

ATTORNEY GENERAL OF THE STATE OF NEW YORK
CIVIL RIGHTS BUREAU
LAW ENFORCEMENT MISCONDUCT INVESTIGATIVE OFFICE

In the Matter of

Assurance No. 24-083

**Investigation by LETITIA JAMES,
Attorney General of the State of New York, of**

CITY OF OSWEGO and the
OSWEGO CITY POLICE DEPARTMENT,

Respondents.

ASSURANCE OF DISCONTINUANCE

The Office of the Attorney General of the State of New York (“OAG”) commenced an investigation pursuant to New York Executive Law § 63(1) and New York Civil Rights Law § 28 into the arrest of a non-U.S.-citizen Richard Ubanwa by officers of the Oswego City Police Department (“OPD”) in the Oswego County Courthouse. This Assurance of Discontinuance (“Assurance”) contains the findings of the OAG’s investigation and the relief agreed to by the OAG and Respondents the City of Oswego and the OPD (collectively, the “Parties”).

OAG’s FINDINGS

1. The OPD is a department of 51 full-time sworn police officers serving the City of Oswego, which is located on Lake Ontario in Upstate New York. The OPD is located one mile from the U.S. Customs and Border Patrol (“CBP”)’s Oswego Station.

2. On June 8, 2022, OPD Investigators Jeremy Linn and Chelsea Giovo, who had been promoted three months prior, attempted to question Richard Ubanwa at the Oswego County Courthouse in connection with an open criminal investigation for which the victim had declined prosecution.

3. According to CBP, Mr. Ubanwa is a Nigerian citizen in the United States on an expired visa. An Assistant District Attorney informed OPD Investigator Chelsea Giovo earlier on June 8 that Mr. Ubanwa was present at the courthouse to attend a proceeding in another matter in which he was a defendant. The OPD Investigators approached Mr. Ubanwa's counsel as he exited the courtroom, in a hallway of the courthouse. When Mr. Ubanwa, through counsel, refused to discuss the uncharged allegations, Investigator Linn informed Mr. Ubanwa and his counsel that he had an immigration warrant for Mr. Ubanwa's arrest and that they would be transporting Mr. Ubanwa to the OPD where CBP officers would take him into custody. Prior to so informing Mr. Ubanwa, neither OPD Investigator had viewed the warrant, but they had been informed of its existence by then-Sergeant Lorie Burger and Investigator James La Due of OPD. The OPD had also previously created a Wanted poster for Mr. Ubanwa that cited the immigration warrant.

4. According to Mr. Ubanwa, Investigator Linn told him something to the effect of, "Either you come with us peacefully or we will drag you out." OPD denies that Mr. Ubanwa was ever in its custody because Mr. Ubanwa "surrendered" to the OPD investigators. There is no dispute, however, that Mr. Ubanwa's counsel advised Mr. Ubanwa to cooperate with the OPD Investigators and that Mr. Ubanwa did not resist arrest.

5. After informing Mr. Ubanwa of the immigration warrant, Investigator Linn handcuffed Mr. Ubanwa in the hallway of the Oswego County Courthouse and, with Investigator Giovo, escorted him downstairs to the parking lot. There, an OPD officer in a patrol car came and transported Mr. Ubanwa to the OPD stationhouse, located a few blocks away. At the stationhouse, Mr. Ubanwa was kept in handcuffs until CBP officers took him into their custody approximately fifteen to twenty minutes later. In light of these circumstances, OPD officers did in fact arrest Mr. Ubanwa in order to execute the immigration warrant.

6. Throughout his time in OPD custody, Mr. Ubanwa requested a copy of the immigration warrant but OPD did not have a copy of it or provide one until CBP officers shared a copy of the warrant after Mr. Ubanwa's arrest approximately fifteen to twenty minutes later.

7. The immigration warrant for Mr. Ubanwa's arrest was not signed by a judge. Rather, it was executed by an immigration officer and stated solely that there is probable cause to believe that Mr. Ubanwa was at the time removable from the United States under the Immigration and Nationality Act, based upon "the execution of a charging document to initiate removal proceedings against the subject," "the pendency of ongoing removal proceedings against the subject," biometric confirmation of his identity and lack of status, and voluntary statements or other "reliable evidence" that indicate his lack of status. None of the bases listed as applicable for the warrant established any basis for believing that Mr. Ubanwa had committed a crime or offense punishable by a term of imprisonment or fine.

8. Investigator Giovo confirmed to the OAG that the only basis for handcuffing Mr. Ubanwa, transporting him to the OPD, and turning him over to CBP custody was the administrative immigration warrant. Soon after Mr. Ubanwa's arrest, Investigator Giovo closed the OPD's open criminal investigation of Mr. Ubanwa on the basis that the complainant declined to prosecute.

9. Approximately three months after OPD learned about OAG's investigation, OPD began to train its officers regarding state and federal law limitations in executing administrative immigration warrants. Specifically, as held in *The People, ex rel. Jordan Wells, on behalf of Susai Francis v. DeMarco* ("Francis"), 88 N.Y.S.3d 518 (2d Dep't 2018), unlawful arrest and seizure occurs when, without a judicial warrant, New York State and local authorities detain an individual beyond the time authorized under state law solely in order to transfer that individual to the custody of federal immigration authorities. In addition, the Protect Our Courts Act ("POCA"), New York

Civil Rights Law § 28, prohibits certain civil arrests in courthouses where, as here, the individual had been attending a court proceeding to which he was a party.

10. OAG finds that Respondents' officers arrested Mr. Ubanwa without the authority required by New York State law. *See* N.Y. Crim. Procedure Law § 140.10 (requiring reasonable cause to believe the individual committed offense or crime to arrest without a warrant). That arrest violated Mr. Ubanwa's rights to be free from unlawful seizure under the Federal and State Constitutions and POCA.

11. Respondents neither admit nor deny the OAG's Findings, Paragraphs 1 to 10 above.

12. Although Respondents created and subsequently amended their policies and trainings to address deficiencies revealed during the OAG's investigation, and have fully cooperated throughout the OAG's investigation, the OAG finds that additional oversight is necessary to ensure compliance with the applicable laws.

13. Respondents have agreed to this Assurance in settlement of the violations described above and to avoid the time, expense, and distraction of litigation.

14. The OAG finds the relief and agreements contained in this Assurance appropriate and in the public interest. THEREFORE, the OAG is willing to accept this Assurance pursuant to Executive Law § 63(15), in lieu of commencing a proceeding for violations of the Federal and State Constitutions and POCA based on the conduct described above.

IT IS HEREBY UNDERSTOOD AND AGREED, by and between the Parties:

RELIEF

15. General Injunction: Respondents shall not engage, or attempt to engage, in conduct in violation of any applicable laws, including but not limited to the Federal and State Constitutions, POCA, and N.Y. Crim. Procedure Law § 140.10, and expressly agree and acknowledge that any

such conduct is a violation of the Assurance, and that the OAG thereafter may commence the civil action or proceeding contemplated in Paragraph 14, *supra*, in addition to any other appropriate investigation, action, or proceeding.

16. Programmatic Relief:

- a. Within fourteen (14) days of the Effective Date of this Assurance, the OAG shall review and make any recommended changes to Respondents' policy regarding its treatment of immigration detainees ("Policy"). Within thirty (30) days of receipt of final recommendations, Respondents shall revise and submit to the OAG the finalized Policy.
- b. Within sixty (60) days of finalizing its Policy, Respondents shall submit to the OAG any relevant training materials for review. Within thirty (30) days of receipt, the OAG shall make written recommendations for any revision to the training materials. Twenty-one (21) days after receiving recommendations, the Parties shall meet and confer in good faith concerning outstanding differences regarding the training materials.
- c. Within fourteen (14) days of finalizing training materials, Respondents shall provide the OAG with proposed dates within the next sixty (60) days for training OPD employees on the Policy. The OAG shall have two opportunities to attend a live training session of the Policy, either in person or virtually (by Zoom or other video conferencing software).
- d. For a period of one (1) year, Respondents shall require officers to document any and all instances of OPD's receipt of a detainer request and/or administrative

warrant from any agency of the U.S. Department of Homeland Security. Such documentation shall include:

- i. a copy of the detainer request and/or administrative warrant;
 - ii. the date on which the detainer or administrative warrant was received;
 - iii. whether the detainer or administrative warrant was accompanied by a judicial warrant;
 - iv. the basis for OPD's custody of any individual who is the subject of a detainer request and/or administrative warrant received by OPD; and
 - v. OPD's response or compliance, if any, with the detainer request or administrative warrant, as well as the date of any such response or compliance.
- e. For a period of one (1) year, Respondents shall require officers to report and document any and all instances of information-sharing and requests for information (whether oral or written) between OPD and any agency of the U.S. Department of Homeland Security, regardless of which entity initiated the communication. Such reporting and documentation shall include the following information:
- i. The date(s) on which the request for information was sent or the information-sharing occurred;
 - ii. Whether the request for information was accompanied by a judicial warrant;
 - iii. OPD's role or compliance, if any, with the request for information, as well as the date of any response or compliance.
- f. All documents and communications relevant to provisions 16(d) and 16(e) of this Assurance shall be provided to the OAG by Respondents on a monthly basis. If

there are no documents or communications to report, OPD shall be required only to communicate the lack of such documents or communications to the OAG for those month(s).

17. Oversight/Monitoring: Periodic Compliance Reports: Respondents shall provide the OAG with a report detailing its compliance with the requirements set forth in this Assurance biannually for one year, *i.e.* six and twelve-month mark after the Effective Date. These reports shall be in writing and shall set forth in detail the manner and form of compliance with this Assurance for the six-month period preceding the report and shall append any documentation created pursuant to Paragraph 16 not already submitted to the OAG. This report shall be signed by the Respondents' designee. In any case where the circumstances warrant, the OAG may require Respondents to file an interim report of compliance upon thirty (30) days' notice.

MISCELLANEOUS

Subsequent Proceedings.

18. Respondents expressly agree and acknowledge that the OAG may initiate a subsequent investigation, civil action, or proceeding to enforce this Assurance, for violations of the Assurance, or if the Assurance is voided pursuant to Paragraph 26, and agree and acknowledge that in such event:

- a. any statute of limitations or other time-related defenses are tolled from and after the Effective Date of this Assurance;
- b. the OAG may use statements, documents or other materials produced or provided by the Respondents prior to or after the Effective Date of this Assurance;

- c. any civil action or proceeding must be adjudicated by the courts of the State of New York, and that Respondents irrevocably and unconditionally waive any objection based upon personal jurisdiction, inconvenient forum, or venue;
- d. evidence of a violation of this Assurance shall constitute prima facie proof of a violation of the applicable law pursuant to Executive Law § 63(15).

19. In lieu of the options set forth in Paragraph 18, the OAG may, at its election, extend the monitoring periods in provisions 16(d), 16(e), and 17 of this Assurance by one (1) year. If the OAG exercises this extension, it shall provide OPD with notice of the extension prior to the expiration of the original one-year monitoring period.

Effects of Assurance:

20. This Assurance is not intended for use by any third party in any other proceeding.

21. This Assurance is not intended, and should not be construed, as an admission of liability by the Respondents.

22. All terms and conditions of this Assurance shall continue in full force and effect on any successor, assignee, or transferee of the Respondent. Respondents shall include any such successor, assignment or transfer agreement a provision that binds the successor, assignee or transferee to the terms of the Assurance. No party may assign, delegate, or otherwise transfer any of its rights or obligations under this Assurance without the prior written consent of the OAG.

23. Nothing contained herein shall be construed as to deprive any person of any private right under the law.

24. Any failure by the OAG to insist upon the strict performance by Respondents of any of the provisions of this Assurance shall not be deemed a waiver of any of the provisions hereof, and the OAG, notwithstanding that failure, shall have the right thereafter to insist upon the

strict performance of any and all of the provisions of this Assurance to be performed by the Respondents.

Communications:

25. All notices, reports, requests, and other communications pursuant to this Assurance must reference Assurance No. 24-083, and shall be in writing and shall, unless expressly provided otherwise herein, be given by hand delivery; express courier; or electronic mail at an address designated in writing by the recipient, followed by postage prepaid mail, and shall be addressed as follows:

If to the Respondents, to: Phil Cady, or in his/her/their absence, to the person holding the title of OPD's Chief of Police.

If to the OAG, to: Lillian Marquez, Michelle Gonzalez, and Zoe Levine or in their absence, to the person holding the title of Bureau Chief, Civil Rights Bureau.

For the period of one (1) year from the date of execution, should Lillian Marquez be permanently unavailable, the OAG agrees to notify OPD of any personnel change and to provide contact information for OAG's new designated person within thirty (30) days.

Representations and Warranties:

26. The OAG has agreed to the terms of this Assurance based on, among other things, the representations made to the OAG by Respondents and their counsel and the OAG's own factual investigation as set forth in Findings, Paragraphs (1)-(10) above. Respondents represent and warrant that neither they nor their counsel have made any material representations to the OAG that are inaccurate or misleading. If any material representations by Respondents or their counsel are

later found to be inaccurate or misleading, this Assurance is voidable by the OAG in its sole discretion.

27. No representation, inducement, promise, understanding, condition, or warranty not set forth in this Assurance has been made to or relied upon by the Respondents in agreeing to this Assurance.

28. The Respondents represent and warrant, through the signatures below, that the terms and conditions of this Assurance are duly approved.

General Principles:

29. Unless a term limit for compliance is otherwise specified within this Assurance, the Respondents' obligations under this Assurance are enduring. Nothing in this Agreement shall relieve Respondents of other obligations imposed by any applicable state or federal law or regulation or other applicable law.

30. Nothing contained herein shall be construed to limit the remedies available to the OAG in the event that Respondents violate the Assurance after its Effective Date.

31. This Assurance may not be amended except by an instrument in writing signed on behalf of the Parties to this Assurance.

32. In the event that any one or more of the provisions contained in this Assurance shall for any reason be held by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, in the sole discretion of the OAG, such invalidity, illegality, or unenforceability shall not affect any other provision of this Assurance.

33. Respondents acknowledge that they have entered this Assurance freely and voluntarily and upon due deliberation with the advice of counsel.

34. This Assurance shall be governed by the laws of the State of New York without regard to any conflict of laws principles.

35. The Assurance and all its terms shall be construed as if mutually drafted with no presumption of any type against any party that may be found to have been the drafter.

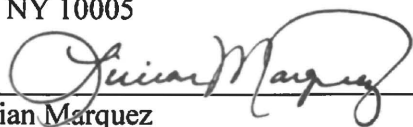
36. This Assurance may be executed in multiple counterparts by the parties hereto. All counterparts so executed shall constitute one agreement binding upon all parties, notwithstanding that all parties are not signatories to the original or the same counterpart. Each counterpart shall be deemed an original to this Assurance, all of which shall constitute one agreement to be valid as of the Effective Date of this Assurance. For purposes of this Assurance, copies of signatures shall be treated the same as originals. Documents executed, scanned and transmitted electronically and electronic signatures shall be deemed original signatures for purposes of this Assurance and all matters related thereto, with such scanned and electronic signatures having the same legal effect as original signatures.

37. The Effective Date of this Assurance shall be the date on which the last Party signs the Assurance.

Date: November 4, 2024

LETITIA JAMES
Attorney General of the State of New York
28 Liberty Street
New York, NY 10005

By:



Lillian Marquez
Deputy Bureau Chief
Law Enforcement Misconduct Investigative Office
Tel.: (212) 416-6401
Lillian.Marquez@ag.ny.gov

CITY OF OSWEGO

Date:

By: Robert A. Corradino
Robert A. Corradino
City of Oswego, Mayor

STATE OF New York)
) ss.:
COUNTY OF Oswego)

On this 4th day of November, 2024, Robert A. Corradino, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument, appeared before the undersigned and acknowledged to me that he/she executed the within instrument by his/her signature on the instrument.

Sworn to before me this
4th day of November, 2024

Tammy Lynn Carpenter
NOTARY PUBLIC
TAMMY LYNN CARPENTER
Notary Public, State of New York
Reg. No. 01CA6169798
Qualified in Oswego County
Commission Expires 07/02/2023
2027

OSWEGO CITY POLICE DEPARTMENT
Date:

By: Phil Cady
Phil Cady
Chief of Police

STATE OF New York)
) ss.:
COUNTY OF Oswego)

On the 4th day of November, 2024, Phil Cady, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument, appeared before the undersigned and acknowledged to me that he/she executed the within instrument by his/her signature on the instrument.

Sworn to before me this
4th day of November, 2024

Tammy Lynn Carpenter
NOTARY PUBLIC

TAMMY LYNN CARPENTER
Notary Public, State of New York
Reg. No. 01CA6169798
Qualified in Oswego County
Commission Expires 07/02/2023
2027