

# Commonwealth of Virginia

## COUNTY OF FAIRFAX

4110 CHAIN BRIDGE ROAD, ROOM 114

FAIRFAX, VIRGINIA 22030-4047

**STEVE DESCANO**  
COMMONWEALTH'S ATTORNEY

Eric S. Dreiband  
Assistant Attorney General  
Civil Rights Division  
United States Department of Justice  
601 D. Street, NW  
Washington, DC 20579

May 29, 2020

Dear Mr. Dreiband,

Since our last correspondence, the Fairfax County Commonwealth's Attorney's Office (Office) has continued its investigation into the 2017 shooting death of Bijan Ghaisar. As you are aware, this Office requested the appearance of an FBI agent as a summary witness before a Fairfax County grand jury in 2019. Upon taking office, I did not immediately renew that request as I wanted the Office, under my leadership and oversight, to thoroughly review the materials in the investigative file shared with this Office by the Department of Justice (Department) before acting. My Office is now nearing completion of its review of these materials. Our review has raised the following questions with respect to the investigative file:

- A log was provided to the Office with the heading "FOR OFFICE OF FAIRFAX COMMONWEALTH ATTORNEY REVIEW ONLY. DO NOT DISSEMINATE WITHOUT THE APPROVAL OF THE FBI WASHINGTON FIELD OFFICE." This log contains approximately 260 entries labeled as "redacted." The documents that correspond with the entries labeled "redacted" were not provided to my Office. Given that the withheld documents were not identified or described, my Office has no knowledge as to what type of documents the Department withheld. Please identify the documents withheld and advise whether you will produce the documents in their entirety.

- [REDACTED]

Our investigation has advanced to the point where we would like an opportunity to view the physical evidence collected by the FBI and speak with the FBI and/or other federal agents involved in the investigation. Please advise whether the Department will agree to these requests.

At the conclusion of our investigation, my Office will decide whether to proceed with criminal charges, and if so, what criminal charges are appropriate. As part of the analysis, my Office will need to consider what, if any, cooperation the Department will offer. Whether the Department will cooperate, and to what extent, will affect the evidence that is available to the Commonwealth for use at trial, and therefore, what charges the Commonwealth can indict and sustain. Accordingly, please advise as follows:

- Will the Department authorize FBI and/or other federal agents to appear before a state grand jury in Fairfax County, not as summary witnesses, but as fact and/or expert witnesses?
- Will the Department authorize FBI and/or other federal agents to appear before a trial jury or judge in Fairfax County, not as summary witnesses, but as fact and/or expert witnesses?

Additionally, your February 6, 2020, letter indicates that the Department was in the process of evaluating two legal issues that are of importance to this Office: (i) whether the Department will provide legal representation to the U.S. Park Police officers in connection with pending civil litigation relating to Mr. Ghaisar's death, and (ii) whether the Department will support the U.S. Park Police officers' anticipated assertion of immunity defenses. These issues remained unresolved at the time of your February 6, 2020 letter and were cited as the basis for the Department's denial of the request previously made by this Office. In light of the prominent role these issues played in the Department's previous decision-making, any final decision on the issues would provide needed clarity to my Office.

I would respectfully request that the Department provide a response to the questions herein no later than June 30, 2020. All involved in this matter deserve a timely decision with respect to the investigation being conducted by my Office. If I do not hear back from the Department within this time frame, or receive a response that does not provide answers to the questions, my Office will proceed on the assumption that no cooperation will be forthcoming from the Department with respect to the requests made herein.

Sincerely,



Steve Descano

Fairfax County Commonwealth's Attorney