

# United States Senate

March 16, 2020

Kenneth T. Cuccinelli  
Senior Official Performing the Duties of the  
Deputy Secretary for the Department of Homeland Security  
Department of Homeland Security  
2801 Nebraska Avenue NW  
Washington, D.C. 20528

Dear Mr. Cuccinelli:

During a March 5, 2020 hearing before the Senate Committee on Homeland Security and Governmental Affairs entitled “The Federal Interagency Response to the Coronavirus and Preparing for Future Global Pandemics,” I asked you whether the U.S. Department of Homeland Security (DHS) was willing to issue a public statement that U.S. Immigration and Customs Enforcement (ICE) will not conduct enforcement actions at certain public health facilities during the current coronavirus pandemic. You responded that ICE had issued a statement on March 4, apparently referencing an e-mail ICE provided to the press rather than a formal statement that is clear and easily accessible to the public.<sup>1</sup> During this serious public health crisis, it is critical to ensure that everyone, including our immigrant communities, feel safe seeking any necessary medical attention. Accordingly, I write to request that DHS issue a formal, public statement that clearly and accessibly communicates that both ICE and U.S. Customs and Border Protection (CBP) will not conduct enforcement actions at public health facilities during the ongoing coronavirus pandemic.

On March 5, you testified that “[ICE] do[es] not do enforcement in healthcare facilities absent single case exigent circumstances. So there is no reason anyone should expect that law enforcement to take place.” The next day, DHS confirmed to my office that “ICE considers medical facilities like hospitals, doctors['] offices and health clinics to be sensitive locations. The agency avoids immigration enforcement actions at sensitive locations unless exigent circumstances exist . . . individuals seeking medical treatment for the virus should continue to do so without fear or hesitation. Claims to the contrary are false and create unnecessary fear within communities.”

As you acknowledged during your testimony, ICE’s existing policies indeed state that immigration enforcement actions at “sensitive locations,” including medical treatment and health care facilities, such as hospitals, doctors’ offices, accredited health clinics, and emergent or urgent care facilities, should only occur under “exigent circumstances, if other law enforcement actions have led officers to a sensitive location, or with prior approval from an appropriate

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<sup>1</sup> See Monique O. Madan, Miami Herald, “Immigration officials vow not to raid hospitals as coronavirus spreads” (Mar. 4, 2020), available at <https://www.miamiherald.com/news/local/immigration/article240805776.html>.

supervisory official.”<sup>2</sup> CBP policies similarly dictate that enforcement at sensitive locations “should generally be avoided” and that “ICE and CBP officers and agents [should] exercise sound judgment when enforcing federal law at or focused on sensitive locations,” including “hospitals.”<sup>3</sup> However, I am concerned by recent reports that sensitive locations policies are inconsistently enforced<sup>4</sup> and that “[t]he presence of immigration authorities is becoming increasingly common at health care facilities around the country.”<sup>5</sup> As my Senate colleagues and I noted in a March 4, 2020 letter to DHS, the agency has issued statements regarding applicable “sensitive locations” policies during specific emergencies in the past during, for example, Tropical Storm Barry as well as Hurricanes Harvey, Irma, Florence, and Dorian.<sup>6</sup> The current public health crisis is equally as serious and merits a clear and unequivocal statement from your agency.

Fear of immigration enforcement activities could cause people in our immigrant communities to hesitate to seek medical attention if they exhibit symptoms of the coronavirus. Failure to timely seek medical attention could lead to further transmissions of the coronavirus, making all of our communities less safe.

Therefore, DHS should issue a statement to the public at large confirming that the “sensitive locations” policy applies during the ongoing coronavirus pandemic. First, any statement you issue should clearly state that the “sensitive locations” policy applies broadly to any and all public health facilities critical to responding to the spread of coronavirus, including hospitals, doctors’ offices, accredited health clinics, emergent or urgent care facilities, and COVID-19 testing and quarantine sites. Second, the statement should clarify that the “sensitive locations” policy includes all immigration enforcement actions, including actions taken by both ICE and CBP. Third, the statement should be prominently available to the public in a standalone advisory, rather than being contained in FAQ documents or responses to inquiries in specific publications. Fourth, I request that DHS distribute guidance regarding the policy’s implementation to all DHS personnel to ensure that it is consistently applied throughout the United States.

Based on your previous testimony, we are in agreement that immigration enforcement should not take place at sensitive locations, specifically including hospitals and other health care facilities, during this public health crisis and that immigrant communities should not fear seeking medical attention. I look forward to working with you to ensure that DHS sensitive locations policies are

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<sup>2</sup> U.S. Department of Homeland Security, “FAQ on Sensitive Locations and Courthouse Arrests,” *available at* <https://www.ice.gov/ero/enforcement/sensitive-loc>; Letter from Sens. Elizabeth Warren, Kamala D. Harris, *et al.* to Acting Secretary Chad F. Wolf, Acting Commissioner Mark A. Morgan, and Deputy Director and Senior Official Performing the Duties of the Director of ICE Matthew T. Albence (Mar. 4, 2020), *available at* <https://www.menendez.senate.gov/imo/media/doc/2020.03.04%20Letter%20to%20DHS,%20ICE,%20and%20CBP%20re%20Halting%20Immigration%20Enforcement%20near%20hospitals.pdf> [March 4 Letter].

<sup>3</sup> CBP, FAQs, *available at* <https://www.cbp.gov/faqs/what-do-department-homeland-security-policies-require-enforcement-actions-be-carried-out>.

<sup>4</sup> *See* Physicians for Human Rights, “Establishing Sanctuary Hospitals: Protecting the Right to Access Health Care,” *available at* <https://phr.org/wp-content/uploads/2019/09/PHR-Sanctuary-Hospitals-Fact-Sheet-FINAL.pdf>.

<sup>5</sup> Adriana Gomez Licon, Associated Press, “Border Patrol’s growing presence at hospitals creates fear” (Oct. 17, 2019), *available at* <https://apnews.com/52a38ce1d4b84e289b8073b47674514e>.

<sup>6</sup> March 4 Letter.

publicized as clearly and effectively as possible and applied by DHS personnel in a manner that best protects our communities.

Thank you for your attention to this important matter. I request that you confirm to my office that DHS will be issuing a public statement and provide a copy of that statement as well as any related guidance issued to DHS personnel by March 18, 2020.

Sincerely,



KAMALA D. HARRIS  
U.S. Senator