

ACLU BORDER RIGHTS

Texas

July 17, 2020

El Paso Police Department
Records Division
911 N. Raynor St.
El Paso, TX 79903

Re: Texas Public Information Act Request

Dear Public Information Officer:

This letter constitutes a request pursuant to the Texas Public Information Act, Texas Government Code Ch. 552. This request is submitted on behalf of the American Civil Liberties Union of Texas, Border Rights Center (“ACLU”).¹ Border Patrol regularly engages in deadly high-speed chases that endanger the community and those in the chase. Border Patrol’s culture of impunity keeps these incidents from public scrutiny; border communities deserve better. The ACLU seeks any and all records depicting or reporting the vehicle chase conducted by Border Patrol² agents on June 25, 2020 that culminated in a crash that killed seven people on Paisano Avenue.³

I. Background

Border Patrol agents often engage in high-speed vehicle chases. One study found that from 2015 to 2018 alone, at least 250 people were injured and 22 were killed in a vehicle crash due to such a pursuit.⁴ The analysis also found that out of over 500 Border Patrol vehicle pursuits, one in three ended in a crash.⁵ These pursuits often include lethal tactics, such as boxing in moving vehicles, puncturing tires and other methods aimed at

¹ ACLU, a 501(c)(3) organization, is dedicated to protecting and defending the individual rights and liberties guaranteed by the Constitution and laws. The ACLU monitors government conduct, provides free legal representation in civil rights and civil liberties cases, educates the public about their rights and liberties and abuses of power, and provides analyses to the public of government activities and their civil rights implications.

² Border Patrol is a subcomponent of the Customs and Border Protection Agency. As most vehicle pursuits are conducted by Border Patrol agents, this request specifically refers to Border Patrol agents rather than Customs and Border Protection agents.

³ René Kladzyk, “Witnesses say Border Patrol chased car moments before it crashed, killing 7,” El Paso Matters, July 1, 2020, available at <https://elpasomatters.org/2020/07/01/witnesses-say-border-patrol-chased-car-moments-before-it-crashed-killing-7/>.

⁴ Brittany Mejia, Kavitha Surana and James Queally, “Trapped in a Deadly Chase,” ProPublica, April 4, 2019, available at <https://features.propublica.org/border-crashes/death-injuries-in-high-speed-border-patrol-chases/>.

⁵ *Id.*

spinning vehicles off the road.⁶ Notably, since President Donald Trump assumed office, the number of people injured in Border Patrol pursuit crashes has increased by 42 percent.⁷

These tragedies occur with disturbing frequency, including in El Paso. In January 2020, a Border Patrol chase resulted in a fatal crash on Paisano Avenue near downtown El Paso.⁸ While Customs and Border Protection (“CBP”) denied participating in the chase, police reports and the agency’s own records indicate that a Border Patrol agent was pursuing the vehicle at the time of the crash.⁹ On June 25, 2020, a Border Patrol vehicle chase again led to a crash, this time killing seven people in the same location.¹⁰ Gustavo Cervantes, 18, of El Paso; Yadira Barrera, 16, of El Paso; Liliana Jimenez, 16, of El Paso; Jorge Manuel Acosta, 19, of El Paso; Oscar Miguel Garcia-Bran, 21, of Guatemala; Elvira Tot-Chiroy, 19, of Guatemala; and Santos Porfirio-Garcia, 32, of Guatemala were reported deceased by either the El Paso Police or their family members.¹¹

Wilmer Gomez of Guatemala was one of three survivors in the vehicle that crashed on June 25, 2020.¹² Gomez says he remembers being chased by approximately seven Border Patrol vehicles.¹³ Other witnesses also recount that Border Patrol vehicles were speeding in pursuit when the crash occurred.¹⁴ In contrast, Border Patrol claims that agents did pursue the vehicle but terminated the pursuit when the vehicle reached high speeds heading into downtown El Paso, ultimately denying that agents were in pursuit of the vehicle at the time of the crash.¹⁵ Notably, a Border Patrol internal memo sent hours after the crash, obtained by news outlet *El Paso Matters*, purports to order an end to pursuits in the Paisano Avenue location where the crash occurred.¹⁶

II. Requested Records

In the interest of open government, please be mindful of your duty to make a good-faith effort to fulfill the below requests and provide any relevant information that you hold. These records are urgently needed to inform the public about Border Patrol’s activity that may be harmful to the public interest. The fact that CBP’s vehicle pursuit policy is not public and the large number of fatal crashes resulting from Border Patrol vehicle chases are the sources of considerable public concern and debate. Accordingly, transparency regarding the vehicle pursuit and crash of June 25, 2020 is vital to promoting trust in local government.

⁶ *Id.*

⁷ Debbie Nathan, “Border Patrol Agent Speaks out about a High-Speed Chase That Ended in a Immigrant’s Death,” *The Intercept*, February 28, 2020, available at <https://theintercept.com/2020/02/28/border-patrol-el-paso-texas-car-chase/>.

⁸ *Id.*

⁹ *Id.*

¹⁰ Kladzyk, *supra* note 3.

¹¹ *Id.*; Alfredo Corchado, “Witnesses contradict Border Patrol’s claim that they weren’t chasing car when 7 died in crash,” *The Dallas Morning News*, July 1, 2020, available at <https://www.dallasnews.com/news/immigration/2020/07/01/witnesses-contradicts-border-patrols-claim-that-they-werent-chasing-car-when-7-died-in-crash/>.

¹² *Id.*

¹³ *Id.*

¹⁴ Corchado, *supra* note 11.

¹⁵ Kladzyk, *supra* note 3.

¹⁶ *Id.*

Pursuant to the Texas Public Information Act, Texas Government Code Ch. 552, the ACLU requests the following information maintained by the El Paso Police Department and its employees and agents:

1. All videotapes, audio tapes, or other media depicting the June 25th chase and crash. As the Paisano Avenue location is a busy traffic area, the ACLU has reason to believe that traffic cameras likely captured at least part of the chase and consequent crash;¹⁷
2. All police and dispatch recordings, 911 reports, and other audio recordings reporting the June 25th chase and crash. Given that the El Paso Police Department is the lead agency investigating the crash, the ACLU has reason to believe that the department holds basic information about the crash that has not been released to the public.¹⁸

III. Application of the Texas Public Information Act

Although this Request seeks certain law enforcement information, this information is not exempted from the requirements of Tex. Gov't Code Ch. 552 because the release of information regarding this public incident does not interfere with the detection, investigation, or prosecution of a crime.¹⁹ The public is already aware of the crash and the identity of those killed, so releasing footage of or details about the wreck will not hinder any current investigative efforts.²⁰ Moreover, the ACLU is not requesting any investigative files or memoranda. Additionally, §552.108(a)(2) is not applicable because the El Paso Police Department is currently conducting an active investigation of the crash.

The Texas Public Information Act mandates that if you are unable to produce the requested information within 10 business days of this request, you certify that fact in writing and set a date within a reasonable timeframe when the information will be available. Should you elect to withhold or delete any information, please justify your decision by referencing specific exemptions under the Act. Under provisions of the Texas Public Information Act, we reserve the right to appeal should you determine to withhold any information sought in my request.

This request is made for public and non-commercial purposes by the American Civil Liberties Union of Texas, which is a nonprofit organization whose mission is to defend and preserve individual rights and liberties guaranteed to every person in this country by the Constitution and laws of the United States. Because we request this information for the benefit of the general public, please waive the fees for this request pursuant to Tex. Gov't Code § 552.267.

¹⁷ Where any media disclosed implicates the privacy of bystanders and others whose identity has not been disclosed by the media, disclosed media may be edited to protect the privacy of such people (e.g. blurring of face).

¹⁸ Aaron Martinez, "El Paso police reveal details in fatal Downtown crash; group seeks Border Patrol inquiry," El Paso Times, June 26, 2020, available at <https://www.elpasotimes.com/story/news/crime/2020/06/26/el-paso-fatal-car-crash-accident-border-patrol-investigation/3265472001/>.

¹⁹ See *City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App. 2002) at 325-326, 329 (ruling that Texas courts have consistently narrowly construed the type of information that may be considered law enforcement matters withheld under the Texas Public Information Act exceptions).

²⁰ See Kladzyk, *supra* note 3.

To the extent possible, we ask that the requested information be provided electronically. Materials may be sent by email to sdrake@aclutx.org, or by mail to ACLU of Texas Border Rights Center, P.O. Box 8306, Houston, TX 77288. Please do not hesitate to contact me if you have any questions or concerns by email at sdrake@aclutx.org or by telephone at 713.942.8146. Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'S. Drake', with a stylized flourish at the end.

Shaw Drake
ACLU of Texas, Border Rights Center
P.O. Box 8306, Houston, TX 77288
713.942.8146
sdrake@aclutx.org