

**MEMORANDUM OF UNDERSTANDING
DEPARTMENT OF HOMELAND SECURITY
HOMELAND SECURITY INVESTIGATIONS,
WASHINGTON COUNTY ATTORNEY'S OFFICE,
ST. GEORGE POLICE DEPARTMENT and
WASHINGTON COUNTY SHERIFF'S OFFICE
"FRAUDULENT IDENTITY and SECURITY THREATS" (FIST) UNIT**

The parties hereto agree to participate in the Fraudulent Identity and Security Threats (FIST) Unit (herein cited as "FIST") in Utah, according to the following terms and conditions:

Article I. MISSION

- A. The mission of the FIST is to deter, disrupt and dismantle criminals or criminal organizations, with particular emphasis on identity theft and transnational gang related crimes, committed in and around Washington County, Utah.
- Goal 1: Whenever practicable, utilize the Enterprise Theory of Investigation to build long-term criminal investigations, using any and all suitable investigative techniques, including but not limited to Title III wiretap authority, undercover operations, and use of cooperating witnesses and defendants, in an effort to obtain wholesale disruption and dismantlement of the most serious identity theft/transnational gang related threats in Washington County, Utah.
 - Goal 2: Make effective use of the intelligence gathering and analyzing capabilities of the participating agencies to prioritize and target the most viable and violent criminal enterprises/gangs operating in Washington County and surrounding areas for investigation and prosecution, and to maintain and share among the participating agencies a useful intelligence base on identity theft and transnational gang related criminal activity in Utah.
 - Goal 3: Seek appropriate training opportunities for team members in order to enhance the investigative and enforcement capabilities of its members, develop esprit de corp and relevant identity theft and transnational gang experience and expertise.
 - Goal 4: Make effective use of state and federal asset seizure and forfeiture statutes to strip targeted criminal enterprises/gangs of their assets, and to return the proceeds of the forfeited assets to the participating agencies, whenever possible, in accordance with all applicable laws and policies.
- B. Goal 5: Identity theft related crimes and gang activity that readily involve violence, drug use and distribution, and possession of firearms - the FIST will be mindful of effective deconfliction with other agencies, namely DEA, HIDTA (where applicable)

and local level drug task forces operating in the surrounding communities of Washington County, Utah. Appropriate measures will be enacted to ensure proper deconfliction of other criminal investigations among the Washington County law enforcement community.

HSI Definitions of Gang Member and Gang Associate

Gang Member: A gang member is defined as anyone who self-admits gang affiliation or falls under two or more of the following criteria, one of which occurred in the previous five (5) years:

- Subject has tattoos identifying a specific gang.
- Subject frequents an area notorious for gangs and or associates with known gang members.
- Subject has been seen displaying gang hand signs/symbols.
- Subject has been identified as a gang member by a reliable source.
- Subject has been identified by an informant (tested or untested).
- Subject has been arrested on two or more occasions with known gang members (if the most recent arrest has occurred in the past five years, the “previous five (5) years” requirement is deemed to have been met).
- Subject has been identified by a jail or prison as a gang member.
- Subject has been identified through seized written or electronic correspondence.
- Subject has been seen wearing gang apparel or been found possessing gang paraphernalia.
- Subject has been identified through documented reasonable suspicion.

Associate Gang Member: An associate gang member is defined as an individual who exhibits one of the above listed gang member criteria but not formally initiated into the gang, or facilitates or otherwise tacitly encourages gang activity. The agent(s) conducting the arrest will determine whether indications of association are present.

Article II. STRUCTURE

1. Participating Agencies

- A. The FIST will consist of local, county and federal investigators. All agencies agree to assign experienced agents, officers and/or attorneys to the FIST, consistent with the Task Force’s mission and table of organization.
- B. During their period of assignment, any investigators will be under the direct control of their assigned supervisor(s) within the FIST.

2. FIST Leadership

- A. The FIST will be overseen by a panel of participating agency personnel (herein “FIST Executive Council” or “Executive Council”), to include the Washington County Attorney, Washington County Attorney’s Office; Chief of Police, St. George Police Department; Sheriff Washington County Sheriff’s Office; Assistant Special Agent in Charge and Resident Agent in Charge, Homeland Security Investigations. The Executive Council will maintain oversight over geographical areas wherein participating agencies are located. Each participating agency will assign full or part time investigators, other officers or personnel to the FIST, which will comprise the “Task Force.”
- B. The day to day operations of the FIST will be overseen by a first-line supervisor from a designated participating agency. This first-line supervisor will report directly to their designated respective chain of command at their parent agency, as well as the Executive Council, as required.
- C. For all administrative functions relative to their employing agency, participating federal agencies will report directly to the Assistant Special Agent in Charge of their respective agency. For all administrative functions relative their employing agency, local or county personnel will report directly to the Chief, Sheriff or governing agency head of their respective agency.
- D. The Washington County Attorney will appoint an Assistant County Attorney to serve as the Lead Attorney for the FIST (herein “Lead FIST Attorney”). The Lead FIST Attorney will have primary responsibility to provide case-related legal advice to all participating FIST investigators and to prosecute, or oversee the prosecution of, all FIST cases. In addition, the Lead FIST Attorney will participate in the coordination and facilitation of FIST investigations as needed. The Lead FIST Attorney will also serve as an intermediary to resolve any potential conflicts between participating agencies. Assistant County Attorneys may be assigned to the FIST permanently or on an ad hoc basis.

Article III. OPERATIONAL AND ADMINISTRATIVE PROCEDURES

- A. Officers of state and local law enforcement agencies assigned to FIST may be cross designated by DHS HSI pursuant to section 401(i), Tariff Act of 1930, (19 U.S.C. 1401(i), as amended, which allows FIST investigators to perform certain Immigration and Customs Enforcement (ICE) HSI duties. The designated Customs Officers will have the authority to enforce "Customs" laws. The Secretary of Homeland Security or his/her designee is authorized to designate persons as Customs Officers (Excepted)

who are designated to perform the duties of an ICE Officer. This authority enhances ICE's ability to work more closely with counterparts with common transnational investigative interests. After receiving standardized ICE training, each cross-designated customs officer has the authority to enforce U.S. customs laws and to perform the duties of HSI special agents as granted by the HSI Special Agent in Charge (SAC), including the following:

- Designated customs officers are authorized to execute and serve search or arrest warrants, subpoenas and summonses in compliance with customs laws;
 - Designated customs officers are authorized to conduct customs searches at the border for merchandise being imported into or exported from the U.S. and to effect seizures and arrests of persons or articles in violation of U.S law; and
 - Designated customs officers are authorized to carry firearms in compliance with the ICE firearms policy.
- B. This agreement does not grant the designated Customs Officers the authority to enforce "Immigration" laws. This Title 19 authority is not to be exercised outside of the FIST scope and mission, and *require* that the FIST investigators exercise such authorities under the direction and control of HSI. All Title 19 cross-designations will require two days of initial training followed by eight hours of recertification training every two years. Cross-designated FIST investigators shall adhere to all governing HSI policies and procedures when enforcing U.S. Customs law, except where such HSI policies and procedures are in direct conflict with the state/local agency's policies and procedures. All reporting systems and investigative and administrative procedures will be consistent with those utilized by a member's employing agency. Processing of all evidence acquired as a result of operations or investigations conducted by the FIST will be coordinated by all participating agencies for optimal efficiency.
- C. Each agency employee assigned to the FIST will remain subject to the personnel rules, regulations, laws and policies applicable to his or her respective agency. 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. Legal representation by the United States is determined by the Department of Justice on a case-by-case basis. The parties cannot guarantee the United States will provide legal representation to any local, state, or federal law enforcement officer or employee.
- D. All complaints, allegations or information relative to misconduct or breaches of integrity involving FIST investigators while in the performance of Task Force duties

will be investigated by and in accordance with the rules and guidelines of the employee's employing agency.

- E. In the event of a substantiated complaint of misconduct or breach of integrity, all determinations of financial liability and/or disciplinary action will be made by the employing agency of the member(s) concerned. Each agency will evaluate the circumstances surrounding the specific allegations and independently decide if the individual agency chooses to participate in the inquiry. It is understood and expected that the investigation will be conducted by one or more participating agencies' respective internal investigating bodies, or its designees.
- F. It is understood that this policy is flexible and that initial decisions with respect to who will investigate allegations are not binding and are subject to re-evaluation as dictated by circumstances which may be disclosed during the course of an inquiry.
- G. In the event of an agent/officer shooting or other critical incident involving member(s) of the FIST, that is the direct result of a FIST operation or investigation, the agency with primary jurisdiction (meaning that agency whose agent/officer was involved in the shooting or other critical incident), will have responsibility for the coordination of the criminal investigation or will designate the agency that will coordinate the investigation. The agency with primary jurisdiction agrees to allow any other FIST participating agency involved in the incident to conduct a collateral administrative investigation provided that the collateral investigation does not interfere with or jeopardize the primary investigation. If more than one agency is involved in a shooting or other critical incident, the agencies may agree to share any information resulting from the collateral investigation(s), consistent with the sharing agency's rules and regulations. Each respective agency's deadly force policy will be in effect for its designated FIST investigator(s) or officer(s). A criminal or administrative investigation of a FIST investigator involved in a shooting or other critical incident as described in this paragraph is not intended to replace or otherwise substitute for an investigation by the appropriate local law enforcement agency where the shooting occurs.
- H. In the event of a vehicle pursuit while conducting investigative activity specific to the FIST, respective agency pursuit policies will be honored. Specifically, the investigators or officers involved in the pursuit will adhere to their respective agency's vehicle pursuit policy.

Article IV. GENERAL CONTRACTUAL PROVISIONS

- A. This FIST MOU shall be effective upon execution (signature) by all parties listed as signatories hereto. Any party may terminate its involvement in this MOU with or

without cause by giving 30 days advance written notice to the other parties. This MOU will remain in effect until such time as the parties: (1) enter into a new MOU; (2) revise the MOU in writing; or (3) rescind this MOU in writing.

- B. Nothing herein shall be construed as creating any personal liability on the part of any officers or agents of any party, nor shall it be construed as giving any rights or benefits hereunder to anyone other than the parties to this MOU. This MOU shall not be construed as, or deemed to be, an MOU for the benefit to any third parties and no third parties shall have any right of action hereunder for any cause whatsoever.
- C. This MOU constitutes the sole agreement between the parties. No representations oral or written not incorporated herein shall be binding upon the parties. No amendment or modifications of this MOU shall be enforceable unless such amendment or modification is in writing and approved by official action of all parties to this MOU.
- D. In the event any provision of this MOU is held to be unenforceable for any reason, the remainder of this MOU shall remain in full force and effect and enforceable in accordance with its terms.
- E. All participating agencies will be responsible for any fiscal obligations incurred by them on an investigation not directly related to FIST operations, while a member of the Task Force. FIST shall only be responsible for the equitable sharing of forfeited assets from the Department of Justice and/or the Treasury Department Forfeiture Funds with members that have executed such agreements in advance.
- F. State and Local Overtime (SLOT) agreements (sponsoring agreement) will be executed prior to any overtime (OT) reimbursement considerations. Payment of SLOT monies is contingent upon the availability of such funding as each HSI SAC office is allotted limited SLOT allocations each year. Any operational plans where SLOT investigators are planning to solicit OT reimbursements must first be cleared with the presiding HSI supervisor (HSI RAC) to ensure the availability of SLOT funds for use.
- G. State and Local FIST investigators and/or those who administer financial accounting affairs on behalf of those members, must comply with billing guidelines as per the executed SLOT agreement. Participating agencies shall maintain on a current basis complete and accurate overtime records and accounts of all obligations and expenditures of overtime funds under the Sponsoring Agreement in accordance with generally accepted accounting principles and instructions provided by HSI to facilitate on-site inspection and auditing of such records and accounts.

- H. Participating agencies shall provide vehicles for officers and agents assigned to FIST. Participating agencies are responsible for gasoline, routine maintenance, repairs, and other costs associated with these vehicles.
- I. Participating agencies are also responsible for firearms, ammunition, protective gear and other equipment necessary for the safe and proper performance of their personnel assigned to the FIST.

Article VI. USE OF FORFEITED FUNDS

- A. Under the terms of this MOU, the participating agencies in the FIST intend and agree to facilitate the sharing of all assets seized as a result of any FIST enforcement activity and/or prosecution. If an agency that is not a member of the FIST participates in an investigation, it shall be recommended for sharing based on its relative contribution to the seizure. The FIST Executive Council will consult with the lead seizing agency and provide input on the recommended percentages.

Article VII. FIST EXECUTIVE COUNCIL

- A. The FIST Executive Council shall be composed of the Washington County Attorney, Washington County Attorney's Office; Chief of Police, St. George Police Department; Sheriff, Washington County Sheriff's Office; Assistant Special Agent in Charge and Resident Agent in Charge, Homeland Security Investigations.
- B. The Washington County Attorney shall serve as the Chair of the FIST Executive Council.
- C. It shall be the function of the FIST Executive Council to approve any change in the policies and procedures of the FIST. Executive Council members will exercise the decision-making functions described in this MOU and undertake any action necessary for the effective and continued function of the FIST. In addition, the Executive Council will resolve any jurisdictional conflicts which may arise between the Task Force, its participating member agencies, and any other gang enforcement entity involved in an investigation, if the conflict cannot be resolved at the operational or management level of the FIST. Any procedural and policy-related change and any decision to ensure the continued successful operation of the FIST must be approved by a simple majority of the Executive Council members to become effective, provided that a quorum of FIST members are present at such time that the Executive Council's decision-making function is exercised.

IN WITNESS WHEREOF, the parties hereto have caused this MOU to be executed in St. George, Washington County, Utah, each to be considered as an original by their authorized representative, on the _____ day of _____, 2013.

Brock Belnap
Washington County Attorney
Washington County Attorney's Office

Date

Marlon Stratton
Chief of Police
St. George Police Department

Date

Cory Pulsipher
Sheriff
Washington County Sheriff's Office

Date

James J. Eardley
Chairman
Washington County Commission

Date

Jonathan Lines
Assistant Special Agent in Charge
Homeland Security Investigations

Date

Mark Cutchen
Resident Agent in Charge
Homeland Security Investigations

Date