

Via Email

April 13, 2020

Roy D. Villareal
Chief Patrol Agent
Tucson Sector, U.S. Border Patrol
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Dear Chief Villareal:

The undersigned organizations write to raise our concerns regarding Customs and Border Protection (CBP)'s failure to suspend interior enforcement, particularly at sensitive locations,¹ in light of the COVID-19 pandemic. We are particularly concerned by recent reports of agents at a hospital providing testing. We request that your sector take immediate steps to: 1) suspend enforcement at sensitive locations, including hospitals, schools, places of worship, and courthouses, as well as places where public access and operations are deemed essential under current federal or state shelter-in-place orders;² and 2) publicly assure border communities that Border Patrol will refrain from enforcement that would interfere with access to essential services.

The disease known as COVID-19, caused by a novel coronavirus never before seen in humans, was confirmed as a global pandemic by the World Health Organization ("WHO") on March 11, 2020.³ COVID-19 has presented an unprecedented challenge to the U.S. healthcare system that requires a proportionate response. Currently, the U.S. has the highest number of confirmed COVID-19 cases of any country in the world.⁴ Current public health models show the U.S. is nowhere near "flattening the

¹ U.S. Customs and Border Protection, "What does the Department of Homeland Security mean by the term "sensitive location"?", <https://www.cbp.gov/faqs/what-does-department-homeland-security-mean-term-%E2%80%9Csensitive-location%E2%80%9D>

² Current executive order in Arizona defines "essential services" to include food banks, grocery stores, pharmacies, gas stations, rehab centers, among others; *See* Office of the Governor, Governor Ducey Issues Executive Order Detailing "Essential Services," <https://azgovernor.gov/governor/news/2020/03/list-essential-services>

³ *WHO Director-General's opening remarks at the media briefing on COVID-19*, WORLD HEALTH ORG. (Mar. 11, 2020), <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020>

⁴ New York Times "Coronavirus Map: Tracking the Global Outbreak," New York Times. (April 2, 2020), available at: <https://www.nytimes.com/interactive/2020/world/coronavirus-maps.html>

curve” due to the increase of “new cases confirmed each day” with a predicted “peak in the number of hospitalizations in May, with a strong possibility of a second peak sometime this fall.”⁵

Despite the outbreak of COVID-19 in Arizona communities, community members have reported the presence of Border Patrol, CBP’s enforcement arm, at hospitals that are providing free drive-thru testing for community members. Last year, CBP was criticized for deploying agents conspicuously at hospital entrances and pressuring doctors to discharge patients quickly for further detention.⁶ CBP’s actions disregard the detriment to public health that their presence at hospitals and other sensitive locations creates. The agency appears to be failing to follow public health best practices in this regard. Notably, CBP has not publicly confirmed that they will refrain from enforcement at sensitive locations in order to encourage necessary access to essential services.

Enforcement that deters access to medical care and other essential services is wrong during normal times, but is particularly antithetical to the public health needs of the current crisis. According to over 800 public health officials and organizations the “highest priority needs to be placed on allowing people to voluntarily cooperate with public health advice about prevention.”⁷ Allowing individuals to cooperate with public health advice includes unimpeded access to COVID-19 testing, medical facilities, and the stores where they can buy necessary medicine, sanitary and hygiene supplies. Public health experts specifically advise that “[h]ealthcare facilities must be immigration enforcement-free zones so that immigration status does not prevent a person from seeking care.”⁸

The slow pace of testing has already had disastrous effects within the U.S. by exponentially increasing the spread of COVID-19.⁹ Because individuals can be

⁵ See “New Cases of COVID-19 In World Countries,” John Hopkins University, <https://coronavirus.jhu.edu/data/new-cases>; Christen Brownlee, Dangerous Curve: Predicting the Coronavirus Peak, John Hopkins University (March 31, 2020), <https://www.jhsph.edu/covid-19/articles/dangerous-curve-predicting-the-coronavirus-peak.html>

⁶ Sheri Fink, *Migrants in Custody at Hospitals Are Treated Like Felons, Doctors Say*, N.Y. TIMES, June 10, 2019, <https://www.nytimes.com/2019/06/10/us/border-migrants-medical-health-doctors.html>

⁷ “Achieving A Fair and Effective COVID-19 Response: An Open Letter to Vice-President Mike Pence, and Other Federal, State and Local Leaders from Public Health and Legal Experts in the United States,” Gonsalvez, Gregg et. al. (Mar. 2, 2020), https://law.yale.edu/sites/default/files/area/center/ghjp/documents/final_covid-19_letter_from_public_health_and_legal_experts.pdf.

⁸ *Id.* at page 2.

⁹ Alltucker, Ken. “Labs are testing 100,000 people each day for the coronavirus. That's still not enough.” USA Today (April 2, 2020), available at: <https://www.usatoday.com/story/news/health/2020/04/02/coronavirus-testing-number-labs-covid/5099458002/>

asymptomatic carriers, meaning they can transmit the virus to others without showing symptoms, and due to the high transmission rate of COVID-19, increased testing cannot be impeded.¹⁰

CBP, in a 2013 memo issued by former Deputy Commissioner Aguilar, recognized that particular care is needed when conducting enforcement activities at or near certain sensitive locations including hospitals, schools, and places of worship.¹¹ That memo instructed officers to consult supervisors prior to taking action and consider alternative measures to avoid disturbances at such locations. If CBP activities are likely to lead to an apprehension near a sensitive location, written approval has been previously required from Border Patrol leadership.¹² It is unclear whether the agency purports to continue to follow these previously delineated requirements. At a minimum, CBP should reaffirm its commitment to its 2013 sensitive locations memo and expand the list of covered locations to those listed above.

To ensure community members are able to access essential services -including testing and treatment locations- free from fear of arrest, CBP must suspend enforcement at sensitive locations and at all places where public access and operations are deemed essential under current federal or state shelter-in-place orders. The agency must publicly confirm they will not conduct enforcement at such locations during the COVID-19 pandemic, and ensure their agents are not present at such locations.

We remain available to discuss these concerns. Please contact Yvette Borja, Staff Attorney for the ACLU of Arizona, at yborja@acluaz.org and Cynthia Pompa, Advocacy Manager for the ACLU Border Rights Center, at cpompa@aclutx.org.

¹⁰ Chen, Caroline. “What We Need to Understand About Asymptomatic Carriers if We’re Going to Beat Coronavirus,” ProPublica (April 2, 2020), available at: <https://www.propublica.org/article/what-we-need-to-understand-about-asymptomatic-carriers-if-were-going-to-beat-coronavirus>

¹¹ U.S. Customs and Border Protection Memorandum regarding *U.S. Customs and Border Protection Enforcement Actions at or Near Certain Community Locations*, Jan. 18, 2013, https://foiarr.cbp.gov/docs/Policies_and_Procedures/2013/826326181_1251/1302211111_CBP_Enforcement_Actions_at_or_Near_Certain_Community_Locations_%7BSigned_M.pdf

¹² *Id.*

Sincerely,

ACLU of Arizona

ACLU Border Rights Center

Alliance for Global Justice

Borderlinks

Coalición de Derechos Humanos

End Streamline Coalition

Florence Immigrant and Refugee Rights Project

Green Valley Samaritans

Indivisible Tohono

Kino Border Initiative

Los Abogados Hispanic Bar Association

Migrant Quilt Project

Mijente

Multnomah Monthly Meeting of Society of Friends

No More Deaths/No Más Muertes

Pima Community College

People Helping People in the Border Zone

People's Defense Initiative

Puente Human Rights Movement

St. Francis in the Foothills United Methodist Church

St. Mark's Presbyterian Church

Tucson Samaritans

Copy to:

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Border Community Liason

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