

MEMORANDUM OF UNDERSTANDING BETWEEN THE DEPARTMENT OF JUSTICE FOR THE COMMONWEALTH OF PUERTO RICO, THE PUERTO RICO POLICE DEPARTMENT, AND THE UNITED STATES ATTORNEY'S OFFICE FOR THE DISTRICT OF PUERTO RICO

FOR THE REFERRAL AND HANDLING OF CASES WHERE THERE IS CONCURRENT STATE AND FEDERAL JURISDICTION.

I. INTERESTED PARTIES

The interested parties in this MEMORANDUM OF UNDERSTANDING are the Department of Justice for the Commonwealth of Puerto Rico (DOJ-PR), the Puerto Rico Police Department (PRPD) and the United States Attorney's Office for the District of Puerto Rico (USAO-PR).

II. PRELIMINARY STATEMENT

A harmonious working relationship between the primary criminal justice and prosecutorial agencies, state and federal, in Puerto Rico being essential to the due administration of justice and the efficient use of criminal justice resources being necessary to effective crime fighting in Puerto Rico, the undersigned enter into this memorandum of understanding concerning the prosecutorial and investigative responsibility regarding certain listed crimes as follows:

A. Drug Trafficking Cases in All Airports

The DOJ-PR and PRPD shall have primary prosecutorial and investigative jurisdiction in all cases involving the possession, transportation or seizure of controlled substances within and through ports of entry to Puerto Rico including but

not limited to airports, seaports, cruise terminals and container yards. However, the USAO-PR and federal law enforcement agencies, primarily the Drug Enforcement Administration (DEA), the Federal Bureau of Investigation (FBI), and Immigration and Customs Enforcement (ICE), shall have primary jurisdiction in all cases involving more than:

1. 500 grams of cocaine.
2. 100 grams of heroin.
3. 100 pounds of marijuana.
4. 50 grams of methamphetamine.
5. 5 grams of crack cocaine.
6. 40 grams of MDMA ("Ecstasy").

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In all other cases the USAO-PR will not exercise primary prosecutorial and investigative jurisdiction unless it is determined, regardless of the amount and kind of controlled substance, that the activity has a connection or suspected connection or is in furtherance of continued drug activity of a local, United States or foreign drug trafficking or other criminal organization, as determined by PRPD or federal law enforcement agencies whether with or without an investigation. Such determination may be made by agreement only in consultation with each other.

B. Theft of Motor Vehicles (Carjackings)

The DOJ-PR and PRPD shall have primary prosecutorial and investigative jurisdiction in all cases involving the theft of a motor vehicle by force, violence or

intimidation. However, the USAO-PR and federal law enforcement agencies shall have primary prosecutorial and investigatory jurisdiction in those motor vehicle theft cases involving:

1. Death or serious bodily injury caused to any person during the commission of the carjacking or as a result thereof.

2. A person kidnapped, abducted or taken as a hostage during the commission of the carjacking or as a result thereof.

3. The use of a fully automated weapon or a firearm with an obliterated serial number during the commission of the carjacking.

4. Carjacking where a minor or minors were victims.

C. Bank Robberies

The DOJ-PR and PRPD shall have primary prosecutorial and investigative jurisdiction in all bank robbery cases. However, the USAO-PR and federal law enforcement agencies shall have primary prosecutorial and investigatory jurisdiction in those bank robbery cases where any of the following circumstances are present:

1. When death or serious bodily injury is caused to any person during the commission of the bank robbery or as result of thereof.

2. When a firearm is brandished or discharged during the commission of the bank robbery.

3. Where any person has been abducted, restrained or taken hostage during or after the commission of the bank robbery or as a result thereof.

4. When a gang, organization or terrorist group is responsible for the commission of the bank robbery.

5. Robberies in which a connection with a terrorist organization has been established.

6. Robberies in which an interstate or foreign connection has been established.

7. Robberies in which the amount taken was \$50,000 or greater.

8. Robberies by convicted felons.

D. Firearms and Weapons Cases

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The DOJ-PR and PRPD shall have primary prosecutorial and investigative jurisdiction in all firearm and weapons cases. However, the USAO-PR and federal law enforcement agencies, primarily the Bureau of Alcohol, Tobacco, Firearms and Explosives, shall have primary prosecutorial and investigatory jurisdiction in those firearm and weapons cases where any of the following circumstances are present:

1. When the offense involves the possession, carrying or use of a firearm during and in relation to any drug trafficking crime or in furtherance of any such crime.

2. Where an independent investigation has identified the defendant as a known violent offender or as a member of a gang, organization or terrorist group.

3. When the offense involved a "semiautomatic assault weapon" as that term is defined in 18 U.S.C. ' 921(a)(30) or a firearm, as described in 26 U.S.C. ' 5845.

4. When the offense involves a firearm which was modified to operate differently than designed (i.e., machine guns or silencers).

5. When the offense involved the dealing, shipping, receiving or transporting of a large number of firearms (7 firearms or more in a single or in multiple transactions) in interstate or foreign commerce.

6. When the offense involves an illegally obtained (lie and buy) and/or the attempt to do so (lie and try) of a firearm.

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7. When the defendant is an Armed Career Criminal. An Armed Career Criminal is a Felon in Possession, as that term is defined in 18 U.S.C. ' 922(g), and who has at least three (3) prior convictions for a "violent felony" or a "serious drug offense."

8. When the defendant is a convicted felon.

9. Firearms stolen from a Federal Firearms Licensee (FFL).

10. Drive by shootings resulting in death.

E. Hobbs Act Cases (18 U.S.C. ' 1951)

The USAO-PR and federal law enforcement agencies shall have primary prosecutorial and investigative jurisdiction in Hobbs Act violations, (interference with interstate commerce by robbery or extortion or the attempt to do so), where the robbery or extortion amount exceeds \$50,000.

The DOJ-PR and PRPD shall have primary prosecutorial and investigative jurisdiction in all robbery and extortion cases not covered by the first paragraph in this section.

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F. Sexual Exploitation of Children and Sexual Offenders

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The DOJ-PR and PRPD shall have primary prosecutorial and investigative jurisdiction in all sexual assault cases involving minors. However, the USAO-PR and federal law enforcement agencies shall have primary prosecutorial and investigatory jurisdiction in those sexual assault cases involving minors where any of the following circumstances are present:

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1. Sexual exploitation of children, as provided in 18 U.S.C. ' 2251.
 2. Certain activities relating to material involving the sexual exploitation of minors, that is, child pornography, as provided in 18 U.S.C. ' 2252.

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The USAO-PR and federal law enforcement agencies shall have primary prosecutorial and investigative jurisdiction in cases where a sex offender fails to register under the Sex Offender Registration and Notification Act, as provided in 18 U.S.C. ' 2250.

III. CRIME SCENE INVESTIGATION

The FBI will have one (1) Special Agent and one (1) Task Force Agent available at all times to respond to crime scenes where there is a potential federal law enforcement nexus in cases of death or serious bodily injury. The USAO will assign, on a case-by-case basis, one (1) Assistant U.S. Attorney from its Violent Crimes Unit to assist in the crime scene analysis in cases resulting in death or serious bodily injury, within the San Juan Metropolitan area, Bayamón and Carolina.

IV. GATEKEEPER

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Each agency a part of this agreement shall assign one (1) person from its agency to act as a "Gatekeeper," of this agreement. Such gatekeepers shall, in communication with each other, assure that periodic assessments of this agreement, to include the need for additions, deletions or modifications, are made in order to keep this agreement between the agencies up to date, meeting the needs of law enforcement and viable for the parties. Such assessments shall be done periodically, but in no case any less frequently than once per calendar year.

V. CONCLUDING STATEMENTS

This agreement merely sets out the understanding between Commonwealth and federal criminal justice agencies as to what the presumption will be regarding the investigative and prosecutorial responsibilities regarding the listed cases. Nothing in this agreement precludes the parties from reaching an opposite conclusion to that listed in this agreement regarding a specific case or group of cases. Such conclusions might be dictated by resources, interest, propriety of a particular matter being handled in one jurisdiction or the other, desires of the parties, etc. The gist of this agreement is that such exceptions will be done, when necessary, in full communication between the parties.

The investigative and prosecutorial responsibilities in cases of concurrent state and federal jurisdiction not covered in this Memorandum will be discussed and

evaluated by the parties on a case by case basis. A determination of primary investigative and prosecutorial responsibility shall be promptly made to promote the efficient and effective use of resources.

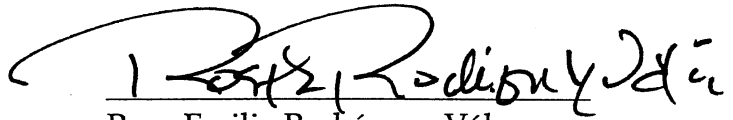
This agreement specifically supersedes the agreement signed by the USAO-PR and the DOJ-PR on September 29, 1993.

All parties to this Memorandum of Understanding reserve the right to nullify or modify this agreement unilaterally upon due written notice to any other affected party.

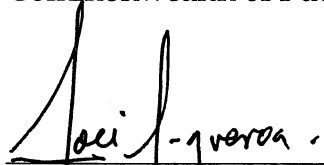
Signed and agreed to this 2nd day of February, 2010, in San Juan, Puerto Rico.



Guillermo Somoza
Acting Secretary of Justice
Commonwealth of Puerto Rico



Rosa Emilia Rodríguez-Vélez
United States Attorney
District of Puerto Rico



José Enrique Figueroa-Sancha
Superintendent of Police
Puerto Rico Police Department