it is the policy of the United States to deter, defeat, and respond vigorously to all terrorist attacks on our territory and against our citizens, or facilities, whether they occur domestically, in international waters or airspace or on foreign territory." Within the United States, the Department of Justice, acting through the Federal Bureau of Investigation (FBI), is the designated lead agency for counterterrorism.

In order to ensure that there is a robust capability to deter, defeat, and respond vigorously to terrorism in the United States, the FBI recognizes the need to work with local law enforcement agencies. This approach ensures that the U.S. Government is combating terrorism in a coordinated and comprehensive manner.

To that end, the Dallas FBI believes that the continuation of North Texas Joint Terrorism Task Forces (NTJTTF) embodies the objectives of the U.S. policy on counterterrorism as set forth in PDD 39, and establishes a cooperative effort among members of the Dallas/Fort Worth law enforcement community.

PURPOSE:

The purpose of this Memorandum of Understanding (MOU) is to outline the mission of the Joint Terrorism Task Force (JTTF), and to formalize the relationship between the FBI and the Richardson Police Department in order to maximize cooperation and to create a cohesive unit capable of addressing the most complex terrorist investigations within the Dallas/Fort Worth metroplex and other areas for which FBI Dallas is responsible.

This MOU shall serve to establish operational guidelines and the parameters for the detailing/assigning of employees from the Richardson Police Department to the NTJTTF.

This MOU specifically represents the agreement between the FBI and the Richardson Police Department which will govern the process by which Richardson Police Department employees are detailed, or otherwise assigned to work as part of the JTTF.

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, their parent agencies, the United States, or the officers, employees, agents or other associated personnel thereof.

MISSION:

The mission of the JTTF will be to utilize the collective resources of the participating agencies for the prevention, preemption, deterrence and investigation of terrorism and activities related to terrorism, both actual and potential, occurring in or affecting the U.S. carried out by terrorist groups and/or individuals, as well as apprehending individuals committing such violations, the groups, organizations or individuals to be investigated will be specifically identified and agreed upon by the participating agencies of the JTTF.

AUTHORITY:

Pursuant to 28 U.S.C. 533, 28 C.F.R. 0.85, and PDD 39 and 62, the FBI is authorized to coordinate a law enforcement investigative and operational response to terrorism. By virtue of that same authority, the FBI may form this JTTF composed of other federal, state and local law enforcement agencies acting in support of the above listed statutory and regulatory provisions.

CONTROLLING DOCUMENTS:

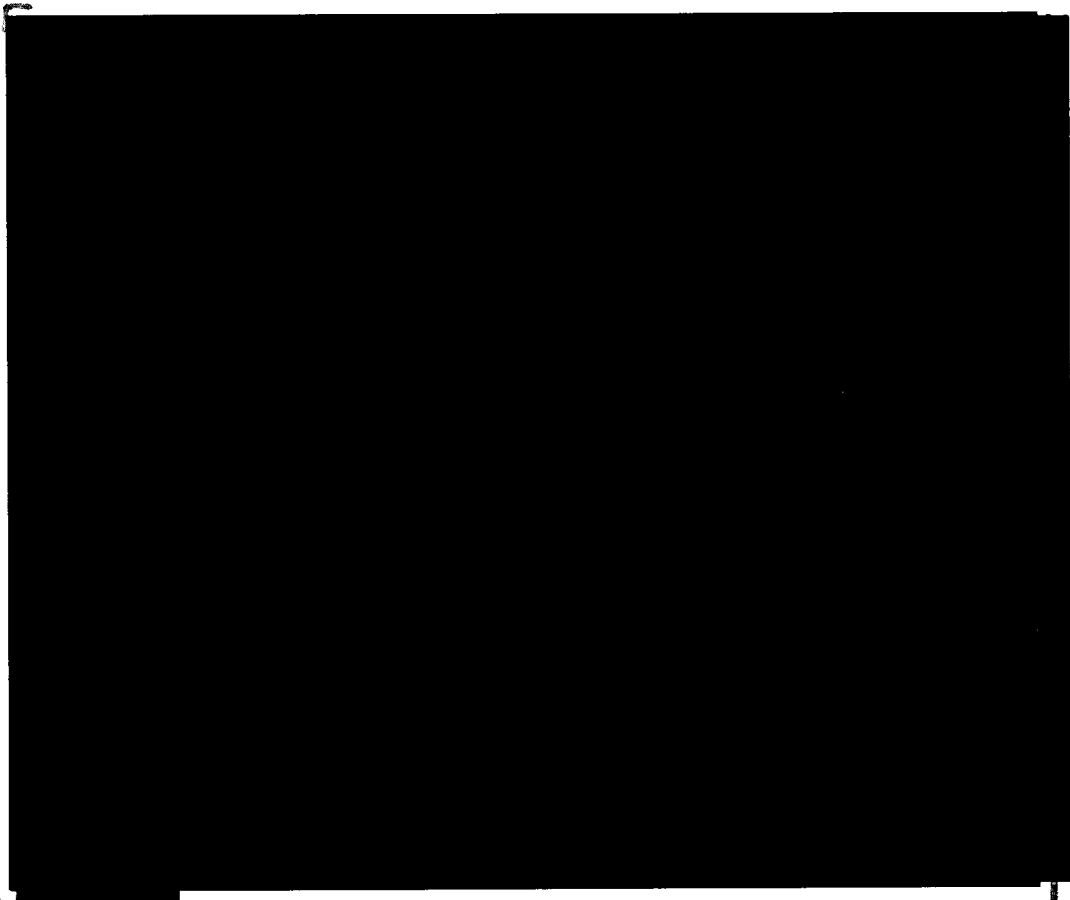
Because the JTTF will operate under Attorney General authority, it will be necessary for the JTTF to adhere to Attorney General Guidelines that have been tested for legal sufficiency. Therefore, to the extent not covered by the provisions in the Direction section all parties agree to abide by the following guidelines:

- 1) Attorney General Guidelines on General Crimes, Racketeering Enterprise and Domestic Security/Terrorism Investigations,
- 2) Attorney General Guidelines for Foreign Intelligence Collection and Foreign Counterintelligence Investigations,
- 3) Attorney General Guidelines on Federal Bureau of Investigation Undercover Operations,
- 4) Attorney General Procedure for Reporting and Use of Information Concerning Violations of Law and Authorization for Participation in otherwise Illegal Activity in FBI Foreign Intelligence, Counterintelligence or International Terrorism Intelligence Investigations,
- 5) Attorney General Memorandum dated July 19, 1995, entitled "Procedures for Contacts Between the FBI and the Criminal Division Concerning Foreign Intelligence and Foreign Counterintelligence Investigations,"
- 6) Attorney General's Guidelines on the FBI Use of Informants and Confidential Sources,
- 7) Attorney General Guidelines on the Development and Operation of FBI Criminal

Informants and Cooperative Witnesses in Extraterritorial Jurisdictions.

All guidance on investigative procedures will be issued by the FBI.

DIRECTION (CHAIN OF COMMAND):



SALARY / COMPENSATION:

Each Agency representative will report to his/her respective Agency for administrative matters. Each agency shall be responsible for the pay, overtime, annual leave, performance appraisals, etc. of its own employees.

When allowable under Federal law and to the extent that Federal Funding is available for such purposes, the FBI will reimburse overtime incurred by full-time members in the performance of JTTF responsibilities in accordance with the terms and conditions of a reimbursement agreement between the Richardson Police Department and the FBI. Overtime shall be compensated in accordance with applicable Richardson Police Department overtime provisions and shall be subject to prior approval of appropriate

personnel in the Richardson Police Department's chain of command.

SECURITY CLEARANCES:

Members of the JTTF, as well as appropriate supervisory personnel responsible for these individuals, must apply for and receive a Top Secret Security Clearance verified by the FBI. Due to U.S. Department of Justice (DOJ) regulations regarding classified information, no one will have access to classified documents or materials without a proper security clearance. Prospective JTTF members who do not possess Top Secret clearances granted by the FBI or DOJ will be subjected to a full background investigation(s), with assignment contingent upon receipt of appropriate security clearances. All Richardson Police Department personnel will be sworn in as Special Deputy United States Marshals. Security clearances will also be granted to designated supervisory personnel, after appropriate background investigation, within the Richardson Police Department chain of command.

In view of the need for security clearances, all personnel assigned to the JTTF should be so assigned for an extended period of time, to be mutually agreed upon by both agencies.

PHYSICAL LOCATION AND SUPPORT:

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.

The FBI agrees and authorizes full-time members of the JTTF to use vehicles owned or rented by the FBI when necessary, and if available. The purpose of these vehicles is for surveillance, case management, and investigation in connection with any JTTF investigation.

The Richardson Police Department agrees to be responsible for any damage incurred to JTTF vehicles as a result of any act of omission on the part of the Richardson Police Department or its' employees, and in general, assumes financial responsibility for property damage to said vehicles, consistent with Richardson Police Department policy and practice, city ordinances, State of Texas law and existing or future contractual obligations relative to the repair of vehicles owned by the Richardson Police Department. The responsibility for all other liability attributed to the Richardson Police Department resulting from the use of JTTF vehicles rests with the Richardson Police Department.

RECORDS AND REPORTS:

Except for information originating from Richardson Police Department, all classified information generated by the FBI or the JTTF will be controlled solely by the FBI, and will be handled in accordance with FBI policy.

All JTTF investigative records are the property of and will be maintained by the FBI.

Investigative reports will be prepared by all JTTF personnel on FBI forms. Investigations of criminal violations solely or primarily within the jurisdiction of the Richardson Police Department may also be reported on Richardson Police Department reports and entered into the files of the Richardson Police Department, within the parameters of its' classification, and subject to the provisions of the "COORDINATION" section of the MOU. Access to, and use of, JTTF records will be in accordance with Federal law and Department of Justice and FBI regulations and policy, including but not limited to the Freedom of Information and Privacy Act.

Detailees may nominate any information they see for dissemination to their organization, which will be handled through normal FBI procedures, and agreements between the FBI and the agency which originated the information.

FUNDING:

Unless otherwise agreed in writing, each party shall bear its own costs in relation to this MOU. Obligations/expenditures by each party will be subject to federal budgetary processes and availability of funds pursuant to applicable laws, regulations, and policies.

TRAVEL:

All JTTF related travel of non-FBI personnel will require the approval of the Agency employing the individual and the appropriate FBI supervisor. All individuals will be responsible for securing his/her own agency's approval for all travel. Costs for such travel will be paid for by the FBI.

For international travel, the FBI will obtain country clearances for all JTTF members. For domestic travel, each agency member will be responsible for appropriate notifications within their own agency.

LIABILITY MATTERS IN GENERAL:

Unless specifically addressed by the terms of the MOU, the parties agree to be responsible for the negligent or wrongful acts or omissions of their respective employees. Legal representations by the United States is determined by the Department of Justice (DOJ) on a case-by-case basis. 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 of his/her designee may certify that an individual defendant acted within the scope of his/her 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. If the United States is substituted as the defendant, the individual employee is thereby protected from suits in his/her 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 503.15(a).

COORDINATION:

All members of the JTTF agree not to act unilaterally on any matter affecting the JTTF without first coordinating with the FBI. It is agreed that matters designated to be handled by the JTTF will not be subject to non-JTTF law enforcement efforts without prior coordination. Each member agency will make all reasonable efforts to coordinate matters with the JTTF that evidence terrorist organization involvement or activities.

PROSECUTIONS:

The JTTF investigative procedure will conform to the requirements for Federal prosecution. A determination will be made on a case by-case basis whether the prosecution of cases will be at the State or Federal level. The criteria for the decision will be which level of prosecution would better advance the interests of justice.

INFORMANTS:

All confidential informants and cooperating witnesses developed through the JTTF, who provide information pertaining to terrorist activities, will be opened as FBI informants, sources, assets, or cooperating witnesses, and handled in accordance with Attorney General and FBI Guidelines, policy and procedures.

The FBI agrees to pay reasonable and necessary informant expenses incurred by the JTTF. All expenses must be approved by the FBI before they are incurred.

MEDIA:

All media releases will be mutually agreed upon and jointly handled by the member Agencies of the JTTF. Press releases will conform to Department of Justice Guidelines regarding such releases.

DURATION:

The term of this understanding shall be for an indefinite period and shall terminate upon 30 days written notice of withdrawal from the JTTF by the Richardson Police Department. Upon termination of the understanding, all equipment will be returned to the supplying agency.

AMENDMENTS:

This Agreement in no manner affects any existing MOUs or agreements with the FBI or any other agency. This Agreement may be amended by mutual written consent of the parties.

SIGNATORIES:

3/26/05

OFFICE OF THE
CHIEF CONTRACTING OFFICER
FEDERAL BUREAU OF INVESTIGATIONS

4/5/05

GUADALUPE GONZALEZ
SPECIAL AGENT IN CHARGE
FEDERAL BUREAU OF INVESTIGATIONS

CHIEF
RICHARDSON POLICE DEPARTMENT