

Biennial Report of the Office of the Attorney General's Special Investigations & Prosecutions Unit

A report from the Office of

**New York State Attorney General
Eric T. Schneiderman**



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Executive Summary

On July 8, 2015, Governor Cuomo issued Executive Order No. 147, titled, “A Special Prosecutor to Investigate and Prosecute Matters Relating to the Death of Civilians Caused by Law Enforcement” (“EO 147”). EO 147 sets forth its rationale and purpose. It states that “incidents involving the deaths of unarmed civilians [] have challenged the public’s confidence and trust in our system of criminal justice” and that “it is necessary to ensure that a full, reasoned, and independent investigation and prosecution of any such incident is conducted without conflict or bias, or the perception of conflict or bias.”

In furtherance of this purpose, EO 147 conferred exclusive prosecutorial powers on the Attorney General for incidents “involving the death of an unarmed civilian, whether in custody or not, caused by a law enforcement officer” or “where, in [the Attorney General’s opinion], there is a significant question as to whether the civilian was armed and dangerous at the time of his or her death. EO 147 directs that where the Attorney General does not submit charges to a Grand Jury, or where a Grand Jury declines to return an indictment, the Attorney General must provide the Governor a report providing an “explanation of that outcome and any recommendations for systemic reform arising from the investigation.”

On July 9, 2015, one day after Governor Cuomo issued EO 147, Attorney General Eric T. Schneiderman announced the creation of the Special Investigations and Prosecutions Unit (“SIPU”) within the Office of the Attorney General. SIPU is staffed with experienced prosecutors, investigators, and a community liaison.¹ While SIPU’s principal objective is to investigate the cases covered by EO 147 without fear or favor, it also seeks to bring transparency and strengthen the public trust in matters involving deadly police-civilian encounters.

In furtherance of this mission, and though not required by EO 147, this report provides an

¹ Appendix A provides the biographies of the SIPU leadership, and Appendix B lists outreach conducted by SIPU to law enforcement and community groups concerning EO 147.

overview of SIPU's first two years in operation.

Section I of this report provides an overview of the 94 incidents that SIPU assessed to make a determination whether EO 147 applied. County District Attorneys have plenary jurisdiction to investigate and, if warranted, prosecute violations of the state's Penal Law that take place within their jurisdiction. EO 147 creates an exception to this general rule by conferring these powers upon the Attorney General, but only for the types of incidents set forth in the EO. Whether a specific incident falls within the scope of EO 147 is often unclear in its immediate aftermath. As a result, many of the incidents about which SIPU is notified ultimately fall outside the scope of SIPU's jurisdiction under EO 147. To make this jurisdictional determination, SIPU conducts a preliminary inquiry or review. For example, SIPU may be notified about an incident where a civilian is seriously injured by a law enforcement officer; if the civilian lives, EO 147 does not apply and SIPU lacks jurisdiction. Or SIPU may respond to the scene of an incident, review the evidence, and determine that EO 147 does not apply because the civilian was armed and dangerous. Section I provides an overview of incidents at each stage of the jurisdictional assessment, as well as the gender, race, and age of the civilians who were involved in each of the incidents.

Section II discusses active SIPU investigations and prosecutions, and provides summaries of SIPU's closed investigations. To better advance SIPU's commitment to transparency, the Attorney General released to the public the reports and recommendations on SIPU's closed cases that EO 147 requires the Attorney General to submit to the Governor. We summarize these reports and recommendations for reform in Section II.

I. Overview of Incidents Assessed by SIPU Pursuant to the Executive Order

SIPU established a hotline and notification protocol for county District Attorneys to alert SIPU to incidents that may fall within the scope of EO 147. District Attorneys generally receive notice from local police departments of potential homicides shortly after an incident and, as a general matter, respond to homicide scenes. Because jurisdiction under the Executive Order is not always immediately clear, SIPU has encouraged District Attorneys to notify the hotline even in cases where jurisdiction would potentially remain with the District Attorney. In addition, SIPU

identifies incidents potentially within SIPU’s jurisdiction through several others means, such as communication with community groups, civilian complainants, police departments, and through media reports. Upon learning of an incident, SIPU endeavors to expeditiously obtain and review the available evidence in order to determine whether it has jurisdiction under EO 147; SIPU generally makes its jurisdictional determination within several days of the incident.

This section of the report discusses the incidents in which SIPU conducted a jurisdictional assessment. The section subdivides the total number of assessed incidents into categories relevant to the various jurisdictional requirements of EO 147 including incidents where (i) a civilian died; (ii) the civilian was not armed and dangerous; and (iii) the death was caused by a law enforcement officer.^{2,3} Demographic information about the civilians is provided for each category.

A. Total Number of Assessed Incidents

From July 8, 2015 to July 8, 2017, SIPU assessed 94 incidents for potential jurisdiction under EO 147.⁴ Of these incidents, 90% of the civilians involved were male and 10% were female. *See Figure 1.* The racial composition of the civilians involved in these incidents is as follows: Black/African-American - 52%; White (non-Hispanic) - 28%; Hispanic/Latino - 17%; Asian - 2%; Native American - 1%. *See Figure 2.* The average age of the involved civilians was 35.⁵

B. Assessing Incidents Involving the Death of a Civilian

EO 147 does not provide jurisdiction for SIPU for any police-civilian encounter that does not result in a civilian’s death. Of the 94 assessed incidents, 16 did not result in the death of a

² The section treats these jurisdictional determinations in order. For instance, if an incident involved a civilian that did not die, that incident is not counted again, even if the civilian was unarmed.

³ EO 147 specifically defines “law enforcement officer” as those persons “listed in subdivision 34 of section 1.20 of the Criminal Procedure Law.” Five assessed incidents did not involve a law enforcement officer as defined by the EO, but in these cases, there were other jurisdictional defects as well.

⁴ Some incidents involved more than one civilian being seriously injured or killed while involved in an interaction with law enforcement. To facilitate discussion about the data in the report and specifically about the backgrounds of the civilians involved in the incidents, the total number of incidents is defined to be the number of serious civilian injuries or civilian deaths. The number of discrete incidents is 93.

⁵ Given the relatively narrow scope of EO 147, the limited timeframe for this report, and the sample size, this data is not offered to arrive at any statistical conclusion beyond the fact that this was the composition of the civilians involved in the matters assessed by SIPU.

Available data on the deaths caused by local law enforcement have been sparse historically. In 2014, Congress passed the Death in Custody Reporting Act, which requires local agencies to report fatal encounters starting with fiscal year 2016. See <https://www.justice.gov/opa/pr/justice-department-outlines-plan-enable-nationwide-collection-use-force-data>

civilian.⁶ Of the remaining 78 incidents, 90% of the civilians involved were male and 10% were female. *See Figure 1.* The racial composition of the civilians involved in these incidents is as follows: Black/African-American - 51%; White (non-Hispanic) - 27%; Hispanic/Latino - 18%; Asian - 3%; Native American – 1%. *See Figure 2.* The average age of the involved civilians was 36.

C. Assessing Incidents Involving the Death of a Civilian Who Was Not Armed and Dangerous

SIPU has jurisdiction under EO 147 if a law enforcement officer causes the death of an unarmed civilian. If a civilian was armed, EO 147 assigns jurisdiction to SIPU if “there is a significant question as to whether the civilian was armed and dangerous at the time of his or her death.” The EO does not define the term “armed and dangerous.” The determination by the Attorney General of whether a civilian was “armed and dangerous” is highly fact-specific and requires an examination of several factors, including, but not limited to: (1) the type of instrument that the civilian possessed; (2) the location of the instrument at the time of the use of police force; (3) the distance between the civilian and the officer(s) or any other civilians; (4) the manner in which an instrument was used; and (5) the physical location and conditions where the incident occurred. The amount of evidence, its quality, and its reliability are also key considerations.

A determination that a civilian was “armed and dangerous” is only a determination that SIPU does not have jurisdiction of the matter under EO 147. As explained above, EO 147 only confers jurisdiction on the Attorney General to investigate and, if warranted, prosecute crimes in certain specified circumstances. As a result, SIPU’s jurisdictional determination is not a determination that the officer’s actions were justified. Once SIPU determines that it lacks jurisdiction, the county District Attorney’s Office can exercise its full authority investigate and, if warranted, prosecute any crimes.

Of the 78 incidents where death occurred, 31 involved a civilian who SIPU determined, based on the factors enumerated above, was armed and dangerous at the time of death and, therefore, outside of SIPU’s jurisdiction. Among these, 18 civilians were armed with a firearm, seven were armed with a knife, three were armed with a pellet gun, and one each were armed with a bat, a police baton, and a screwdriver.

Of the 47 incidents where the civilian was not armed and dangerous at the time of death, 87%

⁶ These 16 matters are generally examples where District Attorneys called the SIPU hotline in an abundance of caution, because, for example, a civilian was seriously injured. SIPU has encouraged District Attorneys to notify SIPU of such incidents because, had the civilian died, SIPU would have been far better positioned to have the investigation seamlessly transitioned from the District Attorney to SIPU because SIPU had been notified expeditiously.

of the civilians involved were male and 13% were female. *See Figure 1.* The racial composition of the civilians involved in these incidents is as follows: Black/African-American - 45%; White (non-Hispanic) - 26%; Hispanic/Latino - 26%; Asian - 2%; Native American – 2%. *See Figure 2.* The average age of the involved civilians was 35.

D. Assessing Incidents Where Death of an Unarmed Civilian Was Caused by a Law Enforcement Officer

For the 47 incidents involving a civilian who was not armed and dangerous at the time of death, SIPU must consider whether the death was caused by a law enforcement officer. The causation element for SIPU’s jurisdictional determination is circumscribed: EO 147 confers jurisdiction on SIPU only where a civilian death was *caused* by a law enforcement officer. Whether a person “caused” an injury or death is typically a legal conclusion and has variable meanings in different areas of law. For purposes of determining whether sufficient causation exists to obtain jurisdiction, SIPU assesses incidents in two causation categories: *first*, incidents where the law enforcement officer used force or took some deliberate action that in fact caused the civilian’s death; *second*, incidents where the officer may have failed to take a legally required action that caused the civilian’s death.

Of the 47 incidents involving a civilian who was not armed and dangerous at the time of death, 10 incidents fall into the first causation category. Five of these incidents involved the police officer’s use of a firearm, two a police vehicle, two a Taser, and one a physical struggle with an officer during an arrest. The 37 other incidents fall into the second causation category. They include 3 suicides, 8 overdoses, 12 medical conditions (including, for example, cardiac arrest), and 14 deaths that occurred while fleeing the police (10 motor vehicle incidents, 3 falls from height, and 1 electrocution on a subway track).

SIPU determined that EO 147 applied to eight incidents in the first causation category and three incidents from the second, for a total of 11. Of the civilians involved in these incidents, 10 were male and one was female. The racial background of the civilians was as follows: Black/African-American - 45%; White (non-Hispanic) - 36%; Hispanic/Latino - 18%; Asians - 0%; Native American - 0%. The average age of the involved civilians was 41.

Figure 1: Gender of Civilians in SIPU Assessed Incidents

Census Category	2016 Census Estimate NY	SIPU Incidents			
		All	Death	& Unarmed*	& Causation
Female	51.40%	10%	10%	13%	9%
Male	48.60%	90%	90%	87%	91%
[n=]		94	78	47	11

Figure 2: Race of Civilians in SIPU Assessed Incidents

Census Category	2016 Census Estimate NY	SIPU Incidents			
		All	Death	& Unarmed*	& Causation
American Indian	1.00%	1%	1%	2%	0%
Asian	8.90%	2%	3%	2%	0%
Black	17.70%	52%	51%	45%	45%
Hispanic	19.00%	17%	18%	26%	18%
White	55.80%	28%	27%	26%	36%
[n=]		94	78	47	11

* includes all not armed and dangerous

II. SIPU Investigations

Of the 11 incidents over which SIPU established jurisdiction under EO 147, SIPU has charged one police officer, is investigating five matters, and has closed five investigations.

If SIPU determines that EO 147 confers SIPU with jurisdiction, as a matter of best practice, SIPU obtains from the Governor a “conforming order” that states that a specific incident belongs in SIPU’s jurisdiction.⁷ Historically, special prosecutors have obtained conforming orders to protect against subsequent challenges to the prosecutor’s jurisdiction. As EO 147 only generally refers to certain types of incidents, *i.e.*, where an unarmed civilian is killed by a law enforcement officer, the conforming order makes clear that SIPU has jurisdiction over a specific incident and thus protects against subsequent challenges to jurisdiction.⁸ In *Figure 3*, we list the cases where SIPU established jurisdiction and received conforming orders.

⁷ Under New York Executive Law 63(2), the Governor may require the Attorney General to supersede a District Attorney in any category of cases or for a particular case. EO 147 supersedes the District Attorneys in a category of cases involved the death of unarmed civilians by law enforcement. Each conforming order amends EO 147 to include specific incidents and are listed as EO 147.1, 147.2 etc.

⁸ In one incident, SIPU received a conforming order establishing that, notwithstanding the express terms of EO 147, SIPU did not have jurisdiction over the incident.

Figure 3: Overview of Incidents Under SIPU's Jurisdiction

Date of Incident	County	Name	TYPE	Death	JRDXN	RACE	AGE	Sex	SIP Status
7/27/15	Westchester	Raynette Turner	CAD	Yes	Yes	Black	42	Female	Closed
11/30/15	Putnam	Joseph Seguin	TAS	Yes	Yes	White	38	Male	Closed
12/8/15	Westchester	Miguel Espinal	SHT	Yes	Yes	Hispanic	36	Male	Closed
3/16/16	Bronx	Richard Gonzalez	DRO	Yes	Yes	Hispanic	54	Male	Closed
4/17/16	Rensselaer	Edson Thevenin	SHT	Yes	Yes	Black	37	Male	Active
7/4/16	Kings	Delrawn Small	SHT	Yes	Yes	Black	37	Male	Active
10/14/16	Dutchess	Warren Corbitt	VHA	Yes	Yes	White	45	Male	Closed
11/2/16	Bronx	Ariel Galarza	CAD	Yes	Yes	Hispanic	49	Male	Active
2/8/17	Erie	Wardel Davis	CAD	Yes	Yes	Black	20	Male	Active
5/7/17	Erie	Jose Hernandez-Rossey	SHT	Yes	Yes	Hispanic	26	Male	Active
5/11/17	Schenectady	Andrew Kearsse	CAD	Yes	Yes	Black	36	Male	Active

E. Active Matters

The following summarizes each of SIPU's active matters. To preserve the integrity of active prosecutions and investigations, only limited, non-confidential information is provided.

1. Edson Thevenin (Rensselaer County)

On April 17, 2016, Edson Thevenin, 37, died as a result of gunshot wounds from shots fired by a Troy Police Department sergeant following an automobile chase. While SIPU was assessing its jurisdiction over the matter, Rensselaer County District Attorney Joel Ablove presented the case to a Grand Jury on April 22, 2016, which returned no charges against the officer.⁹ Citing "significant concerns" regarding the investigation of Mr. Thevenin's death by DA Ablove, Governor Cuomo, at the request of the Attorney General, issued Executive Order 163 on February 1, 2017, enabling SIPU to investigate any "unlawful acts or omissions or alleged unlawful acts or omissions by any person," including DA Ablove, regarding the investigation of Mr. Thevenin's death.

The investigations into Mr. Thevenin's death and DA Ablove's official acts following Mr. Thevenin's death are ongoing.

2. Delrawn Small (Kings County)

SIPU presented the matter to a Grand Jury, which charged the officer with Murder in the Second Degree and Manslaughter in the First Degree in case 5873/2016 in Kings County. Trial is expected to take place in Fall 2017.

⁹ In the immediate aftermath of Mr. Thevenin's shooting, SIPU made written and verbal requests for information to DA Ablove relating to the incident. Having received no response to its requests, SIPU commenced legal proceedings against DA Ablove in order to receive a copy of his file and to enable members of SIPU to review the minutes of his Grand Jury presentation.

3. Wardel Davis (Erie County)

On February 7, 2017, Wardel Davis III, 20, died after being taken into custody by Buffalo Police Department Officers. Mr. Davis was unarmed. On February 8, 2017, SIPU asserted jurisdiction over the matter. SIPU's investigation is ongoing.

4. Jose Hernandez Rossy (Erie County)

On May 7, 2017, Jose Hernandez Rossy, 26, died after being shot by a Buffalo Police Department Officer. While initial reports stated that Mr. Hernandez Rossy was armed at the time he was killed, SIPU asserted jurisdiction on May 9, 2017 as there was a significant question as to whether Mr. Hernandez Rossy was in fact armed or armed and dangerous. SIPU's investigation is ongoing.

5. Ariel Galarza (Bronx County)

On November 2, 2016, Ariel Galarza, 49, died during an arrest by New York City Police Department officers, who deployed a Taser to facilitate arrest. Mr. Galarza had brandished a glass bottle at the officers. SIPU asserted jurisdiction on November 7, 2017 as there was a significant question as to whether Mr. Galarza was in fact armed and dangerous. SIPU's investigation is ongoing.

6. Andrew Kearse (Schenectady County)

On May 11, 2017, Andrew Kearse, 36, died in police custody following arrest by Schenectady Police Department officers. SIPU asserted jurisdiction on June 21, 2017. SIPU's investigation is ongoing.

F. Closed Investigations

EO 147 calls for the Attorney General to issue a report to the Governor if SIPU does not present charges to a Grand Jury or, if it does present charges, the Grand Jury does not return an indictment. Though not required by EO 147, the Attorney General has made public SIPU's reports on its five closed investigations. These reports detail the evidence gathered in the investigation, outline the relevant law, apply the law to the facts, and offer recommendations for systemic reform. The

reports are available on the OAG website.¹⁰ Overviews of the four reports are below.

1. Report on the Investigation into the Death of Raynette Turner (“Turner Report”)

On Saturday, July 25, 2015, Raynette Turner was arrested for two counts of petit larceny and taken to the Mount Vernon Police Department (“MVPD”) to await arraignment. The next court session in Mount Vernon was scheduled for Monday. Approximately 48 hours after her arrest, Ms. Turner was found unresponsive in her holding cell and ultimately declared deceased. SIPU’s investigation included review of the autopsy and toxicology reports, video footage depicting the duration of Ms. Turner’s confinement, and more than 1,700 pages of Ms. Turner’s medical records, and interviews with more than 40 witnesses.

The Medical Examiner found no physical trauma suggesting physical abuse by the MVPD, there was no indication of physical abuse on the video, and no witness interviewed (including arrestees who were in the custody of the MVPD at the same time as Ms. Turner) raised any suggestion of physical abuse. The Medical Examiner found that an enlarged heart and chronic narcotic drug use caused Ms. Turner’s death. Ms. Turner’s medical records prior to her arrest, which included evidence of drug use and cardiac issues, corroborated the Medical Examiner’s findings.

The only conceivable theory for a homicide prosecution in a situation such as Ms. Turner’s, where no abuse or excessive force occurred, would have been a criminally negligent homicide prosecution based upon a theory that MVPD employees criminally failed to provide necessary care and medical attention to her.

During her time in custody, Ms. Turner made one request for medical attention – regarding her prescription medications – and MVPD employees promptly took her to a nearby hospital where she received medication. MVPD members specifically inquired as to Ms. Turner’s well-being

¹⁰ New York State Office of the Attorney General, Report on the Investigation into The Death of Warren Corbitt (June 23, 2017) (online at https://ag.ny.gov/sites/default/files/oag_report_-_warren_corbitt.pdf); New York State Office of the Attorney General, Report on the Investigation into The Death of Richard Gonzalez (March 31, 2017) (online at https://ag.ny.gov/sites/default/files/oag_report_-_richard_gonzalez.pdf); New York State Office of the Attorney General, Report on the Investigation into The Death of Miguel Espinal (Dec. 21, 2016) (online at https://ag.ny.gov/sites/default/files/oag_report_-_bronx-westchester.pdf); New York State Office of the Attorney General, Report on the Investigation into The Death of Joseph Seguin (Aug. 26 2016) (online at https://ag.ny.gov/sites/default/files/oag_report_-_putnam_county.pdf); New York State Office of the Attorney General, Report on the Investigation into The Death of Raynette Turner (March 3, 2016) (Online at <https://ag.ny.gov/pdfs/SIPReport.pdf>).

twice after she returned from the hospital and she did not indicate that she needed or wanted further medical attention. Finally, when Ms. Turner became unresponsive in her cell, MVPD employees immediately notified emergency medical services. Accordingly, the Attorney General found no basis for a criminally negligent homicide charge (i.e., that any MVPD employee failed to perceive a substantial and unjustifiable risk that Ms. Turner’s death would occur or that any such failure to perceive that risk constituted a gross deviation from reasonable care).

The Turner Report made recommendations to address the unfortunate circumstance of a person charged with two counts of petty theft dying while waiting 48 hours to be arraigned. Principally, the Turner Report noted that speedier arraignments could occur either by extending the hours of arraignment courts or expanding the use of video-facilitated arraignments as an alternative. SIPU found that “[m]any states, including Florida, New Jersey, and Pennsylvania, have embraced videoconferencing or closed circuit capabilities for court proceedings, including arraignments.” The report further noted that most of the states surveyed about their video/closed circuit usage improved the administration of justice and saved money. At the time of the report, in New York, courts rarely used videoconferencing for appearances, and less than half of the 62 counties in the state were statutorily permitted to use videoconferencing for arraignments.

On November 28, 2016, New York State passed a law that permits courts to open off-hours arraignment courts on nights, weekends or holidays on a rotating basis, for suspects arrested anywhere within a particular county.

2. Report on the Investigation into the Death of Joseph Seguin (“Seguin Report”)

On November 30, 2015, two officers and a sergeant from the Carmel Police Department (“CPD”) responded to a 911 call reporting that another resident was in his room sexually assaulting a woman. When the police arrived, they found Joseph Seguin attacking a partially unclothed female. Mr. Seguin refused police demands to release her. The officers extricated the woman from Mr. Seguin and attempted to arrest him, but he violently resisted.

The officers repeatedly warned Mr. Seguin that he would be Tasered if he continued to

resist arrest. One of the officers attempted to drive-stun Mr. Seguin with his Taser (i.e., pressing the instrument directly against Mr. Seguin's skin as opposed to deploying its darts) when Mr. Seguin refused to comply with officers' directions. However, the Taser malfunctioned and Mr. Seguin continued to resist. The Sergeant pinched the back of Mr. Seguin's arm (a recognized pain compliance technique) in an attempt to stop him from resisting arrest. Nevertheless, Mr. Seguin continued to resist arrest. At that point, one of the officers drive-stun Tasered Mr. Seguin again on the lower, right side of his back. However, Mr. Seguin continued to fight with the officers.

An officer then used his Taser in dart-probe mode (i.e., the Taser released darts designed to cause temporary neuromuscular incapacitation). Mr. Seguin was Tasered in dart-probe mode eight times over the course of 91 seconds before the officers were finally able to handcuff him. Shortly thereafter, Mr. Seguin lost consciousness, stopped breathing, and died. The coroner found that the cause of death was "cardiac arrest during [an] excited state, while under the influence of phencyclidine [PCP], after being Tasered and handcuffed."

The SIPU investigation included a review of the Medical Examiner's Report (including autopsy, microscopy, and toxicology records), interviews of all civilian witnesses who saw or heard various parts of the incident (including the female whom Mr. Seguin was assaulting), interviews of responding CPD officers and Emergency Medical Technicians, review of video and audio captured by the Taser used during the incident, review of video captured by a civilian witness, and review of 911 dispatch recordings.

SIPU determined that the force used by the CPD officers in order to arrest Mr. Seguin was justified under New York State Penal Law. The officers appropriately escalated their use of force in an effort to effect the arrest of a person violently resisting arrest for what appeared to be a violent attempted sexual assault.

Nevertheless, in investigating this incident and reviewing Taser-related incidents generally, SIPU noted that a disproportionate number of Taser-related deaths occur when the individual Tasered is under the influence of drugs such as PCP. Therefore, the Seguin Report recommended that police agencies develop policies directed toward Taser use on individuals suspected of being under the influence of drugs.

The report cited, in particular, guidelines issued by the DOJ Community Oriented Policing Services (COPS) and the Police Executive Research Forum (PERF), which state that officers should be made aware that certain vulnerable populations, including those under the influence of drugs, could be at a heightened risk of death or serious injury. So, while scientific research on this issue remains limited, law enforcement agencies should be cognizant of these concerns and incorporate protocols regarding individuals suspected to be under the influence of drugs into their existing Taser policies.

3. Report on the Investigation into the Death of Miguel Espinal ("Espinal Report")

On December 8, 2015, a New York Police Department ("NYPD") officer fatally shot Miguel Espinal in the woods adjacent to the Saw Mill River Parkway in Yonkers.

The incident began in the Bronx, when police observed Mr. Espinal operating a vehicle with tinted windows and attempted to effect a traffic stop. The officers activated their lights and sirens, but Mr. Espinal did not stop and instead sped away. Mr. Espinal engaged the officers in a high speed pursuit on busy thoroughfares from the Bronx to Yonkers, during which Mr. Espinal struck other civilians' vehicles and drove south in the northbound lane of the Saw Mill River Parkway, before crashing his vehicle into a highway barrier.

Mr. Espinal then exited his vehicle and ran into the wooded area adjacent to the highway; the officers followed. One officer was able to catch up with Mr. Espinal in the wooded area, the two men wrestled, and Mr. Espinal attempted to take the officer's weapon. The officer fired one shot into Mr. Espinal's chest because he felt physically spent and feared that Mr. Espinal would succeed in taking his weapon to use it against the officer. There were no eyewitnesses and no video recordings of the incident.

The SIPU investigation relied heavily on forensic tests to assess the credibility of the officer's account. Among other investigative steps, SIPU sought and analyzed (1) the Westchester County Medical Examiner's Office's autopsy, microscopy, and toxicology records and (2) forensic analysis reports including Firearms, Trace Analysis, Gunshot Residue, and DNA reports. SIPU determined that those records and reports corroborated the officer's account.

The Medical Examiner's Report deemed the cause of death to be a single bullet wound that entered Mr. Espinal's chest. The location of the entry wound corroborated that the officer fired his gun while facing Mr. Espinal. There were multiple abrasions covering many parts of Mr. Espinal and the officer's bodies. Those abrasions were consistent with the officer's account that he and Mr. Espinal wrestled with one another in an area heavily overgrown with thorns and brush.

Firearms analysis disclosed that the approximate distance between the muzzle of officer's gun and Mr. Espinal was between 14 and 18 inches when the fatal shot was fired. That finding supported the officer's statement that he was within two feet of Mr. Espinal when he fired his gun.

The trace analysis report showed the presence of particles consistent with the chemical composition of gunpowder on Mr. Espinal's upper body clothing. The presence of those particles was consistent with the officer's account that Mr. Espinal was attempting to wrest the officer's gun from him. Primer gunshot residue ("P-GSR") analysis showed that particles consistent with P-GSR were found on both of Mr. Espinal's hands, further supporting the officer's claim that Mr. Espinal's hands were in very close proximity to the officer's gun when he fired the weapon. Based on the totality of the evidence, SIPU determined that no criminal charges were warranted.

Video evidence would have assisted SIPU's investigation. SIPU, therefore, recommended that law enforcement agencies and policy makers work toward outfitting as many officers and vehicles as possible with body-worn and dashboard cameras. SIPU believes that body-worn cameras can serve multiple useful functions including creating evidence for prosecution of a civilian, capturing or deterring unlawful or improper officer conduct, and rebutting baseless allegations against officers acting properly.¹¹

¹¹ Many police departments throughout the state have begun incorporating BWCs into routine patrols of uniformed officers. The New York City Police Department launched a pilot program earlier this year with the goal of equipping all 23,000 uniformed officers with BWCs by 2019. In 2016, several New York police departments, including Syracuse University, Mount Vernon and Salamanca, received funding from the Department of Justice's Edward Byrne Memorial Justice Assistance Grant to incorporate BWCs into routine patrol. In addition, following two recent incidents where police officers fatally shot a civilian, the Buffalo Police Department announced plans in May to implement a BWC pilot program, and is now in the procurement stage of obtaining suitable BWC equipment. By last year, the Niagara Falls Police Department had 55 BWCs to equip 75 percent of uniformed officers. The City of Tonawanda Police Department used asset forfeiture funds to equip uniformed officers with BWCs in 2015. Lockport also began outfitting uniformed officers with BWCs in 2015. Finally, in 2015, the federal government announced that it would provide \$22.5 million to state and local police departments for BWCs, and funded 73 out of 285 submitted requests. The New York awardees included Albany, Spring Valley, Rochester and White Plains.

4. Report on the Investigation into the Death of Richard Gonzalez ("Gonzalez Report")

On March 16, 2016, Richard Gonzalez died following an interaction with NYPD officers responding to 911 calls from Mr. Gonzalez's wife stating that he was under the influence of drugs and acting erratically.

When police officers arrived, they could hear shouting coming from within the Gonzalez's apartment. The officers escorted Mr. Gonzalez's wife away from her husband and into the building hallway. Mr. Gonzalez followed the police into the hallway and forcefully tried to bring his wife back into their residence. The officers were ultimately able to take Mr. Gonzalez to the floor, where he continued to struggle and try to kick them. The officers were eventually able to handcuff Mr. Gonzalez. Shortly thereafter, emergency medical technicians ("EMTs") arrived and took Mr. Gonzalez downstairs to a waiting ambulance.

It became apparent to the EMTs that Mr. Gonzalez was unresponsive. The officers and EMTs used an automatic electronic defibrillator ("AED") and performed CPR on Mr. Gonzalez, which they continued on their way to the hospital; Mr. Gonzalez was pronounced deceased shortly after arrival. The Medical Examiner ruled the cause of death as acute cocaine intoxication.

A civilian witness who was a resident of the apartment building told SIPU investigators that the police officers did not hit or choke Mr. Gonzalez. The statements of the police officers and EMTs were consistent with this civilian witness' account. The Medical Examiner's findings were also consistent with the civilian witness, the police officers, and the EMTs. Finally, SIPU reviewed Mr. Gonzalez' prior medical records. During the months immediately preceding his death, Mr. Gonzalez engaged in persistent cocaine use; he also suffered from chronic cardiac issues.

SIPU determined that criminal charges were not warranted. Nevertheless, noting the lack of video evidence, SIPU again recommended that police agencies and policymakers work toward outfitting as many officers as possible with body-worn cameras.

5. Report on the Investigation into the Death of Warren Corbitt (“Corbitt Report”)

On October 14, 2016 Warren Corbitt was killed in a vehicular accident with a New York State Police Trooper.

At approximately 7:50 pm, the Village of Millbrook Police Department (“VMPD”) requested assistance from the New York State Police to apprehend a man who had brandished a knife at several teenagers attending a high school football game. Four troopers, including the Trooper involved in the accident with Mr. Corbitt, responded to the VMPD’s call for assistance. They traveled in four separate vehicles, all of which traveled at a high rate of speed with their emergency lights and sirens activated on a stretch of highway where New York State Route 82 and U.S. Route 44 run together as one combined road.

Route 82/U.S. 44 has two lanes, one eastbound and one westbound. The collision between the Trooper’s car and Mr. Corbitt’s motorcycle took place near the point where Route 82 and U.S. 44 diverge. The three other Troopers drove, in the eastbound lane, past this part of Route 82/U.S. 44 moments before the collision. The three other troopers passed a car operated by a civilian witness (the “Witness”) in the eastbound lane. The Witness pulled her car over to the edge of Route 82/U.S. 44. Mr. Corbitt, who was several feet ahead of the Witness’s car on a motorcycle also in the eastbound lane, did not pull over.

Moments later, when the fourth Trooper (who also was in the eastbound lane) attempted to pass Mr. Corbitt’s motorcycle, the Trooper’s vehicle and Mr. Corbitt’s motorcycle collided. The collision took place near the double yellow line separating the eastbound and westbound lanes, near the point at which Route 82 and U.S. 44 diverge. Under the Vehicle and Traffic Law, Mr. Corbitt should have pulled over to the right, to the edge of the road on the eastbound lane. Instead, as the Trooper attempted to pass Mr. Corbitt on his left, Mr. Corbitt’s motorcycle also moved to the left toward the center of the roadway near the double line.

Criminal charges against the Trooper were not warranted, because the evidence made clear that the collision was a tragic accident.

Appendix A: SIPU Biographies

Alvin Bragg is the Chief of the Special Investigations and Prosecutions Unit. Mr. Bragg also serves as the Executive Deputy Attorney General for Social Justice. In that capacity, he oversees the Social Justice Division, which includes the Charities, Civil Rights, Environmental Protection, Health Care, and Labor Bureaus. Mr. Bragg was an Assistant United States Attorney in the Criminal Division of the United States Attorney's Office in New York's Southern District, where he investigated and prosecuted misconduct by elected officials and law enforcement, money laundering of narcotics proceeds, witness tampering, and armed robbery. He previously served as an Assistant Attorney General with the Public Integrity Bureau of the New York State Attorney General's Office, where he investigated and prosecuted cases involving official misconduct and fraud.

Dominick Zarrella is a 15-year member of the New York State Attorney General's Office. He has held the position of Chief Investigator since March 2012. The Chief Investigator is a senior-level position that ultimately reports to the Attorney General and is under the direction of the First Deputy to the Attorney General, as well as the Executive Deputy Attorney General for Criminal Justice. The Investigations Division provides investigative support for the Special Investigations and Prosecutions Unit, Public Integrity Bureau, Criminal Enforcement and Financial Crimes, Crime Proceeds Strikeforce, Auto Insurance Fraud, Taxpayer Protection, Medicaid Fraud Control Unit, Organized Crime Task Force, the Special Operations Unit, and the Executive Protection Unit. Prior to becoming Chief Investigator, he served as an Assistant Chief in the Organized Crime Task Force and a Deputy Chief in the Auto Insurance Fraud Unit. Before joining the New York State Attorney General's Office, Chief Zarrella was a Lieutenant Commander Detective Squad with the New York City Police Department. During his 22 year tenure with NYPD Chief Zarrella spent 16 years in investigative assignments including the Organized Crime Control Bureau, Internal Affairs Bureau, and the Detective Bureau.

Natalia Salgado currently serves as the Director of Advocacy for the Office of the Attorney General. Prior to this role, Natalia served as the New York State Deputy Political Director for 32BJ

SEIU for 8 years where she advocated on issues including immigrant worker rights and economic inequality. Ms. Salgado started her career in Philadelphia, Pennsylvania where she worked for the SCOH (Services to Children in their own Homes) Program at the Council of Spanish Speaking Organizations. Ms. Salgado's current role requires her to interface with community and advocacy groups/leaders from across the state concerning myriad issues, including SIPU's work.

Paul A. Clyne is a Deputy Chief in the Special Investigations and Prosecutions Unit. He served as District Attorney of Albany County from 2001 to 2004 and was an Assistant District Attorney in Albany County for fourteen years. Mr. Clyne has presented over 700 cases to grand juries, including scores of homicides, and has tried fifteen homicides to verdict.

David Giudici is an investigator in the Special Investigations and Prosecutions Unit. He was previously assigned to the Medicaid Fraud Control Unit within the OAG. Prior to that, David served in the City of Rochester Police Department for approximately 24 years.

Joshua Gradinger is a Deputy Chief in the Special Investigations and Prosecutions Unit, which he joined in October of 2015. Before that, for 10 years, Joshua served as an Assistant District Attorney at the Bronx County District Attorney's Office, principally handling homicides and other violent crimes. Prior to joining the Bronx District Attorney's office, Mr. Gradinger worked as a Homicide Division Chief at the Miami-Dade County State Attorney's Office for six years. Mr. Gradinger has a Masters in Social Work.

Gail Heatherly is Counsel to the Special Investigations and Prosecutions Unit, Senior Counsel to the Criminal Justice Division, and the Bureau Chief of the Conviction Review Bureau. From 2007 through the fall of 2012, she was the Bureau Chief of the Criminal Prosecutions Bureau. For fourteen years, from 1991 through 2005, Ms. Heatherly was a senior prosecutor in the New York County District Attorney's Office. There, she was a homicide assistant; conducted long-term cold case homicide investigations; was the Domestic Violence supervisor in her trial bureau; and was a member of the Sex Crimes Prosecution Unit. Prior to working at the District Attorney's Office, she was a litigation associate at Paul, Weiss, Rifkind, Wharton & Garrison.

Diane M. LaVallee is a Deputy Chief in the Special Investigations and Prosecutions Unit. She also is assigned to the Criminal Enforcement and Financial Crimes Bureau. She started her career in the Erie County District Attorney's Office, where she became Chief of the Comprehensive Assault, Abuse, and Rape Bureau. She left in 1997 to become the Chief of the Capital Assistance to Prosecutor's Unit of the New York State Attorney General's Office. Diane also has served as the First Assistant District Attorney in Orleans County.

Bryan Mason joined the Special Investigations and Prosecutions unit as an investigator in February 2016. Prior to that, Bryan served almost 22 years with the NYPD obtaining the rank of Detective First Grade. His assignments included extensive homicide investigations. Bryan earned several awards during his tenure including Detective of the Year in Staten Island.

Jose Nieves is as a Deputy Chief in the Special Investigations and Prosecutions Unit. Prior to joining the Attorney General's office, Mr. Nieves served as an Assistant District Attorney for the Kings County District Attorney's Office for eleven years, prosecuting long-term narcotics investigations, gun related offenses and other violent crime. Subsequent to his time as an Assistant District Attorney, Mr. Nieves prosecuted administrative disciplinary cases for excessive use of force and other misconduct against New York City Correction Officers as an Agency Attorney for the Trials and Litigation Division of the New York City Department of Correction. Jose also was commissioned as a Captain in the U.S. Army Reserve Corp and served as a Judge Advocate for over ten years.

Matthew Ross is an Assistant Attorney General at the New York State Attorney General's Office in both the Criminal Section of the Labor Bureau and in the Special Investigations and Prosecutions Unit. Prior to joining the office in 2014, Matthew was an Assistant District Attorney at the Richmond County District Attorney's Office for several years. Before that, Matthew was a litigation associate at the New York City law firm of Dewey & LeBoeuf LLP.

Jennifer Sommers is a Deputy Chief in the Special Investigations and Prosecutions Unit. Prior to joining the Attorney General's Office, Ms. Sommers was an Assistant District Attorney for the Livingston and Monroe County District Attorney's Offices for eleven years. She conducted

homicide and other violent crime investigations. Ms. Sommers also worked as counsel to the Monroe County Sheriff's Office for seven years before joining the Attorney General's Office in 2014. From 2014 to 2016, Jennifer investigated and prosecuted medicaid fraud cases. Jennifer has a Masters Degree in toxicology.

John Sullivan is Assistant Chief Investigator for the Special Investigations and Prosecutions Unit. He has had numerous critical assignments at the Attorney General's Office, including the re-investigation of the Martin Tankleff homicide case. Prior to his time in SIPU, John was part of the Crime Proceeds Strike Force, where he worked wiretap cases involving money laundering and mortgage fraud. Prior to joining the OAG John served 21 years with the NYPD and obtained the rank of Sergeant Supervisor Detective Squad. His assignments included the Brooklyn North Homicide Squad, the Hostage Negotiation Team, Internal Affairs Bureau and the Organized Crime Control Bureau. Assistant Chief Sullivan also served 2 years with the FBI Police as a sergeant and was a member of their evidence collection team.

Nicholas Viorst is a Deputy Chief in the Special Investigations and Prosecutions Unit, which he joined in September 2016. Before that, for 12 years, Nick was an Assistant District Attorney at the Manhattan District Attorney's Office, principally handling homicides and other violent crimes.

Zulkifl (Muhammad) Zargar is a Legal Support Analyst in the Special Investigations and Prosecutions Unit. Muhammad received his A.B. in Biochemistry from Washington University in St. Louis in 2015.

Appendix B: Law Enforcement and Community Outreach

SIPU has met with district attorneys, law enforcement agencies, and advocacy groups across the state in an effort to facilitate communication and provide information about SIPU's mission and responsibilities pursuant to EO 147. To promote transparency, the groups that we met with, in addition to the 62 District Attorneys, are listed below.

Albany Police Department
Allegheny County Law Enforcement
Beacon Police Department
Broome County Chiefs and District Attorney
Buffalo Chiefs of Police
Buffalo Police Department
Cattaraugus County Law Enforcement
Cayuga County Law Enforcement
Central New York Police Chiefs
Chautauqua County Law Enforcement
Chemung County Law Enforcement
Chenango County Law Enforcement
Dutchess County Chiefs, Sheriffs, and District Attorney
Finger Lakes Law Enforcement Counsel
Genesee County Law Enforcement
Glen Cove Police Department
Jefferson County Law Enforcement
Kingston Police Department
Livingston County Chiefs of Police
Madison County Law Enforcement
Monroe County Chiefs of Police
Monroe County Law Enforcement Counsel
Nassau County Police Department
New York City Police Department and its Force Investigation Division
New York State Police
New York State Sheriff's Association
New York State Sherriff's Association – Undersheriff's
Niagara County Law Enforcement
Onondaga County Law Enforcement
Orange County Law Enforcement
Oswego County Law Enforcement
Peekskill Police Department
Putnam County Police Department
Rensselaer Police Department Locust Club
Rochester Police Department
Rockland County Police Department
Schenectady City Police Department

Schuyler County Law Enforcement
Seneca County Law Enforcement
State AFL and Statewide Police Unions
Steuben County Police Chief's Association and District Attorney
Suffolk Sherriff's Association
Syracuse Police Department
Wayne County Law Enforcement
Westchester Department of Public Safety
Wyoming County Law Enforcement
Yates County Law Enforcement
Yonkers Police Department.

Members of the SIPU team have conducted meetings with the following religious, community, activist, and advocacy groups:

Albany Citizens Police Review Board
Association of Black Social Workers
Baber AME Church
Bibleway Healing Assembly
B.L.A.C.K. (Building Leadership and Community knowledge)
Black Lives Matter
Black, Latino Caucus
Brown Memorial Clergy
Capital Area Against Mass Incarceration
Capital District Muslim Cultural Center
Center for Law & Justice
Christian Cultural Center
Citizen Action
Committee of Religious Leaders
Committee of Religious Leaders Full Committee
Communities United for Police Reform
Concerned Clergy of WNY
Ibero-American Action League
Justice Committee
Members of the Buffalo Clergy
Members of Rochester Clergy
Metropolitan Black Bar Association
Mothers Against Gun Violence
My Brother's & Sister's Keeper
NAACP
National Action Network
National Lawyers Guild
New York City Bar Association – Civil Rights Committee

New York Civil Liberties Union
New York Western First Jurisdiction
North Star Fund
OPEN Buffalo
Partnership for the Public Good
PUSH Buffalo
Southwest Community Center
Stop the Violence Coalition
Syracuse Common Council
Syracuse Model Neighborhood Inc.
United Christian Leadership Ministry of WNY

