

MEMORANDUM OF UNDERSTANDING
Between
DEPARTMENT OF HOMELAND SECURITY
U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT
HOMELAND SECURITY INVESTIGATIONS
RESIDENT AGENT IN CHARGE, OMAHA
Through the
SPECIAL AGENT IN CHARGE, ST. PAUL
And
Lancaster County, Nebraska,
on behalf of the Lancaster County Sheriff's Office,
Douglas County Sheriff's Office,
United States Postal Inspection Service, and the
Nebraska State Patrol
as participants in the
OMAHA MAJOR CRIME TASK FORCE

1. PARTIES

The parties to this Memorandum of Understanding (MOU), Lancaster County, Nebraska on behalf of the Lancaster County Sheriff's Office (LSO), Douglas County, Nebraska on behalf of the Douglas County Sheriff's Office (DCSO), the United States Postal Inspection Service (USPIS), and the Nebraska State Patrol (NSP) are participating agencies in the Major Crimes Task Force (MCTF), sponsored by the Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE), Homeland Security Investigations (HSI), Resident Agent in Charge (RAC), Omaha (HSI Omaha), under the Special Agent in Charge (SAC), St. Paul (HSI St. Paul).

2. AUTHORITIES

DHS-ICE-HSI Omaha's participation in this MOU is authorized under the provisions of the Homeland Security Act of 2002, as amended, and codified in Title 6 of the U.S. Code and all other applicable DHS/ICE delegation orders.

Nothing in this MOU is intended to conflict with current law, regulation, or policy. Further, nothing in this MOU is intended to restrict the authority of any party to act as provided by law or regulation, or to restrict any agency from enforcing any laws within its authority or jurisdiction. If any term of this MOU is inconsistent with law, regulation, or other authority, then that term shall be invalid, but the remaining terms and conditions of this MOU shall remain in full force and effect.

3. PURPOSE

a. Mission and Role

The primary mission of the MCTF is to target local, national and international criminal organizations. Through the partnership of the participating agencies, investigators will seek to leverage the collective resources with the goal of disrupting and dismantling criminal organizations. Once a specific target has been identified, the MCTF will identify the scope of the organization and collectively decide to either further the investigation or disseminate the intelligence through the participating agencies for intelligence or investigative action. The MCTF will focus on identifying and dismantling criminal organizations operating in HSI Omaha's area of responsibility (AOR) and seizing assets associated with the criminal organization.

The MCTF will use the collective resources of the participating agencies to maximize knowledge of the organizations, operational methods or the criminal organizations, and current trends. The MCTF will work together to aggressively prosecute organizational members on federal and state criminal statutes and utilize forfeiture laws to disrupt or dismantle the organizational structure.

Initially, five agencies will participate in the MCTF: HSI Omaha, LSO, DCSO, USPIS and NSP. These agencies are located in Lincoln, Lancaster County, Nebraska, and Omaha, Douglas County, Nebraska. Personnel who participate in the MCTF include federal agents, sheriff's deputies, state investigators, and intelligence analysts.

4. OVERSIGHT AND LEADERSHIP

The MCTF will be co-located at HSI Omaha and will be administered by HSI Special Agents. Each participating agency will coordinate with their respective command structure to forward specific department priorities through the MCTF.

5. RESPONSIBILITIES

a. Jurisdiction

All participating agencies will maintain the jurisdictional authority of their respective geographical and subject-matter areas. It is understood that all participating agencies will support and provide assistance to other members of the MCTF regardless of the geographical and jurisdictional areas in which they normally operate, provided they have jurisdictional

authority to act. Some investigations and enforcement actions may require members of the MCTF to travel to other jurisdictions, which shall require the approval of their parent agency. Additionally, the MCTF members that are cross-designated as Title 19 Task Force Officers (TFOs) with federal Customs Officer authority, will follow HSI Directives and instructions when utilizing enforcement authority conveyed by HSI Omaha and will not operate outside the policies and practices of the participating agency.

Any participating agency may bring investigative leads, sources of information, investigations or missions to the MCTF for evaluation. The MCTF will maintain the discretion to further the investigation or disseminate the information through the participating agencies. These decisions will be based on the standing priorities and available resources of the MCTF.

The MCTF participating agencies acknowledge that HSI Omaha, as part of the United States government, is bound by federal laws including the Federal Tort Claims Act (FTCA), 28 U.S.C. §§ 1346(b), 2401(b), and 2671-80, and the Anti-Deficiency Act, 31 U.S.C. § 1341. HSI is effectively “self-insured” under the FTCA, which provides that the United States may be sued for damage to or loss of property, personal injury, or death caused by the negligent or wrongful acts or omissions of HSI’s employees while those employees are acting within the scope of their offices or employment. If the MCTF personnel or participating agencies suffer damage to or loss of property, personal injury, or death caused by the negligent or wrongful acts or omissions of their employees while those employees are acting within the scope of their offices or employment and wish to submit a claim under the FTCA, they or their estate will contact HSI Omaha for information on how to do so.

b. Personnel

Each agency will be responsible for the salaries, benefits, vacation, sick leave, vehicles, and other compensation of their respective personnel dedicated to the MCTF. Overtime accrued by personnel assigned to the MCTF from participating agencies may be reimbursed as described in Part 5(c).

Each participating agency’s personnel shall also continue to remain accountable to his or her employing agency within the policies and procedures of that agency. While personnel will serve under the direct daily control of the MCTF, they remain under the legal, administrative and disciplinary purview of their parent agency and parent agency supervision. Participating agency personnel assigned to the MCTF will abide by and adhere to all policies and procedures regarding conduct promulgated by their respective parent agencies.

c. Overtime Reimbursement

As in the past, HSI Omaha may reimburse overtime for those assigned to the MCTF in accordance with the provisions of the Treasury Executive Office for Asset Forfeiture (TEOAF) Directive 18 State and Local Overtime Reimbursement Program (SLOT). Overtime reimbursement requires the HSI SAC to execute a separate MOU for the Reimbursement of Joint Operations Expenses from the Treasury Forfeiture Fund (TFF) with the participating parent agency and would also be subject to the availability of TFF funds. Additional overtime reimbursement may be funded through the Organized Crime and Drug Enforcement Task Force (OCDETF), Interdiction Initiative.

Any reimbursements through the SLOT do not constitute federal grants to the state or local law enforcement agency partners. Overtime salaries, travel, fuel, training, equipment, and other similar costs of state and local law enforcement officers that are incurred in a joint law enforcement operation with a TFF agency can be authorized for reimbursement, subject to the availability of funds.

d. Data Management

The MCTF will provide a detailed briefing and summary of active cases, accomplishments and significant activities to participating agencies as necessary to meet an individual agency's reporting requirements.

Information that is provided to and maintained by federal agencies will become records for the purpose of the Privacy Act (5 U.S.C. § 552a) and Freedom of Information Act (5 U.S.C. § 552). No participating agency will disclose another participating agency's records or any other information that is privileged or confidential, law enforcement sensitive or otherwise prohibited from disclosure by law, regulation, or policy, without the prior permission of the originating agency.

This includes data collected by Financial Crimes Enforcement Network (FinCEN) and anything considered, and subject to, Bank Secrecy Act (BSA) regulations. As the administrator of the BSA, FinCEN manages and maintains FinCEN Query as the government wide access service for exploiting BSA data in pursuit of our common mission to protect our financial system from the abuses of financial crime, terrorist financing, money laundering and other illicit activity. The MCTF will take appropriate steps to safeguard BSA data and to uphold the confidentiality requirements associated with suspicious activity reporting. Unauthorized disclosure or release of information collected under the BSA may result in criminal or civil sanctions.

Throughout the course of the MCTF investigations and enforcement activities, legal advice may be obtained from the assigned prosecutor(s) and/or participating agency counsel as required by law and policy. The parties agree to advise HSI counsel and their MCTF Group Supervisor/Sergeant of each court proceeding in which a) the validity of a participating agency's investigation, search, seizure or arrest authority becomes an issue; or b) the credibility or integrity of a participating agency employee or of the MCTF becomes an issue.

e. Equipment

Facilities, vehicles and equipment provided by participating agencies that are utilized in support of the MCTF operations remain the property of the providing agency. Maintenance, replacement and other costs associated with equipment assigned to the MCTF will remain the responsibility of the providing agency, unless otherwise provided for by the MCTF.

At the discretion of each agency and upon thirty day written notice to the Task Force Co-Directors, or upon withdrawal of an agency from the MCTF, or upon dissolution of the MCTF, all equipment will be returned to the owning agency.

6. OPERABILITY, NEW PARTICIPANTS, AMENDMENTS AND WITHDRAWAL

a. Operability

This MOU shall become effective for (1) one year from the date of execution by the HSI SAC and all participating agencies, and it shall apply to HSI Omaha and all participating agencies who have signed this MOU without regard to the status of any other agency that may subsequently become a participating agency. The duration of this MOU shall consist of a one (1) year term and shall auto renew for subsequent one (1) year terms until terminated by any party.

b. New Participants

After the effective date of this MOU, the signing of an addendum between HSI and a new agency will constitute the addition of a participating agency to this MOU and shall not require the approval of all members. An addendum shall become effective upon the signature of HSI SAC and the new agency. An executed addendum shall also constitute an acceptance of the terms of the MOU and an addition of the agency to the list of participating agencies to the MCTF. HSI Omaha will maintain a current list of participating agencies and personnel.

c. Amendments

Any and all amendments to this MOU are effective upon the signature of HSI SAC and at least one other member agency, and are effective upon all participating agencies upon their receipt of written notice of such amendments.

d. Withdrawal

A participating agency may withdraw from this MOU and MCTF at any time, by providing thirty (30) day written notice to the appropriate HSI Omaha point of contact. After an agency's withdrawal, this MOU shall continue to be effective upon all remaining agencies.

7. NO PRIVATE RIGHT CREATED

This MOU is an internal MOU and does not create or confer any right or benefit on any other person or party, private or public.

8. ASSET SHARING

During the course of enforcement and investigative activities by the MCTF, HSI Omaha will attempt to identify and seize assets that may be forfeited under federal, state and local administrative, civil, and criminal forfeiture statutes. Such activities will be executed in accordance with federal laws and regulations, and agency and prosecutorial policies and guidelines.

a. Task Force Agreement and Equitable Sharing

Task Force Agreements ease the equitable sharing documentation process especially in Task Force and multi-agency cases involving pre-established numbers of personnel and/or continuous contributions to long-term interdiction or ongoing operations. Task Force Agreements are reviewed annually, or as requested, and ensure that provisions are acceptable to all participating agencies. Additionally, Task Force Agreements do not preclude the processing of equitable sharing outside the established agreement, where total contributions or devoted hours of the participating agencies exceed the degree of participation. For seizures that occur outside these Task Force Agreements, the process of equitable sharing remains as established in the "Green Book" by TEOAF.

Task force equitable sharing agreements dictate the agreed upon percentages for participation in a task force and enable a more efficient processing of payments. In circumstances of ad-hoc participation or when HSI/Omaha chooses not to formalize a task force agreement, equitable sharing determinations will continue to be based on a narrative justification and

review of hours expended by the local law enforcement officers directly involved in the efforts leading up to the seizure.

Pursuant to the provisions of TEOAF, which oversees the TFF, the net proceeds of property that is federally forfeited shall be shared provided that participating personnel actively contributed in good faith to such investigation and in accordance with the MOU and all operative rules, regulations, and policies.

As detailed in the 2018, joint-DOJ/TEOAF “Guide to Equitable Sharing,” the determination of whether an agency is entitled to this base level of asset sharing is within the sole discretion of HSI Asset Forfeiture Unit (AFU).

Certain instances may warrant a departure from this default asset sharing arrangement. In such instances, including but not limited to, outstanding participation by a participating agency, amount of the seizure, participation by other task force agencies, HSI may recommend a deviation from the base equitable sharing percentage for each agency participating in that particular investigation, based on each agency's contribution to the investigation.

HSI AFU retains the sole authority to determine the final asset sharing percentages. The parties acknowledge, however, that the disposition of assets forfeited under federal law is within the discretionary authority of the Department of Treasury and/or the Department of Justice, as applicable in each case.

9. POINTS OF CONTACT

The recipients and points of contact for all required notices shall be the following:

- a. Homeland Security Investigations
Sean M. Key, Resident Agent in Charge, Omaha
13923 Gold Circle, Suite 200
Omaha, Nebraska 68144
Sean.M.Key@ice.dhs.gov

- b. Lancaster County Sheriff's Office
Terry Wagner, Sheriff
575 South 10th Street
Lincoln, Nebraska 68508
TWagner@Lancaster.ne.gov

- c. Douglas County Sheriff's Office
Tim Dunning, Sheriff
3601 N 156th Street
Omaha, Nebraska 68116
Timothy.dunning@douglascounty-ne.gov

- d. United States Postal Inspection Service
Kevin Rho, Postal Inspector in Charge – Denver Division
1745 Stout Street, Suite 900
Denver, Colorado 80299
KKRHO@USPIS.GOV

- e. Nebraska State Patrol
Colonel John A. Bolduc, Superintendent
1600 Highway 2
PO Box 94907
Lincoln, Nebraska 68509
John.bolduc@nebraska.go

10. SIGNATORIES

This Addendum is agreed to by the official signatories of HSI, LSO, DCSO, USPIS, and NSP as set forth below. Each signatory warrants that he or she is authorized to bind his or her agency to this Addendum. Each signatory agrees that this Addendum may be

executed in multiple original counterparts, each of which shall constitute one and the same Addendum. This MOU will be reviewed and renewed annually to ensure that provisions are acceptable to all participating agencies.

SIGNED AND AGREED UPON:

DATE: _____

Ronnie A. Martinez, Special Agent in Charge
Homeland Security Investigations, Kansas City

DATE: _____

Jennifer Brinkman, Chair
Lancaster County Board of Commissioners, Lancaster,
Nebraska on behalf of the Lancaster County Sheriff's
Office

DATE: _____

Tim Dunning, Sheriff
Douglas County Sheriff's Office, Omaha, Nebraska

DATE: _____

Kevin Rho, Postal Inspector in Charge – Denver Division
United States Postal Inspection Service

DATE: _____

Colonel John A. Bolduc, Superintendent
Nebraska State Patrol