

Congress of the United States
Washington, DC 20510

May 4, 2022

The Honorable Merrick Garland
Attorney General of the United States
Department of Justice
950 Pennsylvania Ave. NW
Washington, D.C. 20530

Dear Attorney General Garland:

We write today regarding the 2017 fatal shooting of 25-year-old Bijan Ghaisar by two United States Park Police (USPP) officers. Nearly five years after the fatal shooting of Bijan, it remains unclear to the Ghaisar family, to us, and to the broader community of the National Capital Region, how a traffic stop escalated to a fatal shooting. While the Department of Justice (DOJ) declined to pursue federal charges under the previous administration, we believe another look is warranted. Therefore, we respectfully request that DOJ reopen its investigation, pursue a vigorous analysis of the facts and law, and determine whether federal charges are merited.

In November 2019, DOJ's Civil Rights Division informed the Ghaisar family that the Department would not pursue a federal indictment against the officers under 18 U.S.C. § 242. In October 2020, a grand jury convened in the Fairfax County Circuit Court returned criminal indictments against the USPP officers on state charges of involuntary manslaughter and reckless use of a firearm. The officers' attorneys asked for a change of venue from the Fairfax County Circuit Court to the Alexandria Division of the Eastern District of Virginia. The request was granted by a federal district judge, and then, in October 2021, the same judge granted a motion to dismiss the case. The dismissal was made on the grounds of Supremacy Clause immunity, meaning the district court did not engage in fact finding or an analysis of whether Bijan's rights under the U.S. Constitution were violated. Then-Virginia Attorney General Mark Herring and Fairfax County Commonwealth's Attorney Steve Descano appealed the decision to the Fourth Circuit Court of Appeals. Unfortunately, Virginia's new Attorney General has chosen to drop the Commonwealth's appeal, leaving this question unsettled.

As Attorney General, you have rescinded memos that hampered the ability of DOJ's Civil Rights Division to investigate police departments accused of misconduct, and, where appropriate, hold them accountable. You have worked to restore public trust after reports of political interference with investigations during the previous administration, which reportedly included cases under investigation by the Civil Rights Division. You authorized Justice Department and FBI personnel to cooperate with the Fairfax County Commonwealth's Attorney investigation, which returned state criminal indictments against the USPP officers, after such cooperation was denied by the previous administration. These actions are commendable, and we hope you will extend this improved oversight to the Ghaisar case.

To summarize, the following major decisions were made without sufficient explanation: DOJ declining to file federal charges in 2019; DOJ declining to share physical evidence or the conclusions of its personnel with local attorneys; the federal district court's dismissal of the case; and the Virginia Attorney General's withdrawal from the appeal of the dismissal. Taken together, these decisions mean that Ghaisar's family cannot be confident that the circumstances of Bijan's death have received the rigorous legal scrutiny they deserve.

As you know, the Federal Bureau of Investigation (FBI) investigated this shooting in detail, interviewing more than 150 individuals (including law enforcement, civilian, and medical witnesses), analyzing evidence at the FBI Laboratory in Quantico, and amassing an investigative file of some 10,000 documents. The focus of the Department's investigation was to determine whether the officers had violated federal laws, in particular federal criminal civil rights statute 18 U.S.C. § 242. There is precedent for charges in a case like this, as DOJ's Civil Rights Division pursued similar charges in the George Floyd and Ahmaud Arbery cases.

What's more, we understand that Bijan Ghaisar's family, through counsel, has requested that the Civil Rights Division revisit its decision declining to prosecute the officers who shot and killed him. We further understand that the Department is now in possession of sworn deposition testimony taken from briefs submitted in a civil action, which includes testimony from a senior U.S. Park Police officer and a Fairfax County Police officer that may cast new light on the events of that tragic evening.

We want to be clear that we do not seek to pressure you to arrive at a decision that the evidence does not support. Rather, we simply seek an impartial review of the facts, including the newly adduced evidence from the civil proceeding. This case was only dismissed at the district level because of Supremacy Clause immunity, an issue that does not apply if the case is brought by the federal government. Supremacy Clause immunity would also not apply in other cases involving state, not federal, officers, which makes this case unique and not a pathway to reopen every case the DOJ may have declined to consider under prior administrations.

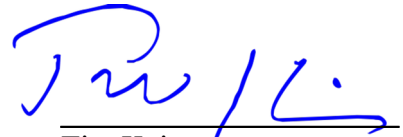
The decision to escalate to deadly force must be explained – it is unconscionable to think such a low-level offense could justify being shot to death by police. Bijan's family, and the public, are entitled to due process and an explanation of why their son is dead that reflects full scrutiny of this situation at all levels of the justice system. We hope you will use all resources and personnel at your disposal to give this case a fair, honest look and decide what the proper form of justice for this tragedy should be.

Thank you for your consideration. We look forward to your response.

Sincerely,



Mark R. Warner
United States Senator



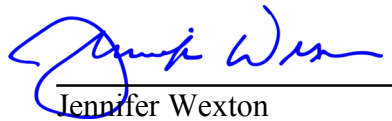
Tim Kaine
United States Senator



Donald S. Beyer Jr.
Member of Congress



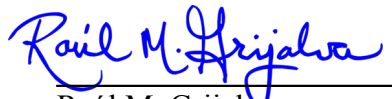
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