



New Mexico

June 29, 2022

Joint Intake Center
U.S. Department of Homeland Security
Attn: Assistant Commissioner Matthew Klein
P.O. Box 14475
1200 Pennsylvania Avenue, NW
Washington, D.C. 20044
Via Email (JointIntake@cbp.dhs.gov)

RE: Complaint Regarding September 18, 2021 High-Speed Vehicle Pursuit by Border Patrol Agents in New Mexico

Dear Assistant Commissioner Klein:

The American Civil Liberties Union of New Mexico (“ACLU-NM”) submits this complaint regarding a high-speed vehicle pursuit that took place on September 18, 2021. We urge the CBP Office of Professional Responsibility (“OPR”) to exercise its authority to investigate misconduct committed by Border Patrol agents in the El Paso Sector in undertaking this high-speed pursuit. As the below facts show, this pursuit was conducted in violation of CBP’s vehicle pursuit policy, resulting in multiple serious injuries and two fatalities.

The below information was obtained by the ACLU-NM through records requests pursuant to New Mexico’s open records laws. These records, including incident reports, crash reconstruction, and New Mexico State Police (“NMSP”) bodycam footage, are available at:

[REDACTED]

On September 18, 2021, Border Patrol (“BP”) agents engaged in a high-speed vehicle pursuit on a two-lane highway in New Mexico that resulted in the vehicle rolling over and bursting into flame. Two passengers died. The crash occurred at approximately 12:46 PM near mile marker 19 on New Mexico State Road 11 (“NMSR 11”).

The incident began when a black 2002 Acura SUV reportedly circumvented a Border Patrol checkpoint located at mile marker 13 on NMSR 11, between the Columbus Port of Entry and the town of Deming, New Mexico. The Acura SUV had ten occupants including the alleged driver, Elton Gastelum. Two of the occupants were children.

BP Agent Cristian Mendoza, who had been sitting inside his marked vehicle at the checkpoint, was notified by other BP agents that Gastelum’s vehicle had avoided the checkpoint. He initiated the pursuit of Gastelum’s vehicle. The pursuit appears to have lasted approximately

6 miles (from the Border Patrol checkpoint at mile marker 13 to the crash site at mile marker 19). BP Agent Mendoza did not advise dispatch that he was in pursuit until mile marker 17. In the NMSP bodycam footage, he says, “I should have called it [in] as soon as he circumvented....”¹

In the section of NMSR 11 where the high-speed vehicle pursuit occurred, the road has two lanes, one northbound and one southbound, with a painted yellow center line. The posted speed limit is 60 miles per hour (“mph”). BP Agent Mendoza was driving in pursuit at approximately 90 to 95 mph. He turned on his emergency lights once he saw Gastelum’s vehicle.² He estimated that Gastelum’s vehicle was traveling at between 100 and 110 mph.

BP Agent Eric Escobar joined the pursuit. He had been inside the office at the Border Patrol checkpoint at the time the pursuit began. He got into his marked vehicle and attempted to catch up with BP Agent Mendoza’s vehicle during the pursuit.

BP Agent Carlos Jimenez was traveling northbound on NMSR 11, ahead of and in the same direction as Gastelum’s vehicle. BP Agent Jimenez, upon hearing of the pursuit on the radio, **slowed down to about 45 or 50 mph** and turned on his emergency lights as Gastelum’s vehicle approached from behind. Nowhere in the CBP vehicle pursuit policy is this maneuver authorized as a type of “emergency driving,” “boxing in,” or “offensive driving technique.”³ It is not clear from the available records whether BP Agent Jimenez sought or obtained supervisory approval for this dangerous maneuver.⁴

Gastelum reportedly attempted to pass BP Agent Jimenez’s vehicle—which was traveling well below the posted speed limit—by swerving into the southbound lane of NMSR 11. Gastelum reportedly crossed back into the northbound lane of NMSR 11 in front of BP Agent Jimenez’s vehicle, lost control, and veered off the road onto the right-side shoulder.

Gastelum’s vehicle rolled over multiple times and burst into flames. Six occupants were ejected from the vehicle. As one of the Border Patrol agents on the scene said in the NMSP bodycam footage, “They were all thrown everywhere, bro.”⁵ The four other occupants were trapped in the burning vehicle and had to be pulled out. One passenger who had been thrown from the vehicle—a woman from Ecuador—died at the scene of the crash. All nine of the remaining vehicle occupants were severely injured. At least one had to be intubated on the scene of the crash. Another was going in and out of consciousness. According to dispatch transcripts, “none of them [were] moving,” four had head and chest injuries, and one had a “burnt leg.”

¹ NMSP bodycam footage (Rangel), at 54:45.

² U.S. Customs & Border Protection, “Emergency Driving Including Vehicular Pursuits by U.S. Customs and Border Protection Personnel Directive” at 5–6, No. 4510-26 (effective date Jan. 16, 2021), <https://www.cbp.gov/document/directives/emergency-driving-including-vehicular-pursuits-us-customs-and-border-protection> (last visited June 22, 2022) [hereinafter CBP Vehicle Pursuit Directive] (defining “vehicle pursuit” as “[w]hen an officer or agent in a CBP emergency equipped vehicle activates the emergency warning equipment in an attempt to conduct a vehicle stop”).

³ *Id.* at 3–4 (defining “emergency driving,” “boxing in,” and “offensive driving techniques”).

⁴ *Id.* at 8 (requiring supervisory approval during vehicle pursuit “on a continuing basis, subject to the evolving state of conditions of the pursuit”), 12 (“Prior to utilizing an [offensive driving technique], approval is required from a supervisor....”).

⁵ NMSP bodycam footage (Rangel), at 34:36.

NMSP bodycam footage shows the severity of their extensive traumatic injuries, as they were being triaged by EMS on the scene. They were all transported to nearby hospitals; at least seven of them were airlifted. A man from Brazil, who had been a passenger, died about nine days later.

NMSP was not able to obtain statements on the scene of the crash from any of the vehicle occupants due to the extent of their injuries. At least two of the passengers were apparently later designated as material witnesses.

As captured in NMSP bodycam footage, BP Agent Mendoza repeatedly stated that Gastelum's vehicle was "just trying to blend into traffic" after he circumvented the checkpoint.⁶ BP Agent Mendoza said that Gastelum did not start driving erratically until he saw BP Agent Mendoza's emergency lights behind him.⁷

The NMSP bodycam footage also shows BP Agent Jimenez on the scene of the crash calling the victims "illegals"—a dehumanizing term that has been disfavored by the agency.⁸ Another of the Border Patrol agents spoke disparagingly of the Brazilian passenger, who later died, saying that he remembered making fun of his personal belongings while processing him days earlier.⁹

Discussion among NMSP personnel on the bodycam footage suggests that Border Patrol was planning to "do their investigation" of the incident, and to turn over their findings to NMSP, so that the District Attorney could charge the alleged driver.¹⁰ As one NMSP officer said, "They're gonna give us the evidence."¹¹ This approach raises serious questions about whether the investigation by Border Patrol into its own pursuit was conducted in an impartial manner.

On the day of the incident, it was sunny and the weather was clear. There is no indication that Border Patrol agents gave any consideration to or made any effort to use air support or other surveillance or tracking tools instead of engaging in a high-speed vehicle pursuit.¹²

It is not clear how the Border Patrol agents involved in this incident weighed the law enforcement benefit against the immediate danger created by this high-speed pursuit, both to the occupants of Gastelum's vehicle and other persons in the area.¹³ In the NMSP bodycam footage, BP Agent Mendoza stated that there was light to medium traffic on NMSR 11 at the time.¹⁴

⁶ *Id.* at 55:25, 55:52.

⁷ *Id.* at 55:29.

⁸ *Id.* at 41:52.

⁹ *Id.* at 1:00:06.

¹⁰ NMSP bodycam footage (Gaona), at 1:24:14.

¹¹ *Id.* at 1:24:32.

¹² CBP Vehicle Pursuit Directive, at 9 ("The use of alternatives to pursuit ... are preferable to pursuit and are encouraged in order to terminate or avoid a vehicle pursuit."), 10 ("Aerial surveillance and assistance should be utilized to the maximum extent available.").

¹³ *Id.* at 8 (setting out balancing test; identifying factors to be considered in making pursuit determinations).

¹⁴ NMSP bodycam footage (Rangel), at 55:37.

The CBP press statement on this incident made no mention of the dangerous slow-down maneuver that BP Agent Jimenez conducted prior to Gastelum's vehicle losing control.¹⁵

We respectfully request that OPR promptly engage in a thorough investigation of this high-speed pursuit incident and pursue any misconduct to ensure that the agents involved in this incident are held accountable and reforms are undertaken to prevent similar dangerous vehicle pursuits from occurring in the future.

Please do not hesitate to contact the ACLU-NM at rsheff@aclu-nm.org if you have any questions or need any additional information. Thank you for your prompt attention to this matter.

Sincerely,

/s/ Rebecca Sheff

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¹⁵ U.S. Customs & Border Protection, "Multiple Migrants Airlifted to Hospital, One Deceased" (Sept. 21, 2021) https://www.cbp.gov/newsroom/speeches-and-statements/multiple-migrants-airlifted-hospital-one-deceased?language_content_entity=en.