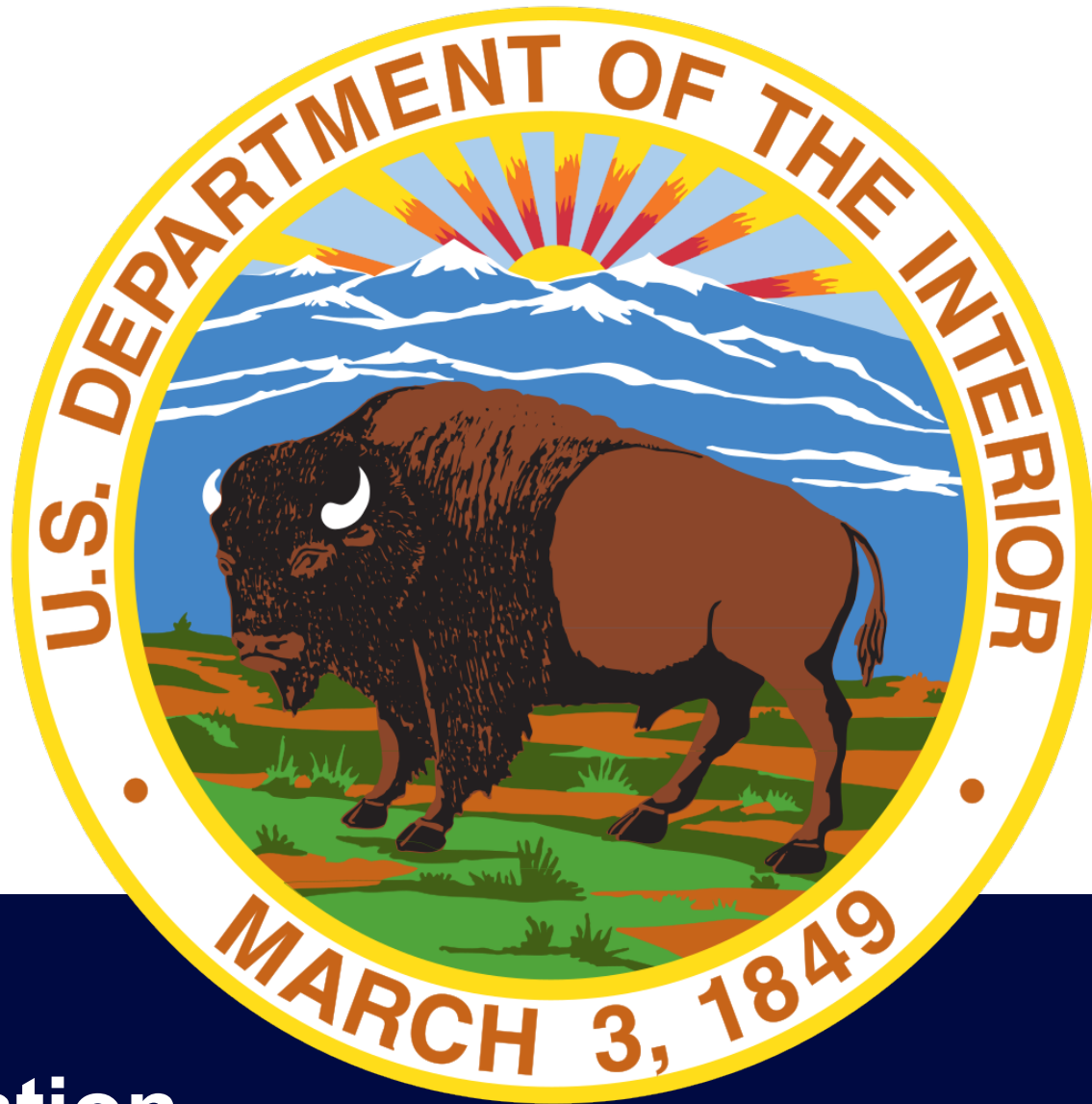




OFFICE OF  
**INSPECTOR GENERAL**  
U.S. DEPARTMENT OF THE INTERIOR



# Investigation

## U.S. Park Police Officers' Use of Deadly Force Following a Pursuit on the George Washington Memorial Parkway

This is a revised version of the report prepared for public release.



OFFICE OF  
**INSPECTOR GENERAL**  
U.S. DEPARTMENT OF THE INTERIOR

## REPORT OF INVESTIGATION

### I. EXECUTIVE SUMMARY

We investigated whether two U.S. Park Police (USPP) officers, Lucas Vinyard (Officer 1) and Alejandro Amaya (Officer 2), acted in accordance with USPP policies in place at the time during their vehicular pursuit and subsequent fatal shooting of Bijan Ghaisar on November 17, 2017. We concluded that the officers' pursuit of Ghaisar was consistent with USPP policies and that, in all but one instance, the officers' actions during the pursuit did not violate USPP policies. We also concluded that the officers' use of deadly force against Ghaisar did not violate USPP policy.

Specifically, we found that the officers' initiation and continued pursuit of Ghaisar was consistent with the USPP's vehicular pursuit policy because the two bases under which pursuits are authorized under the policy were both present on November 17: namely, that the preponderance of the evidence showed the officers reasonably believed that Ghaisar had committed a felony by leaving the scene of an accident, and that Ghaisar presented a clear and immediate threat to public safety if not immediately apprehended. We also found that the officers' drawing of their service weapons during the pursuit did not violate the USPP's firearms policy because doing so was within the broad discretion afforded officers under the policy. However, we also found that Officer 2's use of his service weapon to strike the SUV's window violated the USPP's firearms policy. The USPP's firearms policy prohibits the use of a firearm as an impact weapon other than to protect an officer or another person from death or serious injury when no other reasonable means of protection is available.

We also determined that USPP policies did not require the officers to use specific tactics and techniques, including felony traffic stop techniques, during the pursuit and subsequent stops of Ghaisar because the relevant policies afford officers wide discretion in determining whether circumstances dictated the use of these techniques. In addition, we determined that the USPP's roadblocks policy did not apply to the officers' attempted stops of Ghaisar because the tactics employed by the officers to stop Ghaisar did not constitute a "roadblock" as that term was defined in the USPP's roadblocks policy in place at the time.

Finally, we concluded that the officers' use of deadly force against Ghaisar did not violate the USPP's use of force policy. We concluded this because the preponderance of the evidence showed the officers reasonably believed that Ghaisar posed an imminent danger of death or serious bodily harm to Officer 2 based on the facts and circumstances confronting them at the time, which is the standard permitting the use of deadly force under the USPP's use of force policy. In making this finding, we note that our review was limited to analyzing the officers' conduct under the USPP's use of force policy. In particular, we did not separately determine whether the officers' use of deadly force was reasonable under the Fourth Amendment of the U.S. Constitution. However, because the USPP's use of force policy incorporates the Fourth Amendment's constitutional reasonableness standard, we did consider U.S. Supreme Court and other relevant court cases interpreting the Fourth Amendment to inform our analysis of the officers' conduct under the USPP's use of force policy.

In making these findings, we note that our analysis was limited to the standards set forth in applicable USPP policies, which grant law enforcement officers broad—though not unbounded—discretion in carrying out their official duties. Notably, USPP policies do not set forth the specific tactics and techniques USPP officers must use in every situation they might encounter while operating in the field. Thus, where we determined that the officers' actions fell within the discretion afforded them under USPP policies, we did not assess the officers' tactics and techniques or substitute our judgement for that of the officers.

We also recognize that the Federal Bureau of Investigation (FBI) investigated Officer 1 and Officer 2's actions with respect to the shooting of Ghaisar and presented its findings to the U.S. Department of Justice (DOJ), which declined to bring criminal charges against the officers. In addition, in 2021, a Federal district court dismissed criminal charges brought by the Commonwealth of Virginia against these two officers. While we considered evidence from both the FBI's investigation and the Federal court proceedings, unlike our own investigation, neither addressed whether the officers' conduct complied with USPP policies. To make that determination, we conducted our own investigation and independently evaluated the totality of the evidence in coming to our conclusions.

The appendix includes a timeline of the events discussed in this report.

We are providing this report to the National Park Service (NPS) Director for any action deemed appropriate.

## II. SCOPE AND METHODOLOGY

We examined the officers' actions in light of relevant USPP policies in place at the time the actions occurred. The USPP's use of force policy broadly defines what constitutes an officer's use of force to include "a wide range of physical compliance techniques" and "may take the form of verbal commands, persuasion, warnings, directives, bodily contact, use of baton or other non-lethal weapon, or the use of deadly force."<sup>1</sup> As such, nearly all of the officers' interactions with Ghaisar on November 17, 2017, could be construed as uses of force pursuant to the USPP's use of force policy. In our analysis of the officers' conduct, however, we used more specific USPP policies—such as the USPP's vehicular pursuit and firearms policies—where applicable and appropriate, such as when the officers' conduct fit squarely within the more specific USPP policy.

With respect to the officers' use of deadly force, we analyzed this conduct in accordance with the USPP's use of force policy. This policy delineates when an officer may use deadly force and provides that an officer may use deadly force "only when necessary, that is when the officer has a reasonable belief, in light of the facts and circumstances confronting the officer, that the subject of such force poses an imminent danger of death or serious bodily harm to the officer and/or to another person."<sup>2</sup> This standard incorporates the standard articulated in the U.S. Supreme Court case *Tennessee v. Garner*, 471 U.S. 1 (1985), and developed in subsequent court cases, which requires that officers' uses of force be "objectively reasonable" when viewed "in light of the facts and circumstances confronting them."<sup>3</sup> Accordingly, we considered relevant court cases where they provided guidance in evaluating the officers' conduct here. Read together, these standards required us to consider whether the officers' use of deadly force was objectively reasonable given the facts and circumstances facing the officers at the time. We also looked at whether the officers' actions were consistent with their training because that informed our analysis regarding whether their uses of force were "objectively reasonable."

We further note that USPP policies generally provide officers with significant discretion in carrying out their duties. As discussed more fully below, where we determined that the officers acted within the discretion afforded them under USPP policies, we did not evaluate the particular tactics they employed.

In addition to assessing whether the officers' actions on November 17, 2017, complied with USPP policies, we also sought to provide a clear, comprehensive, and transparent factual record of the events of that evening. To accomplish this, we interviewed USPP officials involved in the incident including Officer 1, Officer 2, and their supervisor. We reviewed the USPP's administrative records and USPP and U.S. Department of the Interior (DOI) policies and procedures. We also reviewed open-source videos, media articles, the officers' training records and training materials from the Federal Law Enforcement Training Center (FLETC), as well as USPP in-service training records.

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<sup>1</sup> See U.S. Park Police, *General Order (G.O.)* 3615, "Use of Force," §§ 3615.03 and 3615.02 (Sept. 28, 1998).

<sup>2</sup> U.S. Park Police, G.O. 3615, "Use of Force," § 3615.03(C).

<sup>3</sup> *Graham v. Connor*, 490 U.S. 386, 397 (1989).

We also reviewed evidence presented in civil and criminal court proceedings related to the fatal shooting of Ghaisar, including numerous expert reports prepared at the request of the USPP officers, the Commonwealth of Virginia, Ghaisar's family, and the DOJ. We note that neither the FBI's investigation nor any of the Federal or State court proceedings addressed whether the officers' conduct on November 17, 2017, complied with USPP policies. As such, we did not treat the evidence, including the expert reports, gathered and presented in connection with either the FBI's investigation or the court proceedings as conclusive on the issue of whether the officers complied with USPP policies. Instead, we independently reviewed the totality of the evidence to conduct our own analysis and reach our conclusions.

The court records we reviewed also included enhanced dashboard camera (dashcam) video with the radio dispatch audio overlaid onto it. We also reviewed transcripts or excerpts of transcripts of various witnesses deposited in connection with the civil court proceedings.

In addition, the Fairfax County Police Department (FCPD) and the FBI provided us with relevant investigative files, documents, and media, which we reviewed. We obtained radio transmissions from the FCPD related to this incident and the dashcam video from the FCPD officers involved in the pursuit of Ghaisar. The FCPD officers involved in the pursuit also consented to voluntary interviews. The FBI provided us a redacted copy of its criminal investigative file that contained summaries of the interviews it conducted of the officers and witnesses involved in the incident.

In reaching our conclusions, we independently assessed the totality of the evidence to determine whether it was more probable than not that Officer 1 and Officer 2 violated relevant USPP policies.

### **III. BACKGROUND**

#### **A. The USPP's Responsibilities With Respect to the GW Parkway**

The NPS, a bureau of the DOI, is charged with the care of the National Park System, including the George Washington Memorial Parkway (GW Parkway).<sup>4</sup> The GW Parkway is a limited-access highway that runs from Interstate 495 in McLean, Virginia, south along the Potomac River to Mt. Vernon, Virginia. The USPP is a unit of the NPS, and its officers are authorized by 54 U.S.C. § 102701 to conduct law enforcement in the National Park System. Virginia also accords USPP officers certain law enforcement powers under State law.<sup>5</sup> Federal regulations adopted by the NPS further provide for the enforcement of State traffic laws within the National Park System.<sup>6</sup>

#### **B. The Officers' Training and Personnel History**

Officer 1 and Officer 2 joined the USPP in 2007 and 2009, respectively. Both officers attended police officer training at FLETC.<sup>7</sup> As part of their basic training program at FLETC, both officers received instruction on traffic stops, pursuits, and the use of force. Following their completion of the FLETC program, both officers also completed 12 weeks of field training. During this time, more experienced officers observed each of them while they completed a regular shift and provided feedback and guidance regarding their work.

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<sup>4</sup> See Capper-Cramton Act, Pub. L. No. 71-284, 46 Stat. 482 (1930) (creating the GW Parkway); see also 54 U.S.C. § 100101(a) ("The Secretary [of the Interior], acting through the Director of the National Park Service shall promote and regulate the use of the National Park System."). Pursuant to 36 C.F.R. § 1.4(a), the "National Park System" includes "any area of land and water now or hereafter administered by the Secretary of the Interior through the National Park Service for park, monument, historic, parkway, recreational, or other purposes."

<sup>5</sup> See Code of Va. § 19.2-12 (law enforcement officers of the Department of the Interior are conservators of the peace with certain arrest authority under Virginia law); see also U.S. Park Police, G.O. 2101, "Arrest Authority," § 2101.10 (Oct. 25, 2017) (summarizing officers' arrest authority under Virginia law).

<sup>6</sup> See 36 C.F.R. §§ 4.1, 4.2; see also U.S. Park Police, G.O. 2101, "Arrest Authority," § 2101.04(C) ("In National Park Service areas of concurrent or exclusive jurisdiction, State law may be assimilated as Federal law under authority of 18 U.S.C. 13.").

<sup>7</sup> While at FLETC, officers study basic law enforcement concepts that a new officer should understand and/or be able to perform upon employment in a Federal law enforcement organization. The program is designed to provide the new officer with the specific knowledge and skills necessary to perform at the entry-level in a Federal law enforcement position.

USPP training records show that the officers completed all required training. In particular, these records reflect that the officers received additional use of force training as required by DOI policy, which mandates that officers attend annual training on the use of force.<sup>8</sup> USPP training records show that the officers had most recently attended use of force training in 2016. We discuss the substance of this and other relevant training where applicable, below.

We reviewed both officers' personnel records, which contained no information that either officer had ever been disciplined for improper use of force or police techniques.

## **IV. RESULTS OF INVESTIGATION**

### **A. Facts**

#### *1. The Officers Began Their Shifts at 6:00 p.m. on November 17, 2017*

Both Officer 1 and Officer 2 were assigned to the USPP's District 2 Substation, and their duties included patrolling and protecting NPS lands and other NPS areas along the GW Parkway.

On the evening of November 17, 2017, the officers both began their shifts at 6:00 p.m. Although each officer was typically assigned to patrol a different area, on that evening, their supervisor (USPP Sergeant) instructed them to ride together in a USPP cruiser and patrol the area to which Officer 2 was usually assigned.<sup>9</sup>

In addition to instructing them to ride in the same patrol vehicle, the USPP Sergeant also gave the officers permission to make a brief stop during their shift to pick up Officer 2's personal vehicle from a nearby repair shop.<sup>10</sup>

#### *2. A Rideshare Car Rear-Ended Ghaisar's SUV and the Rideshare Passenger Called 911*

At approximately 7:20 p.m., while driving southbound on the GW Parkway, a rideshare driver with a passenger in the back seat rear-ended Ghaisar's SUV south of Marina Drive in Alexandria, Virginia (See Figure 1, Point 1).<sup>11</sup> Ghaisar was driving, and there were no other passengers in his SUV. According to both the rideshare driver and passenger, Ghaisar's SUV stopped suddenly in front of the rideshare car. It was not clear to either the rideshare driver or the passenger why Ghaisar stopped. The rideshare driver applied his brakes but was unable to stop before he rear-ended the SUV. The SUV drove away shortly after the collision occurred. The rideshare driver followed the SUV in his car, and, at 7:30 p.m., the passenger called 911 to report the accident and the SUV's departure from the scene. During the call, the passenger also reported damage to the rideshare driver's car and relayed the SUV's license plate information to the 911 operator.

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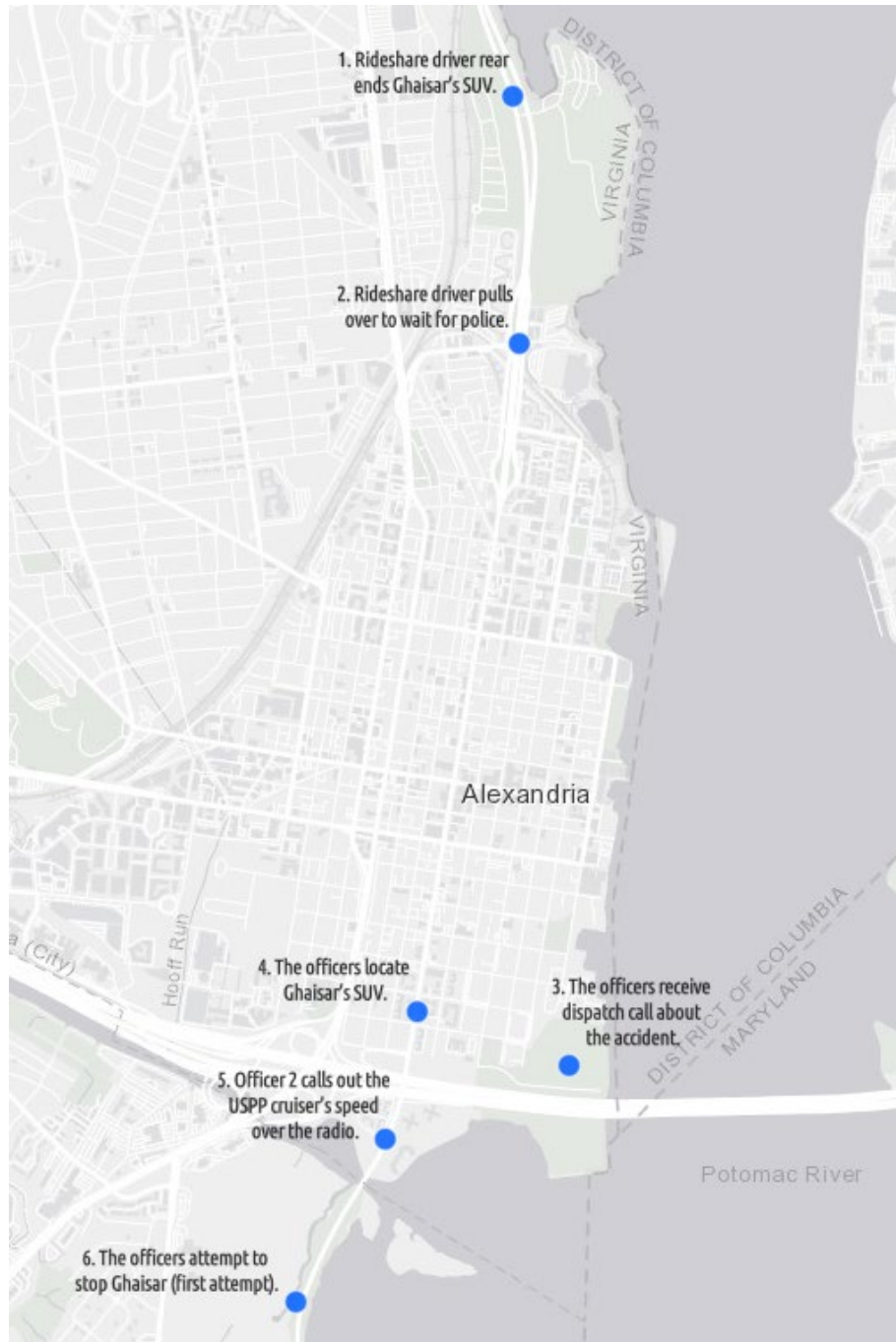
<sup>8</sup> DOI Office of Law Enforcement and Security, 446 *Departmental Manual (DM)* 15, "Training Standards for Law Enforcement Officers" at 15.10 (b)(1) (July 15, 2016) (requiring officers to complete annual 40-hour in-service training including use of force); U.S. Park Police, G.O. 30.05, "Training" (March 19, 2004).

<sup>9</sup> The USPP Sergeant instructed them to do this because the USPP's radio repeaters (devices that receive and retransmit signals to allow the signals to travel greater distances) in that area were malfunctioning that evening. The USPP Sergeant said he assigned the officers to ride together so that Officer 1 could provide some support in the event the radio repeater malfunctioned while they were on patrol. Officer 1, Officer 2, and the USPP Sergeant all stated that it was common at the time for the USPP's radio repeaters to malfunction. It was, however, unusual for USPP officers to be assigned to ride in the same patrol vehicle, and most USPP officers, including Officer 1 and Officer 2, did so infrequently. The USPP Sergeant has since retired from the USPP.

<sup>10</sup> We found no evidence suggesting that the USPP Sergeant's decision to allow Officer 2 to attend to this personal errand was related to the USPP Sergeant's decision to assign the officers to ride in the same patrol vehicle. The USPP Sergeant's authorization of the use of a Government-owned vehicle for this purpose is beyond the scope of this investigation.

<sup>11</sup> Ghaisar was not identified until after the shooting, and none of the individuals described in this report knew the identity of the driver of the SUV until after Ghaisar was transported to the hospital. For clarity, however, we refer to him by name throughout the description of events in this report.

**Figure 1: Map Showing Approximate Locations of the Motor Vehicle Accident and Subsequent Events**



The 911 operator instructed the rideshare driver to pull over and wait for a police officer, which the rideshare driver did, stopping on the GW Parkway near Slater's Lane, in Alexandria, Virginia (see Figure 1, Point 2). Another USPP officer was dispatched to the rideshare car's location, and the rideshare driver was subsequently cited for failure to maintain proper control of his vehicle. Neither the rideshare driver nor the passenger reported any injuries, but the rideshare driver's car had front-end damage and was smoking. The information about damage to the rideshare driver's car was not relayed to Officer 1 or Officer 2 before or during the pursuit.

The passenger's 911 call was routed to the USPP's Communications Section. A USPP dispatcher radioed the officers directly and told them that the car driven by the rideshare driver was the striking vehicle, which was correct, but that the rideshare driver had fled the scene of the accident, which was incorrect. About one minute later, the dispatcher told the officers that the SUV, not the rideshare vehicle, had left the scene and that the SUV "should have rear-end damage." The dispatcher, however, revised her previous statement about which

vehicle had been the “striking vehicle” and incorrectly told them that the SUV had struck the rideshare driver’s car. (As discussed below, the dispatcher later corrected this statement prior to the officers’ first stop of Ghaisar). The dispatcher also provided information concerning the SUV’s direction (southbound on the GW Parkway), color, and license plate information.

### *3. The Officers Located the SUV Between Jefferson and Green Streets*

At the time they received the dispatcher’s call, the officers were in the Jones Point area of Alexandria, Virginia, heading back to the USPP’s District 2 Substation in McLean, Virginia (see Figure 1, Point 3). Officer 2 was driving his personal vehicle, which he had just retrieved from the repair shop, while Officer 1 followed him in the USPP cruiser. Both officers stated that, when they received the dispatcher’s initial radio call, Officer 2 quickly parked his personal vehicle and got into the front passenger seat of the USPP cruiser driven by Officer 1. Officer 1 then turned right onto northbound Washington Street, which is part of the GW Parkway,<sup>12</sup> and they began looking for the SUV.

Within minutes of the dispatcher’s 7:32 p.m. call, the officers spotted the SUV traveling southbound on the GW Parkway between Jefferson and Green Streets (see Figure 1, Point 4) and, according to the officers’ statements to us, they began attempting to conduct a traffic stop of the SUV based on their belief that the driver of the SUV committed a felony by leaving the scene of the accident.<sup>13</sup>

At 7:34 p.m., Officer 2 radioed the dispatcher that they had located the SUV. Several seconds after Officer 2 did so, the dispatcher again corrected the prior transmissions and stated that the black SUV was not the striking vehicle. Officer 2 responded, “10-4,” acknowledging that he received the dispatcher’s corrected information.

At the same time, one of the officers activated the USPP cruiser’s lights and sirens, and Officer 1 made a U-turn onto the southbound side of the GW Parkway to get behind the SUV. Both officers said that, as they activated the lights and sirens and made the U-turn, all other vehicles in the area came to a stop or attempted to move out of the way of the USPP cruiser. The SUV, however, did not stop or pull over.

After making the U-turn, Officer 1 continued driving southbound on the GW Parkway toward the SUV. Although not contained in the recordings of the radio transmissions from that evening, Officer 2 recalled that, as they continued down the GW Parkway and passed Alfred Street (see Figure 1, Point 5), he called out the USPP cruiser’s speed over the radio, which Officer 2 recalled being approximately 20 miles per hour (mph) over the posted 25 mph limit in that area. Officer 2 told us that, because he was the passenger officer, he assumed primary responsibility for operating the radios throughout the duration of the attempted stops of Ghaisar. Officer 1, meanwhile, drove the USPP cruiser throughout the evening of November 17, 2017.

### *4. The Officers Attempted to Conduct a Traffic Stop of Ghaisar Near Four Mile Run (Stop 1)*

During their OIG interviews, the officers said that, shortly after they crossed Alfred Street on the GW Parkway, the SUV switched from the left lane of travel to the right. The officers told us that, near a golf course at Four Mile Run, the SUV either slowed down or stopped in the right lane or shoulder (See Figure 1, Point 6).

The officers told us that Officer 1 then pulled the USPP cruiser to the driver side of the SUV, and the officers attempted to signal to Ghaisar by rolling down their windows and shouting commands that he pull over and stop. Both officers stated that Ghaisar was staring straight ahead and did not acknowledge or otherwise respond to their verbal commands. Officer 1 told us that Ghaisar appeared to be sweating, had a “glossy look,” and was staring straight ahead “like a zombie.”

Notwithstanding the officers’ commands, the officers told us that Ghaisar again began driving southward on the GW Parkway. According to the officers, the SUV soon moved back into the left lane and crossed over the

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<sup>12</sup> The GW Parkway becomes Washington Street within the city limits of Alexandria, Virginia.

<sup>13</sup> As discussed below, Officer 1 and Officer 2 told us that they had reason to believe that Ghaisar’s departure from the scene of a motor vehicle accident could constitute a felony under Virginia law.



double-yellow lines that divided the southbound from the northbound sides of the GW Parkway. Although there is no dashcam video from this time, the officers told us that both the front and rear driver side tires had been on the northbound side, and Officer 2 said that another motorist driving in the opposite direction appeared to have been forced to slow down to avoid a head-on collision with Ghaisar's SUV. Officer 1 recalled that the SUV then "swerved back into the right lane" of the southbound side of the GW Parkway immediately before a median that begins near Belle Haven Road.

Officer 1 told us that, around this time, the officers "talked about [Ghaisar's] impairment" and said that it "seemed like it was more than just alcohol" that was affecting his driving. Similarly, Officer 2 told us that he recalled both made comments to each other meant to indicate that Ghaisar "was under the influence of alcohol and/or drugs." Both officers also told us that they had considered at the time whether Ghaisar might have been suffering from some other medical issue. Both Officer 1 and Officer 2 said that, other than their comments to each other in the USPP cruiser, they did not communicate their belief that Ghaisar was impaired to anyone else during the pursuit, whether over the radio or otherwise.

Around this same time, Officer 2 used his handheld radio to contact the FCPD and request assistance in attempting to stop Ghaisar. The handheld radio allowed Officer 2 to communicate with the FCPD's central communications personnel but not with FCPD officers directly. Thus, to communicate with the FCPD and the USPP, Officer 2 was required to communicate the same information via two separate radios while also listening to different information through both systems.

#### *5. The Officers Began a "Vehicular Pursuit" of Ghaisar as Defined by USPP Policy*

Shortly after the SUV pulled away from Stop 1, at approximately 7:37 p.m., the USPP dispatcher asked the officers whether they were in a pursuit of the SUV, and Officer 2 confirmed that they were. As discussed more fully below, pursuant to the USPP's vehicular pursuit policy, a "[v]ehicular pursuit" occurs when the driver of a vehicle, "who is aware of the attempted stop of his/her vehicle, is attempting to evade apprehension."<sup>14</sup>

In addition to confirming their pursuit of Ghaisar, Officer 2 also advised the USPP dispatcher that he and Officer 1 were continuing to drive south on the GW Parkway, passing Tulane Drive at 49 mph with light traffic and clear weather conditions. The speed limit in this area was 45 mph. Several seconds later, an FCPD dispatcher asked the reason for the pursuit. Officer 2 responded to the FCPD dispatcher that it was for "fleeing from the scene of an accident at this point." Approximately 10 seconds later, Officer 2 advised FCPD dispatch that he and Officer 1 were "southbound coming up on Tulane Street 59 miles per hour[,] traffic's clear."

Both officers told us that they believed at the time of the events in question that pursuit of the SUV after Stop 1 was warranted for two reasons. First, the officers said they had reason to believe that Ghaisar had committed a felony by leaving the scene of an accident because, in Virginia, failing to stop when involved in a motor vehicle accident resulting in injuries or more than \$1,000 of damage is a felony.<sup>15</sup> Although both officers told us that they had not observed any damage to the SUV or received any information concerning injuries or damage to the rideshare driver's vehicle at the time, they said they based their belief about the damage on their experience in responding to motor vehicle accidents on the GW Parkway and other similar roadways and on their general knowledge of cars and how much it cost to fix them. Second, both officers asserted that, based on their observations of Ghaisar, his driving, and their awareness that he had been involved in a motor vehicle accident and then fled the scene, they believed he posed an imminent threat to the public if not immediately apprehended.

The USPP Sergeant told us that he monitored the pursuit via his USPP radio as required by relevant USPP policy. Further, although he had authority to terminate the pursuit, the USPP Sergeant said he allowed it to begin and continue because he believed it was warranted and permitted under the terms of the USPP's vehicular pursuit policy. In addition, the USPP Sergeant's supervisor (USPP Lieutenant) told the FBI during its

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<sup>14</sup> U.S. Park Police, G.O. 2205, "Vehicular Pursuits," § 2205.02(A) (revised June 3, 2015). At the time of the incident, G.O. 2205 consisted of a written policy dated January 20, 1997, and three updates making changes to that policy. As described above, the policy language referred to in this report reflects the USPP policies in effect on November 17, 2017.

<sup>15</sup> Under Virginia law, individuals who flee the scene of a motor vehicle collision resulting in damage of over \$1,000 or injuries may be convicted of a "Class 5 felony." Code of Va. §46.2-894.



investigation that he also monitored the pursuit over the radio and allowed it to continue.

#### *6. The Officers Attempted to Stop Ghaisar Near Tulane Drive (Stop 2)*

About a minute after Ghaisar drove away from Stop 1, an FCPD Lieutenant joined the pursuit to assist the USPP officers, positioning his patrol car behind their cruiser. At approximately the same time the FCPD Lieutenant joined the pursuit, Officer 2 radioed FCPD and asked if they had tire deflation devices (also known as stop sticks) available, but he did not receive a response.<sup>16</sup> Officer 2 told us that, when he saw the FCPD Lieutenant join the pursuit, he turned off the handheld radio that allowed him to communicate with FCPD dispatch because he assumed the FCPD Lieutenant would handle communications with FCPD.

The FCPD Lieutenant's patrol car was equipped with a dashcam and recorded the pursuit from the time he joined the pursuit until after the shooting.<sup>17</sup> This dashcam did not, however, record speed, and the officers' USPP cruiser was not equipped with speed-detecting radar.<sup>18</sup> Even so, Officer 1, Officer 2, and the FCPD Lieutenant all estimated that Ghaisar was driving approximately 10 mph over the posted 45 mph speed limit around the time the FCPD Lieutenant joined the pursuit. Neither Officer 1, Officer 2, the FCPD Lieutenant, nor any of the expert witnesses retained in connection with the criminal and civil court proceedings who reviewed the dashcam video identified any traffic violations, other than his increased speed, committed by Ghaisar during this particular time period.<sup>19</sup>

About 20 seconds after the FCPD Lieutenant joined the pursuit, a civilian vehicle in front of the SUV stopped in the right lane of travel. As the SUV came to a stop behind it, Officer 1 pulled the USPP cruiser slightly in front of and next to the SUV, on the SUV's driver side (See Figure 2).

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<sup>16</sup> Stop sticks are strips containing spikes that can be thrown down on a road to puncture and deflate the tires of an oncoming vehicle.

<sup>17</sup> The USPP cruiser driven by Officer 1 did not contain a dashcam and neither Officer 1 nor Officer 2 were assigned body worn cameras at the time. The USPP did not routinely use either in 2017, and there are no USPP video recordings of the pursuit.

<sup>18</sup> We were unable to independently determine the speed of the pursuit at any particular time. We found no indication that the FBI, Commonwealth of Virginia, or any of the multiple expert witnesses retained in connection with the criminal and civil litigation endeavored to independently analyze the FCPD dashcam video to assess the relative speeds of the vehicles involved in the pursuit.

<sup>19</sup> We independently reviewed the dashcam video and found that the FCPD Lieutenant's distance from the SUV and the USPP cruiser during this portion of the pursuit make it difficult to clearly see either vehicle.

**Figure 2: Vehicle Positions During Stop 2 at 7:38:21 p.m.**



Source: This image is a frame from the FCPD dashcam video. The date, time stamp, and title are included in the FCPD dashcam video.

Shortly after it stopped, the civilian vehicle drove away. As it did so, Officer 2 exited the USPP cruiser with his service weapon drawn and pointed it at Ghaisar through the driver side window. Officer 2 continued to approach the driver side door, and Officer 1 exited the USPP cruiser and began to draw his service weapon. Officer 2 said that, as he got out of the USPP cruiser and approached the SUV, he was shouting commands to Ghaisar to “stop,” “put the car in park,” and “open the door.” According to Officer 2, as he approached the SUV, Ghaisar put his hands up in an “X” formation over his face before returning them to the steering wheel. Officer 2 then grabbed the SUV’s driver side door handle with his left hand (i.e., the hand not holding his service weapon) and pulled on it several times.

While Officer 2’s hand was still on the driver side door, the SUV began to pull away, turning slightly to the right and around Officer 2 and the USPP cruiser. Officer 2 struck the SUV’s driver side window with his service weapon and let go of the door handle as the SUV drove away. As Officer 2 let go of the door handle, he dropped the flashlight he had been holding in his left hand. Officer 2 then retrieved his flashlight from the ground and Officers 1 and 2 got back into their USPP cruiser.

As the officers reentered their USPP cruiser, the FCPD Lieutenant drove around them and took the lead in the pursuit, which continued southbound on the GW Parkway. The FCPD Lieutenant remained in his FCPD vehicle throughout Stop 2, and he did not exit his vehicle until after the shooting.

#### *7. The Officers Attempted to Stop Ghaisar at the West Boulevard Drive Exit (Stop 3)*

As the pursuit continued southbound on the GW Parkway with the FCPD Lieutenant in the lead, the FCPD Lieutenant told FCPD dispatch that he did not believe the SUV was going to stop and requested the assistance of an FCPD helicopter.<sup>20</sup> Officer 1, Officer 2, and the FCPD Lieutenant all estimated that, following his departure from Stop 2, Ghaisar generally drove at a speed of approximately 10 to 15 mph over the posted

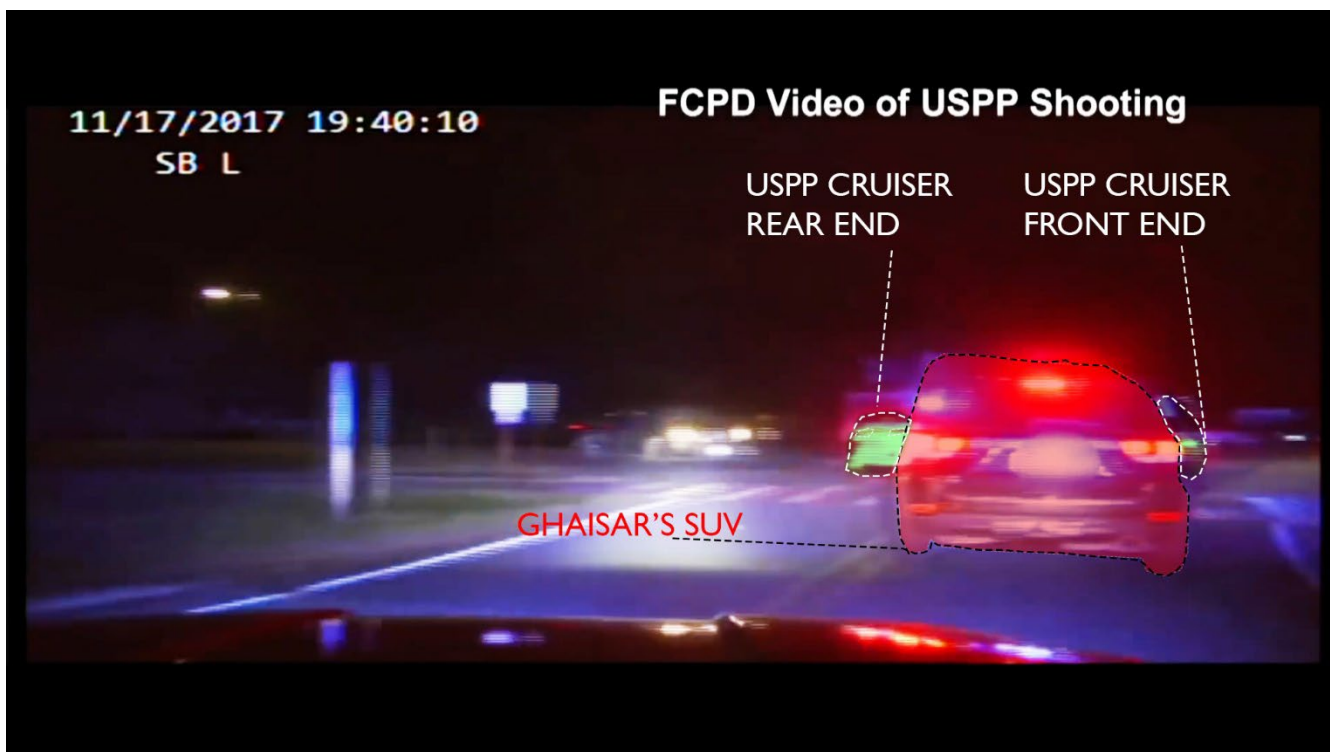
<sup>20</sup> At some point during the pursuit, personnel assigned to the USPP’s helicopter contacted USPP dispatch regarding the pursuit of Ghaisar and inquired if they should deploy it. Following a brief conversation, the USPP deployed the helicopter. This information was not transmitted to Officer 1 or Officer 2, and the timing of this deployment is unclear.

speed limit of 45 mph.

At 7:39:35 p.m., the officers passed the FCPD Lieutenant and retook the lead position in the pursuit.

Approximately 20 seconds after the officers retook the lead position, Ghaisar's SUV approached the West Boulevard Drive exit off of the GW Parkway, which has a speed limit of 45 mph in this area. Officer 2 advised USPP dispatch that Ghaisar was driving at 40 mph. Several seconds later, at 7:40:04 p.m., Ghaisar's SUV exited the GW Parkway at West Boulevard Drive. In a statement to the FBI, Officer 2 said that, as it did so, the SUV crossed the double-yellow dividing line.<sup>21</sup> As the SUV exited the GW Parkway, the officers, who were in the left lane of travel, also exited, followed by the FCPD Lieutenant. The SUV then came to a stop at a fork in the road at the top of the West Boulevard Drive exit, and Officer 1 pulled the USPP cruiser partially in front of the SUV. Officer 1 told us that he did this to ensure that Ghaisar understood he was being stopped. Officer 1 told us, "I just didn't want to believe he just wouldn't stop. I wanted to believe that he would just surrender and then stop." Figure 3 shows the relative positions of Ghaisar's SUV and the USPP cruiser at the beginning of Stop 3.

**Figure 3: Vehicle Positions During Stop 3 at 7:40:10 p.m.**



Source: This is a frame from the FCPD dashcam video. The date, time stamp, and title are included in the FCPD dashcam video. The OIG added dotted lines, shading, and notations for the USPP cruiser and Ghaisar's SUV.

After Officer 1 pulled the USPP cruiser partially in front of the SUV, Officer 2 exited the USPP cruiser from the passenger side, drew his service weapon, and approached the SUV's driver side door. Officer 1, meanwhile, exited the USPP cruiser from the driver side and approached the SUV's driver side door. Although Officer 1 placed his hand on his service weapon during this stop, he did not draw it. Officer 2 reached the SUV first and attempted to open the SUV's door with his left hand while his service weapon was in his right hand, pointed at the driver side window.

<sup>21</sup> We were unable to confirm this based on our review of the dashcam video.

While Officer 2's hand was touching the door, the SUV drove to the right around the USPP cruiser. Officer 2 kicked the SUV as it drove away.<sup>22</sup> The SUV made a right turn onto West Boulevard Drive, and the officers reentered their USPP cruiser and followed behind the SUV. The FCPD Lieutenant, who had remained in his FCPD patrol car throughout Stop 3, followed.

Officer 2 told us that, as he ran up to the SUV and shouted commands to Ghaisar, Ghaisar again briefly crossed his hands in front of his face before returning them to the steering wheel. According to Officer 2, each time Ghaisar did this, he did so without turning his head to look at Officer 2. Officer 1, meanwhile, stated that he had gotten out of his car to try to assist but had no time to draw his weapon before Ghaisar drove away from Stop 3.

#### *8. The Officers Pursued Ghaisar from West Boulevard Drive to Alexandria Avenue*

After Ghaisar departed Stop 3, he made a right turn onto West Boulevard Drive (northbound) and drove a short distance before turning left onto Alexandria Avenue (westbound) at a stop sign. Although not distinguishable on the dashcam video because of the SUV's distance from the FCPD Lieutenant's vehicle, both officers told us that the SUV did not stop or slow down for this stop sign. According to the summary of his interview with the FBI, the FCPD Lieutenant told the FBI that Ghaisar "blew through" this stop sign.

Officers 1 and 2 also estimated that, as he proceeded down Alexandria Avenue toward Fort Hunt Road, Ghaisar was driving at approximately 50 mph in an area with a posted speed limit of 25 mph. Similarly, the FCPD Lieutenant told the FBI that Ghaisar's speed at that time indicated to the FCPD Lieutenant that Ghaisar was now attempting to flee rather than simply refusing to stop.

At approximately 7:41:13 p.m., the pursuit passed another FCPD Officer, parked on the opposite side of Alexandria Avenue (eastbound), who was attempting to deploy stop sticks. Although the FCPD Officer's FBI interview summary reflects that the FCPD Officer told the FBI that Ghaisar had not been "going very fast," when we asked about Ghaisar's speed at the time, the FCPD Officer told us that it was "probably safe to say he was above the speed limit."

The FCPD Officer was unable to deploy the stop sticks, and the pursuit passed him and continued down Alexandria Avenue toward Fort Hunt Road. After securing his stop sticks in his car, the FCPD Officer made a U-turn and began following Ghaisar and the other officers.

#### *9. The Officers Pulled in Front of the SUV at Alexandria Avenue and Fort Hunt Road (Stop 4)*

At approximately 7:41:18 p.m., Ghaisar stopped his SUV at a stop sign at the intersection of Alexandria Avenue and Fort Hunt Road. Officer 1 drove the USPP cruiser around the driver side of the SUV, stopped briefly in front and slightly to the left of the SUV, then proceeded a few feet forward such that the USPP cruiser was fully in front of the SUV. When the USPP cruiser came to a stop at approximately 7:41:26 p.m., it was nearly perpendicular to and directly in front of the SUV, with its passenger side facing the SUV. Figure 4 shows the relative positions of the USPP cruiser and Ghaisar's SUV at Stop 4.<sup>23</sup>

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<sup>22</sup> In a proffer to the FBI, Officer 2's attorney stated that Officer 2 had kicked the SUV in an effort to stop it.

<sup>23</sup> The FCPD Lieutenant's vehicle is behind Ghaisar's SUV at this stop.

**Figure 4: Vehicle Positions During Stop 4 at 7:41:28 p.m.**



Source: This is a frame from the FCPD dashcam video. The date, time stamp, and title are included in the FCPD dashcam video.

During his OIG interview, Officer 1 told us he initially intended to stop in front and slightly to the left of the SUV, but that Officer 2 had encouraged him to move the USPP cruiser fully in front of the SUV. Officer 1 recalled that there was a deep ditch to the SUV's right, and Officer 1 recalled Officer 2 saying "there's a ditch" or words to that effect. Officer 1 said he understood this to mean that he should pull the USPP cruiser farther in front of the SUV to block Ghaisar's ability to proceed to the right of the USPP cruiser. Officer 1 stated that he was concerned about doing this because it placed Officer 2, who was in the front passenger seat, directly in the path of the SUV. He told us he nevertheless did so because he "figured [Officer 2] had a plan" about how to get out of the way once they stopped. Officer 2 stated that he had given these instructions to Officer 1 to prevent Ghaisar from quickly departing from the stop again. He said that he did not believe that Ghaisar was completely blocked by the ditch but that the ditch would make it "tougher" for Ghaisar to get away.

#### *10. The Officers Exited the USPP Cruiser and Fired Their Service Weapons at Ghaisar*

As set forth more fully below, several seconds after Officer 1 stopped the USPP cruiser in front of the SUV, Officer 2 and then Officer 1 exited it, at 7:41:29 p.m. and 7:41:33 p.m., respectively. Both officers approached the SUV with their service weapons drawn. The FCPD Lieutenant remained in his FCPD cruiser although his dashcam continued to record. According to Officer 1, he and Officer 2 did not discuss how they planned to approach the SUV at this or any of the previous stops. They said they had not communicated much about their strategy or tactics concerning the pursuit or their efforts to stop the SUV before or during the pursuit.

Both officers told us they believed approaching the SUV with their service weapons drawn was warranted because they believed Ghaisar posed an imminent risk to the public's safety if not stopped. They stated they believed this because of Ghaisar's driving behavior, such as his flight from the scene of an accident for unknown reasons; speeding and crossing of the double yellow lines; apparent impairment; and departure from Stop 2 when Officer 2 was touching his SUV.

As described in more detail below, the officers ultimately discharged their service weapons a total of 10 times during the following 25 seconds. Figure 5 contains a list of the times each shot was fired by each officer.



**Figure 5: Timing of Shots Fired by Officers**

Shot No.	Time	Officer
1	7:41:33 p.m.	Officer 2
2	7:41:34 p.m.	Officer 2
3–4	7:41:35 p.m.	Officer 2
5	7:41:36 p.m.	Officer 1
6–7	7:41:42 p.m.	Officer 1
8–9	7:41:57 p.m.	Officer 1 and Officer 2 (simultaneously)
10	7:41:58 p.m.	Officer 1

*a. Shots 1–4 (Officer 2)*

As noted above, Officer 2 exited the USPP cruiser at 7:41:29 p.m., leaving the passenger door of the USPP cruiser open. Officer 2 told us that while exiting the USPP cruiser, he shouted commands at Ghaisar and placed himself almost “directly in front of” Ghaisar’s SUV. Officer 2 said he did this so that Ghaisar “could see [him] this time since he kept on moving.”

Figure 6 contains a still image from the dashcam video at 7:41:30 p.m., immediately following Officer 2’s exit from the USPP cruiser.

**Figure 6: Vehicle and Officer Positions During Stop 4 at 7:41:30 p.m.**



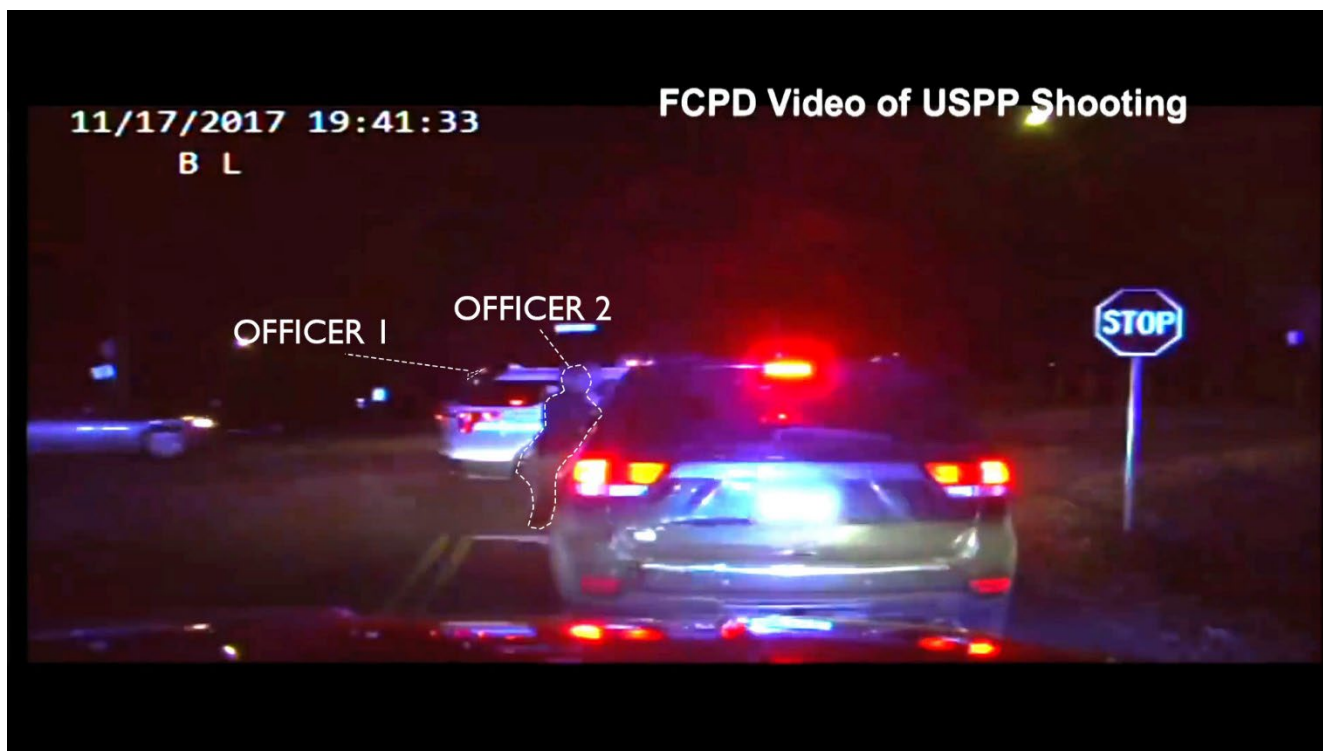
Source: This is a frame from the FCPD dashcam video. The date, time stamp, and title are included in the FCPD dashcam video. The OIG added a dotted line, shading, and a notation for Officer 2.

The dashcam video shows that, approximately three to four seconds after Officer 2 exited the USPP cruiser (i.e., at approximately 7:41:33 p.m.), the SUV’s brake lights went out and the SUV began to move slowly forward and to the right while Officer 2 stood two to three feet from the SUV’s front driver side corner. The dashcam video shows that Officer 2 fired his service weapon at the SUV for the first time at 7:41:33 p.m.

(Shot 1), whereupon the SUV's brake lights illuminated indicating that Ghaisar had applied the brakes. Officer 2 told us that Ghaisar's hands were initially up in an "X" pattern in front of his face, but then he placed them back down on the steering wheel, and "the vehicle started to move forward" toward Officer 2. Officer 2 said he then fired a shot because he feared the moving SUV would kill him.

At the same time, Officer 1 can be seen for the first time during this stop, exiting the USPP cruiser from the driver side and moving around its rear end toward the front driver side of the SUV (see Figure 7).

**Figure 7: Vehicle and Officer Positions During Shot 1 at 7:41:33 p.m.**



Source: This is a frame from the FCPD dashcam video. The date, time stamp, and title are included in the FCPD dashcam video. The OIG added a dotted line and notations for Officer 1 and Officer 2.

At 7:41:34 p.m., the SUV again began to move slowly forward and to the right while Officer 2 stood two to three feet from the front driver side corner. Officer 2 fired one additional shot at the SUV (Shot 2) and then two additional shots (Shots 3 and 4) in the next second at 7:41:35 p.m. (see Figure 8). Although the SUV continued to move slowly forward and to the right, Officer 2 does not appear (in the FCPD dashcam video) to have attempted to move out of the SUV's way.



**Figure 8: Vehicle and Officer Positions During Shots 3 and 4 at 7:41:35 p.m.**



Source: This is a frame from the FCPD dashcam video. The date, time stamp, and title are included in the FCPD dashcam video. The OIG added dotted lines and notations for Officer 1 and Officer 2.

Officer 2 told us that, after he fired his first shot, the SUV initially stopped but then again began to move forward, and he therefore fired additional shots.<sup>24</sup> Officer 2 stated that he continued to fire because he believed himself to be in between the SUV and the USPP cruiser, and thus, in danger of being crushed between the two vehicles.

*b. Shots 5–7 (Officer 1)*

During his OIG interview, Officer 1 stated that, as he exited the USPP cruiser from the driver side door, he heard a gunshot. Officer 1 said he then saw Officer 2, who appeared to be in front of the moving SUV, fire his service weapon several times. Officer 1 said that, as Officer 2 fired, he unholstered his own service weapon and fired one shot at the SUV, at which point the SUV came to a stop. Officer 1 fired this shot (Shot 5) at 7:41:36 p.m. through the SUV's driver side window (see Figure 9).

<sup>24</sup> Officer 2 could not recall how many shots he fired during this interval but did not dispute that he discharged his service weapon three additional times in this time period.

**Figure 9: Vehicle and Officer Positions During Shot 5 at 7:41:36 p.m.**



Source: This is a frame from the FCPD dashcam video. The date, time stamp, and title are included in the FCPD dashcam video. The OIG added dotted lines and notations for Officer 1 and Officer 2.

Although the dashcam video shows that Officer 2 was not in front of the SUV when Officer 1 fired Shot 5, Officer 1 stated that, from his “angle and [ ] juxtaposition,” Officer 2 appeared to be directly in front of the moving SUV when he fired. Officer 1 specifically recalled seeing the SUV’s lights reflecting off Officer 2’s torso and being concerned that Officer 2 would be crushed between the moving SUV and the USPP cruiser.

The dashcam video shows that, after Officer 1 fired Shot 5, he remained at the driver side of the SUV, with his service weapon drawn and pointed at the SUV’s driver side window. Officer 2, however, holstered his service weapon, moved around to the driver side door, and attempted to open it.

At approximately 7:41:41 p.m., as Officer 2 was attempting to open the front driver side door, the SUV began to move forward and to the right. As it did, Officer 2 moved from his position at the driver side front door to the front of the SUV, shutting the USPP cruiser’s front passenger door as he moved between the two vehicles. At 7:41:42 p.m., as Officer 2 moved between the two vehicles, Officer 1 fired two shots (Shot 6 and Shot 7) into the front driver side window of the SUV (see Figure 10). Officer 1 told us that he fired these shots because Officer 2 was in front of the moving SUV, and he believed Officer 2 could be killed or seriously injured if the SUV did not stop.

**Figure 10: Vehicle and Officer Positions During Shots 6 and 7 at 7:41:42 p.m.**



Source: This is a frame from the FCPD dashcam video. The date, time stamp, and title are included in the FCPD dashcam video. The OIG added dotted lines and notations for Officer 1 and Officer 2.

*c. Shots 8–10 (Both Officers)*

Following Shots 6 and 7, Officer 2 remained at the front of the SUV, which had moved to the right such that Officer 2 was no longer in front of the USPP cruiser. In addition, the FCPD Officer, who had by then arrived on scene from where he had attempted to deploy the stop sticks, approached from the left with his service weapon drawn. Officer 1, meanwhile, remained at the driver side door of the SUV and attempted to open it with his left hand, while his service weapon remained in his right hand, pointed at the front driver side window.

Approximately 13 seconds later, at 7:41:57 p.m., the SUV again began to move slowly forward and to the right and Officer 1 fired Shot 8 and Officer 2 fired Shot 9 (see Figure 11). Officer 2 told us he fired Shot 9 because he believed the SUV was about to hit him. In Officer 2's view, Ghaisar had "used the vehicle as a weapon." As such, Officer 2 said, "I responded with deadly force because I was presented with deadly force."

**Figure 11: Vehicle and Officer Positions During Shots 8 and 9 at 7:41:57 p.m.**

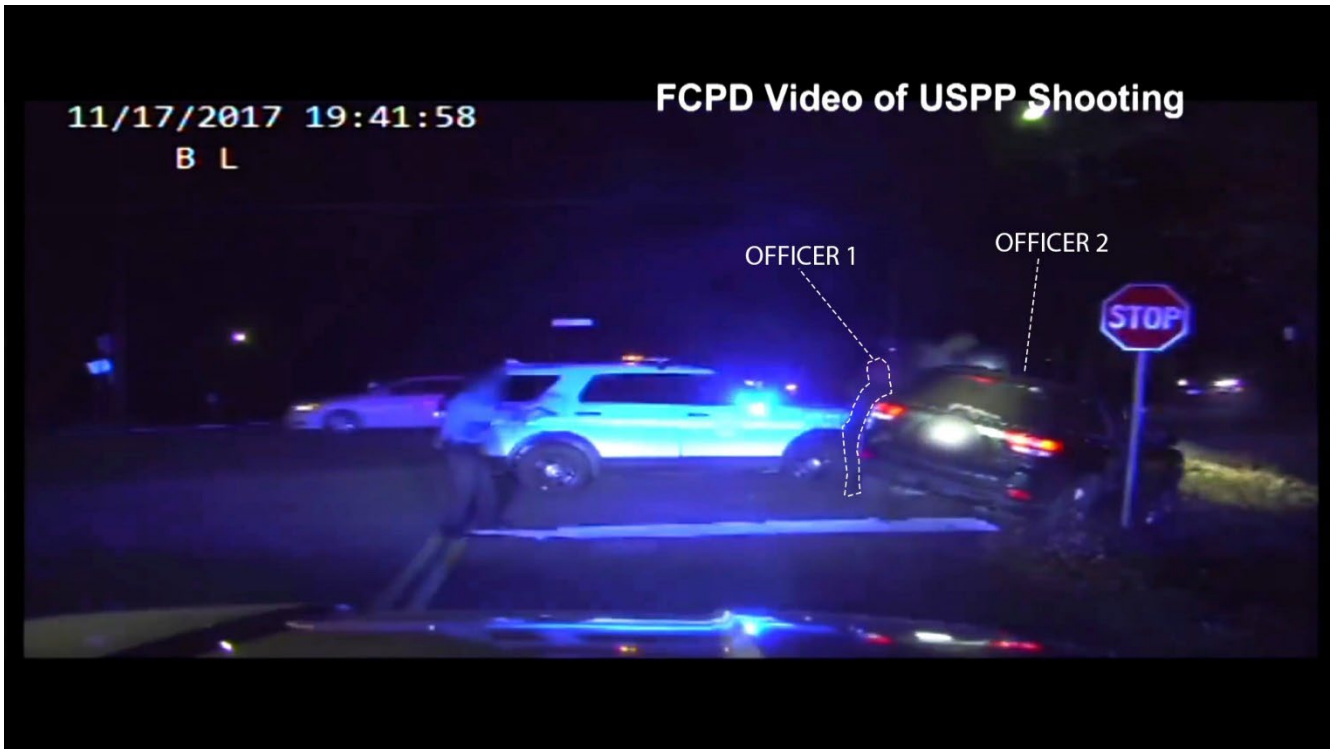


Source: This is a frame from the FCPD dashcam video. The date, time stamp, and title are included in the FCPD dashcam video. The OIG added dotted lines and notations for Officer 1 and Officer 2.

The SUV continued to move forward to the right, away from the officers and the USPP cruiser. At 7:41:58 p.m., Officer 1 fired Shot 10 (see Figure 12).



**Figure 12: Vehicle and Officer Positions During Shot 10 at 7:41:58 p.m.**



Source: This is a frame from the FCPD dashcam video. The date, time stamp, and title are included in the FCPD dashcam video. The OIG added dotted lines and notations for Officer 1 and Officer 2.

After Shot 10 was fired, the SUV stopped, then tilted on its side and rolled into the ditch with its driver side wheels in the air.

Officer 1 told us that he fired Shots 8 and 10 in defense of Officer 2, who he believed to be in the path of, and thus in imminent danger from, the moving SUV. While the dashcam video shows Officer 2 to the left of the SUV when these shots were fired, Officer 1 stated that, from his perspective at the time, Officer 2 appeared to be in front of the SUV.

The evidence showed that Ghaisar was struck four times in the head and once in the wrist.

Neither the FCPD Lieutenant, who remained in his vehicle throughout the shooting, nor the FCPD Officer discharged their service weapons.

### *11. Events Following the Shooting*

After the shooting, Ghaisar was transported to the hospital. He died 10 days later, on November 27, 2017, of gunshot wounds to the head. A forensic pathologist performed a toxicology test on Ghaisar's blood, which was collected shortly after Ghaisar's arrival at the hospital. Ghaisar's blood tested positive for marijuana but negative for alcohol or any other substance included in the test. Officers who responded to the scene found marijuana and a glass pipe in Ghaisar's SUV following the pursuit. In addition, at least one FCPD officer who responded after the shooting reported a strong smell of marijuana coming from Ghaisar's SUV. Officers on the scene found no weapons in the SUV or on Ghaisar at the conclusion of the pursuit.

## **B. Analysis**

### *1. Overview of Approach and Conclusions*

We analyzed whether the officers' uses of force during the pursuit, subsequent stops, and ultimate shooting of Ghaisar complied with USPP policies in place on November 17, 2017. We did this by examining the totality of

the evidence available to us under a “more probable than not” standard, i.e., whether the evidence supported a finding that it was “more probable than not” that the officers complied with USPP policies.

The USPP’s use of force policy defines what constitutes an officer’s use of force broadly, to include verbal commands, physical force, and deadly force.<sup>25</sup> Thus, nearly all of the officers’ interactions with Ghaisar on November 17, 2017, could appropriately be analyzed under the USPP’s use of force policy. In instances where more specific USPP policies applied to the officers’ actions, however, we analyzed their actions under those specific policies. We did this because these specific policies were consistent with the general standards set forth in the USPP’s use of force policy but more completely addressed the conduct at issue.<sup>26</sup>

We also emphasize that, in light of the myriad situations law enforcement officers encounter while operating in the field, USPP policies grant officers wide (though not unfettered) discretion regarding how they conduct their law enforcement operations. That is, USPP policies do not set forth the specific tactics and techniques USPP officers must use in every situation they might encounter that could conceivably fall within the policy in question. Our analysis is therefore limited to the standards set forth in applicable law and policy. We do not assess the officers’ discretionary tactics and techniques or substitute our judgment for that of the officers.

Our findings regarding the officers’ conduct on November 17, 2017, are addressed below in the order in which the conduct generally occurred. In summary, we found that the officers’ initiation and continued pursuit of Ghaisar on November 17, 2017, was consistent with the USPP’s vehicular pursuit policy in place at the time. With respect to other actions by the officers during the pursuit, we concluded that the officers’ drawing of their service weapons during the attempted stops of Ghaisar did not violate the USPP’s firearms policy. We concluded, however, that Officer 2’s use of his service weapon to strike the SUV’s window violated the USPP’s firearms policy. We also determined that the USPP’s vehicular pursuit policy did not require the officers to use felony traffic stop techniques during their pursuit and subsequent stops of Ghaisar. We also concluded that the tactics the officers employed during the pursuit and subsequent stops of Ghaisar did not constitute a “roadblock” as that term is defined under the USPP’s roadblocks policy, and thus, that policy did not apply.

With respect to the final stop (Stop 4), we concluded that the officers’ use of deadly force against Ghaisar did not violate the USPP’s use of force policy. We made this determination because, based on our independent assessment of the totality of the evidence, we concluded that it was more likely than not that both officers reasonably believed that Ghaisar posed an imminent danger of death or serious bodily harm to Officer 2 in light of the facts and circumstances confronting the officers at the time the shots were fired.

## *2. The Officers’ Initiation and Continued Pursuit of Ghaisar Was Consistent With the USPP’s Vehicular Pursuit Policy*

### *a. Governing Standards*

Under the USPP’s vehicular pursuit policy, a vehicular pursuit is defined as “an incident that involves a law enforcement officer who, while operating a motor vehicle, attempts to apprehend one or more occupants of another moving vehicle while the driver, who is aware of the attempted stop of his/her vehicle, is attempting to evade apprehension.”<sup>27</sup>

At the time of the shooting, vehicular pursuits were “authorized” only in two circumstances: 1) when “the offense for which the suspect is being pursued is . . . [a] felony, or the officer has a reason to believe a felony has occurred or is occurring” or 2) when “[t]he suspect presents a clear and immediate threat to public safety if not immediately apprehended.”<sup>28</sup> The USPP’s vehicular pursuit policy states that “[t]he act of fleeing and

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<sup>25</sup> U.S. Park Police, G.O. 3615, “Use of Force,” § 3615.03.

<sup>26</sup> These more general standards include the requirement that uses of force be objectively reasonable, and that the level of force be modulated (i.e., escalated or deescalated) “depending on the dynamics of the situation” and proportional (i.e., “the minimum level of force necessary to control a situation”). U.S. Park Police, G.O. 3615, “Use of Force,” § 3615.02.

<sup>27</sup> U.S. Park Police, G.O. 2205, “Vehicular Pursuits,” § 2205.02(A).

<sup>28</sup> U.S. Park Police, G.O. 2205, “Vehicular Pursuits,” § 2205.01.

eluding the police shall not in itself be a pursuable offense.”<sup>29</sup> The policy also states, “[i]n any pursuit situation, the necessity of an immediate apprehension must outweigh the level of danger created by the pursuit.”<sup>30</sup>

Under the USPP’s vehicular pursuit policy, “[e]ach officer shall be responsible for determining the need to initiate a pursuit,” and “[t]he decision to initiate a pursuit must be based on the pursuing officer’s conclusion that the immediate danger to the public created by the pursuit is less than the immediate or potential danger to the public should the suspect remain at large.”<sup>31</sup>

The USPP’s vehicular pursuit policy further provides that the factors listed below “shall be considered when a vehicular pursuit is initiated” and “shall be continuously re-evaluated during the pursuit to determine whether to continue or terminate the pursuit.”<sup>32</sup> These factors are:

- a) The likelihood of a successful apprehension.
- b) The performance capabilities of the pursuit vehicle, and the officer’s driving skills.
- c) The condition of the road surface upon which the pursuit is being conducted and the officer’s familiarity with the area.
- d) The amount of vehicular and pedestrian traffic in the area, and the composition of the area, e.g., schools, business districts, residential.
- e) Weather conditions, visibility, time of day, and day of the week.<sup>33</sup>

Under the USPP’s vehicular pursuit policy, a pursuing officer has broad discretion in determining whether to continue or terminate a pursuit based on the officer’s consideration of the above factors, including whether “[t]he level of danger posed to the public, the officers, or the violator by continued pursuit outweighs the necessity of an immediate apprehension.”<sup>34</sup> However, USPP officers’ immediate supervisors are “responsible for directing, monitoring, evaluating, and terminating the pursuit, as appropriate.”<sup>35</sup> Like the officers themselves, supervisors have a good deal of discretion in determining whether to terminate a pursuit. The applicable USPP policy states termination “may be the most prudent course of action” in some situations, which “may include” when the danger posed to the public by the pursuit outweighs the need for immediate apprehension; when the subject’s identity has been established and the need for apprehension is no longer present; or where the distance between vehicles is so great that further pursuit is futile.<sup>36</sup>

As of November 2017, USPP and FLETC training materials contained little guidance on an officer’s decision to initiate or continue a vehicular pursuit and generally left that decision to the discretion of the individual officer or his or her supervisor under the applicable agency’s policy.<sup>37</sup>

#### *b. Analysis of the Pursuit*

As an initial matter, we found that, under the USPP’s vehicular pursuit policy’s definition of “[v]ehicular pursuit,” the officers’ “pursuit” of Ghaisar began after Ghaisar departed from Stop 1 because that is the point at which a

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<sup>29</sup> U.S. Park Police, G.O. 2205, “Vehicular Pursuits,” § 2205.01.

<sup>30</sup> U.S. Park Police, G.O. 2205, “Vehicular Pursuits,” § 2205.01.

<sup>31</sup> U.S. Park Police, G.O. 2205, “Vehicular Pursuits,” §§ 2205.04(A)(1)-(A)(2).

<sup>32</sup> U.S. Park Police, G.O. 2205, “Vehicular Pursuits,” § 2205.04(A)(3).

<sup>33</sup> U.S. Park Police, G.O. 2205, “Vehicular Pursuits,” § 2205.04(A)(3).

<sup>34</sup> U.S. Park Police, G.O. 2205, “Vehicular Pursuits,” § 2205.04(A)(4)(a).

<sup>35</sup> U.S. Park Police, G.O. 2205, “Vehicular Pursuits,” § 2205.06(B).

<sup>36</sup> U.S. Park Police, G.O. 2205, “Vehicular Pursuits,” § 2205.04(A)(4).

<sup>37</sup> See, e.g., FLETC Driver and Marine Division, Instructing Pursuit Termination Techniques Lesson Plan at 4 (Jan. 2007) (stating that the decision when to pursue a fleeing suspect “rests with the individual officers, supervisors, and agency policy”); FLETC Driver and Marine Division, Instructing Pursuit Termination Techniques Lesson Plan at 4 (Apr. 2008) (stating the same).



preponderance of the evidence established that Ghaisar could be reasonably construed as “attempting to evade apprehension” by the officers.<sup>38</sup> Specifically, during Stop 1, Officer 1 drove the USPP cruiser next to the SUV, which was either stopped or slowed, and both Officer 1 and Officer 2 shouted commands to Ghaisar, who then drove away. The officers then followed Ghaisar, thereby initiating a vehicular pursuit as that term is defined in the USPP’s vehicular pursuit policy.

We further concluded that the officers’ initiation and continued pursuit of Ghaisar was consistent with the USPP’s vehicular pursuit policy under either of the two bases set forth in the policy. First, the officers had reason to believe a felony had occurred; and second, the officers reasonably believed that Ghaisar presented a clear and immediate threat to public safety if not immediately apprehended.

With respect to the first basis, Officer 1 and Officer 2 both stated that they had reason to believe Ghaisar committed a felony when he left the scene of the collision with the rideshare driver (i.e., fleeing the scene of a motor vehicle accident resulting in injuries or over \$1,000 in damage).<sup>39</sup> First, we note that, by the time the officers began the pursuit of Ghaisar, USPP dispatch had corrected its prior transmissions about the motor vehicle accident, and the officers had been told that the SUV had not been the striking vehicle but had fled the scene of the accident. Second, the evidence showed that, before the officers located Ghaisar, USPP dispatch advised them that the SUV “should have rear-end damage.” In addition, while both officers acknowledged they had no information concerning injuries or damage to the other vehicle and had not observed damage to Ghaisar’s SUV, Officer 1 and Officer 2 provided support for their estimate of the damage. Specifically, both officers told us that, based on their experience in responding to motor vehicle accidents and their knowledge of vehicle repair costs generally, any motor vehicle accident on the GW Parkway was likely to result in damage over \$1,000, which is the threshold for a felonious hit and run under Virginia law.

Moreover, we note that the USPP Sergeant and the USPP Lieutenant, both of whom were monitoring the pursuit, were authorized by the USPP’s vehicular pursuit policy to terminate the pursuit if they believed it was not permitted under that policy, which they did not do. During their interviews with us, Officer 1 and Officer 2 both reported that they believed the USPP Sergeant and/or the USPP Lieutenant were monitoring the pursuit as it was occurring, and that they would have terminated their pursuit of Ghaisar if either the Sergeant or Lieutenant had directed them to do so. When we interviewed the USPP Sergeant, he told us that he believed the pursuit was permitted based on what the officers knew at the time (i.e., that a rear-end collision resulting in vehicular damage had occurred on the GW Parkway). In addition, according to the summary of his interview with the FBI, the USPP Lieutenant told the FBI that the officers’ pursuit of Ghaisar was permissible under the USPP’s vehicular pursuit policy in place at that time.<sup>40</sup>

We therefore concluded that the officers’ initiation and continuation of the pursuit of Ghaisar after Stop 1 was consistent with the USPP’s vehicular pursuit policy’s provision allowing for vehicular pursuits where “the officer has reason to believe a felony has occurred.”<sup>41</sup>

A separate basis authorizing a vehicular pursuit under the USPP’s vehicular pursuit policy occurs when the suspect being pursued “presents a clear and immediate threat to public safety if not immediately apprehended” and the pursuing officers conclude “that the immediate danger to the public created by the pursuit is less than

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<sup>38</sup> See U.S. Park Police, G.O. 2205, “Vehicular Pursuits,” § 2205.02(A) (defining “vehicular pursuit” as “an incident that involves a law enforcement officer who, while operating a motor vehicle, attempts to apprehend one or more occupants of another moving vehicle while the driver, who is aware of the attempted stop of his/her vehicle, is attempting to evade apprehension.”).

<sup>39</sup> As noted above, Virginia law classifies failing to stop at the scene of a motor vehicle collision resulting in injuries or in damage to property of over \$1,000 as a “Class 5 felony.” Code of Va. §46.2-894.

<sup>40</sup> The current version of the USPP’s vehicular pursuit policy, adopted on June 8, 2018, would not have permitted a vehicular pursuit under the circumstances in this case. The new policy states pursuits are “authorized” only if “[t]he suspect is wanted for, or suspected of committing a felony offense involving violence or the threat of violence to another person [which] includes but is not limited to homicide, sexual assault, robbery, felony assault, felony sex offense, and abduction” or “the suspect is wanted for or has committed a felony and is in known possession of a firearm.” In addition, under the current version of the policy, officers are required to “obtain supervisory approval prior to initiating, engaging in, assisting partner agencies with, or continuing pursuits” under any other circumstances. U.S. Park Police, G.O. 2205, “Vehicular Pursuits,” § 2205.01 (June 8, 2018).

<sup>41</sup> During their OIG interviews, both officers indicated that they believed pursuit was authorized under an earlier version of the USPP’s vehicular pursuit policy which expressly listed “Driving While Intoxicated” and “hit and run” as examples of “clear and immediate threat[s] to public safety.” Although USPP had, in 2002, directed a “pen and ink” change telling officers to draw a line through the examples in their own copies of the policy, thus deleting them, we concluded that the pursuit was nevertheless authorized under the policy’s “threat to public safety” language, which the USPP did not change. U.S. Park Police, G.O. 2205, “Vehicular Pursuits,” § 2205.01(B) (revised Dec. 11, 2002).

the immediate or potential danger to the public should the suspect remain at large.”<sup>42</sup> We found that the officers’ vehicular pursuit of Ghaisar was also permitted under this basis.

The officers stated that they believed Ghaisar presented a clear and immediate threat to public safety if not immediately apprehended and that the need to apprehend Ghaisar outweighed the risk of the pursuit to the public. The officers stated that they drew this conclusion because Ghaisar appeared to be driving while impaired or under the influence of drugs or alcohol, had fled the scene when the officers tried to execute a legal traffic stop, was speeding, and was driving erratically. Both officers stated that they observed Ghaisar depart from Stop 1 in an unsafe manner and had commented to each other that they believed that Ghaisar was impaired. Officer 1 believed that by Ghaisar crossing the double-yellow line while traveling southbound, he was in danger of causing a head-on collision with northbound traffic. Officer 2 also told us that he believed Ghaisar was a threat to the public if he continued to drive because he believed Ghaisar was impaired or under the influence of drugs or alcohol. In addition, both officers consistently stated that Ghaisar remained facing forward not looking at the officers even as they shouted commands at him, and one officer commented that he appeared sweaty, glossy-eyed and stared straight ahead “like a zombie.”

The evidence also showed that the officers appropriately considered the requisite factors—such as the officers’ and their vehicle’s capabilities, their likelihood of successfully apprehending the suspect, vehicular and pedestrian traffic, and road and traffic conditions—in determining whether to initiate and continue the pursuit. For example, immediately following Stop 1, Officer 2 told both USPP and FCPD dispatch of their speed, location, and traffic conditions. During their OIG interviews, the officers also described how various characteristics of the roadways and areas in which the pursuit proceeded influenced their assessment of the danger posed by Ghaisar. In particular, both officers noted that the street Ghaisar turned onto immediately before Stop 4, Alexandria Avenue, is a narrow, two-lane road, located in a high-traffic, residential neighborhood with no sidewalk, and that it was a time of night (approximately 7:30 p.m.) when people are typically returning home from work and other activities. The officers both said they believed at the time of the pursuit that Ghaisar’s “erratic” behavior and driving posed an imminent danger to residents as well as to motorists and pedestrians who could be in the area. Officer 1 also stated that, during the final stop, he believed they “were gonna apprehend [Ghaisar] successfully without incident.”

There was some conflicting evidence regarding Ghaisar’s driving behavior and the risk he posed to the public. For example, during the pursuit, neither Officer 1 nor Officer 2 ever communicated to anyone other than each other that they believed Ghaisar to be impaired or under the influence of drugs and alcohol.<sup>43</sup> In addition, when an FCPD dispatcher asked about the basis for the pursuit, Officer 2 mentioned only “fleeing from the scene of an accident” in his reply. Similarly, according to the summary of his FBI interview, the USPP Lieutenant told the FBI that, based on the radio transmissions he heard during the pursuit, he did not have the impression that the SUV was posing a danger to the public. Likewise, the FCPD Lieutenant also told us that he had not seen Ghaisar driving in an erratic manner or endangering anyone on the roadway.

Overall, however, the evidence we reviewed tended to corroborate the officers’ statements. Specifically, during his OIG interview, Officer 2 told us that he regretted not advising FCPD and USPP dispatch regarding his concerns about Ghaisar’s driving but explained that it had been challenging to manage both the pursuit itself and two different radios simultaneously. In addition, we independently reviewed the dashcam video taken by the FCPD Lieutenant and found at least one instance in which Ghaisar did cross a double yellow line into the oncoming lane of traffic. Moreover, while the FCPD Lieutenant had a different opinion from the USPP officers regarding the risk posed by Ghaisar’s driving, all officers involved in the pursuit agreed that Ghaisar was driving at least 10 to 15 miles per hour over the speed limit. We further note that the FCPD Lieutenant was further away from Ghaisar than the USPP officers during most of the pursuit and did not join the pursuit until Stop 2. Thus, the USPP officers were closer and had a better opportunity to observe Ghaisar’s driving.

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<sup>42</sup> U.S. Park Police, G.O. 2205, “Vehicular Pursuits,” §§ 2205.01 and 2205.04.

<sup>43</sup> The USPP’s vehicular pursuit policy also requires that officers who initiate pursuits immediately notify the USPP’s Communications Section of certain information including the basis for the pursuit, the location and direction of the pursuit, the description of the vehicle and any occupants (if known), that pursuit will be entering another jurisdiction, and “[a]ny unusual actions of the violator (e.g., forcing other vehicles off the road, attempting to or ramming other vehicles, shots fired).” U.S. Park Police, G.O. 2205, “Vehicular Pursuits,” § 2205.04(A)(9). We found that, although Officer 2 failed to communicate his belief that Ghaisar was impaired, this policy did not clearly require him to do so because it does not specify whether such conduct would constitute “unusual actions of the violator.”

Furthermore, the FCPD Lieutenant did not witness any of the conduct the USPP officers reported observing prior to Stop 2. Likewise, as stated above, both the USPP Lieutenant and Sergeant supervisors were monitoring the pursuit via radio and did not terminate it, even though they were authorized by the USPP's vehicular pursuit policy to do so if they believed it was inconsistent with that policy.<sup>44</sup>

Accordingly, taken together, we found that the preponderance of the evidence demonstrated that the officers' initiation and continued pursuit of Ghaisar was consistent with the USPP's vehicular pursuit policy. Both officers' provided reasons for the pursuit that were articulated in the USPP's vehicular pursuit policy, and these stated reasons were supported by a preponderance of the evidence we reviewed. We also found no evidence that their conduct was inconsistent with their training. Rather, both officers told us they received minimal training on conducting a pursuit under the circumstances involved in this case, and our review of the relevant training materials was consistent with these statements. Further, the training materials we did identify related to the initiation of pursuits suggested that officers had wide discretion in determining when to do so.

### *3. The Officers' Other Actions During the Pursuit*

We also considered whether the officers' other actions during the pursuit complied with USPP policies. As noted above, both USPP policies and the training the officers receive give officers significant discretion in performing their law enforcement duties. This discretion includes determining when to draw their service weapons, what techniques to use in stopping a vehicle during a pursuit, and how to proceed once the vehicle being pursued has stopped. In light of this discretion, we determined that most of the officers' actions during the pursuit were consistent with USPP policies. Officer 2, however, did not comply with the USPP's firearms policy when he used his service weapon to strike the driver side window of Ghaisar's SUV during Stop 2.

#### *a. The Officers Did Not Violate the USPP's Firearms Policy When They Drew Their Service Weapons*

We found that the officers did not violate the USPP's firearms policy when they drew their USPP service weapons during the attempted stops of Ghaisar.<sup>45</sup> Under the USPP's firearms policy, an officer may draw his or her service weapon when, "in the officer's judgment, a degree of imminent danger exists that necessitates the possible use of the firearm for the officer's safety or the safety of others."<sup>46</sup> Moreover, USPP officers are trained that they have wide discretion to draw their service weapons in a broad array of situations, including any time they have concerns about their safety. Officer 2 told us that, in the training he had received, he was taught "if you're in a chase and they stop, your gun comes out." These statements were supported by a FLETC training course we reviewed, which stated that, as officers exited their vehicles in high-risk situations, they should "remove seatbelts and prepare to quickly deploy weapons."<sup>47</sup> These materials further noted that, in such situations, an officer's "goal should be to move to a position of cover and have weapons on target before the suspect(s) can assault the officer[ ]."<sup>48</sup>

Here, Officer 1 and Officer 2 stated that they drew their service weapons because they believed Ghaisar was a threat to them and the public based on his behavior; namely, that he refused to stop and continued to flee, that he appeared impaired or under the influence of drugs or alcohol, and that he was speeding and violating traffic laws. We found their statements to be credible because, while the dashcam video was generally inconclusive regarding Ghaisar's driving behavior, there was at least one instance in which Ghaisar can be seen crossing the double-yellow line and there was evidence that he was driving over the speed limit throughout the pursuit. Moreover, the officers' assessment of his possible impairment was corroborated, albeit after the pursuit had ended, by the marijuana and marijuana paraphernalia found in Ghaisar's SUV and the results of his blood

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<sup>44</sup> In addition, while not available to the officers at the time, evidence obtained after the pursuit—including marijuana and a glass pipe retrieved from Ghaisar's SUV, one officer's observation that there was a strong smell of marijuana coming from Ghaisar's SUV immediately after the pursuit ended, and the toxicology report showing that Ghaisar's blood was positive for marijuana at the time of the pursuit—tended to support the credibility of the officers' statements that they believed Ghaisar was driving while impaired or under the influence of drugs or alcohol.

<sup>45</sup> Officer 1 drew his service weapon at Stops 2 and 4 and Officer 2 drew his service weapon at Stops 2, 3, and 4.

<sup>46</sup> U.S. Park Police, G.O. 3601, "Firearms," § 3601.02(D) (Sept. 30, 2016).

<sup>47</sup> FLETC Driver and Marine Division, Risk and High-Risk Vehicle Stops Lesson Plan at 13 (Oct. 2006); FLETC Driver and Marine Division, Risk and High-Risk Vehicle Stops Lesson Plan at 15 (Jan. 2009).

<sup>48</sup> FLETC Driver and Marine Division, Risk and High-Risk Vehicle Stops Lesson Plan at 12 (Oct. 2006); see also FLETC Driver and Marine Division, Risk and High-Risk Vehicle Stops Lesson Plan at 15 (Jan. 2009) (containing nearly identical language).

toxicology test. In addition, several law enforcement officials and experts concurred that officers have discretion in drawing their service weapons. These law enforcement officials and experts emphasized in interviews with us and the FBI that they had drawn or observed other officers drawing their service weapons in situations similar to those faced by Officer 1 and Officer 2, including at traffic stops. Although the information from these officials and experts is not dispositive, it does tend to support the conclusion that Officer 1 and Officer 2 did not act unreasonably in drawing their weapons during the pursuit and attempted stops of Ghaisar.

Accordingly, under these circumstances, and in light of the broad discretion granted to officers under USPP policy, we concluded that the USPP's firearms policy did not prohibit Officer 1 and Officer 2 from drawing their service weapons during their pursuit and attempted stops of Ghaisar.

*b. Officer 2's Use of His Service Weapon to Strike the SUV's Window Violated the USPP's Firearms Policy*

We determined that Officer 2's use of his service weapon to strike the SUV's window violated the USPP's firearms policy. The USPP's firearms policy prohibits the use of a firearm "as an impact weapon" other than "to protect an officer or another person from death or serious injury when no other reasonable means of protection is available."<sup>49</sup> During his OIG interview, Officer 2 told us that he used his service weapon to strike the driver side window of Ghaisar's SUV in an effort to break the window and try to extract Ghaisar from the SUV. Officer 2 did not further explain how this action was intended to protect himself or others from serious death or injury. Officer 2 also did not suggest that striking the SUV's window with his service weapon was the only means reasonably available to protect himself or others from serious death or injury.

Further, the evidence showed that Officer 2's action was inconsistent with his training. A USPP training officer and a USPP officer both told the FBI during interviews that officers were not trained to "bang" on windows with their service weapons.<sup>50</sup> Similarly, the USPP Sergeant told us that officers were "not supposed to" use their firearms in this manner. Similarly, the then-Chief of the USPP (USPP Chief) said under oath that while he was not aware of a policy that "specifically restricts" use of a firearm to break a window, doing so "could potentially put everybody on the scene in danger." According to the summary of his interview with the FBI, the USPP Chief also stated that, when a service weapon is out of its holster, any movement or jolt could cause the service weapon to discharge and that Officer 2's actions created a risk that his weapon would discharge and hit someone.

Accordingly, based on the evidence we reviewed, including our interview with Officer 2, we concluded that Officer 2's use of his service weapon to strike the driver side window of Ghaisar's SUV violated the USPP's firearms policy.

*c. The Officers Were Not Required to Use Felony Traffic Stop Techniques During Their Pursuit and Subsequent Stops of Ghaisar*

We determined that the USPP's vehicular pursuit policy did not require the officers to employ felony traffic stop techniques during their pursuit and subsequent stops of Ghaisar. We conducted this analysis because the manner in which the officers attempted to terminate the pursuit of Ghaisar (i.e., by pulling their USPP cruiser in front of or next to his SUV) potentially implicated the USPP's vehicular pursuit policy.

Specifically, the USPP's vehicular pursuit policy states that "at the conclusion of the pursuit, felony traffic stop techniques shall be used as circumstances dictate."<sup>51</sup> The policy does not, however, define or describe "felony traffic stop techniques." Law enforcement officers—including Officer 1 and Officer 2—told us, however, that they generally understand that a felony traffic stop involves a stop in which an officer pulls behind a suspect's vehicle and orders the suspect to exit the vehicle with his or her hands up and move backwards toward the officer until the officer can gain control of the suspect.<sup>52</sup> The USPP's vehicular pursuit policy also does not say

<sup>49</sup> U.S. Park Police, G.O. 3601, "Firearms," § 3601.02(C).

<sup>50</sup> We identified no training materials that discussed or contemplated using a service weapon to gain entry to a vehicle.

<sup>51</sup> U.S. Park Police, G.O. 2205, "Vehicular Pursuits," § 2205.04(A)(11).

<sup>52</sup> Officer 1 and Officer 2 confirmed to us that this understanding was based on the training they had received.

under what circumstances an officer should use a felony traffic stop; instead, the policy appears to leave this decision to the officer's discretion.

Similarly, USPP officer training does not mandate felony traffic stops in particular situations; it, too, leaves this decision to the officer's discretion.<sup>53</sup> The evidence also showed that it was a common practice among USPP officers to pull in front of a suspect's stopped car, rather than behind it, in attempting to stop a fleeing suspect. We therefore concluded that the officers' decision to pull in front of Ghaisar's SUV at each attempted stop, rather than pulling behind him (which is what the officers would have done had they employed a felony traffic stop), was within the officers' discretion and not prohibited by the USPP's vehicular pursuit policy.

*d. The USPP's Roadblocks Policy Did Not Apply to the Officers' Conduct Because the Tactics Employed by the Officers Did Not Constitute a "Roadblock" as That Term Is Defined in the Policy*

We determined that the tactics Officer 1 and Officer 2 employed during the pursuit and subsequent stops of Ghaisar did not constitute "roadblocks" as that term is defined under the USPP's roadblocks policy, and thus, the policy did not apply. As above, we conducted this analysis because the tactics employed by the officers in their attempts to terminate the pursuit of Ghaisar potentially implicated this policy.

The USPP's roadblocks policy defines two types of roadblocks, a "rolling roadblock" and a "stationary roadblock," both of which contemplate using police vehicles or some sort of barricade or road obstruction to stop an already moving vehicle.<sup>54</sup> The first type of roadblock defined in the USPP's roadblocks policy is the "rolling roadblock," in which multiple pursuit vehicles surround a suspect's vehicle while it is still moving and then slow to a stop along with the suspect's vehicle.<sup>55</sup> The second type of roadblock defined in the USPP's roadblocks policy is the "stationary roadblock," in which some sort of barricade is set up ahead of the pursuit to stop a fleeing suspect.<sup>56</sup> The USPP's roadblocks policy also makes clear that officers may not "intentionally use a traffic backup as a means of stopping a fleeing suspect."<sup>57</sup>

None of the tactics the officers used during the pursuit of Ghaisar met either definition of a roadblock as that term is defined in the USPP's roadblocks policy. Specifically, during Stop 1, the officers did not surround Ghaisar's moving vehicle with multiple vehicles to force him to stop, nor did officers set up a barricade ahead of Ghaisar in an attempt to force him to stop. Rather, Ghaisar slowed or came to a stop and the officers pulled the USPP cruiser next to his SUV. Similarly, at Stops 3 and 4, the officers pulled their USPP cruiser in front of Ghaisar's SUV, but in each case, Ghaisar's SUV had already come to a stop. As set forth above, the types of roadblocks set forth in the USPP's roadblocks policy both contemplate stopping a vehicle that is moving, not impeding the progress of an already stopped vehicle.

Moreover, while dashcam video showed Ghaisar's SUV was moving with the USPP cruiser next to it immediately prior to Stop 2, dashcam video also showed that a civilian vehicle in front of Ghaisar came to a stop on its own, thus halting Ghaisar's progress. Here, too, the evidence failed to show that the officers used a roadblock because they did not "surround" Ghaisar's SUV "with multiple pursuit vehicles" nor did they "intentionally use a traffic backup" to stop Ghaisar. We therefore concluded that the USPP's roadblocks policy did not apply to the officers' actions during their pursuit of Ghaisar on November 17.

*4. The Officers' Use of Deadly Force Against Ghaisar Did Not Violate the USPP's Use of Force Policy*

We analyzed whether the officers' use of deadly force against Ghaisar violated the USPP's use of force policy and determined that it did not. In making this determination, our review was limited to analyzing the officers' conduct under the USPP's use of force policy in place on November 17, 2017. While the USPP's use of force policy incorporates the Fourth Amendment's constitutional reasonableness standard, we did not separately

<sup>53</sup> FLETC Driver and Marine Division, Risk and High-Risk Vehicle Stops Lesson Plan at 13 (Oct. 2006) (noting that the procedures outlined constituted a "general template"); FLETC Driver and Marine Division, Risk and High-Risk Vehicle Stops Lesson Plan at 12 (Jan. 2009) (noting the same).

<sup>54</sup> U.S. Park Police, G.O. 2210, "Roadblocks," § 2210.03 (Sept. 5, 2017).

<sup>55</sup> U.S. Park Police, G.O. 2210, "Roadblocks," § 2210.03(A).

<sup>56</sup> U.S. Park Police, G.O. 2210, "Roadblocks," § 2210.03(B).

<sup>57</sup> U.S. Park Police, G.O. 2210, "Roadblocks," § 2210.03(A)(2).

determine whether the officers' use of deadly force was reasonable under the Fourth Amendment of the U.S. Constitution.<sup>58</sup> We did, however, consider U.S. Supreme Court and other relevant court cases interpreting the Fourth Amendment to inform our analysis of the officers' conduct under the USPP's use of force policy.

In assessing these issues, we acknowledge that, in November 2019, the DOJ declined to bring criminal charges against the officers based on the FBI's investigation into the fatal shooting of Ghaisar. In its press release, the DOJ stated that there was "insufficient evidence to establish beyond a reasonable doubt that the officers" acted "willfully," and that it was "unable to disprove a claim of self-defense or defense of others by the officers."<sup>59</sup> We also acknowledge that in October 2021 a Federal district court dismissed criminal charges brought by the Commonwealth of Virginia against Officer 1 and Officer 2 based on Supremacy Clause immunity.<sup>60</sup> In doing so, the court found "that the officers acted in accordance with federal law" and that "[t]he officers' actions were necessary and proper" because the totality of the circumstances "reasonably invoked the officers' belief that Ghaisar's actions placed [Officer 2's] life in imminent, life-threatening danger," and that "[t]his belief was reasonable considering the circumstances on November 17, 2017."<sup>61</sup>

While we considered the evidence gathered and presented in connection with both the FBI's investigation and the Federal court proceedings, neither specifically addressed whether the officers' conduct on November 17, 2017, complied with applicable USPP policies. Accordingly, we do not believe that either the DOJ declination or the Federal court decision speak directly to the oversight questions relevant to our inquiry. We therefore conducted our own investigation and independently evaluated the totality of the evidence in coming to our conclusions.

#### *a. Applicable Standards*

##### *i. USPP Policies Governing Uses of Force by USPP Officers*

The USPP's use of force policy states that "an officer may use deadly force only when necessary, that is when the officer has a reasonable belief, in light of the facts and circumstances confronting the officer, that the subject of such force poses an imminent danger of death or serious bodily harm to the officer or to another person."<sup>62</sup> The USPP's use of force policy provides a non-exclusive list of examples of imminent threats, which include where "an unarmed individual with the capability of inflicting death or serious physical injury, or otherwise incapacitating officers/others, without a deadly weapon who is demonstrating an intention to do so."<sup>63</sup> The USPP's use of force and firearms policies contain provisions that address circumstances in which an officer fires at a moving vehicle, but the relevant language in these provisions is largely duplicative of the use of force provisions discussed elsewhere in this report. Thus, we do not discuss those provisions

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<sup>58</sup> The Fourth Amendment of the U.S. Constitution states in pertinent part that the people have a right "to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV.

<sup>59</sup> Press Release, U.S. Attorney's Office, District of Columbia, Federal Officials Close Investigation Into the Death of Bijan Ghaisar (Nov. 14, 2019), <https://www.justice.gov/usao-dc/pr/federal-officials-close-investigation-death-bijan-ghaisar>. In June 2022, the DOJ declined a congressional request to reopen its investigation into the shooting of Ghaisar, stating that "[g]iven the totality of the evidence reviewed, including the evidence amassed during the prior federal investigation, material submitted to the District Court, and the District Court's findings and dismissal, the department does not have an adequate basis to reopen its prior investigation." Press Release, Off. of Pub. Affs., DOJ, Federal Officials Decline to Reopen Investigation Into the Death of Bijan Ghaisar (June 10, 2022), <https://www.justice.gov/opa/pr/federal-officials-decline-reopen-investigation-death-bijan-ghaisar>.

<sup>60</sup> *Virginia v. Amaya*, No. 1:21-cr-00091-CMH, slip op at 5 (E.D. Va. Oct. 22, 2021); *Virginia v. Vinyard*, No. 1:21-cr-00092-CMH, slip op at 5 (E.D. Va. Oct. 22, 2021). Supremacy Clause immunity protects Federal law enforcement officers acting in their official capacity from having to defend themselves against alleged violations of State law where a court finds that the officers "were authorized by federal law to act as they did," and "the officers did no more than was necessary and proper" in carrying out their official duties. *Amaya*, slip op. at 5 (citing *Cunningham v. Neagle*, 135 U.S. 1, 75 (1890) and *Baker v. Grice*, 169 U.S. 284, 291 (1898)); *Vinyard*, slip op. at 5 (citing the same).

<sup>61</sup> *Amaya*, slip op. at 5-6; *Vinyard*, slip op. at 5-6.

<sup>62</sup> U.S. Park Police, G.O. 3615, "Use of Force," § 3615.03(C)(1). The USPP's use of force policy in place at the time of the Ghaisar shooting also required officers to use "only the minimum level of force necessary to control a situation." U.S. Park Police, G.O. 3615, "Use of Force," § 3615.02 (Sept. 28, 1998). We did not analyze Officer 1 and Officer 2's conduct under the "minimum level of force necessary" standard because the officers' use of force rose to the level of deadly force for which the USPP's use of force policy provides a more specific standard. Specifically, under the USPP's use of force policy, the use of deadly force is permitted "only when necessary," which the policy defines as "when the officer has a reasonable belief . . . that the subject of such force poses an imminent danger of death or serious bodily harm to the officer or to another person." U.S. Park Police, G.O. 3615, "Use of Force," § 3615.03(C). It was under this standard, rather than the "minimum level of force necessary" standard, that Officer 1 and Officer 2's conduct was analyzed.

<sup>63</sup> U.S. Park Police, G.O. 3615, "Use of Force," § 3615.03(C)(2)(b).

separately.<sup>64</sup>

The USPP's use of force policy requires that an officer's use of force be "reasonable" and further provides that what constitutes a reasonable use of force "depend[s] on the dynamics of the situation."<sup>65</sup> In determining what constitutes "reasonable force," U.S. Supreme Court precedent requires that an officer's use of force be "objectively reasonable" when viewed "in light of the facts and circumstances confronting them."<sup>66</sup> Whether a use of force is objectively reasonable "must be judged from the perspective of a reasonable officer on the scene."<sup>67</sup>

In evaluating an officer's use of force, the U.S. Supreme Court has cautioned that the split-second judgments of law enforcement officers should not be evaluated with the "20/20 vision of hindsight."<sup>68</sup> The U.S. Supreme Court has also held that an officer's use of force may be justified even if it was based on a mistaken belief, provided that belief was reasonable.<sup>69</sup> Moreover, in considering an officer's use of deadly force, case law does not require the officer to be directly in front of a suspect's vehicle to support a finding that the officer reasonably believed that the suspect posed a threat of serious physical harm to him or another person.<sup>70</sup> Case law states that the law "does not require police to gamble with their lives in the face of a serious threat of harm."<sup>71</sup>

We did not assess whether Officer 1 or Officer 2's conduct prior to their use of deadly force contributed to the need to use deadly force. This is consistent with Fourth Circuit precedent,<sup>72</sup> which is the law that applies to the officers' conduct here.<sup>73</sup> While some courts in other circuits consider whether an officer's conduct prior to his or her use of deadly force created the need to use that force in assessing the reasonableness of the officer's conduct,<sup>74</sup> the Fourth Circuit does not take this approach, and it is not a consideration in the USPP's use of force policy.<sup>75</sup>

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<sup>64</sup> See U.S. Park Police, G.O. 3615, "Use of Force," § 3615.03(C)(3) (permitting an officer to fire at a moving vehicle only when the officer reasonably believes the subject poses an imminent danger of death or serious physical injury and public safety benefits outweigh the risks to the officer or another person); U.S. Park Police, G.O. 3601, "Firearms," § 3601.02(B) (stating that "[f]iring at the operator of a moving vehicle might be appropriate . . . when a vehicle is being operated in a manner deliberately intended to injure the officer or another.").

<sup>65</sup> U.S. Park Police, G.O. 3615, "Use of Force," § 3615.02.

<sup>66</sup> *Graham v. Connor*, 490 U.S. 386, 397 (1989).

<sup>67</sup> *Id.* at 396.

<sup>68</sup> *Plumhoff v. Rickard*, 572 U.S. 765, 775 (2014) (quoting *Graham*, 490 U.S. at 396). In *Plumhoff*, the Court wrote that it analyzes an officer's use of deadly force "from the perspective 'of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight,'" and noted that this allows the Court to account "for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation." 572 U.S. at 775 (quoting *Graham*, 490 U.S. at 396).

<sup>69</sup> See *Saucier v. Katz*, 533 U.S. 194, 205 (2001), overruled on other grounds by *Pearson v. Callahan*, 555 U.S. 223 (2009), ("If an officer reasonably, but mistakenly, believed that a suspect was likely to fight back, for instance, the officer would be justified in using more force than in fact was needed.").

<sup>70</sup> *Waterman v. Batton*, 393 F.3d 471, 479 (4th Cir. 2005).

<sup>71</sup> *Id.* (quoting *Elliott v. Leavitt*, 99 F.3d 640, 641 (4th Cir. 1996)).

<sup>72</sup> See *Elliott v. Leavitt*, 99 F.3d 640, 643 (4th Cir. 1996) ("*Graham* requires us to focus on the moment force was used; conduct prior to that moment is not relevant in determining whether an officer used reasonable force."); see also *Greenidge v. Ruffin*, 927 F.2d 789, 792 (4th Cir. 1991) (law enforcement actions that occurred before a seizure "are not relevant and are inadmissible" for purposes of Fourth Amendment analysis). Other Federal courts of appeal have reached similar conclusions. See, e.g., *Salim v. Proulx*, 93 F.3d 86, 92 (2d Cir. 1996) (holding that an officer's "actions leading up to" the use of force are "irrelevant to the objective reasonableness of his conduct."); *Banks v. Hawkins*, 999 F.3d 521, 525-26 (8th Cir. 2021), cert. denied, 142 S. Ct. 2674 (2022) ("In any event, we evaluate the reasonableness of [an officer's] conduct by looking primarily at the threat present at the time he deployed the deadly force.") (citation omitted); *Barnes v. Felix*, 91 F.4th 393, 397 (5th Cir. 2024), petition for cert. filed, No.23-7541 (Apr. 19, 2024) ("Any of the officers' actions leading up to the shooting are not relevant for the purposes of an excessive force inquiry in this Circuit.") (footnotes omitted).

<sup>73</sup> Fourth Circuit law applies because the officers' use of deadly force against Ghaisar occurred in Virginia, which falls within the Fourth Circuit Court of Appeals.

<sup>74</sup> See, e.g., *Arnold v. City of Olathe*, 35 F.4th 778, 789 (10th Cir. 2022) (stating that precedent in that circuit required it to "consider whether an officer's 'reckless or deliberate conduct during the seizure unreasonably created the need to use such force'" (quoting *Allen v. Muskogee*, 119 F.3d 837, 840 (10th Cir. 1997)); *Young v. City of Providence ex rel. Napolitano*, 404 F.3d 4, 22 (1st Cir. 2005) (noting that an assessment of the "totality of the circumstances" includes the actions of government officials leading up to the use of force, not only the officers' actions at the moment of the shooting); *Nehad v. Browder*, 929 F.3d 1125, 1135 (9th Cir. 2019) ("Reasonable triers of fact can, taking the totality of the circumstances into account, conclude that an officer's poor judgment or lack of preparedness caused him or her to act unreasonably.").

<sup>75</sup> We also note that, to date, the U.S. Supreme Court has not decided the issue. See *City of Tahlequah v. Bond*, 5 U.S. 9, 12 (2021) (declining to analyze whether police officers' actions that created a situation requiring deadly force can itself violate the Fourth Amendment where officers "plainly did not violate any clearly established law"); see also *County of Los Angeles v. Mendez*, 581 U.S. 420, 429 n\* (2017) (declining to decide whether a jury may consider police conduct prior to the use of force that "foreseeably created the need to use it").



## ii. USPP Use of Force Training

As noted above, USPP officers receive use of force training at FLETC as part of their basic training and annually thereafter through the USPP. FLETC use of force training materials reflect that, during the time period Officer 1 and Officer 2 attended FLETC training, Officers 1 and 2 were instructed on the factors the courts consider in assessing the reasonableness of an officer's use of force. This training also addressed other relevant court opinions highlighting a variety of considerations officers should consider in determining whether the use of deadly force is justified.<sup>76</sup> Among other things, these materials noted that officers may use deadly force only when doing so would be objectively reasonable, including when the officer has a reasonable belief, in light of the facts and circumstances confronting the officer, that the subject of such force poses a danger of death or serious bodily harm to the officer or to another person.<sup>77</sup> The training further explained that officers were not required to be "100% sure the suspect is going to cause death or serious bodily harm" prior to using deadly force.<sup>78</sup> In addition, the training materials stated that an officer "is not obligated to wait until death or serious bodily harm is occurring" before using deadly force, but instead, is permitted to use deadly force "[i]f based upon the totality of circumstances the officer perceives there is a threat of such action."<sup>79</sup>

The materials further cautioned officers against "unnecessary hesitation" in applying force, noting that this unnecessary hesitation could cause the officer to be injured.<sup>80</sup> In addition, the training materials noted that officers have no "duty to retreat in an effort to avoid using force on a suspect."<sup>81</sup>

Likewise, materials from the USPP's 2016 use of force in-service training, which Officer 1 and Officer 2 attended, highlighted similar concepts.<sup>82</sup> For example, the 2016 in-service materials noted that officers have "no duty to retreat" to avoid using force and that, where deadly force is justified, Supreme Court precedent does not require law enforcement officers to "exhaust lesser forms of force" before using that deadly force.<sup>83</sup> In addition, these 2016 training materials advised the officers that "[h]esitation in a fight can get you killed."<sup>84</sup>

### b. Analysis of the Officers' Use of Deadly Force

We concluded that the officers' use of deadly force did not violate the USPP's use of force policy because a preponderance of the evidence established that both officers reasonably believed that Ghaisar posed an imminent danger of death or serious bodily harm to Officer 2 in light of the facts and circumstances confronting them at the time.

The officers' use of deadly force (i.e., the 10 shots fired at Ghaisar) began approximately four seconds after the officers exited their vehicle at Stop 4 and lasted approximately 25 seconds. During this relatively brief period, there was little material change in the facts and circumstances confronting the officers at the time they used deadly force. Nonetheless, in evaluating the objective reasonableness of the officers' conduct, we found it useful to separate the officers' use of force into three segments: (1) Shots 1 through 4 fired by Officer 2 between 7:41:33 p.m. and 7:41:35 p.m.; (2) Shots 5 through 7 fired by Officer 1 between 7:41:36 p.m. and 7:41:42 p.m.; and Shots 8 through 10 fired by both officers between 7:41:57 p.m. and 7:41:58 p.m. We determined that this segmented approach was consistent with relevant case law and allowed us to consider

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<sup>76</sup> These court opinions include *Graham v. Connor*, 490 U.S. 386 (1989), which provides the legal standard for evaluating whether an officer's use of force in certain circumstances is reasonable under the Fourth Amendment of the U.S. Constitution, as well as *Tennessee v. Garner*, 471 U.S. 1, 11-12 (1985) (stating that the use of deadly force is not "constitutionally unreasonable" when an "officer has probable cause to believe that the suspect poses a threat of serious physical harm."); *Elliot v. Leavitt*, 99 F.3d 640, 641 (1996) ("The Constitution simply does not require police to gamble with their lives in the face of a serious threat of harm."); and *Scott v. Harris*, 550 U.S. 372, 383 (2007) ("Whether or not [the officer's] actions constituted application of 'deadly force,' all that matters is whether [the officer's] actions were reasonable.").

<sup>77</sup> FLETC Enforcement Operations Division, Use of Force Lesson Plan at 6 (Sept. 2007).

<sup>78</sup> FLETC Enforcement Operations Division, Use of Force Lesson Plan at 7 (Sept. 2007).

<sup>79</sup> FLETC Enforcement Operations Division, Use of Force Lesson Plan at 7 (Sept. 2007).

<sup>80</sup> FLETC Enforcement Operations Division, Use of Force Lesson Plan at 14 (Sept. 2007).

<sup>81</sup> FLETC Enforcement Operations Division, Use of Force Lesson Plan at 14 (Sept. 2007).

<sup>82</sup> See USPP, In Service 2016 Use of Force Update at 9 (2016) (discussing U.S. Supreme Court cases addressing use of force).

<sup>83</sup> USPP, In Service 2016 Use of Force Update at 14 (2016).

<sup>84</sup> USPP, In Service 2016 Use of Force Update at 20 (2016).

whether, at discrete moments during the encounter, there was a change in circumstance requiring the officers to reassess their use of deadly force or if the use of deadly force remained justified.<sup>85</sup>

As discussed in more detail below, in each instance when the officers fired at Ghaisar, we found that their use of deadly force was permitted under the USPP's use of force policy. We arrived at this conclusion because, under the totality of the facts and circumstances confronting the officers at the time, a preponderance of the evidence established that it was reasonable for the officers to believe that Ghaisar presented an imminent danger of death or serious bodily harm to Officer 2. These facts and circumstances included that: (1) during the pursuit, the officers observed Ghaisar speeding, including in a residential area, failing to stop at a stop sign, and crossing a double-yellow line into the oncoming traffic lane; (2) the officers believed Ghaisar may have been driving while impaired or under the influence of drugs or alcohol based on his demeanor and behavior; (3) Ghaisar had fled the scene of three prior attempted traffic stops by the officers; (4) Ghaisar refused to stop at Stop 4 despite the officers having drawn their service weapons and verbally commanded him to stop; and (5) each time the officers fired at Ghaisar, the SUV was moving forward. Based on Ghaisar's demonstrated inability or unwillingness to follow commands and impaired judgment, it was reasonable for the officers to conclude that Ghaisar was unlikely to stop or to move the SUV in such a way that Officer 2 would be struck by it and that Ghaisar therefore presented an imminent threat of death or serious bodily injury to Officer 2.

*i. Shots 1–4 (Officer 2)*

We found that Officer 2 reasonably believed that he was in imminent danger of death or serious bodily harm when he fired Shots 1 through 4 at Ghaisar. After Officer 2 exited the USPP cruiser at Stop 4, he placed himself in front of the SUV with his service weapon drawn. Officer 2 told us he did this because he believed Ghaisar posed a threat to the public and he wanted to stop him. According to Officer 2, he then saw the SUV begin to move toward him and that he then fired Shot 1 because he feared for his life and thought Ghaisar was going to run him over.

Approximately one second later, as the SUV continued to move forward and to the right, Officer 2 fired Shots 2, 3, and 4. Officer 2 told us that he knew at the time that Ghaisar's vehicle could be used as a weapon and that an officer could be seriously injured if struck by a motor vehicle even at relatively low speeds. Officer 2 also knew that Ghaisar had refused to stop at three prior attempts, and Officer 2 had observed behavior that led him to believe that Ghaisar might be impaired or under the influence of drugs or alcohol and thus may have had reduced judgment or mental capacity to follow instructions or stop his SUV before hitting Officer 2. We found Officer 2's statements credible because they were supported by other evidence. We therefore concluded that, based on the preponderance of the evidence, Officer 2 reasonably believed Ghaisar presented an imminent danger to his safety at the moment he fired these four shots.

We also independently reviewed the FCPD's dashcam video and evidence from the FBI's investigative file, which largely corroborated Officer 2's account. Specifically, both the dashcam video and the FBI evidence showed that, at the time Officer 2 fired the four shots, Ghaisar's SUV was moving forward and to the right, while Officer 2 was standing no more than a few feet from the front of Ghaisar's SUV with the police cruiser behind him. In addition, while the dashcam video and FBI evidence also showed that Officer 2 was not directly in the SUV's path when he fired the shots, neither it nor the FBI evidence show the visual perspective of Officer 2. Officer 2 stated that at the precise moment he fired the shots, he believed that he was in the SUV's path. Officer 2 provided specific recollections to support his statements (e.g., looking down and seeing the SUV's headlights shining on the front of his pants, indicating to him that he was potentially in the SUV's path). Officer 2 also explained that he was not in a static position during the encounter and that it would have been impossible for him to predict in what direction or at what speed Ghaisar would drive the SUV.

Moreover, to the extent Officer 2 was not directly in the path of the SUV when he fired these shots, case law does not require an officer to be directly in front of a suspect's vehicle to support a finding that the officer

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<sup>85</sup> *Lachance v. Town of Charlton*, 990 F.3d 14, 24 (1st Cir. 2021) (noting that most courts use a segmented approach where it makes sense to do so, and citing *Harris v. Pittman*, 927 F.3d 266, 268-69 (4th Cir. 2019) for the proposition that "even where an initial use of deadly force is reasonable, the repeated use of force may be constitutionally excessive if circumstances change in a material way."); see also *Waterman v. Batton*, 393 F.3d 471, 481 (4th Cir. 2005) (rejecting appellants' argument that use of a segmented approach was inappropriate and holding that "force justified at the beginning of an encounter is not justified even seconds later if the justification for the initial force has been eliminated.").

reasonably believed that the suspect posed a threat of serious physical harm to him or another person. To the contrary, in *Waterman v. Batton*, for example, the Fourth Circuit Court of Appeals addressed a situation in which none of the officers were directly in the path of the suspect's vehicle at the moment it moved forward and the officers began firing. The court nonetheless concluded that it was reasonable for the officers to believe that the suspect's vehicle "posed an immediate threat of serious physical harm" to the officers.<sup>86</sup> The court based its conclusion on the proximity of the officers to the suspect's vehicle, the vehicle's movement in the officers' "general direction," and "the split-second nature of the [officers'] decision," i.e., the fact that the officers "could have been run over in about one second if [the suspect] had turned slightly toward them."<sup>87</sup>

Similarly, here, the four shots fired by Officer 2 occurred over approximately three seconds, leaving Officer 2 with little time to assess the direction and speed of the SUV that was moving forward. Under these circumstances, Officer 2 was not required "to pause and ponder" the many different factors and scenarios that could have played out and "risk[ ] losing [his] last chance to defend" himself against serious physical harm.<sup>88</sup> This is consistent with the FLETC use of force training materials described above, which caution officers against hesitating to use deadly force until they were "100% sure" a suspect was going to cause death or serious bodily harm.

In addition, neither law nor USPP policy prohibited Officer 2 from placing himself in front of the SUV, nor did law or policy require him to get out of the way once the SUV started moving forward. Further, the FLETC and USPP in-service training materials we reviewed specifically state that officers have "no duty to retreat" in an effort to avoid using force on a suspect.<sup>89</sup> As discussed above, we did not analyze the appropriateness of the USPP officers' tactics, nor are we suggesting that by moving out of the way, Officer 2 would have eliminated the danger. These questions are outside the scope of our review of the officers' use of force, which was limited to whether the officers complied with USPP's use of force policy.

Accordingly, based on the totality of the circumstances facing Officer 2 at the time, we concluded that Officer 2 reasonably believed that he was in imminent danger of death or serious bodily harm, and thus, did not violate the USPP's use of force policy when he fired the four shots at Ghaisar's SUV.

## *ii. Shots 5–7 (Officer 1)*

We found that Officer 1 reasonably believed that Officer 2 was in imminent danger of death or serious bodily harm when he fired Shots 5 through 7 at Ghaisar. Officer 1 fired Shot 5 approximately one second after Officer 2 fired Shot 4, as Ghaisar's SUV continued to move forward. Officer 1 stated that, from his perspective at the time, Officer 2 appeared to be directly in front of the moving SUV with the USPP cruiser behind him. Officer 1 also provided specific recollections in support of his statements, i.e., he recalled seeing the SUV's lights illuminating Officer 2's torso and being concerned that Officer 2 would be hit by the SUV and crushed between it and the USPP cruiser behind him.

After Officer 1 fired Shot 5, Officer 2 holstered his service weapon, moved to the driver side door, and attempted to open it. Seconds later, the SUV again began to move forward and to the right, and Officer 2 moved back to his position in front of the SUV, which continued to move forward. As above, we note that nothing in law or policy required Officer 2 to refrain from moving in front of the SUV.

As the SUV moved forward, Officer 1 fired Shots 6 and 7 into the front driver side window of the SUV, approximately six seconds after he had fired Shot 5. Officer 1 stated that he fired Shots 6 and 7 because he saw Officer 2 directly in front of the SUV, which was moving toward Officer 2, and he believed Officer 2 could be killed or seriously hurt if the SUV did not stop.

Our independent review of the FCPD dashcam video and of the FBI evidence largely supported Officer 1's statements. Specifically, the dashcam video and the FBI evidence showed that at the time Officer 1 fired

<sup>86</sup> *Waterman*, 393 F.3d at 474-75, 478 (4th Cir. 2005).

<sup>87</sup> *Id.* at 478-79.

<sup>88</sup> *Id.* at 478.

<sup>89</sup> FLETC Enforcement Operations Division, Use of Force Lesson Plan at 14 (Sept. 2007); USPP, In Service 2016 Use of Force Update at 14 (2016).

Shot 5, Ghaisar's SUV was moving forward, and at the time Officer 1 fired Shots 6 and 7, the evidence showed Ghaisar's SUV moving directly toward Officer 2. Officer 2 was only a few feet away from Ghaisar's SUV with the USPP cruiser directly behind him. Moreover, also as stated above, neither law, policy, nor relevant training required either officer to be "100% sure" in their split-second, life or death decisions.

In light of these circumstances—including the closeness of Ghaisar's vehicle to Officer 2, the direction it was heading, the fact that the USPP cruiser was directly behind him, and the mere seconds Officer 1 had to assess the situation—we determined that it was reasonable for Officer 1 to believe that Officer 2 was in imminent danger of death or serious bodily harm from Ghaisar's SUV. We therefore concluded that Officer 1 did not violate the USPP's use of force policy when he fired Shots 5, 6, and 7 at Ghaisar's vehicle.

### *iii. Shots 8–10 (Both Officers)*

We found that the officers reasonably believed that Officer 2 was in imminent danger of death or serious bodily harm when Officer 1 fired Shots 8 and 10 and Officer 2 fired Shot 9. The officers stated that they fired Shots 8, 9, and 10 because they believed Officer 2 was in danger of being struck and killed by Ghaisar's SUV, which they said was moving toward Officer 2 at the time they fired these shots. Officer 2 said that, even in those instances where he was not directly in front of Ghaisar's SUV, in every instance in which he fired his service weapon, he was "always in front of the vehicle in a position of danger where [Ghaisar] could either just go straight to hit me or slightly turn the wheel and hit the gas and hit me and pin me between the car or just drag me under the vehicle . . . or just sideswipe me." The FCPD Officer, who had by then arrived on scene, got out of his car and approached Ghaisar's vehicle from the rear passenger side right after Shot 7, corroborated Officer 2's statements, stating that Officer 2 could have been hit by Ghaisar's SUV if it did not turn in a certain way.

The dashcam video and FBI evidence file largely corroborated the officers' statements and showed that, when Shots 8, 9, and 10 were fired, Officer 2 was to the front driver side of the SUV, and the SUV was moving forward. Specifically, the evidence showed that approximately 13 seconds after Officer 1 fired Shot 7, Ghaisar's SUV had moved forward and slightly to the right and then stopped; Officer 2 remained standing in front of the SUV, and Officer 1 remained standing at the driver side door. During these 13 seconds, Officer 1 tried to open the SUV's driver side door while continuing to hold his service weapon in his right hand pointed at the driver side window. The SUV again began slowly moving forward to the right. As it moved, Officer 2 was still in front of the SUV but was no longer between it and the USPP cruiser. Two seconds later, as the SUV moved forward, Officer 1 and Officer 2 fired Shots 8 and 9 simultaneously. One second later, as Ghaisar's SUV continued to move forward, Officer 1 fired Shot 10. Ghaisar's SUV then tipped over on its right side with its driver side wheels off the ground.

Based on the totality of the circumstances facing the officers at the time—including the SUV's continued movement forward despite the officers' repeated attempts to stop the vehicle, and the mere seconds the officers had to assess the situation—we determined that the officers' belief that Officer 2 was in imminent danger of death or serious bodily harm from Ghaisar's SUV was reasonable. We therefore concluded that the officers did not violate the USPP's use of force policy when they fired Shots 8, 9, and 10 at Ghaisar's SUV.

## **V. CONCLUSION**

We found that the officers' initial and continued pursuit of Ghaisar was consistent with the USPP's vehicular pursuit policy. We also found that the officers' drawing of their service weapons did not violate the USPP's firearms policy, but we concluded that Officer 2 did violate the USPP's firearms policy when he struck Ghaisar's SUV with his service weapon. In addition, we found that the officers were not required to use "felony traffic stop techniques," and that the USPP's roadblocks policy did not apply to the tactics the officers used during the pursuit. Finally, we concluded that the officers' use of deadly force against Ghaisar did not violate the USPP's use of force policy because they reasonably believed the use of deadly force was necessary to prevent imminent death or bodily harm to Officer 2.

## **VI. SUBJECTS**

Lucas Vinyard, Officer (SP-0083-01), USPP, NPS, DOI.

Alejandro Amaya, Officer (SP-0083-01), USPP, NPS, DOI.

## **VII. DISPOSITION**

We are providing this report to the NPS Director for any action deemed appropriate.

## APPENDIX: Timeline of Events

	Time	Event
	7:20 p.m.	Bijan Ghaisar's SUV is rear ended by rideshare car and leaves the crash scene.
	7:30 p.m.	Rideshare passenger calls 911.
	7:32 p.m.	The U.S. Park Police (USPP) dispatcher radios USPP officers Lucas Vinyard (Officer 1) and Alejandro Amaya (Officer 2).
	7:34 p.m.	Officers 1 and 2 locate the SUV; the SUV fails to stop for the USPP cruiser's lights and siren.
<b>Stop 1</b>	After 7:34 p.m.	The SUV stops briefly in right lane of travel and begins driving again; the USPP officers begin their pursuit.
	7:37:59 p.m.	The Fairfax County Police Department (FCPD) Lieutenant joins the pursuit.
<b>Stop 2</b>	7:38:19 p.m.	The SUV stops behind a stopped civilian vehicle.
	7:38:21 p.m.	The USPP cruiser stops slightly in front of and next to the SUV. Officers 1 and 2 exit the cruiser with their service weapons drawn.
	7:38:25 p.m.	Officer 2 strikes the SUV with his service weapon and drops his flashlight as the SUV drives off.
<b>Stop 3</b>	7:40:10 p.m.	The SUV stops; the USPP cruiser stops partially in front of the SUV.
	7:40:11 p.m.	The USPP officers exit their cruiser and approach the driver side of the SUV.
	7:40:14 p.m.	The SUV drives around the USPP cruiser while Officer 2's hand is touching the SUV; Officer 2 kicks the SUV.
	7:40:19 p.m.	The USPP officers reenter their cruiser and continue the pursuit.
<b>Stop 4</b>	7:41:18 p.m.	The SUV stops at a stop sign at the intersection of Alexandria Avenue and Fort Hunt Road.
	7:41:21 p.m.	The USPP cruiser drives around the driver side of the SUV and stops briefly in front and slightly to the left of the SUV.
	7:41:26 p.m.	The USPP cruiser continues to drive in front of the SUV and stops perpendicular to and directly in front of the SUV.
	7:41:29 p.m.	Officer 2 exits the USPP cruiser with his service weapon drawn and approaches the front of the SUV on the SUV's driver side.
	7:41:33 p.m.	The SUV moves forward to the right; Officer 1 exits the USPP cruiser; Officer 2 fires Shot 1.
	7:41:34 p.m.	The SUV continues to move forward and to the right; Officer 2 fires Shot 2; Officer 1 approaches the driver side of the SUV.
	7:41:35 p.m.	The SUV continues to move forward and to the right; Officer 1 draws his service weapon; Officer 2 fires Shots 3 and 4.
	7:41:36 p.m.	Officer 1 fires Shot 5.
	7:41:41 p.m.	Officer 2 attempts to open the front driver side door of the SUV, and the SUV begins moving forward and to the right. Officer 2 moves in front of the SUV, shutting the USPP cruiser's front passenger door as he moves between the two vehicles.
	7:41:42 p.m.	As Officer 2 moves between the two vehicles, Officer 1 fires Shots 6 and 7.
	7:41:57 p.m.	The SUV begins to move slowly forward and to the right. Officer 1 fires Shot 8. Officer 2 fires Shot 9.
	7:41:58 p.m.	The SUV continues to move forward to the right; Officer 1 fires Shot 10.
	7:41:59 p.m.	The SUV comes to a stop then rolls into a ditch with its driver side wheels in the air.



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