

DEPARTMENT OF JUSTICE | OFFICE OF THE INSPECTOR GENERAL

# REPORT OF INVESTIGATION

<b>SUBJECT</b> (b)(6); (b)(7)(C) Special Agent in Charge (retired) (b)(6); (b)(7)(C)		<b>CASE NUMBER</b> 2020-001886
<b>OFFICE CONDUCTING INVESTIGATION</b> Washington Field Office		<b>DOJ COMPONENT</b> Federal Bureau of Investigation
<b>DISTRIBUTION</b> <input checked="" type="checkbox"/> Field Office WFO <input checked="" type="checkbox"/> AIGINV <input checked="" type="checkbox"/> Component FBI <input type="checkbox"/> USA <input type="checkbox"/> Other	<b>STATUS</b> <input type="checkbox"/> OPEN <input type="checkbox"/> OPEN PENDING PROSECUTION <input checked="" type="checkbox"/> CLOSED PREVIOUS REPORT SUBMITTED: <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO Date of Previous Report:	

## SYNOPSIS

The Department of Justice (DOJ) Office of the Inspector General (OIG) initiated this investigation upon the receipt of information from the Federal Bureau of Investigation (FBI), Inspection Division, alleging that (b)(6); (b)(7)(C) a retired Special Agent in Charge (SAC) (b)(6); (b)(7)(C) obtained an FBI HR-218 card by making false statements to (b)(6); (b)(7)(C). Specifically, it was alleged that (b)(6); (b)(7)(C) told (b)(6); (b)(7)(C) he had misplaced his FBI-issued HR-218 card when he, in fact, he had never been issued one by the FBI because he was not qualified to receive one as a result of the FBI suspending his security clearance at the time of his retirement (b)(6); (b)(7)(C). (b)(6); (b)(7)(C) An HR-218 card certifies that the named individual has met the requirements set forth in the Law Enforcement Officers Safety Act (LEOSA) of 2010 and thereby authorizes the individual to carry a concealed firearm as a qualified Separated/Retired Law Enforcement Officer.

Subsequent to the onset of the investigation, the OIG determined (b)(6); (b)(7)(C) may have made a false statement to two OIG Special Agents while being served with an Inspector General (IG) administrative subpoena. (b)(6); (b)(7)(C) stated to the OIG Special Agents that he was unaware that he was not permitted to have an HR-218 card and that its issuance to him (subsequent to his call to (b)(6); (b)(7)(C)) was an error made by FBI personnel.

The OIG investigation substantiated that (b)(6); (b)(7)(C) made two false statements. The first occurred on (b)(6); (b)(7)(C) when (b)(6); (b)(7)(C) informed (b)(6); (b)(7)(C) that he had misplaced his HR-218 card when he, in fact, had never been issued one by the FBI because of his suspended security clearance at the time of his retirement. The second false

DATE	(b)(6); (b)(7)(C)	SIGNATURE	(b)(6); (b)(7)(C)
PREPARED BY SPECIAL AGENT			
DATE		SIGNATURE	Digitally signed by Russell W. Cunningham Date: 2021.03.23 12:53:33 -04'00'
Russell W. Cunningham			
APPROVED BY SPECIAL AGENT IN CHARGE			

statement occurred on (b)(6); (b)(7)(C) when (b)(6); (b)(7)(C) told OIG Special Agents that he was unaware he was not permitted to possess the HR-218 card.

FBI email records reflected that on (b)(6); (b)(7)(C) contacted (b)(6); (b)(7)(C) to request (b)(6); (b)(7)(C) help in obtaining an HR-218 card. (b)(6); (b)(7)(C) responded by email later that same day informing (b)(6); (b)(7)(C) that he was not eligible to receive an HR-218 card because his security clearance had been suspended by the FBI. Separately, another senior FBI official told the OIG that he also personally communicated to (b)(6); (b)(7)(C) that he was ineligible to receive an HR-218 card. (b)(6); (b)(7)(C) the morning after receiving (b)(6); (b)(7)(C) email informing him that he was ineligible to receive an HR-218 card, (b)(6); (b)(7)(C) contacted (b)(6); (b)(7)(C) falsely told her that he had misplaced his HR-218 card, and asked her to send him a new one, which (b)(6); (b)(7)(C) did. A few weeks later, on (b)(6); (b)(7)(C) while two OIG Special Agents were serving (b)(6); (b)(7)(C) with an administrative subpoena seeking production of the HR-218 card that (b)(6); (b)(7)(C) had sent to him, (b)(6); (b)(7)(C) made an unsolicited statement to the OIG Special Agents falsely claiming that he had been unaware that he was not permitted to possess the HR-218 card.

(b)(6); (b)(7)(C) declined the OIG's request for a voluntary interview regarding his alleged false statements; (b)(6); (b)(7)(C) complied with the IG administrative subpoena for documents related to this matter. While the OIG has the authority to compel testimony from current DOJ employees, and to subpoena documentary evidence from current or former DOJ employees, the OIG does not have the authority to compel or subpoena testimony from former Department employees, including those who retire or resign during the course of an OIG investigation.

The U.S. Attorney's Office (b)(6); (b)(7)(C) declined criminal prosecution of (b)(6); (b)(7)(C).

The OIG has completed its investigation and is providing this report to the FBI for its review and action it deems appropriate.

Unless otherwise noted, the OIG applies the preponderance of the evidence standard in determining whether DOJ personnel have committed misconduct. The Merit Systems Protection Board applies this same standard when reviewing a federal agency's decision to take adverse action against an employee based on such misconduct. See 5 U.S.C. § 7701(c)(1)(B); 5 C.F.R. § 1201.56(b)(1)(ii).

## DETAILS OF INVESTIGATION

### Predication

The Department of Justice (DOJ) Office of the Inspector General (OIG) initiated this investigation upon the receipt of information from the Federal Bureau of Investigation (FBI), Inspection Division, alleging that (b)(6); (b)(7)(C)

(b)(6); (b)(7)(C) obtained an FBI HR-218 card by making false statements to (b)(6); (b)(7)(C). Specifically, it was alleged that (b)(6); (b)(7)(C) told (b)(6); (b)(7)(C) he had misplaced his FBI-issued HR-218 card when he, in fact, he had never been issued one by the FBI because he was not qualified to receive one as a result of the FBI suspending his security clearance at the time of his retirement (b)(6); (b)(7)(C).

(b)(6); (b)(7)(C). An HR-218 card certifies that the named individual has met the requirements set forth in the Law Enforcement Officers Safety Act (LEOSA) of 2010 and thereby authorizes the individual to carry a concealed firearm as a qualified Separated/Retired Law Enforcement Officer.

Subsequent to the onset of the investigation, the OIG determined (b)(6); (b)(7)(C) may have made a false statement to two OIG Special Agents while being served with an Inspector General (IG) administrative subpoena. (b)(6); (b)(7)(C) stated to the OIG Special Agents that he was unaware that he was not permitted to have an HR-218 card and that its issuance to him (subsequent to his call to (b)(6); (b)(7)(C)) was an error made by FBI personnel.

### Investigative Process

The OIG's investigative efforts consisted of the following:

Interviews of the following FBI personnel:

- (b)(6); (b)(7)(C)
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Review of the following:

- (b)(6); (b)(7)(C) FBI phone records.
- (b)(6); (b)(7)(C) personal Verizon cellular phone records.

### (b)(6); (b)(7)(C) False Statements to the FBI and the OIG

(b)(6); (b)(7)(C) retired from the FBI as SAC (b)(6); (b)(7)(C). At the time of his retirement, (b)(6); (b)(7)(C) security clearance was suspended (b)(6); (b)(7)(C). The suspended clearance precluded (b)(6); (b)(7)(C) from obtaining an HR-218 card, which certifies that the named individual, "has met the requirements set forth in Public Law 111-272, 18 U.S.C. 926 B-C titled "Law Enforcement Officers Safety Act (LEOSA) of 2010" authorizing him to carry a concealed firearm as a qualified Separated/Retired Law Enforcement Officer."

The information provided to the OIG alleged that on [REDACTED] [REDACTED] obtained an HR-218 card by making a false statement to [REDACTED] [REDACTED] told [REDACTED] he had misplaced his HR-218 card, and [REDACTED] subsequently provided him with a replacement HR-218 because she believed that [REDACTED] had been legitimately provided an HR-218 card upon his retirement. During the course of the subsequent OIG investigation, it was alleged that [REDACTED] falsely claimed to the OIG that he was unaware that he was precluded from possessing an HR-218 card.

Title 18, United States Code, Section 1001, False Statements, states in pertinent part: "Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully- (2) makes any materially false, fictitious, or fraudulent statement or representation."

[REDACTED]

[REDACTED] He said that when an FBI employee or retired employee wished to obtain an HR-218 card, an application was submitted to HRD, which would "then launch a series of name checks to ensure this person was retiring, or was retired, in good standing."

[REDACTED] told the OIG that he recalled communicating with [REDACTED] with whom he had a close working relationship, on an unknown date subsequent to [REDACTED] retirement, during which time [REDACTED] recalled informing [REDACTED] that he "wouldn't be able to issue him a[n] [HR-218] card." [REDACTED] believed he relayed this information to [REDACTED] via email and phone. [REDACTED] told the OIG that at a later, undetermined date, he was informed by [REDACTED]

[REDACTED] that [REDACTED] had received his HR-218 card. [REDACTED] said he subsequently contacted [REDACTED] to inquire how [REDACTED] obtained the HR-218 card. As described below, it was determined that the FBI mistakenly issued an HR-218 card to [REDACTED] after [REDACTED] called [REDACTED] claiming that he had misplaced his HR-281 card.

The OIG reviewed emails provided by [REDACTED] as part of the predication. On [REDACTED] at approximately 1:54 PM, [REDACTED] used the email account, [REDACTED] to email [REDACTED] at [REDACTED] stating the following:

[REDACTED] *Hope all is well, brother. So, I went to join [REDACTED] and they are asking for my retirement card. [REDACTED] Do I get one of those? I mean, I have my retired creds but don't have that little card. Am I precluded from that?*

*Sorry to bother,*

[REDACTED]

On the same day, at approximately 5:58 PM, [REDACTED] replied to the email, stating the following:

[REDACTED]

*Hope you are well. All good here.*

*I'm not sure if the "retirement card" you are referring to is the same as what we sometimes refer to as the 281 [218] /carry card. Unfortunately because SecD did suspend your clearance, that is going to come up on a name check until resolved, and that will preclude us from being able to issue you the 281 [218]/carry card. I'm not sure if this*

*"retirement card" could be something else entirely, but am not familiar with any other card that we issue. If you have any info/intel about a different card, please let me know.*

*Sorry I don't have better news or a better answer.* (b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

According to (b)(6); (b)(7)(C) as part of the standard process for obtaining an HR-218 card, the FBI HRD sends the requesting employee's information to four different components within the FBI as part of a background security check: (b)(6); (b)(7)(C)

(b)(6); (b)(7)(C) If the security check is returned with no derogatory information, the HR-218 card is issued to the requestor. However, if the security check is returned with derogatory information, a denial letter is drafted and sent to the (b)(6); (b)(7)(C) HRD who signs the letter. (b)(6); (b)(7)(C) further stated that if (b)(6); (b)(7)(C) had gone through regular channels to request an HR-218 card (rather than calling (b)(6); (b)(7)(C) directly), (b)(6); (b)(7)(C) would have sent the request through (b)(6); (b)(7)(C) since he was assigned to (b)(6); (b)(7)(C) prior to his retirement.

(b)(6); (b)(7)(C) informed the OIG that on (b)(6); (b)(7)(C) she received a call from (b)(6); (b)(7)(C) who indicated he had attempted to contact (b)(6); (b)(7)(C) but she was unavailable. According to (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) stated he wanted to "double check a couple things," further stating he had his retired credentials but could not find his "LEO card." (b)(6); (b)(7)(C) elaborated that, in her experience, the HR-218 was called "three different things: A 'weapons card,' a 'LEO card,' which is a Law Enforcement Officer's card, and [an] HR-218 card." (b)(6); (b)(7)(C) said that, as a result of (b)(6); (b)(7)(C) comments, she was under the impression that (b)(6); (b)(7)(C) had unsuccessfully attempted to reach out to (b)(6); (b)(7)(C) so she proceeded to assist him. (b)(6); (b)(7)(C) told (b)(6); (b)(7)(C) she could reprint a new card, so (b)(6); (b)(7)(C) provided his information, including a mailing address. (b)(6); (b)(7)(C) said she then printed what she believed was, based on (b)(6); (b)(7)(C) representation, a replacement HR-218 card and sent it to him via FedEx. (b)(6); (b)(7)(C) additionally stated that no one from the FBI directed her to assist (b)(6); (b)(7)(C) in this matter.

An OIG review of (b)(6); (b)(7)(C) FBI office phone records for phone number, (b)(6); (b)(7)(C) reflected the following calls with (b)(6); (b)(7)(C) personal Verizon cellular phone, (b)(6); (b)(7)(C) on (b)(6); (b)(7)(C)

- Incoming call from (b)(6); (b)(7)(C) personal cellular phone at approximately 9:53 AM.
- Outgoing call to (b)(6); (b)(7)(C) personal cellular phone at approximately 10:57 AM.
- Incoming call from (b)(6); (b)(7)(C) personal cellular phone at approximately 11:08 AM.

(b)(6); (b)(7)(C) told the OIG that she only recalled having one phone conversation with (b)(6); (b)(7)(C) on (b)(6); (b)(7)(C). However, she recalled that she processed (b)(6); (b)(7)(C) HR-218 card immediately after receiving his call and it was possible she called him back to notify him the HR-218 card was being sent to him via FedEx; (b)(6); (b)(7)(C) said she made it a common practice to notify recipients of credentials and HR-218 cards after she sent them out. When asked about the third call at 11:08 AM, (b)(6); (b)(7)(C) said she could not recall the phone call.

A review of Verizon phone records for (b)(6); (b)(7)(C) confirmed that (b)(6); (b)(7)(C) was the subscriber on record. The records also confirmed the calls to and from (b)(6); (b)(7)(C) FBI office phone. The second phone call, at 10:57 AM, was recorded as (b)(6); (b)(7)(C)

The OIG reviewed FBI emails provided as part of the predication. On (b)(6); (b)(7)(C) at approximately 9:32 AM, (b)(6); (b)(7)(C) sent an email to (b)(6); (b)(7)(C) after (b)(6); (b)(7)(C) inquired about the issuance of a "LEO Card" to (b)(6); (b)(7)(C)

"I believe it was on [REDACTED] he had called. He said something to the [effect that] he could not find his LEO card. I informed him on the phone that we do a one time replacement and I had printed out the LEO card. I update PremSys with my notes that I had sent a one time replacement LEO card to him and initialed my notes. When [REDACTED] asked me to look up the name this morning I recognized the name [REDACTED] and noticed my notes were not saved in the notes section.

*I heard misplaced and just got his LEO card printed out for him..."*

[REDACTED] told the OIG, during a voluntary interview under oath, that she never received a request for an HR-218 card from [REDACTED] she recalled only issuing him retirement credentials upon his retirement. After it was discovered that [REDACTED] received an HR-218 card, she was instructed by [REDACTED] to conduct a "name check," meaning a background security check, to determine if he would have legitimately been able to obtain an HR-218 card. The checks determined [REDACTED] would not have been able to obtain the HR-218 card.

[REDACTED] told the OIG, during a voluntary interview under oath, [REDACTED] when [REDACTED] retired in [REDACTED] as the Special Agent in Charge (SAC) [REDACTED] said they had a professional relationship and did not socialize outside of the workplace, but [REDACTED] contacted [REDACTED] periodically to check on his welfare after [REDACTED] retirement. According to [REDACTED] on an undetermined date after [REDACTED] retirement in [REDACTED] during a phone call, [REDACTED] relayed to [REDACTED] that he was upset about [REDACTED] [REDACTED] also discussed during the call his desire to obtain an HR-218 card. [REDACTED] said that, after his call with [REDACTED] he contacted [REDACTED] on [REDACTED] behalf. [REDACTED] told the OIG that [REDACTED] informed him that although [REDACTED] was willing to again review [REDACTED] eligibility to receive an HR-218 card, [REDACTED] had already conducted such an inquiry in response to a call [REDACTED] had made to [REDACTED] [REDACTED] told [REDACTED] that, as a result of that inquiry, he concluded that, due to [REDACTED] security clearance suspension, [REDACTED] was ineligible to receive an HR-218 card. [REDACTED] further told [REDACTED] that "he had already communicated with [REDACTED] about this... Directly."

[REDACTED] also told the OIG that subsequent to his call with [REDACTED] potentially on the same day, [REDACTED] called [REDACTED] to inform him that he had spoken to [REDACTED] on [REDACTED] behalf. During this phone call, [REDACTED] said that [REDACTED] informed [REDACTED] that he had, in fact, received the HR-218 card via FedEx. According to [REDACTED] [REDACTED] also mentioned that he did not want to tell [REDACTED] about it "because he didn't want somebody to take it away." [REDACTED] said that, following this call with [REDACTED] he called [REDACTED] to tell him to disregard their previous conversation because [REDACTED] obtained an HR-218 card. [REDACTED] told the OIG that he believed [REDACTED] put [REDACTED] in contact with the "woman... responsible for the 218 card," presumably [REDACTED] after [REDACTED] reached out to [REDACTED] for help.

[REDACTED] advised the OIG, during a voluntary interview under oath, [REDACTED] [REDACTED] said he communicated with [REDACTED] sporadically and they had a friendly relationship. [REDACTED] stated that, on an undetermined date, [REDACTED] called [REDACTED] to inquire how he obtained his HR-218 card. [REDACTED] informed [REDACTED] that he filled out the paperwork at [REDACTED] where he received his "... retired creds and all that stuff within several weeks before [REDACTED] He further said to [REDACTED] "... [REDACTED] I don't even know if you qualify [for the HR-218 card] ... But call this person, her name is [REDACTED] Shortly after this conversation, on an undetermined date, [REDACTED] relayed to [REDACTED] that he had obtained the HR-218 card.

On or around (b)(6); (b)(7)(C) in connection with this investigation, the OIG called (b)(6); (b)(7)(C) to arrange service of an Inspector General (IG) administrative subpoena for documents. The OIG advised (b)(6); (b)(7)(C) that the IG subpoena required him to return the HR-218 card that was in his possession. (b)(6); (b)(7)(C) agreed to service of the subpoena.

On (b)(6); (b)(7)(C) two OIG Special Agents met with (b)(6); (b)(7)(C) and served him with IG Subpoena No. 2941. While being served with the subpoena, (b)(6); (b)(7)(C) made the unsolicited statement to the OIG Special Agents that he was unaware that he was not permitted to possess the HR-218 card and that its issuance to him was an error made by FBI personnel.

The OIG administrative subpoena to (b)(6); (b)(7)(C) required that he produce the following records:

*Any retired Law Enforcement Officer cards (LEO cards), also known as HR-218s, issued to you by the Federal Bureau of Investigation (FBI), including but not limited to any original and/or any electronic, paper, or other copies of any such LEO cards/HR-218s.*

*Any documents or records (including but not limited to any emails) relating to any LEO cards/HR-218s issued to you by the FBI, including but not limited to any original and/or any electronic, paper, or other copies of any such documents or records (including but not limited to any emails).*

(b)(6); (b)(7)(C) complied with the IG subpoena, providing the OIG with a folder containing the HR-218 card that (b)(6); (b)(7)(C) sent to him and associated documentation. (b)(6); (b)(7)(C) declined the OIG's request for an interview. While the OIG has the authority to compel testimony from current DOJ employees, and to subpoena current or former employees for records, the OIG does not have the authority to compel or subpoena testimony from former DOJ employees, including those who retire or resign during the course of an OIG investigation.

### OIG's Conclusion

The OIG concluded that (b)(6); (b)(7)(C) violated Title 18, United States Code, Section 1001, False Statements, by making a false statement to (b)(6); (b)(7)(C) when he told (b)(6); (b)(7)(C) on (b)(6); (b)(7)(C) that he had misplaced his HR-218 card. The OIG determined that (b)(6); (b)(7)(C) a recently retired senior FBI official, knowingly and willfully made this false statement to (b)(6); (b)(7)(C) with the sole purpose of obtaining the HR-218 card from the FBI, knowing that he was ineligible to receive one. Indeed, on (b)(6); (b)(7)(C) the day before his call to (b)(6); (b)(7)(C) during which he falsely claimed that he had misplaced his HR-218 card, (b)(6); (b)(7)(C) had contacted (b)(6); (b)(7)(C) by email asking how he could obtain an HR-218 card and was explicitly told that same day in a response email from (b)(6); (b)(7)(C) that he was not entitled to receive a HR-218 card because the FBI had suspended his security clearance. Despite being told this information by (b)(6); (b)(7)(C) the following morning (b)(6); (b)(7)(C) called (b)(6); (b)(7)(C) and made the false statement to (b)(6); (b)(7)(C) about misplacing his HR-218 card in order to induce (b)(6); (b)(7)(C) to send a card.

Although (b)(6); (b)(7)(C) informed (b)(6); (b)(7)(C) that he was seeking a "replacement" "LEO card" during their phone call, (b)(6); (b)(7)(C) explained to the OIG that she knew he was referring to an HR-218 card, because in her experience, the HR-218 card was also commonly referred to as a "LEO card" and "weapons card." The OIG noted that after (b)(6); (b)(7)(C) shipped an HR-218 card to (b)(6); (b)(7)(C) he did not contact her again, because, the OIG concluded, (b)(6); (b)(7)(C) obtained exactly what he wanted, namely an HR-218 card. (b)(6); (b)(7)(C) subsequently informed (b)(6); (b)(7)(C) that he had received the HR-218 card but was concerned "because he didn't want somebody to take it away," further highlighting both that (b)(6); (b)(7)(C) intention was to obtain the HR-218 card, and that he knew he was not entitled to have it.

The OIG also concluded that (b)(6); (b)(7)(C) made a false statement to two OIG Special Agents on (b)(6); (b)(7)(C) when he told the OIG that he was unaware that he was not permitted to possess the HR-218 card. The OIG

determined that at the time (b)(6); (b)(7)(C) made that statement to the OIG, (b)(6); (b)(7)(C) had already: (a) been informed by (b)(6); (b)(7)(C) in writing that he was ineligible to receive the HR-218, (b) made a false statement to (b)(6); (b)(7)(C) to obtain the "replacement" HR-218 card; and (c) told (b)(6); (b)(7)(C) that he "didn't want somebody to take it [the HR-218 card] away." Further, at the time (b)(6); (b)(7)(C) made his false statement to the OIG, he was being served with an IG subpoena requiring the production of the very document about which he made his false statement and which he produced to the OIG in response to the subpoena.

In reaching these conclusions, the OIG credited the testimony of (b)(6); (b)(7)(C) as credible and unbiased, and which was corroborated by the documentary evidence.