



Department of Justice *Touhy*-regulations, see *United States ex.rel. Touhy v. Ragen*, 340 U.S. 462 (1951), applicable to the request, at 28 C.F.R. § 16.21 et seq., was denied.

## I. PARTIES

1. Plaintiff, Anthony D. Gulluni, is sworn as District Attorney for Hampden County in the Commonwealth of Massachusetts (“HDA”). HDA is a state agency of the Commonwealth of Massachusetts. By statute, M.G.L. c. 12, §§ 12-13, 27; G.L. c. 218, § 27A, the HDA is the primary prosecutorial authority for the western district in the Commonwealth of Massachusetts, a district that geographically includes all cities and towns located in Hampden County, Massachusetts. HDA Gulluni serves as the chief law enforcement officer in the district. The HDA is principally located in Springfield, Massachusetts at the Roderick L. Ireland Courthouse, 50 State Street, 3<sup>rd</sup> Floor, Springfield, Massachusetts 01102, with a telephone number of (413) 747-1000. Anthony D. Gulluni brings this action in his official capacity.
2. Defendant, Nathaniel R. Mendell, is a natural person and currently serves as the Acting United States Attorney for the District of Massachusetts. The United States Attorney’s Office for the District of Massachusetts (“USA-MA”), is a governmental agency of the United States Department of Justice (“DOJ”). The USA-MA is led by an appointed United States Attorney for the District of Massachusetts. The USA-MA represents the DOJ on all federal legal matters in the District of Massachusetts, and has a Civil Division that includes a Civil Rights Unit. The USA-MA’s principal office is located at the John Joseph Moakley United States Federal Courthouse, 1 Courthouse Way, Suite 9200, Boston, Massachusetts 02210, with a telephone number of (617) 748-3100. Acting United States Attorney Nathaniel R. Mendell is being sued in his official capacity.

## **II. JURISDICTION**

3. Plaintiff's action is for a violation of the Administrative Procedures Act ("APA"), and is brought pursuant to the provisions of 5 U.S.C. §§ 701-706.
4. Jurisdiction is conferred on this Court by 28 U.S.C. § 1331 (federal question).

## **III. VENUE**

5. This action is brought in the Western Division of the United States District Court for the District of Massachusetts, pursuant to 28 U.S.C. § 1391(e)(1), as the Plaintiff principally resides in Springfield, Massachusetts in Hampden County, geographically located in the Western Division of the District of Massachusetts, and this is a civil action in which a Defendant is an agency of the United States, or an officer or employee of the United States or any agency thereof acting in his official capacity.

## **IV. FACTUAL ALLEGATIONS**

1. The Plaintiff, Anthony D. Gulluni, is sworn as the District Attorney for the Hampden District (HDA) in the Commonwealth of Massachusetts. The HDA is the primary prosecutorial agency for Hampden County in the western district of the Commonwealth of Massachusetts. M.G.L. c. 12, §§ 12-13, 27; G.L. c. 218, § 27A.
2. In the Commonwealth of Massachusetts, the district attorney, in his official capacity, is recognized by case law to be "the people's elected advocate for a broad spectrum of societal interests - from ensuring that criminals are punished for wrongdoing, to allocating limited resources to maximize public protection." *Commonwealth v. Gordon*, 410 Mass. 498, 500 (1991). See *Commonwealth v. Clerk-Magistrate of West Roxbury Div. of Dist. Court*, 439 Mass. 352, 360 (2003); *Commonwealth v. Clerk of Boston Div. of Juvenile Court Dep't*, 432 Mass. 693, 699 (2000).

3. The Plaintiff, Anthony D. Gulluni, in his official capacity as HDA, has wide discretion in determining whether to prosecute an individual, *Commonwealth v. Ware*, 482 Mass. 717, 730 (2019), “with due regard to the constitutional and other rights of the defendant.” *Smith v. Commonwealth*, 331 Mass. 585, 591 (1954), citing *Berger v. United States*, 295 U.S. 78, 88-89 (1935).
4. The HDA serves a population of 468,467 (est. 2016 Census), in five (5) cities and eighteen (18) towns in Hampden County, Massachusetts, and prosecutes cases in state courts located in Hampden County, Massachusetts, including five (5) district courts (including Springfield District Court), two (2) juvenile courts (including Springfield Juvenile Court), and one (1) superior court (Hampden County Superior Court).
5. In Fiscal Years 2016 through 2020, the eight (8) state courts located in Hampden County entered cumulative totals of 102,605 criminal cases. *See* Massachusetts Trial Court Statistical Reports and Dashboards, A Listing of Case Statistics for Trial Court Departments by Fiscal Year, <https://www.mass.gov/info-details/trial-court-statistical-reports-and-dashboards#statistics-2014-2020->. Each one of those cases represented an individual criminal defendant whose case was filed in a state trial court, or a division of a state trial court over that five-year period.
6. The Plaintiff, Anthony D. Gulluni, in his official capacity as HDA, is sworn to uphold the state and federal constitutions and the laws of the Commonwealth in the performance of his duties, including the constitutional and statutory provisions related to a prosecutor’s discovery obligations. *In the Matter of a Grand Jury Investigation*, 485 Mass. 641 (2020); *Giglio v. United States*, 405 U.S. 150 (1972); *Brady v. Maryland*, 373 U.S. 83 (1963).

7. The Plaintiff, Anthony D. Gulluni, in his official capacity as HDA, is a member of the Massachusetts Bar, and is subject to the procedural rules of the courts of the Commonwealth, including the applicable rules of criminal procedure related to a prosecutor's discovery obligations. Mass. R. Crim. P. 14, as amended 444 Mass. 1518 (2005).
8. The Plaintiff, Anthony D. Gulluni, in his official capacity as HDA, is a member of the Massachusetts Bar, and is subject to the rules of professional responsibility, including, where appropriate, undertaking procedural and remedial measures in the exercise of his discovery obligations. Mass. R. Prof. C. 3.8, Special Responsibilities of a Prosecutor, 3.8 (d), (g), (i), and (j) and Comment 1.
9. The Plaintiff, Anthony D. Gulluni, in his official capacity as HDA, employs Assistant District Attorneys, appointed by him, to assist in the performance of his duties.
10. The HDA's Assistant District Attorneys, in their official capacities, are sworn to uphold the state and federal constitutions and laws of the Commonwealth in the conduct of their duties, including the constitutional and statutory provisions related to a prosecutor's discovery obligations. *In the Matter of a Grand Jury Investigation*, 485 Mass. 641 (2020); *Giglio v. United States*, 405 U.S. 150 (1972); *Brady v. Maryland*, 373 U.S. 83 (1963).
11. The HDA's Assistant District Attorneys are members of the Massachusetts Bar, and are subject to the procedural rules of the courts of the Commonwealth, including the applicable rules of criminal procedure related to a prosecutor's discovery obligations. Mass. R. Crim. P. 14, as amended 444 Mass. 1518 (2005).

12. The HDA's Assistant District Attorneys are members of the Massachusetts Bar, and are subject to the rules of professional responsibility, including, where appropriate, undertaking procedural and remedial measures in the exercise of their discovery obligations. Mass. R. Prof. C. 3.8, Special Responsibilities of a Prosecutor, 3.8 (d), (g), (i), and (j) and Comment 1.
13. One of the prosecutorial functions of the HDA, as defined by state and federal law, and court rule, is to disclose to an individual charged with a crime being prosecuted by the HDA any known relevant, material, exculpatory evidence in its possession, custody or control, even without a request from the individual charged. *Committee for Pub. Counsel Servs. v. Attorney Gen.*, 480 Mass. 700, 731 (2018); *Commonwealth v. Ayala*, 481 Mass. 46, 56 (2018). *See Commonwealth v. Bing Sial Liang*, 434 Mass. 131, 134-135 (2001), citing *United States v. Agurs*, 427 U.S. 97, 106-108 (1976) (prosecutors' duty to disclose exculpatory evidence not limited to cases where there is a request for such evidence).
14. In the Commonwealth of Massachusetts, the possession, custody or control of potentially exculpatory information by the prosecutor, by court rule, is defined as persons under the prosecutor's direction and control, or persons who have participated in investigating or evaluating the case and either regularly report to the prosecutor's office or have done so in a particular case. Mass. R. Crim. P. 14, as amended 444 Mass. 1518 (2005). *Commonwealth v. Beal*, 429 Mass. 530, 531 (1999) (prosecutors' duty to disclose extends to information in their possession or in possession of persons subject to their control).
15. The Springfield Police Department ("SPD") is a local law enforcement agency in the City of Springfield, Massachusetts, a city geographically located in Hampden County, in the Commonwealth of Massachusetts.

16. Officers of the SPD are required by state statute or court rule to provide arrest, incident, or investigatory reports to satisfy probable cause determinations before a magistrate or court. *See, e.g.*, Mass. R. Crim. P. 3(g), as appearing 442 Mass. 1502 (2004); G.L. c. 276, § 58A(4); G.L. c. 276, § 1.
17. SPD arrest, incident, or investigatory reports and attendant photographs or video/digital images, among other materials, are provided to HDA assistant district attorneys to fulfill the prosecutor's discovery obligations to an individual charged with a crime.
18. Officers of the SPD testify to the content of arrest, incident, or investigatory reports, and attendant photographs or video/digital images, under oath, in grand jury proceedings and at pretrial, trial, and post-conviction evidentiary hearings of criminally charged individuals in Hampden County Superior Court, Springfield District Court, and Springfield Juvenile Court.
19. On July 8, 2019, the Defendant USA-MA publicly released a report, of twenty-eight pages in length, co-authored by the Defendant USA-MA and the United States Department of Justice – Civil Rights Division [DOJ DIVISION] entitled “Investigation of the Springfield, Massachusetts Police Department’s Narcotics Bureau [“Report”]”. A copy of the Report is attached, and noted as Exhibit A. The contents of the Report, in total, are incorporated herein.
20. The Report’s investigation of the SPD Narcotics Bureau was stated to have begun on April 13, 2018, and spanned twenty-eight (28) months from its initiation to the release of its findings. The statutory authority for the investigation detailed in the report was pursuant to the Violent Crime Control and Law Enforcement Act of 1994, 34 U.S.C. § 12601.

21. The Executive Summary of the Report, Report at 3, states that investigators jointly from the Defendant USA-MA and the United States Department of Justice - Civil Rights Division (“DOJ DIVISION”) conducted a comprehensive review of 114,000 pages of Springfield Police Department documents, including an unspecified number of “incident reports” and “investigative reports.”
22. The Report, Report at 9, states that Defendant USA-MA and DOJ DIVISION investigators sought and received SPD documents, including 1,700 prisoner injury files, 26,000 arrest reports and over 700 use-of-force reports created from 2013 through 2019.
23. The Report, Report at 2, states that Defendant USA-MA and DOJ DIVISION investigators reviewed 5,500 arrest reports and 10 use-of-force reports from the SPD’s Narcotics Bureau from 2013-2018.
24. The Report, Report at 2, states that the Defendant USA-MA and DOJ DIVISION investigators found “examples where [SPD] Narcotics Bureau officers falsified reports to disguise or hide their use of force.”
25. The Report, Report at 9, states there was “... a pattern or practice ... [where SPD] officers made false reports that were inconsistent with other available evidence, including video and photographs....”
26. The Report, Report at 2, states the Defendant USA-MA and DOJ DIVISION investigators concluded that “there is reasonable cause to believe that [SPD] Narcotics Bureau officers engage[d] in a pattern or practice of excessive force in violation of the Fourth Amendment of the United States Constitution.”
27. The Plaintiff, Anthony D. Gulluni, in his official capacity as HDA, did not conduct the investigation and was not informed of the process or reported findings of the Defendant’s

USA-MA's and DOJ DIVISION's twenty-eighth month long joint investigation of the SPD's Narcotics Bureau, prior to the Report's publication.

28. The Plaintiff, Anthony D, Gulluni, in his official capacity as HDA, does not have knowing possession, custody or control of the SPD officers' reports deemed "false" or "falsified" as detailed in the Report.
29. After the Report release, HDA First Assistant District Attorney [HDA First ADA] Jennifer N. Fitzgerald received a telephone call from Torey Cummings, an Assistant United States Attorney ("AUSA") with the Civil Rights Division of the Defendant USA-MA. AUSA Cummings told HDA First ADA Fitzgerald that she had been involved in the investigation and issuance of the Report.
30. AUSA Cummings' stated purpose of the telephone call was to inquire if the HDA had "any questions" about the Report. The parties agreed to speak after the HDA had an adequate time to review the contents of the Report.
31. On July 20, 2020, HDA First ADA Fitzgerald spoke with AUSA Cummings, by telephone, and, in her official capacity, orally requested of AUSA Cummings that the HDA be provided with the SPD reports that investigators referenced in the Report where "officers falsified reports" or "officers made false reports". HDA First ADA Fitzgerald told AUSA Cummings that HDA assistant district attorneys needed to identify the false or falsified SPD reports and review them to determine their discovery obligations, pursuant to *Brady [v. Maryland]*, 373 U.S. 83, 87 (1963) and the Massachusetts Rules of Criminal Procedure [Mass. R. Crim. P. 14, as appearing in 442 Mass. 1518 (2004)]. The parties agreed to speak after AUSA Cummings had sufficient time to consider the HDA's request.

32. On July 28, 2020, HDA First ADA Fitzgerald left a voice message for AUSA Cummings concerning the status of the HDA's July 20<sup>th</sup> request for the SPD's officers' false or falsified reports.
33. Later in the day on July 28<sup>th</sup>, HDA First ADA Fitzgerald received an email from AUSA Cummings stating that the request for the SPD's false or falsified reports was still under consideration.
34. Thereafter, on August 6, 2020, HDA First ADA Fitzgerald, AUSA Cummings, and Jude Volek, an AUSA with the DOJ DIVISION, spoke by telephone.
35. AUSA Volek told HDA First ADA Fitzgerald that he had participated in the investigation and issuance of the Report.
36. In the August 6<sup>th</sup> telephone conversation, HDA's oral request for the production of the SPD officers' false or falsified reports was denied.
37. During the August 6<sup>th</sup> telephone conversation, AUSA Cummings and AUSA Volek collectively advised HDA First ADA Fitzgerald that after discussion with members of the Department of Justice's Professional Responsibility Unit and the DOJ DIVISION, the Defendant USA-MA and the DOJ concluded it would withhold the SPD's false or falsified reports from the HDA.
38. The grounds AUSA Cummings and AUSA Volek provided HDA First ADA Fitzgerald to withhold the "false" or "falsified" reports were: (1) the requested reports were confidential and (2) available from the SPD; (3) the calculus for exculpatory information was different for the Department of Justice; and, (4) the rules for *Brady* material did not extend to the DOJ DIVISION.

39. In response, HDA First ADA Fitzgerald told AUSA Cummings and AUSA Volek, during the August 6th telephone conversation, that the HDA was only seeking the production of SPD officers' false or falsified reports as detailed in the Report, and was not seeking any confidential, privileged, or investigatory material.
40. AUSA Cummings and AUSA Volek then told HDA First ADA Fitzgerald to request the SPD officers' false or falsified reports from the SPD.
41. When further questioned by HDA First ADA Fitzgerald about this statement, AUSA Cummings and AUSA Volek acknowledged that SPD was not told specifically which reports of the thousands of reports that had been provided to the Defendant USA-MA and DOJ DIVISION investigators during the investigation were false or falsified, as found in the Report. A fact later confirmed by the SPD.
42. On August 19, 2020, the Plaintiff, Anthony D. Gulluni, in his official capacity as HDA, wrote a letter to Andrew E. Lelling, then-United States Attorney for the Defendant (USA-MA), in his official capacity as lead attorney for the Defendant USA-MA. A copy of the letter is attached, and noted as Exhibit B. The contents of the letter, in total, are incorporated herein.
43. On August 19, 2020, the Plaintiff, Anthony D. Gulluni, in his official capacity as HDA, wrote a letter to Eric S. Dreiband, then-Assistant Attorney General (AAG), in his official capacity as lead attorney for the DOJ DIVISION that joined the Defendant USA-MA in the investigation and issuance of the Report. A copy of the letter is attached, and noted as Exhibit C. The contents of the letter, in total, are incorporated herein.

44. The Plaintiff's, Anthony D. Gulluni's August 19<sup>th</sup> letter to then-USA-MA Lelling was sent by FedEx courier, and delivered to his principal address on August 20, 2020 at 11:41 am.
45. The Plaintiff's, Anthony D. Gulluni's, August 19<sup>th</sup> letter to then-AAG Dreiband was sent by FedEx courier, and delivered to his principal address on August 20, 2020 at 9:54 am.
46. The Plaintiff's, Anthony D. Gulluni's, August 19<sup>th</sup> letters to then-USA-MA Lelling, in his official capacity as lead attorney for the Defendant USA-MA, and then-AAG Dreiband, in his official capacity as lead attorney for the DOJ DIVISION, were identical in content, and requested of each the production or disclosure of "false" or "falsified" SPD reports and attendant photographs or video/digital images, more specifically described in the letter at pp. 4-5, and generally categorized in the publicly released Report, co-authored by the Defendant USA-MA and DOJ DIVISION.
47. The Plaintiff, Anthony D. Gulluni, in his official capacity as HDA, requested the production of documents, pursuant to the federal Housekeeping Act found at 5 U.S.C. § 301, and the prescribed DOJ regulations applicable to the request found at 28 C.F.R. § 16.21 et seq., a so-called *Touhy [v. Ragen, 340 U.S. 462 (1951),]* request.
48. The Plaintiff's, Anthony D. Gulluni's, request for production or disclosure of documents, in his official capacity as HDA, from then-USA-MA Lelling, in his official capacity as lead attorney for the Defendant USA-MA, and then-AAG Dreiband, in his official capacity as lead attorney for the DOJ DIVISION, specifically sought, at pp.4-5:
- a. A copy of all Springfield Police Department reports, including, but not limited to incident reports, investigative reports, arrest reports, use-of-force reports, or contents of a "prisoner injury file" (as described in the Report, at 7), determined

as examples where Narcotics Bureau officers falsified reports to disguise or hide their use of force[;]”;

- b. A copy of all Springfield Police Department reports, including, but not limited to incident reports, investigative reports, arrest reports, use-of-force reports, or contents of a “prisoner injury file” (as described in the Report, at 7), determined as “...a pattern or practice ... [where] officers made false reports that were inconsistent with other available evidence, including video and photographs...”, and;
- c. A copy of all photographs, or video/digital material determined as inconsistent with any Springfield Police Department officers’ reports, including, but not limited to incident reports, investigative reports, arrest reports, use-of-force reports, or contents of a “prisoner injury file” (as described in the Report, at 7).

49. Between August 20, 2020 and September 14, 2020, then-USA-MA Lelling, in his official capacity as lead attorney for the Defendant USA-MA, did not provide the Plaintiff, Anthony D. Gulluni, in his official capacity as HDA, with a response, either verbally or in writing, to the Plaintiff’s, Anthony D. Gulluni’s, August 19<sup>th</sup> demand for the production or disclosure of “false” or “falsified” SPD reports and attendant photographs or video/digital images, more specifically described in the Plaintiff’s, Anthony D. Gulluni’s August 19<sup>th</sup> letter, at pp. 4-5, and generally categorized in the publicly released Report, co-authored by the Defendant USA-MA and DOJ DIVISION.

50. Between August 20, 2020 and September 14, 2020, then-AAG Dreiband, in his official capacity as lead attorney for the DOJ DIVISION, did not provide the Plaintiff, Anthony D. Gulluni, in his official capacity as HDA, with a response, either verbally or in writing,

to the Plaintiff's, Anthony D. Gulluni's, August 19<sup>th</sup> demand for the production or disclosure of "false" or "falsified" SPD reports and attendant photographs or video/digital images, more specifically described in HDA Gulluni's August 19<sup>th</sup> letter, at pp. 4-5, and generally categorized in the publicly released Report, co-authored by the Defendant USA-MA and DOJ.

51. On September 14, 2020, the Plaintiff, Anthony D. Gulluni, in his official capacity as HDA, wrote a second letter to then-USA-MA Lelling, again in his official capacity as lead attorney for the Defendant USA-MA. A copy of the letter is attached, and noted as Exhibit D. The contents of the letter, in total, are incorporated herein.
52. On September 14, 2020, the Plaintiff, Anthony D. Gulluni, in his official capacity as HDA, wrote a second letter to then- AAG Dreiband, again in his official capacity as lead attorney for the DOJ DIVISION. A copy of the letter is attached, and noted as Exhibit E. The contents of the letter, in total, are incorporated herein.
53. The Plaintiff's, Anthony D Gulluni's, September 14<sup>th</sup> letter to then-USA-MA Lelling was sent, by FedEx courier, and delivered to his principal address on September 15, 2020 at 12:08 am.
54. The Plaintiff's, Anthony D. Gulluni's, September 14<sup>th</sup> letter to Defendant AAG Dreiband was sent by FedEx courier, and delivered to his principal address on September 15, 2020 at 10:18 am.
55. The Plaintiff's, Anthony D. Gulluni's, second letters to then-USA-MA Lelling, in his official capacity as lead attorney for the Defendant USA-MA, and then-AAG Dreiband, in his official capacity as lead attorney for the DOJ DIVISION, were identical in content, and again requested of each the production or disclosure of "false" or "falsified" SPD

reports and attendant photographs or video/digital images, more specifically described in the letter at pp. 4-5, and generally categorized in the publicly released Report, co-authored by the Defendant USA-MA and the DOJ DIVISION.

56. The Plaintiff's, Anthony D. Gulluni's, September 14<sup>th</sup> letters, in his official capacity as HDA, reminded the federal prosecutors that the information sought fell squarely within the type of information federal prosecutors routinely seek, evaluate, and disclose pursuant to the DOJ's so-called *Giglio* Policy, appearing at United States Department of Justice, Justice Manual, Tit. 9-5.100 (updated Jan. 2020) (Manual), <https://www.justice.gov/jm/jm-9-50000-issues-related-trials-and-other-court-proceedings>[<https://perma.cc/NKL2-YZ2J>].
57. On October 29, 2020, then-USA-MA Lelling, in his official capacity as lead attorney for the Defendant USA-MA, served a letter, dated October 21, 2020, upon the Plaintiff, Anthony D. Gulluni, in his official capacity as HDA, by electronic mail. Then-USA-MA Lelling's letter responded to the Plaintiff's, Anthony D. Gulluni's, August 19<sup>th</sup> and September 14<sup>th</sup> letters. A copy of the letter is attached, and noted as Exhibit F. The contents of the letter, in total, are incorporated herein.
58. Then-USA-MA Lelling's October 21<sup>st</sup> letter to the Plaintiff, Anthony D. Gulluni, notified him that "[a]fter carefully considering [the Plaintiff's, Anthony D. Gulluni's] request ... and reviewing the relevant procedural and substantive law, [then-USA-MA Lelling] determined that [the Plaintiff's, Anthony D. Gulluni's] requests [were] improper under the applicable substantive and procedural requirements. Therefore, [then-USA-MA Lelling would not] authorize the disclosure of the official information that [the Plaintiff, Anthony D. Gulluni] requested".

59. The stated grounds for the denial of the production or disclosure of all photographs, or video/digital material determined as inconsistent with any SPD officers' reports, including, but not limited to incident reports, investigative reports, arrest reports, use-of-force reports, or contents of a "prisoner injury file" (as described in the Report, at 7), as requested in the August 19<sup>th</sup> and September 14<sup>th</sup> letters of the Plaintiff, Anthony D. Gulluni, to then-USA-MA Lelling, in his official capacity as the lead attorney for the Defendant USA-MA, were two-fold, and founded upon 28 C.F.R. § 16.26(a)(2) and 28 C.F.R. § 16.26 (b)(5): namely, (1) the requested information was privileged; and, (2) the requested information belongs to the SPD.
60. Then-USA-MA Lelling claimed he based his decision to deny production of the requested documents to the Plaintiff, Anthony D. Gulluni, upon two privileges. First, then-USA-MA Lelling stated "the documents sought [were] subject to the work product privilege because they reflect the thoughts and impressions of DOJ attorneys, paralegals and investigators[,]” without an extraordinary justification for release. Then-USA-MA Lelling wrote that, “[h]ere, there is no ‘extraordinary justification.’ As prosecutors we are sympathetic to the need you expressed in your letter ‘to meet my constitutional, statutory and ethical obligations’ regarding disclosure of the information about police misconduct ... however, the thoughts and impressions of the [Defendant USA-MA] and DOJ employees contained in the Report do not amount to ‘factual findings and legal conclusions binding on, or admissible in, any court.’” Second, then-USA-MA Lelling stated “this Office [Defendant USA-MA] has determined that the documents sought are subject to the law enforcement privilege because they would reveal investigative records

compiled in connection with an open and ongoing civil investigation ... and would interfere with these ongoing law enforcement proceedings.”

61. Then-USA-MA Lelling claimed these privileges, on behalf of the Defendant USA-MA and then-AAG Dreiband and the DOJ DIVISION, even though the Plaintiff’s, Anthony D. Gulluni’s, August 19<sup>th</sup> and September 14<sup>th</sup> letters did not request any documents from the investigation that consisted of “... IIU files, training materials, or other internal, confidential or privileged documents of the [SPD] provided to investigators, or incident reports, investigative reports, arrest reports, use-of-force reports, or contents of a “prisoner injury file” (as described in the Report, at 7) determined not to contain false or falsified information, or statements, notes or recordings of investigators’ interviews with [SPD] officers, City of Springfield officials or community members”, and “the disclosure of any information concerning sensitive investigative techniques, current investigations, classified information, informants or security programs such as the Federal Witness Security Program.”

62. Then-USA-MA Lelling’s October 21<sup>st</sup> letter also claimed “[t]he requested documents belong to and originated with the SPD” when denying production of the requested documents to the Plaintiff, Anthony D. Gulluni. USA-MA Lelling’s October 21<sup>st</sup> letter stated, “SPD produced these documents to the [Defendant USA-MA] pursuant to a confidentiality agreement as part of our civil pattern or practice investigation. Because these documents are available from SPD – a department with which your office likely works daily – they should not be sought from the [Defendant USA-MA].”

63. Then-USA-MA Lelling, in his capacity as lead attorney for the Defendant USA-MA, informed the Plaintiff, Anthony D. Gulluni, that his October 21<sup>st</sup> letter was “the final

agency decision of the USAO in response to the [Plaintiff's, Anthony D. Gulluni's] *Touhy* request[,]” binding upon the Defendant USA-MA and DOJ DIVISION.

64. Prior to issuing his final agency decision, then-USA-MA Lelling, in his official capacity as lead attorney for the Defendant USA-MA, did not discuss or otherwise negotiate the terms of the Plaintiff's, Anthony D. Gulluni's, *Touhy* requests, or any withdrawal pursuant to 28 C.F.R. § 16.24.
65. AAG Dreiband, in his official capacity for the DOJ DIVISION, never responded, verbally or in writing, to the Plaintiff's, Anthony D. Gulluni's, August 19<sup>th</sup> or September 14<sup>th</sup> letters. AAG Dreiband, in his official capacity for the DOJ DIVISION, has not discussed or otherwise negotiated the terms of the Plaintiff's, Anthony D. Gulluni's, *Touhy* requests, or any withdrawal pursuant to 28 C.F.R. § 16.24.
66. The plaintiff's, Anthony D. Gulluni's, September 14<sup>th</sup> letter notified then-AAG Dreiband, in his capacity of the DOJ DIVISION, that a lack of response by September 30, 2020 would be considered a “final agency decision, as those terms are defined by federal administrative and relative case law.”
67. The Plaintiff's, Anthony D. Gulluni's September 14<sup>th</sup> letter notified then-AAG Dreiband, in his official capacity as lead attorney for the DOJ DIVISION, that, without a further response by September 30, 2020, then-AAG Dreiband and DOJ DIVISION's final grounds for withholding the production or disclosure of the demanded reports and attendant photographs or video/digital material would be: (1) the requested false or falsified reports were confidential and (2) available from the SPD; (3) the calculus for exculpatory information was different for the Department of Justice; and, (4) the rules for *Brady* material do not extend to the DOJ DIVISION,.

68. On December 2, 2020, the Plaintiff, Anthony D. Gulluni, in his official capacity as HDA, wrote a letter to Springfield Police Commissioner Cheryl Clapprood requesting the same documents he had requested from federal investigators of the Defendant USA-MA and DOJ DIVISION. A copy of the letter is attached, and noted as Exhibit G. The contents of the letter, in total, are incorporated herein.
69. The Plaintiff's, Anthony D. Gulluni's, December 2<sup>nd</sup> letter, informed the SPD that his request for these documents "reflects...the need for prosecutors to learn of potential impeachment information regarding all the investigating agents and employees participating in the cases they prosecute, so that they may consider whether the information should be disclosed to defense counsel under the *Brady* and *Giglio* line of cases." *In the Matter of a Grand Jury Investigation*, 485 Mass. 641, 660 (2020)", and that, "There [was] no other reasonable means available to [his] office to obtain the production or disclosure of the 'false' or 'falsified' [SPD] reports and attendant photographs or video/digital images, as cited in the July 8<sup>th</sup> Report."
70. On December 10, 2020, Springfield City Solicitor Edward M. Pikula, responded, by letter, that "the City of Springfield has not been provided any information from the Department of Justice specifying any identifying information as to the case numbers, names of specific officers or names of specific criminal defendants described in the Report." A copy of the letter is attached, and noted as Exhibit H. The contents of the letter, in total, are incorporated herein.
71. Attorney Pikula's December 10<sup>th</sup> letter confirmed the facts, as told to HDA First ADA Fitzgerald by AUSAs Cumming and Volek during their August 6<sup>th</sup> telephone conversation, *see supra* at paragraph 41, that the Defendant USA-MA has not advised

the SPD of which of the tens of thousands of reports it had provided to federal investigators during their investigation were false or falsified, as found in the DOJ Report.

72. Attorney Pikula's December 10<sup>th</sup> letter also informed the District Attorney for Hampden County that all of the materials supplied to federal investigators were available to be reviewed by his office in a "reasonable format and on a reasonable schedule in a phased production, similar to the process followed with the Department of Justice."

73. On March 11, 2021, the Plaintiff, Anthony D, Gulluni, in his official capacity as HDA, wrote a letter to Attorney Pikula, in his capacity as SPD's legal counsel, and informed the SPD, that, as district attorney, he could not, legally or practically, recreate a civil investigation that was conducted by and through a federal statutory scheme; but that he would designate office personnel to review the materials provided to the Defendant USA-MA and DOJ DIVISION in its investigation. Such review was reported to consist of tens of thousands of pages spanning six years. A copy of the letter is attached, and noted as Exhibit I.

74. HDA First ADA Fitzgerald has attempted repeatedly, through Attorney Pikula, to coordinate the procedural logistics of the Plaintiff's, Anthony D. Gulluni's, in his capacity as HDA, review of the requested materials. As of May 18, 2021, the SPD had not provided any documents for review.

**COUNT # 1**

**VIOLATIONS OF THE ADMINISTRATIVE PROCEDURE ACT**

**5 U.S.C. §§ 701-706**

75. Plaintiff, Anthony D. Gulluni, in his official capacity as District Attorney for Hampden County, repeats and re-alleges each and every allegation as contained in paragraphs #1 through #74, as if fully set forth herein.
76. With indifference to Plaintiff's, Anthony D. Gulluni's, constitutional, statutory and ethical obligations as the primary prosecuting authority in Hampden County, Acting USA-MA Nathaniel R. Mendell, as lead attorney for the Defendant USA-MA has unlawfully withheld or unreasonably delayed the production or disclosure of all SPD reports, including, but not limited to incident reports, investigative reports, arrest reports, use-of-force reports, or contents of a "prisoner injury file" (as described in the Report, at 7), determined as examples where SPD Narcotics Bureau officers falsified reports to disguise or hide their use of force, as requested in the Plaintiff's, Anthony D. Gulluni's, July 20<sup>th</sup> oral request of HDA First ADA Fitzgerald and August 19<sup>th</sup> and September 14<sup>th</sup> letters to then USA-MA Andrew E. Lelling.
77. With indifference to Plaintiff's, Anthony D. Gulluni's, constitutional, statutory and ethical obligations as the primary prosecuting authority in Hampden County, Acting USA-MA Nathaniel R. Mendell, as lead attorney for the Defendant USA-MA, has unlawfully withheld the production or disclosure of all SPD reports, including, but not limited to incident reports, investigative reports, arrest reports, use-of-force reports, or contents of a "prisoner injury file" (as described in the Report, at 7), determined as "...a pattern or practice .... [where] officers made false reports that were inconsistent with other available evidence, including video and photographs...", as requested in the Plaintiff's, Anthony D. Gulluni's, July 20<sup>th</sup> oral request of HDA First ADA Fitzgerald and August 19<sup>th</sup> and September 14<sup>th</sup> letters to then USA-MA Andrew E. Lelling.

78. With indifference to Plaintiff's, Anthony D. Gulluni's, constitutional, statutory and ethical obligations as the primary prosecuting authority in Hampden County, Acting USA-MA Nathaniel R. Mendell, as lead attorney for the Defendant USA-MA, has unlawfully withheld or unreasonably delayed the production or disclosure of all photographs, or video/digital material determined as inconsistent with any SPD officers' reports, including, but not limited to incident reports, investigative reports, arrest reports, use-of-force reports, or contents of a "prisoner injury file" (as described in the Report, at 7). as requested in the Plaintiff's, Anthony D. Gulluni's, July 20<sup>th</sup> oral request of HDA First ADA Fitzgerald and August 19<sup>th</sup> and September 14<sup>th</sup> letters to then USA-MA Andrew E. Lelling.

79. With indifference to Plaintiff's, Anthony D. Gulluni's, constitutional, statutory and ethical obligations as the primary prosecuting authority in Hampden County, Acting USA-MA Nathaniel R. Mendell, as lead attorney for the Defendant USA-MA and DOJ DIVISION, has violated 28 C.F.R. §16.24, by then-USA-MA Lelling and then-AAG Dreiband failing to discuss or otherwise negotiate the terms of the Plaintiff's, Anthony D. Gulluni's, request for the production or disclosure of "false" or "falsified" Springfield Police Department reports and attendant photographs or video/digital images generally categorized in the publicly released Department of Justice Report, dated July 8, 2020, entitled *Investigation of the Springfield, Massachusetts Police Department's Narcotics Bureau* ("Report"), co-authored by the United States Department of Justice's Civil Rights Division and the United States Attorney's Office for the District of Massachusetts, the prescribed Department of Justice *Touhy*-regulations found at 28 C.F.R. § 16.21 et. seq., prior to the Defendant USA-MA issuing its final agency decision. Failure to engage in

such discussions or negotiations, as contemplated by 28 C.F.R. § 16.24, is arbitrary, capricious, an abuse of discretion, and not in accordance with law.

80. With indifference to Plaintiff's, Anthony D. Gulluni's, constitutional, statutory and ethical obligations as the primary prosecuting authority in Hampden County, Acting USA-MA Nathaniel R. Mendell, as lead attorney for the Defendant USA-MA and DOJ DIVISION, has violated DOJ 28 C.F.R. § 16.24, by then-USA-MA Lelling's and then-AAG Dreiband's failure to produce or disclose any of the "false" or "falsified" Springfield Police Department reports and attendant photographs or video/digital images generally categorized in the publicly released Department of Justice Report, dated July 8, 2020, entitled *Investigation of the Springfield, Massachusetts Police Department's Narcotics Bureau* ("Report"), co-authored by the United States Department of Justice's Civil Rights Division and the United States Attorney's Office for the District of Massachusetts, contrary to the practice and policy of information federal prosecutors routinely seek, evaluate, and disclose pursuant to the United States Department of Justice's so-called *Giglio* Policy, appearing at United States Department of Justice, Justice Manual, Tit. 9-5.100 (updated Jan. 2020) (Manual), <https://www.justice.gov/jm/jm-9-50000-issues-related-trials-and-other-court-proceedings>[<https://perma.cc/NKL2-YZ2J>]. Failure to disclose such information, as contemplated by the so-called *Giglio* Policy, is arbitrary, capricious, an abuse of discretion, and not in accordance with law.

81. The grounds for the denial of the production or disclosure of all SPD reports, including, but not limited to incident reports, investigative reports, arrest reports, use-of-force reports, or contents of a "prisoner injury file" (as described in the Report, at 7),

determined as examples where SPD Narcotics Bureau officers falsified reports to disguise or hide their use of force, as requested in the Plaintiff's, Anthony D. Gulluni's, July 20<sup>th</sup> oral request of HDA First ADA Fitzgerald and August 19<sup>th</sup> and September 14<sup>th</sup> letters to then-USA-MA Lelling, founded upon 28 C.F.R. § 16.26(a)(2) and 28 C.F.R. § 16.26 (b)(5), namely: (1) the requested information is privileged by the work product privilege and law enforcement privilege; and, (2) the requested information belongs to the SPD, was subject to a confidentiality agreement, and should be obtained solely from the SPD, by Acting USA-MA Nathaniel R. Mendell, as lead attorney for the Defendant USA-MA, are arbitrary, capricious, an abuse of discretion, and not in accordance with law.

82. The grounds for the denial of the production or disclosure of all SPD reports, including, but not limited to incident reports, investigative reports, arrest reports, use-of-force reports, or contents of a "prisoner injury file" (as described in the Report, at 7), determined as "...a pattern or practice .... [where] officers made false reports that were inconsistent with other available evidence, including video and photographs..." as requested in the Plaintiff's, Anthony D. Gulluni's, July 20<sup>th</sup> oral request of HDA First ADA Fitzgerald and August 19<sup>th</sup> and September 14<sup>th</sup> letters to then-USA-MA Lelling, founded upon 28 C.F.R. § 16.26(a)(2) and 28 C.F.R. § 16.26 (b)(5), namely: (1) the requested information is privileged by the work product privilege and the law enforcement privilege; and, (2) the requested information belonged to the SPD, was subject to a confidentiality agreement, and should be obtained solely from the SPD, by Acting USA-MA Nathaniel R. Mendell, as lead attorney for the Defendant USA-MA, are arbitrary, capricious, an abuse of discretion, and not in accordance with law.

83. The grounds for the denial of the production or disclosure of all photographs, or video/digital material determined as inconsistent with any SPD officers' reports, including, but not limited to incident reports, investigative reports, arrest reports, use-of-force reports, or contents of a "prisoner injury file" (as described in the Report, at 7), as requested in the August 19<sup>th</sup> and September 14<sup>th</sup> letters of the Plaintiff, Anthony D. Gulluini, to then-USA-MA Lelling, founded upon 28 C.F.R. § 16.26(a)(2) and 28 C.F.R. § 16.26 (b)(5), namely: (1) the requested information is privileged by the work product privilege and the law enforcement privilege; and, (2) the requested information belonged to the SPD, was subject to a confidentiality agreement, and should be obtained solely from the SPD, by Acting USA-MA Nathaniel R. Mendell, as lead attorney for the Defendant USA-MA, are arbitrary, capricious, an abuse of discretion, and not in accordance with law.

84. The grounds for the denial of the production or disclosure of all SPD reports, including, but not limited to incident reports, investigative reports, arrest reports, use-of-force reports, or contents of a "prisoner injury file" (as described in the Report, at 7), determined as examples where SPD Narcotics Bureau officers falsified reports to disguise or hide their use of force, as requested in the Plaintiff's, Anthony D. Gulluni's, July 20<sup>th</sup> oral request of HDA First ADA Fitzgerald and August 19<sup>th</sup> and September 14<sup>th</sup> letters to then-AAG Drieband, as lead attorney for the DOJ DIVISION; namely: (1) the requested false or falsified reports were confidential and (2) available from the SPD; (3) the calculus for exculpatory information was different for the Department of Justice; and, (4) the rules for *Brady* material do not extend to the DOJ, as incorporated in the final agency decision of the Defendant USA-MA, by Acting USA-MA Nathaniel R. Mendell,

as lead attorney for the Defendant USA-MA, are arbitrary, capricious, an abuse of discretion and not in accordance with law.

85. The grounds for the denial of the production or disclosure of all SPD reports, including, but not limited to incident reports, investigative reports, arrest reports, use-of-force reports, or contents of a “prisoner injury file” (as described in the Report, at 7), determined as “...a pattern or practice .... [where] officers made false reports that were inconsistent with other available evidence, including video and photographs...”, as requested in the Plaintiff’s, Anthony D. Gulluni’s, July 20<sup>th</sup> oral request of HDA First ADA Fitzgerald and August 19<sup>th</sup> and September 14<sup>th</sup> letters to then-AAG Dreiband, as lead attorney for the DOJ DIVISION, namely: (1) the requested false or falsified reports were confidential and (2) available from the SPD; (3) the calculus for exculpatory information was different for the Department of Justice; and, (4) the rules for *Brady* material do not extend to the DOJ DIVISION, as incorporated in the final agency decision of the Defendant USA-MA, by Acting USA-MA Nathaniel R. Mendell, as lead attorney for the Defendant USA-MA, are arbitrary, capricious, an abuse of discretion and not in accordance with law.

86. The grounds for the denial of the production or disclosure of all photographs, or video/digital material determined as inconsistent with any SPD officers’ reports, including, but not limited to incident reports, investigative reports, arrest reports, use-of-force reports, or contents of a “prisoner injury file” (as described in the Report, at 7), as requested in the August 19<sup>th</sup> and September 14<sup>th</sup> letters of the Plaintiff, Anthony D. Gulluni, to then-AAG Dreiband, namely: (1) the false or falsified reports were confidential and (2) available from the SPD; (3) the calculus for exculpatory information

was different for the Department of Justice; and, (4) the rules for *Brady* material do not extend to the DOJ DIVISION, as incorporated in the final agency decision of the Defendant USA-MA, by Acting USA-MA Nathaniel R. Mendell, as lead attorney for the Defendant USA-MA, are arbitrary, capricious, an abuse of discretion and not in accordance with law.

## V. RELIEF

WHEREFORE, Plaintiff, Anthony D. Gulluni, in his official capacity as District Attorney for Hampden County (Commonwealth of Massachusetts), repeats and re-alleges each and every allegation as contained in paragraphs #1 through #86, as if fully set forth herein, and requests this Honorable Court enter judgment against Acting USA-MA Nathaniel R. Mendell, as lead attorney for the Defendant USA-MA, on all counts of this complaint, and

- a) Declare unlawful and set aside the final agency decision on behalf of then-USA-MA Andrew E. Lelling, as lead attorney for the Defendant US-MA that denied, delayed production, or failed to disclose the “false” or “falsified” SPD reports and attendant photographs or video/digital images, more specifically described in the Plaintiff’s, Anthony D. Gulluni’s, July 20<sup>th</sup> oral request of HDA First ADA Fitzgerald, and August 19<sup>th</sup> and September 14<sup>th</sup> letters to then-USA-MA Lelling, as lead attorney for the Defendant USA-MA and then-AAG Dreiband, as lead attorney for the DOJ DIVISION, at pp. 4-5, and generally categorized in the publicly released Department of Justice Report, dated July 8, 2020, entitled Investigation of the Springfield, Massachusetts Police Department’s Narcotics Bureau [“Report”], co-authored by the Defendant USA-MA and DOJ DIVISION.

- b) Declare that Acting USA-MA Nathaniel R. Mendell's, as lead attorney for the Defendant USA-MA's, denial or delayed production or disclosure of the "false" or "falsified" SPD reports and attendant photographs or video/digital images, more specifically described in the Plaintiff's, Anthony D. Gulluni's , July 20<sup>th</sup> oral request of HDA First ADA Fitzgerald, and August 19<sup>th</sup> and September 14<sup>th</sup> letters to then-USA-MA Lelling, in his capacity as lead attorney for the Defendant USA-MA and then-AAG Dreiband, in his capacity as lead attorney for the DOJ DIVISION, at pp. 4-5, and generally categorized in the publicly released Department of Justice Report, dated July 8, 2020, entitled Investigation of the Springfield, Massachusetts Police Department's Narcotics Bureau ["Report"], co-authored by the Defendant USA-MA and DOJ DIVISION were arbitrary, capricious, an abuse of discretion, or not otherwise in accordance with law; and
- c) Compel the production of the following materials to the Plaintiff, Anthony D. Gulluni, in his capacity as HDA, as requested in the July 20<sup>th</sup> oral request of HDA First ADA Fitzgerald, and August 19<sup>th</sup> and September 14<sup>th</sup> letters to then-USA-MA Lelling, in his capacity as lead attorney for the Defendant USA-MA and then-AAG Dreiband, in his capacity as lead attorney for the DOJ DIVISION, at pp. 4-5:
- (1) A copy of all Springfield Police Department reports, including, but not limited to incident reports, investigative reports, arrest reports, use-of-force reports, or contents of a "prisoner injury file" (as described in the Report, at 7), determined as examples where Narcotics Bureau officers falsified reports to disguise or hide their use of force[;];

- (2) A copy of all Springfield Police Department reports, including, but not limited to incident reports, investigative reports, arrest reports, use-of-force reports, or contents of a “prisoner injury file” (as described in the Report, at 7), determined as “...a pattern or practice .... [where] officers made false reports that were inconsistent with other available evidence, including video and photographs...”, and;
- (3) A copy of all photographs, or video/digital material determined as inconsistent with any Springfield Police Department officers’ reports, including, but not limited to incident reports, investigative reports, arrest reports, use-of-force reports, or contents of a “prisoner injury file” (as described in the Report, at 7).

## **VI. CERTIFICATION**

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

Respectfully submitted,

Date: May 18, 2021

/s/ Anthony D. Gulluni

Anthony D. Gulluni

District Attorney for Hampden County

in the Commonwealth of Massachusetts

Roderick L. Ireland Courthouse

50 State Street, 3<sup>rd</sup> Floor

Springfield, MA. 01102

(413) 505-5901

[agulluni@massmail.state.ma.us](mailto:agulluni@massmail.state.ma.us)

BBO # 674246

# **EXHIBIT A**



**U.S. Department of Justice**

Civil Rights Division

United States Attorney's Office  
*District of Massachusetts*

*United States Attorney's Office  
1 Courthouse Way, Suite 9200  
Boston, MA 02210*

*Assistant Attorney General  
950 Pennsylvania Ave, NW-RFK  
Washington, DC 20530*

July 8, 2020

Via Electronic Mail

Honorable Domenic J. Sarno  
Mayor  
36 Court Street  
Springfield, MA 01103

Re: Springfield Police Department

Dear Mayor Sarno:

The Civil Rights Division of the United States Department of Justice and the United States Attorney's Office for the District of Massachusetts have completed the civil investigation of the Springfield Police Department's ("SPD") Narcotics Bureau, pursuant to the pattern or practice provision of the Violent Crime Control and Law Enforcement Act of 1994, 34 U.S.C. § 12601. We conclude that there is reasonable cause to believe that the Springfield Police Department's Narcotics Bureau engages in a pattern or practice of conduct of excessive force that violates the Fourth Amendment of the United States Constitution. Our investigative conclusions are detailed in the accompanying Report.

We thank the City and SPD for cooperating and assisting us throughout our investigation. In the coming weeks, we will seek to work with you toward developing an appropriate settlement to ensure that all necessary reforms are implemented efficiently and effectively. As we stated at the outset of this investigation, our goal in this matter is to improve public safety, protect civil rights, and promote effective policing. Now that our investigation has concluded, we hope to continue to work cooperatively with the City and SPD to remedy the pattern or practice of conduct we identified so that policing in Springfield can indeed be safer, lawful, and more effective.

If you have any questions, please call Steven H. Rosenbaum, Chief of the Civil Rights Division's Special Litigation Section, at (202) 616-3244, or Jennifer Serafyn, Chief of the Civil Rights Unit at the United States Attorney's Office for the District of Massachusetts, at (617) 748-3188.

Sincerely,

/s/ Eric S. Dreiband

Eric S. Dreiband  
Assistant Attorney General  
Civil Rights Division

/s/ Andrew E. Lelling

Andrew E. Lelling  
United States Attorney  
District of Massachusetts

cc: Commissioner Cheryl Clapprood  
City Solicitor Edward Pikula

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**Investigation of the  
Springfield, Massachusetts  
Police Department's  
Narcotics Bureau**

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United States Department of Justice  
Civil Rights Division  
and  
United States Attorney's Office  
District of Massachusetts

July 8, 2020

## EXECUTIVE SUMMARY

On April 13, 2018, the United States Department of Justice initiated an investigation of the Springfield Police Department's (SPD, or "Department") Narcotics Bureau, pursuant to the Violent Crime Control and Law Enforcement Act of 1994, 34 U.S.C. § 12601.<sup>1</sup> The Narcotics Bureau is a small unit of SPD plainclothes officers tasked with enforcing drug-related laws. Following a thorough investigation, there is reasonable cause to believe that Narcotics Bureau officers engage in a pattern or practice of excessive force in violation of the Fourth Amendment of the United States Constitution.<sup>2</sup>

Specifically, our investigation identified evidence that Narcotics Bureau officers repeatedly punch individuals in the face unnecessarily, in part because they escalate encounters with civilians too quickly, and resort to unreasonable takedown maneuvers that, like head strikes, could reasonably be expected to cause head injuries.

This pattern or practice of excessive force is directly attributable to systemic deficiencies in policies, accountability systems, and training. For example, unlike most other police departments, SPD policies do not require officers to report "hands on" uses of force such as punches and kicks. This practice enables Narcotics Bureau officers to routinely avoid reporting any use of hands-on force or to submit vague and misleading reports documenting their uses of force. We also found examples where Narcotics Bureau officers falsified reports to disguise or hide their use of force. Supervisors fail to effectively review uses of force that Narcotics Bureau officers do report. Deficiencies within SPD's broader systems of accountability exacerbate these issues. For example, although SPD policy requires that senior command staff refer to SPD's Internal Investigations Unit (IIU) any questionable force incident resulting in injury, from 2013 to 2018, command staff did not make any referrals in cases involving the Narcotics Bureau; indeed, not a single such referral was made throughout the entire Department. Further, while IIU has investigated some excessive force complaints made by members of the public, its investigations lack critical content needed to determine if an allegation should be sustained. This has resulted in zero sustained findings of excessive force against any Narcotics Bureau officer in the last six years.

Against this backdrop, Narcotics Bureau officers engage in uses of excessive force without accountability. For example, in October 2018, the United States indicted a veteran Narcotics Bureau sergeant for color of law violations related to his 2016 arrest of two juveniles. The indictment alleges that the sergeant kicked one of the youths in the head, spat on him, and said, "welcome to the white man's world." Further, the sergeant allegedly threatened to, among other things, crush one of the youth's skulls and "fucking get away with it," "fucking bring the dog back [and] let him fucking go after" a youth, "fucking kill [one of the youth] in the parking lot," charge a youth with a murder and "fucking make it stick," and that he would "stick a

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<sup>1</sup> The investigation has been conducted jointly by the United States Attorney's Office for the District of Massachusetts and the Special Litigation Section of the Civil Rights Division.

<sup>2</sup> The Department of Justice does not serve as a tribunal authorized to make factual findings and legal conclusions binding on, or admissible in, any court, and nothing in this Report should be construed as such. Accordingly, this Report is not intended to be admissible evidence and does not create any legal rights or obligations.

fucking kilo of coke in [one of the youth's] pocket and put [him] away for fucking fifteen years.” The indictment also alleges that during interrogation, the sergeant “pointed to blood on his boot” and told one of the youths that if he lied, the youth’s “blood would be on [the sergeant’s] boot next.” The case is pending.

Moreover, there is reasonable cause to believe that officers use excessive force even more often than our investigation uncovered. Indeed, we identified evidence that officers underreport force that should be documented even under SPD’s minimal reporting standards. In many of these cases, the evidence that is available suggests the force used may have caused serious injury and may have exceeded the level of force justified by the circumstances of the incident.

This report is based on a comprehensive review of over 114,000 pages of SPD’s incident reports, investigative reports, policies, training materials, and other internal documents; interviews with SPD officers and City officials; and interviews with community members. Our investigation was conducted with the assistance of two law enforcement experts, one of whom served as a narcotics unit officer in a Massachusetts city, and both of whom have extensive experience reviewing use-of-force incidents and analyzing internal affairs investigations.

We appreciate the cooperation and professionalism that City officials, SPD command staff, and many hard-working SPD officers demonstrated throughout our investigation. We understand that SPD officers perform an immense service to the Springfield community that often places them in dangerous situations, and that Narcotics Bureau officers in particular are tasked with serving felony warrants and making arrests of individuals suspected of serious drug and weapons offenses. We hope that everyone in Springfield—City officials, SPD officers, and residents alike—will view this report as an opportunity to positively address failures within the Narcotics Bureau and make policing in Springfield lawful, safer, and more effective.

## I. BACKGROUND

### A. Springfield, Massachusetts

According to 2010 census data, Springfield is the third largest city in Massachusetts, with a population of over 153,000. Springfield’s population is approximately 52% white, 36% Hispanic or Latino, 22% Black, and 2% Asian. The median income in Springfield is \$34,628, which is below the national average of \$49,445. Approximately 27% of the population lives in poverty, with 43% of Latino residents, 27% of Black residents, and 19% of white residents living below the poverty line.

Springfield is governed by an elected Mayor and City Council. The current Mayor, Domenic Sarno, is a former Springfield City Councilman who has been Mayor since 2007. The Springfield City Council is composed of eight members representing each of Springfield’s eight wards, and five at-large members. The Council is led by President Justin Hurst and Vice-President Marcus Williams.

## B. Springfield Police Department

SPD has approximately 500 sworn officers. The Department is led by a police Commissioner, whom the Mayor appoints to a four-year term. Cheryl Clapprood, the current Commissioner, is a 40-year SPD veteran who was appointed by the Mayor in September 2019. The Department is organized into three major divisions: South/Investigations Division, Central/Uniform Division, and North/Administrative Division. Each division is headed by a deputy chief, who reports to the Commissioner. Together, the divisions cover nine geographic patrol areas, or “sectors,” as well as a number of different specialty units.

The Narcotics Bureau,<sup>3</sup> which falls under the purview of the South/Investigations Division deputy chief, is a small unit of SPD plainclothes officers tasked with apprehending those suspected of narcotics offenses and executing narcotics search and arrest warrants. The Narcotics Bureau also includes the Vice Unit, the Warrant Apprehension Unit, the Task Force (which includes several officers assigned to regional federal and state drug task forces), the Property Unit, and Licensing. Fully staffed, the unit consists of 24 officers, three sergeants, one lieutenant, and one captain, who oversees the unit.

The Internal Investigations Unit (IIU) is charged with investigating allegations of misconduct against the Department and its employees. The IIU is staffed by a captain, lieutenant, and three sergeants. While the IIU conducts investigations of allegations of officer misconduct and drafts reports summarizing findings of fact, IIU investigators *do not* weigh evidence, draw conclusions, or recommend findings. Rather, IIU presents its reports to the Commissioner, or, in the case of certain types of civilian complaints, the Community Police Hearing Board (CPHB or Board), a seven-member civilian panel of mayoral appointees intended to bring community input to SPD’s internal investigation and discipline process. For those complaints, a subset of CPHB members review each IIU file to determine whether to make findings and disciplinary recommendations on the basis of the file alone, or whether to hold a hearing. Where they occur, CPHB hearings are conducted like trials, with city solicitors acting as prosecutors and union counsel defending accused officers. Regardless of whether or not there is a hearing, CPHB members make recommendations about the complaint’s disposition and an officer’s discipline to the Commissioner, who is the ultimate decisionmaker on both whether the complaint is sustained and, if so, how much discipline is imposed.<sup>4</sup>

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<sup>3</sup> SPD called this bureau the “Narcotics Unit” until approximately 2011, when Commissioner Fitchett renamed it the “Special Investigations Unit.” In September 2019, Commissioner Clapprood renamed the “Special Investigations Unit” as the “Narcotics Bureau.” While the title of this unit has changed, the core functions and responsibilities of this unit have not.

<sup>4</sup> Under the Executive Order that created the CPHB on February 3, 2010, the CPHB had the authority to make a recommendation for any discipline warranted. On March 2, 2016, the Executive Order was amended to eliminate CPHB’s authority to make discipline recommendations. The CPHB could only make written findings of fact regarding the merits of the complaint and make a recommendation as to whether any discipline was warranted. The Executive Order was amended again on December 29, 2017 to reinstate CPHB’s authority to make discipline recommendations. CPHB currently relies on guidance from the City’s Department of Labor Relations in making disciplinary recommendations.

Two unions represent the interests of SPD supervisors and officers. The International Brotherhood of Police Officers represents the interests of patrol officers. The Springfield Police Supervisors Association represents the interests of sergeants, lieutenants, and captains. Each union has a collective bargaining agreement (CBA) with the City that establishes the terms and conditions of employment. In July 2018, the City Council approved a new CBA negotiated by the patrol officer's union and the City. The supervisors' union CBA was tentatively approved by the union and the City in March 2019. The recently negotiated contracts include the initiation of a body-worn camera pilot program, the adoption of a social media policy, a peer support program, as well as several provisions related to promotions, evaluations, and discipline.

### **C. Recent Events In the Narcotics Bureau and SPD**

Several recent incidents have raised public concern regarding force and accountability issues within SPD, and within the Narcotics Bureau in particular. As discussed above, a Narcotics Bureau sergeant was indicted for threatening juveniles in a February 2016 incident. In addition to the federal criminal charges filed against this officer, one of the youths filed a civil lawsuit alleging that the officer used excessive force against him. The lawsuit alleges officers beat the youth so severely that he received a fractured nose, two black eyes, and numerous head contusions and abrasions. The sergeant who threatened the youths initially received a 60-day suspension for the incident, but SPD suspended him without pay after he was criminally indicted by a federal grand jury in 2018. The civil lawsuit against the City and the criminal charges against the sergeant are both still pending. As a result of this controversy, local prosecutors have had trouble successfully prosecuting drug crimes in Springfield, in large part due to the fact that they have not been able to rely on testimony from discredited Narcotics Bureau officers.<sup>5</sup>

While this investigation focused on the Narcotics Bureau, our conclusions about that Bureau are supported by SPD's response to its officers' uses of excessive force generally. In one incident, six off-duty SPD officers not assigned to the Narcotics Bureau fought with four men in a parking lot outside a bar in April 2015. The officers reportedly caused significant injuries to the men, including knocking one unconscious and fracturing his leg and skull, kicking and punching another while he lay on the ground covering his bleeding face, and kicking a third man in the head repeatedly. The Massachusetts Attorney General's Office has criminal charges pending against several then off-duty and then on-duty SPD officers; charges include both assault and battery and that some officers covered up the incident by providing false reporting. The alleged beating of civilians outside a bar and alleged willingness of officers to cover up fellow officers' misconduct demonstrate accountability lapses within the Department. With the charges pending, SPD reinstated to full service five officers in April 2020.

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<sup>5</sup> See, e.g., Buffy Spencer, *Drug Cases Dropped Against Springfield Couple; Hinged on Police Officer Gregg Bigda*, MassLive, Jan. 23, 2017; available at [http://www.masslive.com/news/index.ssf/2017/01/drug\\_cases\\_dropped\\_against\\_spr.html](http://www.masslive.com/news/index.ssf/2017/01/drug_cases_dropped_against_spr.html); Buffy Spencer, *Prosecution Problems Caused by Suspended Narcotics Detective Gregg Bigda Result in 'Gift' Sentence*, MassLive, Oct. 15, 2016, available at [https://www.masslive.com/news/2016/10/prosecution\\_problems\\_caused\\_by.html](https://www.masslive.com/news/2016/10/prosecution_problems_caused_by.html); Buffy Spencer, *Yet Another Drug Trafficking Case Dropped Because of Springfield Officer Gregg Bigda's Involvement*, MassLive, Dec. 9, 2016, available at [http://www.masslive.com/news/index.ssf/2016/12/another\\_drug\\_trafficking\\_case.html](http://www.masslive.com/news/index.ssf/2016/12/another_drug_trafficking_case.html).

In another widely reported incident, a former Narcotics Bureau evidence officer was indicted in January 2016 for stealing cash from the narcotics evidence room. The stolen cash allegedly was obtained from more than 170 drug cases and totaled almost \$400,000. The officer was a 43-year-veteran of SPD, and at the time of his retirement in July 2014, was the longest-serving officer in SPD. The officer died before this matter could be resolved legally or administratively.

The City and SPD have taken some steps to address matters within the Department. First, after the 2016 indictment of the Narcotics Bureau evidence officer for theft, SPD requested a City-led audit of SPD's record-keeping practices. The audit found that the Department lacked comprehensive policies or procedures related to seized cash and its disposition; had an inadequate system for logging and tracking seized cash; and had not developed any safeguards to protect against improper access or handling of currency. The audit report recommended several measures, most significantly updates to SPD's record-keeping system for seized cash that SPD has implemented.

Second, the City hired a consultant to review SPD's accountability systems, as well as all SPD policies. This review focused on protocols and did not include a review of any use-of-force incidents or internal investigation files. In early 2019, the consultant issued its first report,<sup>6</sup> which addressed accountability, finding that although SPD has some practices in place regarding complaint intake, classification, and investigation, the practices are not comprehensive or codified appropriately in policy. The report recommended that IIU create a detailed internal affairs manual outlining the process for receiving, investigating, and resolving complaints. It also recommended that IIU create an updated electronic case management system to document and track complaints. The report further recommended improvements to the CPHB by expanding the Board from seven members to at least nine, staffing the Board with individuals who have relevant police and trial experience, and appointing an oversight coordinator that would be responsible for the daily administration of the Board. The City and SPD have publicly committed to implementing these reforms. To date, SPD has revised its IIU policies and added a captain to oversee IIU. In addition, the City added an additional CPHB member, bringing the total to eight members, and allocated additional resources to the CPHB.

Although SPD's and the City's efforts to address weaknesses in its policies and accountability systems is an important first step in the reform process, more is required to address the constitutional violations and systemic deficiencies detailed in this report.

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<sup>6</sup> The second report, on policies, remains in progress.

## II. METHODOLOGY

This investigation relies on several sources of information. We interviewed City officials, SPD's current and former command staff, SPD officers, and other stakeholders within the City of Springfield. We conducted onsite tours in April 2018, August 2018, December 2018, February 2019, and May 2019. We also met with SPD's Training Division, IIU investigators, and representatives of the patrol officer and supervisor unions. A significant portion of each of these interviews consisted of understanding how use-of-force policies are interpreted and applied by commanders and officers in practice.

Although we attempted several times, we did not individually interview any Narcotics Bureau commanders or officers currently serving within the Narcotics Bureau. SPD informed us that Narcotics Bureau command staff and officers were unwilling to engage in one-on-one interviews with us. We did, however, conduct a group interview with Narcotics Bureau supervisors. We also met informally with several groups of Narcotics Bureau supervisors and officers to inform them of our investigation and learn about general Narcotics Bureau operations. In all, we spoke to over 40 SPD officers and command staff.

We also sought to learn more from individuals and groups who have had direct interactions with Narcotics Bureau officers. We held community meetings in different regions of the City; met with individuals who had either witnessed, had knowledge of, or had been subjected to force by SPD officers; met with plaintiff's attorneys and criminal defense lawyers; spoke with attorneys in the Hampden County District Attorney's Office and FBI agents working cases in the Springfield area; and spoke to over 50 religious leaders and community stakeholders. We also met with the majority of CPHB members.

This investigation also included an extensive review of documentary evidence. We reviewed over 114,000 pages in total, including SPD's policies and procedures; training materials related to the use of force and accountability; SPD internal affairs protocols; and other materials relating to the general operations of the Department and use-of-force practices in particular. We also reviewed over 100 report files for over 100 internal investigations conducted by IIU, as well as 74 personnel files.

Most significantly, the investigation included a comprehensive review of officer reports regarding specific incidents in which an SPD officer used force. There is no single report used to document force within SPD. Rather, officers use three main types of documents to record force – (1) the "Prisoner Injury File," (2) the "Arrest Report," and (3) the "Use-of-force Report" – each of which is described below:

1. Prisoner Injury Files. A "Prisoner Injury File" is the most common report that officers use to document the use of force. Each such file includes:
  - a. SPD-276 form;
  - b. Non-mug shot photographs of the arrestee and his injuries;
  - c. Prisoner injury report narrative(s); and
  - d. Arrest Report.

When a prisoner is booked, an officer in charge (typically the booking sergeant) must complete an SPD-276 form when he or she “finds any bruises, cuts or other injuries” on a prisoner.<sup>7</sup> In the SPD-276 form, the officer documents the arresting officer’s name(s), the prisoner’s name, the prisoner’s marks or bruises, and how the marks or bruises were caused. The booking sergeant also takes non-mugshot photos for inclusion in the file.

Under SPD policy, the commanding officer also obtains prisoner injury report narratives from all officers involved with the arrest if a prisoner’s injury is alleged or suspected to have been inflicted by an officer.<sup>8</sup> In the report narratives, officers are supposed to detail any force used by the involved officers and the circumstances surrounding the use of force. A prisoner injury file also includes the related arrest report for the encounter in which the injury was sustained.

If a prisoner’s injury requires medical attention, policy requires the SPD Captain of Professional Standards to cause a preliminary investigation to be conducted to ensure that proper procedures were followed.<sup>9</sup> The prisoner injury files we reviewed generally included a boilerplate memo from the commanding officer stating that the prisoner’s injuries were consistent with the officers’ narratives and recommending no further investigation into the incident.

2. Arrest Reports. Some references to uses of force are also captured on SPD’s “Arrest Report” form. This form is principally used to document arrests, not uses of force, but the form includes a section where officers document the circumstances and justification for an arrest, which sometimes include reports of force being used. However, while an arrest report narrative may reference the force incidentally used to effect an arrest, it does not typically provide a detailed description of the actions justifying a use of force, and/or the precise nature of the use of force that one would expect in a use-of-force report.
3. Use-of-force Reports. SPD only requires officers to file a “Use-of-force Report” when they use a less-lethal force *tool*, such as electronic weapons (*e.g.*, Tasers), oleoresin capsicum spray (OC spray), batons, or other impact tools. Unlike most other police departments, SPD policy does not require written reports to be completed when hands-on force alone is used, such as punching or kicking.<sup>10</sup>

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<sup>7</sup> See Massachusetts General Law (M.G.L.) ch. 276 § 33.

<sup>8</sup> Revised AO 88-594 Prisoner Injury/Arrest Reports (effective date Jan. 27, 2010).

<sup>9</sup> SO 10-005, Prisoner Medical Attention Injury (effective date Jan. 17, 2010).

<sup>10</sup> SPD General Order 500.76, Reporting the Use of Deadly Force and Less Lethal Force Tools, p. 2 (effective date Jan. 1, 2015). By contrast, most other police departments require officers to report any kind of force that exceeds what is necessary for compliant handcuffing. For example, the Massachusetts Chiefs of Police Association recommends that: “All officers shall complete a Use of Force Report if they are involved in any instance wherein physical force greater than handcuffing of a compliant detainee, ‘soft hand physical compliance techniques’ or ‘come-alongs’ are utilized...” See [https://www.erving-ma.gov/sites/ervingma/files/uploads/1.01\\_use\\_of\\_force.pdf](https://www.erving-ma.gov/sites/ervingma/files/uploads/1.01_use_of_force.pdf); see also Baltimore Police Department Policy 725, Use of Force Reporting, Review, and Assessment, p. 2,4 (effective date Nov. 24, 2019) (requiring

While SPD policy does not preclude officers from reporting other types of force, no officer we interviewed indicated that he or she submits use-of-force reports for hands-on uses of force. Instead, SPD officers sometimes report uses of hands-on force informally in one of the two other forms listed above: a prisoner injury report narrative or an arrest report.

We requested and received every arrest report and use-of-force report for a five-year period spanning from 2013-2018, and every prisoner injury file created from 2013 through 2019. This set of documentation included over 1,700 prisoner injury files, approximately 26,000 arrest reports, and over 700 use-of-force reports. In light of the fact that this investigation is focused on the Narcotics Bureau specifically, we reviewed every one of the 84 prisoner injury files involving a Narcotics Bureau officer's use of any form of force from 2013-2019, as well as many of the approximately 5,500 Narcotics Bureau arrest reports between 2013 and 2018. We also reviewed all use-of-force reports involving Narcotics Bureau officers from 2013-2018 – a total of just 10 reports for a five-year period. Some of the 10 use-of-force reports overlap with the uses of force reported in the prisoner injury files and document the injuries that resulted from the use of OC spray and tasers. In addition to reviewing all Narcotics Bureau-related incident reports, we also reviewed hundreds of other use-of-force incidents, both to ensure that our investigation did not omit incidents involving Narcotics Bureau officers and to better understand the use-of-force practices of the Department as a whole.

### **III. THE NARCOTICS BUREAU'S USE-OF-FORCE PRACTICES**

We have reasonable cause to believe that Narcotics Bureau officers engage in a pattern or practice of using excessive force in violation of the Fourth Amendment.<sup>11</sup> We reviewed the Narcotics Bureau's force practices mindful that officers have both the right and responsibility to protect themselves and others from threats of harm, which could arise at any point in a particular situation. Nonetheless, our investigation showed that Narcotics Bureau officers resort to force when there is no legal justification to do so, and that in situations where force is justified, Narcotics Bureau officers use force that is more severe and dangerous than is reasonable. In particular, our investigation revealed a pattern or practice of unlawful non-lethal and less-lethal use of force within the Narcotics Bureau.

#### **A. Legal Standard**

The use of excessive force by a law enforcement officer violates the Fourth Amendment. *Graham v. Connor*, 490 U.S. 386, 394 (1989). Excessive force claims are analyzed under the Fourth Amendment's "reasonableness" standard, and courts are to balance "the nature and

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officers to complete use-of-force reports for hand control, escort, and pressure point compliance techniques, as well as "[f]orcible takedowns that do not result in actual injury or complaints of injury"); Portland Police Bureau, Policy 1010.00, Use of Force (effective Jan. 19, 2020) (categorizing resisted handcuffing, resisted control, and all takedowns, whether controlled or resisted, as reportable uses of force).

<sup>11</sup> Throughout, we use the terms "unreasonable" and "excessive" interchangeably; both terms refer to force that exceeds constitutional limits, or in other words, is disproportional in light of the threat posed to officers or others, the level of resistance, and the severity of the crime suspected.

quality of the intrusion on the individual's Fourth Amendment interests against the countervailing governmental interests at stake." *Id.* at 396 (internal citations omitted). Courts use a "totality of the circumstances" approach and assess the reasonableness of the force "from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." *Id.* The reasonableness inquiry is an objective one: "whether the officer's actions are 'objectively reasonable' in light of the facts and circumstances confronting them, without regard to their underlying inquiry or motivation." *Id.* at 397. Even if uses of force do not result in serious injuries, the force can still be excessive. *Bastien v. Goddard*, 279 F.3d 10, 14 (1st Cir. 2002); *Alexis v. McDonalds Rests. of Mass., Inc.*, 67 F.3d 341, 353 & n.11 (1st Cir. 1995).

While this investigation focused on whether Narcotics Bureau officers' use-of-force practices exceed constitutional limits, SPD also places limits on officers' use of force through Department policies. SPD's main general order governing the use of force provides: "It is the policy of the Springfield Police Department that an officer's force response must be objectively reasonable in consideration of the officer's perception of the risk/threat presented, and the officer's perception of the subject's actions."<sup>12</sup> That general order also contains a use-of-force continuum that indicates available force options in particular situations depending on the level of resistance an officer encounters.<sup>13</sup>

To establish a pattern or practice of violations, the United States must prove "more than the mere occurrence of isolated or 'accidental' or sporadic discriminatory acts." *See Int'l Bhd. of Teamsters v. United States*, 431 U.S. 324, 336 (1977). It must "establish by a preponderance of the evidence that . . . [violating federal law] was . . . the regular rather than the unusual practice." *Bazemore v. Friday*, 478 U.S. 385, 398 (1986) (quoting *Teamsters*, 431 U.S. at 336); *see also EEOC v. Am. Nat'l Bank*, 652 F.2d 1176, 1188 (4th Cir. 1981) (explaining that a "cumulation of evidence, including statistics, patterns, practices, general policies, or specific instances of discrimination" can be used to prove a pattern or practice). Additionally, unlike Section 1983 *Monell* claims brought by private plaintiffs, the United States does not need to show that the City had an official custom or policy that was the "moving force" behind the constitutional violations in order to establish municipal liability under Section 12601; rather, the pattern or practice of unconstitutional conduct is alone sufficient to establish liability. *See United States v. Town of Colo. City*, 934 F.3d 804, 811 (9th Cir. 2019) (holding that Section 12601 establishes liability for municipalities based on general agency principles).

#### **B. SPD's Narcotics Bureau Engages in a Pattern or Practice of Unreasonable Force in Violation of the Fourth Amendment**

Our investigation determined that Narcotics Bureau officers use non-lethal and less-lethal force unreasonably with high frequency. Our review of 2013-2019 prisoner injury files involving Narcotics Bureau officers, for example, showed that a substantial portion of reported uses of force were unreasonable, based on an application of the standards articulated in *Graham v. Connor*, 490 U.S. 386 (1989), and an examination of whether the officers' level of force was proportional in light of whether the subject demonstrated compliance, passive resistance, active

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<sup>12</sup> SPD General Order 100.20 (Effective Date: Jan. 1, 2015) at 1.

<sup>13</sup> *Id.* at 2-5.

resistance, or assaultive behavior.<sup>14</sup> Within this pattern or practice of excessive force, our investigation identified a specific trend of Narcotics Bureau officers striking suspects in the head, or otherwise using force that results in blows to the head, in situations where such force is not justified. Our investigation was narrowly focused on the use of force by the Narcotics Bureau; however, our conclusion is supported by evidence of other SPD officers escalating encounters and employing head strikes without justification.

Narcotics Bureau officers regularly punch subjects in the head and neck area without legal justification. The routine reliance on punches during arrests and other encounters that we discovered during our investigation indicates a propensity to use force impulsively rather than tactically, and as part of a command-and-control approach to force rather than an approach that employs force only as needed to respond to a concrete threat. This reliance on punches to the head also indicates a failure of officers to appropriately comprehend the seriousness of head strikes and the resistance that must be encountered to justify their use. Punches and other blows to the head are dangerous, and can create a substantial likelihood of causing death or serious bodily injury. *See Conlogue v. Hamilton*, 906 F.3d 150, 156 (1st Cir. 2018); *Wade v. Fresno Police Dep't.*, No. 1:09-CV-0599 AWI-BAM, 2012 WL 253252 (E.D. Cal. Jan. 25, 2012), *aff'd*, 529 Fed. Appx. 840 (9th Cir. 2013) (unpublished) (“Choking and punching are broadly characterized as non-lethal levels of force, though both may be employed in a manner that creates a substantial risk of death or serious bodily injury.”).

To its credit, SPD has adopted general orders that recognize the seriousness of head strikes. A policy on impact tactics provides that “officer[s] should avoid strikes to the subject’s head, neck, spine, kidney and solar plexus area(s). Targeting of more vulnerable areas of a subject’s body should be undertaken only under the proper circumstances.”<sup>15</sup> And SPD’s main use-of-force policy designates head strikes as a “level four” use of force on a five-level continuum, with only deadly force requiring greater justification. The policy establishes that punches to the head are not permissible unless a subject is actually “assaultive,” defined as engaged in a perceived or actual attack on the officer or another person. If a subject is instead exhibiting only “active resistance,” an SPD officer must use compliance techniques other than punches to the head.<sup>16</sup>

Similarly, according to nationally accepted standards, punching a subject in the face should not be the first method of trying to gain compliance of a subject. Indeed, some states’

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<sup>14</sup> As discussed in detail in Section III.C, our analysis likely undercounts the frequency of unreasonable force. First, of the Narcotics Bureau prisoner injury files from the period that we reviewed, in 46% of cases, officers failed to provide sufficient detail to make a determination one way or another as to the legality of the force used. These incidents did not factor into our investigative conclusions about excessive force even though the records of these incidents do not contain adequate information to determine the force used was justified. Moreover, while we reviewed all reported Narcotics Bureau uses of force, our investigation identified evidence that force used by Narcotics Bureau officers commonly goes unreported. For example, in reviewing all of the Narcotics Bureau’s 2017 arrest reports where the narrative indicates that the prisoner was likely to have been injured at the hands of an officer, booking sergeants only completed SPD-276 forms 11% of the time, indicating a large number of force incidents that were not reported by officers, reviewed by supervisors, or available to us during this investigation.

<sup>15</sup> SPD General Order No. 500.50, Impact Tactics.

<sup>16</sup> SPD General Order 100.20, at pp. 3-4 (effective date Jan. 1, 2015).

training standards expressly note the dangers of this form of force, including that “a blow of sufficient force with any personal body weapon [such as hands and feet] to a vulnerable part of body during an attack could result in injury or fatality,” including face, throat, head, and neck.<sup>17</sup> Scientific and professional literature confirms that punching someone in the head, face or neck area has the potential to cause disfigurement, damage major blood vessels, can lead to traumatic brain injury, and can possibly even sever the spinal cord.<sup>18</sup> Punches to the head also often result in additional head injuries if and when a subject falls to the hard ground. In addition, fist strikes are not only dangerous for subjects, but also create a real risk of injury to officers. If an officer injures his or her dominant hand while executing a fist strike, the officer is made vulnerable by being unable to access other force tools to protect himself.<sup>19</sup> Even in situations where strikes to a subject’s head are warranted, palm strikes or hammer punches are safer for both the officer and subject than knuckle punches.

Contrary to law, SPD policy, and national standards, Narcotics Bureau officers routinely resort to punching subjects’ head areas with closed fists as an immediate response to resistance without attempting to obtain compliance through other less serious uses of force. Out of all 84 Narcotics Bureau Prisoner Injury Files from 2013 through 2019, roughly 19% of the uses of force reviewed included punches to subjects’ heads, and approximately an additional 8% involved injuries to subjects’ heads from another form of a head strike. In a significant number of these cases, such force was unreasonable.

For example, in one incident, Narcotics Bureau officers punched V.A., a 25-year-old man, following a foot pursuit.<sup>20</sup> When the four Narcotics Bureau officers approached V.A. and motioned to him to remove his earphones, officer reports state that V.A. pushed one of the officers and began running away. After they caught up to V.A., a Narcotics Bureau supervisor delivered multiple punches to V.A.’s face, allegedly because V.A. looked prepared to fight by holding his closed fist in a “punching position.” V.A. sustained a broken nose and lip laceration requiring three stitches. The incident then allegedly continued on the ground with an officer and V.A. exchanging blows, though there is no evidence indicating that the officer sustained any injuries. Instead, it appears that officers chased V.A. and initiated the use of force by striking V.A., a non-assaultive subject, with multiple punches, immediately using a means of force that was disproportionate to the subject’s resistance without attempting other less dangerous uses of force. Given that four officers were present, other methods of control could have been used instead of immediately punching him in the head.

In another incident, a Narcotics Bureau officer punched T.S., a 17-year-old youth, as he rode a motorbike past a group of Narcotics Bureau officers. At the time of the punch, the officers were making unrelated arrests; when the youth rode his motorbike past the officers,

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<sup>17</sup> California Peace Officers and Standards Training LD 33.01.E04.

<sup>18</sup> Ed Flosi, *When a Cop Throws a Punch to the Face*, policeone.com, Nov. 11, 2010, available at <https://www.policeone.com/legal/articles/2866927-When-a-cop-throws-a-punch-to-the-face/>; *Traumatic Brain Injury*, American Association of Neurological Surgeons, available at <https://www.aans.org/en/Patients/Neurosurgical-Conditions-and-Treatments/Traumatic-Brain-Injury>.

<sup>19</sup> See Mike Siegfried, *Safer Strikes*, policemag.com, Aug. 5, 2010, available at <https://www.policemag.com/340364/safer-strikes>.

<sup>20</sup> Name abbreviations used in this letter are pseudonyms.

reportedly at a high rate of speed, an officer struck the youth. In the involved officer's arrest report, he does not characterize the strike as a punch, but rather states that he "extended his left arm" to prevent the youth from colliding with him on the motorbike. The 17-year-old then "swerved" his motorbike and the officer ended up "mak[ing] contact" with the youth's head and shoulder area. Administering a fist strike in this circumstance was particularly dangerous as the youth could have easily lost control of the motorbike, severely injuring himself, the officer, or others. The subject's brother, L.S., was also punched in the face, but by a different Narcotics Bureau officer. The officer who punched L.S. reported that he did so because L.S. ran towards the officer "with his fist clenched and arm cocked back." None of the other officers at the scene corroborated the punching officer's account.

In a third incident, a Narcotics Bureau officer pushed J.B., a 22-year-old man, in the face following a foot pursuit where J.B. exhibited no assaultive behavior. After four Narcotics Bureau officers observed J.B. to be engaged in a narcotics transaction, an officer engaged in a foot pursuit and shoved J.B. from behind so that he fell to the ground. As reported by the officer in the prisoner injury report narrative, J.B. rolled over and began to push at the officer in an attempt to escape, as opposed to in an assaultive manner. The Narcotics Bureau officer then struck J.B. in the face with a closed fist, resulting in a laceration to his lower lip. Nothing in the officer's narrative indicated that J.B. was engaging in the kind of active physical threat that would condone the use of a knuckle punch to the face. The fact that four Narcotics Bureau officers were involved in this arrest made it even less necessary to strike the subject in the head to gain compliance.

These incidents are merely examples and are not atypical within the Narcotics Bureau. We found multiple incidents in which officers used head strikes following a pursuit, even when officer reports suggest the subject was already subdued, including an incident where the Department of Justice has charged the officer with criminal color of law violations. Tellingly, a former Narcotics Bureau officer reported that people know that if you mess with the SPD or try to run, you "get a beat down." Incident reports we reviewed support this officer's observation.

In many incidents involving head strikes, Narcotics Bureau officers unnecessarily escalate encounters and immediately punch subjects without employing other control tactics that are lower on the use-of-force continuum. While law enforcement officers may inevitably need to use force to carry out their job, the law prohibits officers from using force that is disproportionate to the threat at hand. *See Graham*, 490 U.S. at 396; *Jennings v. Jones*, 499 F.3d 2, 11 (1st Cir. 2007). Generally, using a greater level of force is not reasonable when the officer did not encounter "any danger or physical resistance that required him to escalate his use of force" to effectuate arrest. *See Jennings*, 499 F.3d at 20-21 (use of increased force after a subject stops resisting violates the Fourth Amendment). Nonetheless, we reviewed multiple incidents in which officers used more severe force than the situation warranted.

In the course of one drug arrest, for example, a Narcotics Bureau officer punched R.F., a slight, middle-aged man, while attempting to retrieve contraband. Officer reports state that R.F. resisted opening his fist and instead attempted to free his wrist from the Narcotics Bureau officer's grasp; officers then immediately punched him in the face. The Narcotics Bureau officer who punched R.F. escalated the situation without attempting other means of gaining compliance,

unnecessarily resulting in a serious use of force. R.F. is not a large individual – 5’9” and 140 pounds – and there was no evidence that he had access to a weapon or otherwise posed a threat. The arrest report also shows that at least four Narcotics Bureau officers were on the scene. These circumstances do not justify escalating the encounter to include use of a head strike.

In many situations, Narcotics Bureau officers quickly escalate their situational responses to involve force without first identifying themselves as officers or issuing verbal commands. Given that Narcotics Bureau officers often operate as plainclothes officers, they often do not have uniforms or other indicators that would help distinguish them as law enforcement officers. Nonetheless, we found that officers fail to take basic steps to identify themselves before resorting to force. *See Shea v. Porter*, 56 F. Supp. 3d 65, 88 (D. Mass. 2014) (considering the fact that the subject did not believe or know that the person in plain clothes was indeed a police officer as an additional factor weighing in favor of a finding of excessive force). In one incident, *see infra* Section III.C.3., video footage shows that officers rushed into a store and immediately hit S.L. in the face. The encounter happened so quickly that it appears the plainclothes officers failed to identify themselves. The video lacks audio, but at a minimum, the video makes clear that if officers did announce themselves or issue a command, they failed to provide S.L. with any time to react to the officers and surrender before he was hit.

Relatedly, we reviewed incidents in which officers’ failure to identify themselves resulted in pursuits that ultimately escalated into unreasonable uses of force. In two nearly identical situations we reviewed involving vehicle pursuits, the drivers stated that they did not immediately stop their vehicles because they did not know that the plainclothes Narcotics Bureau officers in pursuit were in fact officers and instead feared they were being chased by criminals. The narcotics officers were in unmarked cars, and did not activate their lights. Once the drivers did eventually stop their cars—in one case because an officer in a marked cruiser came on scene and activated his blue lights, and in the other case because the individual collided with another car—the police then used unreasonable force to effect the arrests.

In the case of P.J., he claimed that he fled in his vehicle because he was being chased by an unmarked vehicle and did not know law enforcement officers were in that vehicle. In one report, an officer describes “extracting [P.J.] through the passenger side door and proned [him] face down onto the pavement.” Photos show he sustained significant injuries—severe contusions and dark bruising on the right side of his face, a large black eye, a gash on the bridge of his nose, and additional abrasions on the left side of his face and the left side of his nose. These injuries are inconsistent with the officers’ reports that P.J. had “small cuts to the face,” and are instead consistent with repeated strikes of his head.

In the case of F.D., two Narcotics Bureau officers, including one supervisor, stated that after a brief pursuit of F.D.’s vehicle, they pulled F.D. from the car onto the ground. One officer’s report says F.D. was “placed” on the ground and another officer’s report states that F.D. was “escorted” to the ground. But photos of the abrasions to F.D.’s face demonstrate the use of serious force and multiple points of impact including: the left side of his forehead, the right side of his forehead, and his cheek. F.D. reported in an interview that he was kicked in the face and upper body area 10-12 times, with multiple officers taking turns kicking him. Regardless of whether these injuries were caused by an aggressive takedown or direct kicks to the head, the

prisoner injury report narratives do not indicate that any such force was necessary. None of the officer reports state that F.D. resisted arrest or was combative, and this is further supported by the fact that he was not arrested for resisting arrest or assault and battery of a police officer. According to documents, 12 officers were listed as involved with the arrest and four officers completed prisoner injury report narratives, all arising from an incident that began when F.D. failed to stop because he did not know he was being chased by officers.

Had Narcotics Bureau officers properly announced themselves and given P.J. and F.D. an opportunity to surrender peacefully, which both reportedly did once they finally realized the plainclothes officers were law enforcement officers, the Narcotics Bureau officers could have likely engaged in a straightforward arrest without the use of unreasonable force.

In addition to directly striking subjects' heads, Narcotics Bureau officers also engage in similar conduct that, like head strikes, could reasonably be expected to cause head injuries without legal justification, including conducting unnecessarily forceful takedowns. This type of force is particularly troublesome because the resulting crash to the pavement can cause serious injuries such as bone fractures and head trauma. *See Raiche v. Pietroski*, 623 F.3d 30 (1st Cir. 2010) (tackling plaintiff from his motorcycle and slamming him into the pavement constituted excessive force).

For example, in the course of a recent arrest, roughly a dozen officers, most of them Narcotics Bureau officers, executed a narcotics warrant for A.E. After a vehicle pursuit, A.E. eventually stopped but refused to get out of the car, and officers physically pulled him out. At some point during his extraction from the car, A.E.'s head struck the pavement directly, and the booking photos show significant swelling in his right forehead area in two points of impact, indicating that officers likely used additional force once A.E. was on the ground. The officers' own reports indicate that Narcotics Bureau officers had A.E. under control at all times, and nothing indicates that his head needed to be slammed to the pavement. Despite the serious head injuries depicted in the booking photos, one officer's report described A.E. as having only a "minor injury" above his eye. Notably, the Narcotics Bureau officers' accounts of what happened in the course of the arrest are also inconsistent with each other. One Narcotics Bureau officer reported that A.E. and other officers fell to the ground together, and that A.E. then continued to struggle and resist handcuffing. Another officer did not mention that any officers fell to the ground, and instead reported that A.E. tried to pull away when officers handcuffed him and "stumbled falling to the ground." Viewed in isolation, each officer's report fails to describe circumstances that would justify the level of force used in this encounter. Viewed together, the inconsistencies between these reports demonstrate that the officers did not accurately report how A.E. sustained the significant and multiple injuries to his head.

Across these and other incidents, we identified trends and practices that are unique to the specialized work of the Narcotics Bureau. First, as discussed above, the fact that Narcotics Bureau officers often fail to identify themselves when they are in plainclothes and attempting to stop or arrest a suspect has resulted in unreasonable—and avoidable—uses of force. Second, Narcotics Bureau officers often execute search warrants or planned seizures, operations that often involve many officers. The tactical benefit of having multiple officers on scene should be that officers have the opportunity to engage in more strategic planning of the arrest or raid. In

practice, however, the presence of multiple narcotics officers appears to lead to less thoughtful decision-making and increased uses of force. Further, in some of the incidents summarized above, one of the many officers on scene included a supervisor, which means that supervisors are not only involved in the use of force, but implicitly approving the uses of force.

### **C. Narcotics Bureau Force Violations Are Likely More Widespread Than Indicated in SPD Documents**

Our investigation shows that the pattern or practice is likely more widespread than is captured by SPD documents. We identified substantial evidence that, over the last six years: (1) Narcotics Bureau officers failed to report use-of-force incidents that should have been reported even under SPD's lax policies; (2) where force did get reported, officers often used vague language, which prevented us from identifying a particular use of force as unlawful in a significant number of cases; and (3) officers made false reports that were inconsistent with other available evidence, including video and photographs, suggesting that there are additional instances of unreasonable force that we were not able accurately to assess in cases where no photographic or video evidence exists.

#### **1. Narcotics Bureau officers underreport uses of force**

Narcotics Bureau officers regularly underreport uses of force and the injuries that result. As discussed above in Section II, SPD policy requires all uses of force that cause an injury to a subject to be documented in a prisoner injury file; only then is a particular use of force reviewed by a supervisor. During our review of arrest reports, however, we identified a large number of incidents in which officers reported using force to apprehend a suspect on the arrest report but failed to complete an accompanying prisoner injury file to specifically document the force used. These references to force in arrest reports included uses of force like takedowns or forcibly removing a suspect from a vehicle while he or she was resisting. While the officers' descriptions of force in these arrests reports is typically vague, in many cases, the force was likely to have caused some injury. In 2018, there were 32 Narcotics Bureau arrest reports that referred to a use of force where an injury may have likely occurred. Yet, Narcotics Bureau officers failed to complete a prisoner injury file in 21 (66%) of those incidents. Similarly, for 2017, 81 Narcotics Bureau arrest reports referred to a use of force where an injury to a prisoner likely occurred. Narcotics Bureau officers failed to complete a prisoner injury file in 72 (89%) of those cases.

For example, during the execution of an arrest warrant in 2017, a Narcotics Bureau officer used force against a subject who refused to exit his home, but the officer did not report the use of force in a prisoner injury file. Citing an "aggressive barking dog," the officer executing the warrant deployed one burst of oleoresin capsicum (OC) spray to the subject's face through a window, and then pulled the subject through the door. Once the subject was out of the house, the officer used a leg sweep, causing the subject to land on the floor of the porch. The officer then struck the subject with his fist in the upper arm/shoulder area. The force employed during this incident was not reported in a prisoner injury file.

According to another Narcotics Bureau arrest report from 2018, while executing an arrest warrant related to the sale of narcotics, officers took a subject from the front seat of a car and

placed him face down on the street in order to be handcuffed. The arrest report notes that he “sustained minor abrasions to his forehead.” There is no accompanying prisoner injury file for this incident.

Among the over 5,000 Narcotics Bureau arrest reports we received during our investigation, many refer to a use of force that is not documented anywhere else. Given that arrest reports only contain cursory references to force used during the arrest, the failure to properly complete a prisoner injury file in cases where force resulted in injury likely shielded many additional uses of force from our review. This also underscores the failures in supervisory oversight within the Department, as supervisors reviewing these arrest reports should have filled out SPD-276 forms at the time of booking, and additionally directed the involved officers to fill out prisoner injury report narratives.

2. Prisoner injury report narratives are often vague and fail to detail officer actions

Narcotics Bureau officers’ narratives in the prisoner injury reports they do file are consistently vague and use generic, patterned language. In many cases, this makes it impossible to identify the circumstances surrounding a particular use of force or whether the reported force was unreasonable. Indeed, we were unable to make a determination about the reasonableness of force in 43% of the Narcotics Bureau prisoner injury files reviewed during this investigation, and accordingly, supervisors too lacked the information they needed to determine whether their officers were using force appropriately.

Officers regularly use rote and pat language to justify their uses of force without providing individualized descriptions. Reports often contain conclusory language calling a particular use of force reasonable without describing in detail the circumstances surrounding the use of force. One report, for example, said that as the officer attempted to stop the subject from fleeing, they “both violently fell to the ground. Once on the ground [the subject] continued to struggle[,] at which point [another officer] arrived and began assisting and controlling and placing [the subject] under arrest.” The report concludes by stating, “[o]nly reasonable and necessary force was used to apprehend the subject.” Other reports acknowledge some sort of a struggle, but fail to document the specific resistance encountered or the specific type of force used by the officers involved. One such prisoner injury narrative simply stated about a female subject that, “[d]ue to her resisting [arrest] and in order for us to safely handcuff her, we had to bring her down, in a prone position, face first, onto the sidewalk. During this struggle she sustained scrapes to her face area.”

The use of vague and rote language obscures the details of many incidents, and precludes meaningful supervision and oversight within the Department.

3. Narcotics Bureau officers submit reports with inaccurate or falsified information

During our investigation, we sought to compare the narratives Narcotics Bureau officers reported in prisoner injury files with other available evidence regarding the same incident, such

as photographs and/or videos. We found multiple incidents in which available evidence discredited the Narcotics Bureau officers' account of what occurred. This is consistent with a former SPD officer's characterization of the Narcotics Bureau as a "rogue unit," whose officers were known for routinely cutting corners.

In the case of P.J., described above, a Narcotics Bureau officer stated that he made an effort "to extract[ ] [P.J.] through the passenger side door and prone[] [him] face down onto the pavement." According to another officer's narrative, this resulted in "minor abrasions to the right side of his face," and according to the booking sergeant in charge of filling out the SPD-276 form, P.J. had "small cuts to the face." These descriptions of P.J.'s injuries are plainly contradicted by the photographs in his prisoner injury file. These photographs clearly show severe contusions and dark bruising on the right side of his face, a large black eye, a gash on the bridge of his nose, and additional abrasions on the left side of his face and the left side of his nose. The injuries present in the photographs are inconsistent with the officers' reports, and are instead consistent with repeated strikes to P.J.'s head. Further, when interviewed by IIU after P.J. filed a complaint, a civilian witness stated that she saw officers kick P.J. in the head and body. During his IIU interview, P.J. stated that one officer struck him in the head with the butt of a handgun, and that once on the ground, several officers began kicking and punching him in the head and the body. P.J. further alleged that, once back at the station and in a holding room, a Narcotics Bureau officer walked in and beat him severely in the face with a book, causing him to bleed profusely. To be clear, there is no other corroboration of P.J.'s version of events besides the photographs we reviewed and the statement of the civilian witness. But these pieces of evidence are more consistent with some of P.J.'s reporting of the takedown than the officers' reports. Although IIU investigated P.J.'s complaint, IIU failed to sustain P.J.'s allegations and the officers received no discipline.

Instances of officers downplaying the extent of a prisoner's injuries in their official reports were commonplace in the files we reviewed. In another prisoner injury file, Narcotics Bureau officers report that M.K., a 5'3" man, had a "small cut over and under his left eye," whereas the photographs show not only the small cuts but that his eye was almost swollen shut.

In a 2016 incident, security camera footage directly contradicted aspects of the reports of Narcotics Bureau officers. In reports documenting a Narcotics Bureau arrest of S.L., a Narcotics Bureau officer stated that as he reached out to secure S.L., S.L. "backed away and struck [him] in the face with a closed fist." The officer reported that he then struck S.L. in the face and upper body in an attempt to stop S.L. from striking him again. As reported by the officer, the circumstances of this interaction would justify the force used. But the officer's account is belied by video evidence, which shows S.L. standing, looking down at a piece of paper in his hand, when two plainclothes officers rush towards S.L., grab his wrist and tackle him to the ground. But for the video evidence of what happened in this use of force, the use of force described in the misleading reports provided by the officers would have appeared reasonable.

In many cases, we were only able to identify untruthful reporting—and deficiencies in the way force was actually used—because photographic and/or video evidence happened to be available. However, these inaccurate reports indicate that it is not uncommon for Narcotics Bureau officers to write false or incomplete narratives that justify their uses of force. Because

many prisoner injury files lack photographs of subjects' injuries (in contravention of SPD policy) or video evidence of the arrest, the inaccurate narratives raise substantial concern that there are other uses of unreasonable force that are falsely reported.

#### **D. Deficiencies in Basic Department Operations Contribute to the Narcotics Bureau's Pattern or Practice of Excessive Force**

SPD's deficient use-of-force and accountability policies—failure to require detailed and consistent use-of-force reporting, and failure to meaningfully review use-of-force reporting—directly contributes to the Narcotics Bureau's pattern or practice of unreasonable force. Conversely, reform in this area would go a long way to mitigating the problem.

##### 1. SPD policy does not require appropriate use-of-force reporting

SPD's use-of-force policies establish a use-of-force continuum showing different levels of resistance and the severity of force justified by each. However, the Department's use-of-force policies lack certain common provisions that, if adopted, could have the capacity to reduce the incidence of unreasonable force. Most significantly, while we identified many instances in which Narcotics Bureau officers unnecessarily escalated encounters, SPD policy does not require officers to attempt to de-escalate encounters before resorting to force. The relevant policy states only that officers "may de-escalate, stabilize or escalate his/her response based upon his/her risk assessment and the perceptions of the subject's degree of compliance or non-compliance." The policy does not provide guidance regarding potential de-escalation techniques available to officers. Further, while we identified several uses of unreasonable force where multiple officers were on the scene, SPD policy does not require officers to intervene if they observe an unlawful use of force occurring.<sup>21</sup>

Moreover, the use-of-force reporting policy does not require the reporting of certain significant uses of force, such as takedowns, punches, or other "hands on" uses of force. Further, even where policy requires reporting of particular types of force, policy does not specify the level of detail to be reported or supervisor responsibilities in reviewing the reports. Thus, current policy allows the vague reporting we saw in prisoner injury report narratives and arrest reports. Without a reporting mechanism that documents force and is reviewable by supervisors, Narcotics Bureau officers are able to engage in force without appropriate oversight.

As discussed in Section II, three types of reports can contain information regarding a use of force: (1) Prisoner Injury Files; (2) Arrest Reports; and (3) Use of Force Reports, which must be completed following the deployment of specific weapons, including OC spray and electronic control weapons. Even in combination, however, these forms do not capture – and SPD policy does not require the reporting of – uses of force that do not involve specific weapons or injuries to jailed suspects. This massive gap in policy means that officers do not report many uses of force.

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<sup>21</sup> While we did not review any incidents involving lethal encounters, SPD policy also does not include any requirement that officers attempt to warn individuals before firing their service weapons if it is reasonable to do so, does not prohibit or otherwise directly limit the use of neck restraints, and does not explicitly require that medical care be provided following a use of force once it is safe to do so.

First, prisoner injury files are ineffective as a general force report as they are not used to capture force unless it caused an observable injury. This provides too much discretion as to whether force should be reported, and risks officers being able to avoid reporting uses of force that *do* result in injuries by claiming they did not see one. Nor does SPD policy provide any guidance regarding what constitutes an “injury” and thus triggers the required creation of a prisoner injury file, which exacerbates the inconsistency of reporting. Under SPD policy, Narcotics Bureau officers need not report uses of force involving strong hands, punches and other hand strikes, feet, or elbow strikes unless they result in an injury. In interviews with Narcotics Bureau officers and other SPD officers, they confirmed that it is not Department practice to record these types of uses of force, and that any use of arrest reports or prisoner injury files that happen to document such encounters is aberrational. This practice is especially problematic given that Narcotics Bureau officers primarily use hands-on force.

Second, current force reporting practices do not capture any uses of force against a non-prisoner or a non-arrestee. Because prisoner injury files and arrest reports are the primary documents used to capture uses of force, no mechanism exists to monitor uses of force against individuals who are stopped by the police but not ultimately arrested. Indeed, we reviewed multiple IIU complaints against Narcotics Bureau officers for using excessive force against individuals who were not arrested. In one of them, the complainant alleged that a Narcotics Bureau officer reached in the car while she was driving, pushed her against the seat, and grabbed her hand and slammed it into the dashboard so hard that she was bruised. In her IIU complaint, she submitted photos showing bruises. Because she was not arrested, no arrest report or Prisoner Injury file exists for this incident. In another incident, the complainant alleged that a Narcotics Bureau officer pulled him out of a car and handcuffed him roughly, only to release him because they had attempted to arrest the wrong person. Following IIU investigations, neither of these complaints were sustained. The importance of access to IIU and strong complaint investigation procedures is particularly salient in situations where SPD officers do not have to draft arrest reports or other documentation concerning an encounter with an individual. Under SPD’s current system, an IIU complaint is the only way these allegations of officer force will come to light.

Third, though many officers essentially treat the prisoner injury report narrative as a general use-of-force report, prisoner injury files serve a very different function: namely, to comprehensively document and review prisoner injuries alleged or suspected to have been inflicted by an officer. Because of this principal function, officers tend to use the report narratives only to document injuries. In many cases, officers simply report injuries that prisoners had before officers arrived, likely for liability purposes. For example, of all prisoner injury files from 2013 through 2018, the content of about one-third was limited to documenting that a prisoner had an injury before officers arrived to the scene.

## 2. Narcotics Bureau supervisors do not meaningfully review uses of force

The fact that Narcotics Bureau officers can routinely submit use-of-force reports and prisoner injury report narratives that lack meaningful detail about a use of force is especially concerning in light of the fact that Narcotics Bureau supervisors reviewed and approved all of

the uses of force, including those highlighted in this report. Despite the many instances of unreasonable force identified by our team, SPD Captains signed off on every single prisoner injury file without once referring an incident of force to the Commissioner for IIU investigation. This occurred despite the fact that, on multiple occasions, outside evidence, including video footage, demonstrated that Narcotics Bureau officers' descriptions of events involving use-of-force situations was not credible.

SPD does not have a policy addressing supervisory responsibilities in reviewing prisoner injury files, arrest reports, or use-of-force reports, and the dearth of detail contained in the prisoner injury files supports a conclusion that supervisors do not ask questions, require more information to be submitted, or critically review the reports to ensure that uses of force are appropriate. This results in failures in supervisory oversight at every stage of review. We understand that, in theory, prisoner injury files are reviewed by a sergeant, a watch commander, the SPD Quality Assurance Captain, and ultimately the Commissioner. In practice, however, it appears that the prisoner injury files are rubber stamped without any meaningful review.

As discussed above in Section II, booking sergeants fill out the SPD-276 form. Booking sergeants are not assigned specifically to the Narcotics Bureau, but are supervisors who are stationed at the booking desk and help process arrestees – regardless of the specific unit that arrested the person. Almost universally, these entries on the SPD-276 form are brief and lack detail. Nor does it appear that supervisors require officers to provide more information when additional detail is needed to describe an encounter. For example, it is not uncommon for booking sergeants to document that a prisoner “states undercover officers beat him,” or that a prisoner states that “officers punched and used knees to hit him.” These statements should lead to further inquiry by the reviewing supervisor to identify the nature of the force to determine whether it was reasonable. Nothing in policy requires supervisors to do so, nor do they do so in practice.

The SPD Quality Assurance Captain reviews prisoner injury files to flag any instances where a prisoner's documented injuries are inconsistent with the prisoner injury report narratives. This review occurs after the chain of command of the officer using force reviews the file. While this role is important, it does not appear that the review is meaningful. Of all 1,700 prisoner injury files produced, we saw only 179 SPD Quality Assurance Captain memos analyzing whether a prisoner's injury was consistent with the officer's account. The Quality Assurance Captain signed off on every single prisoner injury file, without once referring an incident of force to the Commissioner for IIU investigation. Indeed, during our review of every prisoner injury file between 2013 and 2018, we only saw a single instance in which the Quality Assurance Captain requested that the arresting officers submit report narratives to explain how the prisoner received his injury when the officer narratives were absent; once submitted, the file was approved without referral to IIU. We heard in interviews that the Quality Assurance Captain refers prisoner injury files to IIU regularly, but we saw no evidence or documentation of this in our review of the prisoner injury files, and our reviews of IIU investigations similarly did not reveal any use-of-force investigations based on prisoner injury files that had been administratively referred by the Commissioner.

The lack of rigorous supervisory review of uses of force enables deficient force reporting by involved officers. More significantly, it leads to officers using force, particularly hands-on force, without fear of oversight or consequence.

3. SPD does not have adequate systems in place to detect, address, and prevent officer misconduct

Police departments have the responsibility to detect misconduct and take steps to prevent their officers from engaging in it. The components of an effective accountability system are well-established and include procedures to ensure that misconduct is fully reported by fellow officers and supervisors; that complaints from members of the public are accepted and not discouraged, and that all allegations of misconduct are investigated thoroughly and fairly, without regard to improper external factors or biases. Developed and implemented properly, these systems will fairly and objectively determine whether officers acted both lawfully and consistently with departmental policy or should instead face discipline, as well as determine whether the incident raises policy, training, tactical, or equipment concerns that need to be addressed for officer and civilian safety. These basic measures are essential for ensuring that misconduct occurs rarely and that, when it does occur, officers are held accountable.<sup>22</sup>

SPD does not have an adequate accountability system in place. As a result, Narcotics Bureau officers who use excessive force or engage in other violations of law or policy typically face no internal consequences. SPD fails to hold its IIU to even basic standards, creating and perpetuating an environment that permits constitutional violations by officers.

*a. SPD's complaint intake processes are flawed*

SPD's actions have discouraged citizens from filing complaints against officers. While SPD purports to accept citizen complaints at any location, to any officer, and in any form, we learned during our investigation that, in practice, this is not the case. SPD commanders we interviewed said that they do not accept citizen complaints and instead tell complainants that they must go to IIU. Some officers also reported that, if complainants appear at SPD headquarters on Pearl Street, officers there have similarly rejected their complaint and instead instructed them to go to the IIU office on Maple Street.

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<sup>22</sup> Courts considering police misconduct cases—including courts considering cases involving SPD, and Narcotics Bureau officers in particular—have long acknowledged that deficiencies in systems and operations can unequivocally lead or contribute to constitutional violations. *See, e.g., Douglas v. Bigda*, No. 14-30210-MAP, Report and Recommendation Regarding Defendant's Motion for Summary Judgment (D. Mass. Oct. 14, 2016) (adopted in full by the District Court judge in *Douglas v. City of Springfield*, No. CV 14-30210-MAP, 2017 WL 123422, at \*1 (D. Mass. Jan. 12, 2017) (denying the City's motion for summary judgment in a case against seven Narcotics Bureau officers for excessive force explicitly finding that, "[i]f a jury concluded that Springfield's IIU process was ineffective or weak, it could further conclude that a resulting failure to take appropriate action in response to complaints of excessive force might lead Springfield's officers to believe such conduct would be tolerated."); *Comfort v. Town of Pittsfield*, 924 F. Supp. 1219, 1233 (D. Me. 1996) (denying the Town's motion for summary judgment on claims related to police officers' use of excessive force and finding sufficient evidence to establish the possibility that a police chief's "management style created atmosphere in which officers in his command believed that he would not punish their use of excessive force.")

Community members echoed the challenges involved in filing complaints against SPD officers. We heard members of the public complain that the Department fails to provide residents with clear guidance on how and where they can obtain a complaint form. When community members are able to navigate the intake process, they assert that they are faced with lengthy delays when trying to acquire complaint forms. One community member said that when she told an officer in person at SPD headquarters that she wanted to file a complaint, the officer treated her poorly and made her wait 30 minutes before giving her the form. Another community member stated that he had to wait five hours to file a complaint at a precinct. In a case involving Narcotics Bureau officers, the federal court denied summary judgment to the defendants and concluded that SPD's "IIU documents submitted as evidence by Plaintiff show what appears to be a consistent pattern of rejecting civilian complaints against police officers." *Douglas v. Bigda*, No. 14-30210-MAP, Report and Recommendation Regarding Defendant's Motion for Summary Judgment (D. Mass. Oct. 14, 2016), adopted in full by the District Court judge in *Douglas v. City of Springfield*, No. CV 14-30210-MAP, 2017 WL 123422, at \*1 (D. Mass. Jan. 12, 2017).

*b. Investigations of misconduct allegations are inadequate*

Even when complaints do come to SPD, there are deficiencies apparent in the quality of the investigations of those complaints, which has directly undermined SPD's ability to hold officers accountable where appropriate. These deficiencies also apply to internal referrals of misconduct.

Problems in SPD's misconduct investigations arise from the outset of the process, as there is a lack of consistency in how SPD classifies complaints. Like many departments, SPD assigns some minor categories of complaints and allegations of misconduct to the chain of command for investigation, while more serious allegations are assigned to IIU given its specialized focus on conducting such investigations. In interviews, officers asserted that all allegations of excessive force are handled by IIU, rather than by supervisors in the chain of command; but documents show this is not the case. We found multiple chain of command investigations between 2013 and 2018 that involved allegations of excessive force and thus should have been handled by IIU, but were not.

Our review of chain of command investigations of allegations of excessive force showed significant shortcomings in investigative techniques. For example, a prisoner complained that the "police beat me up," sprayed OC, and struck him three times on the back of the head with a flashlight. The prisoner injury report narrative states that the prisoner had a laceration on the left side of his head and was transported to the emergency room of a local hospital for treatment. SPD's Commissioner classified this excessive force complaint as a complaint that needed to be reviewed only by the officer's chain of command. The investigative file consisted of the officers' statements and the arrest report; there was no statement from the complainant or witnesses. The supervisor's discipline was to recommend retraining to "clearly articulat[e] use of force in reporting to accurately depict necessity." The *prima facie* evidence in the reports indicated that the officer's force was potentially excessive; in response to the subject's resisting arrest, the officer struck the subject with a flashlight three times in the head—force that

could potentially cause death or serious bodily injury. Had SPD referred this case to IIU for a full investigation, the Department could have reasonably sustained an excessive force complaint, rather than finding only that the officer erred by improperly failing to justify his use of force.

When complaints of excessive force are referred to IIU for investigation, those investigations also have significant deficiencies. We reviewed five years of IIU reports on investigations of excessive force and a number of other types of investigations of Narcotics Unit officers. That review showed that IIU investigators are not using basic investigative techniques needed to accurately determine if an allegation of excessive force should be sustained. IIU interviews often lack detail and important content. For example, in many instances, the interviewer does not ask for any information from the officer beyond what is included in the officer's arrest report. Instead, IIU investigators copy and paste officers' reports into the investigation report narrative. Interviews are not memorialized by IIU investigators, and instead the IIU investigator asks the officers interviewed to write their own report on what was said. The reports that result from these interviews are of poor quality. The format, structure, and presentation of the information in IIU reports is often confusing and does not convey an understanding of the issues or the violations under investigation. Often, multiple source documents are pasted into the report narrative without any description or attempt to resolve confusion between the different sources of information. In many reports, the allegations are not clearly stated or clearly answered, the relevant facts bearing on the truth of each allegation are not analyzed or clearly reported; and the language is repetitive, resulting in reports that are overly long and difficult to read despite lacking critical content. Often the IIU investigator does not attempt to clarify inconsistencies between or among witness statements, or between oral interviews and officer reports.

In one IIU investigation regarding allegations of excessive force conducted in the spring of 2016, IIU failed to interview several key witnesses who observed the incident. The incident so disturbed the witnesses that they recounted it in social media postings the same day. The IIU investigator knew who the witnesses were, where they lived, and had taken a statement from another witness confirming their identities, yet never interviewed them, noting instead in the report that "all efforts to contact [them] were unsuccessful," without any detail as to what "efforts" he made. Other IIU files document similar failings in following up with key witnesses, including law enforcement officers from other agencies, to conduct interviews and obtain essential information.<sup>23</sup>

These failures in how SPD investigates allegations of misconduct are directly attributable to the lack of adequate policies, guidance, and training for officers regarding how to conduct internal investigations. Although SPD's Policy Manual makes a general reference to IIU and

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<sup>23</sup> These deficiencies are not limited to investigations of excessive force, but instead are present across different types of investigations and reflect a broader and deeper lack of capacity within IIU. For example, when investigating a complaint that Narcotics Bureau officers were drinking alcohol on duty, IIU failed to interview at least a dozen named potential witnesses. Attempts to reach witnesses involved just making one phone call or sending one email before giving up. In that case, IIU ultimately interviewed only one witness who was not a law enforcement officer (who had no information). The investigative report consisted entirely of nearly identical statements from officers denying the allegations.

SPD does have an “IIU General Guidelines” document,<sup>24</sup> no policies specifically detail how IIU complaints are to be investigated, such as how IIU investigators should collect evidence, canvass for and interview witnesses, or draft investigative reports. Pursuant to the patrol officer and supervisor unions’ CBAs, IIU also has a 90-day timeframe to finish investigations, which is short when compared to other law enforcement agencies. Nor does SPD supply IIU officers with sufficient training regarding their specific responsibilities as investigators.

*c. Springfield’s Community Police Hearing Board lacks the support and training it needs to make sound conclusions and determinations*

Springfield created the CPHB to increase transparency within SPD and enhance the Springfield community’s involvement in ensuring accountability within their Police Department. In practice, however, the CPHB fails to fulfill these goals. The CPHB fails to equip its members with the training and resources needed to adequately perform these tasks. For example, unlike many other law enforcement agencies, SPD’s complaint review and discipline system prohibits sworn internal investigations officers— those who conduct the investigations and have the most knowledge of the facts – from making conclusions and recommendations. Instead, it tasks community members, most of whom have little experience in policing, with making preliminary determinations on use-of-force allegations and recommending discipline without any meaningful guidance. Officers we spoke to perceive the CPHB as untrained laypeople who do not have the resources to competently assess evidence or reach sound conclusions; we also heard from community members who view the CPHB as politicized and ineffective. To the extent that the Springfield community seeks to have a board comprised of community members make additional recommendations regarding the disposition of misconduct investigations and potential discipline, steps must be taken to enable that responsibility to be carried out effectively and appropriately.

In any event, the CPHB receives very few use-of-force investigations to review. As discussed above, SPD supervisors have not referred a single Narcotics Bureau use-of-force incident to IIU for investigation; and between 2013-2016, only six complaints by members of the public involving excessive force by a Narcotics Bureau officer made it to IIU. In five of those six IIU cases involving allegations of excessive force by a Narcotics Bureau officer in 2013-2018, the officers were exonerated or the allegations were not sustained. The sixth case involves a Narcotics Bureau officer who has been charged with federal crimes related to his alleged use of force in the incident. In that case, the indicted officer negotiated a 60-day unpaid suspension and remains an SPD officer. Neither CPHB nor SPD made a finding regarding whether the officer’s conduct violated policy in that case. While the Commissioner has the authority to impose discipline regardless of CPHB’s recommendations to correct lapses in accountability; we found no cases where the Commissioner reversed the CPHB’s recommendation.

*d. SPD fails to impose discipline even in the rare cases where violations of policy are sustained*

As discussed above, we could not identify a single instance of SPD sustaining a finding of excessive force involving a Narcotics Bureau officer. But even in cases involving other types of misconduct, when IIU investigations are sustained, Narcotics Bureau officers rarely face

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<sup>24</sup> SPD Policy Manual, Rules 32 and 35.

discipline from SPD. Narcotics Bureau officers are less likely to receive discipline from SPD compared to officers in other units. Between 2013-2018, in cases where SPD sustained allegations of misconduct, 11% of allegations involving SPD officers outside of the Narcotics Bureau resulted in discipline, but only 5% of allegations involving Narcotics Bureau officers resulted in discipline. In addition, there is no formal document or database recording past officer discipline to use as a guideline for the Commissioner. As a result, there are apparent inconsistencies in discipline.

SPD's overall failure to discipline its officers for using excessive force is probative of SPD's failure to discipline Narcotics Bureau officers for using excessive force. Records show that the failures within SPD's accountability systems are longstanding. In addition to the instances of excessive force uncovered through our review, courts have found SPD officer misconduct on multiple occasions where SPD failed to hold officers accountable. For example, a jury awarded \$250,000 to a plaintiff after finding that an SPD officer (not in the Narcotics Bureau) used excessive force and committed assault and battery when he hit the plaintiff with a baton in 2013. *Hutchins v. Springfield*, Case No. 3:16-cv-30008-NMG (D. Mass. Jan. 20, 2019). SPD did not discipline any of the officers involved in the *Hutchins* case. In another lawsuit against the City of Springfield, a plaintiff alleged that in 2012, several Narcotics Bureau officers punched the plaintiff in the jaw, beat him up, and hit him multiple times with the butt of a pistol. *See Douglas v. Bigda*, No. 14-30210-MAP, Report and Recommendation Regarding Defendant's Motion for Summary Judgment (D. Mass. Oct. 14, 2016), adopted in full by the District Court judge in *Douglas v. City of Springfield*, No. CV 14-30210-MAP, 2017 WL 123422, at \*1 (D. Mass. Jan. 12, 2017). None of the Narcotics Bureau officers involved in this incident were investigated or disciplined by SPD. The *Douglas* Court determined that "[a] reasonable finder of fact could also infer that there were flaws in the city's investigation of civilian complaints that demonstrated deliberate indifference to the risks posed by officers against whom large numbers of civilian complaints about excessive use of force had been made." The *Douglas* lawsuit settled for \$60,000 in 2017. According to records created and produced by the City of Springfield and other publicly available reports, the City paid over \$5.25 million in police misconduct settlements between 2006 and 2019.<sup>25</sup> By contrast, two nearby cities of similar size, Bridgeport, Connecticut and Lowell, Massachusetts, appear to have paid \$249,000 and \$817,000, respectively, in police misconduct settlements during the same 13-year timeframe.<sup>26</sup> This

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<sup>25</sup> See Stephanie Barry, *Springfield Paid Out \$3.9 million Over 10 years in Police Misconduct Lawsuits*, MassLive, Sept. 6, 2017, available at [https://www.masslive.com/news/2017/09/springfield\\_police\\_misconduct\\_lawsuits.html](https://www.masslive.com/news/2017/09/springfield_police_misconduct_lawsuits.html); Dan Glaun, *Springfield to Pay \$885,000 in Settlements in Alleged 2015 Police Beating Even as Grand Jury Considers Indictments*, MassLive, Sept. 26, 2018, available at [https://www.masslive.com/news/2018/09/post\\_1008.html](https://www.masslive.com/news/2018/09/post_1008.html) (reporting \$885,000 settlement); Peter Goonan, *Springfield City Council Approves \$450,000 for Police Brutality Settlement*, MassLive, June 17, 2019, available at <https://www.masslive.com/news/2019/06/springfield-city-council-approves-450000-for-police-brutality-settlement.html> (reporting \$450,000 settlement).

<sup>26</sup> Bridgeport: see Daniel Tepfer, *City Settles Police Brutality Lawsuit*, CTPost, May 28, 2014, available at <https://www.ctpost.com/local/article/City-settles-police-brutality-lawsuit-5508039.php> (reporting \$198,000 settlement); Daniel Tepfer, *City Pays Settlements in Police Brutality Cases*, CTPost, July 26, 2017, available at <https://www.ctpost.com/local/article/City-pays-settlements-in-police-brutality-cases-11437279.php> (reporting \$16,000 settlement); Brian Lockhart, *Bridgeport Settles Lawsuit Over*

disparity supports our conclusion that SPD officers are engaging in a pattern or practice of excessive force. Yet, the SPD has failed to use its administrative powers to hold these officers accountable.

4. SPD's failure to train officers contributes to the pattern or practice of excessive force

SPD's Training Division does not conduct comprehensive in-service training for Narcotics Bureau officers, or any officers, on the use of punches and strikes— the types of force that underlie the pattern or practice we have identified. As a result, Narcotics Bureau officers must recall and rely on recruit training, often received years ago, when assessing when and how to deliver a punch or strike.

In addition, SPD Narcotics Bureau sergeants are not taught how to address Springfield- or supervisor-specific issues that may arise while they are managing officers. They do not receive formal training on the following important topics: how to complete SPD-276 forms; how to comprehensively review prisoner injury report narratives; how to follow up with officers about key report omissions and specious language; or how to handle any pushback from officers about the need to provide more detailed information in reports.

Finally, there is no coordination between command staff, IIU, those responsible for creating SPD policy, and the Training Division to identify problematic patterns or trends that evidence a need for additional training.

#### IV. PRELIMINARY ASSESSMENT OF REMEDIES

Addressing the constitutional violations we identified during our investigation will require changes to the policy, training, and accountability systems within the Narcotics Bureau of SPD. These changes would improve SPD's handling of force issues if they applied to SPD as a whole. Bringing about lawful and effective policing by the Narcotics Bureau will also require the sustained commitment of City and SPD leaders in ensuring accountability and transparency within SPD. While the full range of necessary measures is beyond the scope of this document, it is clear that changes in the following areas must be made:

1. Enhance Force Reporting and Review Procedures. SPD should implement a use-of-force reporting procedure that: (1) requires officers to report all uses of force, including hands-on uses of force, uses of force that do not result in injury, and uses of force that do not occur with an arrestee; and (2) instructs supervisors on how to review uses of force and

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*Family's Arrest*, CTPost, Dec. 4, 2018, available at <https://www.ctpost.com/local/article/Bridgeport-settles-lawsuit-over-family-s-arrest-13442920.php> (reporting \$35,000 settlement).

Lowell: *see* Robert Mills & Lauren Peterson, *City of Lowell to Settle Confidential Informant Lawsuit for \$750G*, Lowell Sun, Oct. 18, 2017, available at <https://www.lowellsun.com/2017/10/18/city-of-lowell-to-settle-confidential-informant-lawsuit-for-750g/> (reporting \$750,000 settlement); Grant Welker, *Lowell Settlements Cost Taxpayers*, Lowell Sun, June 14, 2015, available at <https://www.lowellsun.com/2015/06/14/lowell-settlements-cost-taxpayers/> (reporting one \$27,000 settlement and two \$20,000 settlements).

implement disciplinary action where necessary. Officers and supervisors should receive comprehensive training on the new reporting and review procedures.

2. Adopt New Use-of-force Training. New training curricula should explicitly address the importance of avoiding fist strikes to the head, neck, and face area, and avoiding kicking suspects. SPD should also expand its training on bystander liability to ensure officers intervene to prevent problematic events from escalating and report excessive uses of force that they witness.
3. Review and Revise IIU Policies and Training. IIU requires new policies, procedures, and training to ensure that civilian complaints are properly taken, and that IIU officers use proper interviewing and investigative techniques in order to conduct meaningful investigations.
4. Increase Accountability Mechanisms. SPD should adopt policies and procedures so that officer discipline is meaningful, consistent, and appropriate. SPD should also address the fact that administrative charges can be dismissed due to timeliness issues.

## V. CONCLUSION

Our investigation has determined that there is reasonable cause to believe that Narcotics Bureau officers have engaged in a pattern or practice of excessive force, which is directly attributable to systemic deficiencies in SPD's policies, accountability systems, and training.

We are encouraged by SPD's cooperation and by its initial efforts to address reform. We hope SPD will take advantage of its new leadership and the retention of an outside consulting firm to resolve the issues we identified within the Narcotics Bureau. We look forward to working cooperatively with the City of Springfield and SPD to develop and implement sustainable reform measures to address the violations and deficiencies outlined in this report.

## **EXHIBIT B**



ANTHONY D. GULLUNI  
DISTRICT ATTORNEY

COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF THE DISTRICT ATTORNEY  
HAMPDEN DISTRICT

HALL OF JUSTICE  
50 STATE STREET  
SPRINGFIELD, MASSACHUSETTS 01102

SUPERIOR COURT  
TEL: 413-747-1000  
FAX: 413-781-4745

SPRINGFIELD DISTRICT COURT  
TEL: 413-747-1001  
FAX: 413-747-5628

August 19, 2020

Andrew E. Lelling,  
United States Attorney - District of Massachusetts  
United States Attorney's Office - District of Massachusetts  
John Joseph Moakley United States Federal Courthouse  
1 Courthouse Way, Suite 9200  
Boston, Massachusetts 02210

**RE: *Investigation of the Springfield, Massachusetts Police Department's Narcotics Bureau, Department of Justice Report, dated July 8, 2020***

Dear United States Attorney Lelling:

I serve as Hampden District Attorney for the Commonwealth of Massachusetts. In that capacity, I am requesting the production of documents, pursuant to 5 U.S.C. § 301 and the prescribed regulations applicable to this request found at 28 C.F.R. § 16.21 *et seq.*, of certain Springfield Police Department reports [more specifically identified below] as named in the publicly released Department of Justice Report, dated July 8, 2020, entitled *Investigation of the Springfield, Massachusetts Police Department's Narcotics Bureau* ["Report"], co-authored by the United States Department of Justice's Civil Rights Division and the United States Attorney's Office for the District of Massachusetts. It is asserted that any responsive records or papers are necessary for production to my office FORTHWITH to assist me in the exercise of my constitutional, statutory, and ethical obligations to the citizens of Hampden County, including, but not limited to, charged individuals in pending and post-conviction criminal matters in the courts of the Commonwealth.

"Ensuring the public's safety is of the first order of government, a duty underlying all government action." *Lavallee v. Justices in Hampden Superior Court*, 442 Mass. 228, 245 (2004). In the Commonwealth of Massachusetts, the District Attorney, by statute, is the governmental official who serves as chief law enforcement officer for his/her respective district. M.G.L., c. 12, §12. See *Commonwealth v. Bing Sial Ling*, 434 Mass. 131, 133 (2001), citing *District Attorney for the Norfolk Dist. v. Flatley*, 419 Mass. 507, 509 n.3 (1995) (recognizing district attorney's position as an elected official and chief law enforcement officer in his district by providing him extraordinary review of legal issues). The district attorney, as a prosecutor, is sworn to uphold the state and federal constitutions, and is required to disclose material, exculpatory evidence in his/her custody or control, to a defendant, *Committee for Pub. Counsel Servs. v. Attorney Gen.*, 480.

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Lelling, A.

August 19, 2020

Mass. 700, 731 (2018); *Brady v. Maryland*, 373 U.S. 83, 87 (1963), even without a request from the defendant. *Commonwealth v. Ayala*, 481 Mass. 46, 56 (2018). See *Commonwealth v. Bing Sial Ling*, 434 Mass. at 134-135, citing *United States v. Agurs*, 427 U.S. 97, 106-108 (1976) (prosecutors' duty to disclose exculpatory evidence not limited to cases where there is a request for such evidence); *Commonwealth v. Beal*, 429 Mass. 530, 531 (1999) (prosecutors' duty to disclose extends to information in their possession or in possession of persons subject to their control). See also Mass. R. Crim. P. 14, as appearing in 442 Mass. 1518 (2004). "...[I]ssues of Federal and State sovereignty have the potential to prejudice a defendant being prosecuted in State court by stymying his or her ability to obtain exculpatory information held by Federal authorities." *Commonwealth v. Ayala*, 481 Mass. at 56, citing *Commonwealth v. Donahue*, 396 Mass. 590, 596 (1986). In addition, ethical obligations "may require a prosecutor to undertake some procedural and remedial measures as a matter of obligation," in the exercise of his discovery obligations. Mass. R. Prof. C. 3.8, Special Responsibilities of a Prosecutor, 3.8 (d), (g), (i), and (j) and Comment 1.

The Springfield Police Department is a law enforcement agency within Hampden County. Officers of the Springfield Police Department are required by statute and rule to provide arrest, incident, and investigatory reports to satisfy probable cause determinations before a magistrate or court. These reports are then provided to Hampden County prosecutors to fulfill discovery obligations. In addition, officers of the Springfield Police Department testify to the documents' content, under oath, in grand jury proceedings and pretrial and post-conviction evidentiary hearings of criminally charged individuals in Hampden Superior Court, Springfield District Court, and Springfield Juvenile Court.

The Executive Summary of the July 8, 2020 Report of the *Investigation of the Springfield, Massachusetts Police Department's Narcotics Bureau*, Report at 3, states that investigators jointly from the Department of Justice's Special Litigation Section of the Civil Rights Division and the United States Attorney's Office for the District of Massachusetts, conducted a comprehensive review of 114,000 pages of Springfield Police Department documents, including an unspecified number of "incident reports" and "investigative reports". Notably, Report at 9, the Report states that investigators sought and received 1,700 prisoner injury files, 26,000 arrest reports and over 700 use-of-force-reports created from 2013 through 2019. More specifically, Report at 9, the Report states that investigators reviewed 5,500 arrest reports and 10 use-of-force reports from the Springfield Police Department's Narcotics Bureau from 2013-2018. Found by investigators, Report at 2, were **"examples where Narcotics Bureau officers falsified reports to disguise or hide their use of force[;]"** and Report at 16, **"...a pattern or practice ... [where] officers made false reports that were inconsistent with other available evidence, including video and photographs...."** This information is deemed to have contributed to the investigators conclusion, Report at 2, that "there is reasonable cause to believe that Narcotics Bureau officers engage in a pattern or practice of

PAGE THREE  
Lelling, A.  
August 19, 2020

excessive force in violation of the Fourth Amendment of the United States Constitution.”<sup>1</sup>

After the Report was made public, a First Assistant District Attorney with my office received a telephone call from an AUSA with the Civil Rights Division of the United States Attorney’s Office for the District of Massachusetts who had been involved in the investigation and issuance of the Report. The AUSA’s stated purpose of the telephone call was to inquire if the Hampden District Attorney had “any questions” about the Report. The parties agreed to speak after my office had an adequate time to review the contents of the Report. On July 20, 2020, that First Assistant District Attorney from my office spoke with the AUSA, by telephone, and orally requested that the Hampden District Attorney be provided with the Springfield Police Department reports that investigators referenced in the Report where “officers falsified reports” or “officers made false reports”. The First Assistant District Attorney told the AUSA that the assistant district attorneys in the Hampden District Attorney’s Office needed to identify the false or falsified reports and review them to determine his/her discovery obligations, pursuant to *Brady* and the Massachusetts Rules of Criminal Procedure. The parties agreed to speak after the AUSA had sufficient time to consider the First Assistant District Attorney’s request.

On July 28, 2020, the First Assistant District Attorney left a voice message for the AUSA concerning the status of the July 20<sup>th</sup> request for the Springfield Police Department officers’ false or falsified reports. Later in the day, the First Assistant District Attorney received an email from the AUSA stating that the request for the Springfield Police Department officers’ false or falsified reports was still under consideration. Thereafter, on August 6, 2020, the First Assistant District Attorney, the AUSA and another AUSA (who participated in the investigation and issuance of the Report) spoke by telephone. In that telephone conversation, the First Assistant District Attorney’s oral request for the production of the Springfield Police Department officers’ false or falsified reports was denied. After discussion with members of the Department of Justice’s Professional Responsibility Unit and the Civil Rights Division, the Department of Justice concluded it would withhold the Springfield Police Department’s false or falsified reports from the Hampden District Attorney. The grounds stated were that the requested false or falsified reports were confidential, the calculus for exculpatory information was different for the Department of Justice, and rules for *Brady* material do not extend to the Department of Justice’s civil rights investigations. The First Assistant

---

<sup>1</sup> While I recognize that the authors of the Report note that investigators did not serve “as a tribunal to make factual findings and legal conclusions binding on, or admissible in, any court” see Report at 2, n.2, the reported findings of unconstitutional law enforcement conduct, as described in the twenty-eight page Report, suggest the documents supporting these findings may contain potentially exculpatory material as that term is legally understood, and is subject to my mandatory review to effectively meet the constitutional, statutory and ethical obligations of my office.

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Lelling, A.  
August 19, 2020

District Attorney again emphasized to each AUSA that the Hampden District Attorney was only seeking the production of Springfield Police Department officers' false or falsified reports, not any confidential, privileged, or investigatory material. The First Assistant District Attorney was told to request the reports from the Springfield Police Department. The First Assistant District Attorney was also informed by the AUSA that the Springfield Police Department did not know which of the thousands of reports it had provided to federal investigators during the investigation were false or falsified, as stated in the Report.

I understand that, in the first instance, due to the federal regulations cited above and relevant case law, see *U.S. ex. rel. Touhy v. Ragen*, 340 U.S. 462 (1951), a District Attorney's subpoena to produce documents, information or objects, pursuant to G.L. c. 277, § 68, or a state court summons to produce documents, information or objects, pursuant to Mass. R. Crim. P. 17 (a)(2), 378 Mass. 885 (1979), even if properly served, is legally insufficient to compel the production of the requested Springfield Police Department officers' reports, or attendant photographs or video/digital images, notwithstanding the language of the subpoena or summons, without prior administrative relief being sought.

My office did not conduct or participate in the investigation with the Department of Justice's Specialized Litigation Unit of the Civil Rights Division or the United States Attorney for the District of Massachusetts and therefore, does not have knowing custody or control of the Springfield Police Department officers' reports deemed false or falsified. Although statutorily serving as the chief law enforcement officer for Hampden County, and thus the chief law enforcement officer within the Springfield Police Department's jurisdiction, the Hampden District Attorney was not served with a copy of the Report from the investigating agencies, and has not been enlisted to assist in developing necessary remedial measures for the constitutional violations found. The Report's investigation spanned twenty-seven months from its initiation to the release of its findings. The scope and timing of the investigation cannot be replicated by my office in any meaningful way so as to meet my constitutional, statutory, and ethical obligations in a timely manner.

Therefore, I make this written request, pursuant to 28 C.F.R. § 16.21 *et. seq.*, for:

- (1) A copy of all Springfield Police Department reports, including, but not limited to incident reports, investigative reports, arrest reports, use-of-force reports, or contents of a "prisoner injury file" (as described in the Report, at 7), determined as examples where Narcotics Bureau officers falsified reports to disguise or hide their use of force[;];

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- (2) A copy of all Springfield Police Department reports, including, but not limited to incident reports, investigative reports, arrest reports, use-of-force reports, or contents of a "prisoner injury file" (as described in the Report, at 7), determined as "...a pattern or practice .... [where] officers made false reports that were inconsistent with other available evidence, including video and photographs....", and;
- (3) copy of all photographs, or video/digital material determined as inconsistent with any Springfield Police Department officers' reports, including, but not limited to incident reports, investigative reports, arrest reports, use-of-force reports, or contents of a "prisoner injury file" (as described in the Report, at 7).

I do NOT request any other documents from the investigation, including any contents of IIU files, training materials, or other internal, confidential or privileged documents of the Springfield Police Department provided to investigators, or incident reports, investigative reports, arrest reports, use-of-force reports, or contents of a "prisoner injury file" (as described in the Report, at 7) determined not to contain false or falsified information, or statements, notes or recordings of investigators' interviews with Springfield Police Department officers, City of Springfield officials or community members. I also do not request the disclosure of any information concerning sensitive investigative techniques, current investigations, classified information, informants or security programs such as the Federal Witness Security Program.

Cooperation is sought for a quick resolution of this request, and is necessary for me to meet my constitutional, statutory, and ethical obligations to the people I have been elected to serve. As you know, seeking the truth and the pursuit of justice are the bedrock principles of our work as prosecutors. If you have questions or concerns arising from this office's need for this information, please contact me by telephone at (413) 505-5901.

Very truly yours,

  
Anthony D. Gulluni  
District Attorney  
Hampden District

cc: Eric S. Dreiband, Assistant Attorney General  
Department of Justice, Civil Rights Division

# **EXHIBIT C**



ANTHONY D. GULLUNI  
DISTRICT ATTORNEY

COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF THE DISTRICT ATTORNEY  
HAMPDEN DISTRICT

HALL OF JUSTICE  
50 STATE STREET  
SPRINGFIELD, MASSACHUSETTS 01102

SUPERIOR COURT  
TEL: 413-747-1000  
FAX: 413-781-4745

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TEL: 413-747-1001  
FAX: 413-747-5628

August 19, 2020

Eric S. Dreiband  
Assistant Attorney General  
United States Department of Justice  
Civil Rights Division  
950 Pennsylvania Avenue, NW  
Washington, D.C. 20530-0001

**RE: *Investigation of the Springfield, Massachusetts Police Department's Narcotics Bureau, Department of Justice Report, dated July 8, 2020***

Dear Assistant Attorney General Dreiband:

I serve as Hampden District Attorney for the Commonwealth of Massachusetts. In that capacity, I am requesting the production of documents, pursuant to 5 U.S.C. § 301 and the prescribed regulations applicable to this request found at 28 C.F.R. § 16.21 *et seq.*, of certain Springfield Police Department reports [more specifically identified below] as named in the publicly released Department of Justice Report, dated July 8, 2020, entitled *Investigation of the Springfield, Massachusetts Police Department's Narcotics Bureau* ["Report"], co-authored by the United States Department of Justice's Civil Rights Division and the United States Attorney's Office for the District of Massachusetts. It is asserted that any responsive records or papers are necessary for production to my office FORTHWITH to assist me in the exercise of my constitutional, statutory, and ethical obligations to the citizens of Hampden County, including, but not limited to, charged individuals in pending and post-conviction criminal matters in the courts of the Commonwealth.

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Dreiband, E.  
August 19, 2020

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August 19, 2020

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PAGE FOUR  
Dreiband, E.  
August 19, 2020

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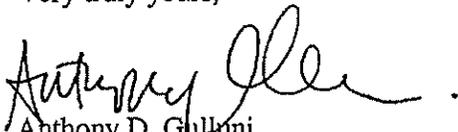
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Dreiband, E.  
August 19, 2020

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I do NOT request any other documents from the investigation, including any contents of IUU files, training materials, or other internal, confidential or privileged documents of the Springfield Police Department provided to investigators, or incident reports, investigative reports, arrest reports, use-of-force reports, or contents of a "prisoner injury file" (as described in the Report, at 7) determined not to contain false or falsified information, or statements, notes or recordings of investigators' interviews with Springfield Police Department officers, City of Springfield officials or community members. I also do not request the disclosure of any information concerning sensitive investigative techniques, current investigations, classified information, informants or security programs such as the Federal Witness Security Program.

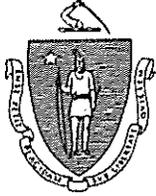
Cooperation is sought for a quick resolution of this request, and is necessary for me to meet my constitutional, statutory, and ethical obligations to the people I have been elected to serve. As you know, seeking the truth and the pursuit of justice are the bedrock principles of our work as prosecutors. If you have questions or concerns arising from this office's need for this information, please contact me by telephone at (413) 505-5901.

Very truly yours,

  
Anthony D. Gulluni  
District Attorney  
Hampden District

cc: Andrew E. Lelling,  
United States Attorney – District of Massachusetts

# **EXHIBIT D**



ANTHONY D. GULLUNI  
DISTRICT ATTORNEY

COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF THE DISTRICT ATTORNEY  
HAMPDEN DISTRICT

HALL OF JUSTICE  
50 STATE STREET  
SPRINGFIELD, MASSACHUSETTS 01102

SUPERIOR COURT  
TEL: 413-747-1000  
FAX: 413-781-4745

SPRINGFIELD DISTRICT COURT  
TEL: 413-747-1001  
FAX: 413-747-5628

September 14, 2020

Andrew E. Lelling  
United States Attorney – District of Massachusetts  
United States Attorney’s Office – District of Massachusetts  
John Joseph Moakley United States Federal Courthouse  
1 Courthouse Way, Suite 9200  
Boston, Massachusetts 02210

**RE: *Investigation of the Springfield, Massachusetts Police Department’s Narcotics Bureau, Department of Justice Report, dated July 8, 2020***

Dear United States Attorney Lelling:

In a letter dated August 19, 2020, I requested, pursuant to 5 U.S.C. § 301 and the prescribed Department of Justice *Touhy*-regulations applicable to the request found at 28 C.F.R. § 16.21 *et. seq.*, the production or disclosure of “false” or “falsified” Springfield Police Department reports and attendant photographs or video/digital images, and generally categorized in the publicly released Department of Justice report, dated July 8, 2020, entitled *Investigation of the Springfield, Massachusetts Police Department’s Narcotics Bureau* (“Report”), co-authored by the United States Department of Justice’s Civil Rights Division and the United States Attorney’s Office for the District of Massachusetts.<sup>1</sup> It was asserted then, and remains as my office’s position, that any responsive records or papers are necessary for production to my office FORTHWITH to assist me in the exercise of my constitutional, statutory, and ethical obligations to the citizens of Hampden County, including, but not limited to, charged individuals in pending and post-conviction criminal matters in the courts of the Commonwealth.

As previously stated, it is my understanding that due to the federal regulations cited above and relevant case law, see *U.S. ex. rel. Touhy v. Ragen*, 340 U.S. 462 (1951), a District Attorney’s subpoena to produce documents, information or objects, pursuant to Massachusetts G.L. c. 277, § 68, or a state court summons to produce documents, information or objects, pursuant to Mass. R. Crim. P. 17 (a)(2), 378 Mass. 885 (1979), each with a specified production date, even if properly served, do not compel the production of the “false” or “falsified” Springfield Police Department officers’ reports, or

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<sup>1</sup> A copy of the letter is attached. FedEx courier served the letter upon you on August 20, 2020 at 11:41 am.

attendant photographs or video/digital images, notwithstanding the language of the subpoena or summons, without prior federal administrative relief being sought. My August 19<sup>th</sup> letter sought such federal administrative relief. To date, you have not responded to my written request, either orally or in writing, and we have not otherwise discussed or negotiated the terms of my requests or any withdrawal. See 28 C.F.R. § 16.24.

If I do not receive a written response from you by September 30, 2020, I will consider your lack of response as a denial of my August 19<sup>th</sup> demand for production or disclosure and a final agency decision, as those terms are defined by federal administrative law, see 28 C.F.R. § 16.25, and relevant case law, see *Bennett v. Spear*, 520 U.S. 154, 177-178 (1997), by the United States Department of Justice, its Civil Rights Division and the United States Attorney's Office for the District of Massachusetts. The requests are for the following:

- (1) A copy of all Springfield Police Department reports, including, but not limited to incident reports, investigative reports, arrest reports, use-of-force reports, or contents of a "prisoner injury file" (as described in the Report, at 7), determined as examples where Narcotics Bureau officers falsified reports to disguise or hide their use of force[;];
- (2) A copy of all Springfield Police Department reports, including, but not limited to incident reports, investigative reports, arrest reports, use-of-force reports, or contents of a "prisoner injury file" (as described in the Report, at 7), determined as "...a pattern or practice .... [where] officers made false reports that were inconsistent with other available evidence, including video and photographs....", and;
- (3) copy of all photographs, or video/digital material determined as inconsistent with any Springfield Police Department officers' reports, including, but not limited to incident reports, investigative reports, arrest reports, use-of-force reports, or contents of a "prisoner injury file" (as described in the Report, at 7).

In addition, if I receive no written response from you by September 30, 2020, I also will consider that the final grounds for withholding the production or disclosure of the demanded reports and attendant photographs, see 28 C.F.R. § 16.26 (b)(1) - (6), are that: (1) the requested false or falsified reports are confidential, (2) the calculus for exculpatory information is different for the Department of Justice, and (3) the rules for *Brady* material do not extend to the Department of Justice's civil rights investigations.

I understand that any appeal from your final decision to produce or disclose the requested "false" or "falsified" Springfield Police Department reports and attendant photographs or video/digital images, as set forth in my August 19<sup>th</sup> demand letter, is pursuant to the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 701-706.

The Hampden District Attorney's Office serves a population of 468,467 (est. 2016 Census), in five (5) cities and eighteen (18) towns, and prosecutes cases in five (5) district courts (including Springfield District Court), two (2) juvenile courts (including Springfield Juvenile Court), and one (1) superior court (Hampden County Superior Court). The production or disclosure of "false" or "falsified" Springfield Police Department reports and attendant photographs or video/digital images, originating from a law enforcement department within Hampden County, are necessary to meet the constitutional, statutory, and ethical obligations of my office. A state prosecutor's

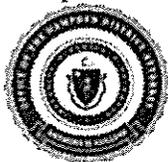
discovery obligations concerning potentially exculpatory information include seeking disclosure from those persons under the prosecutor's direction and control, or persons who have participated in investigating or evaluating the case and either regularly report to the prosecutor's office or have done so in a particular case. Mass. R. Crim. P. 14 (a)(1)(A).

It is my understanding that the United State Department of Justice has a policy, known as its *Giglio* [*v. United States*, 405 U.S.150, 155 (1972)] Policy, "...whereby Federal prosecutors obtain potential impeachment information from Federal investigative agencies, such as the Federal Bureau of Investigation, regarding law enforcement agents and employees who may be witnesses in the cases they prosecute." *In the Matter of a Grand Jury Proceeding*, \_\_\_ Mass. \_\_\_, 2020 WL 5360068 at 8-9, SJC-12869 at 31 (Slip Op. September 8, 2020), quoting United States Department of Justice, Justice Manual, Tit. 9-5.100 (updated 2020)). This policy "reflects the department's recognition of the need for prosecutors to learn of potential impeachment information regarding all the investigating agents and employees participating in the cases they prosecute, so that they may consider whether the information should be disclosed to defense counsel under the Brady and Giglio line of cases." *In the Matter of a Grand Jury Proceeding*, \_\_\_ Mass. \_\_\_, 2020 WL 5360068 at 9, SJC-12869 at 33 (Slip Op. September 8, 2020). My request falls squarely within the type of information your prosecutors routinely seek, evaluate, and disclose.

In Massachusetts, "[t]he district attorney is the people's elected advocate for a broad spectrum of societal interests - from ensuring that criminals are punished for wrongdoing, to allocating limited resources to maximize public protection." *Commonwealth v. Gordon*, 410 Mass. 498, 500 (1991). See *Commonwealth v. Clerk-Magistrate of West Roxbury Div. of Dist. Court*, 439 Mass. 352, 360 (2003); *Commonwealth v. Clerk of Boston Div. of Juvenile Court Dept.*, 432 Mass. 693, 699 (2000). There is no other reasonable means available to my office to obtain the production or disclosure of the "false" or "falsified" Springfield Police Department reports and attendant photographs or video/digital images as cited your July 8<sup>th</sup> Report. I will continue to seek the truth and pursue justice for the citizens of Hampden County. If you continue to remain silent, resolution of this matter will proceed per applicable statutes and regulations for such disputes.

Sincerely,

  
Anthony D. Gulluni  
District Attorney  
Hampden District



cc: Eric S. Dreiband  
Assistant Attorney General



ANTHONY D. GULLUNI  
DISTRICT ATTORNEY

COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF THE DISTRICT ATTORNEY  
HAMPDEN DISTRICT

HALL OF JUSTICE  
50 STATE STREET  
SPRINGFIELD, MASSACHUSETTS 01102

SUPERIOR COURT  
TEL: 413-747-1000  
FAX: 413-781-4745

SPRINGFIELD DISTRICT COURT  
TEL: 413-747-1001  
FAX: 413-747-5628

August 19, 2020

Andrew E. Lelling,  
United States Attorney - District of Massachusetts  
United States Attorney's Office - District of Massachusetts  
John Joseph Moakley United States Federal Courthouse  
1 Courthouse Way, Suite 9200  
Boston, Massachusetts 02210



**RE: *Investigation of the Springfield, Massachusetts Police Department's Narcotics Bureau, Department of Justice Report, dated July 8, 2020***

Dear United States Attorney Lelling:

I serve as Hampden District Attorney for the Commonwealth of Massachusetts. In that capacity, I am requesting the production of documents, pursuant to 5 U.S.C. § 301 and the prescribed regulations applicable to this request found at 28 C.F.R. § 16.21 *et seq.*, of certain Springfield Police Department reports [more specifically identified below] as named in the publicly released Department of Justice Report, dated July 8, 2020, entitled *Investigation of the Springfield, Massachusetts Police Department's Narcotics Bureau* ["Report"], co-authored by the United States Department of Justice's Civil Rights Division and the United States Attorney's Office for the District of Massachusetts. It is asserted that any responsive records or papers are necessary for production to my office FORTHWITH to assist me in the exercise of my constitutional, statutory, and ethical obligations to the citizens of Hampden County, including, but not limited to, charged individuals in pending and post-conviction criminal matters in the courts of the Commonwealth.

"Ensuring the public's safety is of the first order of government, a duty underlying all government action." *Lavallee v. Justices in Hampden Superior Court*, 442 Mass. 228, 245 (2004). In the Commonwealth of Massachusetts, the District Attorney, by statute, is the governmental official who serves as chief law enforcement officer for his/her respective district. M.G.L., c. 12, §12. See *Commonwealth v. Bing Sial Ling*, 434 Mass. 131, 133 (2001), citing *District Attorney for the Norfolk Dist. v. Flatley*, 419 Mass. 507, 509 n.3 (1995) (recognizing district attorney's position as an elected official and chief law enforcement officer in his district by providing him extraordinary review of legal issues). The district attorney, as a prosecutor, is sworn to uphold the state and federal constitutions, and is required to disclose material, exculpatory evidence in his/her custody or control, to a defendant, *Committee for Pub. Counsel Servs. v. Attorney Gen.*, 480.

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Lelling, A.

August 19, 2020

Mass. 700, 731 (2018); *Brady v. Maryland*, 373 U.S. 83, 87 (1963), even without a request from the defendant. *Commonwealth v. Ayala*, 481 Mass. 46, 56 (2018). See *Commonwealth v. Bing Sial Ling*, 434 Mass. at 134-135, citing *United States v. Agurs*, 427 U.S. 97, 106-108 (1976) (prosecutors' duty to disclose exculpatory evidence not limited to cases where there is a request for such evidence); *Commonwealth v. Beal*, 429 Mass. 530, 531 (1999) (prosecutors' duty to disclose extends to information in their possession or in possession of persons subject to their control). See also Mass. R. Crim. P. 14, as appearing in 442 Mass. 1518 (2004). "...[I]ssues of Federal and State sovereignty have the potential to prejudice a defendant being prosecuted in State court by stymying his or her ability to obtain exculpatory information held by Federal authorities." *Commonwealth v. Ayala*, 481 Mass. at 56, citing *Commonwealth v. Donahue*, 396 Mass. 590, 596 (1986). In addition, ethical obligations "may require a prosecutor to undertake some procedural and remedial measures as a matter of obligation," in the exercise of his discovery obligations. Mass. R. Prof. C. 3.8, Special Responsibilities of a Prosecutor, 3.8 (d), (g), (i), and (j) and Comment 1.

The Springfield Police Department is a law enforcement agency within Hampden County. Officers of the Springfield Police Department are required by statute and rule to provide arrest, incident, and investigatory reports to satisfy probable cause determinations before a magistrate or court. These reports are then provided to Hampden County prosecutors to fulfill discovery obligations. In addition, officers of the Springfield Police Department testify to the documents' content, under oath, in grand jury proceedings and pretrial and post-conviction evidentiary hearings of criminally charged individuals in Hampden Superior Court, Springfield District Court, and Springfield Juvenile Court.

The Executive Summary of the July 8, 2020 Report of the *Investigation of the Springfield, Massachusetts Police Department's Narcotics Bureau*, Report at 3, states that investigators jointly from the Department of Justice's Special Litigation Section of the Civil Rights Division and the United States Attorney's Office for the District of Massachusetts, conducted a comprehensive review of 114,000 pages of Springfield Police Department documents, including an unspecified number of "incident reports" and "investigative reports". Notably, Report at 9, the Report states that investigators sought and received 1,700 prisoner injury files, 26,000 arrest reports and over 700 use-of-force-reports created from 2013 through 2019. More specifically, Report at 9, the Report states that investigators reviewed 5,500 arrest reports and 10 use-of-force reports from the Springfield Police Department's Narcotics Bureau from 2013-2018. Found by investigators, Report at 2, were "examples where Narcotics Bureau officers falsified reports to disguise or hide their use of force[;]" and Report at 16, "...a pattern or practice ... [where] officers made false reports that were inconsistent with other available evidence, including video and photographs...." This information is deemed to have contributed to the investigators conclusion, Report at 2, that "there is reasonable cause to believe that Narcotics Bureau officers engage in a pattern or practice of

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Lelling, A.  
August 19, 2020

excessive force in violation of the Fourth Amendment of the United States Constitution.”<sup>1</sup>

After the Report was made public, a First Assistant District Attorney with my office received a telephone call from an AUSA with the Civil Rights Division of the United States Attorney’s Office for the District of Massachusetts who had been involved in the investigation and issuance of the Report. The AUSA’s stated purpose of the telephone call was to inquire if the Hampden District Attorney had “any questions” about the Report. The parties agreed to speak after my office had an adequate time to review the contents of the Report. On July 20, 2020, that First Assistant District Attorney from my office spoke with the AUSA, by telephone, and orally requested that the Hampden District Attorney be provided with the Springfield Police Department reports that investigators referenced in the Report where “officers falsified reports” or “officers made false reports”. The First Assistant District Attorney told the AUSA that the assistant district attorneys in the Hampden District Attorney’s Office needed to identify the false or falsified reports and review them to determine his/her discovery obligations, pursuant to *Brady* and the Massachusetts Rules of Criminal Procedure. The parties agreed to speak after the AUSA had sufficient time to consider the First Assistant District Attorney’s request.

On July 28, 2020, the First Assistant District Attorney left a voice message for the AUSA concerning the status of the July 20<sup>th</sup> request for the Springfield Police Department officers’ false or falsified reports. Later in the day, the First Assistant District Attorney received an email from the AUSA stating that the request for the Springfield Police Department officers’ false or falsified reports was still under consideration. Thereafter, on August 6, 2020, the First Assistant District Attorney, the AUSA and another AUSA (who participated in the investigation and issuance of the Report) spoke by telephone. In that telephone conversation, the First Assistant District Attorney’s oral request for the production of the Springfield Police Department officers’ false or falsified reports was denied. After discussion with members of the Department of Justice’s Professional Responsibility Unit and the Civil Rights Division, the Department of Justice concluded it would withhold the Springfield Police Department’s false or falsified reports from the Hampden District Attorney. The grounds stated were that the requested false or falsified reports were confidential, the calculus for exculpatory information was different for the Department of Justice, and rules for *Brady* material do not extend to the Department of Justice’s civil rights investigations. The First Assistant

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<sup>1</sup> While I recognize that the authors of the Report note that investigators did not serve “as a tribunal to make factual findings and legal conclusions binding on, or admissible in, any court” see Report at 2, n.2, the reported findings of unconstitutional law enforcement conduct, as described in the twenty-eight page Report, suggest the documents supporting these findings may contain potentially exculpatory material as that term is legally understood, and is subject to my mandatory review to effectively meet the constitutional, statutory and ethical obligations of my office.

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Lelling, A.

August 19, 2020

District Attorney again emphasized to each AUSA that the Hampden District Attorney was only seeking the production of Springfield Police Department officers' false or falsified reports, not any confidential, privileged, or investigatory material. The First Assistant District Attorney was told to request the reports from the Springfield Police Department. The First Assistant District Attorney was also informed by the AUSA that the Springfield Police Department did not know which of the thousands of reports it had provided to federal investigators during the investigation were false or falsified, as stated in the Report.

I understand that, in the first instance, due to the federal regulations cited above and relevant case law, see *U.S. ex. rel. Touhy v. Ragen*, 340 U.S. 462 (1951), a District Attorney's subpoena to produce documents, information or objects, pursuant to G.L. c. 277, § 68, or a state court summons to produce documents, information or objects, pursuant to Mass. R. Crim. P. 17 (a)(2), 378 Mass. 885 (1979), even if properly served, is legally insufficient to compel the production of the requested Springfield Police Department officers' reports, or attendant photographs or video/digital images, notwithstanding the language of the subpoena or summons, without prior administrative relief being sought.

My office did not conduct or participate in the investigation with the Department of Justice's Specialized Litigation Unit of the Civil Rights Division or the United States Attorney for the District of Massachusetts and therefore, does not have knowing custody or control of the Springfield Police Department officers' reports deemed false or falsified. Although statutorily serving as the chief law enforcement officer for Hampden County, and thus the chief law enforcement officer within the Springfield Police Department's jurisdiction, the Hampden District Attorney was not served with a copy of the Report from the investigating agencies, and has not been enlisted to assist in developing necessary remedial measures for the constitutional violations found. The Report's investigation spanned twenty-seven months from its initiation to the release of its findings. The scope and timing of the investigation cannot be replicated by my office in any meaningful way so as to meet my constitutional, statutory, and ethical obligations in a timely manner.

Therefore, I make this written request, pursuant to 28 C.F.R. § 16.21 *et. seq.*, for:

- (1) A copy of all Springfield Police Department reports, including, but not limited to incident reports, investigative reports, arrest reports, use-of-force reports, or contents of a "prisoner injury file" (as described in the Report, at 7), determined as examples where Narcotics Bureau officers falsified reports to disguise or hide their use of force[;];

PAGE FIVE

Lelling, A.

August 19, 2020

- (2) A copy of all Springfield Police Department reports, including, but not limited to incident reports, investigative reports, arrest reports, use-of-force reports, or contents of a "prisoner injury file" (as described in the Report, at 7), determined as "...a pattern or practice .... [where] officers made false reports that were inconsistent with other available evidence, including video and photographs....", and;
- (3) copy of all photographs, or video/digital material determined as inconsistent with any Springfield Police Department officers' reports, including, but not limited to incident reports, investigative reports, arrest reports, use-of-force reports, or contents of a "prisoner injury file" (as described in the Report, at 7).

I do NOT request any other documents from the investigation, including any contents of IIU files, training materials, or other internal, confidential or privileged documents of the Springfield Police Department provided to investigators, or incident reports, investigative reports, arrest reports, use-of-force reports, or contents of a "prisoner injury file" (as described in the Report, at 7) determined not to contain false or falsified information, or statements, notes or recordings of investigators' interviews with Springfield Police Department officers, City of Springfield officials or community members. I also do not request the disclosure of any information concerning sensitive investigative techniques, current investigations, classified information, informants or security programs such as the Federal Witness Security Program.

Cooperation is sought for a quick resolution of this request, and is necessary for me to meet my constitutional, statutory, and ethical obligations to the people I have been elected to serve. As you know, seeking the truth and the pursuit of justice are the bedrock principles of our work as prosecutors. If you have questions or concerns arising from this office's need for this information, please contact me by telephone at (413) 505-5901.

Very truly yours,

  
Anthony D. Gulluni  
District Attorney  
Hampden District

cc: Eric S. Dreiband, Assistant Attorney General  
Department of Justice, Civil Rights Division

# **EXHIBIT E**



ANTHONY D. GULLUNI  
DISTRICT ATTORNEY

COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF THE DISTRICT ATTORNEY  
HAMPDEN DISTRICT

HALL OF JUSTICE  
50 STATE STREET  
SPRINGFIELD, MASSACHUSETTS 01102

SUPERIOR COURT  
TEL: 413-747-1000  
FAX: 413-781-4745

SPRINGFIELD DISTRICT COURT  
TEL: 413-747-1001  
FAX: 413-747-5628

September 14, 2020

Eric S. Dreiband  
Assistant Attorney General  
United States Department of Justice  
Civil Rights Division  
950 Pennsylvania Avenue, NW  
Washington, D.C. 20530-0001

**RE: *Investigation of the Springfield, Massachusetts Police Department's Narcotics Bureau, Department of Justice Report, dated July 8, 2020***

Dear Assistant Attorney General Dreiband:

In a letter dated August 19, 2020, I requested, pursuant to 5 U.S.C. § 301 and the prescribed Department of Justice *Touhy*-regulations applicable to the request found at 28 C.F.R. § 16.21 *et. seq.*, the production or disclosure of “false” or “falsified” Springfield Police Department reports and attendant photographs or video/digital images, and generally categorized in the publicly released Department of Justice report, dated July 8, 2020, entitled *Investigation of the Springfield, Massachusetts Police Department's Narcotics Bureau* (“Report”), co-authored by the United States Department of Justice’s Civil Rights Division and the United States Attorney’s Office for the District of Massachusetts.<sup>1</sup> It was asserted then, and remains as my office’s position, that any responsive records or papers are necessary for production to my office FORTHWITH to assist me in the exercise of my constitutional, statutory, and ethical obligations to the citizens of Hampden County, including, but not limited to, charged individuals in pending and post-conviction criminal matters in the courts of the Commonwealth.

As previously stated, it is my understanding that due to the federal regulations cited above and relevant case law, see *U.S. ex. rel. Touhy v. Ragen*, 340 U.S. 462 (1951), a District Attorney’s subpoena to produce documents, information or objects, pursuant to Massachusetts G.L. c. 277, § 68, or a state court summons to produce documents, information or objects, pursuant to Mass. R. Crim. P. 17 (a)(2), 378 Mass. 885 (1979), each with a specified production date, even if properly served, do not compel the production of the “false” or “falsified” Springfield Police Department officers’ reports, or

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attendant photographs or video/digital images, notwithstanding the language of the subpoena or summons, without prior federal administrative relief being sought. My August 19<sup>th</sup> letter sought such federal administrative relief. To date, you have not responded to my written request, either orally or in writing, and we have not otherwise discussed or negotiated the terms of my requests or any withdrawal. See 28 C.F.R. § 16.24.

If I do not receive a written response from you by September 30, 2020, I will consider your lack of response as a denial of my August 19<sup>th</sup> demand for production or disclosure and a final agency decision, as those terms are defined by federal administrative law, see 28 C.F.R. § 16.25, and relevant case law, see *Bennett v. Spear*, 520 U.S. 154, 177-178 (1997), by the United States Department of Justice, its Civil Rights Division and the United States Attorney's Office for the District of Massachusetts. The requests are for the following:

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In addition, if I receive no written response from you by September 30, 2020, I also will consider that the final grounds for withholding the production or disclosure of the demanded reports and attendant photographs, see 28 C.F.R. § 16.26 (b)(1) - (6), are that: (1) the requested false or falsified reports are confidential, (2) the calculus for exculpatory information is different for the Department of Justice, and (3) the rules for *Brady* material do not extend to the Department of Justice's civil rights investigations.

I understand that any appeal from your final decision to produce or disclose the requested "false" or "falsified" Springfield Police Department reports and attendant photographs or video/digital images, as set forth in my August 19<sup>th</sup> demand letter, is pursuant to the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 701-706.

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discovery obligations concerning potentially exculpatory information include seeking disclosure from those persons under the prosecutor's direction and control, or persons who have participated in investigating or evaluating the case and either regularly report to the prosecutor's office or have done so in a particular case. Mass. R. Crim. P. 14 (a)(1)(A).

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Sincerely,

  
Anthony D. Gulluni  
District Attorney  
Hampden District



cc: Andrew E. Lelling  
United States Attorney – District of Massachusetts



ANTHONY D. GULLUNI  
DISTRICT ATTORNEY

COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF THE DISTRICT ATTORNEY  
HAMPDEN DISTRICT

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August 19, 2020

Eric S. Dreiband  
Assistant Attorney General  
United States Department of Justice  
Civil Rights Division  
950 Pennsylvania Avenue, NW  
Washington, D.C. 20530-0001

 COPY

**RE: *Investigation of the Springfield, Massachusetts Police Department's Narcotics Bureau, Department of Justice Report, dated July 8, 2020***

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PAGE TWO  
Dreiband, E.  
August 19, 2020

Mass. 700, 731 (2018); *Brady v. Maryland*, 373 U.S. 83, 87 (1963), even without a request from the defendant. *Commonwealth v. Ayala*, 481 Mass. 46, 56 (2018). See *Commonwealth v. Bing Sial Ling*, 434 Mass. at 134-135, citing *United States v. Agurs*, 427 U.S. 97, 106-108 (1976) (prosecutors' duty to disclose exculpatory evidence not limited to cases where there is a request for such evidence); *Commonwealth v. Beal*, 429 Mass. 530, 531 (1999) (prosecutors' duty to disclose extends to information in their possession or in possession of persons subject to their control). See also Mass. R. Crim. P. 14, as appearing in 442 Mass. 1518 (2004). "...[I]ssues of Federal and State sovereignty have the potential to prejudice a defendant being prosecuted in State court by stymying his or her ability to obtain exculpatory information held by Federal authorities." *Commonwealth v. Ayala*, 481 Mass. at 56, citing *Commonwealth v. Donahue*, 396 Mass. 590, 596 (1986). In addition, ethical obligations "may require a prosecutor to undertake some procedural and remedial measures as a matter of obligation," in the exercise of his discovery obligations. Mass. R. Prof. C. 3.8, Special Responsibilities of a Prosecutor, 3.8 (d), (g), (i), and (j) and Comment 1.

The Springfield Police Department is a law enforcement agency within Hampden County. Officers of the Springfield Police Department are required by statute and rule to provide arrest, incident, and investigatory reports to satisfy probable cause determinations before a magistrate or court. These reports are then provided to Hampden County prosecutors to fulfill discovery obligations. In addition, officers of the Springfield Police Department testify to the documents' content, under oath, in grand jury proceedings and pretrial and post-conviction evidentiary hearings of criminally charged individuals in Hampden Superior Court, Springfield District Court, and Springfield Juvenile Court.

The Executive Summary of the July 8, 2020 Report of the *Investigation of the Springfield, Massachusetts Police Department's Narcotics Bureau*, Report at 3, states that investigators jointly from the Department of Justice's Special Litigation Section of the Civil Rights Division and the United States Attorney's Office for the District of Massachusetts, conducted a comprehensive review of 114,000 pages of Springfield Police Department documents, including an unspecified number of "incident reports" and "investigative reports". Notably, Report at 9, the Report states that investigators sought and received 1,700 prisoner injury files, 26,000 arrest reports and over 700 use-of-force-reports created from 2013 through 2019. More specifically, Report at 9, the Report states that investigators reviewed 5,500 arrest reports and 10 use-of-force reports from the Springfield Police Department's Narcotics Bureau from 2013-2018. Found by investigators, Report at 2, were "examples where Narcotics Bureau officers falsified reports to disguise or hide their use of force[;]" and Report at 16, "...a pattern or practice ... [where] officers made false reports that were inconsistent with other available evidence, including video and photographs...." This information is deemed to have contributed to the investigators conclusion, Report at 2, that "there is reasonable cause to believe that Narcotics Bureau officers engage in a pattern or practice of

PAGE THREE  
Dreiband, E.  
August 19, 2020

excessive force in violation of the Fourth Amendment of the United States Constitution.”<sup>1</sup>

After the Report was made public, a First Assistant District Attorney with my office received a telephone call from an AUSA with the Civil Rights Division of the United States Attorney’s Office for the District of Massachusetts who had been involved in the investigation and issuance of the Report. The AUSA’s stated purpose of the telephone call was to inquire if the Hampden District Attorney had “any questions” about the Report. The parties agreed to speak after my office had an adequate time to review the contents of the Report. On July 20, 2020, that First Assistant District Attorney from my office spoke with the AUSA, by telephone, and orally requested that the Hampden District Attorney be provided with the Springfield Police Department reports that investigators referenced in the Report where “officers falsified reports” or “officers made false reports”. The First Assistant District Attorney told the AUSA that the assistant district attorneys in the Hampden District Attorney’s Office needed to identify the false or falsified reports and review them to determine his/her discovery obligations, pursuant to *Brady* and the Massachusetts Rules of Criminal Procedure. The parties agreed to speak after the AUSA had sufficient time to consider the First Assistant District Attorney’s request.

On July 28, 2020, the First Assistant District Attorney left a voice message for the AUSA concerning the status of the July 20<sup>th</sup> request for the Springfield Police Department officers’ false or falsified reports. Later in the day, the First Assistant District Attorney received an email from the AUSA stating that the request for the Springfield Police Department officers’ false or falsified reports was still under consideration. Thereafter, on August 6, 2020, the First Assistant District Attorney, the AUSA and another AUSA (who participated in the investigation and issuance of the Report) spoke by telephone. In that telephone conversation, the First Assistant District Attorney’s oral request for the production of the Springfield Police Department officers’ false or falsified reports was denied. After discussion with members of the Department of Justice’s Professional Responsibility Unit and the Civil Rights Division, the Department of Justice concluded it would withhold the Springfield Police Department’s false or falsified reports from the Hampden District Attorney. The grounds stated were that the requested false or falsified reports were confidential, the calculus for exculpatory information was different for the Department of Justice, and rules for *Brady* material do not extend to the Department of Justice’s civil rights investigations. The First Assistant

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<sup>1</sup> While I recognize that the authors of the Report note that investigators did not serve “as a tribunal to make factual findings and legal conclusions binding on, or admissible in, any court” see Report at 2, n.2, the reported findings of unconstitutional law enforcement conduct, as described in the twenty-eight page Report, suggest the documents supporting these findings may contain potentially exculpatory material as that term is legally understood, and is subject to my mandatory review to effectively meet the constitutional, statutory and ethical obligations of my office.

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Dreiband, E.  
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District Attorney again emphasized to each AUSA that the Hampden District Attorney was only seeking the production of Springfield Police Department officers' false or falsified reports, not any confidential, privileged, or investigatory material. The First Assistant District Attorney was told to request the reports from the Springfield Police Department. The First Assistant District Attorney was also informed by the AUSA that the Springfield Police Department did not know which of the thousands of reports it had provided to federal investigators during the investigation were false or falsified, as stated in the Report.

I understand that, in the first instance, due to the federal regulations cited above and relevant case law, see *U.S. ex. rel. Touhy v. Ragen*, 340 U.S. 462 (1951), a District Attorney's subpoena to produce documents, information or objects, pursuant to G.L. c. 277, § 68, or a state court summons to produce documents, information or objects, pursuant to Mass. R. Crim. P. 17 (a)(2), 378 Mass. 885 (1979), even if properly served, is legally insufficient to compel the production of the requested Springfield Police Department officers' reports, or attendant photographs or video/digital images, notwithstanding the language of the subpoena or summons, without prior administrative relief being sought.

My office did not conduct or participate in the investigation with the Department of Justice's Specialized Litigation Unit of the Civil Rights Division or the United States Attorney for the District of Massachusetts and therefore, does not have knowing custody or control of the Springfield Police Department officers' reports deemed false or falsified. Although statutorily serving as the chief law enforcement officer for Hampden County, and thus the chief law enforcement officer within the Springfield Police Department's jurisdiction, the Hampden District Attorney was not served with a copy of the Report from the investigating agencies, and has not been enlisted to assist in developing necessary remedial measures for the constitutional violations found. The Report's investigation spanned twenty-seven months from its initiation to the release of its findings. The scope and timing of the investigation cannot be replicated by my office in any meaningful way so as to meet my constitutional, statutory, and ethical obligations in a timely manner.

Therefore, I make this written request, pursuant to 28 C.F.R. § 16.21 *et. seq.*, for:

- (1) A copy of all Springfield Police Department reports, including, but not limited to incident reports, investigative reports, arrest reports, use-of-force reports, or contents of a "prisoner injury file" (as described in the Report, at 7), determined as examples where Narcotics Bureau officers falsified reports to disguise or hide their use of force[;]";

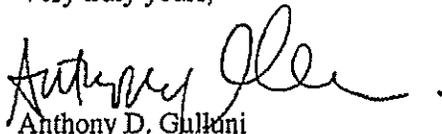
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Dreiband, E.  
August 19, 2020

- (2) A copy of all Springfield Police Department reports, including, but not limited to incident reports, investigative reports, arrest reports, use-of-force reports, or contents of a "prisoner injury file" (as described in the Report, at 7), determined as "...a pattern or practice ... [where] officers made false reports that were inconsistent with other available evidence, including video and photographs...", and;
- (3) copy of all photographs, or video/digital material determined as inconsistent with any Springfield Police Department officers' reports, including, but not limited to incident reports, investigative reports, arrest reports, use-of-force reports, or contents of a "prisoner injury file" (as described in the Report, at 7).

I do NOT request any other documents from the investigation, including any contents of IIU files, training materials, or other internal, confidential or privileged documents of the Springfield Police Department provided to investigators, or incident reports, investigative reports, arrest reports, use-of-force reports, or contents of a "prisoner injury file" (as described in the Report, at 7) determined not to contain false or falsified information, or statements, notes or recordings of investigators' interviews with Springfield Police Department officers, City of Springfield officials or community members. I also do not request the disclosure of any information concerning sensitive investigative techniques, current investigations, classified information, informants or security programs such as the Federal Witness Security Program.

Cooperation is sought for a quick resolution of this request, and is necessary for me to meet my constitutional, statutory, and ethical obligations to the people I have been elected to serve. As you know, seeking the truth and the pursuit of justice are the bedrock principles of our work as prosecutors. If you have questions or concerns arising from this office's need for this information, please contact me by telephone at (413) 505-5901.

Very truly yours,

  
Anthony D. Gullani  
District Attorney  
Hampden District

cc: Andrew E. Lelling,  
United States Attorney – District of Massachusetts

# **EXHIBIT F**



U.S. Department of Justice

*Andrew E. Lelling*  
*United States Attorney*  
*District of Massachusetts*

Main Reception: (617) 748-3100

*John Joseph Moakley United States Courthouse*  
*1 Courthouse Way*  
*Suite 9200*  
*Boston, Massachusetts 02210*

October 21, 2020

**VIA U.S. MAIL**

Anthony D. Gulluni  
District Attorney  
Hampden District  
50 State Street  
Springfield, MA 01102

RE: *Touhy Request – Investigation of the Springfield, MA Police Department’s  
Narcotics Bureau, DOJ Report dated July 8, 2020*

Dear District Attorney Gulluni:

This letter will serve as the formal response of the United States Attorney’s Office for the District of Massachusetts (“USAO”) to your correspondence dated August 19, 2020 and September 14, 2020 (the “*Touhy* Request”). The letters, submitted pursuant to the Department of Justice’s (“DOJ”) *Touhy* regulations, codified at 28 C.F.R. Part 16 Subpart B (§§ 16.21-16.29), seeks production of “Springfield Police Department officers’ false or falsified reports,” as referenced in the DOJ’s July 8, 2020 report (the “Report”).

You requested that these documents be produced by September 30. We requested an extension, to which you kindly agreed. For the reasons that follow in this final agency decision, the USAO is unable to authorize disclosure of the materials sought in the *Touhy* Request.

**Applicable Regulations and Standards**

As you are aware, the DOJ has promulgated regulations governing its response to a third-party request for the production of documents and information. See 28 C.F.R. §§ 16.21-16.29 (“*Touhy* regulations”). Specifically, in matters such as this where there is no proceeding and, therefore, the United States is not a party, the *Touhy* regulations prohibit current and former employees from disclosing “any material contained in the files of the Department” and “any information relating to or based upon material contained in the files of the Department,” unless prior approval has been obtained from the proper Department official. 28 C.F.R. § 16.22(a). Section 16.22(d) further requires that a *Touhy* request for documents include “a summary of the information sought and its relevance to the proceeding.”

The statutory authority for these regulations is found in the Federal Housekeeping Act, 5 U.S.C. § 301, which authorizes the head of every Executive Branch agency to “prescribe regulations for the government of his department, the conduct of its employees, the distribution and performance of its business, and the custody, use and preservation of its records, papers and property.” See *United States ex. rel. Touhy v. Ragen*, 340 U.S. 462, 468 (1951). Courts have recognized that an agency’s *Touhy* regulations such as those promulgated by the Department of Justice serve the legitimate purpose of “conserve[ing] government resources when the United States is not a party to a lawsuit and to minimize government involvement in controversial matters unrelated to official business.” *Demers v. Buonanno*, C.A. No. 12-676ML, 2012 WL 5930223, at \*3 (D. Rhode Island Nov. 2, 2012) (citing *Boron Oil Co. v. Downie*, 873 F.2d 67, 73 (4th Cir. 1989)); *F.A.C., Inc. v. Cooperativa De Seguros De Vida*, 188 F.R.D. 181, 185 (D. Puerto Rico July 21, 1999) (same) (citing *Reynolds Metals Co. v. Crowther*, 572 F. Supp. 288, 290 (D. Mass. 1982)). Such regulations also serve to “centraliz[e] determinations [within the agency] as to whether subpoenas . . . will be willingly obeyed or challenged,” thereby avoiding “the possibilities of harm from unrestricted disclosure in court.” *Touhy*, 340 U.S. at 468.

The validity of these regulations has been consistently upheld by the United States Supreme Court and courts in numerous jurisdictions. See, e.g., *Touhy*, 340 U.S. at 468 (upholding the FBI’s refusal to produce documents sought in a subpoena); *Hasie v. Office of the Comptroller of the Currency of the United States*, 633 F.3d 361 (5th Cir. 2011); *United States v. Soriano-Jarquin*, 492 F.3d 495, 504 (4th Cir. 2007); *In re Elko County Grand Jury*, 109 F.3d 554, 556 (9th Cir. 1997); *Edwards v. United States Dept. of Justice*, 43 F.3d 312, 316-317 (7th Cir. 1994); *Solomon v. Nassau County*, 274 F.R.D. 455, 457 (E.D.N.Y. 2011). In fact, agency housekeeping regulations are accorded the full force and effect of federal law, and a court lacks the authority to compel compliance with a subpoena or other request where such compliance is not authorized pursuant to such regulations. See *Touhy*, 340 U.S. at 468.

The submitted *Touhy* Request appears to have complied with the procedural requirements of 28 C.F.R. § 16.22 for seeking the approval of the relevant Department official for the documents sought and, pursuant to § 16.24, the USAO is tasked with responding to the *Touhy* Request. Production generally is authorized only if the request comports with § 16.26(a) and if none of the factors specified in § 16.26(b) exists with respect to the requested disclosure. 28 C.F.R. § 16.24.

Section 16.26(a) directs Department officials to consider whether the disclosure “is appropriate under the rules of procedure governing the case or matter in which the demand arose,” as well as whether it “is appropriate under the relevant substantive law of privilege.” Section 16.26(b), in turn, precludes disclosure where any of six enumerated factors exist. Such factors include where “[d]isclosure would reveal investigatory records compiled for law enforcement purposes, and would interfere with enforcement proceedings or disclose investigative techniques and procedures the effectiveness of which would thereby be impaired.” 28 C.F.R. § 16.26.

### The Touhy Request At Issue

The *Touhy* Request seeks three categories of documents from the USAO:

- (1) A copy of all Springfield Police Department reports, including, but not limited to incident reports, investigative reports, arrest reports, use-of-force reports, or contents of a “prisoner injury file” (as described in the Report, at 7), determined as examples where Narcotics Bureau officers falsified reports to disguise or hide their use of force[;]”;
- (2) A copy of all Springfield Police Department reports, including, but not limited to incident reports, investigative reports, arrest reports, use-of-force reports, or contents of a “prisoner injury file” (as described in the Report, at 7), determined as “. . . a pattern or practice . . . [where] officers made false reports that were inconsistent with other available evidence, including video and photographs . . .”, and
- (3) A copy of all photographs or video/digital material determined as inconsistent with any Springfield Police Department officers’ reports, including, but not limited to incident reports, investigative reports, arrest reports, use-of-force reports, or contents of a “prisoner injury file” (as described in the Report, at 7).

In response, pursuant to 28 C.F.R. § 16.26(a)(2) and (b)(5), the USAO declines to authorize production of these documents.

1. The Requested Information Is Privileged

The *Touhy* Request seeks “all Springfield Police Department Reports . . . *determined* as examples where Narcotics Bureau officers falsified reports” and photographs and videos “*determined* as inconsistent with any Springfield Police Department officers’ reports.” *Touhy* Request, Aug. 19, 2020, at 4-5 (emphasis added). The documents sought are subject to the work product and law enforcement privileges and are not appropriate for disclosure under 28 C.F.R. § 16.26(a)(2) and (b)(5).

A request for privileged information is beyond the scope of matters that can be released under 28 C.F.R. § 16.26(b). Disclosure is not appropriate for any information that would violate a statute, regulation, court order, such as a sealing order, or rule of procedure, such as the grand jury secrecy rule (Fed. R. Crim. P. 6(e)), or any privileged or classified information. Privileged information includes, but is not limited to, the following:

- a. Disclosures that would reveal the internal deliberation process within the Department of Justice, including the FBI, the Drug Enforcement Administration, the Bureau of Alcohol, Tobacco, Firearms and Explosives, the U.S. Attorney’s Office, and other agencies;
- b. Privileged attorney-client communications;
- c. Disclosures that would reveal attorney work product;
- d. Disclosures of information that would threaten or endanger the lives or safety of any individual; and

- e. Disclosures that could interfere with ongoing criminal investigations or prosecutions, or reveal investigative or intelligence gathering and dissemination techniques, the effectiveness of which would thereby be impaired.

First, the documents sought are subject to the work product privilege because they reflect the thoughts and impressions of DOJ attorneys, paralegals, and investigators. “Work product that contains ‘opinions, judgments, and thought processes of counsel’ receives nearly absolute protection from discovery and must be produced only if the party seeking the work product shows an ‘extraordinary justification.’” *Cavanaugh v. Wainstein*, 2007 U.S. Dist. LEXIS 40242, at \*26 (D.C. Cir. June 4, 2007) (quoting *In re Sealed Case*, 676 F.2d 793, 809-10 (D.C. Cir. 1982).

Here, there is no “extraordinary justification.” As prosecutors, we are sympathetic to the need you expressed in your letter “to meet my constitutional, statutory, and ethical obligations” regarding disclosure of information about police misconduct. As you note in your August 19 letter (p. 3, FN 1), however, the thoughts and impressions of USAO and DOJ employees contained in the Report do not amount to “factual findings and legal conclusions binding on, or admissible in, any court.” See also Report at 2, FN 2. As such, these mental impressions are protected from disclosure.

Second, this Office has determined that the documents sought are subject to the law enforcement privilege because they would reveal investigative records compiled in connection with an open and ongoing civil investigation. Consequently, disclosure of the requested materials would reveal records compiled for investigative purposes and would interfere with these ongoing law enforcement proceedings.

## 2. The Requested Information Belongs To The Springfield Police Department

The *Touhy* Request seeks “all Springfield Police Department reports” including incident reports, investigative reports, arrest reports, and use-of-force reports. The requested documents belong to and originated with the Springfield Police Department (SPD). SPD produced these documents to the USAO pursuant to a confidentiality agreement as part of our civil pattern or practice investigation. Because these documents are available from SPD – a department with which your office likely works daily – they should not be sought from the USAO.

For these reasons, the USAO declines to disclose the information sought by the *Touhy* Request.

### Final Agency Decision

After carefully considering your request, applying all of the above factors, and reviewing the relevant procedural and substantive law, I have determined that your requests are improper under the applicable substantive and procedural requirements. Therefore, I do not authorize the disclosure of the official information that you have requested.

District Attorney Anthony D. Gulluni  
October 21, 2020  
Page 5

The forgoing constitutes the final agency decision of the USAO in response to the *Touhy* request. You have the right to seek judicial review of this decision in the federal district court pursuant to the Administrative Procedure Act ("APA"), 5 U.S.C. § 551, *et seq.*

If you have further questions, please do not hesitate to contact Assistant United States Attorney Jennifer A. Serafyn at (617) 748-3188, or Jennifer.Serafyn@usdoj.gov.

Sincerely,



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Andrew E. Lelling  
United States Attorney

cc: Jennifer A. Serafyn, AUSA

# **EXHIBIT G**



ANTHONY D. GULLUNI  
DISTRICT ATTORNEY

COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF THE DISTRICT ATTORNEY  
HAMPDEN DISTRICT

HALL OF JUSTICE  
50 STATE STREET  
SPRINGFIELD, MASSACHUSETTS 01102

SUPERIOR COURT  
TEL: 413-747-1000  
FAX: 413-781-4745

SPRINGFIELD DISTRICT COURT  
TEL: 413-747-1001  
FAX: 413-747-5628

December 2, 2020

Commissioner Cheryl Clapprood  
Springfield Police Department  
130 Pearl Street  
Springfield, Massachusetts 01105

**RE: *Investigation of the Springfield, Massachusetts Police Department's Narcotics Bureau, Department of Justice Report, dated July 8, 2020***

Dear Commissioner Clapprood:

By letters, dated August 19, 2020 and September 9, 2020, I made demand, pursuant to 5 U.S.C. § 301, and the prescribed Department of Justice *Touhy*-regulations found at 28 C.F.R. § 16.21 et. seq., for the production or disclosure of “false” or “falsified” Springfield Police Department reports and attendant photographs or video/digital images generally categorized in the publicly released Department of Justice Report, dated July 8, 2020, entitled *Investigation of the Springfield, Massachusetts Police Department's Narcotics Bureau* (“Report”), co-authored by the United States Department of Justice’s Civil Rights Division and the United States Attorney’s Office for the District of Massachusetts. I sought disclosure of any responsive records or papers to assist me in the exercise of my constitutional, statutory, and ethical obligations to the citizens of Hampden County, including charged individuals in pending and post-conviction criminal matters in the courts of the Commonwealth.

On October 29, 2020, the Department of Justice, through the United States Attorney for the District of Massachusetts, Andrew E. Lelling, declined to disclose any documents to my office. United States Attorney Lelling’s letter stated that the requested information “belong[ed] to and originate[d] with the Springfield Police Department (SPD). SPD produced these documents to the USAO pursuant to a confidentiality agreement as part of our civil pattern or practice investigation. Because these documents are available from SPD – a department with which your office likely works daily – they should not be sought from the USAO”.

As you know, as district attorney, I am sworn to uphold the state and federal constitutions, and I am required to disclose material, exculpatory evidence in my custody or control, to a defendant, even without a request from the defendant. *Committee for Pub. Counsel Servs. v. Attorney Gen.*, 480 Mass. 700, 731 (2018); *Brady v. Maryland*, 373 U.S. 83, 87 (1963), *Commonwealth v. Ayala*, 481 Mass. 46, 56 (2018). See *Commonwealth v.*

*Bing Sial Liang*, 434 Mass. at 134-135, citing *United States v. Agurs*, 427 U.S. 97, 106-108 (1976) (prosecutors' duty to disclose exculpatory evidence not limited to cases where there is a request for such evidence); *Commonwealth v. Beal*, 429 Mass. 530, 531 (1999) (prosecutors' duty to disclose extends to information in their possession or in possession of persons subject to their control). See also Mass. R. Crim. P. 14, as appearing in 442 Mass. 1518 (2016). In addition, ethical obligations "may require a prosecutor to undertake some procedural and remedial measures as a matter of obligation," in the exercise of his discovery obligations. Mass. R. Prof. C. 3.8, Special Responsibilities of a Prosecutor, 3.8 (d), (g), (i), and (j) and Comment 1.

The Executive Summary of the July 8, 2020 Report of the *Investigation of the Springfield, Massachusetts Police Department's Narcotics Bureau*, Report at 3, states that investigators jointly from the Department of Justice's Special Litigation Section of the Civil Rights Division and the United States Attorney's Office for the District of Massachusetts, conducted a comprehensive review of 114,000 pages of Springfield Police Department documents, including an unspecified number of "incident reports" and "investigative reports". Notably, Report at 9, the Report states that investigators sought and received 1,700 prisoner injury files, 26,000 arrest reports and over 700 use-of-force-reports created from 2013 through 2019. More specifically, Report at 9, the Report states that investigators reviewed 5,500 arrest reports and 10 use-of-force reports from the Springfield Police Department's Narcotics Bureau from 2013-2018. Found by investigators, Report at 2, were "examples where Narcotics Bureau officers falsified reports to disguise or hide their use of force[;]" and Report at 16, "...a pattern or practice ... [where] officers made false reports that were inconsistent with other available evidence, including video and photographs..." This information is deemed to have contributed to the investigators' conclusion, Report at 2, that "there is reasonable cause to believe that Narcotics Bureau officers engage in a pattern or practice of excessive force in violation of the Fourth Amendment of the United States Constitution."<sup>1</sup>

My office did not conduct or participate in the investigation with the Department of Justice's Specialized Litigation Unit of the Civil Rights Division or the United States Attorney for the District of Massachusetts, and therefore, does not have knowing custody or control of the Springfield Police Department officers' reports deemed false or falsified. The Report's investigation spanned twenty-seven months from its initiation to the release of its findings. The SPD's production or disclosure of "false" or "falsified" Springfield Police Department reports and attendant photographs or video/digital images originating are necessary to meet the constitutional, statutory, and ethical obligations of my office.

Thus, I request from you, the following:

- (1) A copy of all Springfield Police Department reports, including incident reports, investigative reports, arrest reports, use-of-force reports, or contents of a

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<sup>1</sup> While I recognize that the authors of the Report note that investigators did not serve "as a tribunal to make factual findings and legal conclusions binding on, or admissible in, any court" see Report at 2, n.2, the reported findings of unconstitutional law enforcement conduct, as described in the twenty-eight page Report, suggest the documents supporting these findings may contain potentially exculpatory material as that term is legally understood, and is subject to my mandatory review to effectively meet the constitutional, statutory, and ethical obligations of my office.

“prisoner injury file” (as described in the Report, at 7), where Narcotics Bureau officers “falsified reports to disguise or hide their use of force”;

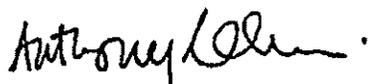
(2) A copy of all Springfield Police Department reports, including incident reports, investigative reports, arrest reports, use-of-force reports, or contents of a “prisoner injury file” (as described in the Report, at 7), “[where] officers made false reports that were inconsistent with other available evidence, including video and photographs...”, and;

(3) A copy of all photographs, or video/digital material that is inconsistent with any Springfield Police Department officers’ reports, including incident reports, investigative reports, arrest reports, use-of-force reports, or contents of a “prisoner injury file” (as described in the Report, at 7).

My request for these documents “reflects...the need for prosecutors to learn of potential impeachment information regarding all the investigating agents and employees participating in the cases they prosecute, so that they may consider whether the information should be disclosed to defense counsel under the *Brady* and *Giglio* line of cases.” *In the Matter of a Grand Jury Proceeding*, 485 Mass. 641, 660 (2020). If possible, I respectfully request production of the “false” or “falsified” reports as described above as soon as possible or by December 22, 2020.

There is no other reasonable means available to my office to obtain the production or disclosure of the “false” or “falsified” Springfield Police Department reports and attendant photographs or video/digital images, as cited in the July 8<sup>th</sup> Report. Should you not be able to fulfill my request, please notify me immediately.

Sincerely,



Anthony D. Gulluni  
District Attorney  
Hampden District



cc: Edward Pikula, City Solicitor

# **EXHIBIT H**

**Edward M. Pikula**

***City Solicitor***

Law Department

36 Court Street, Room 210

Springfield, MA 01103

Office: (413) 787-6085

Direct Dial: (413) 787-6098

Fax: (413) 787-6173

Email: [epikula@springfieldcityhall.com](mailto:epikula@springfieldcityhall.com)



**THE CITY OF SPRINGFIELD, MASSACHUSETTS**

December 10, 2020

Anthony D. Gulluni

District Attorney

Hampden District

50 Court Street

Springfield, MA 01102

**RE:** *Letter Request for Documents relating to July 8, 2020 DOJ Report on Investigation of the Springfield, Massachusetts Police Department's Narcotics Bureau*

Dear District Attorney Gulluni:

This office represents the City of Springfield, its Police Department, and Police Officials in their official capacity. This letter is in response to your letter addressed to Commissioner Cheryl Clapprod dated December 2, 2020 and received by the Law Department on December 7, 2020.

In that letter, you reference the prosecutorial obligations to provide exculpatory information under state and federal laws and constitutional provisions as described in case law including *Brady v. Maryland*, 373 U.S. 83, 87 (1963). In furtherance of your stated purpose regarding your office's efforts to meet its *Brady* obligations, you requested the Police Commissioner produce the following documents relating to the July 8, 2020 Report of the *Investigation of the Springfield, Massachusetts Police Department's Narcotics Bureau* (hereafter, the "Report"):

- (1) A copy of all Springfield Police Department reports, including incident reports, investigative reports, arrest reports, use-of-force reports, or contents of a "prisoner injury file" (as described in the Report, at 7), where Narcotics Bureau officers "falsified reports to disguise or hide their use of force";
- (2) A copy of all Springfield Police Department reports, including incident reports, investigative reports, arrest reports, use-of-force reports, or contents of a "prisoner injury file" (as described in the Report, at 7), "... [where] officers made false reports that were inconsistent with other available evidence, including video and photographs...", and;

- (3) A copy of all photographs, or video/digital material that is inconsistent with any Springfield Police Department officers' reports, including incident reports, investigative reports, arrest reports, use-of-force reports, or contents of a "prisoner injury file" (as described in the Report, at 7).

As you note in your letter, the Report was based, in part, on the full cooperation by the City of Springfield and its Police Department in supplying voluminous documents to the Department of Justice. The production to the Department of Justice included 114,000 pages of Springfield Police Department documents, including an unspecified number of "incident reports" and "investigative reports"; 1,700 prisoner injury files, 26,000 arrest reports and over 700 use-of-force- reports created from 2013 through 2019. The Report states that investigators reviewed 5,500 arrest reports and 10 use-of-force reports from the Springfield Police Department's Narcotics Bureau from 2013-2018.

The Springfield Police Department will continue to comply with all of its obligations under State and Federal law to assure evidence that is "material," for *Brady* purposes in possession of the Police Department will always be disclosed to the prosecutors handling criminal proceedings where a Springfield Police Officer is involved as a witness.

Towards that end, as stated in the Report, the Department of Justice does not serve as a tribunal authorized to make factual findings and legal conclusions binding on, or admissible in, any court and nothing in the Report should be construed as such. Accordingly, the Department of Justice stated that this Report is not intended to be admissible evidence and does not create any legal rights or obligations.

Further, the City of Springfield has not been provided any information from the Department of Justice specifying any identifying information as to the case numbers, names of specific officers, or names of specific individual criminal defendants described in the Report.

As I am sure you are aware, shortly after receipt of the Report, the Police Commissioner assigned personnel to review the incidents described in the Report in an effort to identify the specific dates of incidents, police officers that could be identified, as well as individuals who are referenced in the Report. While some descriptions make rather obvious reference to known cases widely reported in the media involving case information previously disclosed to your office, for example, references to an incident relating to juveniles arrested in Palmer, or an incident occurring near the Nathan Bills Restaurant. Some incidents described in the Report the Police Department believe it has been able to identify with a reasonable degree of certainty. However, there remain a number of matters referenced which could not be fully identified with certainty and the effort to do so is ongoing.

Moreover, the Police Department review revealed a number of statements contained in the Report which the Police Commissioner believes are not accurate. However, while the Police Commissioner disagrees or disputes some of the statements and findings contained in the Report, she has repeatedly stated that she acknowledges the need for reforms in the Department and, with the full support of Mayor Sarno, she has initiated efforts to make changes based on the recommendations set forth in the Report and is committed to implement reforms within the entire Springfield Police Department. The Police Department, with the assistance of former SJC Chief Justice Roderick Ireland, Mayor Sarno, and the Law

Department, continues to cooperate with the Department of Justice in efforts to implement recommendations for reform. I am informed that, since receipt of the Report in July and changes implemented to date, the Police Department has not received any citizen complaints alleging excessive force by the Narcotics Unit.

All of the materials supplied to the Department of Justice are available for review by your office in a reasonable format and on a reasonable schedule in a phased production, similar to the process followed with the Department of Justice. As you know, ultimately, the determination of whether information is exculpatory, or possibly exculpatory, deals with an inevitably imprecise standard, and because the significance of an item of evidence can seldom be predicted accurately until the entire record is complete, we will arrange to provide you all of the information provided to the Department of Justice. I believe it may be most productive for members of the Police Department to meet with prosecutors from your office to review specific materials referenced in the Report that we have been able to identify in the ongoing efforts to review each of the specific incidents described in the Report rather than a wholesale provision of voluminous materials as previously described categorized under each of the numbered requests in your letter.

Please provide me with the name and contact information of a representative of your office so that arrangements can be made with the Police Department to discuss and identify the most efficient means of reviewing and producing any of the documents the Police Department previously supplied to the Department of Justice in order to assure compliance with *Brady* obligations. In the meantime please feel free to contact me at 413-787-6085 to discuss in more detail.

Very truly yours,

A handwritten signature in black ink, appearing to read "Edward M. Pikula", with a stylized flourish at the end.

Edward M. Pikula, City Solicitor.

EMP:sal

Enclosure

# **EXHIBIT I**



ANTHONY D. GULLUNI  
DISTRICT ATTORNEY

COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF THE DISTRICT ATTORNEY  
HAMPDEN DISTRICT

HALL OF JUSTICE  
50 STATE STREET  
SPRINGFIELD, MASSACHUSETTS 01102

SUPERIOR COURT  
TEL: 413-747-1000  
FAX: 413-781-4745

SPRINGFIELD DISTRICT COURT  
TEL: 413-747-1001  
FAX: 413-747-5628

March 11, 2021

Edward M. Pikula, Esq.  
City Solicitor  
City of Springfield  
36 Court Street, Room 210  
Springfield, Massachusetts 01103  
Via e-mail: [epikula@springfieldcityhall.com](mailto:epikula@springfieldcityhall.com)

**RE: Investigation of the Springfield, Massachusetts Police Department's Narcotics Bureau, Department of Justice Report, dated July 8, 2020**

Dear Attorney Pikula:

Thank you for your response to my letter of December 2<sup>nd</sup>. As you know, I sought disclosure of specific documents identified in the Department of Justice Report ("Report") as "false" or "falsified" to assist me in the exercise of my constitutional, statutory, and ethical obligations to the citizens of Hampden County, including charged individuals in pending and post-conviction criminal matters in the courts of the Commonwealth. That duty is ongoing, and remains a priority for me and the assistant district attorneys in my office who prosecute those arrested by members of the Springfield Police Department ("SPD").

I requested these "false" or "falsified" documents from the Department of Justice ("DOJ") on multiple occasions but their refusal to produce them is, in part, based on the fact that the DOJ claims the documents are in the possession of the SPD. Your letter stated, "the City of Springfield has not been provided any information from the Department of Justice specifying any identifying information as to the case numbers, names of specific officers, or names of specific individual criminal defendants described in the Report." With this apparent contradiction, I am left only to conclude that the SPD is not in *knowing* possession, custody, or control of any specific information related to my December 2<sup>nd</sup> request for documents. As the City of Springfield continues to work with the DOJ to rectify the issues highlighted in the Report, please immediately provide any materials to my office that are received or determined to be responsive to my December 2<sup>nd</sup> request. I, too, will continue to seek these materials through separate administrative or court alternatives available to me.

Your letter also stated that after receipt of the Report, the SPD assigned personnel to review the incidents described in the Report in an effort to identify the specific dates of incidents and involved police officers referenced in the Report. Therefore, I request copies of any specific materials referenced in the Report as "false" or "falsified" that the SPD has been able to identify with a reasonable degree of certainty. I request the production of these materials to ensure complete compliance, notwithstanding whether any one of these documents relates to case

information previously provided to my office in what you reference as “known cases widely reported in the media”.

As District Attorney and chief law enforcement officer for Hampden County, my primary obligation is to pursue the ends of justice with wide discretion in determining whether to prosecute an individual, *Commonwealth v. Ware*, 482 Mass. 717, 730 (2019), and “with due regard to the constitutional and other rights of the defendant.” *Smith v. Commonwealth*, 331 Mass. 585, 591 (1954), citing *Berger v. United States*, 295 U.S. 78, 88-89 (1935). This obligation, however, does not direct or allow me, or any other district attorney for that matter, to recreate a civil investigation that was conducted by another law enforcement agency through the authority of specific federal law. Accordingly, the purpose, scope, and timing of the DOJ investigation, which was conducted by and through a federal statutory mandate, cannot, legally or practically, be replicated by my office.

As you are unable to provide me with the specific SPD materials determined to be “false” or “falsified” by the DOJ, I accept your offer to meet with SPD officials in order to review the material provided to the DOJ by the SPD. I am aware that these materials amount to tens of thousands of pages of SPD documents that span six years. But I believe it is important that I assign members of my office to review these materials through a non-investigatory, prosecutorial lens of *Brady* and *Giglio*, see *In the Matter of a Grand Jury Proceeding*, 485 Mass. 641, 647 (2020), to meet our constitutional, statutory, and ethical obligations while we continue to seek from the DOJ those materials they identified as “false” or “falsified”.

I have designated First Assistant District Attorney Jennifer N. Fitzgerald as my office’s contact to coordinate the procedural logistics of our efforts going forward. Thank you for your continued cooperation in this matter.

Sincerely,



Anthony D. Gulluni  
Hampden District Attorney



# **EXHIBIT J**



and accurate copies of the correspondences sent and received by me to the United States Attorney's Office for the District of Massachusetts, the Attorney General's Office of the United States Department of Justice, Civil Rights Division, and the Springfield Police Department to the best of my knowledge and belief.

Signed under the pains and penalties of perjury, this 19<sup>th</sup> day of May 2021.

/s/ Anthony D. Gulluni

Anthony D. Gulluni

District Attorney for Hampden County  
in the Commonwealth of Massachusetts

Roderick L. Ireland Courthouse

50 State Street, 3<sup>rd</sup> Floor

Springfield, MA. 01102

(413) 505-5901

[agulluni@massmail.state.ma.us](mailto:agulluni@massmail.state.ma.us)

BBO # 674246

# **EXHIBIT K**



4. I have read the letters authored or received by the District Attorney for Hampden County, attached to the Complaint and noted as Exhibits B-I. These letters are true and accurate copies of the correspondences sent and received by the District Attorney for Hampden County, and contain true and accurate factual summaries of my conversations with members of the United States Attorney's Office for the District of Massachusetts, United States Department of Justice's Attorney General's Office, Civil Rights Division, and Springfield Police Department to the best of my knowledge and belief.

Signed under the pains and penalties of perjury, this 19th day of May 2021.

/s/ Jennifer N. Fitzgerald  
Jennifer N. Fitzgerald  
First Assistant District Attorney  
District Attorney for Hampden County  
in the Commonwealth of Massachusetts  
Roderick L. Ireland Courthouse  
50 State Street, 3<sup>rd</sup> Floor  
Springfield, MA. 01102  
(413) 505-5901  
jenfitzgerald@massmail.state.ma.us  
BBO #550089