

# REPORT OF INVESTIGATION

<b>SUBJECT</b> [REDACTED] Assistant United States Attorney [REDACTED]		<b>CASE NUMBER</b> [REDACTED]	
<b>OFFICE CONDUCTING INVESTIGATION</b> Houston Area Office		<b>DOJ COMPONENT</b> Executive Office for United States Attorneys	
<b>DISTRIBUTION</b>		<b>STATUS</b>	
<input checked="" type="checkbox"/> Field Office    HAO <input checked="" type="checkbox"/> AIGINV <input checked="" type="checkbox"/> Component    EOUSA <input type="checkbox"/> USA <input type="checkbox"/> Other		<input type="checkbox"/> OPEN <input type="checkbox"/> OPEN PENDING PROSECUTION <input checked="" type="checkbox"/> CLOSED  <b>PREVIOUS REPORT SUBMITTED:</b> <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO  Date of Previous Report:	

## SYNOPSIS

The Department of Justice Office of the Inspector General (OIG) initiated this investigation on [REDACTED], upon the receipt of information from the Executive Office for United States Attorneys (EOUSA) alleging that Assistant U.S. Attorney (AUSA) [REDACTED], misused his position when he provided assistance to the target of a federal prosecution in a matter from which [REDACTED] had been formally recused. Specifically, it was alleged that [REDACTED] assisted [REDACTED], with gathering documents in response to a grand jury subpoena sought by prosecutors from [REDACTED] which prosecuted the case after [REDACTED] was recused. [REDACTED]

[REDACTED]. The OIG conducted this investigation jointly with the Federal Bureau of Investigation [REDACTED]

During this investigation, the FBI provided the OIG additional information from its interviews of [REDACTED] which were conducted during its investigation of [REDACTED] the target of the [REDACTED] criminal investigation and prosecution. Therein, [REDACTED] admitted to:

- assisting with the production of hundreds of documents that were produced in response to a grand jury subpoena issued by the [REDACTED] AUSA before [REDACTED] was indicted;

DATE	August 24, 2020	[REDACTED]
PREPARED BY SENIOR SPECIAL AGENT	[REDACTED]	
DATE	August 24, 2020	SIGNATURE
ROBERT A. BOURBON	[REDACTED]	
APPROVED BY SPECIAL AGENT IN CHARGE	[REDACTED]	 Digitally signed by <b>ROBERT BOURBON</b> Date: 2020.08.24

- contacting Chief [REDACTED] Office of the Federal Public Defender, [REDACTED], and asking him to provide [REDACTED] with a strong defense attorney; and
- having discussions with [REDACTED] and his attorney, [REDACTED], about the investigation.

The OIG investigation substantiated the allegations that when [REDACTED] assisted in [REDACTED] defense he (a) violated 5 C.F.R. § 3801.106 by providing personal services involving a criminal matter and an investigation in which the Department of Justice was a party, (b) violated multiple provisions of the Department's "Outside Employment and Activities" policy by participating in a matter in which his office had a material conflict; (c) attempted to use his public position for the private gain of a friend; and (d) violated a recusal order that barred [REDACTED] from participating in a case brought against [REDACTED] by [REDACTED]. [REDACTED]

[REDACTED]

[REDACTED]

During [REDACTED] respective FBI and OIG interviews, he admitted advising [REDACTED] on [REDACTED] criminal case, trying to obtain legal representation for [REDACTED], and assisting in the production of documents responsive to the grand jury subpoena for [REDACTED] criminal case. [REDACTED] said he helped the [REDACTED] as a favor because he considered them close friends.

[REDACTED]

The U.S. Attorney's Office for [REDACTED] declined prosecution of [REDACTED] [REDACTED]

The OIG has completed its investigation and is providing this report to EOUSA and 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).

## ADDITIONAL SUBJECTS



## DETAILS OF INVESTIGATION

### Predication

The Department of Justice Office of the Inspector General (OIG) initiated this investigation on [REDACTED], upon the receipt of information from the Executive Office for United States Attorneys (EOUSA) alleging that Assistant U.S. Attorney (AUSA) [REDACTED], misused his position when he provided assistance to the target of a federal prosecution in a matter from which [REDACTED] had been formally recused. Specifically, it was alleged that [REDACTED] assisted [REDACTED] [REDACTED], with gathering documents in response to a grand jury subpoena sought by prosecutors from the [REDACTED] which prosecuted the case after [REDACTED] was recused. [REDACTED]

[REDACTED]. The OIG conducted this investigation jointly with the Federal Bureau of Investigation [REDACTED].

### Investigative Process

The OIG's investigative efforts consisted of interviews and reviews of [REDACTED] e-mail, text messages, electronic files on his government computer, and call information on his government cell phone.

Interviews of the following EOUSA personnel:

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

Review of the following government-issued devices:

- [REDACTED] EOUSA cell phone
- [REDACTED] EOUSA computer

### Background

[REDACTED]

## ██████████ Misuse of Position and Related Misconduct

The information provided to the OIG alleged that ██████████ misused his position as an ██████████ AUSA by assisting ██████████ in producing documents in response to a grand jury subpoena, seeking a strong defense attorney for ██████████, and discussing the investigation with ██████████ and his attorney, despite the ██████████ being recused from the matter.

DOJ's policy on "Outside Employment and Activities" cites two federal criminal statutes that place significant restrictions on any federal employee seeking to assist someone in a criminal case brought by the United States.

Citing to 18 U.S.C. § 203, the policy states, "An employee may not receive compensation for the representation of anyone before an agency or court of the Federal Government on a matter in which the United States is a party or has a substantial interest. This prohibition applies whether the employee renders the representation himself or shares in compensation from someone else's representation."

Citing to 18 U.S.C. § 205, the policy further states, "An employee also may not represent anyone before an agency or court of the Federal Government, with or without compensation, on a matter in which the United States is a party or has a substantial interest."

5 C.F.R. § 3801.106 defines outside employment as "any form of employment, business relationship or activity, involving the provision of personal services whether or not for compensation, other than in the discharge of official duties. It includes, but is not limited to, services as a lawyer, officer, director, trustee, employee, agent, consultant, contractor, or general partner."

Section 3801.106(b)(1) specifically prohibits the following forms of outside employment:

- (i) The practice of law, unless it is uncompensated and in the nature of community service, or unless it is on behalf of himself, his parents, spouse, or children;
- (ii) Any criminal or habeas corpus matter, be it Federal, State, or local; or

- (iii) Litigation, investigations, grants or other matters in which the Department of Justice is or represents a party, witness, litigant, investigator or grant-maker.

In order to engage in outside employment, whether paid or unpaid, DOJ employees must obtain prior written approval before engaging in any outside employment that involves a subject matter that relates to the responsibilities of their components. *Id.*, § 3801.106(c)(1)(ii).

Separate provisions expressly prohibit outside activities that create or appear to create a conflict of interest with an employee's official duties. Such a conflict exists when the outside activity would: (1) require the recusal of the employee from significant aspects of his or her official duties (5 C.F.R. § 2635.802(b)); (2) create an appearance that the employee's official duties were performed in a biased or less than impartial manner (5 C.F.R. § 2635.502); or (3) create an appearance of official sanction or endorsement (5 C.F.R. § 2635.702(b)).

Specifically, 5 C.F.R. § 2635.702 (Use of public office for private gain) states, "An employee shall not use his public office for his own private gain, . . . or for the private gain of friends, relatives . . ." and 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 could reasonably be construed to imply that his agency or the Government sanctions or endorses his personal activities or those of another."

Under Justice Manual § 3-1.140, employees of a U.S. Attorney's Office are bound to honor a decision by EOUSA determining that their district be recused from a specific case, if EOUSA determines that a criminal or civil matter results in "an actual or apparent conflict of interest."

In his voluntary OIG interview, [REDACTED] said that he had known the [REDACTED] for many years, [REDACTED] said he considers them close personal friends.

[REDACTED] stated that [REDACTED] complained to him [REDACTED] [REDACTED] advised [REDACTED] to file a complaint against [REDACTED] with the [REDACTED]. [REDACTED] said that he learned that later, an audit was conducted [REDACTED]. [REDACTED] said that [REDACTED] reassured him that he was not doing anything wrong. However, [REDACTED] said the audit prompted the FBI investigation that targeted [REDACTED].

[REDACTED] stated that following the audit, [REDACTED] received a federal grand jury subpoena calling from the production of numerous documents for the [REDACTED]. [REDACTED] said he never saw the subpoena but acknowledged helping [REDACTED] with the production of the subpoenaed documents. [REDACTED] said that [REDACTED] was frantic that he could not get all the documents together by the grand jury due date. At the time, [REDACTED] suspected [REDACTED] was the subject of the investigation based on his reading of the [REDACTED] report, despite assurances from [REDACTED] that [REDACTED] was the target of the investigation. [REDACTED] said that on two occasions, he and [REDACTED] helped the [REDACTED] copy the documents requested and organize them for production. [REDACTED] said all the copying was done at [REDACTED] office [REDACTED] and none was done during official time. [REDACTED].

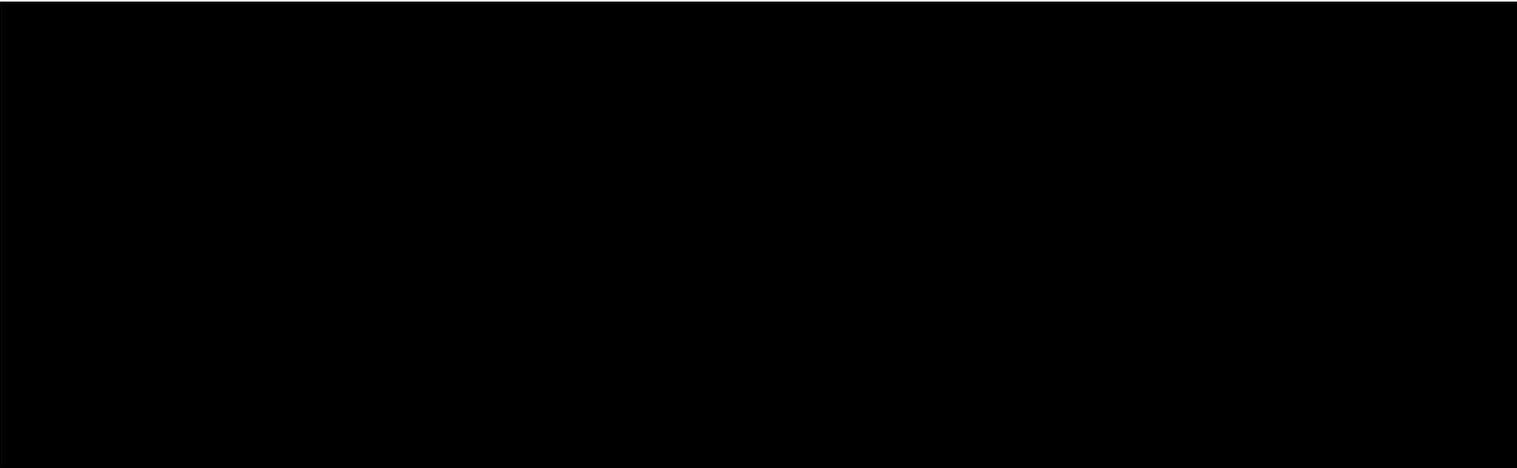
█████ admitted that at the time he was assisting █████ with the case he was aware that █████ case had been recused from his office █████ to the █████ USAO. █████ said █████ advised him of the recusal during a conversation about the production of grand jury documents.

█████ admitted that when he realized █████ needed an attorney, he discussed legal representation of █████ with █████, Chief of the █████ Office of the Public Defender. He asked █████ to assign █████ one of his better defense attorneys. At the time this call was made, █████ was aware that █████ was an █████ AUSA as they had been friends for years. █████ said that █████ told him he could not appoint an attorney for █████ pre-indictment.

When the OIG asked █████ if his efforts for █████ violated EOUSA standards of conduct, including the prohibition against practicing law without written approval, █████ responded that he was not practicing law, but instead only giving █████ advice.

█████ denied violating the EOUSA standards of conduct regarding impartiality in the performance of official duties. █████ said he was not a participant in the investigation or prosecution.

█████ also said he did not violate the "misuse of position" standards. █████ said he only advised █████ that he needed a lawyer and said he never discussed a defense strategy with him. █████ did acknowledge meeting with █████ defense attorney, but only to discuss the audit report, and not █████ defense. █████ admitted using his DOJ computer and official email account to send an email to █████, discussing the case against █████



█████ denied using any DOJ resources to help █████ with the exception of sending an email from his DOJ account to █████ lawyer, █████.

### OIG's Conclusion

As a █████ AUSA, █████ would have known that a federal grand jury subpoena can only be issued in conjunction with an investigation of a federal criminal case in which DOJ is a party, and that by assisting someone in responding to such a subpoena he was involved in a criminal case in which his employer was a party. By assisting █████ in responding to that subpoena, attempting to help him obtain an attorney by contacting the Federal Public Defender's office in █████ on his behalf, and participating in discussions with █████ attorney, all regarding a criminal case his own office was recused from, █████ violated multiple federal ethics regulations and DOJ policies.



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