

VIA EMAIL

U.S. Customs and Border Protection
Office of Professional Responsibility
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The ACLU of Maine submits this administrative complaint to U.S. Customs and Border Protection on behalf of Jaime Zilko regarding a U.S. Border Patrol traffic stop that likely violated the Fourth Amendment rights of two lawfully present Hispanic people and resulted in a violation of Ms. Zilko's First and Fourth Amendment rights.

Ms. Zilko is a resident of Caribou, Maine, with a life-long dedication to immigrants' rights. As the federal government increased its deportation efforts,¹ so too has Ms. Zilko stepped up her activism. She now routinely hands out Know Your Rights cards to people likely to be racially profiled by law enforcement and she tries to be a resource to immigrants in her community however she can. Her goal is to ensure that people are equipped to stand up for themselves when interacting with federal immigration law enforcement.

On May 21, 2025, Ms. Zilko was driving in Presque Isle to get dinner with her husband when she saw a U.S. Border Patrol ("CBP") truck stopped on Fort Fairfield Road behind a car with two Hispanic passengers. Ms. Zilko was immediately alarmed. She was already familiar with Border Patrol's increased enforcement in northern Maine: she had seen Border Patrol verbally harassing a Hispanic child in Caribou weeks earlier, and she knew from social media posts that immigration arrests in northern Maine had increased dramatically in the preceding months. She also knew that once in Border Patrol custody, people are often traumatically denied contact with their families; denied access to counsel; denied medical care; and subjected to difficult conditions such as having to sleep for days in facilities that have no beds, blankets, and are not equipped for anyone to stay in at all.²

¹ See, e.g., Ari Snider, *ICE arrests in Maine are up 50% since Trump took office, according to new data*, Maine Public Radio (July 7, 2025), <https://www.mainepublic.org/maine/2025-07-07/ice-arrests-in-maine-are-up-50-since-trump-took-office-according-to-new-data>.

² Bonnie Bishop, *Easton resident detained by US Customs and Border Protection in Maine*, WMTW News 8 Portland (July 31, 2025), <https://www.wmtw.com/article/man-in-easton-maine-detained-by-us-customs-and-border-protection/65557052>; Callie Ferguson, *A 13-year-old immigrant was arrested in Maine. It took 2 weeks to get her home.*, The Maine Monitor (July 7, 2025), <https://themainemonitor.org/13-year-old-immigrant-arrested/>; Emily Allen, *Federal judge in Maine considers whether to bring back a man Border Patrol flew to Texas*, Portland Press Herald (Aug. 28, 2025), <https://www.pressherald.com/2025/08/28/federal-judge-in-maine-considers-whether-to-bring-back-a-man-border-patrol-flew-to-texas/>.

Ms. Zilko knew that she could not prevent CBP from carrying out the traffic stop, but she wanted to ensure that the people being detained were safe and aware of their rights. To that end, she pulled over about fifty feet ahead of the detained car, got out of her car, held her phone out in front of her with both hands, and began to approach the stopped car, trying to record as she went.³ When she got out of her car, CBP Agent Souza was in his truck; Agent Donnelly arrived in a second truck shortly afterwards. Agent Souza told Ms. Zilko, via megaphone, to get back into her car. Ms. Zilko responded “fuck you” and raised her middle finger, as she did not believe Agent Souza had the authority to tell her to return to her car. She continued to approach the detained car so that she could convey information to the detainees about their rights, but was careful not to get in between Agent Souza and the detainees physically at any point or otherwise interfere with the stop.

Agent Souza then got out of his truck and walked towards Ms. Zilko. Ms. Zilko kept her hands lifted and visible, continued trying to record but did not approach him. Agent Souza asked Ms. Zilko if she wanted to be detained, clearly threatening her. Ms. Zilko was frustrated and responded, “do it.” Agent Souza then forced her left arm behind her back and threw her, face-down, against the detainees’ car.

Ms. Zilko screamed in pain. She started yelling for Agent Souza to stop touching her, but did not physically resist. Agent Donnelly then got out of his car and put his arm on Agent Souza’s arm, prompting Agent Souza to release Ms. Zilko. Agent Souza freed Ms. Zilko’s arm and allowed her to get up. She again started filming, this time successfully. Ms. Zilko was distraught, explained to Agent Donnelly that she had not been impeding anything and asked him to tell Agent Souza not to “put his hands on me.” She also asked Agent Donnelly why Agent Souza had put his hands on her, but Agent Donnelly did not respond.

Agent Souza then spoke to the detainees briefly and returned to his truck. Ms. Zilko tried again to engage Agent Donnelly in conversation and to learn more about why CBP had initiated this traffic stop. Agent Donnelly did not respond, but he allowed Ms. Zilko to speak to the detainees and to film that conversation. From that conversation, she learned that Agent Souza had told the detainees he was pulling them over for speeding, but they had not been speeding. She also learned that they were legal U.S. residents who lived in Massachusetts rather than Maine and were in Presque Isle to visit family. Ms. Zilko explained that they were very close to the border and that it might be less safe for them, as Hispanic people, so close to the border. She also told the detainees that they did not have to say anything; where to find know your rights information online; and that, should they be stopped by law enforcement again, they should try to record as much as they could.

Agent Donnelly then spoke to the detainees, and they reiterated that they had not been speeding. He left to speak with Agent Souza, leaving Ms. Zilko alone with the detainees. Agent Souza came back from his truck and told the detainees they could leave; they did so. Neither Agent Souza nor Agent Donnelly issued any citation or summons to the detained people, but instead apparently determined that the detainees had not committed any offense.

³ Ms. Zilko later learned that she was inadvertently not filming at this time.

Agent Donnelly remained and spoke to Ms. Zilko. Ms. Zilko explained how concerned she was to see federal immigration agents stopping Hispanic people for what appeared to be nothing more than a minor traffic offense. Agent Donnelly responded that she could file a complaint; this complaint follows.

This encounter left Ms. Zilko physically and emotionally shaken. Her arm remained sore for days. She has PTSD and this incident exacerbated her symptoms: she had a panic attack shortly afterwards and regular nightmares for days. It is traumatic for her to know both that CBP is conducting likely unlawful traffic stops, and that attempts to document those stops are met with violence and intimidation. It is Ms. Zilko's hope that filing this complaint will highlight the inappropriateness of both the traffic stop and her own detention; encourage CBP supervisory staff to provide training so that similar traffic stops and violent encounters do not happen in the future; and allow her to learn more about the policies that enabled the traffic stop.

I. The traffic stop was likely unlawful because the Fourth Amendment and federal statute bar CBP from detaining people merely for being Hispanic.

The Fourth Amendment's prohibition on unreasonable searches and seizures exists within 100 miles of the United States' international borders, just as it does throughout the country. *Almeida-Sanchez v. U.S.*, 413 U.S. 266 (1973). Because a traffic stop is a seizure, it must be justified by probable cause or reasonable suspicion. To determine whether those justifications exist, courts look in part to the authority of the law enforcement agency involved. Here, CBP's mission and authority are explicitly laid out in statute: to serve as law enforcement "with primarily responsibility for [] persons attempting to illegally enter or exit the United States." 6 U.S.C. § 211(3)(A). CBP's limited authority combined with the requirements of the Fourth Amendment allow CBP to conduct a brief traffic stop based on a reasonable suspicion that the car may contain non-citizens not legally present in the United States *only to* investigate "the circumstances that provoke suspicion." *U.S. v. Brignoni-Ponce*, 422 U.S. 873, 882 (1973).

Race or ethnicity alone cannot provide reasonable suspicion to justify a traffic stop. *See generally id.* (Border Patrol could not stop vehicle near Mexican border "where the occupants apparent Mexican ancestry furnished the only ground for suspicion that the occupants were aliens."). Although one of the CBP officers suggested that the detainees were speeding, the detainees explained at the time that they had not been speeding, no evidence was provided to support the CBP officer's claim, and ultimately neither Agent Souza nor Agent Donnelly issued any citation or summons to the detainees—presumably based on their determination that they had not committed any offense.

Moreover, even assuming for the sake of argument that the detained driver was speeding, courts across the country have repeatedly found that CBP traffic stops violate the Fourth Amendment when they are based on minor traffic violations and being Hispanic. Those two factors alone do not create reasonable suspicion to believe that a person is present without authorization and justify a traffic stop—even within 100 miles of the border and even if accompanied by other purportedly suspicious behavior. *U.S. v. Gonzalez-Vargas*, 496 F.Supp. 1296 (N.D.Ga. 1980) (Hispanic appearance, traveling on a possible "major route for the transportation of unauthorized aliens," "uncharacteristic" driving, and other characteristics of smuggling did not create reasonable

suspicion); *U.S. v. Abdon-Limas*, 780 F.Supp. 773 (D.N.M. 1991) (Hispanic appearance and “dramatic decrease in speed” did not create reasonable suspicion); *U.S. v. Rodriguez-Rivas*, 151 F.3d 377 (5th Cir. 1998) (driver being Hispanic, driving at a high speed, and slouching in his vehicle as if to avoid detection did not create reasonable suspicion).

But based on Ms. Zilko’s and Agent Donnelly’s conversations with the two detained people, the most CBP *could* have known when they stopped the car is that the driver and passenger were Hispanic, and that they were speeding. This is clearly insufficient to create reasonable suspicion and justify the traffic stop. The result of the stop demonstrates *why* CBP must have more. The detainees were not taken into custody and no immigration violation had occurred—they were essentially stopped for no reason at all.

As well, enforcing minor state law traffic offenses like speeding is well outside the bounds of CBP’s statutory authority. “[T]here is no law or policy that would authorize a CBP officer to pull over a motorist for a traffic incident that did not arise from any border-related inspection, function, or activity.” *Ramzan v. U.S.*, 438 F.Supp.3d 871, 879 (N.D. Ill. 2020) (quoting affidavit of supervisory CBP officer). CBP lacks the authority necessary to stop motorists for speeding. Instead, this authority lies securely in the hands of *local* law enforcement. See *Melendres v. Arpaio*, 598 F.Supp.2d 1025 (D. Ariz. Feb. 10, 2009) (finding local law enforcement was authorized to conduct traffic stop for speeding, but not to prolong stop for immigration-related purposes); *Melendres v. Arpaio*, 695 F.3d 990 (9th Cir. 2012). To the extent CBP may rely on 25 M.R.S. § 1502-A to assert that it is permitted to conduct traffic stops in Maine, the Maine Criminal Justice Academy’s corresponding regulation is clear that “this authority **is not intended to make [CBP agents] traffic enforcement officers**, but to ensure their authority to act when a life-threatening situation evolves in their presence.” Specification S-32 (emphasis added). Because the detainees were stopped solely for speeding and there is no indication that any life-threatening situation existed, Section 1502-A does not empower CBP to conduct the traffic stop that occurred here.

The Fourth Amendment requires CBP to have reasonable suspicion before conducting this traffic stop. The agents were likely acting outside the bounds of their authority by stopping two legal U.S. residents who happened to be Hispanic.

II. Agent Souza violated Ms. Zilko’s First Amendment rights to criticize and film law enforcement.

When Ms. Zilko realized that Agent Souza was engaged in a potentially illegal traffic stop, she acted accordingly: she immediately tried to record the stop, and verbally remonstrated the officer involved. The First Amendment protects Ms. Zilko’s right to do both of those things, and Agent Souza violated Ms. Zilko’s First and Fourth Amendment rights when he detained her in retaliation for doing so.

Ms. Zilko suffered First Amendment retaliation: her speech and actions were protected by the First Amendment, and she nonetheless was subjected to an adverse action motivated by that protected conduct. *Nieves v. Bartlett*, 587 U.S. 391 (2019).

A. Ms. Zilko had a First Amendment right to film, approach, and use profanity

The First Amendment, at its core, protects the public's right to discuss government actions and this discussion can only occur if the public knows what its government is doing. *Mills v. Alabama*, 384 U.S. 214 (1966). Thus, courts have repeatedly recognized a First Amendment right to record government actions in public, recognizing that that information aids public discussion of government action. *Gilk v. Cunniffe*, 655 F.3d 78, 82 (1st Cir. 2011) (collecting cases). That interest is particularly strong when a member of the public seeks to record law enforcement. *Gentile v. State Bar of Nev.*, 501 U.S. 1030, 1036 (1991). This right does not disappear when law enforcement conducts a traffic stop—"a traffic stop [] is inescapably a police duty carried out in public." *Gericke v. Begin*, 753 F.3d 1, 7 (1st Cir. 2014) (finding that arrest of person who attempted to film traffic stop and did not otherwise attempt to interfere with traffic stop violated First Amendment). A person's First Amendment right to film is implicated even if they are ultimately unsuccessful in filming—the right is implicated even by a person's attempt to film. *Id.* at n. 2. An officer can direct a person to stop filming their duties in public "*only if* the officer can reasonably conclude that the filming itself is interfering, or is about to interfere, with his duties." *Id.* (emphasis added).

The Supreme Court instructs that the First Amendment protects criticism and profanity directed at law enforcement unless the speech is "shown likely to produce a clear and present danger of a serious substantive evil that rises far above public inconvenience, annoyance, or unrest." *Houston v. Hill*, 482 U.S. 451, 461 (1987). This is a high bar, because law enforcement is expected to "exercise a higher degree of restraint than the average citizen, and thus be less likely to respond belligerently to fighting words." *Id.* Thus, courts routinely find that merely stating "fuck you" or raising a middle finger to police do not meet that bar. *U.S. v. Poocha*, 259 F.3d 1077 (9th Cir. 2001) (finding statement of "fuck you" to park ranger to be protected speech); *Sandul v. Larion*, 119 F.3d 1250, 1255 (6th Cir. 1997) ("the mere words and gesture of 'f—k you' are constitutionally protected speech").

Before Agent Souza threatened to detain, and then did detain, Ms. Zilko, she had done only three things: exited her car to walk towards the stopped car, attempted to film the stop, and used profanity to criticize Agent Souza. Ms. Zilko had a clear-cut right to try to film the traffic stop, as it was a government action occurring in public. Ms. Zilko had a similarly unqualified right to use profanity to criticize Agent Souza. To the extent that Agent Souza detained Ms. Zilko because she did not return to her car when instructed to do so, that instruction was invalid. Agent Souza could not have reasonably concluded that her filming or approach would interfere with his duties. To the contrary, minutes after Agent Souza told her to return to her car, Agent Donnelly *did* allow Ms. Zilko to film the stop while standing right next to the detained car, to speak to the detainees through their car window, and even to remain alone with the detainees, with no ill effect on CBP function or safety. Ms. Zilko therefore engaged in activity protected by the First Amendment immediately before she was detained.

B. Ms. Zilko's detention was an adverse action unsupported by probable cause or reasonable suspicion.

Agent Souza took adverse action against Ms. Zilko when he forced her arm behind her back and slammed her into the detained car. Pinning and restraining a person against a car is a

detention. *Wilkey v. Argo*, 43 Fed. Appx. 925 (6th Cir. 2002). Moreover, that detention was unsupported by probable cause or reasonable suspicion. *See Nieves*, 587 U.S. 391. *First*, Ms. Zilko received no criminal charges. *Second*, as detailed above, everything she did prior to being threatened with detention and detained—approach the stopped car, film the stop, and use profanity—was protected by the First Amendment. And *third*, she was allowed to both film and stand by the stopped car (at one point unattended) after her detention. No probable cause or reasonable suspicion justified Ms. Zilko’s detention.

C. Agent Souza detained Ms. Zilko because of her protected First Amendment activity

Ms. Zilko may show that the detention was motivated by her First Amendment activity by pointing to “an unusually suggestive temporal proximity between the protected activity and the [] retaliatory action.” *Watson v. Rozum*, 834 F.3d 417 (3rd Cir. 2016); *Gonazalez v. Trevino*, 602 U.S. 653, 676 (Sotomayor, J., concurring). Here, the temporal proximity was nearly instantaneous. Agent Souza threatened to detain Ms. Zilko immediately after she used profanity to criticize him. Prior to the detention Ms. Zilko had had no opportunity to do anything *other* than approach the car, try to film, and use profanity—all First Amendment-protected activities. That the threat of detention came immediately after Ms. Zilko did those things shows that the violent detention was motivated by her engagement in protected activity. Agent Souza’s detention of Ms. Zilko was therefore unlawful retaliation for her exercise of her First Amendment rights.

III. Agent Souza’s excessive force violated Ms. Zilko’s Fourth Amendment rights.

Pinning and restraining a person against a car is a detention that may constitute excessive force, even if it occurs only briefly. *Wilkey*, 43 Fed. Appx. 925; *Graham v. Connor*, 490 U.S. 386 (1989). Agent Souza’s behavior must therefore be evaluated under the Fourth Amendment’s reasonableness standard, balancing the “intrusion on the individual’s Fourth Amendment interests against the countervailing governmental interests at stake.” *Graham*, 490 U.S. at 396 (cleaned up). This in turn requires evaluating “the severity of the crime at issue, whether the [individual] poses an immediate threat to the safety of the officers or others, and whether [she] is actively resisting arrest or attempting to evade arrest by flight.” *Id.* Each of these factors weighs heavily in Ms. Zilko’s favor, showing that Agent Souza’s excessive force violated Ms. Zilko’s Fourth Amendment rights.

First, Ms. Zilko did not receive any criminal charges and there was no crime at issue at all. To the contrary, everything Ms. Zilko did before Agent Souza detained her—approach the detained car, try to film, and try to speak with the detainees—Agent Donnelly allowed her to do immediately after Agent Souza detained her, showing that these actions were lawful. *Second*, that Ms. Zilko was allowed to do all of those things also demonstrates that she posed no safety risk to Agent Souza when she attempted to do them. To the contrary, before being assaulted Ms. Zilko made a conscious effort to keep her arms and hands visible. And *third*, Ms. Zilko made no attempt to dodge detention at all. Taken together, these factors show that Agent Souza’s use of force was unreasonable and violated Ms. Zilko’s Fourth Amendment rights.

Conclusion

When Ms. Zilko witnessed an illegal traffic stop that could have dire consequences for the people involved, she took lawful actions to assist them, attempting to document the stop and to provide information to the people detained. Agent Souza violated her First and Fourth Amendment rights by violently detaining her in retaliation for those actions; and the initial traffic stop likely violated the Fourth Amendment rights of the two Hispanic people who were detained. Ms. Zilko still does not understand why this traffic stop happened and why the agents were unable to provide any explanation despite her repeated questions. On behalf of Ms. Zilko, we respectfully request the following documents, with the goal of helping Ms. Zilko better understand what she observed and experienced:

1. any incident reports or other documents related to the above-described incidents (including both the traffic stop and the interactions with Ms. Zilko); and
2. all policies or other documents describing CBP's authority to conduct traffic stops in Maine.

We look forward to your response.

Respectfully,



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