

**DEPARTMENT OF HOMELAND SECURITY
OFFICE OF INSPECTOR GENERAL**

REPORT OF INVESTIGATION

I17-BP-ELP-10299



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OFFICE OF INSPECTOR GENERAL
Department of Homeland Security

REPORT OF INVESTIGATION

<i>Case Number:</i>	I17-BP-ELP-10299
<i>Case Title:</i>	[REDACTED] Border Patrol Agent, GS-12 U.S. Customs and Border Protection El Paso, TX
<i>Report Status:</i>	Final
<i>Alleged Violation(s):</i>	18 USC § 1001 (False Statements, Entries or Concealing or Covering up a Material fact)

SYNOPSIS

This case was initiated on February 23, 2017, after an email was received from U.S. Border Patrol (USBP), regarding the arrest of [REDACTED] an undocumented, previously deported alien living illegally in the United States. The arrest occurred at the El Paso County Courthouse, El Paso, TX on February 2, 2017. The email detailed contradictions between an affidavit filed by a USBP Agent in support of [REDACTED] arrest and what DHS OIG observed upon review of captured courthouse video.

During the course of the investigation, the Department of Homeland Security (DHS), Office of Inspector General (OIG), conducted interviews of involved parties and reviewed captured courthouse video in its entirety. DHS OIG substantiated allegations that [REDACTED] falsified information on a criminal complaint; however, the U.S. Attorney's Office declined prosecution.

Reporting Agent		Distribution:	
Name: [REDACTED]	Signature: [REDACTED]	El Paso Field Office	Original
Title: Special Agent	Date: 8-17-17	Headquarters	cc
Approving Official		Component(s)	cc
Name: Javy Pedroza	Signature: [Signature]	Other	cc
Title: Special Agent in Charge	Date: 8/22/2017		

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DETAILS

On February 2, 2017, the U.S. Customs and Border Protection (CBP), Office of Professional Responsibility, El Paso, TX received an email from [REDACTED], Acting Deputy Chief Patrol Agent, CBP, USBP, El Paso, TX, regarding the arrest of [REDACTED] a non-documented, previously deported alien. The email indicated that on February 2, 2017, Border Enforcement Security Taskforce (BEST) Disrupt Unit, received information that a subject identified as [REDACTED] was residing illegally in El Paso, TX.

The focus of this investigation is an affidavit attached to a criminal complaint filed on February 10, 2017, presented, signed and sworn to by [REDACTED] BPA, CBP, USBP, El Paso, TX and signed by Anne T. Berton, U.S. Magistrate Judge, El Paso, TX. According to the affidavit, on February 9, 2017, [REDACTED] observed [REDACTED] exiting the El Paso County Courthouse and walking on the sidewalk on San Antonio Avenue. BEST Agents approached [REDACTED] identified themselves as BPA's and questioned her regarding her citizenship and immigration status. The affidavit stated that [REDACTED] admitted to being a Mexican National with no immigration documentation allowing her to enter the United States legally. The Affidavit stated that [REDACTED] was taken into custody at that time.

Subsequent surveillance video footage from the El Paso County Courthouse, released by local media outlets contradicted the sworn criminal complaint of the encounter/arrest of [REDACTED] (Exhibit 1)

Allegation: [REDACTED] falsified a criminal complaint, an official Federal Government document, presented to a U.S. Magistrate subsequent to the arrest of [REDACTED]

DHS OIG reviewed video related to the arrest of [REDACTED] on February 9, 2017, which was recorded at the El Paso County Courthouse. The video is controlled by the El Paso County Sheriff's Department and included multiple video scenes from various cameras inside the courthouse. The video review revealed that [REDACTED] made contact with [REDACTED] inside, not outside of the courthouse and then escorted her outside to a waiting vehicle. The video further showed that [REDACTED] placed his hand on [REDACTED] arm and physically directed her out of the courthouse. (Exhibit 2)

The DHS OIG interviewed [REDACTED] who stated that on February 9, 2017, she attended a Protective Order Hearing at the El Paso County Courthouse in order to obtain a protective order against her domestic partner. [REDACTED] stated that she was driven to the courthouse by [REDACTED] Victim Counselor, Center Against Sexual and Family Violence, El Paso, TX. [REDACTED] stated that they both went to a waiting area on the 10th floor of the courthouse. According to [REDACTED] subsequently informed her [REDACTED] that Immigration and Customs Enforcement (ICE), was in the building and would likely be arresting her. [REDACTED] stated that after receiving her protective order, they returned to the waiting area before leaving the courtroom. Upon leaving the courtroom, [REDACTED] stated that she was approached by two individuals who identified themselves as ICE agents. [REDACTED] stated that the agents asked her

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name and if she had documentation to be in the U.S. legally. [REDACTED] stated that she gave them her name and admitted that she had no documentation to be in the U.S. legally. [REDACTED] stated that she was led to the elevator and escorted out of the courthouse to a waiting vehicle. [REDACTED] stated that she was driven to an office on Montana Ave, El Paso, TX where she was processed. [Agent's Note: That building was subsequently identified as the Homeland Security Investigations Office (HSI), El Paso, TX, which houses the BEST unit.] [REDACTED] stated that during processing, she told [REDACTED] that she would not answer questions without the presence of an attorney. [REDACTED] stated that [REDACTED] continued to ask her where and when [REDACTED] last entered the U.S. [REDACTED] stated that she eventually answered [REDACTED] questions. [REDACTED] stated that at no time after the agents apprehended her did she feel that she was free to leave. (Exhibit 3)

The DHS OIG interviewed [REDACTED] Chief Attorney, Protective Order Unit, El Paso County's Attorney's Office, El Paso, TX. [REDACTED] stated that she had been informed that ICE agents were in the building and were looking for [REDACTED] [REDACTED] stated that she went to the 10th floor of the courthouse and informed [REDACTED] [REDACTED] stated that she attended [REDACTED] protective order hearing and that [REDACTED] was seated behind her. [REDACTED] stated that after they exited the courtroom, they were approached by [REDACTED] and another male who both identified themselves as ICE agents. [REDACTED] stated that the two agents spoke with [REDACTED] and asked her about her immigration status and [REDACTED] responded that she had no legal status. [REDACTED] stated that she had not heard either agent tell [REDACTED] that she was under arrest but witnessed [REDACTED] grasp [REDACTED] arm and walk her toward the elevator. [REDACTED] stated that she had been practicing law for approximately 18 years handling varied types of law. [REDACTED] stated that she felt in her experience and knowledge of the law that at no time was [REDACTED] free to leave after the two agents approached her. (Exhibit 4)

The DHS OIG interviewed [REDACTED] Victim Advocate, Center Against Sexual and Family Violence, El Paso, TX. [REDACTED] stated that she brought [REDACTED] to the El Paso County Courthouse on February 9, 2017, in order for [REDACTED] to attend a protective order hearing to secure a protective order against her domestic partner. [REDACTED] stated that while at the courthouse she spoke with [REDACTED] who informed her that ICE agents were in the building looking for [REDACTED] [REDACTED] stated that the hearing for [REDACTED] proceeded and [REDACTED] was granted the order. [REDACTED] stated that she was told that ICE agents had been in the courtroom during the hearing. [REDACTED] stated that after the hearing, they went back to the waiting area prior to exiting the courtroom. [REDACTED] stated that she went outside and spoke with [REDACTED] [REDACTED] stated that [REDACTED] informed her that they were there to arrest her. [REDACTED] stated that she, [REDACTED] and [REDACTED] exited the waiting room and were approached by [REDACTED] and another agent. [REDACTED] stated that both men identified themselves as ICE agents and commented to [REDACTED] that they knew she had been previously deported and should have learned by now. [REDACTED] stated that the two agents walked [REDACTED] toward the elevator. [REDACTED] stated that as soon as the agents approached [REDACTED] she, [REDACTED] did not feel that [REDACTED] was free to leave. (Exhibit 5)

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The DHS OIG interviewed [REDACTED] BPA, CBP, USBP, El Paso, TX. [REDACTED] was the second individual present on the 10th floor with [REDACTED] and can be seen on the video interacting with [REDACTED]. [REDACTED] is currently assigned to the BEST unit. [REDACTED] stated that on February 8, 2017, a pre-operation meeting was held regarding [REDACTED] immigration status and that she was scheduled for a hearing on February 9, 2017 at the El Paso County Courthouse. [REDACTED] stated that the plan called for BEST agents to surveil the courthouse in an effort to locate [REDACTED]

[REDACTED] stated that he travelled to the courthouse with [REDACTED]. Upon arriving at the courthouse, [REDACTED] stated he and [REDACTED] went to the 10th floor where the protective order hearings were held. [REDACTED] stated that they had a photo of [REDACTED]. [REDACTED] stated that he positioned himself near the rear of the floor while [REDACTED] spoke with the court bailiff. [REDACTED] stated that [REDACTED] approached him and told him that [REDACTED] was inside the courtroom and was dressed as a woman. [REDACTED] stated that [REDACTED] went into the courtroom and spoke with [REDACTED] advocate/counselor from the women's shelter who asked him what they intended to do with [REDACTED]

[REDACTED] stated that he observed [REDACTED] and her advocate exit the courtroom followed by a tall blond woman. [REDACTED] stated that [REDACTED] approached them and took over the conversation. [REDACTED] stated that he and [REDACTED] identified themselves and asked [REDACTED] her identity and if she had any documentation to be in the U.S. [REDACTED] stated that [REDACTED] asked [REDACTED] to step outside so they could talk further. [REDACTED] stated that at that time, [REDACTED] had not told [REDACTED] she was under arrest. [REDACTED] stated that at one point while walking with [REDACTED] placed his hand on [REDACTED] elbow, which [REDACTED] felt was an effort to guide [REDACTED] downstairs and out of the building.

[REDACTED] stated that when he, [REDACTED] and [REDACTED] exited the courthouse, they were joined by [REDACTED] BPA, CBP, USBP, El Paso, TX, and all walked to a waiting BEST vehicle. At the vehicle, [REDACTED] stated that [REDACTED] again asked [REDACTED] her identity and her immigration status. Upon hearing that she had no documentation to be in or remain in the U.S., [REDACTED] stated that [REDACTED] placed [REDACTED] under arrest. [REDACTED] stated that [REDACTED] was transported to the HSI BEST Office, El Paso, TX for processing. [REDACTED] stated that once at the HSI Office, [REDACTED] observed [REDACTED] working at a computer terminal. [REDACTED] believed that [REDACTED] was working on the USBP I-213, Record of Deportable/Inadmissible Alien form.

The DHS OIG asked [REDACTED] if based on his training and experience as a BPA, at the time that he and [REDACTED] approached [REDACTED] on the 10th floor of the courthouse, was [REDACTED] free to leave or was she in custody. [REDACTED] stated no, [REDACTED] would not have been free to leave once they contacted her and placed her in custody. (Exhibit 6)

DHS OIG reviewed the USBP I-213, which was prepared by [REDACTED]. The USBP I-213 detailed [REDACTED] arrest and her criminal history. The DHS OIG review concluded that the USBP I-213 documented the actual events of [REDACTED] arrest as they occurred inside the courthouse. The document also accurately reflected what was observed in the video. However, the USBP I-213 directly contradicted the affidavit prepared, sworn to and signed by [REDACTED]. The most

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notable inconsistency was the affidavit denoting that [REDACTED] initially approached [REDACTED] outside the courthouse while the USBP I-213 reported the initial contact inside the courthouse. (Exhibit 7)

The DHS OIG interviewed [REDACTED]. On February 9, 2017, [REDACTED] was assigned to the BEST Unit. [REDACTED] stated that they had been given intelligence that [REDACTED] was an undocumented alien residing in the U.S. and had a protective order hearing scheduled for February 9, 2017, at the El Paso County Courthouse.

[REDACTED] stated that on February 9, 2017, he and other members of the BEST Unit traveled to the El Paso Courthouse, El Paso, TX. [REDACTED] stated that he and [REDACTED] entered the courthouse and first went to the 5th floor Protective Unit Office and inquired about [REDACTED]. [REDACTED] stated that he and [REDACTED] then went to the 10th floor to look for [REDACTED]. [REDACTED] stated that he went up to the court bailiff and inquired about [REDACTED]. [REDACTED] stated that the bailiff told him that [REDACTED] was inside and dressed as a woman. [REDACTED] stated that he went inside the courtroom to identify [REDACTED] since she now looked different than the picture he had of her. After identifying [REDACTED], [REDACTED] stated he left the courtroom.

[REDACTED] stated that outside of the courtroom, he was approached by a woman who identified herself as an advocate/counselor from the women's shelter and asked if he was there to arrest [REDACTED]. [REDACTED] stated that approximately five or ten minutes later, [REDACTED] and the advocate exited the courtroom followed by a tall blond woman. [REDACTED] stated that he and [REDACTED] approached [REDACTED]. [REDACTED] identified themselves and asked [REDACTED] to identify herself and provide her immigration status. [REDACTED] stated that a group was congregating around them so he suggested that they go outside and talk further. [REDACTED] stated that as they walked toward the elevator he did not place his hands on [REDACTED] or tell her that she was under arrest at that time. [REDACTED] stated that he gave instructions to [REDACTED] advocate as to how [REDACTED] could retrieve her property from the women's shelter.

[REDACTED] stated that when the elevator door opened on the first floor, [REDACTED] turned away from the courthouse exit. [REDACTED] stated that upon seeing [REDACTED] turn in the wrong direction, he placed his hand on her arm to guide her in the right direction. [REDACTED] stated that after they exited the courthouse they were approached by [REDACTED] and walked toward a waiting BEST vehicle. [REDACTED] stated that at the vehicle he again asked [REDACTED] her identity and if she had any documentation to be in the U.S. legally. [REDACTED] stated that [REDACTED] provided her identity and that she did not have documentation. [REDACTED] stated that [REDACTED] was placed under arrest and transported to the HSI BEST Office for processing. [REDACTED] stated that he first completed the USBP I-213 and then the Criminal Complaint and Affidavit. [REDACTED] stated that he swore to the complaint the following day.

The DHS OIG asked [REDACTED] about the discrepancies in the affidavit, the USBP I-213 and the video that was widely broadcast throughout the U.S. The affidavit stated that [REDACTED] was observed by surveillance exiting the courthouse and then proceeded to walk down San Antonio Ave., El Paso, TX. The video and the USBP I-213 show and state that [REDACTED] was

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encountered by [REDACTED] and [REDACTED] on the 10th floor inside the courthouse and ushered to a waiting BEST vehicle. [REDACTED] replied that he didn't believe it was an issue where he reportedly encountered/arrested [REDACTED] because the courthouse was physically on San Antonio Ave. [REDACTED] stated the reason for the differences between the affidavit and the USBP I-213, was that he could not remember what he wrote on the USBP I-213. [REDACTED] stated he meant to write that [REDACTED] was seen on San Antonio Ave, not [REDACTED] but was in a hurry and forgot to add [REDACTED] name.

The DHS OIG asked [REDACTED] if [REDACTED] was free to leave following their initial encounter at the courthouse. [REDACTED] stated no, if [REDACTED] tried to leave she would have been arrested. The DHS OIG asked [REDACTED] if [REDACTED] was in fact detained and therefore under arrest. [REDACTED] responded in the affirmative.

The DHS OIG requested that [REDACTED] prepare a written statement. Under the advice of counsel, [REDACTED] declined. The following day, [REDACTED] contacted the DHS OIG and informed them that he had prepared a written statement. [REDACTED] brought the statement to DHS OIG where he swore to and signed it in the presence of DHS OIG Special Agents. In the prepared statement, [REDACTED] now stated that when he wrote in the affidavit stating that [REDACTED] was observed on San Antonio Ave., he meant to say that [REDACTED] was observed on the walkway in front of the courthouse which intersects with San Antonio Ave. [REDACTED] wrote that, while on the 10th floor of the courthouse and during his initial interaction with [REDACTED] questions to [REDACTED] were limited to her identity and her immigration status. On the street, [REDACTED] wrote that he now questioned her to her previous deportations. It was then that [REDACTED] was placed under arrest. [REDACTED] explained the reason he stated on the affidavit that BPA's approached [REDACTED] and not himself was because he wasn't sure who would testify at [REDACTED] preliminary hearing.

The DHS OIG reviewed all available information to include video. A number of inconsistencies were observed regarding [REDACTED] interview statements, his prepared statement and the retrieved video. Specific inconsistencies include [REDACTED] stating that [REDACTED] was not under arrest on the 10th floor of the courthouse, but still informing advocate how to retrieve [REDACTED] belongings. [REDACTED] claimed that when exiting the Courthouse elevator with [REDACTED] he simply grabbed her arm to guide her in the proper direction. The video showed [REDACTED] hand on [REDACTED] arm from the moment the elevator door opened. In his affidavit, [REDACTED] wrote that [REDACTED] was walking on San Antonio Ave. During the interview, [REDACTED] stated that he meant to write that [REDACTED] was seen on San Antonio Ave. In his prepared statement, [REDACTED] wrote that he meant to say that [REDACTED] was seen on the walkway in front of the courthouse but at the time didn't know what to call that area. (Exhibit 8)

The DHS OIG was advised by the U.S. Attorney's Office that they would be not be pursuing criminal charges against [REDACTED] because they did not feel that [REDACTED] had acted with any type of criminal malice against [REDACTED]. They would however, be adding [REDACTED] to their Giglio database. (Exhibit 9)

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