

June 25, 2024

via MESSENGER

The Honorable Matthew M. Graves
U.S. Attorney
U.S. Attorney's Office for the District of Columbia
601 D Street, NW
Washington, D.C. 20579

RE: The Homicide of Dr. Vivek Taneja

Dear Mr. Graves:

Attorney Kaveh Noorishad and I represent the family of Dr. Vivek Taneja following his death after a vicious beating in downtown Washington, D.C. Homicide detectives from the D.C. Metropolitan Police Department subsequently positively identified the male assailant, and have made the assailant known to the attorneys in your homicide unit assigned to the matter. Despite clear and overwhelming evidence for the crime of either 2nd degree murder or manslaughter, our client was notified on June 6, 2024 that your office sent a declination memorandum to the D.C. Metropolitan Police Department indicating that the U.S. Attorney's Office was declining to prosecute the assailant in connection with Dr. Taneja's death. We have since been provided a copy of that declination letter and disagree with many of the factual summaries made by your office.

Your prosecutors' failure to charge Dr. Taneja's killer is an appalling miscarriage of justice. The decision to decline prosecution is a disservice to the citizens of this city, an insult to Dr. Taneja's grieving family, and demands immediate rectification.

I. FACTUAL BACKGROUND

On the night of February 1, 2024, Vivek Taneja and two female friends were waiting for their Ubers in an open plaza after dining at the restaurant Akedo in Washington, D.C. The night took a dark turn when, at approximately 2:00 A.M., the assailant invaded their space uninvited, displaying aggressive and confrontational behavior. Dr. Taneja initially attempted to ask him to leave them alone and the assailant forcefully pushed him out of the way. When Dr. Taneja's female friends then tried to intervene and prevent a confrontation, the assailant attempted to push them aside to get to Dr. Taneja. Despite repeated requests from Dr. Taneja and his friends for the assailant to leave, the assailant chose to escalate the situation, provoking a physical altercation. Cornered, and in a desperate act of self-defense for himself and his friends, Dr. Taneja swung once at the assailant. What followed was a display of excessive and unprovoked violence. The assailant, a trained wrestler and amateur boxer and former police officer, brutally assaulted Dr. Taneja by

repeatedly striking him until he fell unconscious to the ground. The severity of the assault left Dr. Taneja bleeding and motionless with damage to his head that is equivalent to a high speed motor vehicle accident. After rendering Dr. Taneja unconscious, the assailant callously stepped over his lifeless body as he walked away from the scene, showing no concern for Dr. Taneja's condition.

It must be noted that Dr. Taneja is of Indian descent, and as the facts in this matter indicate, he was approached by the assailant after he was seen by the assailant who is Caucasian sitting with two women who are also Caucasian. Those facts alone propose that the assailant's approach may have been made for reasons that should concern your office.

Homicide detectives assigned to the case subsequently met with the Taneja family, with their Sergeant and Lieutenant present, and assured the family and their Counsel in a formal meeting that an arrest was inevitable and that, based on their review of the facts and unanimous witness testimony, the assailant should not be able to assert a valid claim of self-defense. AUSA Laura Bach had a different opinion. Days after the attack, even before a proper investigation was conducted, AUSA Bach told the victim's family counsel that she wanted to "set expectations" regarding this case, and expressed to them that she likely had no plans to prosecute the assailant. She specifically said that she knew who the assailant was but did not believe the assailant was "a threat to society" and would not support his arrest. The homicide detectives submitted an arrest warrant thereafter, and it was not signed by the AUSA. After a long month, a meeting was formally granted between AUSA Bach and the family, where she expressed that she felt that this case should not proceed in the "usual" fashion: arrest of the assailant and presentation before a judge, and a grand jury. She again said that she personally did not believe the assailant should be charged, because an argument could be made that he acted in self-defense. Other meetings were arranged between the AUSA, Dr. Taneja's family and counsel for the family. After obtaining permission from the Court, the family and counsel for the family were finally also able to view two videos that partially captured the assault.

After thorough review of the video footage, paired with initial witness testimony from the date of the attack, the family and we, as their counsel, disagreed with the prosecutors on the issue of self-defense. The family and we firmly believe that the assailant instigated and initiated the confrontation and should not be shielded by a claim of self-defense as detailed later in this letter. Furthermore, we believe that the prosecutors assigned to the case decided very early on in the investigation that the assailant could possibly raise a claim of self-defense, and that view impaired their objectivity when it came to reviewing this case. The AUSA later revealed that AUSA Miles Janssen, presented only some of the evidence of this case to a grand jury with repeated emphasis to the jury on the definition of "self-defense" in the District of Columbia. We later discovered that only 1 of the 2 key videos of the killing was presented – in fact, AUSA Bach and AUSA Janssen did not initially view the second video (which was from a different angle showing the assailants actions), nor were they even aware it existed. It was only after the family requested this information from the police that it was reviewed by the prosecutors. Additionally, rather than objectively explaining the self-defense law to the grand jury, the prosecutors, believing that a claim of self-defense may be appropriate for the assailant and not for Dr. Taneja, passed their bias on this issue onto the grand jury.

A man was killed. Law enforcement and the prosecutors know who did it and have evidence that identifies the killer as the aggressor, yet he has not been arrested. By declining this matter and failing to present the case thoroughly to a grand jury for a vote, the family was denied the opportunity to seek a fair and just trial. We believe the declination is not supported by the evidence in this matter, and we request your office review the prosecutorial decisions made by the lawyers in your office who were originally assigned to the matter.

II. LEGAL ANALYSIS

Given these facts, the decision by prosecutors not to charge the assailant is incomprehensible and unjust. The evidence supports, at a minimum, a charge of manslaughter. This is explained further.

A. Self Defense

Under D.C. law, as articulated in the Criminal Jury Instructions and relevant case law, a defendant can claim self-defense if they actually and reasonably believed they were in imminent danger of bodily harm. *Parker v. United States*, 155 A.3d 835, 845 (D.C. 2017); Criminal Jury Instructions for the District of Columbia, No. 9.500 (5th ed. rev. 2014). The force used in self-defense must not be excessive and must be proportionate to the threat perceived. *Higgenbottom v. United States*, 923 A.2d 891, 900 (D.C. 2007); *Ewell v. United States*, 72 A.3d 127, 130-31 (D.C. 2013). **Self-defense is not available to the aggressor, or one who deliberately puts himself in a position where he reasonably believes that his presence will provoke trouble.** *Andrews v. United States*, 125 A.3d 316 (D.C. 2015). **Forfeiture of self-defense ensues even if the defendant's purpose in putting himself in that position was benign.** *Sams v. United States*, 721 A.2d 945, 953 (D.C. 1998).

Here, video evidence from two different angles unambiguously captures the assailant's aggression. He approached Dr. Taneja and his friends uninvited, with an aggressive demeanor, and refused to leave despite being asked multiple times. His actions deliberately put him in a position where a confrontation was likely, disqualifying him from claiming self-defense. *See Andrews*, 125 A.3d at 316; *Sams*, 721 A.2d at 953. It was the assailant's physical aggression and refusal to de-escalate that led to the altercation.

The assailant had training as a wrestler in college, was a well-documented amateur boxer, and he was previously part of law enforcement in 2 different states. His experience only amplifies his culpability and diminishes any claim of self-defense. He possessed the skills and knowledge to de-escalate a situation he provoked, yet chose to respond with deadly force. We do not believe this information was given to the initial grand jury.

Even if the assailant initially believed he was in imminent danger, his response was grossly disproportionate. Dr. Taneja swung once in a defensive act. In contrast, the assailant, leveraging his wrestling and boxing skills as well as police training, launched a brutal and sustained assault on Dr. Taneja, striking him repeatedly until he was unconscious. The use of force was clearly

excessive and not a reasonable or proportionate response to the perceived threat. *Higgenbottom*, 923 A.2d at 900; *Ewell*, 72 A.3d at 130-31.

Further, and more disturbingly, the assailant's response to the aftermath of his violent assault was to step over Dr. Taneja's prone body and walk away, showing not only a blatant disregard for the life he had just taken, but treating Dr. Taneja as a conquered foe – not someone from whom he was protecting himself.

This callousness is further compounded once again by the assailant's background. As a former member of two police agencies, he should have been acutely aware of the consequences of his actions and the duty to protect life, not extinguish it. His decision to flee the scene prior to the arrival of law enforcement shows a clear consciousness of guilt. The facts and relevant legal standards unequivocally show that the assailant is not entitled to claim self-defense in the killing of Dr. Vivek Taneja. The assailant was the aggressor, used excessive force, and failed to act responsibly given his background and training. As a former college wrestler and amateur boxer the assailant knew his substantial fighting capabilities. After provoking a confrontation, he unleashed those fighting capabilities without regard to the damage he knew he would inflict. Your prosecutors have left this killer foisted on a vulnerable community, and have allowed him a measure of comfort that he could do this again without remorse or concern of being arrested. Therefore, it is imperative that this relevant history and information as well as a discussion that Dr. Taneja was allowed to defend himself from the assailant's unprovoked encounter be presented and considered by an unbiased grand jury.

B. Second Degree Murder

Under D.C. Code § 22-2103, 2nd degree murder liability attaches where the perpetrator kills another with malice aforethought. Malice aforethought requires (1) the specific intent to kill, (2) the specific intent to inflict serious bodily harm, (3) a wanton and willful disregard of the risk of death or serious bodily harm, or (4) intent to commit a felony that results in a homicide. *Comber v. United States*, 584 A.2d 26, 38–39 (D.C. 1990). The killing is not malicious, however, if it is justified, excused, or committed under recognized mitigation circumstances. Mitigating factors arise when the killer is provoked; acts in the heat of passion, including fear, resentment, or rage; or uses excessive force in self-defense. *Id.* at 41–42.

Here, based on the evidence and relevant case law, the assailant's actions on the night of the incident demonstrate a wanton and willful disregard of the risk of death or serious bodily harm. After approaching Dr. Taneja and his friends uninvited and displaying aggressive behavior, the assailant escalated the situation despite being asked to leave. When Dr. Taneja swung at him in defense of himself and his friends, the assailant, leveraging his skills as an amateur boxer and former police officer, launched a brutal and sustained attack. The force and nature of the assault, with the assailant's training as a boxer and former police officer, striking Dr. Taneja repeatedly until he was unconscious, clearly show a reckless disregard for Dr. Taneja's life and safety. This conduct undoubtedly satisfies the requirement for malice aforethought under the third prong of the *Comber* test. *Comber*, 584 A.2d at 38–39.

As noted above, for a killing to be classified as 2nd degree murder, it must not be justified, excused, or committed under recognized mitigating circumstances. In this case, none of those mitigating factors are present. The assailant was not provoked as he was the initial aggressor. The assailant's aggressive approach and refusal to leave provoked the altercation, not any actions by Dr. Taneja.

Similarly, the assailant was not acting in the heat of passion. The assailant's actions were not a spontaneous reaction to provocation or fear. The assailant clearly initiated the physical altercation when he forcefully pushed Dr. Taneja out of his way to approach the females present. The assailant's subsequent sustained assault on Dr. Taneja after the initial defensive swing by Dr. Taneja indicates a deliberate and excessive use of force by the assailant. As previously discussed, the assailant's response was grossly disproportionate to any perceived threat. The excessive and prolonged nature of the assault goes beyond what could be considered self-defense. Thus, the assailant could be subject to a charge of 2nd degree murder.

C. Manslaughter

Voluntary manslaughter is a killing committed with the specific intent to kill or inflict serious bodily harm, or with a conscious disregard of death or serious bodily harm, with the presence of mitigating factors. *Comber*, at 42-43. Thus, a killing is lessened to voluntary manslaughter where the state of mind would render it 2nd degree murder, but for the presence of recognized mitigating factors. *Id.* On the other hand, involuntary manslaughter is an unintentional or accidental killing, *i.e.*, a killing done without malice, absent justification or excuse. *Comber*, 584 A.2d. at 47-48.

There are two categories of involuntary manslaughter: criminal-negligence involuntary manslaughter and misdemeanor involuntary manslaughter. Criminal-negligence involuntary manslaughter is an unintentional killing as a result of non-criminal conduct that creates both extreme danger to life or serious bodily harm and amounts to a gross deviation from a reasonable standard of care. *Id.* at 48. Conduct resulting in death is thus excused unless it creates an extreme risk of death or serious bodily harm. *Id.* at 49. Misdemeanor involuntary manslaughter is an unintentional killing done in the commission of a misdemeanor that creates a foreseeable risk of appreciable injury. *Id.* at 49-52. For sentencing purposes, D.C. Code § 22-2105 does not distinguish between the different types of manslaughter. Instead, a person found guilty of manslaughter may be subject to a maximum of 30 years.

Further, according to the video footage, Dr. Taneja swung at the assailant as a defensive response to an attempted attack by the assailant. Here, although the assailant was, without a doubt, the initial aggressor, there could possibly be a colorable argument presented that Dr. Taneja's swing provoked the assailant. This possible provocation, combined with the heat of the moment, could be seen as a mitigating factor. The assailant's actions could be viewed as a response to a sudden quarrel. Despite being disproportionate, his reaction might be framed as happening in the heat of passion, thus reducing the charge from 2nd degree murder to voluntary manslaughter.

However, the assailant's sustained assault on Dr. Taneja, despite knowing the potential for serious harm due to his boxing and police training, shows an absolute conscious and again, reckless disregard for Dr. Taneja's life. This satisfies the *mens rea* requirement for voluntary manslaughter. Further, the assailant's conduct, while perhaps not intended to kill, created an extreme danger to Dr. Taneja's life due to his background as a trained boxer and police officer. The assailant's actions represent a gross deviation from a reasonable standard of care. If the assailant's actions are viewed within the context of a simple assault (a misdemeanor), the unintentional killing of Dr. Taneja during this act could be classified as misdemeanor involuntary manslaughter. The assault created a foreseeable risk of appreciable injury, leading to Dr. Taneja's death. Thus, the assailant could be subject to a charge of either voluntary or involuntary manslaughter.

III. CONCLUSION

Dr. Taneja, by all accounts, was a peaceful individual with no history of physical altercations, and was truly minding his own business until approached and provoked by the assailant. Those who knew him describe him as a loving, loyal, gregarious, and generous man. He was a huge supporter of local businesses, which is what called him out that fateful night. His death is a profound loss to his family, friends, and the community – not just in DC, but across the country and internationally, as well. Justice for Vivek Taneja is not just a matter of legal obligation but a moral imperative. The prosecutors in your office must reconsider their stance and appropriately and objectively present this matter to a grand jury for vote. Failure to do so not only denies justice for Dr. Taneja and his grieving family, but also sets a dangerous precedent that trained individuals can escape accountability for violent actions, which they initiated.

The facts and relevant legal standards overwhelmingly and unequivocally show that the assailant is not entitled to claim self-defense in the killing of Vivek Taneja. The assailant was the aggressor, used excessive force, and acted recklessly given his background and training.

The evidence supports, at a minimum, presentation to the grand jury with a request for an indictment charging the assailant with manslaughter, but could also possibly sustain a charge for 2nd degree murder. Therefore, it is imperative that your office review this matter. We are requesting that you involve a different panel of experienced Assistant U.S. Attorneys in your office to review all of the footage of the assault and all available statements and other evidence. We are also requesting that you assign another AUSA who is experienced in investigating and prosecuting homicides to thoroughly and objectively present this matter to a new grand jury panel.

To circle back to the initial statement made by AUSA Laura Bach, we would like to remind you that the assailant walked away unscathed, while Dr. Taneja is dead at the assailant's hands. Your decision not to prosecute says that the assailant was the one "in danger". Please ask yourself what sense does that make?

Furthermore, we ask you to reflect whether the decision to decline to prosecute would be the same if the races of the assailant and the victim were to be reversed. Would an assailant, as a person of color, have been arrested and prosecuted sooner without doubt, if he beats a white man to death in the District?

Ultimately, the decision to simply decline this case, in the opinion of the authors, is a gross dereliction of your duty to the District of Columbia community and its visitors. After viewing the footage of this killing, no reasonable person will say that your decision is a reflection of justice. The decision to not even allow a panel of citizens from the DC community to review such a violent and heinous act by this assailant objectively and fairly by a grand jury or as part of a petit jury is shameful and not the action of a public servant acting in the interest of the District of Columbia. Presenting selected pieces of evidence and passing on bias to a jury does not count as a fair and objective presentation. This case should be investigated thoroughly, presented objectively, and allowed to be reviewed fully by a jury (grand or petit) of DC citizens - not solely by individuals in your office. The family is seeking Justice for Vivek. A fair grand jury presentation and trial is what the family deserves.

Thank you for your time in considering our request.

Dated: June 25, 2024

Respectfully submitted,

/s/ Kaveh Noorishad

Kaveh Noorishad (VA Bar 76436)
NOORISHAD LAW, P.C.
8200 Greensboro Drive
Suite 900
McLean, Virginia 22102
Tel: (703) 542-4500
Fax: (703) 636-8945
Kaveh@Noorishadlaw.com
Attorneys for the Taneja Family

/s/ William R. Martin

William R. Martin (DC Bar No. 465531)
Royston Peters (DC Bar No. 1736019)
BARNES & THORNBURG, LLP
555 12th Street, N.W., Suite 1200
Washington, DC 20004
Tel: (202) 289-1313
Fax: 202-289-1330
Billy.Martin@btlaw.com
Royston.Peters@btlaw.com
Attorneys for the Taneja Family

*cc: Laura Bach, Laura.Bach@usdoj.gov
Miles Janssen, Miles.Janssen@usdoj.gov
MPD-Homicide Det. Bryan Aldemeyer, Bryan.Aldemeyer@dc.gov*