

DEPARTMENT OF JUSTICE | OFFICE OF THE INSPECTOR GENERAL

REPORT OF INVESTIGATION

SUBJECT (b)(6); (b)(7)(C) Assistant U.S. Attorney (b)(6); (b)(7)(C)		CASE NUMBER 2022-003264
OFFICE CONDUCTING INVESTIGATION Miami Field Office		DOJ COMPONENT Executive Office for United States Attorneys
DISTRIBUTION		STATUS
<input checked="" type="checkbox"/> Field Office MFO <input checked="" type="checkbox"/> AIGINV <input checked="" type="checkbox"/> Component EOUSA <input type="checkbox"/> USA <input checked="" type="checkbox"/> Other OPR		<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 Executive Office for United States Attorneys (EOUSA) alleging that on (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) Assistant U.S. Attorney (AUSA) (b)(6); (b)(7)(C) misused his official position and displayed conduct prejudicial to the government when the (b)(6); (b)(7)(C) Police Department (b)(6); (b)(7)(C) stopped the vehicle he was driving for disregarding a traffic signal. (b)(6); (b)(7)(C) officers subsequently found that (b)(6); (b)(7)(C) driver's license had been suspended because he did not have valid automobile insurance, and they issued him two citations. Both citations are still pending resolution.

After this investigation began, the OIG found indications that (b)(6); (b)(7)(C) had been driving his personal vehicle while under the influence of alcohol.

The OIG investigation substantiated the allegations that on (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) misused his official position when he mentioned his job title to the (b)(6); (b)(7)(C) officers who had stopped his vehicle in an attempt to influence them. After the police officers determined (b)(6); (b)(7)(C) was driving on a suspended license and told him he could no longer drive or move his vehicle, (b)(6); (b)(7)(C) displayed conduct prejudicial to the government when he argued with the police officers, failed to follow lawful orders, and used profane language towards the police officers. Subsequently, (b)(6); (b)(7)(C) was placed in handcuffs and secured in the back seat of a police vehicle where he then leaned back in the seat and kicked the door several times.

DATE	August 26, 2022	SIGNATURE	(b)(6); (b)(7)(C)
PREPARED BY SENIOR SPECIAL AGENT	(b)(6); (b)(7)(C)		
DATE	August 26, 2022	SIGNATURE	Digitally signed by JAMES BOYERSMITH Date: 2022.08.26 13:26:52 -04'00'
APPROVED BY SPECIAL AGENT IN CHARGE	James F. Boyersmith		

The OIG reviewed video from the body cameras of the two responding (b)(6); (b)(7)(C) police officers and from the dash camera of the police vehicle, and observed that (b)(6); (b)(7)(C) appeared to be under the influence of alcohol, stated that he was an AUSA on several occasions, cursed at the police officers, made statements claiming that there would be repercussions for the police officers' activity, and said he was going to contact a municipal judge regarding the traffic stop. The OIG observed that after (b)(6); (b)(7)(C) was handcuffed and placed in the back of a patrol vehicle, he kicked the door of the patrol vehicle multiple times before the sergeant opened the door and engaged in conversation with (b)(6); (b)(7)(C). Lastly, the OIG observed that (b)(6); (b)(7)(C) appeared to be under the influence of alcohol during the time he engaged with the police officers.

The OIG interviewed (b)(6); (b)(7)(C). The police officers told the OIG that (b)(6); (b)(7)(C) told them during the traffic stop that he was an attorney for the government. The officers said that they believed (b)(6); (b)(7)(C) conduct was inappropriate and that he had misused his position in attempting to influence their decision making that evening. (b)(6); (b)(7)(C) and (b)(6); (b)(7)(C) both observed (b)(6); (b)(7)(C) become enraged and curse at them, which caused them to place (b)(6); (b)(7)(C) in handcuffs and detain him in the patrol vehicle. (b)(6); (b)(7)(C) and (b)(6); (b)(7)(C) both stated that (b)(6); (b)(7)(C) banged against the vehicle door. Lastly, all three of these witnesses stated that they believed (b)(6); (b)(7)(C) was under the influence of alcohol when he was driving his vehicle.

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

Two witnesses who attended the (b)(6); (b)(7)(C) party on (b)(6); (b)(7)(C) told the OIG they observed (b)(6); (b)(7)(C) drinking but stated they did not know the number of alcoholic beverages he consumed during the party. One of the two witnesses stated he briefly joined (b)(6); (b)(7)(C) and the woman (b)(6); (b)(7)(C) was dating at the bar inside the (b)(6); (b)(7)(C) where he witnessed (b)(6); (b)(7)(C) consume additional alcoholic beverages.

The OIG interviewed (b)(6); (b)(7)(C). At the outset of that interview, the OIG advised (b)(6); (b)(7)(C) that it was investigating this case as an administrative matter and promised not to share (b)(6); (b)(7)(C) statements with local law enforcement authorities. (b)(6); (b)(7)(C) admitted to the OIG that his conduct during the traffic stop was unbecoming of an AUSA and that he misused his position when he mentioned his title to the (b)(6); (b)(7)(C) officers several times during the traffic stop. (b)(6); (b)(7)(C) stated he was sorry for his conduct but attributed his actions to his consumption of alcohol. (b)(6); (b)(7)(C) admitted he was under the influence of alcohol when he was driving. He stated that over the course of the evening he had consumed several Michelob Ultra beers and an unspecified quantity of wine. (b)(6); (b)(7)(C) further stated that the alcohol he had consumed was still affecting him when he engaged with the (b)(6); (b)(7)(C) officers.

The (b)(6); (b)(7)(C) did not pursue local charges against (b)(6); (b)(7)(C) for driving while under the influence. While the OIG found that (b)(6); (b)(7)(C) violated the (b)(6); (b)(7)(C) criminal statute prohibiting driving under the influence of alcohol, the OIG did not present the information for local prosecution because the (b)(6); (b)(7)(C) officers did not conduct a sobriety check.

The OIG has completed its investigation and is providing this report to the EOUSA and the DOJ's Office of Professional Responsibility for appropriate action.

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 Executive Office for United States Attorneys (EOUSA) alleging that on [REDACTED] Assistant U.S. Attorney (AUSA) [REDACTED] misused his official position and displayed conduct prejudicial to the government when the [REDACTED] Police Department [REDACTED] stopped the vehicle he was driving for disregarding a traffic signal. [REDACTED] officers subsequently found that [REDACTED] driver's license had been suspended because he did not have valid automobile insurance, and they issued him two citations. He planned to contest the citation pertaining to the automobile insurance.

Subsequent to the onset of the investigation, the OIG found indications that [REDACTED] was driving his personal vehicle while driving under the influence of alcohol.

Investigative Process

The OIG's investigative efforts consisted of the following:

Interviews of the following [REDACTED] personnel:

- [REDACTED]
- [REDACTED]
- [REDACTED]

Interviews of the following [REDACTED] personnel:

- [REDACTED]
- [REDACTED]
- [REDACTED]

Interview of the following USAO personnel:

- [REDACTED] AUSA

Review of the following:

- [REDACTED] body and dash camera videos
- [REDACTED]

Background

[REDACTED] officers stopped [REDACTED] vehicle for running a red light. Subsequently, they determined that [REDACTED] driver's license had been suspended because he did not have valid automobile insurance. The [REDACTED] officers told [REDACTED] he could no longer drive or move his vehicle. [REDACTED] argued with the police officers, failed to follow lawful orders, and used profane language towards them. Subsequently, [REDACTED] was placed in handcuffs and secured in the back seat of a police vehicle where he then leaned back in the seat and kicked the door several times.

[REDACTED]

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

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

Misuse of Position and Conduct Prejudicial to the Government

The information provided to the OIG alleged that (b)(6); (b)(7)(C) misused his position when he repeatedly told police officers conducting a traffic stop of his vehicle that he was an AUSA.

5 C.F.R. Section 2635.702(a), Use of public office for private gain, states in part that:

An employee shall not use or permit the use of his Government position or title or any authority associated with his public office in a manner that is intended to coerce or induce another person . . . to provide any benefit, financial, or otherwise, to himself or to friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity.

5 C.F.R. Section 735.203, Conduct prejudicial to the Government, states: "An employee shall not engage in criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct prejudicial to the Government."

The OIG reviewed the body-worn camera video from (b)(6); (b)(7)(C) and (b)(6); (b)(7)(C) and observed that (b)(6); (b)(7)(C) made the following statements to the police officers during the traffic stop:

- When asked where he was coming from, (b)(6); (b)(7)(C) replied he was coming from a bar association Christmas party and that he was an AUSA.
- (b)(6); (b)(7)(C) stated he was the senior AUSA in the town.
- (b)(6); (b)(7)(C) informed the police officers they were about to get into trouble for what they were doing.
- (b)(6); (b)(7)(C) claimed the police officers were not cutting him any slack.
- (b)(6); (b)(7)(C) asked if they would really arrest an AUSA and challenged them to arrest him.
- (b)(6); (b)(7)(C) stated the officers have all the power but later they will not.
- (b)(6); (b)(7)(C) said "fuck you" to the officers, at which time he was placed in handcuffs.
- (b)(6); (b)(7)(C) told the police officers to call the chief of police so the chief could tell them who he is.
- (b)(6); (b)(7)(C) stated he was the most senior law enforcement (officer or official) in the eight-county area.

(b)(6); (b)(7)(C) and (b)(6); (b)(7)(C) told the OIG that they believed (b)(6); (b)(7)(C) used his position to attempt to influence their decisions that evening. (b)(6); (b)(7)(C) recalled he told (b)(6); (b)(7)(C) that (b)(6); (b)(7)(C) did not have the right to throw his weight around during the traffic stop. According to (b)(6); (b)(7)(C), (b)(6); (b)(7)(C) said he was going to contact (b)(6); (b)(7)(C) after the traffic stop concluded.

The OIG interviewed (b)(6); (b)(7)(C). At the outset of that interview, the OIG advised (b)(6); (b)(7)(C) that it was investigating this case as an administrative matter and promised not to share (b)(6); (b)(7)(C) statements with local law enforcement authorities. (b)(6); (b)(7)(C) told the OIG that he acted inappropriately when he used his title in an attempt to influence the officers' decisions, and that this constituted a misuse of position and conduct unbecoming of an AUSA. (b)(6); (b)(7)(C) told the OIG that due to his consumption of alcohol he could not recall everything that happened when the (b)(6); (b)(7)(C) pulled him over and detained him. (b)(6); (b)(7)(C) stated he did not read the incident report and did not watch the body-worn

camera videos of his encounter with the officers. During the interview, the OIG read aloud some of the statements (b)(6); (b)(7)(C) had made during the traffic stop. (b)(6); (b)(7)(C) told the OIG that he could not recall the statements, but he did not deny that he had made them. (b)(6); (b)(7)(C) told the OIG he was sorry for his conduct that evening, and that his attorney had contacted the police department and apologized on his behalf.

OIG's Conclusion

The OIG investigation concluded that (b)(6); (b)(7)(C) engaged in misconduct and violated 5 C.F.R. Section 2635.702(a) and 5 C.F.R. Section 735.203, when he attempted to use his position to influence the actions of the police officers, and when he engaged in conduct that was prejudicial to the government by disobeying lawful orders, saying "Fuck you" to the police officers, and kicking the door of the patrol vehicle.

Driving While Under the Influence of Alcohol

During the investigation, the OIG found indications that (b)(6); (b)(7)(C) was under the influence of alcohol when he drove his vehicle after leaving the (b)(6); (b)(7)(C) Christmas party on (b)(6); (b)(7)(C)

(b)(6); (b)(7)(C) states in part:

- (A) It is unlawful for a person to drive a motor vehicle in this State while under the influence of alcohol to the extent that the person's faculties to drive a motor vehicle are materially and appreciably impaired, under the influence of any other drug or a combination of other drugs or substances which cause impairment to the extent that the person's faculties to drive a motor vehicle are materially and appreciably impaired, or under the combined influence of alcohol and any other drug or drug substances which cause impairment to the extent that the person's faculties to drive a motor vehicle are materially and appreciably impaired. A person who violates the provisions of this section is guilty of the offense of driving under the influence and, upon conviction, entry of a plea of guilty or of nolo contendere, or forfeiture of bail must be punished as follows:...

The OIG reviewed the body-worn camera video from (b)(6); (b)(7)(C) and (b)(6); (b)(7)(C) and the dash camera video from (b)(6); (b)(7)(C) vehicle and observed that (b)(6); (b)(7)(C) appeared to be under the influence of alcohol in that he had difficulty informing the officers of his destination and by his general mannerisms, including speech that was slow, slightly slurred, and choppy. This was captured on the body-worn cameras of the police officers involved. The OIG also observed in the dash camera video that the (b)(6); (b)(7)(C) vehicle had to follow (b)(6); (b)(7)(C) vehicle for quite a distance before (b)(6); (b)(7)(C) pulled over.

(b)(6); (b)(7)(C) and (b)(6); (b)(7)(C) both told the OIG that, based on their training and experience, (b)(6); (b)(7)(C) appeared to be under the influence of alcohol while he was driving his personal vehicle and while engaged in conversation with them. (b)(6); (b)(7)(C) told the OIG that as soon as he opened the patrol vehicle's door to speak with (b)(6); (b)(7)(C) after (b)(6); (b)(7)(C) had banged on the door, he smelled alcohol coming from (b)(6); (b)(7)(C). (b)(6); (b)(7)(C) told the OIG that based on his experience and training, he believed (b)(6); (b)(7)(C) was under the influence of alcohol.

(b)(6); (b)(7)(C) told the OIG that she was at the (b)(6); (b)(7)(C) Christmas party and saw (b)(6); (b)(7)(C) consume alcohol at the party, but she was unable to state how much he consumed.

(b)(6); (b)(7)(C) told the OIG that he attended the (b)(6); (b)(7)(C) Christmas party and saw (b)(6); (b)(7)(C) consume alcohol but was unable to state how much he

consumed. (b)(6); (b)(7)(C) stated that after the party, he accompanied (b)(6); (b)(7)(C) and the woman (b)(6); (b)(7)(C) was dating to the (b)(6); (b)(7)(C) restaurant where he saw (b)(6); (b)(7)(C) consume more alcohol. (b)(6); (b)(7)(C) stated that he left before (b)(6); (b)(7)(C) so he did not observe how much alcohol (b)(6); (b)(7)(C) consumed at the restaurant.

(b)(6); (b)(7)(C) told the OIG that he was under the influence of alcohol when he drove his vehicle home after the party and that he should have called an Uber. He stated that over the course of the evening he had consumed several Michelob Ultra beers and an unspecified quantity of wine. Additionally, (b)(6); (b)(7)(C) admitted to the OIG that he could not recall some of his conduct during the traffic stop due to his consumption of alcohol.

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

OIG Conclusion

The OIG investigation concluded that (b)(6); (b)(7)(C) violated (b)(6); (b)(7)(C) when he drove his personal vehicle while under the influence of alcohol. (b)(6); (b)(7)(C) admitted that he was under the influence of alcohol when he drove his vehicle on the evening of (b)(6); (b)(7)(C) and the OIG saw evidence of his material and appreciable impairment on the footage from the body cameras worn by the officers who stopped him.