

July 28, 2022

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*Via email*

**Re: Operation Lone Star: Racial Profiling in Texas Department of Public Safety (DPS)  
Traffic Stops and High Death Toll from DPS Vehicle Pursuits**

Dear Attorney General Garland, Deputy Attorney General Monaco, Associate Attorney General Gupta, Assistant Attorney General Clarke, Ms. Stoneman, and Mr. Rosenbaum,

The Texas Department of Public Safety (DPS)—the state police agency—has blanketed communities throughout South Texas with officers. This is one facet of Operation Lone Star (OLS), Governor Greg Abbott’s long-running anti-immigrant initiative. As part of this initiative in South Texas, DPS officers are regularly conducting pretextual traffic stops. There is significant evidence that DPS is engaged in racial profiling—discriminating against Latinx drivers and passengers—in these stops. And, troublingly, the stops turn into deadly vehicle pursuits with alarming frequency: we have linked DPS vehicle pursuits in South Texas to 30 deaths since the start of OLS, a startlingly high number.

Federal civil rights investigation and intervention is urgently needed. Based on this evidence, we urge the Department of Justice to investigate DPS for a pattern and practice of civil rights violations not only in the context of Texas’ migrant arrest program, as we have previously urged, but also in OLS traffic stops. DOJ has both the authority and the responsibility to intervene to end racial profiling by DPS, and to intervene to end other DPS practices that result in regular civil rights violations.

For years, DPS has turned South Texas into a police state by periodically saturating border communities with surges of DPS officers conducting traffic stops. DPS has a history of disproportionately stopping and citing Latinx drivers in past DPS surges. These stops have led to severe consequences: repeated expensive tickets for minor traffic violations for drivers in some of the poorest counties in Texas, and a climate of fear in which many Latinx residents limit their travel to avoid contact with law enforcement.

Now, DPS’s traffic stop saturation approach—and the attendant harms to Latinx individuals in border communities—is resurgent under OLS. Governor Abbott has sent up to 1,000 DPS officers to Texas border communities. DPS officers’ stops under OLS, like their stops

in prior surges of state police to the border, have plain indicia of racial profiling. Tarleton State University researchers' analysis of 2021 DPS traffic stop data concluded that there is "a reasonable probability that racial profiling is a significant contributor to" disparities in DPS traffic stops between Latinx and white drivers. For example, DPS is disproportionately searching Latinx individuals in traffic stops without results, a strong indicator of racial profiling—71% of DPS traffic stop searches of Latinx individuals in 2021 turned up no contraband whatsoever.

Further, in some of DPS officers' own accounts of traffic stops, the officers have provided passengers' perceived Latinx ethnicity as the apparent justification for prolonging the stop to investigate for smuggling of people under state law. In other accounts, DPS officers have described prolonging the stop based on passenger ethnicity together with another characteristic that does not provide a lawful basis for extending the contact—like vehicle passengers' lack of identity documents, when Texas law does not require passengers to carry such documents. In at least one account, a DPS officer even outrageously claimed that he detected a "distinct odor" that "undocumented aliens emit"—demonstrating the implicit bias that appears pervasive in DPS officers' OLS traffic stops.

DPS's saturation presence in South Texas has deadly consequences. In the 16 months since the start of OLS, DPS has engaged in vehicle pursuits that have killed at least 30 people. This death toll includes drivers and passengers of pursued vehicles, and bystanders who happened to be on the same road as a DPS vehicle pursuit. Because DPS has historically disproportionately targeted Latinx drivers for traffic stops and because OLS itself has indicia of bias-based policing, these vehicle pursuits likely disproportionately kill Latinx drivers and passengers. DPS has to our knowledge made no effort to remedy this problem of deadly consequences to its vehicle pursuits. Contrary to law enforcement best practices, DPS leaves pursuit decisions up to the discretion of the individual officer. The agency also provides no meaningful policy guidance as to when to deploy different intervention tactics. The consequence is deadly crashes that are entirely foreseeable.

We have repeatedly urged DOJ to investigate involvement in the OLS trespass arrest program by a variety of state and local agencies, including DPS. We again renew that call for a formal investigation into state and local agencies' participation in the trespass arrest program under Title VI of the Civil Rights Act of 1964. Title VI bars discrimination on the basis of race, color, or national origin in any program or activity that receives federal financial assistance. The OLS trespass arrest program targets Black and Brown migrants for arrest and funnels them into a separate criminal system rife with civil rights abuses. It is dangerous, oppressive, and illegal.

The traffic stops that DPS is conducting under OLS are likewise dangerous, oppressive, and illegal. The impact on border communities—from the chilling effects on daily life to the risk of serious injury and death from vehicle pursuits—is immense. We request that DOJ initiate a Title VI investigation not only into DPS's conduct in trespass arrests under OLS but also into the agency's conduct in traffic stops under OLS. Further, we request that DOJ investigate DPS for a pattern or practice of civil rights violations, pursuant to its independent authority to investigate law enforcement agencies under 34 U.S.C. § 12601. In light of the serious and significant

evidence of racial profiling in DPS traffic stops, and the alarming death toll from DPS vehicle pursuits, investigation is urgently needed.

Inquiry into DPS's conduct under OLS is all the more urgent in light of recent information that a DPS officer in South Texas was "friends" with Lucas Denney, the leader of the Patriot Boys—a white supremacist vigilante group aligned with the Proud Boys. Denney was a fugitive from the FBI for months due to his role in the January 6, 2021, insurrection at the U.S. Capitol. While he was a fugitive, Denney hid out in Kinney County, a Texas border county heavily involved in the OLS trespass arrest program. Denney was arrested on the ranch of Kinney County Attorney Brent Smith.<sup>1</sup> Reportedly, he had lived there for three months and was patrolling for migrants.<sup>2</sup> According to Denney's attorney, a DPS officer who was Denney's "friend" drove Denney from Kinney County to Del Rio for Denney to turn himself in to the FBI.<sup>3</sup> Denney recently pled guilty to assault on police with a dangerous weapon; his conduct on January 6 included swinging a PVC pipe at a Capitol officer and attacking another officer who suffered a heart attack from the day's events.<sup>4</sup>

This episode raises very serious concerns about DPS's ties to white supremacist extremist groups—as well as Kinney County's ties to white supremacist groups, and ties between such groups and the Operation Lone Star program more broadly. These armed vigilante groups, seeking to hunt down migrants, are creating a volatile atmosphere with the potential for violence against Black and Brown people in South Texas.<sup>5</sup> A DPS officer's friendship with a leader of a

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<sup>1</sup> Smith is one of the driving forces behind the trespass arrest program and may have been one of its architects. OLS Trespass Arrest Program Title VI Suppl. Compl., Feb, 23, 2022, 15-17, [https://www.aclutx.org/sites/default/files/operation\\_lone\\_star\\_title\\_vi\\_supplemental\\_complaint.pdf](https://www.aclutx.org/sites/default/files/operation_lone_star_title_vi_supplemental_complaint.pdf). He is also one of the key promoters of the racist effort to convince Governor Abbott to declare an "invasion" based on migration to Texas. *E.g.*, Texas Scorecard, *Kinney County Attorney Brent Smith on the Border*, ~ 2:15, [https://www.youtube.com/watch?v=gislvULDgso&ab\\_channel=TexasScorecard](https://www.youtube.com/watch?v=gislvULDgso&ab_channel=TexasScorecard) ("In my view, we need to declare an invasion under Article I of the Constitution and the Texas Constitution and actually prevent their [migrants'] entry from occurring in the first place."). This language of "invasion" is the same rhetoric that fueled the 2019 El Paso Wal-Mart shooting that killed 23. Heidi Pérez-Moreno & James Barragán, *Critics Denounce Greg Abbott and Dan Patrick's "Invasion" Rhetoric on Immigration, Saying It Will Incite Violence*, Tex. Tribune, June 17, 2021, <https://www.texastribune.org/2021/06/17/greg-abbott-dan-patrick-el-paso-invasion-immigration/>.

<sup>2</sup> James Dobbins, *A January 6 Fugitive Was Arrested on a Property Connected to the Kinney County Attorney*, Tex. Monthly, July 19, 2022, <https://www.texasmonthly.com/news-politics/lucas-denney-brent-smith-kinney>; Elizabeth Findell, *In a Texas Border Town, Armed Groups Arrive to Look for Migrants*, The Wall Street Journal, Dec. 16, 2021, <https://www.wsj.com/articles/in-a-texas-border-town-armed-groups-arrive-to-look-for-migrants-11639668989>.

<sup>3</sup> Dobbins, *January 6 Fugitive Arrested on a Property Connected to the Kinney County Attorney*, *supra*.

<sup>4</sup> Tom Jackman, *Texas Man, Temporarily Lost in System, Pleads Guilty to Assaulting Police on Jan. 6*, Wash. Post, Mar. 17, 2022, <https://www.washingtonpost.com/dc-md-va/2022/03/17/denney-pleads-guilty/>.

<sup>5</sup> See OLS Trespass Arrest Program Title VI Compl., Dec. 15, 2021, 43-49, [https://www.aclutx.org/sites/default/files/field\\_documents/ols\\_trespass\\_arrest\\_title\\_vi\\_complaint.pdf](https://www.aclutx.org/sites/default/files/field_documents/ols_trespass_arrest_title_vi_complaint.pdf); OLS Trespass Arrest Program Title VI Suppl. Compl., Feb, 23, 2022, 11-15, *supra* note 1; OLS Trespass

white supremacist vigilante group in a county participating in OLS warrants severe scrutiny—particularly given a lack of clarity as to when the two met and interacted.<sup>6</sup> This tie between a DPS officer and a January 6 insurrectionist, possibly in the context of OLS, highlights the need for federal investigation of discriminatory policing by DPS in Texas’s anti-immigrant initiative.

## **I. DPS’s History of Saturating Border Communities and Indicia of Accompanying Racial Profiling**

Governor Abbott has deployed up to 1,000 DPS officers to border communities under OLS.<sup>7</sup> This is part of a pattern of similar actions by the Texas government: since 2006, Texas has regularly surged state police to the border for what it terms “border security operations.” These surges go by militaristic names and include Operation Rio Grande in 2006, Operation Border Star in 2008, Operations Strong Safety and Strong Safety II in 2013 and 2014, and Operation Secure Texas in 2015—and, now, Operation Lone Star.<sup>8</sup>

Past DPS surges have led to increased stops for minor traffic violations, creating unnecessary contacts with law enforcement for people living and traveling in border communities. Historically, DPS has particularly increased stops and citations in the Rio Grande Valley. Between 2012 and 2014, for example, traffic stops in Starr County increased 233%, and stops in Hidalgo County increased 40%.<sup>9</sup> In 2014, Hidalgo and Starr Counties had 2% of the state’s vehicle traffic but 6% of state DPS citations and 10% of state DPS warnings.<sup>10</sup> One driver described a 2019 stop in the Rio Grande Valley, for traveling 3 miles over the speed limit, in

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Arrest Program Title VI 2nd Suppl. Compl., Apr. 7, 2022, 7, [https://www.aclutx.org/sites/default/files/ols\\_supplemental\\_complaint\\_4.7.22.pdf](https://www.aclutx.org/sites/default/files/ols_supplemental_complaint_4.7.22.pdf).

<sup>6</sup> Dobbins, *supra* note 2 (Denny’s attorney stating, regarding the “friendship” between his client and the DPS officer, “I do not know how they were friends, for how long, or where the friendship started.”).

<sup>7</sup> Emily Hernandez, *What is Operation Lone Star? Gov. Greg Abbott’s Controversial Border Mission, Explained*, Tex. Tribune, Mar. 30, 2022, <https://www.texastribune.org/2022/03/30/operation-lone-star-texas-explained> (noting how up to 1,000 DPS troopers have been deployed at one time in Operation Lone Star); Tanvi Varma, *Records: Operation Lone Star Resulting in Increases as High as 1,000% in Minor Citations for Drivers in Starr County*, KRGV, Aug. 5, 2021, <https://www.krgv.com/news/records-operation-lone-star-resulting-in-increases-as-high-as-1-000-in-minor-citations-for-drivers-in-starr-county/> (DPS spokesperson stating, “We’re providing over 1,000 DPS resources to the RGV and Del Rio sectors”).

<sup>8</sup> Tex. Legis. Budget Bd., *Update: State Funding for Border Security, September 1, 2015 - February 29, 2016*, at 5 (May 2016), [https://www.lbb.texas.gov/Documents/Publications/Presentation/3248\\_Update\\_State\\_Funding\\_Border\\_Security.pdf](https://www.lbb.texas.gov/Documents/Publications/Presentation/3248_Update_State_Funding_Border_Security.pdf).

<sup>9</sup> Brian M. Rosenthal, *What Texas’ Border Surge Means: Traffic Stops*, Hous. Chronicle, Sept. 8, 2015, <https://www.houstonchronicle.com/local/gray-matters/article/A-close-up-lesson-on-police-work-along-the-6490668.php>.

<sup>10</sup> Marty Schladen, *In Rio Grande Valley, Officials Question the Reason for DPS Stops*, El Paso Times, Mar. 28, 2015, <https://www.elpasotimes.com/story/archives/2015/03/28/rio-grande-valley-officials-question-reason-dps-stops/73899258/>.

which the DPS trooper informed him that the stop was because “he just wanted somebody to talk to.”<sup>11</sup>

Concerningly, DPS has a history of racial disparities in stops during such policing surges that indicates racial profiling by the agency. From 2009 to 2011 and again from 2012 to 2014, in two time frames coinciding with a DPS surge, a Border Network for Human Rights review of DPS traffic stop data found that citations of Latinx drivers in border counties soared while those of white drivers in the same counties *dropped*. In Starr County, citations of Latinx drivers increased 127%, while citations of white drivers dropped 40%; in Webb County, there was an 87% increase in Latinx driver citations versus a 30% drop for white drivers; in Cameron County, there was a 9% increase for Latinx drivers versus a 28% decrease for white drivers.<sup>12</sup> A 2016 *Austin American-Statesman* analysis found that 35% of DPS officers searched Black and Latinx drivers at least twice as often as white drivers. These officers were overwhelmingly less likely to find evidence of contraband in their searches of Black and Latinx drivers—an indication of racial profiling.<sup>13</sup>

During DPS surges, many border residents endure repeated stops. Examining one surge, the Dallas Morning News found that more than 600 people in Starr and Hidalgo Counties were stopped 10 or more times; more than 300 were stopped 20 or more times; and one person was stopped 52 times.<sup>14</sup>

The harms from these racially disparate and repeated stops—and from the environment they create in affected communities—are grave. DPS stops have the potential to lead to serious consequences for drivers and passengers, including tickets with high fines. One Starr County resident described struggling financially after receiving three tickets over just a few months, as well as three or four warnings, after the state sent state police to the area pursuant to Operation Lone Star.<sup>15</sup> More broadly, DPS’s saturation of border communities creates a climate of fear. Many border residents are afraid to venture out of their homes due to the fear that a routine errand may lead to severe economic consequences or, for undocumented individuals, deportation. As Starr County Judge Eloy Vera explained during a prior surge of DPS troopers, “In Starr County, unfortunately, a lot of our people are very humble, on low incomes, and they

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<sup>11</sup> Aaron Nelsen, “*When Do They Leave?*”: *Border Residents Bear the Latest Surge of DPS Troopers*, Tex. Monthly, June 24, 2021, <https://www.texasmonthly.com/news-politics/rio-grande-valley-dps-troopers/>.

<sup>12</sup> Border Network for Human Rights, *Race, Traffic Stops, & Ensuring Public Safety for a Changing Texas: A Review of White vs. Hispanic Disparities in Texas DPS Traffic Stops, 2009-2014*, at 9 (Apr. 2016), <http://bnhr.org/wp-content/uploads/2016/04/DPS-Report.pdf>.

<sup>13</sup> Eric Dexheimer et al., *Not So Black and White*, *Austin American-Statesman*, Sept. 9, 2016, <http://specials.mystatesman.com/dps-stop-search-data/>.

<sup>14</sup> Tom Benning & Andrew Chavez, *After 2 Years and \$800M, Texas’ Border Boost Has One Solid Outcome: More Traffic Tickets*, *The Dallas Morning News*, Nov. 22, 2016, <https://www.dallasnews.com/news/politics/2016/11/22/after-2-years-and-800m-texas-border-boost-has-one-solid-outcome-more-traffic-tickets/>.

<sup>15</sup> Varma, *Records: Operation Lone Star Resulting in Increases as High as 1,000% in Minor Citations for Drivers in Starr County*, *supra* note 7.

are afraid to go out” due to the likelihood of receiving a traffic citation.<sup>16</sup> As a result, he went on to explain, “It has played havoc on our economy. People will not go out, they stay home. They might go out once a week to our stores.”<sup>17</sup>

Meanwhile, traffic stops decline in other parts of Texas with reallocation of DPS to the border<sup>18</sup>—while border communities bear the brunt of hyper-policing.

History appears to be repeating itself under OLS. Again, stops under these surges have frequently been for minor traffic violations. At the start of OLS, citations by DPS in Starr County skyrocketed for materials on a windshield: DPS citations for having anything on a car windshield increased 1,060%, and DPS citations for having any transparent material on a windshield increased 840%.<sup>19</sup>

And there is significant evidence of racial profiling by DPS officers in recent stops of Latinx drivers and passengers in OLS areas. First, 2021 DPS traffic stop data shows meaningful disparities between stop outcomes for Latinx and white individuals.<sup>20</sup> Tarleton State University researchers, in analyzing this data, concluded there is “a reasonable probability that racial profiling is a significant contributor to” those disparities.<sup>21</sup> They characterized their findings as “concerning.”<sup>22</sup> They surmised, “These findings may indicate that the DPS has not made appropriate organizational course corrections through policy, training, and analysis of their own data.”<sup>23</sup> Specifically, the researchers found that:

- “DPS searched Hispanics at a higher rate than Whites.” This was true statewide, and it was true more granularly in DPS Regions 2 (West Texas) and 3 (Lower Rio Grande Valley). These two regions are the regions in which counties with large deployments of DPS officers—such as Kinney, Val Verde, Uvalde, Cameron, Hidalgo, and Starr Counties—are located.<sup>24</sup>
- “DPS conducted a significantly greater portion of consent searches on Hispanics relative to Whites.” Because consent searches—where an officer asks for permission to search—

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<sup>16</sup> Border Network for Human Rights, *Race, Traffic Stops, & Ensuring Public Safety for a Changing Texas*, *supra* note 12, at 7 (quoting Judge Vera, as reported in Steve Taylor, *Vera Fears Border Security Bill Will Bring More Harassment for Starr County Residents*, Rio Grande Guardian, July 14, 2015, <https://riograndeguardian.com/vera-fears-border-security-bill-will-bring-more-harassment-for-starr-county-residents/>).

<sup>17</sup> *Id.*

<sup>18</sup> Benning & Chavez, *After 2 Years and \$800M, Texas’ Border Boost Has One Solid Outcome: More Traffic Tickets*, *supra* note 14.

<sup>19</sup> Varma, *Records: Operation Lone Star Resulting in Increases as High as 1,000% in Minor Citations for Drivers in Starr County*, *supra* note 7.

<sup>20</sup> Tarleton State University Institute for Predictive Analytics in Criminal Justice, *Additional Analysis of State of Texas 2021 Racial Profiling Data: Hispanic Data Analysis Report, June 14, 2022*, at 18.

<https://web.tarleton.edu/ipac/wp-content/uploads/sites/12/2022/07/IPAC2021AnnualReportHispanicFindings.pdf>.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at 8, 17.

are discretionary searches, they are strong indicators of racial profiling. DPS asked for and was granted consent to search by 19.5% of white drivers but 32.1% of Latinx drivers.<sup>25</sup>

- “DPS had a significantly lower contraband hit rate with Hispanics relative to Whites.” The percentage of searches that produce contraband is likewise a strong indicator of racial profiling. “The lower the hit rate, the greater the probability that racial profiling is a contributing factor. . . . In order to be confident that no racial profiling is occurring, contraband hit rates . . . should remain relatively equal across races.”<sup>26</sup> Statewide, the researchers characterized the disparity between Latinx and white people in contraband hit rates as “concerning.” “When DPS officers searched Hispanics, they were wrong (no contraband discovered) over 71% of the time.”<sup>27</sup> DPS Regions 2 and 3, where OLS traffic stops occur, had lower hit rates for Latinx than for white individuals.<sup>28</sup>
- DPS had higher consent search rates of Latinx individuals and *far* lower contraband hit rates with Latinx individuals than did the state overall. The state’s rates for consent search are 33.9% for white drivers and 25.3% for Latinx driver; as described above, there is a wide disparity in the other direction for DPS’s consent search rates. For contraband hit rates, the state is at 44.4% for Latinx individuals and 48.6% for whites. DPS, by contrast, finds contraband on 28.5% of Latinx individuals and 39.6% of white individuals.<sup>29</sup>

Again, the Tarleton State University researchers concluded that these findings regarding 2021 data—data for the OLS time period—were “concerning” and “suggest[ed] a reasonable probability that racial profiling is a significant contributor.”<sup>30</sup> These indicia of racial profiling, coupled with DPS’s history and the specifics of OLS DPS officer affidavits, necessitate a federal investigation into racial profiling of Latinx individuals by DPS officers in OLS traffic stops.

## **II. Racial Profiling in OLS Traffic Stops: DPS Officer Affidavits from Smuggling Cases**

In addition to the statistical evidence of racial profiling described above, probable cause affidavits from Kinney and Val Verde Counties reveal regular racial profiling by DPS officers in traffic stops that involve Latinx passengers. We have analyzed arrest affidavits by DPS officers

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<sup>25</sup> *Id.* at 9, 17.

<sup>26</sup> *Id.* at 12, 17.

<sup>27</sup> *Id.* at 17.

<sup>28</sup> *Id.* at 12.

<sup>29</sup> *Id.* at 17.

<sup>30</sup> *Id.* at 18.

from 18 traffic stops<sup>31</sup> that resulted in arrests under Texas state law for “smuggling of persons.”<sup>32</sup> In nearly half of those stops—8 out of 18, or 44%—the affidavits strongly indicate racial profiling by DPS officers. Specifically, they show state police relying on the race of passengers to formulate reasonable suspicion to prolong the traffic stop to investigate smuggling of persons or to formulate probable cause for arrest.<sup>33</sup>

The arrest affidavits show that DPS’s racial profiling in traffic stops occurs in two primary ways—ethnicity alone and ethnicity combined with ordinary daily activities. First, several affidavits show DPS relying on passengers’ perceived Latinx ethnicity alone to prolong traffic stops to investigate for human smuggling: it is the only information that the officer provides to justify prolonging the stop. Second, in other affidavits DPS officers describe combining passengers’ perceived Latinx identity with other ordinary characteristics—such as having a backpack or appearing, in the DPS officer’s judgment, scared—to justify reasonable suspicion for further investigation or probable cause for arrest.

Both of these approaches to generating reasonable suspicion or probable cause violate federal anti-discrimination law and the Constitution.

#### **A. DPS Reliance on Perceived Latinx Ethnicity in Violation of the Constitution and Title VI of the Civil Rights Act**

The use of race to develop reasonable suspicion or probable cause in a traffic stop is unlawful. Law enforcement may not extend a traffic stop beyond the time it takes for the officer to deal with the traffic infraction that formed the basis for the stop, absent reasonable suspicion of a crime.<sup>34</sup> As the Fifth Circuit has explained, “A factual condition which is consistent with the smuggling of [undocumented noncitizens] in a particular area, will not predicate reasonable suspicion, if [1] that factual condition occurs even more frequently among the law abiding public in the area” or [2] there are substantially more people numerically in the general population who possess that characteristic than there are people who are violating the law.<sup>35</sup> **“For example,” the**

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<sup>31</sup> We are in possession of 20 such affidavits—18 are for arrests of drivers, and 2 are for arrests of passengers who allegedly colluded with the drivers in 2 of those same stops.

<sup>32</sup> Smuggling of persons under Texas law includes, among other acts, “knowingly . . . us[ing] a motor vehicle . . . to transport an individual with the intent to . . . conceal the individual from a peace officer or special investigator” and “knowingly . . . encourag[ing] or induc[ing] a person to enter or remain in this country in violation of federal law by concealing, harboring, or shielding that person from detection.” Tex. Penal Code § 20.05(a)(1)(A), (a)(2).

<sup>33</sup> One affidavit that we have counted as racial profiling does not mention the passengers’ race or ethnicity. However, in it the DPS officer claims to detect a “distinct odor” in the vehicle that “undocumented immigrants emit.” Because the affidavit invokes a racist trope as the justification for prolonging the stop, we have included it as racial profiling.

<sup>34</sup> *Rodriguez v. United States*, 575 U.S. 348 (2015).

<sup>35</sup> *United States v. Jones*, 149 F.3d 364, 369 (5th Cir. 1998). The original opinion uses the phrase “illegal alien,” for which we have substituted “undocumented noncitizen.” See *United States v. Palomar-Santiago*, 141 S. Ct. 1615, 1619 (2021) (substituting “noncitizen” for “alien” in statutory text).



**Fifth Circuit has explained, “the fact that one is of Mexican national origin does not create reasonable suspicion that one is an [undocumented noncitizen], since, in border areas, there are far more legal citizens than [undocumented noncitizens] of Mexican origin.”<sup>36</sup>**

Thus, DPS’s reliance on perceived Latinx ethnicity to develop reasonable suspicion or probable cause of smuggling violates the Fourth Amendment and constitutes unlawful discrimination in violation of the Fourteenth Amendment and Title VI of the Civil Rights Act of 1964. The DPS officer affidavits that we analyzed are from vehicle stops in Kinney County and Val Verde County. The demographics of both those counties are majority Latinx: Kinney County’s population is roughly 62% Latinx; Val Verde’s, roughly 82%.<sup>37</sup> Prolonging stops for vehicles with multiple Latinx passengers will therefore sweep in many residents of these border communities. This is also true in other border and non-border counties saturated with DPS officers due to OLS. And importantly, by their nature these affidavits represent only the stops in which DPS officers *did* decide to effectuate an arrest. They do not include any stops prolonged due to racial profiling that did not end in arrest—perhaps after the DPS trooper realized that a stopped vehicle’s occupants were Latinx family, coworkers, or groups of friends traveling together, completely unrelated to a violation of the Texas “smuggling” statute. Similar stops that did not end in arrest would, of course, likewise violate the Constitution and Title VI’s prohibition on racial discrimination.

In 4 of the 18 stops, DPS officers provided only passenger ethnicity as a possible justification for prolonging the stop:

- A DPS officer pulled over a vehicle in Kinney County for darkly tinted windows. The officer stated in the affidavit, “During the roadside interview, I observed 2 Hispanic male passengers in the vehicle. The two passengers were later identified as undocumented persons by their Honduras identification cards.” This—the ethnicity of the passengers—is the only justification given in the probable cause affidavit for prolonging the stop beyond the purpose of investigating the window tint violation and instead converting the stop into an investigation for smuggling.
- Similarly, a DPS officer stopped a vehicle in Kinney County for failure to dim headlights and for darkly tinted windows. The officer stated, “During the roadside interview, I observed 3 Hispanic males sitting low in the vehicle. The three passengers were later identified as

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<sup>36</sup> *Jones*, 149 F.3d at 369; *see also United States v. Montero-Camargo*, 208 F.3d 1122, 1135 (9th Cir. 2000) (en banc) (holding, in the context of a Border Patrol traffic stop near an interior checkpoint, that “at this point in our nation’s history, and given the continuing changes in our ethnic and racial composition, Hispanic appearance is, in general, of such little probative value that it may not be considered as a relevant factor where particularized or individualized suspicion is required”).

<sup>37</sup> U.S. Census Bureau, *QuickFacts: Kinney County, Texas* (Jul. 1, 2021), <https://www.census.gov/quickfacts/kinneycountytexas>; U.S. Census Bureau, *QuickFacts: Val Verde County, Texas* (Jul. 1, 2021), <https://www.census.gov/quickfacts/fact/table/valverdecountytexas/PST045221>.

undocumented persons.” Again, no other explanation was provided for continuing the stop to investigate smuggling.

- A DPS officer stopped a vehicle in Kinney County for going 69 miles per hour in a 60 mile-per-hour zone. The officer stated that, in addition to the driver, “the vehicle was also occupied by three (3) Hispanic male passengers and one (1) female passenger.” There is no other rationale provided for converting the stop into an investigation for smuggling.
- In Kinney County, a DPS officer stopped a sports car for speeding. Upon approaching the vehicle, he “observed five males: three black and two Hispanic.” He then asked the driver to step out of the vehicle, apparently to engage in further investigation—and the affidavit provides no further rationale for this choice.

### **B. DPS Reliance on Perceived Latinx Ethnicity and An Ordinary Characteristic in Violation of the Constitution and Title VI of the Civil Rights Act**

Stops relying on race plus another ordinary characteristic are similarly unlawful—since the ordinary characteristic alone cannot justify the stop. Ordinary characteristics that regularly occur among the general population cannot form a basis for developing reasonable suspicion or probable cause.<sup>38</sup> For example, courts have held that the ordinary characteristics of having a blue tarp draped across a car’s interior, having a muddy car, or having a single key as opposed to a key ring do not form a basis to suspect criminal activity. A blue tarp could be used to conceal people being smuggled, but it is also used to hide belongings from car burglars and, regularly, in camping.<sup>39</sup> A muddy vehicle could be muddy because it unlawfully crossed the Rio Grande, but “there is simply nothing suspicious about a muddy 4 Runner traveling in an area where one should expect most vehicles to have some mud on them.”<sup>40</sup> While drug couriers may have single keys because vehicles are being passed from courier to courier, many people who are not drug couriers also don’t use a key ring while driving.<sup>41</sup>

Three DPS officer affidavits from OLS traffic stops involve unlawful reliance on race plus this kind of ordinary characteristic that forms no basis for developing probable cause. In one affidavit, a DPS officer justified suspicion of smuggling on the grounds that Latinx vehicle occupants had backpacks and undocumented immigrants may “often carry backpacks.” But many travelers who are not undocumented immigrants “often carry backpacks,” as do schoolchildren, hikers, and many people traveling to or from work.

In another affidavit, a DPS officer described prolonging a stop based on the passenger’s perceived Latinx ethnicity and frightened demeanor. But as courts have increasingly recognized, Black and Brown people’s negative experiences with or knowledge of disparities in treatment by

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<sup>38</sup> *Jones*, 149 F.3d at 369.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *United States v. Flores*, 2017 WL 2937577 at \*7 (S.D. Tex. Apr. 4, 2017).

law enforcement affect how they interact with law enforcement.<sup>42</sup> And when any person, “whether innocent or guilty, would be preoccupied with [the law enforcement officer’s] presence, then any inference that might be drawn from” nervousness “is destroyed.”<sup>43</sup>

In a third affidavit, a DPS officer justified prolonging a stop because Latinx passengers lacked identity documents. However, Texas law does not require individuals to carry documents with them to prove their identity or require vehicle passengers (as opposed to drivers) to show identification to law enforcement.<sup>44</sup> A passenger may simply choose not to, and frequently does for any number of reasons ranging from forgetfulness to inconvenience to principle.

Here are the specifics of these affidavits from 3 of 18 stops that provide race plus an ordinary characteristic as the only possible basis for prolonging the stop:

- A DPS officer pulled over a vehicle in Kinney County for failure to stop at the appropriate point behind a stop sign and because the vehicle had a temporary tag with no vehicle identification number connected in the state system. As the officer explained, “A traffic stop was conducted, and the Honda pulled over [in a particular location]. 3 Hispanic Males were observed in the vehicle and upon initial contact, it was discovered that none of the occupants had identifying documents with them.” This is the only description in the affidavit as to what led the DPS officer to require all occupants to exit the vehicle and to investigate for smuggling. As described above, Texas law does not require individuals to carry documents with them to prove their identity or require vehicle passengers (as opposed to drivers) to show identification to law enforcement.
- In Val Verde County, a DPS officer stopped a vehicle for a temporary tag that “flapp[ed] while the vehicle was in motion- and was not readable.” The officer observed two men in the vehicle. As the officer described the encounter, the driver “stated to me that he was traveling to San Antonio Texas, from Eagle Pass, Texas. He stated that he was working in Eagle Pass and the passenger in the vehicle was a co-worker. The front seat passenger was a Hispanic male who looked extremely scared.” This was the officer’s only justification for extending the stop for further investigation.
- Also in Val Verde County, a DPS officer stopped a vehicle because it was on a county road that “is not the most direct route to Austin or San Antonio” and appeared to be carrying a heavy load. Consequently, the officer stated, he “believed [the vehicle] was trying to avoid” interior Border Patrol checkpoints. The officer stopped the vehicle pretextually for speeding. He then “observed two Hispanic males inside of the vehicle with backpacks on the floorboard.” The officer stated in his probable cause affidavit, “Undocumented Migrants often carry backpacks with them when they travel, based on my training and experience I believed the two Hispanic males to be Undocumented and [the driver] to be Human

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<sup>42</sup> *E.g.*, *Commonwealth v. Warren*, 58 N.E. 3d 333, 342 (Mass. 2016).

<sup>43</sup> *Id.* at 370.

<sup>44</sup> *Cf.* Tex. Transp. Code § 521.025 (requiring that drivers carry a license while operating a vehicle and display that license to law enforcement when asked); Tex. Penal Code § 38.02 (requiring individuals to provide identifying information to law enforcement officers under certain circumstances but not requiring the provision of identification).

Smuggling.” Of course, *many* people who are not undocumented migrants also carry backpacks with them when they travel.

### C. DPS Invocation of a Racist Trope to Justify Probable Cause

Finally, in one affidavit a DPS officer claimed, “I smelled an odor that was emitting from inside the vehicle. . . . I identified the smell as an odor that is associated with human smuggling. Undocumented aliens emit a distinct odor due to sweat and being exposed to the environment.” The officer provided this justification for prolonging the stop to investigate smuggling. This is plainly outrageous, and it is bias-based policing. It is of a piece with the longstanding racist, nativist myths that Latinx people, people from outside the United States generally, and Mexicans specifically are dirty.<sup>45</sup>

## IV. DPS Vehicle Pursuits under Operation Lone Star: A High Death Toll

These indicia of racial profiling raise very grave concerns about civil rights violations by DPS; so too do DPS vehicle pursuits. DPS officers are engaging in many vehicle pursuits under OLS—and those pursuits have resulted in at least 30 deaths in the past 16 months, a startlingly high toll. In December 2021, just nine months after the program started, DPS stated that it had already engaged in 1,046 vehicle pursuits pursuant to OLS.<sup>46</sup> This is an increase from before OLS. In just the first month of OLS, DPS has stated, pursuits by the department almost doubled—from 20 in February 2021 to 38 in March 2021.<sup>47</sup>

These vehicle pursuits by DPS are dangerous for border communities and routinely pose a risk not only to drivers and passengers but also to bystanders. DPS’s policy for initiation and conduct of vehicle pursuits is contrary to best law enforcement practices: it rests discretion entirely with the individual officer, with very little guidance as to how to exercise that discretion. The result is tragic, with DPS pursuits regularly killing people traveling through counties caught up in OLS. The evidence of racial profiling in discretionary traffic stop decisions by DPS raises serious concerns that, as a result, vehicle pursuits disparately harm Latinx individuals.

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<sup>45</sup> Ferris State University, Jim Crow Museum, *Mexican and Latino Stereotypes*, <https://www.ferris.edu/HTMLS/news/jimcrow/mexican.htm>; Laura M. Padilla, “*But You’re Not a Dirty Mexican*”: *Internalized Oppression, Latinos & Law*, 7 *Tex. Hisp. J.L. & Pol’y* 59 (2001).

<sup>46</sup> Operation Lone Star Briefing, Dec. 16, 2021, ~ 00:00:30, <https://www.facebook.com/watch/live/?ref=search&v=410888664056374>.

<sup>47</sup> Dave Hendricks, *Crackdown on Smuggling Leads to Spike in Vehicle Pursuits*, *Progress Times*, May 7, 2021, <https://www.progresstimes.net/2021/05/07/crackdown-on-smuggling-leads-to-spike-in-vehicle-pursuits/>.

## A. DPS Vehicle Pursuit Policy: Contrary to Best Practices

DPS's policy regarding vehicle pursuits is extremely bare-bones and, contrary to law enforcement agency best practices, leaves discretion in decisions about pursuits to individual officers with little guidance. An excerpt from the Texas Highway Patrol manual made public in March 2017 states:

There are many times when it is not practicable to continue pursuit of a violator. The decision of when to abandon pursuit can only be made by the officer involved. When, in the judgment of the officer, the mission of the Department can no longer be served or when it becomes evident that continued pursuit will bring about unwarranted danger to the public or to the officer, he should abandon pursuit and take whatever legal action is practicable.<sup>48</sup>

The policy does not provide any guidance as to under what circumstances “the mission of the Department can no longer be served” or what degree of danger to the public or the officer makes continued pursuit “unwarranted.” DPS's use of force policy states, briefly, that a DPS officer “may have to use the vehicle as a tool to end the commission of a crime”; that such use of a vehicle is use of force; and that the use of force must be guided by DPS's general use of force policies.<sup>49</sup> It provides no more specific guidance on use of force in this context.

More recently, in December 2021 and specifically with respect to Operation Lone Star, DPS Lieutenant Chris Olivarez explained regarding vehicle pursuits:

Every agency has their own policy in place on pursuits. We leave it to the discretion of the troopers to make that decision based on the circumstances. So we leave it up to them to make that decision—whether they continue to engage or disengage from a pursuit.<sup>50</sup>

Lieutenant Olivarez's description confirms that DPS's minimal policy leaving discretion up to the individual officer and providing virtually no guidance for the exercise of that discretion is still in effect.

This is contrary to widely understood agency best practices. For example, the International Association of Chiefs of Police recommends that an officer should engage in pursuit only when “the need to apprehend the fleeing suspect [is] greater than the risk presented by the pursuit.”<sup>51</sup> Moreover, “unless a greater danger would result, pursuits should not be undertaken if the identity of the fleeing suspect is known or can be obtained with enough

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<sup>48</sup> The DPS vehicle pursuit policy released to the public in March 2017 is available at <https://www.documentcloud.org/documents/3699762-DPS-Pursuit-Policy.html>.

<sup>49</sup> The DPS use of force policy is available at <https://s3.documentcloud.org/documents/3115640/DPS-Use-Of-Force.pdf>. The use of force policy provides guidance on discharging firearms at vehicles. *Id.* at 5-15 - 5-16.

<sup>50</sup> Operation Lone Star Briefing, Dec. 16, 2021, ~ 14:00, <https://www.facebook.com/watch/live/?ref=search&v=410888664056374>.

<sup>51</sup> International Association of Chiefs of Police, *Vehicular Pursuits*, Dec. 2019, at 3, <https://www.theiacp.org/sites/default/files/2019-12/Vehicular%20Pursuits%20-%202019.pdf>.

certainty that they can be apprehended at a later time”—such as “where the license number of the vehicle can be obtained.”<sup>52</sup>

In addition to failing to provide adequate safeguards around directing officers to disengage from a pursuit, neither the vehicle pursuit policy nor the use of force policy provides meaningful guidance about intervention tactics like roadblocks, ramming, or vehicle physical contact maneuvers.<sup>53</sup> Further, the policies fail to prohibit pursuit actions like “caravanning” (multi-vehicle close pursuit) and “paralleling” (traveling along a parallel road), which are dangerous to traffic not involved in the pursuit.<sup>54</sup> Finally, leaving discretion entirely to the individual officer carries significant risk in light of the many demands on an officer while in the middle of a situation in which a pursuit might arise.<sup>55</sup>

## **B. DPS Operation Lone Star Vehicle Pursuits: A High Death Toll**

Since the start of OLS, vehicle pursuits in which DPS has been involved in counties with an OLS presence<sup>56</sup> have led to at least 30 fatalities and 71 injuries—an extremely high number. This figure is based on publicly available information—collating news accounts throughout South Texas. By comparison, in 2021 Border Patrol vehicle pursuits caused 23 deaths across the *entire* southern border, from California to Texas.<sup>57</sup>

The tally raises serious concerns that DPS’s policy and any training are in practice inadequate for public safety—and, especially in light of the mounting death toll, that DPS is deliberately indifferent to its failure to protect the lives of vehicle drivers, passengers, and members of the public. DPS’s saturation of border communities, its history of racially disparate stops, and the evidence of racial profiling under OLS all also indicate that DPS’s policy failures

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<sup>52</sup> *Id.*

<sup>53</sup> *See id.* at 5-6.

<sup>54</sup> *See id.* at 5.

<sup>55</sup> *Id.* at 2.

<sup>56</sup> We include in this category both counties on the Texas-Mexico border and counties near the border that have opted into Governor Abbott’s anti-immigrant initiative by declaring a state of disaster. *See* Office of the Tex. Governor, *Governor Abbott Renews Border Security Disaster Declaration in July 2022*, July 21, 2022, <https://gov.texas.gov/news/post/governor-abbott-renews-border-security-disaster-declaration-in-july-2022>. While Cameron, Hidalgo, and Starr Counties—the Rio Grande Valley border counties—and El Paso County have not opted into Governor Abbott’s disaster declaration, we believe based on officials’ statements that DPS presence in those counties is nevertheless attributable to OLS. *See, e.g.*, Press Release, Office of the Tex. Governor, *Operation Lone Star Boosts Local Border Security Efforts, Ramps Up Law Enforcement Capabilities*, July 8, 2022, <https://gov.texas.gov/news/post/operation-lone-star-boosts-local-border-security-efforts-ramps-up-law-enforcement-capabilities> (Office of the Texas Governor describing vehicle pursuit in Hidalgo County in OLS press release); Operation Lone Star Briefing, Dec. 16, 2021, ~ 14:15 (OLS spokesperson describing vehicle pursuit in Hidalgo County at OLS press conference and discussing vehicle pursuits in the Rio Grande Valley and “anywhere along the border” apparently as part of OLS).

<sup>57</sup> ACLU of Texas, *CBP Fatal Encounters Tracker*, <https://www.aclutx.org/en/cbp-fatal-encounters-tracker>.

and training adequacies are disproportionately harming Latinx drivers and passengers—foreseeably, because DPS chooses to engage with Latinx drivers and passengers in communities in South Texas.

DPS vehicle pursuits in OLS counties—in which DPS has been involved as either the lead or sole agency, or in a support role—include:

- **March 2021, Val Verde County, 8 killed and 3 injured:** DPS stated that a vehicle pursuit led the pursued vehicle to crash head-on into a vehicle uninvolved in the chase, roughly 30 miles north of Del Rio. Eight passengers in the pursued vehicle were killed. One passenger in that vehicle and two occupants of the bystander vehicle, one of whom was a child, were hospitalized.<sup>58</sup>
- **March 2021, La Salle County, 3 killed:** DPS stated that it deployed spike strips during a chase and that the driver eventually lost control of the vehicle and crashed, killing three passengers.<sup>59</sup>
- **March 2021, La Joya, 2 killed and 6 injured:** DPS stated that a vehicle evaded a traffic stop and lost control, crashing into a car carrying two area residents. Both occupants of the bystander vehicle were killed, and six passengers in the pursued car were injured.<sup>60</sup>
- **Aug. 2021, Brooks County and Edinburg, 1 killed and 3 injured:** According to DPS, a vehicle sped off when DPS attempted to conduct a traffic stop near Falfurrias. The driver lost control of the vehicle, which rolled over. The driver died, and three passengers were hospitalized.<sup>61</sup>
- **Aug. 2021, Brooks and Hidalgo Counties:** DPS stated that a DPS trooper attempted a traffic stop near Falfurrias. The driver evaded the stop and continued at a high rate of speed, according to DPS. DPS stated that the vehicle continued, crashing into a concrete barrier and then traveling on a rim, until the deployment of spike strips. One of the two passengers was found unresponsive and passed away. DPS did not attribute this death to the pursuit but rather to illness that began before the passenger was picked up: it stated that “DPS troopers and Texas Rangers confirmed it was not a fatal crash.”<sup>62</sup>

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<sup>58</sup> Associated Press, *8 Immigrants Killed When Pickup Crashes in Texas Border City*, USA Today, Mar. 17, 2021, <https://www.usatoday.com/story/news/2021/03/17/eight-immigrants-killed-when-pickup-crashes-del-rio-texas/4737252001/>.

<sup>59</sup> Arelis R. Hernández, *In South Texas, Frustration with High-Speed Chases, Increased Crime Exacerbates Political Tensions*, Wash. Post, May 4, 2021, [https://www.washingtonpost.com/immigration/texas-border-crime/2021/05/03/749b4b5a-994b-11eb-b28d-bfa7bb5cb2a5\\_story.html](https://www.washingtonpost.com/immigration/texas-border-crime/2021/05/03/749b4b5a-994b-11eb-b28d-bfa7bb5cb2a5_story.html).

<sup>60</sup> Valley Central, *DPS Searching for Driver in Deadly La Joya Crash*, Mar. 17, 2019, <https://www.valleycentral.com/news/local-news/dps-searching-for-driver-in-deadly-la-joya-crash/>.

<sup>61</sup> KRGV, *McAllen Teen Accused of Leading DPS Troopers on High Speed Chase Dies*, Sept. 3, 2021, <https://www.krgv.com/news/mcallen-teen-accused-of-leading-dps-troopers-on-high-speed-chase-dies/>.

<sup>62</sup> MyRGV, *17-Year-Old McAllen Man Charged in Smuggling Case*, Aug. 26, 2021, <https://myrgv.com/featured/2021/08/26/17-year-old-mcallen-man-charged-in-smuggling-case/>.

- **Sept. 2021, Maverick County, 1 injured:** DPS stated that a vehicle evaded a stop for a traffic violation. As a result of the ensuing chase, the driver crashed into a vehicle not involved in the pursuit, injuring one passenger in the chased vehicle.<sup>63</sup>
- **Nov. 2021, Laredo, 3 killed, 5 injured:** DPS stated that an officer attempted to pull over a vehicle for a traffic stop but that the driver evaded the stop. The pursued vehicle crashed into another car near an intersection in Laredo. The driver of the bystander vehicle was killed, as were two passengers in the pursued vehicle. Five people were taken to the hospital.<sup>64</sup>
- **Nov. 2021, La Joya, 2 killed and 10 injured:** DPS stated that an officer attempted to conduct a traffic stop and the vehicle instead drove away at a high speed. The vehicle rolled over: two people died at the scene, and ten were taken to a local hospital for what DPS characterized as “major to minor injuries.”<sup>65</sup>
- **Dec. 2021, Mission, 2 killed and 7 injured:** DPS officers assisted in a chase initiated by Border Patrol when a vehicle did not stop for a traffic stop. The vehicle collided with a car not involved in the chase, killing both occupants of the car and sending the seven occupants of the pursued vehicle to the hospital for injuries. After the crash, a local police chief suggested that protocols for vehicle pursuits needed to be reexamined in order to protect public safety, given the deaths of bystanders.<sup>66</sup> Border Patrol’s vehicle pursuits likewise frequently end in fatalities and do not align with law enforcement best practices.<sup>67</sup>
- **Dec. 2021, La Gloria, 1 killed:** A DPS officer assisted in a chase initiated by Border Patrol after a vehicle failed to yield. According to CBP, the DPS officer used a vehicle immobilization device. CBP stated that the driver attempted to evade the device but crashed into a nearby off-road object, and the vehicle rolled over. The passenger in the vehicle was killed.<sup>68</sup>

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<sup>63</sup> Texas Dep’t of Public Safety - South Texas Region, Facebook (Sept. 7, 2021), [https://www.facebook.com/permalink.php?story\\_fbid=pfbid0mAwBDuTpDTPemY9pe4iDRumNXYZ8HTt3bc8Lci9n4utuSto4WiiYh16J6QkEVcAL1&id=2118412605136040](https://www.facebook.com/permalink.php?story_fbid=pfbid0mAwBDuTpDTPemY9pe4iDRumNXYZ8HTt3bc8Lci9n4utuSto4WiiYh16J6QkEVcAL1&id=2118412605136040)

<sup>64</sup> Fox South Texas, *High Speed Chase in Laredo Ends with Three Fatalities*, Nov. 16, 2021, <https://foxnewsouthtexas.com/2021/11/16/high-speed-chase-in-laredo-ends-with-three-fatalities/>.

<sup>65</sup> KRGV, *DPS: 2 Dead in One-Vehicle Crash North of La Joya*, Nov. 26, 2021, <https://www.krgv.com/videos/dps-2-dead-in-one-vehicle-crash-north-of-la-joya/>.

<sup>66</sup> Crystal Martinez, *Mission Teen Charged in Deadly Weekend Crash*, KRGV, Dec. 14, 2021, <https://www.krgv.com/news/mission-teen-charged-in-deadly-weekend-crash/>.

<sup>67</sup> ACLU of New Mexico & ACLU of Texas, *Fact Sheet: The Deadly Trend of Border Patrol Vehicle Pursuits*, [https://www.aclutx.org/sites/default/files/field\\_documents/border\\_patrol\\_vehicle\\_pursuit\\_policy\\_brief\\_01\\_03\\_22.pdf](https://www.aclutx.org/sites/default/files/field_documents/border_patrol_vehicle_pursuit_policy_brief_01_03_22.pdf).

<sup>68</sup> U.S. Customs & Border Protection, *CBP Statement on Death of Mexican Man After He Was Ejected From a Vehicle Following Failure to Yield Near La Gloria, Texas*, Dec. 6, 2021, <https://www.cbp.gov/newsroom/speeches-and-statements/cbp-statement-death-mexican-man-after-he-was-ejected-vehicle>.



- **Dec. 2021, La Rosita, 4 injured:** A DPS officer attempted to initiate a traffic stop. According to DPS, the vehicle sped away and eventually crashed into a power pole.<sup>69</sup>
- **Feb. 2022, Zavala County, 3 killed and 4 injured:** A DPS officer pursued a vehicle that failed to stop. The vehicle crashed after driving on the shoulder to pass another vehicle.<sup>70</sup>
- **Feb. 2022, La Joya, 6 injured:** According to CBP, a DPS officer attempted to stop a minivan. A pursuit ensued, and the driver crashed into a tree.<sup>71</sup>
- **March 2022, La Salle County, 2 killed and 4 injured:** A pursued vehicle lost control and rolled over, killing two and hospitalizing four.<sup>72</sup>
- **April 2022, Hidalgo County, 2 killed and 6 injured:** According to CBP, DPS vehicle took over a Border Patrol chase. The vehicle crashed, causing two occupants to die and sending six to the hospital.<sup>73</sup>
- **April 2022, Encinal, 1 killed and 4 injured:** According to CBP, DPS joined in a chase in which the pursued vehicle crashed.<sup>74</sup>
- **June 2022, El Paso, 8 injured:** A DPS highway patrol vehicle performed a Precision Immobilization Technique and hit an SUV that it was chasing, causing the SUV to roll over and injuring all eight of its occupants. One passenger was ejected from the vehicle.<sup>75</sup>

This accounting is taken entirely from publicly available news sources. It is likely not exhaustive. Nevertheless, the available information demonstrates a pattern of deaths resulting from vehicle pursuits by DPS in OLS counties. At least 30 deaths in South Texas OLS counties in DPS vehicle pursuits in the past year is an alarmingly high number.

DPS's history of disproportionate stops of vehicles with Latinx drivers, and the evidence of racial profiling in OLS traffic stops provided above, raises concerns that disproportionate

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<sup>69</sup> KRGV, *4 Hospitalized After DPS Chase Ends in a Crash in Starr County*, Dec. 16, 2021, <https://www.krgv.com/news/4-hospitalized-after-dps-chase-ends-in-a-crash-in-starr-county>.

<sup>70</sup> Bob Price & Randy Clark, *Three Dead, Four Injured in Suspected Human Smuggling Crash in Texas Near Border*, Feb. 15, 2022, <https://www.breitbart.com/border/2022/02/15/three-dead-four-injured-in-suspected-human-smuggling-crash-in-texas-near-border/>.

<sup>71</sup> U.S. Customs & Border Protection, *Four Vehicle Pursuits and a Stash House Leads to 36 Arrests*, Feb. 24, 2022, <https://www.cbp.gov/newsroom/local-media-release/four-vehicle-pursuits-and-stash-house-leads-36-arrests>.

<sup>72</sup> Brenda Camacho, *Two Dead Following a Vehicle Pursuit on IH-35*, KGNS, Mar. 27, 2022, <https://www.kgns.tv/2022/03/27/two-dead-following-vehicle-pursuit-ih-35/>.

<sup>73</sup> U.S. Customs & Border Protection, *Smuggling Incident Results in Fatal Crash North of San Manuel, Texas*, Apr. 28, 2022, <https://www.cbp.gov/newsroom/speeches-and-statements/smuggling-incident-results-fatal-crash-north-san-manuel-texas>.

<sup>74</sup> U.S. Customs & Border Protection, *Failure to Yield Incident at Laredo North Checkpoint Leads to Crash with One Fatality and Multiple Injuries*, Apr. 29, 2022, <https://www.cbp.gov/newsroom/speeches-and-statements/failure-yield-incident-laredo-north-checkpoint-leads-crash-one>.

<sup>75</sup> Daniel Borunda, *SUV Smuggling Migrants Crashes After Hit by Texas DPS Vehicle in El Paso Highway Pursuit*, El Paso Times, June 23, 2022, <https://www.elpasotimes.com/story/news/crime/2022/06/23/texas-dps-chase-el-paso-migrants-smuggling-crash-border-highway/7709849001/>.

contacts with Latinx drivers and passengers that result from racial profiling are leading to racially disparate vehicle pursuits as well. In combination with DPS’s plainly deficient policy—which leaves discretion with the individual officer and fails to provide adequate safeguards for the safety of all involved—racial profiling in encounters may be leading to deaths of Latinx drivers and passengers as the result of unconstitutional traffic stops.

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Under Governor Abbott’s Operation Lone Star initiative, DPS has saturated South Texas communities with state police officers conducting traffic stops. Historically, similar large-scale movement of DPS to border communities to conduct traffic stops has resulted in racially disproportionate citation of Latinx drivers. In 2021, DPS traffic stops exhibited “concerning” disparities. DPS officers’ affidavits from OLS traffic stops provide strong evidence that officers are currently racially profiling in deciding whether to prolong stops. A DPS officer’s ties to a vigilante and January 6 insurrectionist who apparently hid from the FBI for three months on the Kinney County Attorney’s ranch while patrolling for migrants raises very serious concerns about the agency’s ties to white supremacist extremism. And DPS vehicle pursuits have led to many deaths—at least 30—in South Texas OLS counties in the first year of OLS’s operation.

We therefore urgently renew our call for a Title VI investigation into DPS and other state and local agencies for their role in the OLS migrant arrest program, and call on DOJ to investigate DPS for its OLS traffic stops as well. Federal action is critically necessary to protect Black and Brown individuals caught up in the OLS migrant arrest program—and Latinx drivers and passengers in South Texas communities. We also request that DOJ investigate DPS for a pattern or practice of civil rights violations, pursuant to its authority under 34 U.S.C. § 12601.

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