



August 25, 2021

Acting Commissioner Troy Miller
U.S. Customs and Border Protection
U.S. Department of Homeland Security
1300 Pennsylvania Avenue NW
Washington, D.C. 20229

Via Electronic Mail

RE: CBP's Vehicle Pursuit Policy and Border Patrol's Deadly Pursuit of a Vehicle on August 3, 2021 near Las Cruces, New Mexico

Dear Acting Commissioner Miller:

The American Civil Liberties Union of New Mexico ("ACLU-NM") and the American Civil Liberties Union of Texas ("ACLU-TX") write to request that U.S. Customs and Border Protection ("CBP") ensure that robust and independent investigations are conducted by the agency into the recent deadly vehicle pursuit by Border Patrol on August 3, 2021 that killed two individuals and resulted in the hospitalization of eight others. We further request that CBP immediately releases its written vehicle pursuit policy, as well as any and all related training materials, and that the agency undertake a scrupulous review of Border Patrol agents' compliance with or deviation from the written policy in relation to the chase and crash of August 3, 2021.

I. The Deadly Border Patrol Chase of August 3, 2021

On August 3, 2021, two individuals were killed and eight were injured as a result of a vehicle pursuit by Border Patrol near Border Patrol's permanent interior checkpoint on New Mexico State Road 185.¹ Details of the events surrounding the crash are only available via CBP's own press release, which the agency did not issue until August 17, 2021, fourteen days after the incident.² CBP's statement initially reported only one death and did not include information about the U.S. citizen who died as a result of the vehicle pursuit and crash.³

¹ U.S. Customs & Border Protection, "Smuggler loses control of vehicle while evading checkpoint, causing a death and injuries to ejected passengers" (Aug. 17, 2021), *available at* <https://www.cbp.gov/newsroom/speeches-and-statements/smuggler-loses-control-vehicle-while-evading-checkpoint-causing>.

² *Id.*

³ *Id.* The press release was originally issued on August 17, 2021, and indicated that one individual died as a result of the crash. The agency later added an undated update to the press release to indicate that a second individual, a U.S. citizen who had been driving the vehicle, had also died on August 15, 2021. The U.S. citizen had died two days prior to the initial press release, but CBP failed to mention his death in the original text.

Early in the morning of August 3, 2021, a Border Patrol agent assigned to the Las Cruces, New Mexico, U.S. Border Patrol Station was reportedly patrolling New Mexico State Road 185 approximately six miles south of the Border Patrol checkpoint, which is located approximately 69 miles north of the U.S.-Mexico border. According to CBP, the agent witnessed a northbound vehicle pull to the side of the road and then proceed north. The Border Patrol agent reportedly followed the vehicle without activating his emergency equipment.

The vehicle reportedly evaded the Border Patrol checkpoint by driving onto the southbound lanes of New Mexico State Road 185 and then continued north, at which time the Border Patrol agent activated his emergency equipment and attempted to stop the vehicle. Another Border Patrol unit also reportedly pursued the vehicle.

Approximately three miles north of the Border Patrol checkpoint, the vehicle crashed. Several occupants were ejected from the vehicle. The agency's statement simply claims "the driver lost control and crashed," but does not indicate the location or conduct of Border Patrol agents' vehicles immediately preceding the crash.

Border Patrol agents reportedly requested emergency medical services. Four occupants were airlifted to the University Medical Center ("UMC") in El Paso, Texas. Three occupants were transported by EMS to Mountain View Hospital in Las Cruces, New Mexico. Three other occupants, reportedly with minor injuries, were transported to Memorial Hospital in Las Cruces, New Mexico.

One of the occupants transported to UMC was a male citizen of Ecuador. On August 11, 2021, UMC medical personnel determined that he failed to show brain activity and placed him on a ventilator. The following day, he was taken off life support and the El Paso County Office of the Medical Examiner declared him deceased.

The driver of the vehicle, a male U.S. citizen who had also been transported to UMC, died at the hospital on August 15, 2021.

CBP indicated that this incident is being investigated by Homeland Security Investigations and the New Mexico State Police, and that it is being reviewed by the CBP Office of Professional Responsibility and the El Paso County Office of the Medical Examiner. CBP further indicated that the DHS Office of Inspector General has been notified. We strongly urge the investigating agencies to publicize their findings, recommendations, and any other outcomes.

II. Border Patrol's Pattern of Deadly High-Speed Chases Demonstrates that This Is Not an Isolated Incident

Deaths due to Border Patrol vehicle pursuits occur with disturbing frequency. One study found that from 2015 to 2018 alone, at least 250 people were injured and 22 were killed in vehicle crashes due to such pursuits.⁴ This study, in examining more than 500 incidents, found

⁴ Brittany Mejia, Kavitha Surana, & James Queally, "Trapped in a Deadly Chase," PROPUBLICA (Apr. 4, 2019), available at <https://features.propublica.org/border-crashes/death-injuries-in-high-speed-border-patrol-chases/>.

that one in three Border Patrol vehicle pursuits ended in a crash.⁵ Further, the number of injuries resulting from Border Patrol pursuits increased by 42 percent during the Trump administration alone.⁶

Moreover, the El Paso sector, encompassing all of southern New Mexico, has a recent history of deadly Border Patrol chases. In January 2020, a chase resulted in a fatal crash on Paisano Avenue near downtown El Paso, Texas.⁷ Despite Border Patrol denying participating in that chase, police reports and the agency’s own records indicate that Border Patrol was in pursuit of the vehicle at the time of the crash.⁸ Just months later on June 25, 2020, another Border Patrol chase ended in a crash that killed seven people at the same location in downtown El Paso, Texas. Following these crashes the ACLU-TX filed public records requests with both local⁹ and federal authorities¹⁰ and issued a letter to the DHS Office of Inspector General demanding an investigation and the release of Border Patrol’s vehicle pursuit policy.¹¹ Despite these efforts Border Patrol has not releases further information regarding the deadly crashes, nor has the Inspector General responded to our complaint or released any findings, recommendations, or other outcomes of any investigation into the incidents.¹²

CBP’s delayed reporting on vehicle pursuits that result in injuries and fatalities—as occurred with the August 3, 2021 pursuit near Las Cruces, New Mexico—also further hinders accountability measures.

III. Lack of Transparency Regarding CBP’s Vehicle Pursuit Policy Impedes Accountability

CBP has refused to release its written vehicle pursuit policy to the public. CBP has further refused to release the policy to the press¹³ and has declined requests for information, including from Senator Dianne Feinstein.¹⁴ This lack of accountability is highly alarming, especially given the number of injuries and lives lost in recent incidents.

⁵ *Id.*

⁶ Debbie Nathan, “Border Patrol agent speaks out about a high-speed chase that ended in an immigrant’s death,” THE INTERCEPT (Feb. 28, 2020), *available at* <https://theintercept.com/2020/02/28/border-patrol-el-paso-texas-car-chase/>.

⁷ *Id.*

⁸ *Id.*

⁹ Letter from ACLU-TX to El Paso Police Department (July 17, 2021), *available at* https://www.aclutx.org/sites/default/files/pia_request_el_paso_police_department_7.17.20_final.pdf.

¹⁰ Letter from ACLU-TX to Secretary Mayorkas, at Appendix 5 (Apr. 12, 2021), *available at* https://www.dropbox.com/s/p9nar3rbunnkb3k/2021_04_12%20ACLU%20Letter%20on%20Unanswered%20FOIA%20with%20Appendix.pdf?dl=0.

¹¹ ACLU, “Analysis of 13 unresolved complaints highlights need to prioritize reform recommendations,” at Appendix 13 (Mar. 5, 2021), *available at* <https://www.aclu.org/press-releases/aclu-calls-biden-administration-address-cbp-abuses-border>.

¹² *See id.*

¹³ René Kladzyk, “Witnesses say Border Patrol chased car moments before it crashed, killing 7,” EL PASO MATTERS (July 1, 2021), *available at* <https://elpasomatters.org/2020/07/01/witnesses-say-border-patrol-chased-car-moments-before-it-crashed-killing-7/>.

¹⁴ *Id.*

CBP's failure to provide its vehicle pursuit policy is inconsistent with nearly every major law enforcement agency across the country, which routinely provide versions of their policies for public and expert review.¹⁵

CBP has publicly referenced its vehicle pursuit policy and related training curriculum. While briefing reporters, Border Patrol agent Justin Castrejon stated, "We have a very exact pursuit policy."¹⁶ Another Border Patrol agent reported that agents participate in an annual refresher training in which they review the written vehicle pursuit policy.¹⁷

ACLU-NM and ACLU-TX seek to obtain a copy of the CBP vehicle pursuit policy in order to better inform the public as to the parameters of the agency's internal standards and guidance regarding these dangerous encounters. ACLU-NM and ACLU-TX further seek to assess the circumstances in which CBP purports to authorize vehicle pursuits and the tactics that are endorsed by the agency in various situations that may result in injuries or fatalities.

Because CBP has refused to date to release the agency's vehicle pursuit policy, it has been near impossible for ACLU-NM and ACLU-TX to review the agency's compliance with relevant legal authorities, guidelines, and best practices. Under certain circumstances, a high-speed vehicle pursuit can constitute the use of deadly force.¹⁸ The Supreme Court has ruled, in a case involving a high-speed pursuit by law enforcement officers, that the officers' actions during pursuits may constitute a violation of the Fourth Amendment.¹⁹ Border Patrol vehicle pursuits include lethal tactics such as boxing in moving vehicles, puncturing tires, and employing "PIT" maneuvers to force vehicles to spin out and stop.²⁰ Many chases take place in populated locations, including school zones and residential areas, and may occur in treacherous weather that increases the likelihood of serious crashes.²¹ Moreover, it appears that Border Patrol agents

¹⁵ *E.g.*, Seattle Police Department's Vehicle Pursuit Policy, effective March 2020, *available at* <https://www.seattle.gov/policemanual/title-13---vehicle-operations/13031---vehicle-eluding/pursuits>; Chicago Police Department's Vehicle Pursuit Policy, effective April 2019, *available at* <http://directives.chicagopolice.org/directives/data/a7a57be2-1291920c-54712-9192-aecb02ef17e0c47d.html>; Houston Police Department's General Order on Motor Vehicle Pursuits, effective June 2018, *available at* https://www.houstontx.gov/police/general_orders/600/600-04%20Motor%20Vehicle%20Pursuits.pdf; San Antonio Police Department's Procedure on Vehicle Pursuits, effective December 2016, *available at* <https://www.sanantonio.gov/Portals/0/Files/SAPD/GeneralManual/620VehiclePursuitsAndStopTechniques.pdf>; New York Police Department's Patrol Guide on Vehicle Pursuits, effective June 2016, *available at* https://www1.nyc.gov/assets/ccrb/downloads/pdf/investigations_pdf/pg221-15-vehicle-pursuits.pdf; Philadelphia Police Department's Directive on Vehicular Pursuits, updated June 2016, *available at* <https://www.phillypolice.com/assets/directives/D9.4-VehicularPursuits.pdf>; Dallas Police Department's General Order on Vehicle Pursuits, revised June 2011, *available at* https://www.pursuitsafety.org/wpcontent/uploads/2017/09/dallas_EVO_8_pages.pdf; Phoenix Police Department's Pursuit Guidelines, effective April 2009, *available at* https://www.phoenix.gov/policesite/Documents/operations_orders.pdf.

¹⁶ Mejia et al, *supra* note 4.

¹⁷ Kladzyk, *supra* note 13.

¹⁸ *Brower v. Cty. of Inyo*, 489 U.S. 593 (1989) (considering a high-speed police pursuit that led to the death of the fleeing driver and holding that the police officers violated the Fourth Amendment); Hugh Nugent et al., "Restrictive Policies for High-Speed Police Pursuits," NATIONAL INSTITUTE OF JUSTICE (May 16, 1990), *available at* <https://www.ojp.gov/pdffiles1/Digitization/122025NCJRS.pdf>.

¹⁹ *Brower v. Cty. of Inyo*, 489 U.S. 593 (1989).

²⁰ Mejia et al, *supra* note 4.

²¹ *Id.*

do not adhere to any official cutoff speed,²² in disregard of Department of Justice (“DOJ”) recommendations that agencies set speed limits for law enforcement vehicles.²³

Given the high number of injuries and deaths resulting from Border Patrol vehicle pursuits, it appears that either the agency’s policy fails to protect the safety and lives of pursuit subjects or that agents are consistently acting outside the bounds of agency policy.

These Border Patrol vehicle pursuits endanger not only the drivers and passengers of the vehicles involved, but also bystanders and the community at large. In the absence of sufficient information regarding when CBP authorizes agents to engage in vehicle pursuits, community members reasonably fear that racial profiling or otherwise non-suspicious conduct may lead to an unjustified and dangerous Border Patrol pursuit. The lack of transparency regarding the tactics that Border Patrol agents are permitted to engage in, during vehicle pursuits, further heightens our concern that agents may continue to undertake dangerous high-speed chases that jeopardize the life and safety of drivers, passengers, and bystanders. And ultimately, the surviving family members of those who are injured or killed during Border Patrol’s high-speed vehicle pursuits find themselves at a loss in seeking information on why their loved ones were harmed in such tragic and horrific circumstances.

Given these concerns and the gravity of these issues, ACLU-NM and ACLU-TX recommend the following:

- The agency, including relevant internal investigative offices, should undertake robust independent investigations into the August 3, 2021, Border Patrol vehicle pursuit in New Mexico, and should publicize their findings and outcomes;
- CBP should immediately release to the public its written vehicle pursuit policy and any accompanying training materials; and
- DHS OIG should conduct a detailed review of CBP’s written vehicle pursuit policy and its implementation, including its legal sufficiency, its alignment with best practices, and Border Patrol agents’ adherence to or deviation from the written policy.

Thank you for your time and prompt attention to this matter. We look forward to your timely response.

Sincerely,



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²² *Id.*

²³ Nugent et al., *supra* note 18.



Shaw Drake
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cc: DHS Office of Inspector General
CBP Office of Professional Responsibility
U.S. Senator Martin Heinrich (NM)
U.S. Senator Ben Ray Luján (NM)
Representative Yvette Herrell (NM-02)
Representative Veronica Escobar (TX-16)
House Committee on Homeland Security
Senate Homeland Security and Governmental Affairs Committee