

U.S. Department of Justice
 Office of the Inspector General

REPORT OF INVESTIGATION

SUBJECT		CASE NUMBER	
Bianca M. Forde (***)-**-**** (b)(6); (b)(7)(C) Assistant United States Attorney (Former) U.S. Attorney's Office Washington, District of Columbia		2020-002040	
OFFICE CONDUCTING INVESTIGATION		DOJ COMPONENT	
New Jersey Area Office		Executive Office for United States Attorneys	
DISTRIBUTION		STATUS	
<input checked="" type="checkbox"/> Field Office WFO <input checked="" type="checkbox"/> AIGINV <input checked="" type="checkbox"/> Component EOUSA <input type="checkbox"/> USA <input checked="" type="checkbox"/> Other DOJ 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 November 30, 2019, then Assistant United States Attorney (AUSA) Bianca Forde, U.S. Attorney's Office, Washington, D.C., was arrested by the New York City Police Department (NYPD) for resisting arrest and obstructing governmental administration in connection with a traffic stop of a vehicle in which she was a passenger. The charges against Forde were subsequently dismissed, after an Adjournment in Contemplation of Dismissal.

The OIG investigation substantiated that Forde attempted to misuse her position, in violation of 5 C.F.R. § 2635.702, Use of public office for private gain, when almost immediately upon contact with NYPD officers in connection with the traffic stop, Forde displayed her official DOJ credentials to the officers right after (b)(6); (b)(7)(C) the driver of the car in which Forde was a passenger, was asked to step out of the vehicle. The OIG also substantiated that Forde engaged in off-duty misconduct, in violation of 5 C.F.R. § 735.203, Conduct prejudicial to the Government, and the Department's Memorandum, "Off-Duty Conduct," dated January 29, 2016, when Forde repeatedly ignored another NYPD officer's commands to remain in the vehicle while another officer was attempting to have (b)(6); (b)(7)(C) submit to a breathalyzer test, and was rude and disrespectful to the officers.

The OIG obtained and reviewed the recordings from the body worn cameras (BWC) of the NYPD officers present at the time of the traffic stop and Forde's subsequent arrest. This review, along with Forde's statements to the OIG, revealed that Forde displayed her DOJ-issued credentials less than one minute after the officers stopped (b)(6); (b)(7)(C) vehicle and right after they asked (b)(6); (b)(7)(C) to step out of the vehicle. At that time, Forde was in the front passenger seat of (b)(6); (b)(7)(C) vehicle, and she had not been asked for her identification. The BWC recordings also reflect that Forde

DATE	(b)(6); (b)(7)(C)	SIGNATURE	(b)(6); (b)(7)(C)
PREPARED BY SPECIAL AGENT			Date: 2022.01.10 12:30:14 -05'00'
DATE		SIGNATURE	Digitally signed by Russell W. Cunningham Date: 2022.01.10 12:57:42 -05'00'
APPROVED BY SPECIAL AGENT IN CHARGE	Russell W. Cunningham		

twice disobeyed the officers' commands to remain in the vehicle, as they attempted to administer a breathalyzer test to [REDACTED]. Forde twice exited the vehicle and made disparaging remarks toward the officers. Forde also told the officers that she was acting as [REDACTED] attorney. Forde was arrested after she refused the officer's instruction to return to her car after she had gotten out of it a second time.

During a voluntary interview with the OIG, Forde stated that she was upset the night of her arrest because she believed that she and [REDACTED] were being racially profiled by the NYPD. [REDACTED] was stopped for failing to use his turn signal, and Forde told the OIG that drivers of other vehicles pulled over in the same location, a drunk driving checkpoint, were not being asked to get out of their vehicles. Forde admitted to the OIG that she showed an officer her DOJ credentials shortly after she and [REDACTED] were stopped. Forde told the OIG that she wanted the officers to know that she was an attorney, but said she did not identify herself as an AUSA. In response to questions about her disregard for the officer's commands to remain in the vehicle, Forde told the OIG that she was concerned for [REDACTED] and was "thinking to myself, what if this goes bad. There must be something that I could do." Forde acknowledged to the OIG that she "probably should have just sat in the car and been quiet because no one was speaking to me. But I think in that moment, I was just sensitive to all of everything that is a part of my life that is informed by and also separate from my job."

On April 6, 2020, the charges against Forde for Resisting Arrest and Obstructing Governmental Administration were dismissed, after an Adjournment in Contemplation of Dismissal. Forde subsequently filed a civil rights lawsuit against the NYPD officers arising from her arrest, which is pending in the Supreme Court of the State of New York, County of New York.

Forde resigned from the Department, effective November 27, 2020.

The OIG has completed its investigation and is providing this report to EOUSA for its information and to the Department's Office of Professional Responsibility for 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 Executive Office for United States Attorneys (EOUSA) alleging that on November 30, 2019, then Assistant United States Attorney (AUSA) Bianca Forde, U.S. Attorney's Office, Washington, D.C., was arrested by the New York City Police Department (NYPD) for resisting arrest and obstructing governmental administration in connection with a traffic stop of a vehicle in which she was a passenger. On April 6, 2020, the charges against Forde were subsequently dismissed, after an Adjournment in Contemplation of Dismissal.

Investigative Process

The OIG's investigative efforts consisted of the following:

Interviews of the following:

- (b)(6); (b)(7)(C)
- Bianca Forde, Assistant United States Attorney, U.S. Attorney's Office, Washington, D.C.

Review of the following:

- NYPD report concerning the arrest of Forde authored by NYPD Officer (b)(6); (b)(7)(C)
- NYPD audio and video recordings from the body worn cameras of NYPD Officers (b)(6); (b)(7)(C) and (b)(6); (b)(7)(C)

Forde's Attempt to Misuse her Position and Other Off-duty Conduct Prejudicial to the Government

Relevant Authorities

5 C.F.R. § 2635.702 (a), Use of public office for private gain, provides in pertinent part: "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. § 735.203, Conduct prejudicial to the Government, states: "An employee shall not engage in criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, or other conduct prejudicial to the Government."

Memorandum from the Assistant Attorney General for Administration and Designated Agency Ethics Official: "Off-Duty Conduct," dated January 29, 2016, provides in pertinent part: "Higher-level employees and those entrusted with sensitive responsibilities, including attorneys and law enforcement officers, are subject to closer scrutiny and greater potential discipline for off-duty misconduct reflecting on honesty and integrity than those employees with less responsibilities."

OIG Review of NYPD Body Worn Camera Recordings

The OIG obtained and reviewed the recordings of the body worn cameras (BWC) of the NYPD officers present at the time of the traffic stop and Forde's subsequent arrest. Specifically, the OIG reviewed the BWC recordings of NYPD Officers [REDACTED] and [REDACTED] (BWC recordings). The OIG also reviewed [REDACTED] subsequent arrest report. [REDACTED] and [REDACTED] declined to be interviewed by the OIG. The OIG does not have the authority to compel testimony from non-Department employees.

The OIG's review of the BWC recordings revealed the following. Five vehicles passed through a drunk driving checkpoint without being stopped before two vehicles were directed to stop: the vehicle Forde was in and the vehicle immediately in front of it. [REDACTED] directed the driver of the vehicle that Forde was in, [REDACTED] to stop his vehicle and advised [REDACTED] that that he was being pulled over because he had failed to use his left turn signal. [REDACTED] then asked [REDACTED] for his driver's license and asked him to place the car in park and step out of the vehicle. Forde asked [REDACTED] "Why is he being asked to step out of the car?" and remarked that other drivers were not being asked to get out of their car. [REDACTED] responded that the law in New York allowed him to ask [REDACTED] to step out of the car. [REDACTED] also told Forde, "Ma'am, what you're showing me right now, you're being recorded." The video does not reflect what Forde may have showed [REDACTED]. Forde then told [REDACTED] that the law did not allow him to ask [REDACTED] to step out of the vehicle. The exchange between [REDACTED] and Forde occurred less than one minute after [REDACTED] initial contact with [REDACTED].

As reflected in the BWC recordings, [REDACTED] got out of his vehicle, [REDACTED] asked [REDACTED] whether he had anything to drink, and after further discussion [REDACTED] asked [REDACTED] to take a breathalyzer test. As [REDACTED] and [REDACTED] discussed [REDACTED] request for [REDACTED] to take a breathalyzer test, Forde appeared to be filming the exchange on her iPhone and stepped out of the vehicle. [REDACTED] instructed Forde to stay in the car, and Forde responded, "No." Forde remained outside of the vehicle. [REDACTED] and [REDACTED] spoke further about the breathalyzer test. [REDACTED] stated that [REDACTED] was ordering him to take a breathalyzer test. [REDACTED] injected, "I'm not telling you." In speaking with [REDACTED], [REDACTED] referred to "the law." Forde then questioned [REDACTED] "The law says? Are you a rookie? Are you being trained today?" [REDACTED] then explained to [REDACTED] the reason why he was asking [REDACTED] to take the breathalyzer test. In an apparent reference to Forde and her DOJ-issued credentials, [REDACTED] stated, "People who are not rookie drivers want to drive safe, okay. And the passengers in the vehicle should also want them to drive safe, okay. Especially if they are going to pull out some law enforcement ID."

While [REDACTED] continued to talk with [REDACTED], Forde took several steps toward [REDACTED] and [REDACTED]. [REDACTED] stepped in front of Forde and told her that he had asked her to get back inside of the vehicle. As [REDACTED] began to push on Forde's hips, directing her back to the passenger seat of the car, Forde stated, "Don't even touch me." [REDACTED] then told Forde to get into the vehicle and that the next thing he would do was "put her in cuffs." Forde then got back inside the vehicle, said to [REDACTED] and [REDACTED] whatever he is asking you to do, say no," and shut the car door. [REDACTED] approached [REDACTED] and [REDACTED] and said he [REDACTED].

[REDACTED] continued to speak with [REDACTED] about taking the breathalyzer test. During this conversation, Forde opened the car door, at which point [REDACTED] told her to stay in the car. Forde responded, "I'm in the car." [REDACTED] then told Forde that she needed to "lose the attitude" and that he would "call [her] superior officer over here." Forde responded, "You do that."

[REDACTED] continued to speak with [REDACTED] about taking the breathalyzer test. Forde then got out of the vehicle a second time and walked toward [REDACTED] and [REDACTED], shouting, "I'm at this point, I'm his attorney, he's not saying shit else to you." [REDACTED] told Forde to return to the car, and Forde shouted, "No." [REDACTED] then directed Forde to put her hands behind her back and attempted to handcuff her. Forde did not comply with [REDACTED] command. As [REDACTED] controlled Forde's right hand, Forde retrieved her cell phone with her left hand. Another officer assisted [REDACTED] in handcuffing Forde, during which time [REDACTED] told Forde that he had asked her numerous times to stay in the car and that she was being very disrespectful. Once Forde was placed in handcuffs, [REDACTED] told another officer to "call down to the MCC [Manhattan Criminal Court] and speak with the head DA down there and we'll call and verify this lady's . . ." As Forde was placed in a police cruiser, [REDACTED] spoke with an unknown person over his phone, referring

to Forde as “apparently . . . some sort of law enforcement or attorney.” Another officer on the scene asked if Forde was an attorney, and [REDACTED] replied, “federal, some kind of federal.”

[REDACTED] took the breathalyzer test and was told that he was free to go. [REDACTED] was allowed to speak with Forde, who was sitting in the police car.

While sitting in the police car, Forde asked [REDACTED] who was then standing with the officers, “My badge is in there? My badge.” Forde also asked [REDACTED] to call “[REDACTED],” explaining that “he used to work here.” Forde added, “Actually, wait, don’t tell him it’s me though.” Forde also said to [REDACTED] “I should have kept my fucking mouth shut.”

About ten minutes later, after Forde was taken to the 7th Precinct for processing, [REDACTED] searched Forde’s purse in front of Forde. In an apparent reference to her DOJ-issued credentials, Forde said to [REDACTED] “You see that badge in front of you. You see what it says. I’m not some fucker.” Forde also stated, “I’m law enforcement, you know, like, this is just unbelievable.” Forde was charged with Resisting Arrest and Obstructing Governmental Administration. On April 6, 2020, the charges against Forde were dismissed, after an Adjournment in Contemplation of Dismissal. Forde subsequently filed a civil rights lawsuit against the NYPD officers arising from her arrest, which is pending in the Supreme Court of the State of New York, County of New York.

OIG Interviews

On February 26, 2020, the OIG conducted a voluntary interview of Forde and reviewed the BWC recordings with Forde. Forde told the OIG that as an AUSA with the U.S. Attorney’s Office, District of Columbia, she participated in annual ethics training, most recently at the end of 2019. Forde stated that she is not permitted to, nor should she, use her title with the DOJ to obtain a benefit for herself or on behalf of someone else. Forde said her credentials are to be used to get in and out of the federal courthouse and not to be used to obtain a benefit. Forde said she believed engaging in conduct that brings discredit to the DOJ and creating an appearance of impropriety were also covered in the ethics training she received.

Forde told the OIG that prior to her arrest on November 30, 2019, she went to The Broadway Comedy Club with [REDACTED]. [REDACTED] Forde said she [REDACTED] did not believe she [REDACTED] at the time of the traffic stop.

Forde told the OIG that she was a passenger in [REDACTED] car later than evening, when she and [REDACTED] were flagged to stop by an officer. Forde said she noticed other cars also being pulled over by a group of officers. An officer approached [REDACTED] car, asked [REDACTED] for his license and registration, and told them they had been pulled over for failure to use a turn signal. The officer then asked [REDACTED] to step out of the vehicle. Forde initially told the OIG that “at some point” she showed the officer her DOJ-issued credentials. Forde later told the OIG that she had shown her DOJ-issued credentials shortly after she and [REDACTED] were stopped, but added that she only showed her credentials after she protested that the person in front of them was not being “stepped out” of their car.

Forde told the OIG that she was concerned that she and [REDACTED] were being racially profiled. Forde said that [REDACTED] was the only one being asked to step out of his vehicle. Forde added that the driver in front of them was a white male and she did not see him provide a driver’s license and registration.

Forde told the OIG that she asked the officer why [REDACTED] was being made to step out of his vehicle and the officer responded that the law in New York said he could ask anyone to step out of the car, adding that maybe she did not know the law. Forde stated that, at this point, she wanted to communicate to the officer that she was an attorney, although she never said she was an AUSA. Forde stated that it was at this point that she showed the officer her DOJ-issued credentials. Forde said the officer did not look at her credentials and, in fact, stated throughout the stop that she was not an attorney.

Forde told the OIG that because she could not hear or see what was being said after [REDACTED] got out of the vehicle, she stepped out of the vehicle to record [REDACTED] interaction with the police on her iPhone. Forde said the officers told her she could record the interaction but could not get out of the car. Forde confirmed she told [REDACTED] that he did not have to take a breathalyzer test and that the officers told [REDACTED] his license would be suspended if he refused to take the test. Forde said the officer who ultimately arrested her came at her “aggressively” and told her to get back in the vehicle.

Forde told the OIG that after she got back in the vehicle she felt as if [REDACTED] was being surrounded by the officers. Forde began to play out in her mind what could possibly happen to [REDACTED]. At this time, Forde decided to exit the vehicle again and told the officers that she would be acting as [REDACTED] attorney, in an attempt to protect him from what she believed to be a volatile situation. Forde again stated she never told the officers that she was an AUSA. Forde acknowledged that she had been told by the officer not to exit the vehicle but decided to do so anyway.

When asked why she called the officer a “rookie” and asked if he was being trained, Forde told the OIG that she “was frustrated” and “it looked to me as though the officer who was talking to us was being trained. And that this whole exercise was for his training.” Forde stated that after advising the officer that she was an attorney and barred in New York, the officer said she was not an attorney. Forde said she was “offended.” Forde said that “at no point did I resist. At no point did I use my position for a benefit, as I understand that requirement to be.” When asked about whether the officers had ever asked her to show her identification, Forde said that they had never asked her.

Forde acknowledged that after being handcuffed and sitting in the police car awaiting transport, she twice referred [REDACTED] to her “badge,” which she told the OIG was a reference to her DOJ-issued credentials. Forde said her credentials did not include a badge or a shield. Forde said she did not recall what her concern was about her “badge,” but said that she was thinking about her future and did not want the officers to know she was an AUSA.

Forde told the OIG that she had asked [REDACTED] to call [REDACTED] in her office, to see if he could help her. Forde asked [REDACTED] not to tell [REDACTED] it was her, because she wanted to let her superiors know about her arrest herself. Forde said that she completed the mandatory self-report form online after being released from police custody.

Forde told the OIG that while at the 7th precinct for processing, the officer used her DOJ-issued credentials to complete the police paperwork. Forde stated that was the only reason the officers knew she was an AUSA.

When asked about her statement at processing – “You see that badge in front of you. You see what it says. I’m not some fucker.” – Forde said she wanted to convey to the officers, “I have no record, like, why are you doing this? Like this does not have to go this way.” Forde added that her “intention was along the same lines as you profiled us, you pulled us over, you see us in this car, you see this red hoodie, you don’t believe I’m an attorney. And right now, now you know I’m an attorney, like, know that I’m not some crazy person or some dangerous person.”

Forde told the OIG that in retrospect, since [REDACTED] had not been drinking that night, she should have told him to comply with the officer’s request, but that she did what she did because she felt as though they had been profiled and pulled over for reasons that were totally illegitimate. Forde added that she “probably should have just sat in the car and been quiet because no one was speaking to me. But I think in that moment, I was just sensitive to all of everything that is a part of my life that is informed by and also separate from my job.” Forde added that in the moment she was sensitive and angry to what was going on because she tried really hard to maintain integrity in her position as an AUSA. However, she felt betrayed by the system. Forde said she did not believe her actions that night disgraced the DOJ given everything that was going on at that moment.

On May 11, 2021, the OIG interviewed [REDACTED] [REDACTED] told the OIG that he was contacted by [REDACTED] after Forde’s arrest on November 30, 2019. [REDACTED] told [REDACTED] that one of his friends had been arrested and was seeking [REDACTED] advice as [REDACTED]. The next morning, at [REDACTED] request, [REDACTED] recommended a defense attorney. [REDACTED] later advised [REDACTED] that the “friend” who had been arrested was Forde. [REDACTED] said that at no time was he asked to attempt to obtain favorable treatment on Forde’s

behalf. (b)(6); (b)(7)(C) said he and Forde never discussed her arrest. (b)(6); (b)(7)(C) said his DOJ-issued credentials are primarily used to go into federal court or when interviewing someone in his official capacity. When asked if he would ever have a reason to produce his DOJ credentials during a traffic stop, (b)(6); (b)(7)(C) replied, "No."

Forde resigned from the Department, effective November 27, 2020.

OIG's Conclusion

The OIG investigation concluded that Forde violated 5 U.S.C. § 2635.702 by attempting to use her position to gain an advantage to which she was not entitled. Specifically, the OIG investigation concluded that Forde displayed her DOJ-issued credentials, which identified her as an AUSA, within one minute of the officers stopping (b)(6); (b)(7)(C) vehicle and right after they asked (b)(6); (b)(7)(C) to step out of the vehicle. Although the BWC recordings do not capture what Forde showed (b)(6); (b)(7)(C) at the outset of the traffic stop, (b)(6); (b)(7)(C) advised Forde, "Ma'am, what you're showing me right now, you're being recorded," and soon thereafter referred to what Forde showed him as "some law enforcement ID." The officers later referred to Forde on the scene variously as "some sort of law enforcement or attorney" and "some kind of federal attorney." In her OIG interview, Forde admitted that she had shown her DOJ-issued credentials to the officer shortly after she and (b)(6); (b)(7)(C) were stopped. Forde was the passenger, not the driver, of the vehicle that was stopped. By Forde's own admission, no police officer asked her to identify herself. Based on her training and experience, Forde knew it was improper for her to use her credentials showing that she was a federal prosecutor with the intent to obtain a benefit, that is, more favorable treatment for the driver (b)(6); (b)(7)(C) in connection with the traffic stop. This conduct was an attempt to use a public office, position, or title to coerce or induce another person to provide a benefit within the meaning of 5 U.S.C. § 2635.702.

The OIG investigation further concluded that Forde violated federal regulations and Department policy by repeatedly ignoring the instructions of Officer (b)(6); (b)(7)(C) to remain in the vehicle while Officer (b)(6); (b)(7)(C) was attempting to have (b)(6); (b)(7)(C) submit to a breathalyzer test, and was rude and disrespectful toward the officers on the scene. As the video reflected, Forde twice got out of the vehicle. The first time she got out of the vehicle, Officer (b)(6); (b)(7)(C) instructed Forde to stay in the car and Forde responded "No." (b)(6); (b)(7)(C) took no action at that time, and Forde remained outside the vehicle. Shortly thereafter, as Forde started walking towards Officer (b)(6); (b)(7)(C) and (b)(6); (b)(7)(C) intervened and told Forde that he would "put her in cuffs" if she failed to return to the car, at which time Forde got back inside the car. However, not long thereafter, Forde once more got out of the car and once again walked towards (b)(6); (b)(7)(C) and (b)(6); (b)(7)(C) this time shouting, "I'm at this point, I'm his attorney, he's not saying shit else to you." (b)(6); (b)(7)(C) again told Forde to return to the car, and Forde again shouted, "No." At that time, (b)(6); (b)(7)(C) place Forde under arrest. As an AUSA, Forde was entrusted with sensitive responsibilities and thus her off-duty conduct was subject to closer scrutiny under Department policy. As Forde largely conceded in her interview, she should have just remained in the car as instructed and been quiet, because no one was speaking to her. Even if Forde honestly believed the NYPD officers had engaged in racial profiling by pulling over their vehicle, as she has alleged in her OIG interview, at that point in time the officers were engaged in a discussion with (b)(6); (b)(7)(C) about the breathalyzer, and they were allowing Forde to use her phone to video their interaction with (b)(6); (b)(7)(C). Forde was arrested by (b)(6); (b)(7)(C) only after she escalated the situation by twice getting out of the car, and twice ignoring (b)(6); (b)(7)(C) instructions. We recognize the seriousness of the racial profiling allegations made by Forde, and the NYPD officers' conduct will be addressed through the judicial process that Forde has initiated.¹ While Forde may have been rightfully upset by what she has stated was a situation that resulted from racial profiling, her actions that night that resulted in her arrest were not the appropriate response by a federal prosecutor. We therefore concluded that Forde's conduct on the scene was unbecoming a federal employee and prejudicial to the government, in violation of federal regulations and Department policy.

¹ The OIG has no jurisdiction to investigate allegations of misconduct by local law enforcement officers when exercising their local police powers.