

MEMORANDUM OF UNDERSTANDING (MOU)

This Memorandum of Understanding (MOU) is being executed by the below listed Agencies:

Federal Bureau of Investigation	(FBI)
Bureau of Indian Affairs	
Office of Law Enforcement Services	(BIA OLES)
White Mountain Apache Police Department	(WMATPD)
Navajo County Sheriff's Department	(NCSD)
Arizona Department of Public Safety	(AZ DPS)
White Mountain Apache Tribe Wildlife and Outdoor Recreation Division	(WMATWORD)
Pinetop/Lakeside Police Department	(P/LPD)

Nothing in this MOU should be construed as limiting or impeding the basic spirit of cooperation which exists between the participating agencies listed above.

I. PURPOSE

This MOU establishes and delineates the mission of the Fort Apache Safe Trails Task Force, hereafter referred to as FASTTF, as a joint cooperative effort. Additionally, the MOU formalizes relationships between and among the participating agencies in order to foster an efficient and effective cohesive unit capable of addressing the violent crime, drug and gang matters on the Fort Apache Indian Reservation (FAIR). It is the desire of the participating agencies to achieve maximum interagency cooperation in a combined law enforcement effort aimed at reducing violent crime and narcotics distribution on the FAIR.

II. MISSION

The mission of the FASTTF is to effectively and efficiently address felony matters on the FAIR by identifying and targeting for prosecution offenders involved in activities related to murder, rape, sexual and physical abuse of children, narcotics trafficking, robbery, arson, aggravated assault, and other federal violations that fall under the purview of the FBI.

III. ORGANIZATIONAL STRUCTURE

A. Composition

The FASTTF will consist of a combined enforcement body of agencies participating in this MOU. The participating agencies will provide full-time and part-time assigned personnel, as set forth below:

The FBI will assign at least one full-time Special Agent as an investigator and to coordinate the task force. One or two additional FBI agents may be assigned if made available from the Phoenix Division or/and FBI Headquarters.

The Department of the Interior, BIA OLES will provide four full-time investigators, one of which is a Supervisory Criminal Investigator.

The White Mountain Apache Tribal Police will assign two full-time officers/investigators.

The Navajo County Sheriff's Department will assign one full-time detective/investigator.

The Arizona Department of Public Safety will assign one full-time investigator.

The White Mountain Apache Tribe Wildlife and Outdoor Recreation Division will assign one full-time investigator.

The Pinetop-Lakeside Police Department (P/LPD) will assign one part-time crime scene investigator.

B. Direction

All participants acknowledge that the FASTTF is a joint operation wherein all agencies act as partners in the operation of the task force. An Executive Board, made up of the heads of the full-time participating entities will be responsible for the policy and direction of the FASTTF. The Executive Board will meet when needed to collectively provide policy oversight. Membership on the Executive Board may be delegated by the law enforcement agency head to a subordinate.

C. Supervision

The day-to-day operation and administrative control of the FASTTF will be the responsibility of the FBI Supervisory Senior Resident Agent (SSRA) responsible for the PLRA or the SSRA's delegated task force coordinator. The management of the FASTTF will be coordinated with the Executive Board. Responsibility for the conduct of the FASTTF members, both personally and professionally, will remain with the respective agency heads.

IV. PROCEDURES

A. Personnel

Continued assignment of personnel to the FASTTF will be based upon performance and will be at the discretion of the respective agency heads/supervisors. Participating agencies will, however, endeavor to make these long-term assignments due to the time required for the training, deputation and background investigation procedures. Each participating agency will periodically, and upon request, be provided with an update of the program, direction and accomplishments of the FASTTF.

Assigned personnel are available to be called back by a participating agency in case of an emergency or serious incident. They are to return to FASTTF as soon as the emergency or serious incident has been resolved.

B. Deputation

All local, county, state, and tribal law enforcement personnel designated to the FASTTF, will be subject to a limited 10 year background inquiry, will be federally deputized, with the FBI securing the required deputation. These deputations will remain in effect throughout the tenure of each investigator's assignment to the FASTTF. Task force members will be considered "on duty" when called to work during non-duty time.

C. Investigation

All FASTTF investigations will be initiated in accordance with United States Attorney General Guidelines (AG Guidelines). The investigative methods employed will be consistent with the policies and procedures of the FBI and AG Guidelines. However, in situations where the state or tribal law is more restrictive than comparable federal law, the investigative methods employed by state and local law enforcement agencies shall conform to the requirements of such state or tribal law pending a decision as to venue for prosecution.

D. Prosecution

The criteria for determining whether to prosecute a particular violation in tribal, state or federal court will focus upon achieving the greatest overall benefit to the public and to law enforcement. Any questions regarding prosecutive jurisdiction will be resolved through discussion among all investigative agencies and prosecutive entities having an interest in the matter. All cases will be presented to the United States Attorney's Office for prosecutive opinion.

V. ADMINISTRATIVE

A. Case Assignments

The FBI SSRA or Task Force Coordinator and BIA Supervisory CI will oversee the prioritization and assignment of cases and related investigative activities in accordance with the stated objectives and direction of the FASTTF. Cases will be assigned to investigative teams based on experience, training, performance, expertise, and existing case load. Geographic familiarity will also be considered when assigning cases.

B. Records and Reports

All investigative reporting will be prepared in compliance with existing FBI and BIA policy. Subject to pertinent legal and/or policy restrictions, copies of pertinent documents created by each member of the task force will be made available for inclusion in the respective investigative agencies' files as appropriate.

C. Evidence

All evidence and original tape recordings (audio and video) acquired during the course of FASTTF investigations will be maintained by the FBI or BIA. The FBI and BIA rules and policies governing the submission, retrieval and chain of custody will be adhered to by the FASTTF personnel.

D. Investigative Exclusivity

Matters designated to be handled by the FASTTF will not knowingly be subject to non-task force law enforcement efforts. It is incumbent upon each agency to make proper efforts. It is incumbent upon each agency to make proper internal notification regarding FASTTF existence and mission.

There shall be no unilateral action taken on the part of any participating agency relating to FASTTF investigations. All law enforcement action will be coordinated and conducted in a cooperative matter. FASTTF investigative leads outside the task force will be communicated to other similar task forces or to FBI offices of appropriate investigation.

E. Informants and Cooperating Witnesses

The United States AG Guidelines and the FBI guidelines regarding the operation of informants and cooperating witnesses will apply to all informants and cooperating witnesses directed by members of the FASTTF. The FBI agrees, subject to funding availability, to pay informants'/cooperating witnesses' expenses in accordance with the FBI policies and procedures. An appropriate FBI informant or cooperating witness file will be opened wherein all information furnished by the informant/cooperating witness and any recommendations for payments to this informant/cooperating witness will be maintained.

VI. MEDIA

All media releases pertaining to FASTTF investigations and/or arrests will be coordinated and made jointly by all participants of this MOU. No unilateral press releases will be made by any participating agency without the prior approval of the other participants.

VII. EQUIPMENT

A. Equipment

Each participating agency, to the extent possible, agrees to provide their assigned investigator with a vehicle. Each agency will be responsible for routine operating expenses for their own vehicles. The FBI may provide some vehicles for the State, County and Tribal full-time officers assigned to the FASTTF. These officers will work directly out of FBI space. The FBI agrees and authorizes all Tribal, County, State and Federal participating law enforcement agency officers the use of vehicles owned or leased by the FBI for the purposes of surveillance, investigation, and undercover activities in connection with task force operations. The FBI agrees to be responsible for all routine operating expenses of these vehicles. The utilization of these vehicles is restricted to official use only.

B. Communication

The FBI agrees to provide sufficient portable radios for each FASTTF member, subject to funding availability. The FASTTF will provide full-time members with a pager and cellular telephone if possible, if these items are not already available. The FBI will provide such items to full-time members as needed subject to available funding.

C. Specialized Tactical Equipment

If available in their inventories, participating agencies will furnish tactical equipment deemed necessary by FASTTF members to accomplish their tasks. If not available, the FBI agrees to furnish this equipment subject to available funding.

D. Office Space and Equipment

The FBI agrees, subject to availability, to provide funding for the office space and necessary equipment and supplies to carry out the administrative operation of FASTTF. The offices for the FASTTF are currently located at 1360 N. Niels Hansen Lane, Pinetop-Lakeside, Arizona. The FBI is presently attempting to obtain new FBI space to house the PLRA as well as the FASTTF.

VIII. FUNDING

Each participating agency agrees to provide the services of its respective personnel as listed in Section III of this MOU for the duration of this operation. Participating agencies agree

to assume all personnel costs for their task force representatives, including salaries, overtime payments and fringe benefits consistent with their respective agency. Subject to funding availability and legislative authorization, the FBI will reimburse to participating local, county, state, and tribal agencies the cost of overtime worked by FASTTF members assigned full-time to the task force, providing overtime expenses were incurred as a result of FASTTF related duties. Separate Contract Reimbursable Agreements (CRAs) will be executed by the FBI with each participating Agency consistent with regulations and policy.

IX. LIABILITY

Unless specifically addressed by the terms of this MOU, the parties agree to be responsible for the negligent or wrongful acts or omissions of their respective employees, to include responsibility for damages resulting from the use of any government owned vehicles.

The legal representation by the United States is determined by the Department of Justice on a case-by-case basis. The FBI cannot guarantee the United States will provide legal representation to any Federal, Tribal, State, County or local law enforcement officer.

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

For the limited purpose of defending claims arising out of FASTTF activity, state, county, local, or tribal law enforcement officers who have been specially deputized and who are acting within the course and scope of their official duties and assignments pursuant to this MOU, may be considered a “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 1988 (commonly known as the Westfall Act), 28 U.S.C. Section 2679 (b) (1), the Attorney General or his 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). 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 the 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 FASTTF employees, 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 and local 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).

FASTTF officers may request representation by the U.S. Department of Justice (DOJ) 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 designee determines that providing representation would otherwise be in the interest of the United States.” 28 C.F.R. Section 50.15 (a).

A FASTTF 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 FASTTF. The CDC will then forward the representation request to the FBI’s Office of the General Counsel (OGC) together with a Letterhead Memorandum concerning the factual basis for the lawsuit. The 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 FASTTF officer is found to be liable for a constitutional tort, he/she may request indemnification from DOJ to satisfy an adverse judgment 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).

X. DURATION

This MOU shall remain in effect until terminated as specified below. Continuation of this MOU shall be subject to the availability of necessary funding. This agreement may be modified at any time by written consent of all involved agencies. Modifications to this MOU shall have no force and effect unless such modifications are reduced to writing and signed by an authorized representative of each participating agency.

This agreement may be terminated at any time by any of the participating agencies, including the FBI. A participating agency may withdraw from this agreement any time after one year from execution by providing written notice of its intent to withdraw to all other participating agencies. Upon the termination of the FASTTF and the MOU, all equipment will be returned to the supplying agencies.

COST REIMBURSEMENT AGREEMENT

BETWEEN THE FEDERAL BUREAU OF INVESTIGATION AND THE WHITE MOUNTAIN APACHE POLICE DEPARTMENT

FORT APACHE SAFE TRAILS TASK FORCE FILE #: 198A-PX-C619918

Pursuant to Public Law number _____ for Fiscal Year (FY) 2003, the FBI has been authorized to pay overtime for the officer(s) assigned to the formalized Fort Apache Safe Trails Task Force (FASTTF), as set forth below for expenses necessary for detection, investigation, and prosecution of crimes against the United States. It is hereby agreed between the FBI and the White Mountain Apache Tribe Police Department, (WMATPD), located at 5 E. Sycamore, Whiteriver, AZ 85941, Taxpayer ID Number 86 0092030, phone number: (602) 223-2359 that:

- 1) Commencing on October 1, 2002, the FBI will, subject to the availability of the required funding, reimburse the WMATPD for overtime payments made to the officers assigned full-time to the task force.
- 2) Requests for reimbursement will be made on a monthly basis and should be forwarded to FBI Headquarters as soon as practical after the first of the month which follows the month for which reimbursement is requested. Such requests should be forwarded by the Supervisor of the WMATPD to the FBI Task Force Squad Supervisor and Special Agent in Charge for their review, approval, and submission.
- 3) Overtime reimbursements will be made directly to the WMATPD by the FBI. All overtime reimbursement payments are made by electronic funds transfer (EFT). An ACH Vendor/Miscellaneous Payment Enrollment Form (ACH) must be on file with FBI Headquarters to facilitate payment.
- 4) Overtime reimbursements for officers fully assigned to the FASTTF will be calculated at the usual rate for which the individual officer's time would be compensated in the absence of this agreement, up to a monthly maximum of \$858.69.
- 5) It is agreed that the WMATPD will have two (2) officers assigned full-time to the task force.
- 6) It is agreed that the maximum monthly overtime reimbursement allocation computed for each full-time task force officer will not exceed \$858.69.
- 7) At the beginning of each fiscal year, prior to submission of any overtime reimbursement requests, the agency must prepare an official document setting forth the identity of each officer assigned full-time to the FASTTF, along with the regular and overtime hourly rates for each officer. Should any officers change during the year, a similar statement must be

prepared regarding the new officer(s) prior to submitting any overtime reimbursement requests for the officer(s). A separate document must be obtained for each Safe Streets, Safe Trails Task Force. The original document should be forwarded to the field office.

8) Each request for reimbursement will include the name, rank, ID number, overtime compensation rate, number of reimbursable hours claimed and the dates of those hours for each officer for whom reimbursement is sought. Each reimbursement request must be accompanied by a certification signed by an appropriate supervisor of the department that the request has been personally reviewed, that the information described in this paragraph is accurate, and the personnel for whom reimbursement is claimed were assigned full-time to task force cases.

9) Each request for reimbursement will include: an invoice number, invoice date, taxpayer identification number (TIN) and the correct banking information to complete the electronic fund transfer. The necessary banking information is the Depositor Account Title, Bank Account Number, Routing Number, and Type of Account (either checking, savings, or lockbox). If the banking information changes, a new ACH Vendor/Miscellaneous Payment Enrollment Form must be submitted to the FBI.

10) This agreement may be modified at any time by written consent of the parties. This agreement may be terminated unilaterally at any time by the FBI and will not extend beyond September 30, 2003. Requests for reimbursement must be received by the FBI no later than December 31, 2004 to be payable.

Raymond Burnette
Chief of Police
White Mountain Apache Police Department

Date

Guadalupe Gonzalez
Special Agent in Charge
FBI, Phoenix Division

Date

Contract Review Unit, FBIHQ

Date