



NATIONAL BORDER PATROL COUNCIL

BRANDON JUDD / President

2185 West Magee Road, Suite 125 – Tucson, AZ 85742

PROTECTING THOSE WHO PROTECT OUR BORDERS

January 31, 2023

On January 11, 2023, Customs and Border Protection (CBP) announced¹ and published a new directive entitled *Emergency Driving and Vehicular Pursuits*, set to take effect in May 2023. The new policy² replaces the 2021 directive entitled *Emergency Driving Including Vehicular Pursuits*³.

CBP's new pursuit policy purports to be about saving lives, but in reality, it is more about making it almost impossible for Border Patrol Agents, Customs and Border Protection Officers, and other law enforcement officers (LEO) in CBP to do their jobs. It essentially absolves smugglers of all responsibility for the terrible things they do on the road and places it squarely on the shoulders of the LEOs trying to do their job to protect America.

The National Border Patrol Council (NBPC) submitted dozens of questions about the policy to CBP so we can understand what some of the more vague and contradictory language means and confirm if the agency intended to implement what the policy states. Some of the language, as written, is nonsensical, so we have to confirm if CBP understands what their language means for LEOs in the field.

Although there are numerous problems with the policy, here are some of the more concerning aspects:

- The new policy essentially requires agents to predict the future. If they don't predict that a smuggler will crash, and the pursuit continues and the smuggler crashes, even if there are no dangerous weather or road conditions, CBP will blame the agent because they did not correctly determine the "foreseeability of risk" and terminate the pursuit. See Sections 6.15, 6.16, 8.23, 8.26, 8.27, and 8.29.
- Smugglers will be encouraged to drive recklessly, causing supervisors to immediately end pursuits because they want to avoid being investigated by the Office of Professional Responsibility (OPR), allowing smugglers to escape into the country with unknown

¹ <https://www.cbp.gov/newsroom/national-media-release/cbp-updates-emergency-driving-and-vehicular-pursuits-directive>

² https://www.cbp.gov/sites/default/files/assets/documents/2023-Jan/cbp-directive-4510-026A_0.pdf

³ <https://www.cbp.gov/sites/default/files/assets/documents/2021-Dec/CBP-directive-emergency-driving-including-vehicular-pursuits-us-cbp-personnel-redacted.pdf>

people or contraband. See Sections 6.15, 6.16, 6.31, 8.29, and 8.30.

- Previous versions of the pursuit policy allowed a maximum of two LEO vehicles to be directly involved in the pursuit, with an appropriate number of additional agents available for backup, following at a reasonable distance. The new policy allows a maximum of three vehicles to be involved, and no other agents may follow at any distance, including on adjacent roads, regardless of whether they are pursuing an armed felon or the average smuggling load driver, creating significant officer safety concerns. For example, if a load driver stops and ten people run away, agents will be outnumbered because no other agents are allowed to follow at a safe distance. See Sections 6.5, 8.47.4, and 8.47.7.
- Agents will not be allowed to assist local, county, and state law enforcement engaged in pursuits if the agent's supervisor determines that the pursuit is not in compliance with *CBP's pursuit policy* – even if the other officer is complying with their own agency's policy. If the supervisor believes it does not comply with the CBP pursuit policy, agents will be forced to pull over and leave the other officer on their own, creating more officer safety concerns, even if the CBP supervisor had requested that another agency take over the pursuit. This policy will jeopardize the lives of local, county, and state LEOs, especially those who work in remote locations. See Sections 8.47.10, 8.53.6, 8.53.7, and 8.73.
- If a supervisor orders an agent to terminate a pursuit, the agent must pull over to the side of the road and turn off their lights “to effectively signal (to the public and to the subject vehicle)” that the agent is no longer pursuing. But then, the agent must continue up the road to determine if the vehicle has crashed or to check for any other incident. See Sections 8.45, 8.45.1, 8.45.2, and 8.46.
- Agents responding to arrest illegal aliens or narcotics smugglers must activate their lights and sirens while responding if they exceed the speed limit – even if briefly, to pass someone – including while driving on empty roads in the middle of nowhere. While we have no issues with using lights and sirens when appropriate and for safety reasons, this takes the decision away from agents to be able to attempt to interdict illegal cross-border traffic stealthily. In addition, it will notify cartel smugglers that agents are on the way and how far away they are, especially at night.

Similarly, suppose a suspicious vehicle passes an agent while parked on the side of the road, and the agent needs to exceed the speed limit to catch up to that vehicle to read the license plate. The agent would have to activate their emergency lights to catch up before deciding if they have enough reasonable suspicion to pull it over. So motorists

will think they are being pulled over, even when the agent has not yet attempted to do so. See Sections 6.8, 8.9, 8.10, 8.15, 8.16, and 8.17.

- The policy states, “CBP will not question any Authorized Officer/Agent’s decision to Terminate a Vehicular Pursuit. An Authorized Officer/Agent involved in a CBP Pursuit may Terminate that Pursuit at any time, for any reason.” So CBP has made it a policy that they will never question a decision to terminate a pursuit, even if the subject is a violent felon. But if that violent felon chooses to drive erratically and crashes and hurts himself or someone else, they want the responsibility to fall only on the agent. See Section 4.3.
- Finally, despite significant changes to the pursuit policy, CBP will provide only a one-hour online training session before the policy goes into place. Such a small amount of training will inevitably lead to policy violations. Watching a one-hour video about a topic that upends long-standing policy is simply not enough to properly educate the workforce on the changes.

The last thing agents want to see is people getting hurt or killed in a vehicle crash. These crashes are 100% preventable and only happen because a smuggler chooses to flee from law enforcement. And even when law enforcement is not around, some smugglers still end up in single-vehicle crashes on their own because they choose to drive dangerously.

Creating a policy that actively discourages or prevents LEOs from pursuing vehicles containing people who have, up until that point, successfully evaded law enforcement will only encourage more smugglers to get on the roads with illegal immigrants and narcotics. The policy, however, goes one step further and creates officer safety concerns for agents and LEOs from other agencies who are doing their best to help Border Patrol Agents do their job.

The NBPC will continue to do whatever it can to ensure that whatever policy is ultimately implemented is unambiguous and gives agents and other CBP LEOs the ability to do their jobs to protect the American public.

###