

## **MEMORANDUM OF UNDERSTANDING**

### **BETWEEN**

**THE BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES (ATF),**

**And**

**FRESNO POLICE DEPARTMENT (FPD)**

This Memorandum of Understanding ("MOU") is entered into on April 12, 2021 by and between the Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF") and the Fresno Police Department as it relates to the Fresno Task Force (herein referred to as the "Task Force").

### **AUTHORITIES**

Offenses investigated and enforced pursuant to this MOU are those falling within ATF's jurisdiction, including 28 U.S.C. § 599A; 27 CFR Part 0, Subpart W; 18 U.S.C. §§ 921 et. seq.; 26 U.S.C. §§ 5861 et. seq.; and 18 U.S.C. § 3051.

### **PURPOSE**

The Task Force will perform the activities and duties described below:

- a. Investigate firearms related violent crimes.
- b. Investigate firearms trafficking.
- c. Investigate criminal possession of firearms.
- d. Gather and report intelligence data relating to trafficking in firearms.
- e. Conduct undercover operations where appropriate and engage in other traditional methods of investigation in order that the Task Force's activities will result in effective prosecution before the courts of the United States and the State of California.

### **MEASUREMENT OF SUCCESS**

The success of this initiative will be measured by the participating agencies willingness to share certain information, (i.e., crime statistics) for the purpose of measuring the success of the task force as well as its performance. Additional measurement will include analysis of the number of criminal and gang related defendants referred for prosecution for violations related to firearms offenses, violent crime, and firearms trafficking. Also, measurement includes the number of crime guns taken off the streets annually and the number of wanted violent crime offenders arrested.

## **PHYSICAL LOCATION**

Officers / Investigators assigned to this Task Force by their employer shall be referred to as Task Force Officers (TFOs). TFOs will be assigned to the ATF Fresno Field Office, located within the City of Fresno.

## **SUPERVISION AND CONTROL**

The day-to-day supervision and administrative control of TFOs will be the mutual responsibility of the participants, with the ATF Special Agent in Charge or his/her designee having operational control over all operations related to this Task Force.

Each TFO shall remain subject to their respective agencies' policies and shall report to their respective agencies regarding matters unrelated to this agreement/task force. With regard to matters related to the Task Force, TFOs will be subject to Federal law and Department of Justice (DOJ) and ATF orders, regulations, and policy, including those related to standards of conduct, sexual harassment, equal opportunity issues and Federal disclosure laws.

Failure to comply with this paragraph could result in a TFO's dismissal from the Task Force.

## **PERSONNEL, RESOURCES AND SUPERVISION**

To accomplish the objectives of the Task Force, ATF will assign two (2) Special Agents to the Task Force. ATF will also, subject to the availability of funds, provide necessary funds and equipment to support the activities of the ATF Special Agents and officers assigned to the Task Force. This support may include office space, office supplies, travel funds, funds for the purchase of evidence and information, investigative equipment, training, and other support items.

Each participating agency agrees to make available to their assigned task members any equipment ordinarily assigned for use by that agency. In the event ATF supplies equipment (which may include vehicles, weapons, or radios), TFOs must abide by any applicable ATF property orders or policy and may be required to enter into a separate agreement for their use.

To accomplish the objectives of the Task Force, the Fresno Police Department agrees to detail six (6) part-time TFOs to the Task Force for a period of not less than two (2) years. It is understood by all parties that the TFOs assigned to the Task Force while reporting to the ATF Resident Agent in Charge, will still be responsible for maintaining normal duties for members of the Fresno Police Department Street Violence Bureau Tactical Team.

All TFOs shall qualify with their respective firearms by complying with ATF's Firearms and Weapons Policy.

## **SECURITY CLEARANCES**

All TFOs will undergo a security clearance and background investigation, and ATF shall bear the costs associated with those investigations. TFOs must not be the subject of any ongoing investigation by their department or any other law enforcement agency, and past behavior or punishment, disciplinary, punitive, or otherwise, may disqualify one from eligibility to join the Task Force. ATF has final authority as to the suitability of TFOs for inclusion on the Task Force.

## **DEPUTATIONS**

ATF, as the sponsoring Federal law enforcement agency, may request at its sole discretion that the participating agency's TFOs be deputized by the U.S. Marshals Service to extend their jurisdiction, to include applying for and executing Federal search and arrest warrants, and requesting and executing Federal grand jury subpoenas for records and evidence involving violations of Federal laws. Such requests will be made on an individual basis as determined by ATF.

The participating agencies agree that any Federal authority that may be conferred by a deputation is limited to activities supervised by ATF and will terminate when this MOU is terminated or when the deputized TFOs leave the Task Force, or at the discretion of ATF.

## **ASSIGNMENTS, REPORTS, AND INFORMATION SHARING**

An ATF supervisor or designee will be empowered with designated oversight for investigative and personnel matters related to the Task Force and will be responsible for opening, monitoring, directing, and closing Task Force investigations in accordance with ATF policy and the applicable United States Attorney General's Guidelines.

Assignments will be based on, but not limited to, experience, training, and performance, in addition to the discretion of the ATF supervisor.

All investigative reports will be prepared utilizing ATF's investigative case management system, (N-Force) utilizing ATF case report numbers. The participating agency will share investigative reports, findings, intelligence, etc., in furtherance of the mission of this agreement, to the fullest extent allowed by law. For the purposes of uniformity, there will be no duplication of reports, but rather a single report prepared by a designated individual which can be duplicated, as necessary. Every effort should be made to document investigative activity on ATF Reports of Investigation (ROI), unless otherwise agreed to by ATF and the participating agency(ies). This section does not preclude the necessity of individual TFOs to complete forms required by their employing agency.

Information will be freely shared among the TFOs and ATF personnel with the understanding that all investigative information will be kept strictly confidential and will only be used in furtherance of criminal investigations. No information gathered during the course of the Task Force, to include informal communications between TFOs and ATF personnel, may be

disseminated to any third party, non-task force member, by any task force member without the express permission of the ATF Special Agent in Charge or his/her designee.

Any public requests for access to the records or any disclosures of information obtained by task force members during Task Force investigations will be handled in accordance with applicable statutes, regulations, and policies pursuant to the Freedom of Information Act and the Privacy Act and other applicable federal and/or state statutes and regulations.

## **INVESTIGATIVE METHODS**

The parties agree to utilize Federal standards pertaining to evidence handling and electronic surveillance activities to the greatest extent possible. However, in situations where state or local laws are more restrictive than comparable Federal law, investigative methods employed by state and local law enforcement agencies shall conform to those requirements, pending a decision as to a venue for prosecution.

The use of other investigative methods (search warrants, interceptions of oral communications, etc.) and reporting procedures in connection therewith will be consistent with the policy and procedures of ATF. All Task Force operations will be conducted and reviewed in accordance with applicable ATF and Department of Justice policy and guidelines.

None of the parties to this MOU will knowingly seek investigations under this MOU that would cause a conflict with any ongoing investigation of an agency not party to this MOU. It is incumbent upon each participating agency to notify its personnel regarding the Task Force's areas of concern and jurisdiction. All law enforcement actions will be coordinated and cooperatively carried out by all parties to this MOU.

## **INFORMANTS**

ATF guidelines and policy regarding the operation of informants and cooperating witnesses will apply to all informants and cooperating witnesses directed by TFOs.

Informants developed by TFOs may be registered as informants of their respective agencies for administrative purposes and handling. The policies and procedures of the participating agency with regard to handling informants will apply to all informants that the participating agency registers. In addition, it will be incumbent upon the registering participating agency to maintain a file with respect to the performance of all informants or witnesses it registers. All information obtained from an informant and relevant to matters within the jurisdiction of this MOU will be shared with all parties to this MOU. The registering agency will pay all reasonable and necessary informant expenses for each informant that a participating agency registers.

## **DECONFLICTION**

Each participating agency agrees that the deconfliction process requires the sharing of certain operational information with the Task Force, which, if disclosed to unauthorized persons, could

endanger law enforcement personnel and the public. As a result of this concern, each participating agency agrees to adopt security measures set forth herein:

- a. Each participating agency will assign primary and secondary points of contact.
- b. Each participating agency agrees to keep its points of contact list updated.

The points of contact for this Task Force are:

ATF: Resident Agent in Charge Mickel Sexton

Fresno Police Department: Lieutenant Larry Bowlan

## **EVIDENCE**

Evidence maintained by the lead agency having jurisdiction in the court system intended for prosecution. Evidence generated from investigations initiated by a TFO or ATF special agent intended for Federal prosecution will be placed in the ATF designated vault, using the procedures found in ATF orders.

All firearms seized by a TFO must be submitted for fingerprint analysis and for a National Integrated Ballistics Information Network (NIBIN) examination. Once all analysis is completed, all firearms seized under Federal law shall be placed into the ATF designated vault for proper storage. All firearms information/descriptions taken into ATF custody must be submitted to ATF's National Tracing Center.

## **JURISDICTION/PROSECUTIONS**

Cases will be reviewed by the ATF Special Agent in Charge or his/her designee in consultation with the participating agency and the United States Attorney's Office and appropriate State's attorney offices, to determine whether cases will be referred for prosecution to the U.S. Attorney's Office or to the relevant State's attorney's office. This determination will be based upon which level of prosecution will best serve the interests of justice and the greatest overall benefit to the public. Any question that arises pertaining to prosecution will be resolved through discussion among the investigative agencies and prosecuting entities having an interest in the matter.

In the event that a state or local matter is developed that is outside the jurisdiction of ATF or it is decided that a case will be prosecuted on the state or local level, ATF will provide all relevant information to state and local authorities, subject to Federal law. Whether to continue investigation of state and local crimes is at the sole discretion of the state or local participating agency.

## **DISCIPLINE**

Discipline will be the responsibility of the agency supplying the task force officer(s) and not the responsibility of the task force coordinator or task force supervisor. Disciplinary matters will be referred to the appropriate agency for investigation and disposition.

## **MEDIA**

Media relations will be handled by ATF and the U.S. Attorney's Office's public information officers in coordination with each participating agency. Information for press releases will be reviewed and mutually agreed upon by all participating agencies, who will take part in press conferences. Assigned personnel will be informed not to give statements to the media concerning any ongoing investigation or prosecution under this MOU without the concurrence of the other participants and, when appropriate, the relevant prosecutor's office.

## **SALARY/OVERTIME COMPENSATION**

During the period of the MOU, participating agencies will provide for the salary and employment benefits of their respective employees. All participating agencies will retain control over their employees' work hours, including the approval of overtime.

ATF may have funds available to reimburse overtime to the State and Local TFO's agency, subject to the guidelines of the Department of Justice Asset Forfeiture Fund. This funding would be available under the terms of a memorandum of agreement (MOA) established pursuant to the provisions of 28 U.S.C. section 524. The participating agency agrees to abide by the applicable Federal law and policy with regard to the payment of overtime from the Department of Justice Asset Forfeiture Fund. The participating agency must be recognized under State law as a law enforcement agency and their officers / investigators as sworn law enforcement officers. If required or requested, the participating agency shall be responsible for demonstrating to the Department of Justice that its personnel are law enforcement officers for the purpose of overtime payment from the Department of Justice Asset Forfeiture Fund. **This MOU is not a funding document.**

In accordance with these provisions and any MOA on asset forfeiture, the ATF Special Agent in Charge or designee shall be responsible for certifying reimbursement requests for overtime expenses incurred as a result of this agreement.

## **AUDIT INFORMATION**

Operations under this MOU are subject to audit by ATF, the Department of Justice's Office of the Inspector General, the Government Accountability Office, and other Government-designated auditors. Participating agencies agree to permit such audits and to maintain all records relating to Department of Justice Asset Forfeiture Fund payments for expenses either incurred during the course of this Task Force or for a period of not less than three (3) years and, if an audit is being conducted, until such time that the audit is officially completed, whichever is greater.

## **FORFEITURES/SEIZURES**

All assets seized for administrative forfeiture will be seized and forfeited in compliance with the rules and regulations set forth by the U.S. Department of Justice Asset Forfeiture guidelines. When the size or composition of the item(s) seized make it impossible for ATF to store it, any of the participating agencies having the storage facilities to handle the seized property agree to store the property at no charge and to maintain the property in the same condition as when it was first taken into custody. The agency storing said seized property agrees not to dispose of the property until authorized to do so by ATF.

The MOU provides that proceeds from forfeitures will be shared, with sharing percentages based upon the U.S. Department of Justice Asset Forfeiture policies on equitable sharing of assets, such as determining the level of involvement by each participating agency. Task Force assets seized through administrative forfeiture will be distributed in equitable amounts based upon the number of full-time persons committed by each participating agency. Should it become impossible to separate the assets into equal shares, it will be the responsibility of all the participating agencies to come to an equitable decision. If this process fails and an impasse results, ATF will become the final arbitrator of the distributive shares for the participating agencies.

## **DISPUTE RESOLUTION**

In cases of overlapping jurisdiction, the participating agencies agree to work in concert to achieve the Task Force's goals and objectives. The parties to this MOU agree to attempt to resolve any disputes regarding jurisdiction, case assignments and workload at the lowest level possible.

## **LIABILITY**

ATF acknowledges that the United States is liable for the wrongful or negligent acts or omissions of its officers and employees, including TFOs, while on duty and acting within the scope of their federal employment, to the extent permitted by the Federal Tort Claims Act.

Claims against the United States for injury or loss of property, personal injury, or death arising or resulting from the negligent or wrongful act or omission of any Federal employee while acting within the scope of his or her office or employment are governed by the Federal Tort Claims Act, 28 U.S.C. sections 1346(b), 2672-2680 (unless the claim arises from a violation of the Constitution of the United States, or a violation of a statute of the United States under which other recovery is authorized).

Except as otherwise provided, the parties agree to be solely responsible for the negligent or wrongful acts or omissions of their respective employees and will not seek financial contributions from the other for such acts or omissions. Legal representation by the United States is determined by the United States Department of Justice on a case-by-case basis. ATF cannot guarantee the United States will provide legal representation to any State or local law enforcement officer.

Liability for any negligent or willful acts of any agent or officer undertaken outside the terms of this MOU will be the sole responsibility of the respective agent or officer and agency involved.

#### **DURATION**

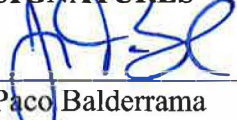
This MOU shall remain in effect for a period not to exceed two years from the date of the signed agreement or until it is terminated in writing (to include electronic mail and facsimile). All participating agencies agree that no agency shall withdraw from the Task Force without providing ninety (90) days written notice to other participating agencies. If any participating agency withdraws from the Task Force prior to its termination, the remaining participating agencies shall determine the distributive share of assets for the withdrawing agency, in accordance with Department of Justice guidelines and directives.

The MOU shall be deemed terminated at the time all participating agencies withdraw and ATF elects not to replace such members, or in the event ATF unilaterally terminates the MOU upon 90 days written notice to all the remaining participating agencies.

#### **MODIFICATIONS**

This agreement may be modified at any time by written consent of all participating agencies. Modifications shall have no force and effect unless such modifications are reduced to writing and signed by an authorized representative of each participating agency.

#### **SIGNATURES**

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\_\_\_\_\_  
Paco Balderrama                      Date  
Chief of Police  
Fresno Police Department

\_\_\_\_\_  
Patrick T. Gorman                      Date  
Special Agent in Charge, ATF  
San Francisco Field Division