



Andrew Vale
Assistant Director in Charge
Federal Bureau of Investigation - Washington Field Office
601 4th Street NW
Washington, DC 20535

26 January 2018

Dear Andrew Vale,

CASE OF BIJAN GHAI SAR: USE OF LETHAL FORCE BY UNITED STATES PARK POLICE OFFICERS

Amnesty International is writing to you regarding the investigation into the fatal shooting of Bijan Ghaisar on 17 November 2017, by U.S. Park Police officers.

We are seeking assurances that this investigation will be thorough, transparent and impartial, that the family of Bijan Ghaisar will be kept updated on its development and determination throughout its process, and that the methodology and results will be made public. At the same time, we emphasise that any law enforcement officer found to have resorted to unlawful use of lethal force be subject to disciplinary and criminal proceedings as appropriate.

According to publicly available information regarding the incident, Bijan Ghaisar was involved in a minor, vehicular collision with another vehicle in which no one was seriously injured on the evening of 17 November in Alexandria, VA. Ghaisar drove away from the scene without exchanging information with the other driver, which can be a Class 5 felony in Virginia if there is injury or the vehicle damage is at least \$1,000. Ghaisar's vehicle was spotted a short time later by US Park Police based on a description and license plate read out over the police radio. The Park Police vehicle pursued Ghaisar and were later joined by a Fairfax County police officer who followed the Park Police officers to the final stop in the Fort Hunt area of Virginia. The dashboard video camera of the Fairfax County officer captured the final minutes of the pursuit and was publicly released. The video shows the US Park Police stop Ghaisar's vehicle on two occasions, and each time he drives off as officers approach his vehicle, close enough to touch the vehicle, but not in the vehicle's path or in harm's way. During the third attempt to stop Ghaisar, officers can be seen with their guns drawn and pointed at the Jeep's driver's side window. As many as five shots can be heard as the vehicle once again started to roll slightly forward to the right, but not directly at the officers, and then stopped. After a brief pause, the vehicle again began to roll forward for a few feet. One of the officers, who had holstered his pistol, unholstered it and two more shots were fired. The vehicle stopped once again. As the officers approached the vehicle a few seconds later, the vehicle again began rolling toward a ditch on the right side of road, where there is no curb or sidewalk when the officers fired two more shots at close range. The vehicle then tipped over into the ditch near a stop sign at the intersection as the video ends. Other vehicles could be seen driving by the stop as the shots were fired.

According to the family's lawyers, medical records show Ghaisar was shot four times in the head and once in the wrist. The lawyers said he was unarmed, and the video does not indicate whether a weapon was present. However, the video shows the officers were not in any apparent danger of being struck when the vehicle moved forward, and away from where the officers were standing. Ghaisar died 10 days later.

The UN Human Rights Committee is the expert body established under the International Covenant on Civil and Political Rights (ICCPR) to monitor implementation of this core human rights treaty. The USA ratified the ICCPR in 1992. In its General Comment 6 on the right to life under the Covenant, the Committee states that “The deprivation of life by the authorities of the State is a matter of the utmost gravity” and that states must take measures to prevent arbitrary killing by their own security forces. Such measures are set out in the United Nations Basic Principles on the use of Force and Firearms by Law Enforcement Officials, Principle 9 of which states:

“Law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life” (emphasis added).

Amnesty International seeks your assurance that the investigation into this incident will conform to the highest standards for investigating officer-involved shootings, and that all relevant evidence, including the medical examiner report and witness testimony, will be made available to it. We urge that a report of the findings be made public as soon as possible, with information on the scope of the investigation, procedures and methods used to evaluate evidence, as well as conclusions and recommendations. We also seek your assurance that any officer found responsible for unlawful use of force will be held accountable in disciplinary and criminal proceedings as appropriate. The family of Bijan Ghaisar should be kept informed regarding the investigation throughout this process.

Accountability is also an essential part of redress. Under international law, anyone whose rights have been violated has the right to remedy. In a case involving death in custody or as a result of lethal force, the family has that right to remedy. The UN Human Rights Committee has stated:

Article 2, paragraph 3, requires that in addition to effective protection of Covenant rights States Parties must ensure that individuals also have accessible and effective remedies to vindicate those rights. ... Administrative mechanisms are particularly required to give effect to the general obligation to investigate allegations of violations promptly, thoroughly and effectively through independent and impartial bodies. A failure by a State Party to investigate allegations of violations could in and of itself give rise to a separate breach of the Covenant...

Where the investigations referred to [above] reveal violations of certain Covenant rights, States Parties must ensure that those responsible are brought to justice. As with failure to investigate, failure to bring to justice perpetrators of such violations could in and of itself give rise to a separate breach of the Covenant. These obligations arise notably in respect of those violations recognized as criminal under either domestic or international law, such as ... summary and arbitrary killing...

While further details are necessary in order to determine all of the facts for what transpired prior to the fatal incident – for instance, whether Bijan Ghaisar, before being shot, made any attempts to speak with the officers or threatened the officers in any way which is not audible or visible from the Fairfax County officer’s video –the mere fact of Ghaisar’s fleeing officers does not justify the use of a firearm unless he presented an ongoing grave threat to the life of

the officers or others. Since the video does not show that Ghaisar presented such a threat, the intentional use of firearms – indicative from the four gunshot wounds to his head – does not appear to be justified in this situation and may amount to an excessive use of force. While emotions may become elevated during a pursuit such as that seen in the video, the protect life principle must remain at the heart of the officers' actions. It may never be easy for officers to allow a suspect to flee, however considering the nature of the crime and the fact that officers had both a description of Ghaisar's vehicle as well as his license plate number, law enforcement had other means in which they may have been able to apprehend him at a later time. It is therefore imperative that the investigation being conducted by the Federal Bureau of Investigation fully examine the facts surrounding this incident to determine not only whether the use of lethal force in this instance was unlawful, but what steps could have been taken to prevent the loss of life in this instance.

I thank you for your serious consideration of our concerns and look forward to your response. Should you have any questions please contact Senior Program Officer for Criminal Justice Program, Krissy Roth at Kroth@aiusa.org or 202.509.8182

Yours sincerely,

A handwritten signature in black ink that reads "Margaret Huang". The signature is fluid and cursive, with the first name "Margaret" written in a larger, more prominent script than the last name "Huang".

Margaret Huang

Executive Director

Amnesty International USA

Cc: Chief Robert Maclean, U.S. Park Police