

MEMORANDUM OF UNDERSTANDING
BETWEEN
THIRD JUDICIAL DISTRICT ATTORNEY, NEW MEXICO,
And
US Customs and Border Protection – Border Patrol

This Memorandum of Understanding (“MOU”) is entered into by and between the Third Judicial District Attorney’s Office and United States Border Patrol El Paso Sector.

AUTHORITIES

The authority to investigate and prosecute State offenses under provisions of this MOU are found in appendix A. This agreement does not confer authorization to enforce violations beyond existing statutory authority.

PURPOSE

The southwest border has experienced an exponential increase in Trans-National Criminal Organization (TCO’s) activity resulting from historic migration flows. Criminal networks exploit border communities to target vulnerable populations and take advantage of task saturated law enforcement. The New Mexico Third Judicial District Attorney’s Office oversees Dona Ana County, New Mexico; the most active corridor for illicit cross-border activity within the El Paso Sector which is ranked the highest active area in the United States for evasive unlawful entries.

Enter this Memorandum of Understanding (MOU) between the Third Judicial District Attorney’s Office and the United States Border Patrol (USBP) as a non-binding agreement that seeks to increase the safety and security of Dona Ana County, New Mexico through the appropriate application of state charges for criminal activity witnessed by US Border Patrol Agents in performance of their law enforcement duties. The United States Attorney’s Office will retain first right of refusal for all cases encountered by USBP. Cases not accepted for federal prosecution may be presented to the Third Judicial District Attorney’s Office for consideration of appropriate state charges.

MEASUREMENT OF SUCCESS

The success of this initiative will be measured by increased collaborative prosecution with the emphasis of reducing cross-border criminal activity within Dona Ana County.

- *Reduce number of deaths that are occurring because of TCO activity*
 - *137 Deaths encountered FY '23 (77% in Dona Ana County)*
- *Assaults on Public Servants*
 - *189 Assaults Incidents FY '23 (majority occurring in Dona Ana County)*
- *Human Smuggling/Trafficking*
 - *FY '23- recorded 55 Stash houses in Dona Ana County*
 - *FY'23- record number of pursuits originating out of Dona Ana*
 - *FY'23- 191,000 recorded Got Aways (70% recorded in Dona Ana County)*

(Not an all-inclusive list, additional Crimes to be prioritized at the Discretion of the District Attorney)

- §66-8-101 Vehicular Homicide*
- §66-7-201 Accidents Involving Death or Personal Injuries*
- §30-22-1.1 Aggravated Fleeing a Law Enforcement Officer*
- §66-8-113 Reckless Driving*
- §30-22-10 Escape from Custody of Peace Officer*
- §30-22-22 Aggravated Assault upon a Peace Officer*
- §30-22-24 Battery upon a Peace Officer*
- §30-22-25 Aggravated Battery upon a Peace Officer*
- §30-22-26 Assisting in Assault upon a Peace Officer*
- §30-6-1 Child Abandonment/Abuse*
- §30-22-4 Harboring a Felon*
- §30-15-1 Criminal Damage to Property*
- §30-14-8 Breaking and Entering*
- §30-16-3 Burglary*
- §30-22-5 Tampering with Evidence*
- §30-16-6 Fraud*
- §30-16-9 Extortion*
- §30-28-3 Criminal Solicitation*
- §30-4-3 False Imprisonment*
- §30-4-1 Kidnapping*
- §30-42-3 Racketeering*
- §30-52-1 Human Trafficking*
- §30-24-3 Bribery/Intimidation of Witness*
- §30-24-3.1 Acceptance of Bribe by Witness*

Or an offense not listed above, but is considered a Serious Violent Offense per §33-2-34(L)(4) NMSA 1978 or an Enumerated Crime per §31-22-8 NMSA 1978 or as determined by evidence.

PHYSICAL LOCATION

Officers/Troopers/Agents will maintain a status quo approach and will be retained by their respective employer to perform daily assignments as required. El Paso Sector Prosecutions Unit will assign a collateral duty agent to the District Attorney's Office to act as liaison and support State Prosecution efforts.

SUPERVISION AND CONTROL

The day-to-day supervision and administrative control of Officers/Troopers/Agents will be retained by the respective employer. Patrol Agents in Charge (PAIC) of the Las Cruces and Santa Teresa Border Patrol Stations will work with the Third Judicial District Attorney to identify and prioritize the type of cross-border criminal activity considered for prosecution.

The points of contact for this initiative are:

NM Third Judicial District Attorney, Gerald M. Byers

USBP El Paso Sector, Chief Patrol Agent Scott S. Good

Law Enforcement Operational Programs, (A)DC Salvador Guerrero Jr.

JURISDICTION/PROSECUTIONS

Cases will be reviewed by the Patrol Agent in Charge or his/her designee in consultation with any other participating agency, and the United States Attorney's Office, and the Third Judicial District Attorney, to determine whether cases will be referred for prosecution to the U.S. Attorney's Office or to the District 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.

MEDIA

Media relations will be coordinated through Third Judicial District Attorney's Office and US Border Patrol, El Paso Sector, Strategic Communications Office. Press releases will be reviewed, final authorization will be made by the District Attorney for cases that are accepted for State Prosecution. 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.

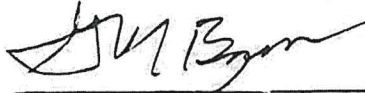
DURATION

This MOU is effective with the signatures of all parties and terminates at the discretion of either party.

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



104-03-22

Gerald M. Byers
Third Judicial
District Attorney
Dona Ana County, NM



04/08/2024

Anthony S. Good Date
Chief Patrol Agent, US Border Patrol,
El Paso Sector

APPENDIX A

NM CONST Art. II, §10

NM CONST Art. VI, §24

NM ST §36-1-18

State v. Snyder, 1998-NMCA-166, 967 P.2d 843 (Ct. App. 1998)

State v. Cardenas-Alvarez, 2001-NMSC-017, 25 P.3d 225 (2015)

In State v. Sanchez, 2015-NMSC-018, 350 P.3d 1169 (2015) the New Mexico Supreme Court stated “The United States Supreme Court has stated that “[t]here is no war between the [United States] Constitution and common sense.” *Mapp v. Ohio*, 367 U.S. 643, 657, 81 S.Ct. 1684, 6 L.Ed.2d 1081 (1961), *limited on other grounds by United States v. Leon*, 468 U.S. 897, 906, 928, 104 S.Ct. 3405, 82 L.Ed.2d 677 (1984). Likewise, there is no need for the New Mexico Constitution to conflict with common sense. “Federal-state cooperation in the solution of crime under constitutional standards will be promoted, if only by recognition of their ... mutual obligation to respect the same fundamental criteria in their approaches.” *Id.* at 658, 81 S.Ct. 1684. Our refusal to depart from the federal border search doctrine acknowledges the significant law enforcement problems at an international border checkpoint where it is known that a motorist is entering from outside the country, thereby vindicating common sense and furthering federal-state cooperation.” (Emphasis added.)