

**ACLU**

New Mexico

**ACLU**

Texas



# **‘INHERENT RISKS:’**

## **POLICY ANALYSIS AND RECOMMENDATIONS ON REVISED CBP VEHICLE PURSUIT POLICY**

**REBECCA SHEFF, SENIOR STAFF ATTORNEY**

JUNE 2023

The United States' border region has always borne the brunt of our most aggressive immigration enforcement efforts, including dangerous high-speed vehicle pursuits by Border Patrol agents that far too often end in serious injuries and deaths.

After years of public outcry from advocates, victims and borderland residents, U.S. Customs and Border Protection (CBP) announced a revised vehicle pursuit policy. This new policy includes measures that we believe can be important for safeguarding the lives of everyone in our communities, but serious questions remain about the implementation, training and enforcement of the new policy that will be critical for its success.

CBP [publicly posted](#) the [revised vehicle pursuit policy](#) on Jan. 11, and it will go into effect in May.

The ACLU of New Mexico and the ACLU of Texas, alongside coalition partners, have long advocated for enhanced transparency and accountability on CBP's vehicle pursuit policy. Until November 2021, CBP's [vehicle pursuit policy](#) was not even publicly available.

Our extensive concerns about CBP's vehicle pursuit policy have been driven by the clear danger that high-speed pursuits pose to everyone involved and the public at large.

In interviews with the [New York Times](#), [Univision](#), and [Al Jazeera's Fault Lines program](#), our client Angie Arden has bravely spoken up about her son who died as a result of a CBP vehicle pursuit in August 2021.

We released an [investigative report](#) based on a never-before-released CBP Critical Incident Team incident report. Our analysis found multiple troubling questions about the lead-up to the crash that killed two, including Angie's son, and injured eight others, as well as the immediate aftermath. We showed the flaws in CBP's internal investigation of vehicle pursuits and published a policy brief calling for specific reforms.

However, that crash was far from the only one we've investigated that resulted in deaths and serious, life-altering injuries. In one pursuit near Deming, New Mexico, a Border Patrol agent conducted a dangerous and unauthorized [maneuver](#) to block the path of the

vehicle on the highway. The vehicle being pursued rolled over and burst into flames; most of the vehicle occupants were ejected from the vehicle, killing two and severely injuring eight others. **As one of the Border Patrol agents on the scene of the crash callously put it, "They were all thrown everywhere, bro."**

Several deadly pursuits have also taken place in Texas, including in January 2020, when a Border Patrol chase resulted in a [fatal crash](#) on Paisano Avenue near Downtown El Paso. On June 25, 2020, a Border Patrol vehicle pursuit again led to a crash, this time killing several people in the [same location](#). There was yet another death in El Paso on Aug. 15, 2022, following a Border Patrol operation that ended in a crash that also [injured seven people](#).

*Our analysis found multiple troubling questions about the lead-up to the crash that killed two...*

These pursuits endanger the people being pursued, the agents and everyone else on the road. A recent [investigation](#) by Searchlight New Mexico highlighted that threat, detailing an April 2022 CBP pursuit that led to a high-speed head-on collision on a major highway. The driver of the vehicle that was struck—a young man from Las Cruces, NM, who was helping his mother expand her local bakery business—died instantly, leaving behind a six-year-old daughter.

The trend has not changed in the lead-up to the rollout of the revised policy. In March, a Border Patrol chase in [southwestern New Mexico](#) ended with one death and four injured after the pursued vehicle crashed head-on into a New Mexico Department of Transportation truck.

It's important to note that in many of these pursuits, immigrants in the vehicle being pursued have little to no control over the vehicle they're in, and are not suspected of anything more serious than misdemeanor entry without inspection. In the vast majority of these cases, the risk taken and harm caused by the pursuit is completely out of proportion with any suspected criminal activity. And the government's **punitive border policies have forced people seeking asylum into dangerous situations**, increasing their exposure to these harms.

Despite that, the pursuits are shockingly common and often end in tragedy. A [2019 ProPublica study](#) examining more than 500 incidents found that one in three Border Patrol vehicle pursuits ended in a crash. Our [Fatal Encounters tracker](#) has tallied up dozens of deaths from CBP vehicle pursuits over the past decade.

While we welcome the revisions to CBP's vehicle pursuit policy as a significant improvement and an important step forward for our border communities, **we know that robust training and oversight will be essential to ensure compliance with this new policy.** We will continue to seek accountability for actions by CBP officers and agents that cause harm in our communities.

## WHAT'S IN THE NEW POLICY

Many of the changes that CBP made to its vehicle pursuit policy will contribute to saving lives and protecting our border communities:

- The policy redefines "vehicle pursuits," so that the policy still applies even if an officer or agent involved in a pursuit fails to activate their emergency lights or sirens.
- It adopts an "objective reasonableness" standard for when officers and agents may engage in vehicle pursuits:
  - The new standard requires that officers and agents consider the government's interest in immediately apprehending an individual, including the severity of the crime at issue and the level of threat posed by the individual.
  - It also **requires officers and agents to consider whether the government's interest in apprehension outweighs the foreseeable risk of the vehicle pursuit itself**, including the risk not only to the public and law enforcement but also to the occupants of the subject vehicle.
- When a subject vehicle is exceeding the speed limit and appears to be overloaded, the policy prohibits officers and agents from starting or continuing a vehicle pursuit unless they have probable cause that a felony involving the use, or threatened use, of physical force or violence that poses an imminent threat has been or is about to be committed, and a reasonable belief that the immediate need to apprehend clearly outweighs the risks.
  - The same standard applies to vehicle pursuits requiring travel in or near a school zone when it is reasonable to believe there may be a school function. It also applies to vehicle pursuits within "restricted areas," which are areas in which there is a heightened level of risk to the public due to population density or residential, commercial, or recreational uses that result in a significant level of pedestrian and vehicular traffic.
- Officers and agents are prohibited from engaging in a vehicle pursuit if the only articulable suspected violation of law is a "failure to yield."
- **Officers and agents are specifically prohibited from engaging in "pursuit immobilization techniques" (PIT) maneuvers**, in which a government vehicle makes intentional contact with the vehicle being pursued to cause it to spin out and stop. Officers and agents are also prohibited from "boxing-in" a moving vehicle, or surrounding the vehicle with government vehicles which then slow to a stop.
- The policy creates a new review structure for vehicle pursuits.
  - It creates a new Vehicular Pursuits Review Committee that is charged with reviewing incidents that result in a vehicle accident, property damage, or injury or death to subjects, bystanders, officers, or agents. The Vehicular Pursuits Review Committee is directed to determine if the pursuit complied with CBP policy, to identify any potential misconduct, and to assess any training, tactical, equipment, or policy issues.
  - Field leadership will be required to submit a memorandum within 14 days of a vehicle pursuit to headquarters leadership and the CBP Office of Professional Responsibility (OPR) providing an analysis of decision-making related to the pursuit.
  - CBP's Law Enforcement and Safety Directorate Compliance (LESC) will be required to submit to the CBP Commissioner an annual vehicle pursuits report documenting and analyzing pursuits from the previous fiscal year.
- Any CBP employee with knowledge of an improper action by CBP law enforcement personnel will be required to report it without unreasonable delay to the CBP OPR.

## CONCERNS ABOUT IMPLEMENTATION & OPEN QUESTIONS

Critical questions remain as to how CBP will operationalize this revised policy in May. We have several recommendations for how CBP should do this in order to ensure internal compliance and public transparency.

- The policy provides for a phased implementation plan, including training for all authorized officers, agents, and supervisors. **It is critical that this training take place expeditiously and is taught by skilled instructors using effective adult learning techniques**, to ensure that officers, agents, and supervisors are sufficiently informed of the policy revisions.
- **The training curriculum on the revised vehicle pursuits policy should provide clarifications about key aspects of how the policy will be operationalized**, including on how “objective reasonableness” is assessed by officers and agents in the field and how the policy relates to the agency’s existing Use of Force Policy. **The agency should also take steps to ensure that the revised**

**vehicle pursuits policy clearly sets forth the minimum required standards for officers and agents**, regardless of whether any other law enforcement agencies are involved in a pursuit.

- **CBP should act swiftly to ensure that its data collection and data analysis capabilities, including the agency’s Enforcement Action Statistical Analysis and Reporting System (E-STAR), are sufficiently robust** to capture high-quality data on vehicle pursuits prospectively. As the revised policy goes into effect, the agency’s ability to assess the effectiveness of its implementation will be contingent in significant part on its ability to analyze not only specific incidents but trends over time, location, and other key factors.
- In establishing the new Vehicular Pursuits Review Committee, **CBP should account for lessons learned from, and concerns raised by, the public on its Use of Force Review Boards**. CBP should proactively inform the public about the new

Vehicular Pursuits Review Committee, including its membership, the frequency of its meetings, the number of incidents it reviews, and the outcomes of those reviews.

- In line with the agency’s broader efforts to promote transparency and accountability, **CBP should proactively, publicly release LESC’s annual vehicle pursuit reports**, periodic reporting to headquarters leadership about the implementation of the revised vehicle pursuit policy, and disaggregated monthly data on CBP vehicle pursuits.

Robust oversight and accountability measures will be essential to ensuring that CBP’s revised vehicle pursuit policy is not merely a piece of paper, but rather a robust tool to protect and preserve human life.

As CBP Acting Commissioner Troy Miller acknowledged, vehicle pursuits “pose inherent risks.” Here in the borderlands, we know the consequences all too well.

— *Rebecca Sheff is a senior staff attorney at the ACLU of New Mexico specializing in immigrants’ rights.*

