



Homeland
Security

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

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SUBJECT: CBP Office of Professional Responsibility
Complaint Nos. 000155-21-CBP, 002411-21-CBP,
002806-22-CBP, 002950-22-CBP,¹ 003024-22-CBP,
003131-22-CBP, 003267-22-CBP, 003499-22-CBP,
003794-22-CBP, 003737-22-CBP, and 003748-22-CBP

Purpose: This memorandum provides analysis and subsequent recommendations by the Office for Civil Rights and Civil Liberties (CRCL) in connection with an investigation into multiple instances of serious bodily injury or death resulting from U.S. Customs and Border Protection (CBP) vehicular pursuits and likely resultant crashes. It is the product of CRCL's above-referenced CBP vehicular pursuits investigation (VPI) and the Analysis of Vehicular Pursuits U.S. Customs and Border Protection: 2021 Report (AVP).

Background: On February 4, 2022, CRCL issued a retention memorandum to CBP based upon representative complaints outlining various scenarios related to vehicular pursuits. CRCL previously provided informal advice to CBP related to vehicular pursuits on September 24, 2020.² In the Informal Advice, CRCL noted issues related to supervisory input at the onset of a pursuit, determination of a reasonable following distance, and incident reporting requirements. CRCL also

¹ Complaint No. 002950-22-CBP is considered the master complaint for record keeping purposes.

² Please note that we have omitted from this memorandum Personally Identifiable Information (PII) relating to the decedents, undocumented non-citizens, or others involved in these above-referenced complaints. These names are included in an attached memo so this memorandum can be freely shared, without the attachment, with those who do not have a need to know the PII.

requested timely issuance of any policy or directive on vehicular pursuits that included the language provided in the draft *Emergency Driving and Vehicle Pursuit Policy* dated August 23, 2017, to help avoid the recurrence of serious and fatal injuries in the course of CBP operations involving vehicular pursuits. Since then, CRCL has continued to have concerns with CBP vehicular pursuits and the policies currently in place. Accordingly, in FY22, CRCL gathered and retained the aforementioned representative allegations, each of which is summarized below.

Complaint No. 000155-21-CBP

On May 14, 2021, Border Patrol Agents (BPAs) discharged their service weapons striking one subject. Agents 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 which was also in the direction of agents on the ground. The vehicle did not remain stationary and multiple BPAs fired upon the driver who was shot. Two Mexican nationals were located in the vehicle and arrested. The 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 serious crash, the death of one person, two persons being air lifted, and seven others being treated at a hospital. BPAs reported a vehicle attempted to circumvent a U.S. Border Patrol (USBP) checkpoint resulting in a failure to yield. BPAs initiated a pursuit and the vehicle 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 vehicle immobilization device (VID) may have resulted in the death of two persons and the hospitalization of a third. A vehicle was referred to secondary inspection, then accelerated and fled the checkpoint. A BPA 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 vehicular pursuit and the deployment of a VID was involved in an incident that resulted in the death of one person. Two BPAs initiated a pursuit that averaged speeds of 102 MPH on a low-visibility country road. A third USBP vehicle driven by a Supervisory BPA (SBPA) "followed the pursuit." As the vehicle approached an intersection, the pursuing BPAs slowed down and a Texas DPS officer, who was accompanied by two BPAs, deployed a VID. The vehicle 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 believed to be smuggling illegal aliens was seen by an Office of Air and Marine Operations (AMO)

helicopter and alerted BPAs. The vehicle failed to yield, and a vehicle pursuit/follow³ ensued. A SBPA terminated the pursuit via radio approximately 40 seconds after it began and requested the CBP helicopter monitor the vehicle from above. The BPA pursuing the vehicle acknowledged the termination via radio and indicated he had stopped pursuing the vehicle. Mission, TX Police Department (MPD) continued to pursue the vehicle. At least three USBP vehicles continued to pursue with their emergency lights activated. One BPA began driving south in northbound traffic lanes. The suspect vehicle failed to stop at a stoplight and collided with an uninvolved vehicle carrying two civilian bystanders, both of whom 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 carrying 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 “clipped” the suspect vehicle and it rolled over. The “clipping” of the vehicle by the BPAs, whether accidental or intentional, appears to have had the same effect as a PIT maneuver and might be considered a lethal use of force at 73 miles per hour.

Complaint No. 003267-22-CBP

On February 2, 2022, BPAs assigned to the Weslaco, Texas Station reported the death of a United States citizen (USC) near San Manuel, Texas. Agents encountered a 2003 Chevrolet pickup suspected of smuggling activities and initiated a pursuit. The vehicle failed to yield and moments later, the vehicle stopped, and the driver ran across the highway and was struck by a civilian vehicle uninvolved in the initial pursuit. Agents performed first aid and notified EMS; EMS responded and continued first aid. The Texas Department of Public Safety (DPS) and the Justice of the Peace (JOP) responded; the JOP pronounced the subject deceased.

Complaint No. 003499-22-CBP

On March 7, 2022, a USBP camera operator observed a group of suspected undocumented migrants load into a vehicle. The vehicle passed a BPA, and the BPA observed multiple people in the rear passenger area. Suspecting this was the vehicle identified by the camera operator, the BPA caught up to the vehicle and attempted to perform a traffic stop. The driver failed to yield, and a vehicle pursuit ensued. Approximately one minute and forty seconds after the attempted vehicle stop, the driver lost control and the vehicle traveled off the roadway, collided with a tree, and rolled over, resulting in multiple injuries and two fatalities.

Complaint No. 003737-22-CBP

On April 15, 2022, a BPA observed a truck that he suspected was smuggling undocumented migrants. The BPA attempted to stop the vehicle, the vehicle failed to yield, and a pursuit ensued. The truck traveled a short distance northbound before crossing the median of the highway and continued traveling southbound at 75 mph and eventually reached speeds in excess of 120 mph. A TX DPS trooper saw the pursuit and took over primary position. After approximately 15 miles, the

³ A “follow” occurs when an agent/officer drives in close proximity to a subject vehicle without making any apprehension efforts, such as the use of Emergency Equipment, other visual/audible signals, and/or any other method to direct the subject vehicle to stop.

driver crashed in a single-vehicle accident. The USC driver and a Honduran citizen were fatally injured as a result of the crash. Six additional passengers sustained non-life-threatening injuries.

Complaint No. 003748-22-CBP

On April 13, 2022, a vehicle circumvented the Laredo North Border Patrol Checkpoint. A BPA saw the vehicle while on patrol and attempted to conduct a license plate query. The vehicle accelerated and the BPA attempted to initiate a traffic stop. The vehicle failed to yield, and a vehicle pursuit was initiated. Pursuit speeds reached in excess of 100 mph. Two additional law enforcement agencies joined and one assumed primary pursuit, three total vehicles from other law enforcement agencies and a fourth USBP vehicle caravanned. The BPA indicated the SBPA instructed him to remain in the pursuit but only as an observer and in a support role. The vehicle crashed and an unidentified female was pronounced deceased. The driver was taken by air to a local hospital.

Complaint No. 003794-22-CBP

On April 15, 2022, a vehicle was observed stopping approximately 500 feet from the primary inspection area in Las Cruces, New Mexico. After a few minutes, it turned around and began driving east in a westbound lane. BPAs left the inspection area and began pursuit. The BPAs initiated their emergency equipment and continued the pursuit as the BPAs entered the highway median to pursue the vehicle, which was driving opposite traffic. The vehicle struck another motorist and crashed. The uninvolved vehicle immediately caught fire, killing the driver. The driver of the pursued vehicle was discovered partially ejected and also died from his injuries.

CRCL Investigation: On September 2, 2021, CRCL sent an initial request for information to CBP related to an individual vehicular pursuit investigation. After opening additional complaints related to vehicle pursuits deaths, CRCL turned its initial investigation into a retained investigation with multiple complaints. On February 24, 2022, CRCL sent CBP a formal Retention Memorandum and letter requesting a series of documents related to its investigation. From May 2021 to April 2022, there were 11 opened vehicle pursuit related complaints involving 16 deaths.⁴

CRCL received voluminous information in response to the retained complaint investigation information request, including:

- CBP Policies and Procedures
- E-STAR Reports and Governance
- Accountability Practices
- CBP's AVP Findings

Once provided with the requested information from CBP, CRCL reviewed the information and met with CBP to discuss current policy. On December 3, 2021, CRCL was briefed by (b) (6), (b) (7)(C), Executive Director (XD), Law Enforcement Safety and Compliance (LESC), CBP on the subject and also to coordinate CRCL's document request. During the conversation, XD (b) (6), (b) (7)(C) notified

⁴ CRCL added five additional complaints to the investigation following the February 2022 retention memorandum as there were numerous deadly vehicular pursuits between February and April 2022.

CRCL that CBP was engaged in a self-initiated proactive effort regarding vehicle pursuits for the incoming CBP Commissioner. At that point, CRCL asked for the related CBP data.

XD (b) (6), (b) (7)(C) stated the information could be provided, but its release would have to be formally approved, and only after it was presented to the Commissioner and other stakeholders. On February 24, 2022, (b) (6), (b) (7)(C), Office of the Commissioner, CBP, provided the AVP report to Director Dana Salvano-Dunn, Compliance Branch, CRCL. This report was later determined to be the information XD (b) (6), (b) (7)(C) was referring to when speaking to CRCL in December 2021.

In April 2022, CRCL began meeting with CBP to discuss and coordinate the VPI issues. Since CBP was proactively making changes to the vehicular pursuit policy contemporaneous to the investigation, and requested CRCL's assistance in light of the investigation, the meetings were focused on areas of inquiry by CRCL and attempted to further the investigation while providing feedback to CBP as the investigation unfolded. This was done in an effort to mitigate any known issues and to allow CBP to begin the process of implementing AVP recommendations in coordination with CRCL's review.

Analysis

Current CBP Policy

In the examination of the current CBP pursuit practices, CRCL reviewed the following authority and guidance documents related to pursuits:

- CBP's Use of Force Policy (4500-002A);
- CBP's Use of Force – Administrative Guidelines and Procedures Handbook (4500-002B);
- U.S. Customs and Border Protection Directive 4510-26, Emergency Driving Including Vehicular Pursuits by U.S. Customs and Border Protection Personnel; and
- U.S. Customs and Border Protection, Law Enforcement Safety and Compliance Directorate, Use of Force Policy for Offensive Driving Techniques (ODT) Class 1 and Class 2 Distinctions, April 2021.

The most relevant document received is Directive Number: 4510-26, Emergency Driving Including Vehicular Pursuits by U.S. Customs and Border Protection Personnel (Directive), which is the main document guiding vehicular pursuits. CRCL has conducted a thorough analysis of the Directive and compared it to actions taken by agents/officers in the recent pursuit complaints. CRCL found areas of the policy that CBP should consider reviewing given CRCL's analysis of the complaints.

Overarching Policy Concerns

First and foremost, the current policy does not adequately address many of the issues facing CBP in its desire to improve vehicle pursuits. The policy is ambiguous and open for interpretation by individual agents/officers. The Directive provides no restrictions or limitations regarding the actions of the subject vehicle in relation to the initial suspected crime. The policy does not address known safety concerns associated with speed, nor does it sufficiently describe the procedures for

initiating, maintaining, or terminating a pursuit, leaving agents/officers to quantify the totality of circumstances in a split second, with no clear understanding of the policy intentions or CBP expectations. CRCL saw many instances of inconsistent decisions and lack of process as pursuits increased in potential risk, including using high speeds, VIDS, or multiple vehicles. In the cases examined, the lack of clear limits and vague language allowed for pursuits to become uncontrolled and, as seen in the examples, many had deadly consequences.

Objectively Reasonable Standard

The Directive does not sufficiently cover or define what the term “objectively reasonable” means. A government seizure must be reasonable under the Fourth Amendment at its inception, in the manner it was effected, and in its duration, as pursuits are an attempt to seize a person. The Supreme Court stated objective reasonableness “requires a careful balancing of the nature and quality of the intrusion on the individual’s Fourth Amendment interests against the countervailing governmental interests at stake.” *Graham v. Connor*, 490 U.S. 386 (1989). Section 2.1 of the current Directive states, “CBP [agents/officers], may engage in and continue emergency driving, including a vehicle pursuit, only when and for as long as the [agent/officer] determines that the law enforcement benefit and need for emergency driving outweighs the immediate and potential danger created by such emergency driving.” However, the term “law enforcement benefit” is not defined, providing no guidance to agents/officers in the calculus of this equation. Thus, the Directive leaves agents/officers unclear as to how to apply the “objectively reasonable” standard as they must interpret the meaning of “law enforcement benefit” as it pertains to vehicle pursuits.

Arguably, all of the complaints investigated might be violations according to this subsection as with every complaint investigated the suspected crime was alien smuggling and the risk taken rose dramatically as the pursuit continued. An example of CBP violating 2.1 is Complaint No. 003024-022-CBP, which was summarized in the CBP Significant Incident Report (SIR):

A vehicle pursuit went on for miles and through populated areas, including strip malls, businesses, and residential areas. The suspect vehicle failed to stop at a stoplight and collided with an uninvolved vehicle carrying two civilian bystanders, who died as a result of the collision.

The actions by the BPAs appear to be unsupported by the Directive. One could argue that the tactics used created “immediate danger” that outweighed the “law enforcement benefit.” Without more clarity as to how to implement the reasonableness standard in the typical CBP context, however, the Directive leaves officers with no clear guardrails.

There are underlying problems with the Directive that likely contribute to these dangerous situations, which are contrary to Section 2.2. Section 7.4.A of the Directive uses subjective and undefined terms as the foundation to initiate or continue in a pursuit. Unlike the “objectively reasonable” standard that has been defined in *Graham v. Connor*, 490 U.S. 386 (1989) the use of the subjective term “law enforcement benefit” is vague and open to individual interpretation, with no defined limitations. Additionally, the Directive does not have any caveats for vulnerable populations or other situations which might require different action. For example, nothing in the Directive suggests agents/officers should consider the safety of occupants in the vehicle or other

vehicles as a factor in the determination to pursue, although in the CBP Use of Force Policy (Policy), the well-being of others involved in an action are clearly noted as factors in sections 1.B.2.e and 1.B.3.i of the Policy.

Another example of the consequences of the term “law enforcement benefit” is in CRCL Complaint 003794-22-CBP which the SIR summarizes accordingly:

On April 15, 2022, a vehicle was observed stopping approximately 500 feet from the primary inspection area in Las Cruces, New Mexico. After a few minutes, it turned around and began driving east in a westbound lane. BPAs left the inspection area and began pursuit. *The BPAs initiated their emergency equipment and continued the pursuit as the BPAs entered the highway median to pursue the vehicle, which was driving opposite traffic. The vehicle struck another motorist and crashed.* The uninvolved vehicle immediately caught fire killing the driver. The driver of the pursued vehicle was discovered partially ejected and also died from his injuries. (emphasis added)

In this instance, it is not evident that BPAs considered the underlying crime or the safety of other drivers.⁵ The BPAs followed the vehicle while driving in the median pursuing the subject vehicle that was driving against traffic. Two deaths occurred in relation to the incident. One of which included a civilian driver that was not involved in the pursuit in any way. This and other examples underscore the need for additional guidance, training, and the employment of the objectively reasonable standard.

Other Concerns

CRCL also has concern regarding the implementation of the Directive without operational limitations. Areas of interest are speed controls, adequately addressing safety, emergency equipment, terminating pursuits, and associated risks.

Below are specific examples of areas of the policy that need to be addressed:

Speed Controls

The Directive does not direct agents/officers to consider the speed of the subject vehicle as a factor in the determination to pursue. In fact, the current policy provides no guidance or definitions on the reasonableness of pursuit speeds. CRCL reviewed many instances when pursuits were conducted at excessive speeds, well over the posted speed limits. Three pursuits exceeded 100 mph and one hit 120 mph. These speeds make operating a vehicle on roadways extremely dangerous. CBP should implement self-imposed speed limits for agents/officers during pursuits to include separate speed limits for throughfares and freeways and another for residential neighborhoods.

Other than reporting of speed, the only guidance provided is, “[Agents/Officers] shall be responsible for determining appropriate vehicle speed and operating a vehicle within its capabilities

⁵ As the car was near a license plate reader, CBP knew the individual had no prior criminal history. There was no evidence that a crime was being committed after the incident.

taking into account road and weather conditions.” (7.1.B). The complaints above show that speed is one of the most important determining factors in the outcome of a pursuit. It is well established that vehicle speeds are directly related to the foreseeable result of a pursuit, in terms of impact forces and vehicle controllability,⁶ yet this is not given consideration in CBP policy. Of course, if a serious crime is underway that may cause serious injury or harm to others, high speeds may be appropriate. The Directive’s “law enforcement benefit,” however, would account for this. Yet the Directive allows speeds without consideration of the reasonableness of the pursuit, thus again undermining *Graham v. Connor*.

Emergency Equipment (Lights)

Another concern CRCL identified is the lack of emergency equipment being activated as required by a vehicular pursuit. The Directive provides a clause within the pursuit definition that states, “An attempt to develop the requisite articulable suspicion to effect a vehicle stop, but before the vehicle’s emergency warning equipment (lights, sirens, and a public address system) is activated, does not constitute a vehicle pursuit or an attempted vehicle stop.”⁷ This is colloquially called “following.”

This practice can have dangerous results as not only the vehicle being pursued, but also other vehicles uninvolved in the pursuit are unaware of the official stop. For example, in E-STAR Incident ID: B-21-TCATUS-20210807-FV-#16424,⁸

On August 7, 2021, at least three BPAs engaged in a vehicle follow where the suspected crime was port running, alien smuggling, and/or illegal entry. A vehicle stop was not initiated nor were emergency equipment engaged during the follow. The subject vehicle was ultimately stopped by a BPA who deployed a VID, grappler. The deployment of the VID caused the suspect vehicle to hit a tractor trailer and immediately catch fire. Due to the crash, and the grappler being deployed without notification to the subject driver, three people perished in the accident or subsequent fire.

In another example of a vehicle pursuit/follow that led to the deployment of a VID and death, reference is made to complaint no. 003748-22-CBP,

On April 13, 2022, a vehicle circumvented the Laredo North Border Patrol Checkpoint. A BPA saw the vehicle while on patrol and attempted to conduct a license plate query. The vehicle accelerated and the BPA attempted to initiate a traffic stop. The vehicle failed to yield, and a vehicle pursuit was initiated. Pursuit speeds reached in excess of 100 mph. Two additional law enforcement agencies joined and one assumed primary pursuit, three total vehicles from other law enforcement agencies and a fourth USBP vehicle caravanned. *The BPA indicated the SBPA instructed him to remain in the pursuit but only as an observer and in a support role.* The vehicle crashed and an unidentified female was pronounced deceased. The driver was taken by air to a local hospital. (emphasis added)

⁶ General Accounting Office, Highway Safety, Causes of Injury in Automobile Crashes, <https://www.gao.gov/pdf/product/154969>

⁷ See pg. 6, U.S. Customs and Border Protection Directive 4510-26, *Emergency Driving Including Vehicular Pursuits by U.S. Customs and Border Protection Personnel*

⁸ E-STAR Incident ID: B-21-TCATUS-20210807-FV-#16424

In this instance, the lack of clarity as to whether the pursuit was terminated, and whether the BPA was in “follow” status is problematic. An “observer” would not be in active pursuit, yet the BPA continued to “follow” the cars. The crash was likely the result of both the pursuit and the car following in the support role.

In a “follow” agents/officers do not utilize emergency equipment, regardless of the speed, as CBP does not consider this a pursuit. An attempt to develop the requisite articulable suspicion to effect a vehicle stop, but before the vehicle’s emergency warning equipment is activated, does not constitute a vehicle pursuit of an attempted vehicle stop. This could incentivize dangerous, high-speed following without the use of emergency equipment. There are instances in the 11 cited complaints in which CBP employees never turned on or disengaged their emergency equipment which includes the previously cited case, 003794-22-CBP.

In the alternative, on the back-end of the pursuit, “following” can also occur. Once CBP terminates a pursuit emergency lights can be turned off. The Directive requires terminations to extinguish emergency equipment and cease any attempt to maintain contact with the suspect vehicle in an ongoing chase. That said, the definition goes on to state, “[t]ermination of a pursuit does not prohibit or deter the use of alternate observation means, to include but not limited to; air support, unmarked vehicles not involved in the initial pursuit, or stationary observation sites to observe and maintain situational awareness of the suspect’s location in order to maintain a probability of arrest.”⁹ In several reviewed instances, agents appear to continue following vehicles “at a safe distance” without the use of emergency equipment after termination.¹⁰ For example, in complaint No. 002950-22-CBP two BPAs actively pursued a vehicle at speeds averaging 102 miles per hour on a low-visibility country road. A third USBP vehicle driven by a SBPA “followed the pursuit”. A VID was ultimately deployed, and the vehicle attempted to circumvent the VID, left the roadway, and rolled. One person, a citizen of Mexico, ultimately died. This practice, if continued, will result in a continued increased risk to the public safety due to lack of emergency warnings.

Dangerous Practices: E-STAR Report Review

As part of the investigations, CRCL reviewed E-STAR reports. E-STAR is CBP’s database system to document assaults, reportable uses of force, firearms discharges, and vehicle pursuits. E-STAR reports are field generated reports containing the description and narrative of the event, authored by the involved agents/officers. Agents/officers are required to prepare an E-STAR report for all vehicle pursuits. In CRCL’s review, E-STAR reports were reviewed for statistical data and understanding of the incident, as well as to assess the agent’s/officer’s perspective and accounting of events.

⁹ See pg. 4, U.S. Customs and Border Protection Directive 4510-26, *Emergency Driving Including Vehicular Pursuits by U.S. Customs and Border Protection Personnel*

¹⁰ U.S. Customs and Border Protection, Enforcement Action Statistical Analysis and Reporting System (E-STAR), example incidents: B-20-LRTLZT-20191128-V-#13269, B-21-RGVRGC-20210219-V-#15401, B-21-RGVRGC-20201212-V-#15042, B-19-TCAWCX-20190514-V-#12425, B-21-TCATUS-20210519-V-#15931

The only explicit restrictions in CBP's current Directive are the prohibition of caravanning and engaging in a pursuit during the transport of aliens, subjects, or civilians,¹¹ which is inadequate to restrict actions that place civilians in potentially perilous situations. CBP provides no prohibitions on actions that have been deemed by other law enforcement agencies to be unnecessary¹² as cited, and therefore create an increased risk of harm and/or actions that would immediately create an unreasonable pursuit, such as Complaint No. 003748-22-CBP, in which a vehicle circumvented the Laredo North Border Patrol Checkpoint. The vehicle accelerated and the BPA attempted to initiate a traffic stop. The vehicle failed to yield, and a vehicle pursuit was initiated. Pursuit speeds reached in excess of 100 mph. Two additional law enforcement agencies joined and one assumed primary pursuit. Ultimately, a total of three vehicles from other law enforcement agencies and a fourth USBP vehicle caravanned. The BPA indicated that the SBPA instructed him to remain in the pursuit but only as an observer and in a support role. The vehicle crashed and an unidentified female was pronounced deceased. The driver was taken by air to a local hospital.

As noted above, the directive does not provide clear mitigating factors. CRCL's review of the E-STAR reports revealed unsafe practices, such as: caravanning, engaging in pursuits during transport of aliens, dangerous conditions, insufficient decisional factors and application of objectionable reasonable standard, use of unmarked vehicles, and inadequate articulable suspicion of a crime.

- CRCL reviewed several pursuits in which CBP actively pursued vehicles that contained many unrestrained occupants at dangerous speeds.¹³ CRCL reviewed several instances, involving high speeds and dangerous conditions, in which the pursuing Officer/Agent indicated only a reasonable suspicion of a minor immigration violation, or no initial crime other than the failure to stop.¹⁴
- CRCL reviewed CBP pursuits in which the articulated facts and circumstances do not support an objectively reasonable pursuit action by the involved agent/officer, and, in some cases, appear to be unreasonable.
- CRCL noted instances where unmarked vehicles were used in pursuits. Conducting vehicle pursuits in unmarked vehicles may lead to confusion of authority and/or the situation by

¹¹ See pg. 9, U.S. Customs and Border Protection Directive 4510-26, *Emergency Driving Including Vehicular Pursuits by U.S. Customs and Border Protection Personnel*

¹² Arizona Department of Public Safety. *Pursuit Operations*, November 9, 2017; Austin Police Department. *General Orders: Section 214.3.4, Pursuit Driving Considerations and Restrictions*, November 19, 2021; Billings Police Department. *Policy & Procedure Manual, Section 2.D.4*, August 27, 2021; Dallas Police Department. *General Order, Section 301.07G Prohibited Practices*, June 16, 2011; Metropolitan Nashville Police Department. *Department Manual, Title 13 Vehicle Operations*, August 20, 2018; Tucson Police Department. *General Orders, Section 3600 Department Vehicles*, May 2001; Franklin County Sheriff's Office. *AR 512 Pursuits*, January 2, 2017; Milwaukee County Sheriff's Office. *Policy Manual, Policy 301 Vehicle Pursuits*, January 25, 2022.

¹³ U.S. Customs and Border Protection, Enforcement Action Statistical Analysis and Reporting System (E-STAR), example incidents: B-21-RGVRGC-20201203-AV-#15007, B-21-RGVFLF-20201207-V-#15010, B-21-RGVRGC-20201222-V-#15089, B-21-EPTSTN-20210518-F-#15908, B-21-EPTDNM-20210610-FV-#16084, B-21-EPTLAS-20210803-V-#16396, B-22-SDCCAO-20211207-FV-#17112

both the subject and the general public, leading to unintended and/or unexpected reactions.¹⁵

- In almost every instance, CBP vehicle pursuits are initiated due to drivers failing to yield for a vehicle stop. The Directive does not provide guidance on the level of suspicion required to conduct a vehicle stop. From October 1, 2017 to September 9, 2021, 546 pursuits were entered into E-STAR with the only recorded violation of law being a failure to yield for the vehicle stop. The omission of reasonable suspicion for an initial violation of law to conduct vehicle stops may lead to unlawful profiling and unreasonable pursuits.
- In a few instances, pursuits were conducted when civilian vehicles were going against the flow of traffic despite the inherent dangers in using this tactic.
- CRCL recognizes the need for more than one vehicle to participate in a vehicle pursuit. CRCL, however, saw that agents/officers join a pursuit when there was already a primary, secondary, and a support vehicle assigned. Caravanning is prohibited by CBP policy, but in at least one case example, it occurred.
- As noted above, in every instance, CBP agents/officers should employ an objectional reasonable standard when initiating, participating, continuing, or ending a pursuit, yet this did not always occur.

CBP Practice and Procedure: Oversight

Oversight is a critical component in assessing proper procedure. CBP has created the National Use of Force Review Board (NUFRB) and approximately 20 Local Use of Force Review Boards (LUFBRs) that should examine if a vehicle pursuit was in compliance with CBP pursuit policy; identify any potential misconduct, and assess any issues involving training, tactics, equipment, or policy. The NUFRB is different from the LUFBR in many important ways, including the level of oversight that is provided. First, the reviewers are at the high leadership level and the scope is national in nature, with both CBP Headquarters and DHS Headquarters represented, thus ensuring that local issues are not a factor. Secondly, non-CBP entities make up some of the voting members, including CRCL, DOJ's Civil Rights Division, the DHS OIG, and ICE's Office of Professional Responsibility. This set-up is critical to the NUFRB addressing use of force and civil rights and liberties issues in a meaningful way.

The NUFRB, however, was specifically created to examine serious and deadly uses of force. The LUFBRs were created to evaluate what are termed less serious uses of force. Thus, vehicular pursuits are often handled at the LUFBR level as the injuries and deaths may occur after the termination of a pursuit and thus are not considered the result of a CBP use of force. Therefore, CBP should create a Vehicular Pursuit Board to shore up this gap. All pursuits associated with serious injury and/or death should either be reviewed by the NUFRB or by a separate Vehicular Pursuit Board which follows the set-up of the NUFRB. Pursuit incidents are closely, if not inseparably, related to Use of Force incidents, and currently there is not sufficient oversight or a process for review and accountability that speak to the serious outcomes that often result from pursuits.

¹⁵ CRCL recognizes the need for emergency vehicles and emergency equipment to be activated in pursuit of a fleeing vehicle. Additionally, CRCL recognizes the inherent risks of engaging in an enforcement action, to include pursuits, when the law enforcement authority is not obvious and apparent.

Additionally, the Use of Force Incident Guide (UFIG), March 2015,¹⁶ which is a checklist for the Use of Force Incident Teams (UFIT), does not address vehicle pursuits and associated deaths although these investigations are relied upon during the NUFRB process. The UFIT investigations rely upon the UFIG for guidance. The UFIG may not align with current UFIT investigative practices relative to process, practice, and procedure. Many of the terms and information in the UFIG appear to need updating as well. This can result in confusion and procedure not being followed in the course of investigations.

CBP'S AVP Findings

In addition to the CRCL investigations and the E-STAR review, CRCL was made aware of CBP's proactive work to address gaps they had identified in the Directive. CBP's LESC provided and CRCL reviewed CBP's AVP which examined the current Directive and considered areas for improvement. The AVP offered significant insight into CBP pursuit activities. We appreciate CBP's attempt to be introspective and acknowledge and address identified deficiencies.¹⁷

To better understand the purpose, background, approach, and analysis of the AVP, the following excerpt is included from its first page:

This report provides a review of vehicle pursuits and pursuit-related incidents from FY2018 through FY2021 to help agency and component leadership better understand if additional resources, policy, training, or guidance are needed.

[According to the AVP,] due to an increasing number of vehicle pursuits and concern from the public and government entities over pursuits ending in injury, fatality, and property damage, the Office of the Commissioner instructed the [LESC] to prepare a report reviewing vehicle pursuits and vehicle pursuit-related incidents. The report provides CBP leadership with a better understanding of trends and tactics beyond individual incidents, allowing components to identify and proactively resolve systematic issues in the field. The report also identifies the mechanisms for improved, regular high-level oversight on these issues, and offers recommendations to address any challenges or issues identified through this study.^{18,19}

As part of the AVP analysis, CRCL reviewed CBP's accountability practices related to pursuits. CRCL identified several issues of concern related to the review and accountability practices related to pursuits. These concerns are listed and below in the recommendations section:

- Pursuit cases that result in injury, accident, or property damage are not regularly reviewed.

¹⁶ Use of Force Incident Guide, March 2015.

¹⁷ CBP engaged in a study that collected benchmarking data from other law enforcement agencies, pursuits by time of day, pursuit by duration, pursuits by vehicle type, and along the way completed the AVP, which included 20 recommendations.

¹⁸ To assess vehicle pursuit and pursuit-related incidents the following activities were conducted: Document; Enforcement Action Statistical Analysis and Reporting (E-STAR) data pull and analysis for FY2018-FY202; vehicle pursuit data comparative analysis; Discussions with stakeholders; and sample vehicle pursuit incident report reviews.

¹⁹ An initial review of CBP's vehicle pursuit data for FY2018 through FY2021 showed a total of 3,059 reported vehicle pursuits, which involved 4,828 Officers/Agents and 9,675 subjects.

- Pursuits that are associated with serious injury and/or deaths are not reviewed by a panel to identify systemic issues and/or share them with the other law enforcement personnel of CBP.
- Cases that are reviewed due to their tie to use of force are not timely investigated and the review is not conducted in a timely manner that would allow for the identification and introduction of safer methods.
- The guidance directing CBP's documentation of significant events is not standardized and/or aligned to provide the most effective responses, reviews, and accountability.

Conclusions

VPI: Following CRCL's investigation into the above-referenced complaints involving vehicular pursuits, CRCL found that the current Directive had significant gaps that needed to be addressed.

E-STAR Review: CRCL's E-STAR review showed that the issues involved in the CRCL complaints were not isolated and that the same concerns were evident upon the larger review.

CBP AVP: After an extensive review of all the provided data, and after completing an independent comprehensive study, CRCL agreed with eight of the original recommendations in the AVP. CRCL disagreed or partially disagreed with 12 recommendations. This information is addressed in CRCL's recommendations below.

Recommendations

Following CRCL's review of incidents, policies, training guides, E-STAR reports, and the AVP, CRCL is issuing these recommendations to comprehensively address each of the 21 identified concerns of CRCL, as well as recommendation related to CBP's AVP.

Recommendation 1: CRCL recommends that CBP revise the Directive (b) (5) (b) (5), to address all policy concerns of CRCL and the AVP.

Recommendation 2: CRCL recommends that CBP institute a risk-based decisional model for the beginning, and commencement of vehicle pursuits.

Recommendation 3: CRCL recommends that CBP identify the hazards and mitigating factors to be considered when pursuing vehicles overloaded with unrestrained passengers in the Directive.

Recommendation 4: CRCL recommends that CBP include and emphasize the importance of vehicle speed (all involved vehicles) as a factor for continuing pursuits.

Recommendation 5: (b) (5)

Recommendation 6: CRCL recommends that CBP amend the definition of pursuit to restrict the “following” of vehicles to the posted speed limit, when not utilizing emergency equipment or using unmarked vehicles not equipped with proper emergency equipment.

Recommendation 7: CRCL recommends that CBP amend the definition of pursuit termination with the inclusion of requirements to stop following at the end of a terminated pursuit.

Recommendation 8: CRCL recommends that CBP expand prohibited pursuit actions to include engaging in pursuits in a direction against the lawful flow of traffic; without the use of emergency equipment; (b) (5)

; or in any instance in which unsuspecting motorists are placed in extreme dangers (e.g. (b) (5) (b) (5), through intersections, school zones, etc.).

Recommendation 9: CRCL recommends CBP initiate improved training on VID site selection and associated conditional hazards.

Recommendation 10: CRCL recommends that CBP conduct additional research into the foreseeable risks of legacy VIDs in various pursuit scenarios and reconsiders the selection, acquisition, and use of VIDs to align with the findings of that research. This research and reassessment should include a focus on devices currently in use which have an abnormally high associated injury rate.

Recommendation 11: (b) (5)

Recommendation 12: CRCL recommends that all pursuits associated to serious injury and/or deaths are reviewed by the NUFRB. In the alternative, that CBP consider establishing a new review board to specifically review vehicle pursuits based on the time it takes for the NUFRB to review use of force cases.

Recommendation 13: CRCL recommends all vehicle pursuits involving death or serious bodily injury be reviewed by the NUFRB as soon as possible (or alternative board) after the conclusion of the investigation or prosecutorial declination, whichever is sooner.

Recommendation 14: CRCL recommends all vehicle pursuits involving injury should be reviewed by a LUFRB as soon as possible after the conclusion of the investigation or prosecutorial declination, if applicable, whichever is sooner.

Recommendation 15: CRCL recommends that CBP review their policies regarding significant event reporting and CBP policies regarding those reviews. The policies should be updated and aligned to provide the most effective means to perform reviews.

Recommendation 16: CRCL recommends that CBP evaluate the Directive to update it with current information, including, but not limited to CBP use of force policies, titles, responsibilities, procedures, board structure, and voting membership, and ensure the language and guidance in CBP Directive Nos. 4510-038 and 1420-1012 are in alignment.

Recommendation 17: CRCL recommends that CBP update the Use of Force Incident Guide (March 2015) to ensure it aligns with these changes to process, practice, and procedure.

Recommendation 18: CRCL recommends that CBP discontinue the use of the PIT maneuver unless used as a means of deadly force.

Recommendation 19: CRCL recommends that CBP continue to perform regular analysis and after-action reviews of pursuit incidents to better understand the trends, tactics, and dangers associated pursuits and assist in developing proactive solutions to address observed issues by way of a CBP vehicle pursuit review board or EA.

Recommendation 20: In every instance, CBP agents/officers should employ an objective reasonable standard when initiating, participating, continuing, or ending a pursuit. This language should be incorporated in any new policies or Directives.

Recommendation 21: CBP should review CRCL's comments to the AVP, included in Attachment 1 for additional input on these issues.

It is CRCL's statutory role to advise department leadership and personnel about civil rights and civil liberties issues, ensuring respect for civil rights and civil liberties in policy decisions and implementation of those decisions. We look forward to working with CBP to determine the best way to resolve these complaints. We request that CBP provide a response to CRCL 120 days whether it concurs or does not concur with these recommendations. If you concur, please include an action plan. Please send your response and any questions to

(b) (6) CRCL will share your response with (b) (6), the Senior Policy Advisor who conducted this investigation.

Attachments

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