



governmentattic.org

"Rummaging in the government's attic"

Description of document: Department of the Interior (DOI) Office of Inspector General (OIG) Closed Investigations regarding the National Park Service (NPS), January - April 2025

Requested date: 07-April-2025

Release date: 15-May-2025

Posted date: 02-June-2025

Source of document: FOIA Request
FOIA Officer
Office of Inspector General
U.S. Department of the Interior
1849 C Street, NW
MS-4428
Washington, DC 20240
Fax: 703-487-5432 (Attn: FOIA Officer)
Email: FOIA@doioig.gov
FOIA.gov

The governmentattic.org web site ("the site") is a First Amendment free speech web site and is noncommercial and free to the public. The site and materials made available on the site, such as this file, are for reference only. The governmentattic.org web site and its principals have made every effort to make this information as complete and as accurate as possible, however, there may be mistakes and omissions, both typographical and in content. The governmentattic.org web site and its principals shall have neither liability nor responsibility to any person or entity with respect to any loss or damage caused, or alleged to have been caused, directly or indirectly, by the information provided on the governmentattic.org web site or in this file. The public records published on the site were obtained from government agencies using proper legal channels. Each document is identified as to the source. Any concerns about the contents of the site should be directed to the agency originating the document in question. GovernmentAttic.org is not responsible for the contents of documents published on the website.



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

VIA EMAIL

May 15, 2025

Re: OIG-2025-000184

This is in response to your Freedom of Information Act (FOIA) request dated April 5, 2025, which was received by the Office of Inspector General (OIG) on April 7, 2025. You requested the following information under the FOIA, 5 U.S.C. § 552:

A copy of the report for each DOI-OIG investigation closed since January 20, 2025 regarding the National Park Service or any National Parks or National Park Service programs or employees. A copy of each Management Alert or equivalent document since January 20, 2025 regarding the National Parks or a National Park or a NPS program or employees. A copy of each inspection relating to the National Park Service completed since January 20, 2025.

We do not bill requesters for FOIA processing fees when their fees are less than \$50.00, because the cost of collection would be greater than the fee collected. See 43 C.F.R. § 2.49(a)(1). Therefore, there is no billable fee for the processing of this request.

We obtained the documents you seek and conducted a review of the material you requested. After reviewing this information, we have determined that we may release 67 pages of responsive documents with FOIA redactions, pursuant to exemption 5 U.S.C. § 552 (b)(6), (b)(7)(C) and (b)(7)(E).

FOIA requires that agencies generally disclose records. Agencies may only withhold requested records only if one or more of nine exemptions apply.

Exemption 6 permits the withholding of information contained in “personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” 5 U.S.C. § 552(b)(6). The term “similar files” encompasses any government record that contains a particular individual; the term is not limited to records contained in personnel or medical files.

Exemption 6 requires weighing the privacy interests in nondisclosure against the public interest in the release of the records. For a privacy interest to exist, the information must be such that there is a substantial probability that a disclosure will cause an interference with personal privacy and that disclosure could subject the individuals to unwanted intrusions. The individuals named in your FOIA request could suffer the harms contemplated under FOIA Exemption 6 if

released, consequently, we find a privacy interest exists in this case. However, even if a privacy interest exists in certain information, we must disclose the information if the privacy interest is outweighed by a significant public interest. The test for determining whether a public interest sufficient to justify release of the requested information exists is whether disclosure of the information would shed light on an agency's performance of its statutory duties. You have not demonstrated how disclosure of the responsive material would reveal how OIG functions, as a result, we find that you have not provided sufficient information to demonstrate that the personal information at issue would inform the public in any meaningful way about the workings of the government. Therefore, you have not established that the public interest in this case outweighs any privacy interests and we must withhold this information under FOIA Exemption 6.

Exemption 7 allows agencies to refuse to disclose records compiled for law enforcement purposes under any one of six circumstances (identified as exemptions 7 (A) through 7 (F)). Law enforcement within the meaning of Exemption 7 includes enforcement pursuant to both civil and criminal statutes.

Specifically, Exemption 7(C) permits an agency to withhold information contained in files compiled for law enforcement purposes if production "could reasonably be expected to constitute an unwarranted invasion of personal privacy." U.S.C. § 552(b)(7)(C). Thus, the purpose of Exemption 7(C) is to protect the privacy of an individual if one exists. To determine this, we must evaluate not only the nature of the personal information found in the records, but also whether release of that information to the general public could affect that individual adversely. In this case, we find that release of personal information could reasonably be expected to have a negative impact on an individual's privacy. However, even if a privacy interest exists, we must nevertheless disclose the requested information if the public interest outweighs the privacy interest in the information requested. In this instance, you have not established that release of the privacy information of witnesses, interviewee, middle and low-ranking federal employees and investigators, and other individuals name in the investigatory file, would shed light on government operations, and we have not found such a public interest in this case. For this reason, after reviewing the information in question, we have determined that disclosure would be an unwarranted invasion of personal privacy and we must withhold this information under FOIA Exemption 7(C).

Exemption 7(E), protects information that, if disclosed, could result in circumvention of law. In particular, Exemption 7(E) allows OIG to withhold all law enforcement information "which would disclose techniques and procedures for law enforcement investigations or prosecutions or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law." 5 U.S.C. § 552(b)(7)(E). Particularly though, for the materials that have been withheld under FOIA Exemption 7(E) here, we have determined that they are techniques and procedures for law enforcement investigations or prosecutions whose release could reasonably be expected to risk circumvention of the law.

As amended in 2016, the Freedom of Information Act provides that a federal agency or department (hereinafter "agency") may withhold responsive records only if: (1) the agency reasonably foresees that disclosure would harm an interest protected by one of the nine exemptions that FOIA enumerates; or (2) disclosure is prohibited by law. 5 U.S.C. §

552(a)(8)(A)(i). We reasonably foresee that disclosure would harm an interest protected by one or more of the nine exemptions to the FOIA's general rule of disclosure.

If you disagree with this response, you may appeal this response to the OIG's FOIA/Privacy Act Appeals Officer. If you choose to appeal, the OIG FOIA/Privacy Act Appeals Officer must receive your FOIA appeal **no later than 90 workdays** from the date of this letter. Appeals arriving or delivered after 5 p.m. Eastern Time, Monday through Friday, will be deemed received on the next workday.

Your appeal must be made in writing. You may submit your appeal and accompanying materials to the OIG FOIA/Privacy Act Appeals Officer by mail, courier service, fax, or email. All communications concerning your appeal should be clearly marked with the words: "FREEDOM OF INFORMATION APPEAL." You must include an explanation of why you believe the OIG's response is in error. You must also include with your appeal copies of all correspondence between you and the OIG concerning your FOIA request, including your original FOIA request and the OIG's response. Failure to include with your appeal all correspondence between you and the OIG will result in the OIG's rejection of your appeal, unless the OIG FOIA/Privacy Act Appeals Officer determines (in the OIG FOIA/Privacy Act Appeals Officer's sole discretion) that good cause exists to accept the defective appeal.

Please include your name and daytime telephone number (or the name and telephone number of an appropriate contact), email address and fax number (if available) in case the OIG FOIA/Privacy Act Appeals Officer needs additional information or clarification of your appeal. The OIG FOIA/Privacy Act Appeals Office Contact Information is the following:

Office of the Inspector General
U.S. Department of the Interior
1849 C Street, NW
MS-4428
Washington, DC 20240
Attn: FOIA/Privacy Act Appeals Office

Telephone: (303) 236-9161
Fax: (703) 487-5432
Email: oig_foiaappeals@doioig.gov

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of FOIA. See [5 U.S.C. 552\(c\)](#). This response is limited to those records that are subject to the requirements of FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

The 2007 FOIA amendments created the Office of Government Information Services (OGIS) to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. You may contact OGIS in any of the following ways:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road - OGIS
College Park, MD 20740-6001

E-mail: ogis@nara.gov
Web: <https://ogis.archives.gov>
Telephone: 202-741-5770
Toll-free: 1-877-684-6448

Please note that using OGIS services does not affect the timing of filing an appeal with the OIG's FOIA & Privacy Act Appeals Officer.

However, should you need to contact me, my email is foia@doioig.gov.

Sincerely,

Brittanie Sadler

Brittanie Sadler
FOIA Analyst
Office of Inspector General



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

Not Subject to Release Under FOIA

REPORT OF INVESTIGATION
ER-HRN-24-0034-I

I. RESULTS OF INVESTIGATION

We investigated allegations of theft from the (b) (6), (b) (7)(C) National Park Service (NPS) (b) (6), (b) (7)(C), between (b) (6), (b) (7)(C). One area where the thefts occurred was in a secured area (b) (6), (b) (7)(C). Stolen items included chainsaws, backpack blowers, weed eaters, and other miscellaneous items.

We did not find evidence to identify who was responsible for these thefts.

We focused much of our investigation on a theft that occurred on (b) (6), (b) (7)(C) where the locks were cut off storage cages, and multiple items were stolen, including five chainsaws. The U.S. Park Police (USPP) valued these items at between \$8,000 and \$10,000 total.

(b) (7)(E)

During interviews with (b) (6), (b) (7)(C) employees, some speculated that (b) (6), (b) (7)(C) (b) (6), (b) (7)(C), may have been responsible for stealing the chainsaws on (b) (6), (b) (7)(C) (b) (6), (b) (7)(C), and (b) (6), (b) (7)(C). We interviewed (b) (6), (b) (7)(C) denied any involvement. We were unable to develop evidence to the contrary.

We briefed the (b) (6), (b) (7)(C) Superintendent as well as (b) (6), (b) (7)(C). We are closing this case to file with no further action anticipated.

II. SUBJECT

Unknown



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

REPORT OF INVESTIGATION
ER-HRN-25-0107-I

I. RESULTS OF INVESTIGATION

We initiated this investigation based on an anonymous complaint alleging that (b) (6), (b) (7)(C) with the National Park Service's (NPS) (b) (6), (b) (7)(C) Park maintenance yard in (b) (6), (b) (7)(C), stole an NPS-owned woodchipper in or around (b) (6), (b) (7)(C) 2023. The complaint alleged that (b) (6), (b) (7)(C) had bragged about using the woodchipper to help clear his (b) (6), (b) (7)(C) property in (b) (6), (b) (7)(C).

We did not substantiate this allegation. We confirmed with NPS (b) (6), (b) (7)(C) supervisor, that the park had been missing a woodchipper manufactured by the company Wood Chuck since approximately (b) (6), (b) (7)(C) 2023. We reviewed documents and coordinated with personnel involved in a (b) (6), (b) (7)(C) 2023 NPS equipment trade, in which a local John Deere franchise removed approximately 60 maintenance items from the yard, including one of two woodchippers. It appears that shortly after this, the second woodchipper made by Wood Chuck that John Deere did not remove went missing from the yard.

We interviewed (b) (6), (b) (7)(C) and other NPS maintenance personnel, who outlined the events that led to the purported theft of the woodchipper. (b) (6), (b) (7)(C) denied taking the woodchipper and stated that he used his personally owned woodchipper for clearing his (b) (6), (b) (7)(C) property in (b) (6), (b) (7)(C). He provided photographs of his personal woodchipper, which was manufactured by the company Vermeer, and we found his statements to be credible.

NPS staff discussed practices they have since implemented at the yard to prevent the future theft of NPS-owned equipment, including storing valuable items in locked areas.

We are closing this case to file with no further action.

II. SUBJECT

(b) (7)(C), (b) (6), National Park Service



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

Alleged Excessive Use of Force, NPS, DC

This document is the property of the U.S. Department of the Interior, Office of Inspector General (OIG), and may contain information that is protected by law from disclosure. Distribution and reproduction of this document is not authorized without the OIG's express written permission.



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

REPORT OF INVESTIGATION
OI-SI-21-0009-I

I. EXECUTIVE SUMMARY

We investigated allegations that two U.S. Park Police (USPP) officers, Officer 1 and Officer 2, used excessive force against two members of the international news media (hereinafter referred to as the Cinematographer and the Reporter) during the operation to disperse protesters in and around Lafayette Park in Washington, DC, on June 1, 2020. During the operation, Officer 1 struck the Cinematographer with his USPP-issued shield and then pushed the Cinematographer's camera, and Officer 2 struck the Reporter with his USPP-issued baton.

We examined the officers' actions in light of relevant USPP policies. These policies define appropriate uses of force by USPP personnel and require officers to use "only the minimum level of reasonable force necessary to control a situation,"¹ which includes a requirement that an officer "shall de-escalate the amount of force to the lowest level necessary to maintain control" of a subject.² USPP policy incorporates the standard set forth in U.S. Supreme Court jurisprudence, which requires that officers' uses of force be "objectively reasonable" when viewed "in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation."³ Read together, these standards required us to consider whether the officers' uses of force were objectively reasonable given the facts and circumstances facing them at the time and, moreover, whether the officers used the minimum level of reasonable force necessary to control the situation. In conducting our analysis, we also considered other, more specific policies, such as the USPP's defensive equipment policy, which provided additional context regarding whether the officers' conduct constituted the "minimum level of reasonable force" in particular situations. We also looked at whether the officers' actions were consistent with their training because this analysis contributed to our assessment of whether their uses of force were "objectively reasonable."

We determined that Officer 1's shield strike against the Cinematographer was permitted under USPP policy because it was objectively reasonable and did not exceed the minimal level of reasonable force necessary to control the situation based on the facts and circumstances confronting him at the time. However, we drew a different conclusion with respect to Officer 1's later actions when he pushed the Cinematographer's camera because the force that Officer 1 used did not appear to be the *minimum* level of reasonable force necessary to get the Cinematographer to leave the area. We acknowledge,

¹ USPP, General Order No. 3615, *Use of Force*, § 3615.02.

² *Id.* § 3615.04.

³ *Graham v. Connor*, 490 U.S. 386, 397 (1989). See also USPP, General Order No. 3615, *Use of Force*, § 3615.02 ("The Supreme Court has stated that the Fourth Amendment 'reasonableness' inquiry is whether the officers' actions are 'objectively reasonable' in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation.").

This document is the property of the U.S. Department of the Interior, Office of Inspector General (OIG), and may contain information that is protected from disclosure by law. Distribution and reproduction of this document is not authorized without the express written permission of the OIG.

OFFICIAL USE ONLY

OI-002 (02/22)

however, that the USPP policy does not define “minimum level of reasonable force,” nor could we find other legal guidance shedding light on this term. Further, the USPP training focuses primarily on the constitutional “objective reasonableness” standard rather than the “minimal level of reasonable force.” While the U.S. Department of the Interior (DOI) may wish to address these points, we nonetheless concluded that both the conduct at issue and the policy are sufficiently clear to find a violation of the policy.

We concluded that Officer 2’s use of force against the Reporter did not comply with USPP policy. We made this determination because USPP policy does not permit an officer to use his baton to strike an individual who is running away in accordance with law enforcement officers’ commands to leave the area. Moreover, we determined that an objectively reasonable officer on the scene would not have concluded that the Reporter posed a threat under the circumstances, and none of the other circumstances authorizing the use of a baton strike under the USPP’s defensive equipment policy were present at the time Officer 2 struck the Reporter.

We are providing this report to the Deputy Assistant Secretary for Public Safety, Resource Protection and Emergency Services, for any action deemed appropriate.

II. BACKGROUND AND SCOPE

On May 25, 2020, George Floyd, a 46-year-old African American man, was killed while in the custody of the Minneapolis, Minnesota police department. Floyd’s death, as well as the broader Black Lives Matter movement, resulted in protests across the United States, including at Lafayette Park in Washington, DC, starting on May 29, 2020.⁴ The USPP, along with the U.S. Secret Service, established a police presence in Lafayette Park to coordinate the law enforcement response to the protests near the White House and the park.

We concluded in an earlier report that, due to the violence and property damage that occurred on May 29 through May 31, 2020, the USPP decided to clear protesters from Lafayette Park and the surrounding areas to allow a contractor to install an anti-scale fence. These events took place on June 1, 2020.⁵ During the clearing of protesters from H Street, two USPP officers used force against two members of the international news media, who later filed an administrative tort claim with the DOI stating that the use of force injured them and damaged their camera equipment.⁶

The USPP Internal Affairs Unit investigated the officers’ uses of force and referred its interim report to the U.S. Attorney’s Office for the District of Columbia (USAO). The USAO ultimately declined to prosecute the two officers. Our office then began an administrative investigation of the incident to determine whether the USPP officers’ uses of force were consistent with USPP policy.⁷

⁴ Lafayette Square, also known as Lafayette Park, is a 7-acre public park located within President’s Park, directly north of the White House on H Street in Washington, DC.

⁵ The events surrounding the USPP’s clearing of protesters on June 1, 2020, are set forth fully in our report, *Review of U.S. Park Police Actions at Lafayette Park*, which is available on our website. See U.S. Dept. of the Interior, Office of Inspector General, 20–0563, *Review of U.S. Park Police Actions at Lafayette Park* (2021) (<https://www.oversight.gov/sites/default/files/oig-reports/DOI/SpecialReviewUSPPActionsAtLafayetteParkPublic.pdf>).

⁶ See also *Hearing Before the House Committee on Natural Resources, Unanswered Questions About the U.S. Park Police’s June 1 Attack on Peaceful Protesters at Lafayette Square*, 116th Congress, 2nd Sess. (June 29, 2020) at 61–62.

⁷ We set forth a more detailed explanation of the standards we applied in the section titled “Governing Standards.”

III. RESULTS OF INVESTIGATION

A. Facts

1. The USPP Officers Received All Required Use of Force Training

Officer 1 joined the USPP in (b) (6), (b) (7)(C) and Officer 2 joined the USPP in (b) (6), (b) (7)(C).⁸ Both officers attended police officer training at the Federal Law Enforcement Training Center (FLETC).⁹ As part of their basic training program, both officers received instruction on the use of force, baton control techniques, nonlethal control tactics, and crowd control.

USPP training records showed that the officers received additional use of force training throughout their careers as required by DOI policy, which mandates that officers attend annual training on the use of force.¹⁰ USPP training records showed that both officers were in compliance with this policy and had most recently attended training in 2019. In particular, Officer 2 attended USPP inservice training on use of force on (b) (6), (b) (7)(C) 2019, and Officer 1 attended USPP inservice training on use of force on (b) (6), (b) (7)(C) 2019.¹¹

As members of the USPP's Civil Disturbance Unit (CDU), both officers also received advanced civil disturbance response training from an outside vendor, which included training on using a shield and baton to manage a crowd and for officer safety. Officers 1 and 2 attended initial civil disturbance training from an outside vendor on (b) (6), (b) (7)(C) 2016, and attended a civil disturbance unit training exercise from the same vendor on (b) (6), (b) (7)(C) 2019. During these training sessions, officers participated in exercises responding to hostile and violent crowds using advanced civil disturbance techniques.

2. Protest Demonstrations at Lafayette Park Leading Up to June 1

As described in our June 2021 report,¹² protests occurred in and around Lafayette Park on May 29, 30, and 31, 2020, and were mostly peaceful during the day. However, acts of violence increased in the late afternoons and evenings. USPP officers reported that some protesters threw projectiles, such as bricks, rocks, caustic liquids, frozen water bottles, glass bottles, lighted flares, and fire, at law enforcement officials. Overall, 49 USPP officers were injured during the protests from May 29–31. Federal and private property, including the comfort station, which was set on fire on May 31, was also damaged during the protests.¹³

⁸ Officer 1 retired from the USPP (b) (6), (b) (7)(C) 2022.

⁹ 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.

¹⁰ See DOI Office of Law Enforcement and Security, 446 *Departmental Manual (DM)* 15, "Training Standards for Law Enforcement Officers" at 15.10 (b)(1) (Aug. 1, 2016).

¹¹ The USPP told us that the training courses for 2020 did not begin until after June 1, 2020.

¹² See U.S. Dept. of the Interior, Office of Inspector General, 20-0563, *Review of U.S. Park Police Actions at Lafayette Park* (2021) (<https://www.oversight.gov/sites/default/files/oig-reports/DOI/SpecialReview/USPPActionsAtLafayetteParkPublic.pdf>).

¹³ The comfort station is a small building on the north end of Lafayette Park near the intersection of 16th and H Streets. The building houses two public restrooms (closed at the time of the protests) and a breakroom for National Park Service maintenance staff. On the H Street side, the comfort station is enclosed by an approximately 6-foot solid concrete wall with an opening in the middle covered by interlocking gates.

3. *The June 1, 2020 Protest Demonstrations*

a. CDU Deployed To Move Protestors

Officers 1 and 2 were assigned to the USPP CDU that cleared protesters from Lafayette Park on June 1, 2020. CDU officers were told that the comfort station was a “flashpoint” for violence during the previous nights and that there was concern that protesters would use the building to conceal themselves and projectiles they could use against officers.

In the evening on June 1, as the USPP incident commander was completing the dispersal warnings, USPP CDU officers moved out of Lafayette Park and began marching down H Street using various police tactics to clear protesters from the area. As described in our June 2021 report, the dispersal warnings could not be clearly heard by some of the protesters on H Street.¹⁴ Both witness statements and video evidence demonstrated that as USPP officers moved west on H Street, they issued verbal commands to the crowd to “move, move, move.” Many protesters ran from the scene, but others refused to clear the area. When officers encountered such protesters, they told them to move back and, in some instances, pushed them with their shields. USPP officers, including Officers 1 and 2, reported that some protesters resisted the officers’ attempts to get them to leave the area by grabbing the officers’ shields, punching them, and throwing water bottles and other objects at them.

b. The Cinematographer and the Reporter Positioned Themselves Next to the Comfort Station

Shortly before the clearing operation began, the Cinematographer and the Reporter, who were working together for an international television network,¹⁵ were on H Street near Vermont Avenue behind a large tree. The Cinematographer told us that their position provided “good cover” when the police arrival “stirred up the crowd a little bit.” The Cinematographer was shooting video while the Reporter was reporting back to the international television network. The Cinematographer and the Reporter moved west on H Street behind the comfort station, and the international television network went live with their coverage. The Cinematographer told us that he and the Reporter positioned themselves next to the comfort station so that they would be out of the way of CDU officers when they advanced up H street (see Figure 1). The Cinematographer and the Reporter told us they did not believe they were required to leave because they were with the media, and no one told them they needed to leave the area. The Reporter also told us the police “moved right past” them the prior evening enabling the Reporter and the Cinematographer to move in behind the police line and continue their news coverage.¹⁶ The Cinematographer and the Reporter also stated they did not hear the USPP’s warnings to leave the park that had been issued earlier that evening.

¹⁴ See U.S. Dept. of the Interior, Office of Inspector General, 20–0563, *Review of U.S. Park Police Actions at Lafayette Park* (2021) (<https://www.oversight.gov/sites/default/files/oig-reports/DOI/SpecialReviewUSPPActionsAtLafayetteParkPublic.pdf>).

¹⁵ The Cinematographer and the Reporter are (b) (6), (b) (7)(C).

¹⁶ An 11 p.m. curfew was in effect on May 31, 2020. The Reporter and the Cinematographer could not identify the law enforcement agency that they stated had walked past them and that they believed had implicitly allowed them to remain in the cleared area the previous night.

Figure 1: Map of Lafayette Park and Surrounding Area

Source: National Park Service. (The DOI Office of Inspector General (OIG) overlaid the orange box to illustrate the approximate location of the comfort station and the blue arrows to illustrate the direction the officers moved).

c. Officer 1's Use of Force Against the Cinematographer

The police line stopped on H Street near the comfort station's gated opening. The comfort station is on the south side of H Street and on the officers' left side as they approached it. Officer 1 was the USPP officer closest to the comfort station, and its solid concrete wall was against his left side.

The Cinematographer was standing on an elevated curb with his right shoulder against the comfort station's south wall and his back to the bike rack fence enclosing Lafayette Park. The police line started moving forward again more rapidly, and as Officer 1 ran toward the corner of the comfort station keeping pace with the police line, he said he noticed out of the corner of his eye someone standing there but could not see the person's hands. Officer 1 said, "I perceived a threat from the person hiding behind the wall during a violent demonstration." Officer 1 explained that, from his view, the individual appeared to be "purposely concealed, hiding, waiting for us to come to his position, like an ambush." This, according to Officer 1, was an "indicator" that the individual was not "retreating" as directed by the officers and led Officer 1 to believe that the individual was there "to do harm and hurt me or somebody else." Officer 1 said he was concerned he would be "hit with something or attacked" by the person. Officer 1 told us that, at the time, he had only his shield to defend himself against what he perceived as a threat. Officer 1 then struck the individual, later identified as the Cinematographer, in the stomach with the edge of his shield, causing the Cinematographer to sit down onto a milk crate that was behind him (see Figure 2).

Figure 2: Officer 1 Striking the Cinematographer at the Comfort Station

Source: (b) (6), (b) (7)(C)

The Cinematographer told us Officer 1 “wouldn’t have been able to see” him until Officer 1 had passed the corner of the comfort station. When asked if he thought Officer 1 could see his camera as Officer 1 approached the comfort station, the Cinematographer said he did not believe it would have been visible because of the camera’s position.

The Cinematographer also told us he was not wearing visible media credentials at the time Officer 1 struck him. In addition, Officer 1 told us, and we independently confirmed with other USPP officers, that, based on briefings they had received, officers generally understood that everyone, including the media, was required to leave when the USPP began its operation to clear Lafayette Park and the surrounding area on the evening of June 1.¹⁷

After striking the individual with his shield, Officer 1 told us that he noticed the individual was holding a video camera on his shoulder. Officer 1 told us that, once he saw the camera, he no longer felt threatened. Officer 1 explained that, at that point, the individual was “distracting me from other people.” Officer 1 went on to state, “[H]e’s not a viable threat, but he’s a threat to a point where he’s taking my attention away from other people that are violent.” When asked by the OIG investigator whether an officer is permitted to strike someone if he or she is no longer a threat and is, in the officer’s words, “distracting” an officer’s attention, Officer 1 responded, “No,” but stated that he “didn’t strike [the Cinematographer] twice.” Officer 1 stated he reached out to the individual with his

¹⁷ During a June 1, 2020 press conference, District of Columbia Mayor Muriel Bowser announced a 7 p.m. citywide curfew for that day. Members of the media and those serving essential functions were exempt from the curfew. As we found in our June 2021 report, the clearing operation was not related to the curfew.

right hand and told the individual to “[m]ove. Get out here.” The video evidence, however, showed that Officer 1 reached out and grabbed the Cinematographer’s camera, pushing it off the Cinematographer’s shoulder and onto his lap (see Figure 3).¹⁸ Officer 1 stated that, in taking this action, he was trying to push the individual out of the way and west down H Street.

Figure 3: View of Officer 1 and the Cinematographer



Source: (b)(6), (b)(7)(C)

When Officer 1 pushed the Cinematographer’s camera, several USPP officers were standing in close proximity to Officer 1 and the Cinematographer. Officer 3, who was standing behind Officer 1, told the Cinematographer to move and pointed in the direction the Cinematographer should go. The Cinematographer then stood up and began running in the direction Officer 3 had pointed. Officer 1’s interaction with the Cinematographer lasted no more than 5 seconds (see Figures 4 and 5).

The Cinematographer continued to film the protest after being struck by Officer 1 and while running away from the comfort station. The Cinematographer told us that when Officer 1 “punched” his camera, it caused the camera to hit back into his head, making him see “stars” and causing a “bit of whiplash.” The Cinematographer told us he went to an urgent care medical facility approximately 6 to 7 days after June 1 based on advice he received from his employer, who insisted he obtain a “clean bill of health.” The Cinematographer told us the medical staff at the urgent care medical facility had seen the news coverage of the incident and said it was a “traumatic injury” and suggested the Cinematographer go to the emergency room to undergo additional testing. The Cinematographer told

¹⁸ A review of the video evidence showed that Officer 1 did not “punch” the Cinematographer or his camera as the Cinematographer stated in his interview. Instead, the video evidence showed Officer 1 reached out with an open palm and then grabbed the camera, pushing it off the Cinematographer’s shoulder and onto his lap.

us he declined those tests because he “felt okay” and was “pretty confident” he did not have any internal injuries. The Cinematographer said that, since the incident, he has had “a bit of lower back pain” but “nothing too significant.”¹⁹

D. Officer 2’s Use of Force Against the Reporter

Officer 2 was to the right of Officer 1 as the USPP officers moved west on H Street past the comfort station. Officer 2 moved several feet past the comfort station and ahead of Officer 1. Officer 2 then stopped and turned toward his left, moving back toward the comfort station where Officer 1 and Officer 3 were interacting with the Cinematographer and the Reporter, as described above (see Figure 4).

Figure 4: Officer 2 Turns Toward Officer 1 and Officer 3



Source: (b) (6), (b) (7)(C) (The DOI OIG overlaid the white arrows identifying Officers 1, 2, and 3.)

Officer 2 told us he saw two officers involved in a “confrontation.” Officer 2 said he saw Officer 1’s “hands up, a commotion, going at it with someone. . . . I took that as a threat, that he was defending himself.” Officer 2 said it “looked like” Officer 1 was being assaulted. Officer 2 moved closer to Officer 3 and was directly behind Officer 3 when Officer 3 told the Cinematographer and the Reporter

¹⁹ On (b) (6), (b) (7)(C) 2023, the attorney for the Cinematographer submitted documentation to the DOI in support of the Cinematographer’s administrative claim for personal injuries and property damage to his video journalism equipment allegedly resulting from this incident caused by the officers’ uses of force on June 1, 2020. This documentation shed no new light on the cause or extent of the Cinematographer’s physical injuries as the documentation did not include records or other information from the urgent care medical facility or any other medical, hospital, or emergency facility or personnel. The attorney also submitted estimates and/or receipts in support of damages to the Cinematographer’s video camera and camera lens.

to move and pointed in the direction they should go to clear the area. The Cinematographer then stood up, and he and the Reporter began running away in the direction Officer 3 had pointed (see Figure 5).

Figure 5: View of Officer 3 Directing the Cinematographer and the Reporter To Depart



Source: (b) (6), (b) (7)(C) (The DOI OIG overlaid the white arrows identifying Officers 1, 2, and 3.)²⁰

Officer 2 then stepped to his right, moved beside Officer 3, and reached around Officer 3 to hit the Reporter with his baton as the Cinematographer and the Reporter began running west on H Street away from the officers as instructed (see Figure 6).

²⁰ The officer in this figure standing behind the fence with his hand on the Reporter's backpack is not a USPP officer. We have reason to believe the officer is with the Federal Bureau of Prisons (BOP). As noted in our June 2021 report, we provided the U.S. Department of Justice OIG, which oversees the BOP, with information relating to the actions of the BOP in Lafayette Park on June 1, 2020.

Figure 6: View of Officer 2 Reaching Out With His Baton

Source: (b) (6), (b) (7)(C) (The DOI OIG overlaid the white arrows identifying Officers 1, 2, and 3).

Officer 2 told us he saw the Reporter as part of a group of people standing near or around Officer 1 and that the Reporter came out from in front of Officer 1. Officer 2 stated he was “unsure” whether the Reporter was going to turn and come back toward CDU lines, and that, “in my mind, [the Reporter] had just previously assaulted a Federal officer and was then leaving the area.” Officer 2 said, “I didn’t know if she was coming to try to penetrate our lines and then assault another officer.” Officer 2 said he saw “[s]omeone came out from the side, and I thought that you know, that looked like someone that was part of the confrontation, and I didn’t want them coming back because we didn’t have any arrest teams behind us, and that’s when I deployed my force-issued baton.”²¹

Officer 2’s baton strike hit the Reporter across her upper back on top of her shoulders and the backpack she was wearing. In explaining his decision to use his baton, Officer 2 said, “When I made that decision in my head there was an assault and that’s why I was using [the baton]. It was also an emergency situation to clear the street to erect the fencing.” When asked if he was allowed to strike

²¹ As explained in our June 2021 report, the evidence demonstrated that the clearing operation was not a mass arrest situation, which has specific requirements and associated policies. However, USPP officers told us “hands teams,” USPP officers who were behind the CDU officers, could remove or arrest, if necessary, protesters who passed through the police line so the CDU unit could continue moving west.

someone with a baton who was complying with commands to leave the area, Officer 2 said, “Hypothetically if the person is 100 percent not resisting, listening to your verbal commands and walking away, no.” He stated, however, that he believed the Reporter had “assaulted a Federal officer and would be a fleeing felon.”

After being struck, the Reporter cried out and continued to move west on H Street. Officer 2’s interaction with the Reporter lasted no more than 3 seconds. A few minutes after being struck by Officer 2, the Reporter continued her live broadcast to the international television network from further down H Street near 16th Street.

The Reporter told us Officer 2’s baton strike landed on top of her shoulders and hit the strap of her backpack. She said the backpack took the impact of the strike and that a camera lens inside the backpack was damaged. The Reporter told us she had no bruising from the baton strike, only some tenderness and soreness around her neck and shoulders. The Reporter also said she received physical therapy for her injuries in her home country due to ongoing “pain and discomfort” since the incident.²²

B. Analysis

We analyzed whether the officers’ uses of force against the Cinematographer and the Reporter violated USPP policy. We did so by examining whether the officers’ actions on June 1, 2020, were objectively reasonable “in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation” and whether the use of force was the minimum level necessary under the circumstances. We used more specific policies, like the USPP’s defensive equipment policy, where applicable, to determine whether the officers’ uses of force constituted the minimum level of reasonable force necessary under the circumstances. Similarly, in assessing whether the officers’ uses of force were objectively reasonable, we reviewed the officers’ training to determine whether the officers’ actions were consistent with that training.

The USPP use of force policy requires that its officers “employ only *the minimum level* of reasonable force necessary to control a situation.”²³ The USPP’s use of force policy further instructs officers by providing examples of what levels of force are appropriate depending on the subject’s level of resistance and requires that once a subject is under control, officers de-escalate the amount of force to the lowest level necessary to maintain control.²⁴ In addition, the defensive equipment policy sets forth parameters on how and when defensive equipment, such as a shield or baton, may be used “to gain control of an individual or group of individuals.”²⁵ USPP officers are required to know these policies and receive annual use of force training.²⁶

²² On [REDACTED] 2023, the attorney for the Reporter submitted receipts for services to the DOI to support the Reporter’s administrative claim for personal injuries allegedly resulting from Officer 2’s use of force on June 1, 2020. The documentation the attorney submitted on behalf of the Reporter did not provide sufficient detail to explain to us the nature or extent of the Reporter’s injuries.

²³ USPP, General Order No. 3615, *Use of Force*, § 3615.02 (emphasis added). Compare DOI Office of Law Enforcement and Security, Interim Policy 446 DM 20 – Use of Force (Dec. 20, 2019) (stating law enforcement officers “are permitted to use force that is reasonable in light of the totality of the circumstances. This standard does not require [law enforcement officers] to meet force with equal or lesser force.”).

²⁴ USPP, General Order No. 3615, *Use of Force*, § 3615.04; see also *id.* § 3615.02 (“Once a level of force is no longer required, it must be decreased or discontinued.”).

²⁵ USPP, General Order No. 3605, *Defensive Equipment*, § 3605.01.

²⁶ USPP, General Order No. 31.01, *Conduct*. See also USPP, General Order No. 32.03, *General Rules*. Witnesses told us that the annual use of force training focused primarily on *Graham v. Connor*’s objective reasonableness standard.

We analyzed Officer 1's conduct as two separate uses of force. We determined that his initial shield strike against the Cinematographer was permitted under USPP policy because it was objectively reasonable and did not exceed the minimal level of reasonable force necessary to control the situation given the facts and circumstances confronting him at the time. However, we were unable to draw the same conclusion with respect to the subsequent use of force—namely, pushing the Cinematographer's camera. In particular, regardless of whether it was “objectively reasonable” under the circumstances, other less intrusive force options were available. Therefore, we concluded the level of physical force used in this instance was not a minimal use of force.

As to Officer 2's use of force against the Reporter, we concluded that his baton strike exceeded the minimum level of reasonable force necessary to control the situation. The evidence showed that at the time of Officer 2's baton strike, the Reporter was following law enforcement officers' commands to leave the area and was running away from them. Officer 2's contention that he was justified in striking the Reporter because he believed she might turn and run behind their police line and assault another officer was objectively unreasonable because we identified no evidence to support his stated belief. First, Officer 2 confirmed he did not know whether it was the Reporter or someone else who committed the alleged assault and that he was not attempting to arrest the Reporter when he struck her. We also found no evidence supporting Officer 2's general statement that the Reporter, as opposed to any other fleeing protester, might return to assault another officer.²⁷ Taken together, Officer 2's statements appeared to be post-hoc justifications for the baton strike rather than credible recollections of what he perceived at the time. Moreover, none of the circumstances authorizing the use of a baton under the USPP's defensive equipment policy were present at the time Officer 2 struck the Reporter. We therefore concluded that Officer 2's baton strike did not comply with USPP policy.

1. Governing Standards

In assessing the officers' uses of force, we looked to USPP policy, which sets forth a more restrictive standard than the “objectively reasonable” standard under Fourth Amendment jurisprudence and requires officers to “employ only the minimum level of reasonable force necessary to control a situation.”²⁸ We did *not* analyze whether the officers' uses of force were permitted under the Fourth

²⁷ See *Deorle v. Rutherford*, 272 F.3d 1272, 1281 (2001) (providing that “a simple statement by an officer that he fears for his safety or the safety of others is not enough; there must be objective factors to justify such a concern”).

²⁸ The Fourth Amendment in general requires an officer's use of force to be “‘objectively reasonable’ in light of the facts and circumstances confronting them.” *Graham*, 490 U.S. at 397. The USPP's use of force policy, however, requires that officers “employ only the minimum level of reasonable force necessary to control a situation.” This is not a requirement of the Fourth Amendment. See *Stevenson v. City of Albuquerque*, 446 F. Supp.3d 806, 858 (D.N.M. 2020) (stating that “the Fourth Amendment does not require the use of the least, or even a less, forceful or intrusive alternative to effect custody, so long as the use of force is reasonable under *Graham v. Connor*.”). An agency may hold its officers to a higher standard than that required under the Fourth Amendment. See *Nguyen v. Navy*, No. SF-0752-17-0079-I-1, 2017 WL 4367439 (M.S.P.B. Sept. 27, 2017) (stating that an “agency is at liberty to set a higher standard for its officers than the minimum requirements of the Fourth Amendment, and there is no need for the agency to wait until an officer violates a civilian's constitutional rights before initiating disciplinary action against the officer for unacceptable conduct”). Because we do not analyze the constitutional claims, we do not attempt to resolve the question of whether the Fourth Amendment's reasonableness standard would apply in this case, as opposed to the higher “shocks the conscience” standard. See *County of Sacramento v. Lewis*, 523 U.S. 833, 846 (1998). Moreover, there is no claim that Officer 1 and Officer 2 were attempting to “seize” or otherwise arrest the members of the news media; instead, it is undisputed that they were trying to get them to leave the area. Accordingly, we do not analyze the legal issues associated with such a determination. See e.g., *Black Lives Matter D.C. v. Trump*, 2021 WL 2530722, at *8, *20 (D.D.C. 2021) (recognizing that it is unsettled whether attempting to move members of a crowd rather than keeping the crowd in a location can constitute a seizure under the Fourth amendment); see also *Jones v. District of Columbia*, C.A. No. 21-836, 2021 WL 5206207, at *4 (D.D.C. Nov. 9, 2021) (finding no seizure occurred because “an intent to keep out or redirect is not an intent to ‘restrain’ or ‘apprehend’”).

Amendment.²⁹ We also considered relevant legal precedent in assessing whether we should analyze Officer 1's conduct as one or two separate uses of force.

a. USPP Policies Governing Uses of Force by USPP Officers

1. USPP General Order Number 3615 – Use of Force Policy

USPP General Order No. 3615 governs the use of force by USPP officers. This policy provides:

The type and level of force used must be reasonable, depending on the dynamics of the situation. This force may take the form of verbal commands, persuasion, warnings, directives, bodily contact, use of baton or other nonlethal weapon, or the use of deadly force. *Once a level of force is no longer required, it must be decreased or discontinued. An officer is expected to employ only the minimum level of reasonable force necessary to control a situation.*³⁰

The USPP's use of force policy defines a "reasonable" use of force with reference to the decision in *Graham v. Connor*, 490 U.S. 386 (1989):

The Supreme Court has stated that the Fourth Amendment "reasonableness" inquiry is whether the officers' actions are "objectively reasonable" in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation. The "reasonableness" of a particular use of force must be judged from the perspective of a reasonable officer on the scene, and its calculus must embody an allowance for the fact that police officers are often forced to make split-second decisions about the amount of force necessary in a particular situation.³¹

Pursuant to *Graham*, there is no mechanical test for determining whether a particular use of force is unreasonable.³² Instead, *Graham* sets forth certain factors that should be considered when determining whether an officer's use of force is "objectively reasonable" under the circumstances. These so-called *Graham* factors include "the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether the suspect is actively resisting arrest or attempting to evade arrest by flight."³³ Other factors the USPP are trained to consider include the number of suspects and officers at the scene; the duration of the action; the size, age, and condition of the officer and suspect; whether the force applied may result in injury to the suspect; the presence of innocent bystanders who could be harmed by the officer's use of or failure to use force; and the

²⁹ See *Graham v. Connor*, 490 U.S. 386, 395 (1989) (holding that claims of excessive force in the context of an arrest, detention, or other seizure should be analyzed under the Fourth Amendment's reasonableness standard).

³⁰ USPP, General Order No. 3615, *Use of Force*, § 3615.02 (emphasis added).

³¹ USPP, General Order No. 3615, *Use of Force*, § 3615.02 (citing *Graham v. Connor*, 490 U.S. 386, 396–397 (1989)).

³² *Graham*, 490 U.S. at 396.

³³ *Id.*

availability of weapons, such as batons, spray, or tasers.³⁴ USPP officers are trained to use these factors when considering what level of force to use in a given situation.³⁵

Taken together, the USPP's policy incorporated the standard set forth in *Graham*: namely, that the officers' actions must be viewed "in light of the facts and circumstances confronting them at the time" in determining whether an officer's use of force is objectively reasonable while imposing the additional requirement that USPP officers use only the "minimum level" of reasonable force necessary to control the situation. The USPP's use of force policy does not define "minimum level" when describing what constitutes reasonable force.³⁶ Rather, USPP policy identifies various potentially permissible subject control tactics that range from a low-level use of force (such as officer presence and verbal commands) to the highest level (deadly force), depending on the circumstances confronting the officers. The policy further provides, however, that "officers shall escalate and de-escalate their level of response in accordance with the actions of a subject" and that "[o]nce the subject is under control, an officer shall de-escalate the amount of force to the *lowest level* necessary to maintain control."³⁷ Based on these various provisions, we concluded that *minimum level of reasonable force* means the force option chosen must be the least amount of reasonable force necessary to accomplish the law enforcement purpose the officer is seeking to effect given the circumstances he or she faces.

2. USPP General Order Number 3605 – Defensive Equipment Policy

USPP General Order No. 3605 governs the use of defensive equipment by USPP officers. This policy provides that "defensive equipment shall be used to gain control of an individual or group of individuals, or to effect an arrest to ensure the protection of the public, the officer, and any arrestees."³⁸ The policy also states that "an officer shall use only Force-approved methods and only that force necessary to subdue an individual."³⁹

Under the policy, defensive equipment includes "oleoresin capsicum agent, tear gas dispensers, batons, Electronic Control Devices (ECDs), and other such equipment."⁴⁰ Although not specifically mentioned in the policy, a shield qualifies as defensive equipment because it is USPP-issued equipment officers may use to defend themselves and others.

The policy contains a separate section on an officer's use of a USPP-issued or approved baton.⁴¹ It states that, when an officer is carrying a baton, it must remain in the officer's baton holder and "shall

³⁴ These other factors have been developed through cases decided after *Graham v. Connor*. See, e.g., *Sturdivan v. Murr*, 511 F.3d 1255, 1260 (10th Cir. 2008) (setting forth factors to be considered in assessing whether the suspect posed an immediate threat to the safety of the officer or others); *Gravelet-Blondin v. Shelton*, 728 F.3d 1086, 1092 (9th Cir. 2013) (stating that in evaluating objective reasonableness, courts must often look beyond the factors enumerated in *Graham* and consider other elements relevant to the totality of the circumstances). See *Westfahl v. District of Columbia*, 75 F. Supp. 365, 372 (D.D.C. 2014) (finding baton strikes delivered before the individual was clearly restrained by the officers, coupled with a lack of serious injury from the strikes, suggests reasonable use of force).

³⁵ See USPP 2019 In Service Use of Force Review, USPP-LAW-0031B.

³⁶ We found no caselaw or other authority interpreting "minimum level" in this context. The Merriam-Webster dictionary defines minimum as "the least quantity assignable, admissible, or possible." *Merriam-Webster.com Dictionary*, Merriam-Webster, <https://merriam-webster.com/dictionary/minimum> (last accessed Apr. 19, 2023).

³⁷ USPP, General Order No. 3615, *Use of Force*, § 3615.04 (emphasis added).

³⁸ USPP, General Order No. 3605, *Defensive Equipment*, § 3605.01.

³⁹ USPP, General Order No. 3605, *Defensive Equipment*, § 3605.02 E.

⁴⁰ USPP, General Order No. 3605, *Defensive Equipment*, §§ 3605.02 A, E.

⁴¹ USPP, General Order No. 3605, *Defensive Equipment*, § 3605.05.

not be removed while in public view except in an emergency or for defensive use.”⁴² The policy further provides that the baton may be used in the following situations:

1. A subject resists arrest.
2. The officer is physically assaulted by an assailant.
3. It is necessary for crowd control.
4. An emergency situation.⁴³

To provide officers with further guidance, the USPP’s use of force policy sets forth “Levels of Behavior/Resistance” and “Levels of Response,” which connect the type of resistance an individual may present to an officer with corresponding levels of force an officer may use to gain control or compliance of the subject.⁴⁴ Pursuant to the policy, an officer is authorized to use “striking and blocking techniques” and “any defensive equipment,” including a baton, to respond to an individual assaulting or attempting to assault an officer or another person.⁴⁵

b. Segmentation of the Uses of Force

In addition to analyzing the relevant USPP policies, a key question with respect to Officer 1 was whether we should analyze his conduct as one use of force (i.e., a continuous course of conduct) or two uses of force.⁴⁶ Based on our review of relevant case law, we determined that a segmented approach treating Officer 1’s conduct as two separate uses of force was most appropriate. We drew this conclusion because the evidence showed that Officer 1 first employed a shield strike to address what he perceived as a threatening situation and then paused before grabbing and pushing the Cinematographer’s camera in what he described as an effort to move the Cinematographer out of the area. Based on our review of the evidence, it appeared to us that Officer 1 had a reasonable opportunity to reassess the circumstances after the shield strike but before he grabbed and pushed the Cinematographer’s camera and that he did in fact do so. As the opportunity to reassess the circumstances before continuing to use force is a significant factor in the various cases we reviewed, we determined that it was appropriate to analyze these uses of force separately.⁴⁷

⁴² USPP, General Order No. 3605, *Defensive Equipment*, § 3605.05 A.

⁴³ USPP, General Order No. 3605, *Defensive Equipment* § 3605.05 B.

⁴⁴ USPP, General Order No. 3615, *Use of Force*, §§ 3615.03, 3615.04.

⁴⁵ USPP, General Order No. 3615, *Use of Force*, § 3615.04 D.

⁴⁶ Compare *Lachance v. Town of Charlton*, 990 F.3d 14, 20–28 (1st Cir. 2021) (applying a segmented approach to two uses of force where there was a change in circumstances between them that was relevant to the reasonableness inquiry), with *Yates v. Terry*, 817 F.3d 877, 883 (4th Cir. 2016) (declining to use a segmented approach involving three deployments of tasers and stating that “the better approach . . . is to view the reasonableness of force ‘in full context with an eye toward the proportionality of the force in light of the totality of the circumstances’”).

⁴⁷ See *Jones v. Treubig*, 963 F.3d 214, 236 (2nd Cir. 2020) (using a segmented approach where the court found the officer had a reasonable opportunity to reassess the circumstances before utilizing additional force). See also *Brockington v. Baykins*, 637 F.3d 503, 507 (4th Cir. 2011) (analyzing uses of force separately where there was a clear break in the sequence of events); *Waterman v. Batton*, 393 F.3d 471, 481 (4th Cir. 2005) (finding that the court could “separately consider non-continuous uses of force during a single incident to determine if all were constitutionally reasonable”).

c. *USPP Use of Force Training*

USPP officers receive use of force training at FLETC as part of their basic training and annually thereafter through the USPP. The USPP training instructor told us past annual inservice use of force trainings reinforced the law (*Graham v. Connor*) and the officers' prior FLETC training. The USPP training instructor said the annual use of force training "review[ed] quickly" the USPP's use of force policy and highlighted that the policy "differs from the law itself and that it can be more restrictive than the law." Before June 1, 2020, Officer 1 and Officer 2 most recently received use of force training in 2019. The 2019 training reviewed the factors courts use to assess the reasonableness of an officer's use of force set forth in *Graham v. Connor*.⁴⁸ In particular, as noted above, these "*Graham* factors" include the severity of the crime at issue; whether the suspect poses an immediate threat to the safety of the officers or others; and whether the suspect is actively resisting arrest or attempting to evade arrest by flight.⁴⁹

The 2019 training discussed additional factors officers should consider when using force, including the number of suspects versus the officers; the duration of the law enforcement action; the size, age, and condition of the officer versus the size, age, and condition of the suspect; whether the force applied resulted in injury to the suspect; whether the officer knew the suspect had a violent history; whether the officer knew the suspect's mental or psychiatric history; and whether innocent bystanders could be harmed by the suspect if the officer did not use force.⁵⁰ The 2019 training also instructed officers to "[a]nticipate likely attacks," recognize body language and nonverbal signals that may indicate an aggressive intent, and "[not to] wait to get hurt before you act."⁵¹ The USPP training instructor told us that the 2019 training focused on the constitutional standard of reasonable force under *Graham v. Connor* rather than the USPP policy.⁵² However, during the 2019 training, officers were provided with a copy of the USPP's use of force policy containing the "minimum level" of reasonable force necessary language, which officers were required to know.⁵³

The 2019 training also addressed escalation and de-escalation of force using the FLETC use of force model as a training tool. The FLETC use of force model described "subject action" and "officer response," which correlates the type of resistance the subject may present to an officer and a corresponding level of appropriate force that the officer may use in response.⁵⁴ The 2019 training reinforced a "balanced use of force" using proportional force and professionalism. Officers were advised that "professionalism is the key," to "remember the goal: (control, arrest, etc.)," and to use "proportional force." Officers were also instructed that "all police use of force is illegal, unless or until

⁴⁸ As noted previously, the Supreme Court's decision in *Graham v. Connor*, 490 U.S. 386 (1989), 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 and is referenced in the USPP's use of force policy at General Order No. 3615, *Use of Force*, § 3615.02.

⁴⁹ *Graham*, 490 U.S. at 396.

⁵⁰ See USPP 2019 In Service Use of Force Review, USPP-LAW-0031B.

⁵¹ *Id.*

⁵² See USPP 2019 In Service Use of Force Review, USPP-LAW-0031B. The use of force training conducted in 2020 after the June 1, 2020 clearing of Lafayette Park reviewed the USPP's use of force policy and specifically noted that the USPP's use of force policy is more restrictive than the constitutional standard. See USPP 2020 Use of Force General Order Quiz, USPP-LAW-0087A. Officer 1 completed this training on (b) (6), (b) (7)(C) 2020, and Officer 2 completed this training on (b) (6), (b) (7)(C) 2020.

⁵³ See USPP General Order Nos. 31.01 and 32.03.

⁵⁴ The USPP's use of force policy refers to "Levels of Behavior" and "Levels of Response" to correlate the type of resistance an individual may present to an officer with the officer's appropriate level of force. USPP, General Order No. 3615, *Use of Force*, § 3615.03.

it is ‘objectively reasonable’ from the perspective of a reasonable police officer.”⁵⁵

The 2019 training also included use of force involving a baton and advised officers that “when striking with a baton you must: start from a good fighting stance, develop and apply power effectively, maintain your mobility, move tactically.” The training also reminded officers that “FLETC baton control techniques training . . . rely upon the officer’s ability to use only that level of force which he/she can articulate as ‘reasonable.’”

In addition, in 2016 and 2019, both officers attended CDU training, which included practical exercises showing officers how to use the face of the shield to push a noncompliant individual and, if necessary, to escalate the officer’s level of force by using the rounded edge of the shield to strike the noncompliant individual. The CDU vendor explained that the CDU training instructed officers on different baton striking techniques that could be used by officers when carrying a shield. The CDU vendor said that, when he gives this training, he instructs officers to strike with purpose and enough force to stop or disrupt an immediate threat. The CDU vendor’s training materials also instruct officers that they must be able to articulate why “any force used was necessary and reasonable on the basis of their honest held belief of the information or intelligence available to them” at the time.

2. *Analysis of the Uses of Force*

a. Officer 1’s Shield Strike Against the Cinematographer Complied With USPP Policy

We concluded that Officer 1’s shield strike was permissible under USPP policy because it was both objectively reasonable and did not exceed the minimal level of reasonable force necessary to control the situation given the facts and circumstances confronting Officer 1 at the time. In reaching this conclusion, we considered the relevant case law on objective reasonableness and that Officer 1’s shield strike was authorized under the USPP’s defensive equipment policy and consistent with the training Officer 1 received.

As described in our June 2021 report, as the USPP began clearing Lafayette Park and the surrounding areas on the evening of June 1, 2020, protesters appeared surprised and confused; while many ran from the area as the officers advanced, some protesters fought with the officers by grabbing their shields, punching them, and throwing water bottles and other objects at them. Given the acts of violence and the failure of some protesters to clear the area voluntarily, the use of some level of force to disperse the protesters and ensure the safety of fellow officers may have appeared necessary to a reasonable law enforcement officer on the scene.⁵⁶

In this case, Officer 1 told us he was surprised by the presence of the Cinematographer as he passed the comfort station because he could not see the Cinematographer standing there, describing the area as a “blind corner.” We found Officer 1’s statements credible for several reasons. First, the evidence showed that Officer 1 could not see the Cinematographer as he approached the corner of the comfort station. At that time, the Cinematographer was standing on a raised curb several inches behind the wall of the comfort station holding his video camera on his right shoulder. In this position, the Cinematographer and his video camera were above Officer 1’s line of sight. In addition, Officer 1’s

⁵⁵ See USPP 2019 In Service Use of Force Review, USPP-LAW-0031B.

⁵⁶ As noted above, our June 2021 report found that not everyone could hear the initial warnings given by the USPP. However, officers understood warnings had been given to the protesters prior to the clearing operation, and officers continued to give verbal commands of “move” or “move back” as they progressed down H Street.

line of sight was further limited by the helmet he was wearing (see Figure 2). The Cinematographer was also not wearing visible media credentials. In addition, our visit to the site and the video evidence we reviewed supported Officer 1's statement that he could not see behind the corner of the comfort station wall where the Cinematographer was standing as Officer 1 moved west along H Street. Finally, the Cinematographer himself told us he did not believe Officer 1 could see him as Officer 1 approached the comfort station.

Officer 1 also told us he viewed this individual as a threat because the person had failed to follow USPP officers' warnings and verbal commands to leave the area and appeared to be purposely concealing himself behind the comfort station wall waiting to ambush the officers.⁵⁷ Additionally, Officer 1 told us he could not see the individual's hands as he rounded the corner of the comfort station and was concerned about being hit or attacked by the individual he perceived to be hiding there. Officer 1 told us that not being able to see an individual's hands heightens an officer's concern during a police encounter. Officer 1 also stated that he knew the comfort station had been a "flashpoint" for violence on prior nights of the protest and had been warned that protesters might use the comfort station to conceal themselves or throw things at officers.

Given these circumstances, we determined that a reasonable officer on the scene could have concluded that a defensive use of force, such as a shield strike, against an unknown individual who appeared to be hiding and whose hands the officer could not see, may have been necessary to defend himself or other officers against a possible attack. Having less than a second to assess the situation, a reasonable officer on the scene could not know the full extent of the threat, if any, the situation presented, and we cannot conclude that a reasonable officer would have believed his actions to defend himself against a perceived threat were unauthorized.⁵⁸ Moreover, law enforcement officers are not required to risk being assaulted to make a more definitive assessment of the perceived threat, nor are they required to retreat under these circumstances.⁵⁹ This is consistent with the USPP's 2019 use of force training wherein officers were instructed to "[a]nticipate likely attacks," "[r]ecognize 'pre-fight indicators,'" and not to wait to get hurt before acting.⁶⁰

Considering all the facts and circumstances from the perspective of a reasonable officer on the scene—coming upon an unidentified person hidden behind a corner who was not complying with the USPP's lawful orders to leave the area, the officer's knowledge of the assaults of the previous days, and the resistance of some of the protesters during the clearing operation—we found that, in the second or less the officer had to think before acting, a reasonable officer could have objectively concluded that this

⁵⁷ Our findings set forth the factual record and analyze the actions of the USPP officers involved in this incident. In making these findings, we recognize that the Cinematographer and the Reporter stated they did not hear the USPP's dispersal warnings and were not aware they were required to leave H Street and therefore may not have intentionally failed to comply with the orders to disperse. We note, however, that the touchstone for our analysis is not what the Cinematographer and the Reporter actually heard but rather what a reasonable officer would have concluded under the circumstances.

⁵⁸ See e.g., *Wardlaw v. Pickett*, 1 F.3d 1297, 1303–04 (D.C. Cir. 1993). In *Wardlaw*, the court found the force used by a United States Marshals Service officer was not so excessive that no reasonable officer could have believed in the lawfulness of his actions. The court based its finding on factors including that the officer, having been warned of a demonstration, reasonably could have anticipated a confrontation, especially while removing an uncooperative spectator from the courthouse who shouted at him while they were in a vulnerable position.

⁵⁹ See *Reed v. Hoy*, 909 F.2d 324, 331 (9th Cir. 1989) (concluding duty to retreat would "be inconsistent with police officers' duty to the public"), overruled on other grounds by *Virginia v. Moore*, 553 U.S. 164, 175 (2008); see also *Tucker v. Las Vegas Metro. Police Dept.*, 470 Fed. Appx 627, 630 (9th Cir. 2012) (Tallan, J. concurring) (citing *Reed*, 909 F.2d at 331) (noting "police officers have no duty to retreat when threatened with physical assault").

⁶⁰ USPP 2019 In Service Use of Force Review, USPP-LAW-0031B.

individual presented a threat requiring the use of a shield strike to protect the officer and others from bodily injury or harm.⁶¹

Having determined that Officer 1's shield strike was objectively reasonable, we next analyzed whether it complied with the USPP's policy to use the minimum level of reasonable force necessary to control the situation. We determined that it did because it complied with the use of force policy's level of response, was consistent with USPP training, did not cause serious injury to the Cinematographer, and was de-escalated once the situation was under control.

The USPP's use of force policy requires that officers employ the minimum level of reasonable force necessary to control the situation and allows officers to use defensive equipment and tactics such as "striking and blocking techniques" when a subject is attempting to assault an officer. We looked to the USPP's defensive equipment policy to further inform our analysis of what constitutes the minimum level of reasonable force where an officer uses defensive equipment like a shield or a baton. This policy provides defensive equipment may be used "to gain control of an individual or group of individuals" using "only Force-approved methods and only that force necessary to subdue an individual."⁶² We also looked to the training Officer 1 received on advanced civil disturbance tactics and response, which involved practical exercises using the shield for protection and to move a crowd ordered to disperse in situations involving civil unrest, to assist us in determining whether the officer's use of his shield was objectively reasonable and constituted a "Force-approved method." During this training, officers were taught to strike with the round edge of the shield as it would be unlikely to cause significant injury. The USPP's use of force policy also requires that once a subject is under control, officers decrease or discontinue their level of force to the lowest level necessary to maintain control.

We determined that Officer 1's shield strike against the Cinematographer complied with USPP policy. That is, all the factors above that permitted the officer to employ striking and blocking techniques using defensive equipment in the first place applied to the question of whether the officer's use of force was at a minimal level.

In making this determination, we considered that Officer 1's use of his shield was consistent with his use of force training, which instructed him to "anticipate likely attacks" and "not wait to get hurt before you act." The CDU vendor told us that the strike used by Officer 1 was within the "framework" of the methods the CDU vendor teaches during his CDU training seminars, and that Officer 1's body position as he came upon the Cinematographer limited his ability to respond with a push rather than a strike.⁶³ Moreover, Officer 1 told us he used his shield to strike the concealed individual because it was the "only thing [he had] defensively." Officer 1 also told us he knew from his training that a shield was unlikely to cause serious injury to an individual he was striking.⁶⁴ Indeed, the evidence showed that Officer 1 struck the Cinematographer with his USPP-issued shield once in the torso, using the round edge of his shield with enough force that the Cinematographer dropped into a sitting position on a milk

⁶¹ See *Etheredge v. District of Columbia*, 635 A.2d 908, 916 (D.C. 1993) (stating "any person, including an officer, is 'justified in using reasonable force to repel an actual assault, or if he reasonably believes he is in danger of bodily harm'" (quoting *Johnson v. Jackson*, 178 A.2d 327, 328 (D.C. 1962))).

⁶² USPP, General Order No. 3605, *Defensive Equipment*, §§ 3605.01, 3605.02 E.

⁶³ In addition to the CDU vendor, we interviewed several other individuals experienced in instructing and assessing the use of force by the USPP and other law enforcement officers. These witnesses primarily discussed the officers' actions in relation to *Graham's* objectively reasonable standard. We considered these opinions as relevant evidence but did not treat them as dispositive on the issue of whether the use of force was at a minimum level as required by the USPP's use of force policy.

⁶⁴ Officer 1 told us he did not carry a baton on June 1, 2020, and the video evidence corroborated his statement.

crate but was not incapacitated. Officer 1's use of force lasted less than a second, and we identified no evidence suggesting that it resulted in serious injury to the Cinematographer, who continued filming the protest after the strike. In addition, the Cinematographer did not seek medical attention until approximately 6 days later and described his injuries as "nothing too significant."⁶⁵ A lack of a serious injury, while not dispositive, is one factor deemed relevant in determining whether an officer's use of force was reasonable.⁶⁶ Upon considering all of these circumstances, we concluded that Officer 1's shield strike was authorized by USPP policy and consistent with Officer 1's training.

Finally, the evidence showed that Officer 1 de-escalated his use of force by discontinuing the use of his shield once the Cinematographer had dropped onto the milk crate and no longer appeared to be an imminent threat to Officer 1 or others. Officer 1's de-escalation complied with USPP policy, which—as set forth above—provides that an officer may use a shield strike during an attempted assault or to gain control of an individual but requires that when an individual is under control that an officer de-escalate his or her use of force to the lowest level necessary to maintain control.

Taken together, we therefore concluded that Officer 1's shield strike complied with USPP policy to use the minimum level of reasonable force necessary to control the situation.

b. Officer 1's Subsequent Grabbing and Pushing of the Cinematographer's Camera Did Not Comply With USPP Policy

As noted previously, we analyzed Officer 1's conduct as two separate uses of force because we concluded that he had the opportunity to pause and consider whether the subsequent grabbing and pushing of the camera was appropriate under the circumstances and did in fact do so. Having made that determination, though, we acknowledge that whether Officer 1's second use of force against the Cinematographer complied with USPP policy is a more difficult question.⁶⁷

As also discussed above, the USPP's use of force policy states that officers are "expected to employ only the minimum level of reasonable force necessary to control a situation" and "shall escalate and de-escalate their level of response in accordance with the actions of a subject."⁶⁸ In addition, "[o]nce the subject is under control, an officer shall de-escalate the amount of force *to the lowest level necessary to maintain control.*"⁶⁹

With respect to this second use of force, after Officer 1's shield strike, the Cinematographer dropped to a sitting position onto a milk crate while still holding his camera. Officer 1 then grabbed the Cinematographer's camera and pushed it off the Cinematographer's shoulder before pointing and using verbal commands to direct the Cinematographer where to go. Officer 1 told us that after passing the comfort station and striking the individual with his shield, he could see that the individual was holding

⁶⁵ As noted above, the Cinematographer filed an administrative claim for damages with the DOI seeking compensation for physical injuries and property damage arising from this incident. We do not take a position as to the validity of the tort claim.

⁶⁶ See *Wasserman v. Rodacker*, 557 F.3d 365 (D.C. Cir. 2009) (finding that a lack of injury tended to confirm that the officer did not use more force than reasonably necessary to gain compliance).

⁶⁷ As discussed above, we determined that it was most appropriate to address each distinct use of force separately in light of the case law we reviewed. Here, the three distinct uses of force we address include (1) Officer 1's shield strike; (2) Officer 1's subsequent grab and push of the Cinematographer's camera; and (3) Officer 2's baton strike.

⁶⁸ USPP, General Order No. 3615, *Use of Force*, §§ 3615.02, 3615.04.

⁶⁹ USPP, General Order No. 3615, *Use of Force*, § 3615.04 (emphasis added).

a video camera on his shoulder and had fallen backward onto a milk crate. Officer 1 told us that, at that point, he no longer viewed the individual as a physical threat to himself or other officers. The evidence also showed that Officer 1's second use of force did not result in serious injury to the Cinematographer; however, it did cause the camera to press into the Cinematographer's face, pushing the Cinematographer's head back with some force. According to the Cinematographer, this caused him to "see" stars and suffer "a bit of whiplash" and resulted in damage to his camera equipment.

Although Officer 1's initial subjective assessment of the threat posed by the Cinematographer was objectively reasonable and his use of force at a minimum level, we cannot draw the same conclusions as to the officer's assessment after he realized the person in question held a video camera. Officer 1 stated that after rounding the corner and striking the Cinematographer with his shield, Officer 1 could now see the Cinematographer's hands, which were holding a large video camera, not a weapon. In addition, the Cinematographer was no longer standing several inches above Officer 1's line of sight but had instead dropped backward and was sitting on a milk crate. At this point, the threat of assault that justified Officer 1's shield strike—the blind corner and the inability to see the Cinematographer's hands, among other factors—had been eliminated. Thus, under USPP policy, Officer 1 was required to de-escalate any further use of force "to the lowest level necessary to maintain control." Maintaining control would include taking actions to ensure the Cinematographer left the area. However, Officer 1 gave the Cinematographer no time to do so before engaging in a second use of physical force against the Cinematographer.

Based on this evidence, we cannot conclude that Officer 1's continued use of physical force against the Cinematographer once the Cinematographer was sitting on the milk crate after Officer 1's shield strike and—by Officer 1's own statements—was under control and no longer appeared to be a threat, complied with USPP policy that officers are "expected to employ only the minimal level of reasonable force necessary to control a situation" and shall "de-escalate the amount of force *to the lowest level necessary to maintain control*."⁷⁰ In this situation, an objective review of the evidence showed that Officer 1 did not appear to use the lowest level of force necessary to control the Cinematographer to get him to leave the area; Officer 1 had alternatives to his use of physical force including "cooperative controls,"⁷¹ such as verbal commands and gestures, and "contact controls,"⁷² such as strong verbal persuasion, escorting, and strategic positioning, which would have given the Cinematographer an opportunity to comply with the officer's commands without the use of physical force. We note that this is the approach that Officer 3, who was standing directly behind Officer 1, and other officers on the scene took. And while Officer 1's use of force did not appear to result in serious injury to the Cinematographer, the Cinematographer alleged that it did result in some physical harm and damage to his camera equipment.⁷³

⁷⁰ USPP, General Order No. 3615, *Use of Force*, § 3615.04.

⁷¹ USPP, General Order No. 3615, *Use of Force*, § 3615.04 A (describing "Cooperative Controls" as "Measures used to maintain control over a compliant subject" to include "a wide range of communication skills and non-verbal actions such as volume and tone control, gestures, stance, and facial expressions").

⁷² USPP, General Order No. 3615, *Use of Force*, § 3615.04 B (describing "Contact Controls" as "Low-level physical and psychological measures used to gain control and compliance when a subject is demonstrating resistant behavior," to include "strong verbal persuasion, strategic positioning, escorting, and soft empty hand control").

⁷³ See *Headwaters Forest Defense v. County of Humboldt*, 240 F.3d 1185, 1199 (9th Cir. 2001) (stating that whether the use of force poses a risk of permanent or significant injury is a factor to be considered in evaluating the need for the force used in a particular case); see also *Wardlaw v. Pickett*, 1 F.3d 1297, 1304 & n.7 (D.C. Cir. 1993) (noting that while the absence of a severe injury "is not by itself the basis for deciding whether the force used was excessive, it does provide some indication" that the degree of force was reasonable).

While we recognize that “we must avoid substituting our personal notions of proper police procedure for the instantaneous decision of the officer at the scene,”⁷⁴ in light of the facts and circumstances confronting Officer 1, Officer 1’s second use of physical force against the Cinematographer did not comply with USPP policy because it was not the minimum level of reasonable force necessary to gain the compliance of the Cinematographer to leave the scene and because Officer 1 did not de-escalate his use of force to the lowest level necessary to control the situation. We acknowledge that the USPP training focuses primarily on the “objective reasonableness” standard set forth under constitutional jurisprudence and does not extensively address what it means to use the “minimum level” of reasonable force. While the DOI may wish to refine its training on this point, we nonetheless conclude that the policy is sufficiently clear that we are able to determine that the conduct at issue here did not comply with USPP policy.

c. Officer 2’s Baton Strike Did Not Comply With USPP Policy

We determined that Officer 2’s use of force against the Reporter did not comply with USPP policy. As discussed above, the USPP’s use of force policy requires that officers “employ only the minimum level of reasonable force necessary to control the situation” and allows for the use of defensive equipment and tactics such as “striking and blocking techniques” when a subject is attempting to assault an officer.⁷⁵ The defensive equipment policy further instructs that an officer may use a baton in situations where an officer is physically assaulted, a subject resists arrest, for crowd control, or in an emergency situation.⁷⁶

Officer 2’s baton strike violated USPP policy because Officer 2’s baton strike was not the minimum level of reasonable force necessary, he did not “de-escalate the amount of force to the lowest level necessary to maintain control,” and none of the four situations listed under the defensive equipment policy were present.⁷⁷ In this case, even if some level of physical force was initially necessary to clear protesters from the area, it was no longer necessary at the time Officer 2 struck the Reporter with his baton because she was already following the verbal commands of the officers and running away from the area. For example, the video evidence showed that Officer 2 reached over another officer to strike the Reporter as her back was turned to him and she was running away. While Officer 2 initially told us he struck the Reporter with his baton because he believed she assaulted Officer 1, the evidence showed that Officer 2 did not see the Reporter assault Officer 1, and the video evidence confirmed the Reporter did not in fact assault Officer 1. Rather, as Officer 2 later explained during his interview, he saw the Reporter as part of a group of people standing near or around Officer 1 and stated the Reporter “looked like someone that was part of the confrontation,” but he could not definitively say the Reporter had assaulted Officer 1.

Furthermore, Officer 2’s explanation that he struck the Reporter with his baton because he believed she might attempt to run behind the advancing police line to “penetrate” it and assault another officer was not credible or reasonable. The Reporter was fleeing the area *away from the police line* at the time Officer 2 struck her. Officer 2 provided no information, and we found no other supporting evidence, to suggest that the Reporter, who was among many other protesters running away from the area, would

⁷⁴ See *Smith v. Freland*, 954 F.2d at 343, 347 (6th Cir. 1992).

⁷⁵ USPP, General Order No. 3615, *Use of Force*, § 3615.02, 3615.04.

⁷⁶ USPP, General Order No. 3605, *Defensive Equipment*, § 3605.05.

⁷⁷ USPP, General Order No. 3615, *Use of Force*, § 3615.02, 3615.04 and USPP, General Order No. 3605, *Defensive Equipment*, § 3605.05.

turn back around and seek to penetrate the police line. Thus, the evidence did not support a finding that Officer 2's baton strike was authorized under USPP policy.

Similarly, the evidence does not support a finding that Officer 2's baton strike was authorized because the Reporter was resisting arrest, it was necessary for crowd control, or it was in response to an emergency. Officer 2 did not contend he was attempting to arrest the Reporter, and he offered no further facts to explain why it was necessary for crowd control for him to strike a fleeing protester, who was following law enforcement officers' commands to leave the area, or what "emergency situation" his use of force was meant to address.⁷⁸ We therefore determined that the evidence did not support a finding that Officer 2's baton strike was authorized under USPP policy.

Our findings are supported by the opinions of three different use of force instructors, who all told us that Officer 2's baton strike was not consistent with the training he received. According to a USPP physical techniques instructor we spoke with, Officer 2's baton strike was not consistent with FLETC or CDU training because the training does not "incorporate backhanded strikes to somebody running away." The CDU vendor also told us that the technique Officer 2 used in striking the Reporter was not consistent with the methods the CDU vendor teaches during the CDU training seminars given to USPP officers.⁷⁹ Similarly, the USPP training instructor stated that Officer 2's baton strike was not "specifically how we train" USPP officers to use their batons, explaining that Officer 2's use of the baton was a "strike" and "we're not striking somebody who's moving away in order to push them further away or get them to move faster." Thus, Officer 2's baton strike did not comply with his training or with USPP policy requiring that officers "use only Force-approved methods."⁸⁰

In finding that Officer 2's use of force did not comply with USPP policy, we recognize that Officer 2 was acting under chaotic, tense, and sometimes violent circumstances and had to make a "split-second" decision "about the amount of force necessary" in this situation.⁸¹ Like Officer 1, Officer 2 told us he observed protesters fighting with officers and throwing projectiles as the officers cleared H Street. However, even assuming the resistance from the crowd placed Officer 2 in a heightened state of awareness, we cannot find that a reasonable officer on the scene would have responded as he did under the circumstances.⁸²

In sum, we determined that Officer 2's baton strike on the Reporter did not comply with USPP policy because it exceeded the minimum level of reasonable force necessary to control the situation and was not used to address a situation authorized under USPP policy.

⁷⁸ The USPP's defensive equipment policy does not define "emergency situation," but the facts at issue here do not reasonably appear to rise to the level of "an emergency situation," which we believe would be a situation presenting an imminent risk of death, bodily harm, or destruction of property. Officer 2 described the "emergency situation" as clearing the street to erect a fence.

⁷⁹ As noted above, Officer 2 attended advanced civil disturbance training given by the CDU vendor in 2016 and 2019.

⁸⁰ USPP, General Order No. 3605, *Defensive Equipment*, § 3605.02 E.

⁸¹ USPP, General Order No. 3615, *Use of Force*, § 3615.02 (quoting *Graham v. Connor*, 490 U.S. at 396–397).

⁸² See *Ciminillo v. Streicher*, 434 F.3d 461, 468 (6th Cir. 2006) (holding it was objectively unreasonable for an officer to shoot an individual with a beanbag propellant during a riot as the individual attempted to leave the scene of the riot and was not displaying aggression).

IV. CONCLUSION

Officer 1's first use of force (shield strike) against the Cinematographer complied with USPP policy, but we could not make the same finding with respect to Officer 1's second use of force (camera push) because it did not appear that Officer 1 employed the "minimum level of reasonable force necessary to control [the] situation." Officer 2's baton strike against the Reporter did not comply with USPP policy because the policy does not permit an officer to use his baton to strike a retreating individual who is following officers' orders to leave the area, an individual who no longer poses a threat to the officer or others, and where no situation authorizing the use of a baton strike otherwise exists.

V. SUBJECTS

Officer 1, (b) (6), (b) (7)(C) USPP.

Officer 2, (b) (6), (b) (7)(C) USPP.

VI. DISPOSITION

We are providing this report to the Deputy Assistant Secretary for Public Safety, Resource Protection and Emergency Services, for any action deemed appropriate.



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



Investigation

NM Nonprofit Employee and Contractor Committed Grant Fraud, NPS

This document is the property of the U.S. Department of the Interior, Office of Inspector General (OIG), and may contain information that is protected by law from disclosure. Distribution and reproduction of this document is not authorized without the OIG's express written permission.



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

REPORT OF INVESTIGATION
RMR-BIL-24-0070-I

I. RESULTS OF INVESTIGATION

We investigated allegations submitted by (b) (6), (b) (7)(C) that James Matison, former Restoration Projects Director of WildEarth Guardians based in Santa Fe, New Mexico, and Jeffery Ham, owner of Timberline Environmental, LLC (Timberline), a WildEarth Guardians contractor, had overbilled WildEarth Guardians for work performed by Ham. We investigated these allegations concurrently with the U.S. Environmental Protection Agency Office of Inspector General. We substantiated the allegations.

We found that between February 2015 and April 2019, Matison conspired with Ham to generate and submit a total of \$242,210 in fraudulent invoices from Timberline for payment by WildEarth Guardians and later reimbursement, in part, by the National Park Service (NPS). These invoices were for hours not actually worked and expenses not actually incurred.

We discovered that Ham provided Matison with pre-signed blank checks from Timberline's account. Matison used these checks to transfer fraudulently obtained funds from Timberline to accounts under his control, including an account associated with an Arizona company called Euro-American Development Inc.²

In July 2023, Ham pleaded guilty in U.S. District Court for the District of New Mexico to conspiracy to commit wire fraud, and he was sentenced on October 31, 2024, to three years of probation; he was ordered to pay \$242,210 in restitution jointly and severally with Matison.

In November 2023, Matison pleaded guilty in U.S. District Court for the District of New Mexico to conspiracy to commit wire fraud and money laundering, and he was sentenced on October 3, 2024, to one day time served and two years of supervised release; he was ordered to pay \$242,210 in restitution jointly and severally with Ham.

We referred this case to our Administrative Remedies Division.

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

II. SUBJECTS

James Matison, former Restoration Projects Director of WildEarth Guardians

Jeffery Ham, owner of Timberline Environmental, LLC

¹ A nonprofit organization whose goal is to protect and restore wildlife, natural resources, and ecosystems of the American West.

² Euro-American Development Inc. is a company that was founded in 1992 by (b) (6), (b) (7)(C), as one of the many companies (b) (6), (b) (7)(C) and operated pursuant to (b) (6), (b) (7)(C).

This document is the property of the U.S. Department of the Interior, Office of Inspector General (OIG), and may contain information that is protected from disclosure by law. Distribution and reproduction of this document is not authorized without the express written permission of the OIG.

OFFICIAL USE ONLY

OI-007-L (06/24)



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 document is the property of the U.S. Department of the Interior, Office of Inspector General (OIG), and may contain information that is protected by law from disclosure. Distribution and reproduction of this document is not authorized without the OIG's express written permission.



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

REPORT OF INVESTIGATION
OI-SI-22-0785-I

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 is 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

This document is the property of the U.S. Department of the Interior, Office of Inspector General (OIG), and may contain information that is protected from disclosure by law. Distribution and reproduction of this document is not authorized without the express written permission of the OIG.

OFFICIAL USE ONLY

OI-007-L (06/24)

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."¹ 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."² 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."³ 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.

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

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

³ *Graham v. Connor*, 490 U.S. 386, 397 (1989).

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.

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 deposed 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).⁴ 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.⁵ Federal regulations adopted by the NPS further provide for the enforcement of State traffic laws within the National Park System.⁶

⁴ 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."

⁵ *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).

⁶ *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.").

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.⁷ 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.

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.⁸ 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.⁹

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.¹⁰

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,

⁷ 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.

⁸ 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).

⁹ 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.

¹⁰ 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.

Point 1).¹¹ 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.

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



¹¹ 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.

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,¹² 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.¹³

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.

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

¹³ 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.

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 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 with 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.”¹⁴

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

¹⁴ 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.

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.¹⁵ 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 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.¹⁶ 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.¹⁷ This dashcam did not, however, record speed, and the officers’ USPP cruiser was not equipped with speed-detecting radar.¹⁸ 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.¹⁹

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).

¹⁵ 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.

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

¹⁷ 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.

¹⁸ 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.

¹⁹ 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)

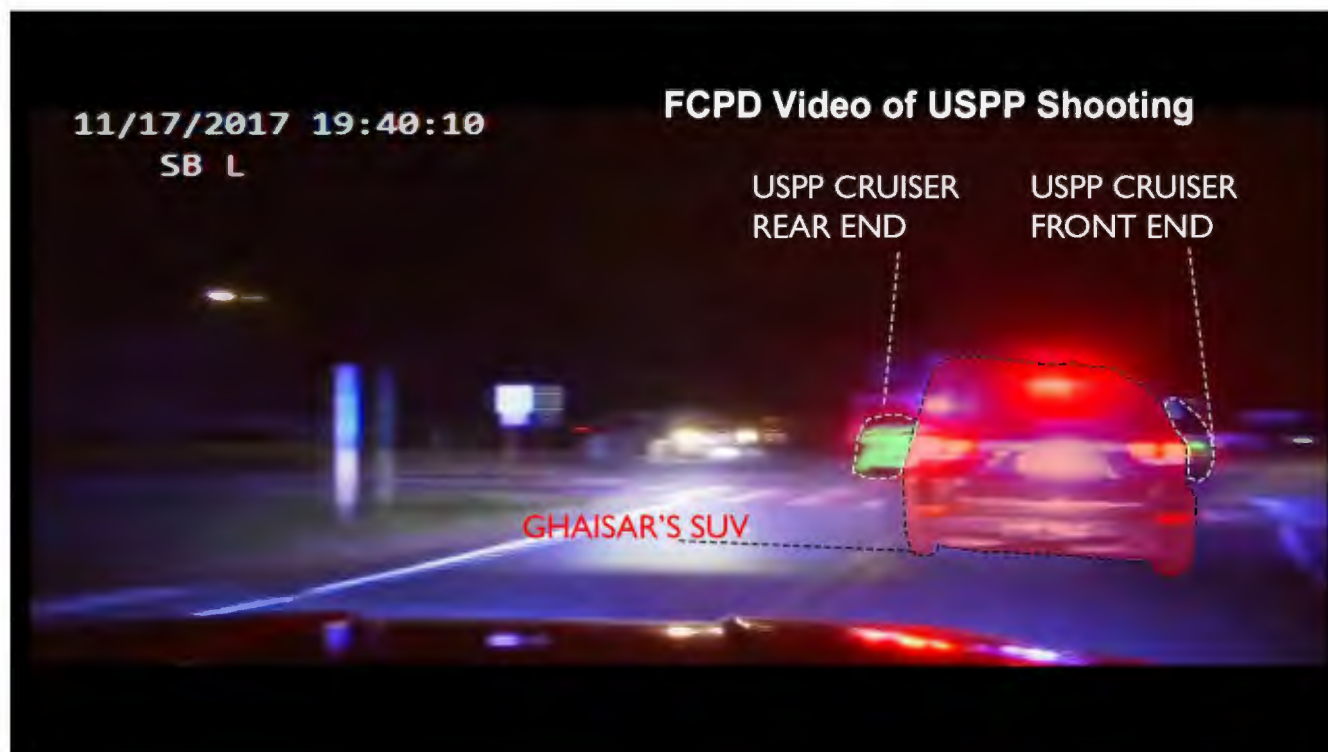
As the pursuit continued southbound on the GW Parkway with the FCPD Lieutenant in the lead, the FCPD Lieutenant told FCPD dispatch that he did not believe the SUV was going to stop and requested the assistance

of an FCPD helicopter.²⁰ 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 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.²¹ 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.

²⁰ 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.

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

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.

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.²² 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 4.²³

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

²³ 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 the 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.²⁴ 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).

²⁴ 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.

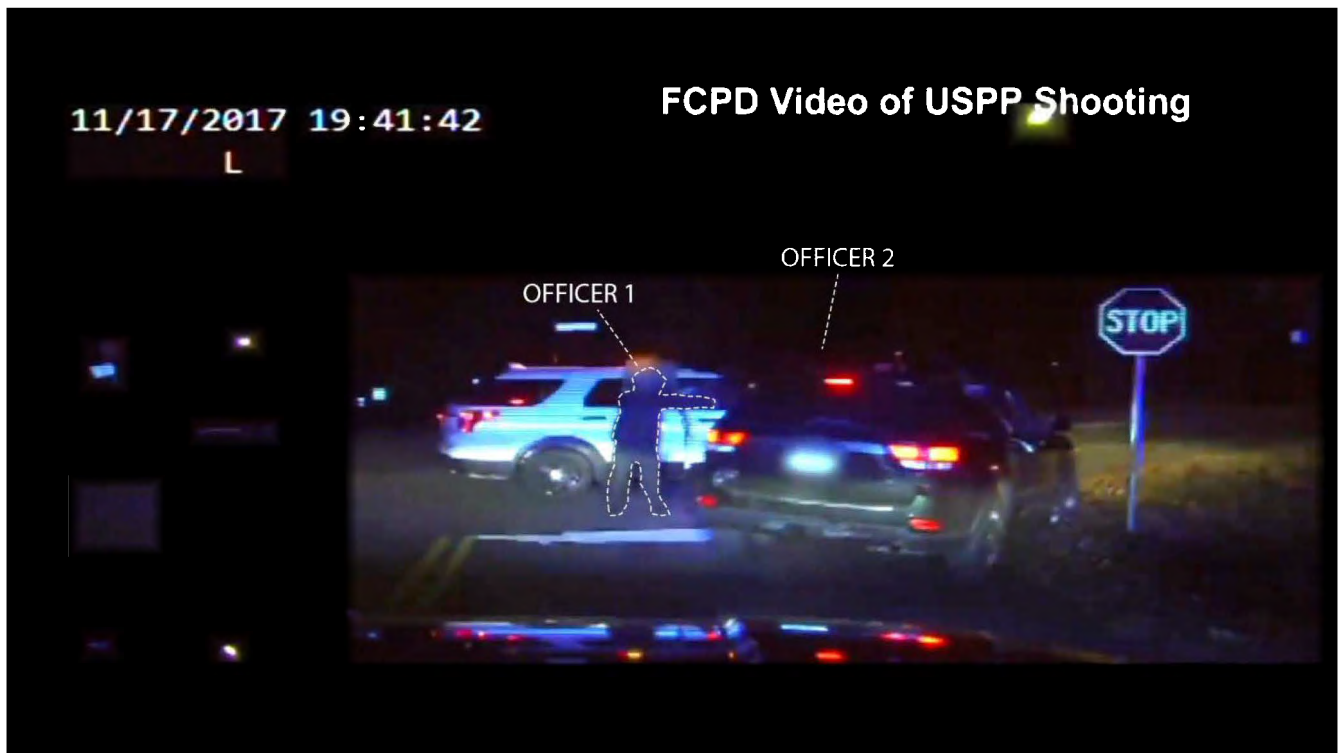
Figure 9: Vehicle and Officer Positions During Shot 5 at 7:41:36 p.m.

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.²⁵ 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.²⁶

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

²⁵ U.S. Park Police, G.O. 3615, "Use of Force," § 3615.03.

²⁶ 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.

evade apprehension.”²⁷

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.”²⁸ The USPP’s vehicular pursuit policy states that “[t]he act of fleeing and eluding the police shall not in itself be a pursuable offense.”²⁹ 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.”³⁰

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.”³¹

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.”³² 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.³³

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.”³⁴ However, USPP officers’ immediate supervisors are “responsible for directing, monitoring, evaluating, and terminating the pursuit, as appropriate.”³⁵ 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.³⁶

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

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

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

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

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

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

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

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

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

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

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.³⁷

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 preponderance of the evidence established that Ghaisar could be reasonably construed as "attempting to evade apprehension" by the officers.³⁸ 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).³⁹ 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

³⁷ 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).

³⁸ 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.").

³⁹ 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.

USPP's vehicular pursuit policy in place at that time.⁴⁰

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."⁴¹

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 the immediate or potential danger to the public should the suspect remain at large."⁴² 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."

⁴⁰ 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).

⁴¹ 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).

⁴² U.S. Park Police, G.O. 2205, "Vehicular Pursuits," §§ 2205.01 and 2205.04.

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.⁴³ In addition, when an FCPD dispatcher asked about the basis for the pursuit, Officer 2 only mentioned "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. 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.⁴⁴

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.

⁴³ 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."

⁴⁴ 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.

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.⁴⁵ 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."⁴⁶ 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."⁴⁷ 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[]." ⁴⁸

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 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."⁴⁹ 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.

⁴⁵ Officer 1 drew his service weapon at Stops 2 and 4 and Officer 2 drew his service weapon at Stops 2, 3, and 4.

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

⁴⁷ 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).

⁴⁸ 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).

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

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.⁵⁰ 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."⁵¹ 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.⁵² The USPP's vehicular pursuit policy also does not say 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.⁵³ 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.

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

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

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

⁵³ 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).

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.⁵⁴ 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.⁵⁵ 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.⁵⁶ 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."⁵⁷

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 determine whether the officers' use of deadly force was reasonable under the Fourth Amendment of the U.S. Constitution.⁵⁸ 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."⁵⁹ We also acknowledge that in October 2021 a Federal district court dismissed criminal charges

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

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

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

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

⁵⁸ 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.

⁵⁹ 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>.

brought by the Commonwealth of Virginia against Officer 1 and Officer 2 based on Supremacy Clause immunity.⁶⁰ 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.”⁶¹

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.”⁶² 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.”⁶³ 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 separately.⁶⁴

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.”⁶⁵ 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.”⁶⁶ Whether a use of force is objectively reasonable “must be judged from the perspective of a reasonable officer on the

⁶⁰ *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).

⁶¹ *Amaya*, slip op. at 5-6; *Vinyard*, slip op. at 5-6.

⁶² 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.

⁶³ U.S. Park Police, G.O. 3615, “Use of Force,” § 3615.03(C)(2)(b).

⁶⁴ 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.”).

⁶⁵ U.S. Park Police, G.O. 3615, “Use of Force,” § 3615.02.

⁶⁶ *Graham v. Connor*, 490 U.S. 386, 397 (1989).

scene.”⁶⁷

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.”⁶⁸ 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.⁶⁹ 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.⁷⁰ Case law states that the law “does not require police to gamble with their lives in the face of a serious threat of harm.”⁷¹

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,⁷² which is the law that applies to the officers’ conduct here.⁷³ 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,⁷⁴ the Fourth Circuit does not take this approach, and it is not a consideration in the USPP’s use of force policy.⁷⁵

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

⁶⁷ *Id.* at 396.

⁶⁸ *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).

⁶⁹ 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.”).

⁷⁰ *Waterman v. Patton*, 393 F.3d 471, 479 (4th Cir. 2005).

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

⁷² 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).

⁷³ 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.

⁷⁴ 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.”).

⁷⁵ 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.”).

the use of deadly force is justified.⁷⁶ 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.⁷⁷ 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.⁷⁸ 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.”⁷⁹

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

Likewise, materials from the USPP’s 2016 use of force in-service training, which Officer 1 and Officer 2 attended, highlighted similar concepts.⁸² 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.⁸³ In addition, these 2016 training materials advised the officers that “[h]esitation in a fight can get you killed.”⁸⁴

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 whether, at discrete moments during the encounter, there was a change in circumstance requiring the officers

⁷⁶ 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.”).

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

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

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

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

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

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

⁸³ USPP, In Service 2016 Use of Force Update at 14 (2016).

⁸⁴ USPP, In Service 2016 Use of Force Update at 20 (2016).

to reassess their use of deadly force or if the use of deadly force remained justified.⁸⁵

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 that 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.

⁸⁵ *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.").

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 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.⁸⁶ 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."⁸⁷

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.⁸⁸ 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.⁸⁹ 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,

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

⁸⁷ *Id.* at 478-79.

⁸⁸ *Id.* at 478.

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

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 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.
Stop 1	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.
Stop 2	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.
Stop 3	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.
Stop 4	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.
