



**Homeland  
Security**

February 24, 2022

MEMORANDUM FOR: Chris Magnus  
Commissioner  
U.S. Customs and Border Protection

Scott K. Falk  
Chief Counsel  
U.S. Customs and Border Protection

FROM:

(b)(6)  
Dana Salvano-Dunn  
Director, Compliance Branch  
Office for Civil Rights and Civil Liberties

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Attorney Advisor - Legal Counsel Division  
Office of General Counsel

SUBJECT: Allegations of Vehicle Pursuit Deaths

Complaint Nos.000155-21-CBP; 002411-21-CBP;  
002806-22- CBP; 002950-22-CBP; 003024-22-CBP;  
003131-22-CBP

The Office for Civil Rights and Civil Liberties (CRCL) has opened complaints alleging violations of civil rights or civil liberties resulting from incidents related to vehicle pursuits by U.S. Customs and Border Protection (CBP) employees. It is alleged that CBP personnel unnecessarily engage in vehicle pursuits at high rates of speeds that are unwarranted given the alleged crime(s), deploy vehicle immobilization devices (VID) or controlled tire deflation devices (CTDD) or pursuit intervention techniques (PIT) potentially leading to serious injury or death to suspect vehicle occupants. The purpose of this memorandum is to notify you of the complaints, describe those allegations, and inform you that CRCL will retain these complaints for investigation.

### ALLEGATIONS

From September 2021 through present, CRCL has received many allegations related to deadly vehicle pursuits. Many of these allegations correspond to apparent increases in vehicle pursuits, including the use of the VIDs, CTDDs, and PITs by CBP or on behalf of CBP.

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For the purposes of this investigation, CRCL will focus on the allegations concerning the high-speed pursuits or those pursuits over the posted speed limits, pursuits involving deaths of vehicle drivers and occupants, bystanders or other unrelated drivers, and deployments of VIDs, CTDDs, and those using PITs. This investigation will review CBP policies, procedures and training related to vehicle pursuits, and practices used by CBP employees during vehicle pursuits and follows.

CRCL has opened the following complaints for investigation that best exemplify the discipline-allegations. The allegations were received from the CBP Situation Room unless otherwise indicated:

*Complaint No. 000155-21-CBP*

On May 14, 2021, Border Patrol Agents (BPAs) allegedly discharged their service weapons striking one subject. Agents allegedly attempted to perform a vehicle stop on a vehicle suspected of smuggling non-citizens; the vehicle then failed to yield. The vehicle went off-road and attempted to run over a barbed wire fence and allegedly in the direction of agents on the ground. Agents reported that shots had been fired and the driver had been shot in the shoulder. Two Mexican nationals were located in the vehicle and arrested. The unidentified driver was transported to a local hospital in San Diego, California where he was later pronounced deceased.

*Complaint No. 002411-21-CBP*

On September 18, 2021, a vehicle pursuit led to a fiery crash, the death of one person, two persons being air lifted, and seven others being treated at a hospital. BPAs reported a vehicle allegedly attempted to circumvent a USBP checkpoint resulting in a failure to yield vehicle pursuit. The vehicle allegedly veered into the opposite lane and over-corrected resulting in a vehicle rollover.

*Complaint No. 002806-22-CBP*

On November 12, 2021, a pursuit and/or deployment of a VID which may have resulted in the death of two persons and the hospitalization of a third. A vehicle was referred to secondary inspection, and then allegedly accelerated and fled the checkpoint. A BPA allegedly attempted to employ a VID; however, the VID failed to deploy. The vehicle circumvented the checkpoint, and a second BPA deployed a VID. The BPA could not determine if the VID affected the vehicles' tires. Four miles north of the checkpoint, a BPA discovered the vehicle overturned on its roof.

*Complaint No. 002950-22-CBP*

On December 3, 2021, a high-speed chase and the deployment of a VID was involved in an incident that may have contributed to the death of one person. BPAs allegedly initiated a pursuit that averaged speeds of 102 MPH. As the vehicle approached an intersection, the pursuing BPAs allegedly slowed down and a TX DPS officer, who was accompanied by two BPAs, deployed a VID. The vehicle allegedly attempted to circumvent the VID, left the roadway, struck solar panels, rolled, and came to rest on its side and facing the opposite direction. A citizen of Mexico was ejected from the vehicle when it rolled over and was pronounced dead at the scene.

*Complaint No. 003024-22-CBP*

On December 11, 2021, a vehicle pursuit resulted in the deaths of two bystanders. A vehicle allegedly believed to be smuggling illegal aliens was seen by an Air and Marine Operations helicopter and alerted BPAs. A vehicle pursuit/follow ensued. The suspect vehicle allegedly failed to stop at a stoplight and collided with an uninvolved vehicle carrying two civilian bystanders, who died as a result of the collision.

*Complaint No. 003131-22-CBP*

On January 14, 2022, CRCL reviewed a New York Times news article, titled “A Rise in Deadly Border Patrol Chases Renews Accountability Concerns”, regarding the death of a driver. The driver was allegedly driving nine non-citizens when his vehicle rolled over while being pursued by BPAs at speeds of up to 73 miles per hour. The BPAs pursued the vehicle for approximately one mile before BPAs allegedly “clipped” the suspect vehicle and it rolled over.

CRCL

*CRCL Mission.* CRCL supports the Department’s mission to secure the Nation while preserving individual liberty, fairness, and equality under the law. CRCL integrates civil rights and civil liberties into all the Department’s activities:

- Promoting respect for civil rights and civil liberties in policy creation and implementation by advising Department leadership and personnel, and state and local partners;
- Communicating with individuals and communities whose civil rights and civil liberties may be affected by Department activities, informing them about policies and avenues of redress, and promoting appropriate attention within the Department to their experiences and concerns;
- Investigating and resolving civil rights and civil liberties complaints filed by the public regarding Department policies or activities, or actions taken by Department personnel; and
- Leading the Department's equal employment opportunity programs and promoting workforce diversity and merit system principles.

*CRCL authorities.* Under 6 U.S.C. § 345 and 42 U.S.C. § 2000ee-1, CRCL is charged with investigating and assessing complaints against DHS employees and officials of abuses of civil rights, civil liberties, and profiling on the basis of race, ethnicity, or religion. The procedures for our investigations and the recommendations they may generate are outlined in DHS Management Directive 3500.

*Access to information.* More particularly, 42 U.S.C. § 2000ee-1(d) grants this Office access to the “information, material, and resources necessary to fulfill the functions” of the office, including the complaint investigation function; Management Directive 3500 further authorizes CRCL to:

- “Notify[] the relevant DHS component(s) involved of the matter and its acceptance by CRCL, and whether the matter will be handled by CRCL or by the component organization”;
- “Interview[] persons and obtain[] other information deemed by CRCL to be relevant and require[e] cooperation by all agency employees”; and
- “Access[] documents and files that may have information deemed by CRCL to be relevant.”

*Reprisals forbidden.* In addition, 42 U.S.C. § 2000ee-1(e) forbids any Federal employee to subject a complainant or witness to any “action constituting a reprisal, or threat of reprisal, for making a complaint or for disclosing information to” CRCL in the course of this investigation.

This memorandum and its accompanying request for information are pursuant to these authorities.

*Privilege and required transparency.* Our communications with CBP personnel and documents generated during this review, particularly the final report, will be protected to the maximum extent possible by attorney-client and deliberative process privileges. Under 6 U.S.C. § 345(b), however, we submit an annual report to Congress—also posted on CRCL’s website—that is required to detail “any allegations of [civil rights/civil liberties] abuses . . . and any actions taken by the Department in response to such allegations.”

We look forward to working with your staff on this matter and will report back to you our findings and any recommendations.

### SCOPE OF REVIEW

The purpose of our review is to determine whether the factual allegations in the complaints can be verified or disproven; whether any additional facts suggest that the Constitution, a federal statute, or Department policy or procedures has been violated; and what steps, if any, should be taken by CBP to address any concerns CRCL identifies, both individually (if a problem is ongoing) and as a matter of policy. It is our goal to produce a report that will assist in making CBP the best agency possible.

### QUESTIONS PRESENTED

(b)(5)



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### INITIATING THE INVESTIGATION

We request an initial discussion with CBP about these complaints and CRCL's plans for reviewing these matters. Senior Policy Advisor (b)(6) will be handling this review. We look forward to working together to determine all the facts surrounding this matter and if appropriate, the best way forward. If you have any questions, please do not hesitate to contact (b)(6) by phone at (b)(6) or by email at (b)(6)

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