

REPORT OF INVESTIGATION

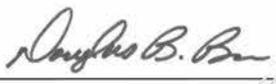
SUBJECT (b)(6); (b)(7)(C) Assistant United States Attorney (b)(6); (b)(7)(C)		CASE NUMBER 2018-005583
OFFICE CONDUCTING INVESTIGATION Denver Field Office		DOJ COMPONENT Executive Office for United States Attorneys
DISTRIBUTION		STATUS
<input checked="" type="checkbox"/> Field Office DNFO <input checked="" 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 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 March (b)(6); (b)(7)(C) 2018, at the (b)(6); (b)(7)(C) California Port of Entry, Assistant United States Attorney (AUSA) (b)(6); (b)(7)(C) was arrested by the California (b)(6); (b)(7)(C) for misdemeanor Driving Under the Influence (DUI); misdemeanor DUI with a blood alcohol content (BAC) above .08%; and misdemeanor possession of a controlled substance (Xanax).

During the course of the investigation, EOUSA suspended (b)(6); (b)(7)(C) for five days without pay for conduct unbecoming of a federal employee solely related to his DUI offense. The suspension did not address the allegation that (b)(6); (b)(7)(C) possessed Xanax without a prescription and attempted to illegally transport the controlled substance into the U.S. or that he was in Mexico without approved leave at the time of his arrest.

Additionally, during the investigation, the OIG found indications that (b)(6); (b)(7)(C) attempted to obstruct the (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) California (b)(6); (b)(7)(C) case against him and the OIG's investigation of him by presenting a fraudulent Mexican prescription for Farmapram, a form of alprazolam, the controlled substance contained in Xanax; that he provided false statements to U.S. Customs and Border Protection (CBP) officers concerning the true type of the tablets he attempted to transport into the U.S. from Mexico; and that he provided false statements during his OIG interview concerning how he acquired the Xanax tablets and related fraudulent Mexican prescription.

DATE	April 15, 2021	SIGNATURE	(b)(6); (b)(7)(C)
PREPARED BY SPECIAL AGENT	(b)(6); (b)(7)(C)		
DATE	April 15, 2021	SIGNATURE	 Digitally signed by DOUGLAS BRUCE Date: 2021.04.15 11:13:43 -06'00'
APPROVED BY SPECIAL AGENT IN CHARGE	Douglas B. Bruce		

Subsequent to the onset of the investigation, EOUSA provided the OIG additional information indicating that (b)(6); (b)(7)(C) traveled into Mexico for personal matters during work hours without approved leave; that he failed to properly report his foreign travel via the DOJ's iReport module within the Justice Security Tracking and Adjudication Record System (JSTARS); (b)(6); (b)(7)(C)

The OIG investigation substantiated the following allegations against (b)(6); (b)(7)(C)

- Illegally possessed a controlled substance (Xanax) upon re-entry into the U.S.;
- Provided false statements to CBP officers concerning the true identity of the tablets he attempted to transport into the U.S. from Mexico;
- Provided false statements during his OIG interview concerning how he acquired the Xanax tablets and related fraudulent Mexican prescription;
- Attempted to obstruct the (b)(6); (b)(7)(C) case and the OIG's investigation by presenting a fraudulent Mexican prescription for Farmapram;
- Traveled to Mexico for personal matters during work hours without approved leave when he procured Xanax on March (b)(6); (b)(7)(C) 2018; and
- Failed to properly report foreign travel via the iReport module within JSTARS.

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

The OIG reviewed CBP and (b)(6); (b)(7)(C) reports that indicated (b)(6); (b)(7)(C) was arrested for DUI when he entered the U.S. from Mexico on March (b)(6); (b)(7)(C) 2018. In connection with his DUI arrest, federal law enforcement officers located inside (b)(6); (b)(7)(C) vehicle a medicine bottle containing 89 tablets, with a label on the outside of the bottle that identified its contents as Oxycodone and listed (b)(6); (b)(7)(C) name. CBP suspected the tablets were actually Xanax and not Oxycodone, and a subsequent test confirmed the tablets were Xanax. (b)(6); (b)(7)(C) failed to declare the 89 Xanax tablets or provide a prescription for the controlled substance upon entry into the U.S. to CBP officials as required. In addition to the DUI arrest, (b)(6); (b)(7)(C) was also arrested by (b)(6); (b)(7)(C) for misdemeanor possession of a controlled substance (Xanax).

An OIG review of CBP's arrest video showed that a CBP officer asked (b)(6); (b)(7)(C) if the tablets inside of (b)(6); (b)(7)(C) Oxycodone bottle were Oxycodone, and (b)(6); (b)(7)(C) replied, "I expect they are." The officer asked (b)(6); (b)(7)(C) if he purchased Xanax in Mexico, and (b)(6); (b)(7)(C) replied, "No," and requested to speak with an attorney.

On (b)(6); (b)(7)(C) was charged by (b)(6); (b)(7)(C) with misdemeanor DUI; misdemeanor DUI with a BAC above .08%; and misdemeanor possession of a controlled substance (Xanax).

The (b)(6); (b)(7)(C) provided the OIG with a (b)(6); (b)(7)(C) e-mail from (b)(6); (b)(7)(C) that attached a prescription for Farmapram dated March (b)(6); (b)(7)(C) 2018, that was issued in the name of Mexican physician (b)(6); (b)(7)(C)

(b)(6); (b)(7)(C) told the OIG that the handwriting and signature on the prescription appeared to be his own but it did not contain a pharmacy's stamp that was normally on the prescription after it was filled. (b)(6); (b)(7)(C) said he did not specifically remember (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) did not ask him to fill out a post-dated prescription; and he did not provide a blank prescription to (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) said he worked in (b)(6); (b)(7)(C) on March (b)(6); (b)(7)(C) 2018, and therefore, he could not have provided the prescription to (b)(6); (b)(7)(C) in (b)(6); (b)(7)(C) as alleged by (b)(6); (b)(7)(C) in his statement to the OIG. (b)(6); (b)(7)(C) said he worked in (b)(6); (b)(7)(C) at a medical clinic on March (b)(6); (b)(7)(C) 2018, but he had no recollection of meeting with (b)(6); (b)(7)(C) on that date.

The owner of [REDACTED] in [REDACTED] Mexico failed to identify any prescriptions that were associated with [REDACTED] or [REDACTED]. The owner said that after a prescription was filled, the pharmacy would maintain the original prescription and provide the dispensed drug to the customer in its original packaging and not in clear plastic bags, as alleged by [REDACTED] in his statement to the OIG.

Although [REDACTED] declined the OIG's request for a voluntary interview, he voluntarily provided the OIG with the original Farmapram prescription he said he obtained from [REDACTED] and later emailed to [REDACTED]. When he provided the prescription to the OIG, [REDACTED] said he was "pretty sure" he obtained and filled the prescription at a pharmacy in [REDACTED] Mexico called [REDACTED].

During [REDACTED] compelled OIG interview, [REDACTED] clarified that his earlier statement to the OIG that he obtained and filled his Xanax prescription at the [REDACTED] pharmacy was a guess and was not intended as a definitive statement. [REDACTED] said he obtained the prescription from [REDACTED] at an unknown [REDACTED] pharmacy on March [REDACTED], 2018, and filled the prescription by means of a cash purchase at the same pharmacy. According to [REDACTED], the pharmacy provided him the Xanax tablets in a clear plastic bag, and he then transferred the tablets into an Oxycodone container. [REDACTED] stated he had not previously purchased Xanax from a Mexican pharmacy and was unaware he was required to have a U.S. prescription in order to legally transport prescribed medication purchased in Mexico back into the U.S., and he did not have a U.S.-issued prescription for Xanax at the time he purchased the medication in Mexico.

[REDACTED] also told the OIG that on the day after his arrest, he returned to Mexico to obtain a copy of his Farmapram prescription so he could provide it to the California state court. [REDACTED] stated he explained to the pharmacy employee that he was arrested for illegally possessing Xanax and needed a copy of his prescription to show the court, but the pharmacy did not have a photocopier so they provided him the original prescription.

[REDACTED] declined to submit to a voluntary OIG-administered polygraph examination.

The OIG determined that [REDACTED] traveled into Mexico during work hours for personal reasons without taking approved leave on March [REDACTED], 2018. A review of [REDACTED] WebTA data for that date showed that [REDACTED] claimed two hours of work and six hours of "absence without official leave" after his after-the-fact leave request was rejected. [REDACTED]

The OIG also identified four instances when [REDACTED] passed through ports of entry from Mexico into the U.S., without having requested approval for his international travel through the iReport module in JSTARS.

During his OIG interview, [REDACTED] was unable to recall specifically when he failed to obtain approved leave but said that his AUSA duties often entailed lengthy work hours that were beyond his core hours of 8:30 a.m. to 5:00 p.m., Monday – Friday. As a result of this, [REDACTED] asserted there was "flexibility" regarding when he could arrive and leave work. In regard to his failure to obtain the required DOJ approval to travel into Mexico, [REDACTED] said that he did not consistently comply with DOJ's international travel reporting requirements, and that at times he had "forgotten" about them.

[REDACTED]

On [REDACTED] pled no contest to misdemeanor DUI and was sentenced to a three-year term of summary probation, 40 hours of community service, and a fine of \$1,766. The other charges were dismissed.

The U.S. Attorney's Office for [REDACTED] California declined criminal prosecution of [REDACTED]. The U.S. Attorney's Office [REDACTED] was recused from this matter.

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).

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 March [REDACTED] 2018, at the [REDACTED] California Port of Entry, Assistant United States Attorney (AUSA) [REDACTED] was arrested by the California [REDACTED] for misdemeanor Driving Under the Influence (DUI); misdemeanor DUI with a blood alcohol content (BAC) above .08%; and misdemeanor possession of a controlled substance (Xanax).

During the course of the investigation, EOUSA suspended [REDACTED] for five days without pay for conduct unbecoming of a federal employee solely related to his DUI offense. The suspension did not address the allegation that [REDACTED] possessed Xanax without a prescription and attempted to illegally transport the controlled substance into the U.S. or that he was in Mexico without approved leave at the time of his arrest.

Additionally, during the investigation, the OIG found indications that [REDACTED] attempted to obstruct the [REDACTED] California [REDACTED] case against him and the OIG's investigating of him by presenting a fraudulent Mexican prescription for Farmapram, a form of alprazolam, the controlled substance contained in Xanax; that he provided false statements to U.S. Customs and Border Protection (CBP) officers concerning the true type of the tablets he attempted to transport into the U.S. from Mexico; and that he provided false statements during his OIG interview concerning how he acquired the Xanax tablets and related fraudulent Mexican prescription.

Subsequent to the onset of the investigation, EOUSA provided the OIG additional information indicating that [REDACTED] traveled into Mexico for personal matters during work hours without approved leave; that he failed to properly report his foreign travel via the DOJ's iReport module within the Justice Security Tracking and Adjudication Record System (JSTARS); [REDACTED]

Investigative Process

The OIG's investigative efforts consisted of the following:

Interviews of the following EOUSA personnel:

[REDACTED]

Interviews of the following personnel:

[REDACTED]

Review of the following:

- CBP surveillance system video
- WebTA records for (b)(6); (b)(7)(C)
- EOUSA USA-5 entry reports for (b)(6); (b)(7)(C)
- JSTARS iReport records for (b)(6); (b)(7)(C)
- U.S. Department of Homeland Security Automated Targeting System records for (b)(6); (b)(7)(C)
- (b)(6); (b)(7)(C) Board of Pharmacy's Prescription Monitoring Program records for (b)(6); (b)(7)(C)

The facts of this report took place in different time zones. For ease of understanding, all times mentioned are in Mountain Standard Time, as is (b)(6); (b)(7)(C) California and (b)(6); (b)(7)(C) Mexico, are in Pacific Standard Time.

(b)(6); (b)(7)(C) **Illegal Possession of Xanax, Attempted Smuggling of Xanax into the United States from Mexico, and False Statements to Law Enforcement**

The information provided to the OIG by EOUSA alleged that (b)(6); (b)(7)(C) was arrested on March (b)(6); (b)(7)(C) 2018, at the (b)(6); (b)(7)(C) California Port of Entry, by (b)(6); (b)(7)(C) for misdemeanor DUI; misdemeanor DUI with a blood alcohol content above .08%, and misdemeanor possession of a controlled substance (Xanax). During the course of the investigation, the OIG found indications that (b)(6); (b)(7)(C) provided false statements to CBP concerning the true identity of the tablets he attempted to smuggle into the U.S. from Mexico.

During the course of the investigation, EOUSA suspended (b)(6); (b)(7)(C) for five days without pay for conduct unbecoming of a federal employee related to his DUI offense. The suspension did not address the allegation that (b)(6); (b)(7)(C) illegally possessed Xanax and attempted to smuggle the Xanax into the United States.

Relevant Statutes

- 18 U.S.C. § 545, Smuggling of Goods, states it is illegal to knowingly smuggle into the U.S. any merchandise which should have been invoiced;
- 21 U.S.C. § 956(a), the Controlled Substances Import and Export Act, Section 1006(a) states, a U.S. resident who enters the U.S. through a Port of Entry with a controlled substance for which the individual does not possess a valid prescription may not import the controlled substance in an amount that exceeds 50 dosage units;
- 21 U.S.C. § 844, Penalties for Simple Possession, states it is illegal to knowingly or intentionally possess a controlled substance unless such substance was obtained directly, or pursuant to a valid prescription or order, from a practitioner, while acting in the course of his professional practice.
- 18 U.S.C. § 1001 makes it a crime to make any materially false, fictitious, or fraudulent statement or representation in any matter of the executive branch of the U.S. government.

The OIG reviewed (b)(6); (b)(7)(C) and CBP reports that indicated officers suspected (b)(6); (b)(7)(C) was driving a vehicle under the influence of alcohol when he entered (b)(6); (b)(7)(C) Port of Entry on Friday, March (b)(6); (b)(7)(C) 2018, at approximately 3:57 p.m. (b)(6); (b)(7)(C) was subsequently arrested for DUI after he refused to take the requested field sobriety tests, and breath examinations revealed his blood alcohol content (BAC) to be .17% and .16%, twice the legal limit of .08%. (b)(6); (b)(7)(C) reportedly told the law enforcement officials that he traveled into Mexico to "have a good time."

During the DUI arrest, a CBP K-9 alerted on (b)(6); (b)(7)(C) vehicle, and a subsequent search identified two brown plastic medication bottles in the trunk of the vehicle within a small toiletry bag inside of a larger gym bag. Both medicine containers listed (b)(6); (b)(7)(C) name as the listed prescribed individual and the prescribed medication as Oxycodone. One of the containers was empty while the other contained 89 tablets that CBP suspected were Xanax and not

Oxycodone as the container indicated. Similar looking tablets were also identified in a small container that was attached to (b)(6); (b)(7)(C) key ring. CBP advised (b)(6); (b)(7)(C) that he needed to declare all medications upon re-entry into the U.S., and that medications were permissible with a U.S.-issued prescription and within their original medication container. (b)(6); (b)(7)(C) did not offer or present a prescription to CBP or (b)(6); (b)(7)(C) for the 89 suspected Xanax tablets. In addition to DUI, (b)(6); (b)(7)(C) arrested (b)(6); (b)(7)(C) for misdemeanor possession of a controlled substance (Xanax).

The OIG's review of the predating material showed that on March (b)(6); (b)(7)(C) 2018, (b)(6); (b)(7)(C) notified USAO management via email of his March (b)(6); (b)(7)(C) 2018, arrest at (b)(6); (b)(7)(C) Port of Entry. (b)(6); (b)(7)(C) wrote that he had "encountered" CBP officers when he attempted to re-enter the U.S. and was directed to secondary inspection and subsequently turned over to (b)(6); (b)(7)(C) for suspicion of DUI. (b)(6); (b)(7)(C) wrote that he was charged with misdemeanor "driving under the influence of alcohol;" misdemeanor "driving under the influence of alcohol with a BAC above .08%," and misdemeanor "possession of alprazolam (Xanax)." (b)(6); (b)(7)(C) added that the (b)(6); (b)(7)(C) officer advised that he was being charged with "possession of alprazolam because the pills were not in a proscribed (sic) container."

The OIG's review of the CBP's March (b)(6); (b)(7)(C) 2018, arrest video of (b)(6); (b)(7)(C) showed that a CBP officer asked (b)(6); (b)(7)(C) if the tablets inside of the Oxycodone medicine bottles were Oxycodone, and (b)(6); (b)(7)(C) replied, "I expect they are." The officer then stated that the tablets appeared to be Xanax, and he asked (b)(6); (b)(7)(C) if he purchased Xanax in Mexico. (b)(6); (b)(7)(C) replied, "No, I didn't." The officer responded, "So you don't think these are Xanax?" (b)(6); (b)(7)(C) replied, "No." The officer confronted (b)(6); (b)(7)(C) with his belief that the tablets in (b)(6); (b)(7)(C) Oxycodone bottle appeared to be Xanax, and he asked (b)(6); (b)(7)(C) directly if the tablets in the bottle were Oxycodone, as previously stated by (b)(6); (b)(7)(C) or Xanax. (b)(6); (b)(7)(C) declined to answer and requested to speak with an attorney. The officer explained that considering (b)(6); (b)(7)(C) identified himself as an AUSA, the officer advised (b)(6); (b)(7)(C) that he should be aware of the regulations regarding crossing into the U.S., and CBP's duties during the "inspection process" to determine if the items (b)(6); (b)(7)(C) transported into the U.S. were permissible. The officer again asked (b)(6); (b)(7)(C) if the tablets in the Oxycodone medicine bottle were in fact Oxycodone "or something else," and (b)(6); (b)(7)(C) declined to answer and again requested to speak with an attorney.

Portions of the recorded interaction between (b)(6); (b)(7)(C) and the CBP officer were unintelligible, but at no point did (b)(6); (b)(7)(C) claim to have a Mexican prescription for Xanax or acknowledge that the tablets in the bottle were in fact Xanax. The OIG also did not identify any instance in police reports wherein (b)(6); (b)(7)(C) claimed that he possessed a valid prescription for Xanax or the name of the (b)(6); (b)(7)(C) pharmacy or other location where he obtained the tablets.

On (b)(6); (b)(7)(C) was charged by (b)(6); (b)(7)(C) with misdemeanor DUI; misdemeanor DUI with a BAC above .08%; and misdemeanor possession of a controlled substance (Xanax).

The OIG learned that an examination of one of the tablets seized from (b)(6); (b)(7)(C) by the California (b)(6); (b)(7)(C) was found to contain alprazolam, the controlled substance in Xanax. (b)(6); (b)(7)(C) told the OIG that the tablet resembled other counterfeit Xanax tablets that originate from Mexico and the tablet did not feature the lettering or numbering found on actual Xanax tablets that are marketed in the United States.

During (b)(6); (b)(7)(C) compelled OIG interview on (b)(6); (b)(7)(C) he said that after he completed his (b)(6); (b)(7)(C) duty AUSA on Friday morning, March (b)(6); (b)(7)(C) 2018, he decided around lunchtime to go to (b)(6); (b)(7)(C) Mexico to "see a physician," take a break from being on call, and to get "some good food." (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) said his first stop in (b)(6); (b)(7)(C) was at a pharmacy so he could meet with a doctor to obtain a Xanax prescription. (b)(6); (b)(7)(C) met with the doctor (b)(6); (b)(7)(C) said that

while Mexican physician [REDACTED] name is on his Farmapram prescription, [REDACTED] offered without prompting that he would not be able to pick [REDACTED] out of a photo line-up if asked, and that [REDACTED] was the "in-house doctor" for the pharmacy he chose that day. [REDACTED] said the doctor provided him a prescription for Farmapram (Xanax), and [REDACTED] presented the prescription to the pharmacist and received the Xanax tablets in a clear plastic bag and not the manufacturer's original packaging or common medicine container. [REDACTED] said he then went to his vehicle and transferred the Xanax tablets from the plastic bag into one of his Oxycodone medicine containers so he could have easier access to the medication and because he was not comfortable going through the [REDACTED] Port of Entry with medication in a plastic bag. [REDACTED] said, "I don't think anything in clear plastic baggies looks good unless it's buttons for your jacket."

After transferring the tablets from the plastic bag to his Oxycodone container, [REDACTED] said he recalled there was a basketball game that he wanted to watch, so he went to a nearby "sports bar" [REDACTED] and drank several margaritas. [REDACTED] said he usually did not consume large amounts of alcoholic beverages, but he was having a good time watching the game and made "a bad choice" by continuing to consume margaritas. [REDACTED] said he did not feel "normal," so he left [REDACTED] and went back to his vehicle which he had parked next to [REDACTED]. [REDACTED] Instead of going to his car, [REDACTED] said he went inside [REDACTED] and had a beer. [REDACTED] said that he then returned to his car and drove to the [REDACTED] California Port of Entry where he was arrested for DUI and misdemeanor possession of a controlled substance (Xanax).

[REDACTED] stated he had not previously purchased Xanax from a Mexican pharmacy and was unaware that he was required to have a U.S. prescription in order to legally transport prescribed medication purchased in Mexico during his return to the U.S. [REDACTED] said he did not have a U.S.-issued prescription for Xanax at the time he made the purchase in Mexico.

On [REDACTED] pled no contest to misdemeanor DUI and was sentenced to a 3-year term of summary probation, 40-hours of community service, and a fine of \$1,766. The other charges were dismissed.

On [REDACTED] the U.S. Attorney's Office for [REDACTED] California declined criminal prosecution of [REDACTED]. The U.S. Attorney's Office [REDACTED] was recused from this matter.

The [REDACTED] California [REDACTED] Office also declined prosecution outside of the previously referenced DUI offense.

OIG's Conclusion

The OIG investigation concluded that [REDACTED] engaged in the misconduct as alleged and that his actions were in violation of 21 U.S.C. § 844 (Simple Possession of a Controlled Substance Without Prescription) and 18 U.S.C. § 545 (Smuggling of Goods), 21 U.S.C. § 956(a) (Import of a Controlled Substance Without Prescription).

In addition, the OIG investigation concluded that [REDACTED] made a materially false and fictitious statement to executive branch officials thereby violating 18 U.S.C. § 1001. Specifically:

- An OIG review of the CBP's March [REDACTED] 2018, arrest video of [REDACTED] showed that a CBP officer asked [REDACTED] if the tablets inside of the Oxycodone medicine bottles were Oxycodone, and [REDACTED] replied, "I expect they are." The officer then stated that the tablets appeared to be Xanax, and he asked [REDACTED] if he purchased Xanax in Mexico. [REDACTED] replied, "No, I didn't." The officer responded, "So you don't think these are Xanax?" [REDACTED] replied, "No." The California [REDACTED] tested the tablets, which contained alprazolam the controlled substance in Xanax and for

which [REDACTED] later claimed he had a valid prescription. The OIG therefore found that [REDACTED] responses to the CBP officer were materially false, in violation of 18 U.S.C. § 1001.

[REDACTED] Attempted to Obstruct the California [REDACTED] Case and the OIG's Investigation through his Presentation of a Fraudulent Prescription

During the course of the investigation, the OIG found indications that [REDACTED] attempted to obstruct the [REDACTED] California [REDACTED] case against him and the OIG's investigation of him through his presentation of a fraudulent Mexican prescription for Farmapram, a form of alprazolam, the controlled substance contained in Xanax, and that he provided false statements during his OIG interview concerning how he acquired the Xanax tablets and related fraudulent Mexican prescription.

Relevant Statutes

- 18 U.S.C. § 1001 makes it a crime to make any materially false, fictitious, or fraudulent statement or representation in any matter of the executive branch of the U.S. government.
- 18 U.S.C. § 1519 makes it a crime to knowingly falsify any record, document, or tangible object with the intent to impede, obstruct, or influence the investigation of any matter within the jurisdiction of any agency of the United States.
- California Penal Code § 134 states that "[e]very person who upon any trial, proceeding, inquiry, or investigation whatever, authorized or permitted by law, offers in evidence, as genuine or true, any book, paper, document, record, or other instrument in writing, knowing the same to have been forged or fraudulently altered or ante-dated" has committed the felony of preparing false evidence.

The OIG initially learned of and later obtained an email message from [REDACTED] that [REDACTED] sent to [REDACTED] on [REDACTED] related to his DUI and misdemeanor possession of a controlled substance arrest. The email attached what appears to be a prescription for [REDACTED] from Mexican physician [REDACTED] dated March [REDACTED] 2018, for 90 tablets of Farmapram, a form of alprazolam, the controlled substance in Xanax.

The OIG's review of [REDACTED] March [REDACTED] 2018, email notification to USAO management regarding his March [REDACTED] 2018, arrest showed that [REDACTED] did not document that he had obtained a prescription for Xanax from a Mexican physician just hours prior to his arrest, as he later told [REDACTED] and the OIG. The OIG also did not identify any instance in [REDACTED] arrest reports where [REDACTED] claimed that he had obtained a prescription for Xanax from a Mexican physician only hours prior to his arrest or mentioned the name of the [REDACTED] pharmacy or other location where he obtained the tablets.

[REDACTED] told Special Agents (SAs) from the U.S. Department of State, Diplomatic Security Service (DSS) that the handwriting and signature on [REDACTED] Farmapram prescription appeared to be his own, and he did not observe any abnormalities with the prescription other than it did not have a pharmacy's stamp that was normally on the prescription after it was filled. [REDACTED] said he did not specifically remember [REDACTED] nor did [REDACTED] remember [REDACTED] asking him to fill out a post-dated prescription for Farmapram, and he did not provide [REDACTED] a blank prescription.

[REDACTED] stated he worked for [REDACTED] on March [REDACTED] 2018, and therefore he could not have provided the prescription to [REDACTED] on March [REDACTED] 2018. [REDACTED] said he worked in [REDACTED] Mexico at a medical clinic called [REDACTED] on March [REDACTED] 2018, but he had no recollection of meeting with [REDACTED] on that date. [REDACTED]

[REDACTED]

The owner (b)(6); (b)(7)(C) told DSS SAs that Farmapram was a "Group 2" drug in Mexico, and a prescription was required for pharmacies to distribute the drug. (b)(6); (b)(7)(C) initially suggested to OIG investigators that he filled the prescription at a (b)(6); (b)(7)(C) pharmacy in (b)(6); (b)(7)(C) search of (b)(6); (b)(7)(C) Pharmacies records failed to identify any prescriptions that were associated with (b)(6); (b)(7)(C) or (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) said that after a prescription was filled, the pharmacy maintained the customer's original prescription and provided the dispensed drug to the customer in its original packaging, and not in different bottles or containers such as clear plastic bags.

(b)(6); (b)(7)(C) supervisor, told the OIG that on March (b)(6); (b)(7)(C) 2018, (b)(6); (b)(7)(C) called him and told him about his arrest for DUI at the Mexico border in California. (b)(6); (b)(7)(C) does not recall if (b)(6); (b)(7)(C) mentioned that he was also arrested for possession of Xanax without a prescription, although (b)(6); (b)(7)(C) recalled seeing information concerning that charge months later in (b)(6); (b)(7)(C) guilty plea documents related to his DUI arrest.

(b)(6); (b)(7)(C) told the OIG that (b)(6); (b)(7)(C) called him around 8:00 p.m. the night of his arrest. (b)(6); (b)(7)(C) told (b)(6); (b)(7)(C) that he was arrested for DUI, but (b)(6); (b)(7)(C) did not mention that he was charged with misdemeanor possession of a controlled substance (Xanax). (b)(6); (b)(7)(C) said he was friends with (b)(6); (b)(7)(C) at the time, but he did not know exactly what to tell (b)(6); (b)(7)(C) and their brief telephone conversation contained a lot of "pausing." Months later (b)(6); (b)(7)(C) first learned from (b)(6); (b)(7)(C) that (b)(6); (b)(7)(C) was also arrested for illegally possessing Xanax without a prescription.

(b)(6); (b)(7)(C) told the OIG that (b)(6); (b)(7)(C) called him around 8:00 p.m. on the night of his DUI arrest, but (b)(6); (b)(7)(C) did not mention that he was also charged with misdemeanor possession of a controlled substance (Xanax). (b)(6); (b)(7)(C) did not know why (b)(6); (b)(7)(C) called him that evening, but (b)(6); (b)(7)(C) told (b)(6); (b)(7)(C) that (b)(6); (b)(7)(C) needed to report his arrest to USAO management. (b)(6); (b)(7)(C) was later told by a (b)(6); (b)(7)(C) that (b)(6); (b)(7)(C) was also arrested for illegally possessing Xanax, but (b)(6); (b)(7)(C) was unaware of any further details of the incident.

(b)(6); (b)(7)(C) told the OIG that she spoke with either (b)(6); (b)(7)(C) or (b)(6); (b)(7)(C) on March (b)(6); (b)(7)(C) 2018, and one of the two men notified her of (b)(6); (b)(7)(C) arrest that day. (b)(6); (b)(7)(C) spoke with (b)(6); (b)(7)(C) the following day, and (b)(6); (b)(7)(C) said that he got arrested for DUI at the border when he re-entered the U.S. from Mexico, but he did not mention any other charges.

On (b)(6); (b)(7)(C) declined the OIG's request for a voluntary interview. Nevertheless, at that time, in response to the OIG's request, (b)(6); (b)(7)(C) voluntarily provided the OIG with the original Farmapram prescription he said he obtained from (b)(6); (b)(7)(C) and later emailed to (b)(6); (b)(7)(C). When he provided the prescription to the OIG, (b)(6); (b)(7)(C) said he was "pretty sure" he filled the prescription at a pharmacy in (b)(6); (b)(7)(C) that was located next to (b)(6); (b)(7)(C).

During (b)(6); (b)(7)(C) compelled OIG interview on (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) clarified that he only gave OIG agents the information about the prescription at the time he provided it to the OIG as a guess concerning where he purchased the Xanax and not as a definitive statement. (b)(6); (b)(7)(C) said he did not know which pharmacy he used to purchase the Xanax, and there were a large number of pharmacies (b)(6); (b)(7)(C) and added that the pharmacy he used was next to (b)(6); (b)(7)(C) meaning it was in the vicinity of (b)(6); (b)(7)(C).

(b)(6); (b)(7)(C) said that on the day following his March (b)(6); (b)(7)(C) 2018, arrest, he returned to (b)(6); (b)(7)(C) Mexico via the (b)(6); (b)(7)(C) California Port of Entry so he could obtain a copy of his Farmapram prescription to show the California state court he was legally prescribed the medication. However, an OIG review of CBP surveillance video from March (b)(6); (b)(7)(C) 2018, at 9:40 a.m., at the (b)(6); (b)(7)(C) Port of Entry, revealed that (b)(6); (b)(7)(C) told a CBP officer that his purpose for traveling into Mexico at that time was to retrieve his credit card from (b)(6); (b)(7)(C). When the OIG questioned (b)(6); (b)(7)(C) about this video, he agreed that he made the statement to the CBP officer, but he did not offer any explanation for his differing explanations for why he re-entered Mexico the day after his arrest. (b)(6); (b)(7)(C) statement

to CBP was also inconsistent with his statement to the OIG concerning his method of payment during his trip to [REDACTED] on March [REDACTED] 2018. [REDACTED] told the OIG he made his purchases in cash due to past experiences of fraud when using credit cards for purchases in Mexico.

[REDACTED] told the OIG that when he arrived back at the [REDACTED] pharmacy, the pharmacy he later would claim an inability to identify for OIG investigators, he explained to a pharmacy employee that he was arrested for illegally possessing the Xanax that he had previously obtained from the pharmacy, and he needed a copy of his Farmapram prescription to show the court. [REDACTED] said the pharmacy did not have a photocopier so they provided him with the original prescription. [REDACTED] was unable to provide a banking transaction record for his Xanax purchase because he said he paid in cash due to past experiences of fraud when using credit cards in Mexico. When questioned about his alleged receipt of Xanax in a plastic bag from an unknown [REDACTED] pharmacy; his possession of the original prescription that failed to contain the filling pharmacy's stamp; and the Farmapram prescription containing the signature of a physician who said he was not working in [REDACTED] on the date the prescription was issued, [REDACTED] stated that the OIG does not appreciate that Mexico was "almost a failed state" and "records and following the rules" are more like guidelines in Mexico.

[REDACTED] said he purposely declined to note in his March [REDACTED] 2018 email to USAO management regarding his arrest for DUI and misdemeanor possession of a controlled substance that he had obtained a Mexican prescription for Farmapram (Xanax) just hours prior to his arrest because he did not feel it was the proper time to defend himself or make an attempt to minimize his actions.

[REDACTED] declined to submit to a voluntary OIG-administered polygraph examination regarding his alleged receipt of a Farmapram prescription from [REDACTED] on March [REDACTED] 2018, [REDACTED]

The OIG obtained records from the [REDACTED] Board of Pharmacy's Prescription Monitoring Program for [REDACTED]

[REDACTED]

On [REDACTED] the U.S. Attorney's Office for [REDACTED] California declined criminal prosecution of [REDACTED]. The U.S. Attorney's Office [REDACTED] was recused from this matter.

The [REDACTED] California [REDACTED] Office also declined prosecution outside of the previously referenced DUI charges.

OIG's Conclusion

The OIG investigation concluded that on several occasions since his arrest on March [REDACTED] 2018, [REDACTED] made materially false and fictitious statement to executive branch officials related to the document he claimed was a valid Farmapram prescription, in violation of 18 U.S.C. § 1001. The OIG also concluded that [REDACTED] knowingly presented a falsified prescription to [REDACTED] and OIG investigators, in violation of CA Penal Code § 143 (Preparing False Evidence) and 18 U.S.C. § 1519 (Obstruction). Specifically:

- On [REDACTED] during an OIG interview, [REDACTED] stated he met with a doctor on March [REDACTED] 2018, [REDACTED] described Mexican physician [REDACTED] as the "in-

house doctor" for the pharmacy he chose that day. [REDACTED] said the doctor provided him a prescription for Farmapram (Xanax), and [REDACTED] presented the prescription to the pharmacist and received the Farmapram tablets in a clear plastic bag and not the manufacturer's original packaging or common medicine container. In contrast, [REDACTED] told the OIG he was in [REDACTED] on March [REDACTED] 2018, and therefore he could not have provided the prescription to [REDACTED] on March [REDACTED] 2018. [REDACTED] was also unable to provide a banking transaction record for his Xanax purchase because [REDACTED] claimed that he paid in cash. After being initially identified by [REDACTED] on [REDACTED] as the pharmacy [REDACTED] used, the owner of [REDACTED] searched the pharmacy's records and failed to identify any prescriptions that were associated with [REDACTED] or [REDACTED] despite the fact that the pharmacy maintains a customer's original prescription. Further, the owner of the pharmacy also said the pharmacy did not distribute prescriptions in clear plastic bags. Though [REDACTED] attempted to explain some of these discrepancies by claiming his [REDACTED] reference to the OIG about [REDACTED] had been a guess, the OIG found that [REDACTED] description to the OIG of how he obtained the Xanax on March [REDACTED] 2018, was materially false, in violation of 18 U.S.C. § 1001.

- Also on [REDACTED] [REDACTED] told the OIG that on March [REDACTED] 2018, the day following his arrest, he returned to [REDACTED] Mexico via the [REDACTED] California Port of Entry so he could obtain a copy of his Farmapram (Xanax) prescription to show the California state court he was legally prescribed the medication. However, the OIG's review of CBP surveillance video from March [REDACTED] 2018, at 9:40 a.m., at [REDACTED] Port of Entry, revealed that [REDACTED] told a CBP officer that his purpose for traveling into Mexico at that time was to retrieve his credit card from [REDACTED]. [REDACTED] stated reason to the CBP officer for entering Mexico contradicts his later statement to the OIG. [REDACTED] statement to CBP was also inconsistent with his later statement to the OIG that he made his purchases in Mexico in cash due to past experiences of fraud when using credit cards for such purchases. The OIG found that [REDACTED] March [REDACTED] 2018, statement to the CBP about the purpose for his travel into Mexico on March [REDACTED] 2018, was materially false, in violation of 18 U.S.C. § 1001.
- On [REDACTED] [REDACTED] told the OIG that when he returned to the [REDACTED] pharmacy (the pharmacy that he later could not identify to OIG investigators), he requested a copy of his Farmapram (Xanax) prescription and because the pharmacy did not have a photocopier, the pharmacy provided him with the original prescription. However, the supposed original prescription [REDACTED] provided to the OIG failed to show the filling pharmacy's stamp and the prescription contained the signature (and was in the handwriting) of a physician [REDACTED] who claimed he was not working [REDACTED] on the date the prescription was issued. Moreover, [REDACTED] never told the CBP or [REDACTED] officers at the time of his arrest, that the controlled substances seized from him by the CBP and that formed the basis, in part, for his arrest, were in fact obtained pursuant to a valid medical prescription. Likewise, [REDACTED] made no mention of a prescription, valid or otherwise, in his report to his supervisors and his colleagues following his arrest. The OIG concluded that [REDACTED] description to the OIG of his March [REDACTED] 2018 retrieval of a valid prescription for the Xanax seized by the CBP the day before was materially false, in violation of 18 U.S.C. § 1001.
- On [REDACTED] [REDACTED] provided [REDACTED] with a document that he claimed to be a valid medical prescription for Xanax, and on [REDACTED] [REDACTED] provided that same document to the OIG. Given [REDACTED] multiple false statements to the OIG, as well as [REDACTED] assertion of a faulty memory when challenged by OIG investigators, the OIG cannot know with certainty the series of events that led to [REDACTED] possessing the document he claimed to [REDACTED] and OIG investigators was a valid medical prescription. Nor can the OIG determine if [REDACTED] acted alone or with others in procuring that document. Nonetheless, the OIG investigation concluded that the prescription was fraudulent; that [REDACTED] knew that it was fraudulent when he passed it off as a valid medical prescription to [REDACTED]

and later to the OIG; and that (b)(6); (b)(7)(C) intended to obstruct (b)(6); (b)(7)(C) case and the OIG's investigation when he sought to mislead state and federal law enforcement authorities into believing that the fraudulent prescription was in fact a genuine, valid prescription, in violation of state and federal criminal law, respectively.

(b)(6); (b)(7)(C) Traveled into Mexico during Work Hours Without Self-Reporting and Obtaining Approval for International Travel or Obtaining Approved Leave

The information provided to the OIG alleged that (b)(6); (b)(7)(C) traveled into Mexico during official work hours for personal reasons without approved leave, and that he failed to complete the required self-report requests for his international travel via the iReport module within JSTARS.

Relevant Statutes and Regulations

- 18 U.S.C. § 1001 makes it a crime to make any materially false, fictitious, or fraudulent statement or representation in any matter of the executive branch of the U.S. government;
- 18 U.S.C. § 641, states it is unlawful to knowingly convert federal funds for personal use;
- 18 U.S.C. § 287 states it is unlawful to make or present to any department, any claim upon or against the U.S., or any department or agency thereof, knowing such claim to be false, fictitious, or fraudulent.
- 5 C.F.R. § 2635.705, Use of Official Time, subsection (a), Use of An Employee's Own Time, states that "[u]nless authorized in accordance with law or regulations to use such time for other purposes, an employee shall use official time in an honest effort to perform official duties. An employee not under a leave system . . . has an obligation to expend an honest effort and a reasonable proportion of his time in the performance of official duties."

The iReport is a module within JSTARS that enables DOJ employees to self-report as mandated by DOJ Policy Statement 1700.04 Department Personnel Security Reporting Requirements signed by the Department Security Officer on April 16, 2018, although the Executive Office for US Attorneys (EOUSA) received approval to delay implementation of the policy until July 2, 2018.

(b)(6); (b)(7)(C) was not on approved leave when he was arrested for DUI while re-entering the U.S. at the (b)(6); (b)(7)(C) California Port of Entry on March (b)(6); (b)(7)(C) 2018, a Friday, at approximately 3:57 p.m. (b)(6); (b)(7)(C)

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

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

(b)(6); (b)(7)(C) On March (b)(6) 2018, he only claimed two hours of regular work via WebTA, and three hours via the USA-5 Entry report. The OIG also determined that (b)(6); (b)(7)(C) submitted a request for six hours of annual leave for March (b)(6) 2018, after his March (b)(6) 2018, DUI arrest, but the leave was not approved. (b)(6); (b)(7)(C) WebTA indicated he had six hours of "absence without official leave" on March (b)(6) 2018.

The OIG also identified four instances (b)(6); (b)(7)(C) when (b)(6); (b)(7)(C) passed through ports of entry from Mexico into the U.S., without submitting requests for international travel via the iReport module within JSTARS. (b)(6); (b)(7)(C)

On other dates during that timeframe, (b)(6); (b)(7)(C) had properly requested and been approved for international travel into Mexico via iReport module within JSTARS, demonstrating his familiarity with the system and its use.

(b)(6); (b)(7)(C) told the OIG that (b)(6); (b)(7)(C)

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

(b)(6); (b)(7)(C) the rules regarding their core work hours of 8:30 a.m. – 5:00 p.m. were “reasonably” more flexible to compensate for those additional hours worked when serving as the duty AUSA. (b)(6); (b)(7)(C) said there was not a mechanism for AUSAs to capture hours that were worked beyond their core hours, and therefore AUSAs were permitted to work less than their normal core hours to compensate for those extra duty hours. However, (b)(6); (b)(7)(C) said the common practice was that AUSAs could alter their schedules by only a couple hours in a work day, and if more time off was required by the AUSA, the AUSA should submit a request for approved leave.

(b)(6); (b)(7)(C) said that when (b)(6); (b)(7)(C) traveled into Mexico for lunch on March (b)(6); (b)(7)(C) 2018, during his work hours, it was not common practice to do so, and (b)(6); (b)(7)(C) should have sought approval before doing so, and not solely relied on it being acceptable under the guise of having conducted previous work beyond his core hours as the duty AUSA.

(b)(6); (b)(7)(C) advised that the WebTA system was the way AUSAs captured their actual work hours, and the USA-5 Entry report system was more of a general way for the USAO to capture the general areas of work for their office, and it was not considered an exact representation of an AUSA’s work hours. (b)(6); (b)(7)(C) said that (b)(6); (b)(7)(C) submitted a request for annual leave for March (b)(6); (b)(7)(C) 2018, following (b)(6); (b)(7)(C) DUI arrest, and that the leave request was not approved.

(b)(6); (b)(7)(C) told the OIG that on the day (b)(6); (b)(7)(C) was arrested, March (b)(6); (b)(7)(C) 2018, she received a telephone call from (b)(6); (b)(7)(C) around noon, and (b)(6); (b)(7)(C) told her that (b)(6); (b)(7)(C) departed the office, and they both agreed that he would likely not return. (b)(6); (b)(7)(C)

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

During his compelled OIG interview, (b)(6); (b)(7)(C) was unable to recall specifics related to the referenced dates when he failed to obtain approved leave and crossed back into the U.S. from Mexico but said that his AUSA duties often entailed lengthy work hours that were beyond his core hours of 8:30 a.m. to 5:00 p.m., Monday – Friday. Because of this, (b)(6); (b)(7)(C) asserted there was “flexibility” with when he was permitted to arrive and leave work, and there was no mechanism for him to capture the hours he worked beyond his core hours as the duty AUSA. In regard to his failure to obtain the required DOJ approval to travel into Mexico via the iReport module within JSTARS, (b)(6); (b)(7)(C) said he had not been consistent with completing the international reporting requirements and had “forgotten” about it and its importance.

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

OIG’s Conclusion

The OIG investigation concluded that (b)(6); (b)(7)(C) engaged in administrative misconduct for failing to self-report his international travel on four instances from (b)(6); (b)(7)(C) as mandated by DOJ Policy Statement 1700.04, Department Personnel Security Reporting Requirements signed on April 16, 2018. The OIG also concluded that (b)(6); (b)(7)(C) engaged in administrative misconduct in violation of 5 C.F.R. § 2635.705 governing the Use of Official Time in that he failed to use official time in an honest effort to perform official duties when he traveled to Mexico at approximately noon during a workday on March (b)(6); (b)(7)(C) 2018, went drinking, drove while intoxicated, obtained a controlled substance without a valid prescription, attempted to smuggle that substance (Xanax) back into the U.S., and made false statements to the CBP at the port of entry, all before 5 p.m.

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

