

# Not in My Exam Room

How U.S. Immigration Enforcement Is  
Obstructing Medical Care

June 2019





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*Cover: Doctors, nurses, and medical students protest in Tornillo, Texas in June 2018 to demand the reunification of 2,700 migrant children with their families amidst public outcry over the U.S. administration's family separation policy.  
Photo: Paul Ratje/  
AFP/Getty Images*

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# Executive Summary

*Public health research has documented widening racial and ethnic health disparities as a result of punitive and discriminatory immigration enforcement practices within the militarized border zone.*

Across communities that line the United States' southern border with Mexico, U.S. immigration enforcement actions in or near hospitals, clinics, and other health care facilities are putting increasing pressure on medical professionals to compromise patient care. Customs and Border Patrol agents conduct searches in hospital parking lots and hold ambulances at checkpoints while critically ill patients languish inside. Agents arrest patients about to undergo surgery, stand guard and refuse to unshackle patients during medical evaluations, and send undocumented patients into detention directly from hospitals, at times putting safe medical discharge into question.

U.S. and international laws protect the right to nondiscriminatory access to health care for all individuals. But, in certain instances, loopholes permit enforcement actions in medical facilities which interfere with this right and with the ethical obligation of medical professionals to provide care. Through consultations with medical professionals in border communities and across the United States, as well as through desk research, Physicians for Human Rights (PHR) has uncovered cases of egregious violations where medical advice was ignored and patients undergoing urgent treatment were arrested and their treatment impeded.

While amending laws and adopting new ones would help solve this problem, there are measures that the medical community can take immediately to help protect patients and providers. This brief examines the impact of enforcement actions on access to health care for hospitalized immigrants, whether in the community or in government custody. It also serves as a resource for policymakers, medical associations, and medical professionals to take concrete action and to advocate for policy solutions, including the notion of creating “sanctuary” or “safe space” hospitals.

# Introduction

The ability of providers to practice evidence-based medicine is hindered by U.S. immigration enforcement actions that disrupt or impede patient treatment. In addition to forcing clinicians to compromise their ethical obligations, these actions may also violate U.S. laws and policies intended to secure fundamental ethical and legal protections for everyone, including noncitizens. These basic rights include non-discrimination and protections to ensure patient privacy and confidentiality.

Furthermore, when immigration actions take place in clinical care settings, current and potential patients, fearful of interactions with immigration agents, avoid seeking medical care,<sup>1</sup> despite their fundamental right to do so under domestic and international law.<sup>2</sup> One health professional described this issue to PHR: “People without papers, they don’t go to the doctor unless it’s really serious. So, by the time they end up at the hospital, they’re dealing with a physical crisis, job insecurity, mental health issues, and emotional trauma.”<sup>3</sup> Meanwhile, routine immigration enforcement practices can cause additional, unnecessary mental and physical health problems for immigrants.<sup>4</sup>

Certain immigration enforcement actions in clinical settings also place medical professionals under dual loyalty pressures – situations in which their professional duty to their patients is at odds with directives from an employer or governmental authority. These generate moral distress for clinicians and can compromise patient care. In light of the extremely vulnerable positions of some patients, health professionals have very strong and clear obligations to uphold several core ethical standards, including providing non-prejudicial care and serving as protectors of basic patient rights. A lack of explicit conversations on the legal obligations of medical staff in the context of immigration enforcement can lead to care that is dangerous and ethically inadequate. This brief explores in depth one particular context where dual loyalty issues arise, that of immigration enforcement actions taking place in or near health facilities.

Clinical care providers in Los Angeles, Houston, Brownsville, Tucson and elsewhere expressed concerns about these incidents during interviews with PHR conducted between June and September 2018. During 2018, a number of clinicians who provide medical and psychological evaluations for asylum seekers also reported to PHR that harsh and arbitrary immigration enforcement actions are an emerging concern in their health facilities. PHR has not collected comprehensive information to pinpoint the prevalence and impact of these practices. Further empirical research is urgently needed, but our preliminary findings support taking action to protect patients and professionals now.

## What is a Sanctuary Hospital?

*“Sanctuary hospital” is a term to describe the concept of a safe space where patients’ rights are uniformly protected by providers and respected by government authorities.*

There is no precise definition of “sanctuary hospital” in law or medical ethics, as it is generally assumed that hospitals are and should be safe spaces. The need for this relatively new concept emerged due to the recent rise in enforcement actions in and around medical centers and the resulting fear among immigrants of seeking medical

attention. In this brief, the term “sanctuary hospital” is used to capture the concept of a safe space where patients’ rights are uniformly protected and where practical measures are implemented to achieve this outcome. In this sense, a sanctuary hospital will have policies that: direct staff on how to interact with immigration agents; explain how to approach immigration issues with patients; note the best way to record relevant patient information; and clarify obligations under the Health Insurance Portability and Accountability Act as pertaining to immigrant patients.<sup>5</sup>

## How U.S. Immigration Actions Interfere with Medical Care

### Immigration Enforcement Actions Violate Policy That Protects Health Care Settings

*Sara Beltran-Hernandez was waiting to undergo an urgent neurological assessment when she was abruptly discharged, shackled, and returned to detention by ICE officers.*

The right to non-discriminatory access to health care for all people is protected by U.S. laws and policies. Historically, the government’s policy was consistent with human rights and medical ethics, as it recognized medical facilities as “sensitive locations,” where enforcement operations should not occur absent “exigent circumstances” or prior supervisory approval.<sup>6</sup> According to the U.S. Immigration and Customs Enforcement (ICE) and U.S. Customs and Border Protection (CBP) Sensitive Locations policy, “exigent circumstances” include those involving national security, terrorism, public safety, or the imminent risk of destruction of evidence pertaining to a criminal matter.<sup>7</sup> The underlying rationale for this policy is the same as for medical ethical standards on access, non-discrimination, and privacy: securing access to medical care is good for both the sick and for public health generally. However, in recent years, violations of the Sensitive Locations policy by agencies responsible for immigration enforcement have been reported with increasing frequency throughout the United States. For instance, while being treated at a community hospital after collapsing in ICE detention, Sara Beltran-Hernandez was waiting to undergo an urgent neurological assessment when she was abruptly discharged, shackled, and returned to detention by ICE officers.<sup>8</sup> In another instance, ICE agents watched a patient leave the hospital, barely waiting until he was off the campus to arrest him.<sup>9</sup> ICE has controversially maintained that these agents’ actions were compliant with the Sensitive Locations policy.<sup>10</sup> Furthermore, ICE officials have, on multiple occasions, approached or detained family members of people requiring medical attention; this affects patients’ emotional well-being as well as practical matters such as transportation to and from care. Jose de Jesus Martinez was reportedly visiting his injured son in the intensive care unit of a San Antonio hospital when ICE agents entered and accosted him.<sup>11</sup> Oscar Millan was reportedly arrested while attempting to pick up his newborn son from a hospital in Boston,<sup>12</sup> and Joel Arrona was detained by ICE while driving his pregnant wife to a hospital for a cesarean section, leaving her to drive herself to the hospital alone to deliver her baby.<sup>13</sup>

## Actions in the Border Zone Impede Access to Medical Attention

The Sensitive Locations policy offers more limited protections to patients and providers in border states, where CBP is the primary enforcement agency. Protections are applied differently “within the immediate vicinity of the border;” here, CBP agents are only required to act with “sound judgement and common sense” while operating consistent with the policy’s goals.<sup>14</sup> CBP has interpreted the “immediate vicinity” language to apply to any location within 100 miles of the border.<sup>15</sup> The policy lists operations in the vicinity of the border as: “searches at ports of entry, activities undertaken where there is reasonable certainty that an individual just crossed the border, and circumstances where agents have maintained surveillance of a subject since crossing the border,” among others.<sup>16</sup>

Despite this expansive government interpretation of its own enforcement authority in the 100-mile zone, reports of incidents raise questions as to CBP’s compliance with the policy. For example, Rosa Maria Hernandez, a 10-year-old with cerebral palsy in need of emergency gallbladder surgery, was arrested by CBP agents while she was being transferred by ambulance between two hospitals.<sup>17</sup> Agents followed the ambulance to the hospital, demanded that the door to Rosa’s hospital room remain open throughout her hospital stay, and, despite medical advice regarding the need for a safe discharge back to her family, instead immediately transported her to a juvenile facility upon discharge.<sup>18</sup> Furthermore, CBP agents have conducted searches in hospital parking lots and have stopped and held an ambulance at an immigration checkpoint despite the presence of a patient in critical condition on board.<sup>19</sup> Four different medical professionals in Arizona informed PHR that CBP agents regularly park in front of the hospital emergency room, presumably to use medical care to target undocumented immigrants for enforcement.<sup>20</sup>

*Rosa Maria Hernandez, a 10-year-old with cerebral palsy in need of emergency gallbladder surgery, was arrested by CBP agents while she was being transferred by ambulance between two hospitals.*

## Interference with Medical Care for Patients in Custody

Immigration officials have allegedly used information disclosed to mental health professionals by children in immigration custody, raising concerns over patient privacy and medical ethics. Attorneys report that information shared by unaccompanied children in therapy sessions is increasingly being accessed by immigration authorities and then used as evidence in immigration court hearings.<sup>21</sup> The information is reportedly used to facilitate deportation and justify higher levels of detention.<sup>22</sup> It is unclear whether the Health Insurance Portability and Accountability Act (HIPAA) protects the children in this situation.<sup>23</sup> However, the disclosure of such information raises ethical concerns about the privacy of those interactions with vulnerable children, especially if the medical professionals are aware that the information will be used against the child’s best interests.<sup>24</sup>

*“I couldn’t think of the rationale of chaining someone who is so sick he almost died.”  
Sara Vasquez, MD, Tucson, AZ*

Even when ICE seeks medical attention for people in custody, the agency maintains that the person is still “detained,” which can interfere with the ability of medical providers to help the patient. In one instance, a patient was transported to a Houston hospital from a detention center because he had metastatic cancer and was only expected to live a few more weeks.<sup>25</sup> The patient’s doctor was unable to adequately examine him due to the fact that the patient had restraints running across his body, despite not posing a danger to anyone due to his weakened state.<sup>26</sup> The doctor requested that detention officers remove the restraints, to no avail.<sup>27</sup> In another case, a patient in immigration custody receiving medical attention was shackled; agents gave no response as to why the restraints were necessary for this critically ill patient when repeatedly asked by the patient’s doctor.<sup>28</sup> “I couldn’t think of the rationale of chaining someone who is so sick he almost died,” she told PHR.<sup>29</sup> Since physical restraints can pose health dangers to patients, the current standards of the Joint Commission, the oldest and largest standards-setting and accrediting body in U.S. health care, require that the least restrictive intervention be used at all times.<sup>30</sup>

Determining the prevalence of situations like these will require further research: ICE and CBP refuse to disclose information about detention sites, which contributes to a lack of accountability for violations. Between 1995 and 2017, at least 80 different hospitals were utilized by ICE in 18 states, which indicates that enforcement actions may affect a significant number of patients and providers.<sup>31</sup> Considering that this data does not include CBP detainees, the numbers of people detained and hospitals used by immigration officials are likely much greater.

*Information shared by unaccompanied children in therapy sessions is increasingly being accessed by immigration authorities and then used as evidence in immigration court hearings ... to facilitate deportation and justify higher levels of detention.*

## Severe Consequences of Enforcement Actions in Health Care Facilities

### Impact on Standard of Care

Enforcement actions by Immigration and Customs Enforcement (ICE) and Customs and Border Protection (CBP) severely disrupt the quality of medical services provided to noncitizens in custody, while health facilities and personnel have differing perceptions and awareness of the ethics, legality, and impact of immigration enforcement on patients.<sup>32</sup> Emergency and primary care physicians in Everett, Massachusetts, reported that fear of immigration enforcement led to increased health care avoidance, stress, and anxiety.<sup>33</sup> Medical personnel in Arizona hospitals report that CBP’s enforcement actions compromise the standard of care provided.<sup>34</sup> For example, the presence of enforcement agents can deter patients from telling medical professionals the truth to avoid self-incrimination, which can affect the treatment provided.<sup>35</sup> Physicians also reported that some agents have insisted on leaving patients in critical condition in shackles, which may affect the ability to examine the

patient or run diagnostic tests.<sup>36</sup> According to professionals in Arizona, patients can be returned to detention or deported at ICE's discretion following medical attention; patients then have decreased access to follow-up care and the ability to fully recover is inhibited.<sup>37</sup>

## Impact on the Patient's Right to Privacy

Enforcement actions interfere with patient confidentiality and the right to privacy. Medical professionals in the Tucson area received complaints that certain hospitals had informed immigration officials of patients' immigration status, raising concerns regarding the protection of patient information.<sup>38</sup> In a Texas gynecological office, staff called local authorities after they suspected that an undocumented patient's identification was fraudulent, potentially violating health privacy law. The staff led the patient to an exam room, where sheriff deputies arrested her and reportedly threatened deportation.<sup>39</sup> Furthermore, ICE and CBP require the presence of guards at all times, even during medical evaluations; meaning that conversations between medical providers and patients are not private.<sup>40</sup> Even where medical professionals recognize the harms of these acts, they often felt powerless against immigration officials.<sup>41</sup> Medical staff report feeling too intimidated by the armed agents to stand up to ICE or CBP enforcement actions against their patients, or to face hospital administration that is unwilling to become involved when clinicians advocate on the patient's behalf.<sup>42</sup>

*ICE and CBP require the presence of guards at all times, even during medical evaluations. . . . Medical staff report feeling too intimidated by the armed agents to stand up to ICE or CBP enforcement actions against their patients.*

## Noncitizens Are Afraid to Seek Medical Attention

Law enforcement actions also impede access to medical care for noncitizens who are not in detention. The increased presence of ICE or CBP agents at medical facilities has led to patients missing or cancelling routine appointments, or even emergency visits, in greater numbers.<sup>43</sup> Many people have refused to seek medical services altogether.<sup>44</sup> One patient, Ahmed, avoided going to the hospital out of fear of immigration repercussions, despite his need for urgent care.<sup>45</sup> Ahmed's condition became so severe that he nearly died.<sup>46</sup> A medical professional in California described a case where a man was afraid to seek care for his father, who was in cardiac arrest.<sup>47</sup> By the time the man brought his father to the hospital, his father was dead.<sup>48</sup> As one medical professional explained, "people are fearful of accessing any service where they are asked their address or any other identifying information."<sup>49</sup>

Common health problems such as obesity, diabetes, or hypertension worsen with reduced or interrupted treatment.<sup>50</sup> Furthermore, victims of domestic violence and other crimes avoid reporting their experiences to authorities or seeking medical attention, leaving their injuries untreated and their abusers without consequences.<sup>51</sup> In addition, medical professionals caution that large populations avoiding medical treatment could result in the spread of otherwise preventable disease or infection.<sup>52</sup>

The overall increase in immigration enforcement under the current administration<sup>53</sup> is aggravating existing health issues and causing new symptoms for those worried about their status, including stress, mental illness, and the worsening of PTSD symptoms.<sup>54</sup>

*“There was a man who[se] father ... was having cardiac arrest – by the time he brought his father to the hospital, he had died. He stated he was scared to come to the hospital.”*  
*Physician, Los Angeles, CA<sup>55</sup>*

### **Case Study: Hospital and U.S. Officials Trample Rights of a Terminally Ill, Schizophrenic Patient<sup>56</sup>**

*A case shared with PHR in June 2018 illustrates the harming of vulnerable patients due to interference with medical care, especially when hospital staff are not well informed about or ignore their ethical and legal obligations. ICE and hospital practices denied the right to legal counsel, failed to obtain informed consent, and initiated unsafe medical discharge.*

*A schizophrenic and terminally ill noncitizen in ICE custody was receiving medical care in a hospital in California. Before his death, the patient’s rights were repeatedly violated by ICE and hospital practices. The hospital actively obstructed his right to legal counsel. The patient was declared mentally incompetent by an immigration judge and was appointed counsel;<sup>57</sup> however, the patient’s attorney was kept from visiting him in the hospital. A hospital employee said ICE authorization was required, while an ICE official blamed the policy of the private prison contractor operating the detention facility. It took numerous conversations with ICE officials and hospital employees before the attorney was permitted to visit her client. Hospital staff failed to obtain informed consent from the patient, relying on consent obtained in English, though the patient did not understand English well. The hospital and ICE sought to discharge the patient, who was terminally ill, without coordinating any further care, on the basis that the patient “wanted to go home,” even though the patient was homeless, his prior home was 100 miles away, and he had no means of transportation. ICE and hospital staff failed to coordinate a safe medical discharge to hospice care for the patient and were only prevented from discharging him with no arrangement for post-discharge care – though he had no money, no friends or family, and no housing – after the patient’s attorney intervened and zealously advocated on his behalf. The attorney subsequently found a note in the patient’s medical records stating that the patient was “illegal” – a violation of the duty to provide medical treatment without discrimination enshrined by both the American Medical Association and the World Medical Association.<sup>58</sup>*

# Legal Framework

## Domestic Law Regulating Government Action

The right to non-discriminatory access to health care for all people is protected by U.S. laws and policies. Laws that were implemented to ensure individual rights have been interpreted to regulate government conduct to protect immigrants from unfair practices in certain instances. For example, the Equal Protection clause of the Fourteenth Amendment guarantees equal protection of the law without regard to race, ethnicity, or nationality.<sup>59</sup> As such, government actors must provide emergency medical services in a non-discriminatory way.<sup>60</sup> This applies to search and rescue operations in the desert along the southern border.<sup>61</sup> The ACLU of Arizona informed a county sheriff's department that its practice of referring 911 calls from people suspected of being undocumented to Customs and Border Patrol agents violated the Equal Protection clause.<sup>62</sup> Also, in the context of immigration detention, the Due Process Clause of the Fourteenth Amendment forbids officials from acting with "deliberate indifference to the serious medical needs" of detainees.<sup>63</sup> In addition, the Fourth Amendment protects health care facilities and patients from unreasonable searches and seizures by law enforcement agents.<sup>64</sup> Immigrants should be protected from acts by agents that violate these provisions.

## Domestic Law Regulating Medical Professionals

Laws and policies that regulate medical professionals also protect the right of immigrants to access health care. For instance, the Emergency Medical Treatment and Active Labor Act creates a legal obligation on staff in hospitals participating in Medicare and Medicaid programs to provide emergency medical care until the patient is stabilized.<sup>65</sup> Fundamental principles of medical ethics safeguard the confidentiality of health records, including for immigrant patients,<sup>66</sup> and oblige health care professionals to provide treatment without discriminating on the basis of race, ethnicity, or immigration status.<sup>67</sup> In addition, according to the American Medical Association Code of Medical Ethics, physicians have a moral obligation to provide treatment when a patient has a life-threatening condition.<sup>68</sup> Asylum seekers and other immigrants possess a right to non-discriminatory access to medical services and to enjoyment of equal guarantees of privacy and confidentiality.

## International Human Rights Law

The right to non-discriminatory access to medical care is also well established under international human rights law. Article 25(1) of the Universal Declaration of Human Rights states that "everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care."<sup>69</sup> The International Covenant on Economic, Social, and Cultural Rights codified the "right of everyone to the enjoyment of the highest attainable standard of physical and mental health."<sup>70</sup> The treaty requires signatories, which include the United States,<sup>71</sup> to take steps necessary to assure that all persons have access to medical services.<sup>72</sup> Implicit in this right is the concept of non-discrimination. Health care is especially vital for vulnerable or marginalized populations and must be accessible without regard to social<sup>73</sup> or immigration<sup>74</sup> status.

# How Medical Facilities and Staff Can Protect Patients' Rights

*“Most of our nurses work in sex crimes, child abuse, strangulation, and domestic violence – and are now being confronted regularly with immigration issues. Our office just had to put up notices on who to call in risk management if ICE arrives. It's horrible.”*

*Amanda Payne, forensic sexual assault nurse and PHR Asylum Network member<sup>75</sup>*

## Establishing a Policy of Non-Discrimination

Medical facilities, personnel, and associations can take actions to ensure that patients' rights are protected, so that health care facilities can be safe spaces for everyone. Patients have the right to be treated by a physician who is free to make decisions about ethical clinical treatment without outside interference.<sup>76</sup> This is consistent with international human rights norms, domestic law, and medical ethical standards. The American Medical Association has declared that medical professionals have an ethical duty not to discriminate on any basis not related to the case when providing medical care.<sup>77</sup> Moreover, the World Medical Association's guidelines prevent the influence of nationality, race, or any other factor on the quality of care given to the patient.<sup>78</sup> Thus, medical professionals shall not refuse to treat a patient on the basis of race, ethnicity, national origin, or immigration status.<sup>79</sup> In keeping with these principles, PHR urges medical facilities to adopt policies to treat any patient, irrespective of immigration status. Medical facilities should make these policies known to all staff and should inform staff that they are not required to report someone who is undocumented.

## Ensuring Confidentiality of Status and Information

Facilities should also adopt policies specifically prohibiting the recording of immigration status on medical records.<sup>80</sup> Alternatively, when a medical professional seeks to record status for the purpose of medical treatment, such as to obtain a referral, they can communicate verbally with other providers or use indirect phrasing in records, i.e. “immigration stressors.”<sup>81</sup> This ensures that the patient remains protected from discriminatory treatment by others or from law enforcement action.<sup>82</sup> Moreover, medical facilities should have a clear policy that ensures that any information collected from patients or any information about their treatment, diagnosis, and prognosis will be kept private, and specifically that information from medical records will not be shared with law enforcement, including Immigration and Customs Enforcement (ICE) and Customs and Border Protection (CBP), absent a court order. Patients should be assured that they are safe to seek medical treatment and that their information will be protected.

## Educate Staff to Protect Patients and Providers from Enforcement Actions

Facilities should educate their staff on patients' rights that could be violated by immigration action so that staff can take steps to protect those rights. For instance, the Fourth Amendment of the U.S. Constitution protects against unreasonable searches and seizures.<sup>83</sup> Whether a search or arrest is unreasonable depends upon whether a person would have a reasonable expectation of privacy in the place where the action occurred.<sup>84</sup> When there is a reasonable expectation of privacy, a search or seizure may not occur in that location without a judicially authorized warrant.<sup>85</sup> Patients should expect stringent privacy protections in all clinical settings, consistent with widely promulgated codes of health professional ethics. As such, medical facilities should ensure that waiting rooms, examination rooms, and other premises are as private as possible.<sup>86</sup> Staff should not permit law enforcement or immigration officials to conduct a search or arrest without a valid warrant. Also, staff should be aware of the "plain view doctrine," which allows law enforcement agents on the premises to access and use information obtained from anything in "plain view."<sup>87</sup> Thus, to protect patient confidentiality, staff should make sure to keep patient files and information out of sight.

## Maintain Privacy under HIPAA

Staff should also be reminded regularly that the Health Insurance Portability and Accountability Act (HIPAA) requirements should ensure that all patients' rights are respected regardless of immigration status. HIPAA protects against impermissible disclosures of any "personal health information," (PHI) which includes "any characteristic that could uniquely identify the individual."<sup>88</sup> In certain instances, this may include a patient's nationality or immigration status, in which case unauthorized disclosure would constitute an impermissible breach. Thus, staff cannot disclose PHI without the patient's prior knowledge and consent, absent certain circumstances where disclosure is permitted but not required, such as to facilitate payment, for health care operations, in response to a judicial order, or in referrals or consultations for treatment purposes.<sup>89</sup> In the event that disclosure of personal health information without patient consent is permitted by HIPAA, hospital staff should take measures to ensure that the patient's best interests are protected in deciding whether to divulge the information.<sup>90</sup> Considering the permanence of health records, providers are encouraged to minimize documentation and to avoid recording immigration status in patient records as it may expose patients to harm later, even if their immigration status has changed.<sup>91</sup> Informed consent of clients for recording immigration status should include an assurance of confidentiality, an explanation of their rights under privacy laws, and clinical empathy.<sup>92</sup>

## Preparing for Interactions with Agents

As a critical measure, health care facilities should prepare staff for a possible interaction with ICE or CBP. This may involve designating enforcement liaisons to mediate all interactions and communications with agents, creating an alert system to inform staff of the presence of immigration officials, developing a plan for responding to requests from ICE or CBP, and informing staff that they should contact the legal department if agents are present.<sup>93</sup> Staff should be made aware that a suspected

violation by ICE or CBP of the “Sensitive Locations” policy or of other rights and laws may be reported to ICE Enforcement and Removal Operations via the Detention Reporting and Information Line at (888) 251-4024 or [ERO.INFO@ice.dhs.gov](mailto:ERO.INFO@ice.dhs.gov) or to ICE Office of Diversity and Civil Rights, Civil Liberties Division, at (202) 732-0092 or [ICE.Civil.Liberties@ice.dhs.gov](mailto:ICE.Civil.Liberties@ice.dhs.gov).<sup>94</sup>

## Recommendations

### To Health Facilities:

- Establish a clear and explicit policy of non-discrimination on the basis of immigration status;
- Ensure confidentiality of status and patient information through prohibiting the recording of immigration status on medical records;
- Educate staff on patient rights that could be violated by immigration action – for example, not permitting searches of hospital rooms without a judicially authorized warrant;
- Maintain privacy under the Health Insurance Portability and Accountability Act (HIPAA) and always take measures to ensure that a patient’s best interests are protected, even when divulging permissible information;
- Prepare for interactions with agents through designating enforcement liaisons and creating alert systems and action plans.

### To Medical Associations:

- Issue clear guidance on ethical obligations to safeguard patient confidentiality and quality of care for the immigrant patient population in the face of increasingly harsh immigration enforcement activities;<sup>95</sup>
- Make clear the differences between professional ethical obligations and possible legal requirements, and, when these conflict to create dual loyalty dilemmas, adopt guidelines for professionals to follow;
- Issue clear statements to reinforce the ethical, medical, and public health rationales for protecting patient rights with regard to access to care, quality of care, and confidentiality of medical records;
- Educate health professionals and administrators on the rights of patients and the obligations of medical professionals regarding patient care through developing curriculum, highlighting issues, and offering training at professional association meetings;
- Advocate for the adoption of local or state policies that seek to protect access to medical attention for noncitizens, and prevent agents from engaging in deterrence through intimidation, both explicitly and implicitly.

### To Elected Officials:

- Support the adoption of a congressional bill that seeks to codify the Sensitive Locations policy into the Immigration and Nationality Act;<sup>96</sup>
- Exercise oversight of Department of Homeland Security agencies to ensure compliance with the Sensitive Locations policy;
- Support the adoption of state and local policies which safeguard sensitive locations.<sup>97</sup>

## To Academic Institutions:

- Support research to document the direct and indirect impacts of immigration enforcement actions on health care access and quality. Recent research with respect to the justice system provides one possible model.<sup>98</sup>

## To the Department of Homeland Security:

- Provide training for CBP and ICE agents, including ICE Health Services Corps, so that they are equipped to understand and respect medical ethics and to consider the medical needs of patients impacted by enforcement actions at all times;
- Fully investigate and sanction agents who violate guidelines and make the findings of those investigations public to ensure respect by all agents for the Sensitive Locations policy;
- Engage in ongoing consultations with independent medical providers in developing new policies and guidelines, and in evaluating health consequences of existing policies and practices.

# Endnotes

<sup>1</sup> Ann M. Cheney, et al., “Inequality and Health among Foreign-born Latinos in Rural Borderland Communities,” *Social Science and Medicine*, 215 (2018): 120; “Immigrant Families in America Today: How Fear and Toxic Stress are Affecting Daily Life, Well-being, and Health,” *The Henry J. Kaiser Family Foundation*, December 13, 2017, <https://www.kff.org/other/event/immigrant-families-in-america-today-how-fear-and-toxic-stress-is-affecting-daily-life-well-being-and-health/>.

<sup>2</sup> “Universal Declaration of Human Rights,” adopted Dec. 10, 1948, *United Nations Office of the High Commissioner of Human Rights*: 7, [https://www.ohchr.org/EN/UDHR/Documents/UDHR\\_Translations/eng.pdf](https://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf); “International Covenant on Economic, Social, and Cultural Rights,” opened for signature December 16, 1966, *United Nations Office of the High Commissioner of Human Rights*: 4, <https://www.ohchr.org/Documents/ProfessionalInterest/cescr.pdf>; “World Medical Association Declaration of Lisbon on the Rights of the Patient,” *34<sup>th</sup> World Medical Assembly*, Lisbon, Portugal, adopted Sep.-Oct., 1981 (reaffirmed April 2015): 1(a), <https://www.wma.net/policies-post/wma-declaration-of-lisbon-on-the-rights-of-the-patient/>.

<sup>3</sup> PHR Interview in Los Angeles, CA (June 21, 2018).

<sup>4</sup> Rajeev Bais, Breanne L. Grace, and Benjamin J. Roth, “The Violence of Uncertainty - Undermining Immigrant and Refugee Health,” *New England Journal of Medicine* 10, 379 (2018): 904, [https://sc.edu/study/colleges\\_schools/socialwork/documents/bre\\_grace\\_new\\_england\\_journal\\_of\\_medicine\\_090618.pdf](https://sc.edu/study/colleges_schools/socialwork/documents/bre_grace_new_england_journal_of_medicine_090618.pdf).

<sup>5</sup> “Sample Policies and Procedures,” *California Health + Advocates*, June 12, 2017. See infra “How Medical Facilities and Staff Can Protect Patients’ Rights.”

<sup>6</sup> “FAQ on Sensitive Locations and Courthouse Arrests,” *U.S. Immigration and Customs Enforcement*, last updated January 31, 2018, <https://www.ice.gov/ero/enforcement/sensitive-loc>. ICE considers “enforcement actions” to be “apprehensions, arrests, interviews, or searches, and surveillance for immigration enforcement purposes only.” Ibid.

<sup>7</sup> Ibid.

<sup>8</sup> Sameer Ahmed, Mitchell H. Katz, and Altaf Saadi, “Making the Case for Sanctuary Hospitals,” *Journal of American Medical Association* 318, 21 (2017): 2079-2080, <https://jamanetwork.com/journals/jama/article-abstract/2658246?redirect=true>; Barbara Demick, “Federal Agents in Texas Move Hospitalized Salvadoran Woman Awaiting Emergency Surgery to a Detention Facility,” *Los Angeles Times*, February 23, 2017, <https://www.latimes.com/nation/la-na-hospital-seizure-20170223-story.html>. ICE stated that the physicians determined that she was stable enough to be discharged.

<sup>9</sup> Katie Shepherd, “ICE Arrested an Undocumented Immigrant Just outside a Portland Hospital,” *Willamette Week*, October 31, 2017, <https://www.wweek.com/news/courts/2017/10/31/ice-arrested-an-undocumented-immigrant-just-outside-a-portland-hospital/>.

<sup>10</sup> Ibid.

<sup>11</sup> Ahmed, “Case for Sanctuary Hospitals,” 2079-2080.

<sup>12</sup> Ibid.

<sup>13</sup> Mariano Castillo, Artemis Moshtaghan, and Amir Vera, “Man Detained while Driving Pregnant Wife to Hospital has an Arrest Warrant in Mexico, ICE Says,” *CNN*, August 21, 2018, <https://www.cnn.com/2018/08/19/us/ice-detains-california-pregnant-womans-husband/index.html>.

<sup>14</sup> “FAQ on Sensitive Locations.” CBP is responsible for immigration enforcement at the border, while ICE typically operates elsewhere.

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<sup>15</sup> See “Guilty until Proven Innocent: Living in New Mexico’s 100 Mile Zone,” *ACLU of New Mexico*, May 2015, [https://www.aclu-nm.org/sites/default/files/wysiwyg/aclu-nm\\_guiltyuntilproveninnocentfinal5\\_15\\_2015\\_2.pdf](https://www.aclu-nm.org/sites/default/files/wysiwyg/aclu-nm_guiltyuntilproveninnocentfinal5_15_2015_2.pdf).

<sup>16</sup> *Ibid.*

<sup>17</sup> John Burnett and Scott Neuman, “10-Year-Old Girl is Detained by Border Patrol after Emergency Surgery,” *NPR*, October 26, 2017, <https://www.npr.org/sections/thetwo-way/2017/10/26/560149316/10-year-old-girl-is-detained-by-ice-officers-after-emergency-surgery>.

<sup>18</sup> *Ibid.*

<sup>19</sup> “Guilty until Proven Innocent,” 5, 10-11;

<sup>20</sup> PHR Interview in Tucson, AZ (June 26, 2018); PHR Interviews in Tucson, AZ (June 2018 and September 2018). The interviewees referred to at least three different hospitals in the Tucson area.

<sup>21</sup> Ella Nilsen, “Kids Who Cross the Border Meet with Therapists and Social Workers. What they Say can be Used Against them,” *Vox*, June 19, 2018, <https://www.vox.com/policy-and-politics/2018/6/18/17449150/family-separation-policy-immigration-dhs-orr-health-records-undocumented-kids>.

<sup>22</sup> *Ibid.*

<sup>23</sup> *Ibid.*

<sup>24</sup> *Ibid.*

<sup>25</sup> PHR Interview in Houston, TX (September 29, 2018).

<sup>26</sup> *Ibid.*

<sup>27</sup> *Ibid.*

<sup>28</sup> PHR Interview in Tucson, AZ (June 2018).

<sup>29</sup> PHR Interview in Tucson, AZ (June 26, 2018).

<sup>30</sup> “Joint Commission Standards on Restraint and Seclusion: Nonviolent Crisis Intervention Training Program,” Crisis Prevention Institute, 2009, accessed January 8, 2019, <https://www.crisisprevention.com/CPI/media/Media/Resources/alignments/Joint-Commission-Restraint-Seclusion-Alignment-2011.pdf>.

<sup>31</sup> On an average day in November 2017, ICE had custody of 38 individuals in 10 hospitals across five states: California (nine people); Florida (five); Michigan (one); South Carolina (19); and Texas (four). The Freedom of Information Act request was filed by the Immigrant Legal Resource Center and processed by the National Immigrant Justice Center. National Immigrant Justice Center, “ICE Detention Facilities as of November 2017,” <https://immigrantjustice.org/ice-detention-facilities-november-2017>.

<sup>32</sup> Jocelyn Chu, et al., “Provider’s Perspectives on the Impact of Immigration and Customs Enforcement (ICE) Activity on Immigrant Health,” *J Health Care Poor Underserved*, 23, 2 (2012): 665.

<sup>33</sup> *Ibid.*

<sup>34</sup> PHR Interview in Tucson, AZ (June 2018).

<sup>35</sup> *Ibid.*

<sup>36</sup> PHR Interview in Tucson, AZ (June 2018); PHR Interview in Houston, TX (September 29, 2018).

<sup>37</sup> PHR Interviews in Tucson, AZ (June 26, 2018).

<sup>38</sup> PHR Interviews in Tucson, AZ (June 2018).

<sup>39</sup> Amanda Marcotte, “Woman Arrested at OB-GYN’s Office for Being an Undocumented Immigrant,” *Slate*, September 14, 2015, <https://slate.com/human-interest/2015/09/woman-arrested-at-ob-gyn-office-her-crime-being-an-undocumented-immigrant.html>; Michael Barajas, “Woman Arrested at Gynecologist Appointment Could Face Deportation,” *Houston Press*, September 11, 2015, <https://www.houstonpress.com/news/woman-arrested-at-gynecologist-appointment-could-face-deportation-7754827>.

<sup>40</sup> PHR Interview in Tucson, AZ (June 2018); PHR Interview in Tucson, AZ (June 26, 2018); PHR Interview in Houston, TX (Sep. 29, 2018).

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- <sup>41</sup> PHR Interview in Tucson, AZ (June 2018); PHR Interview in Houston, TX (September 29, 2018).
- <sup>42</sup> PHR Interview in Houston, TX (September 29, 2018). The doctor interviewed explained how the hospital board did not want to combat ICE because they feared that the hospital would lose sources of funding. *Ibid.*
- <sup>43</sup> “Guilty until Proven Innocent,” 11; Bais, “The Violence of Uncertainty,” 904; Yvette S. Flores et al., “Fear of Discovery among Latino Immigrants Presenting to the Emergency Department,” *Academic Emergency Medicine*, 20, 2 (2013): 155-161.
- <sup>44</sup> PHR Interview in Tucson, AZ (June 2018); Ahmed, “Case for Sanctuary Hospitals,” 2079-2080; Bais, “The Violence of Uncertainty,” 904; Kim, “Should Immigration Status Information,” 9; “Public Health Actions for Immigrant Rights: A Short Guide to Protecting Undocumented Residents and their Families for the Benefit of Public Health and all Safety,” *Public Health Awakened*, February 2, 2018: 3-4.
- <sup>45</sup> Bais, “The Violence of Uncertainty,” 904.
- <sup>46</sup> *Ibid.*
- <sup>47</sup> PHR Interview in Los Angeles, CA (June 6, 2018).
- <sup>48</sup> *Ibid.*
- <sup>49</sup> PHR Interview in Tucson, AZ (June 2018).
- <sup>50</sup> Bais, “The Violence of Uncertainty,” 904; Ahmed, “Case for Sanctuary Hospitals,” 2079-2080.
- <sup>51</sup> Ahmed, “Case for Sanctuary Hospitals,” 2079; “Decline in Reporting of Crime among Hispanic Population,” *Los Angeles Police Department*, March 21, 2017, [http://www.lapdonline.org/home/news\\_view/61998](http://www.lapdonline.org/home/news_view/61998); “Public Health Actions,” 3-4.
- <sup>52</sup> Ahmed, “Case for Sanctuary Hospitals,” 2079-2080.
- <sup>53</sup> Amy Blair, Mark G. Kuczewski, and Johana Mejias-Beck, “Good Sanctuary Doctoring for Undocumented Patients,” *American Medical Association Journal of Ethics*, 21, 1 (2019): 78, [https://journalofethics.ama-assn.org/sites/journalofethics.ama-assn.org/files/2018-12/pfor1-1901\\_1.pdf](https://journalofethics.ama-assn.org/sites/journalofethics.ama-assn.org/files/2018-12/pfor1-1901_1.pdf); Kim, “Should Immigration Status Information,” 9.
- <sup>54</sup> Bais, “The Violence of Uncertainty,” 904-905; Blair, “Good Sanctuary Doctoring for,” 79; Jocelyn Chu et al., “The Impact of Immigration and Customs Enforcement on Immigrant Health: Perceptions of Immigrants in Everett, Massachusetts, USA,” *Soc Sci Med* 73, 586 (2011): 94; Jorge Delva et al., “Health Implications of an Immigration Raid: Findings from a Latino Community in the Midwestern United States,” *Journal Immigrant Minority Health* 19, 702 (2017): 708.
- <sup>55</sup> PHR Interview in Los Angeles, CA (June 6, 2018).
- <sup>56</sup> Case from PHR Interview with Esperanza Immigrant Rights Project Attorney in Los Angeles, CA (June 2018) and email communication with the attorney (October 2018).
- <sup>57</sup> *Franco Gonzalez v. Holder*, 767 F. Supp. 2d 1034 (C.D.C.A. 2010). Pursuant to this case, those declared mentally incompetent by a judge shall be afforded additional protections, including appointed counsel, to ensure that their rights are upheld throughout their proceedings. *See ibid.*; “Franco v. Holder,” *ACLU of Southern California*, accessed October 23, 2018, <https://www.aclusocal.org/en/cases/franco-v-holder>.
- <sup>58</sup> “Code of Medical Ethics;” “World Medical Association Declaration of Geneva,” *Second General Assembly of the World Medical Association*, Geneva, Switzerland, adopted September 1948 (last amended October 2017), <https://www.wma.net/policies-post/wma-declaration-of-geneva/>; “World Medical Association Statement on Patient Advocacy and Confidentiality,” *45<sup>th</sup> World Medical Assembly*, Budapest Hungary, adopted October 1993 (reaffirmed April 2016), <https://www.wma.net/policies-post/wma-statement-on-patient-advocacy-and-confidentiality/>.
- <sup>59</sup> U.S. Constitution, amend. XIV, sec. 2.
- <sup>60</sup> James Lyall, “Letter to Santa Cruz County Sheriff Tony Estrada,” *ACLU of Arizona*, May 27, 2015, [https://www.acluaz.org/sites/default/files/field\\_documents/aclu\\_letter\\_to\\_santa\\_cr](https://www.acluaz.org/sites/default/files/field_documents/aclu_letter_to_santa_cr)

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<sup>61</sup> James Lyall, “Letter to Santa Cruz County Sheriff Tony Estrada,” *ACLU of Arizona*, May 27, 2015, [https://www.acluaz.org/sites/default/files/field\\_documents/aclu\\_letter\\_to\\_santa\\_cr\\_uz\\_county\\_sheriffs\\_department\\_re\\_search\\_and\\_rescue.pdf](https://www.acluaz.org/sites/default/files/field_documents/aclu_letter_to_santa_cr_uz_county_sheriffs_department_re_search_and_rescue.pdf) (accessed December 17, 2018).

<sup>62</sup> *Ibid.*, 1-2.

<sup>63</sup> See *Estelle v. Gamble*, 429 U.S. 97, 103-04 (1976). See also *Revere v. Mass. Gen. Hosp.*, 463 U.S. 239, 244 (1983); *Gibson v. County of Washoe*, 290 F.3d 1175, 1187 (9<sup>th</sup> Cir. 2002) [overruled on other grounds].

<sup>64</sup> U.S. Constitution, amend. IV.

<sup>65</sup> Sconyers, “How Clinicians Should Treat,” 234. Such hospitals are subject to this obligation when a patient seeks medical attention in the hospital’s emergency room. *Ibid.*; 42 USC § 1395dd (b).

<sup>66</sup> “AMA Adopts New Policies to Improve Health of Immigrants and Refugees,” *American Medical Association*, June 12, 2017, <https://www.ama-assn.org/ama-adopts-new-policies-improve-health-immigrants-and-refugees>.

<sup>67</sup> Sconyers “How Should Clinicians Treat,” 233; “Code of Medical Ethics Opinion 1.1.2,” *American Medical Association*, accessed November 13, 2018, <https://www.ama-assn.org/delivering-care/prospective-patients>; Grace Kim, Uriel Sanchez Molina, and Altaf Saadi, “Should Immigration Status Information be Included in a Patient’s Health Record?,” *American Medical Association Journal of Ethics*, 21, 1 (2019): 10.

<sup>68</sup> Sconyers, “How Should Clinicians Treat,” 232.

<sup>69</sup> “Universal Declaration of Human Rights,” adopted Dec. 10, 1948, *United Nations Office of the High Commissioner of Human Rights*: 7, [https://www.ohchr.org/EN/UDHR/Documents/UDHR\\_Translations/eng.pdf](https://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf).

<sup>70</sup> “International Covenant on Economic, Social, and Cultural Rights,” opened for signature December 16, 1966, *United Nations Office of the High Commissioner of Human Rights*: 4, <https://www.ohchr.org/Documents/ProfessionalInterest/cescr.pdf>.

<sup>71</sup> The United States has signed but not ratified the ICESCR. However, according to Art 18 of the Vienna Convention on the Laws of Treaties, widely recognized as codifying customary international law, even prior to the entry into force, States which have signed a treaty are “obliged to refrain from acts which would defeat the object and purpose of a treaty.”

<sup>72</sup> “International Covenant on Economic, Social, and Cultural Rights,” opened for signature December 16, 1966, *United Nations Office of the High Commissioner of Human Rights*: 4, <https://www.ohchr.org/Documents/ProfessionalInterest/cescr.pdf>.

<sup>73</sup> CESCR General Comment No. 14, “The Right to the Highest Attainable Standard of Health” (Art. 12), E/C. Doc. 12/2000/4: 4, <http://www.refworld.org/pdffd/4538838do.pdf> [“Health facilities, goods and services must be within safe physical reach for all sections of the population, especially vulnerable or marginalized groups, such as ethnic minorities and indigenous populations...”].

<sup>74</sup> “International Convention on the Protection of Rights of all Migrant Workers and Members of their Families,” adopted December 18, 1990, *United Nations Office of the High Commissioner*: 11, 13-14, <https://www.ohchr.org/Documents/ProfessionalInterest/cmw.pdf>.

<sup>75</sup> Email communication with PHR staff, August 2018.

<sup>76</sup> “World Medical Association Declaration of Lisbon on the Rights of the Patient,” 1(b).

<sup>77</sup> Sconyers “How Should Clinicians Treat,” 233; “Code of Medical Ethics.”

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<sup>78</sup> “World Medical Association Declaration;” “World Medical Association Statement.”

<sup>79</sup> *Ibid.*

<sup>80</sup> Amy Blair, Mark Kuczewski, and Johana Mejias-Beck, “Sanctuary Doctoring,” (Presentation) *Loyola University Chicago Stritch School of Medicine*, June 2018, slide 4.

<sup>81</sup> Kim, “Should Immigration Status Information,” 10.

<sup>82</sup> *Ibid.*

<sup>83</sup> U.S. Constitution, amend. IV.

<sup>84</sup> “Sample Policies and Procedures,” 13-14.

<sup>85</sup> *Ibid.* Any warrant should be reviewed to ensure that it is signed by a judge or magistrate, states the address of the premises, and is being executed as specified in the document. “Protecting Immigrants’ Access to Health Care,” *National Immigration Law Center*, April 2017: 4.

<sup>86</sup> When considering whether there is a reasonable expectation of privacy in public places, courts consider factors including the number of people in the space; who has access to certain areas; how many people can access the space at any time; whether there are signs identifying rooms as private areas; and whether there is a security guard present at the entrance. “Sample Policies and Procedures,” 13-14.

<sup>87</sup> “Protecting Access to Health Care,” 2-3.

<sup>88</sup> *Ibid.*, 2; 45 C.F.R. § 160.103.

<sup>89</sup> Office for Civil Rights Privacy Brief, “Summary of the HIPAA Privacy Rule,” *U.S. Department of Health & Human Services*, May 2003: 4-9, <https://www.hhs.gov/sites/default/files/privacysummary.pdf>. See also Kim, “Should Immigration Status Information,” 11.

<sup>90</sup> *Ibid.*; 8 C.F.R. §§ 160.103, 164.504(c), 164.501.

<sup>91</sup> Kim, “Should Immigration Status Information,” 9-12.

<sup>92</sup> *Ibid.*

<sup>93</sup> “Sample Policies and Procedures,” 1.

<sup>94</sup> “FAQ on Sensitive Locations.”

<sup>95</sup> Sconyers “How Should Clinicians Treat,” 230-33; “Code of Medical Ethics.”

<sup>96</sup> U.S. Congress, House, *Protecting Sensitive Locations Act*, HR 1815, introduced in House March 30, 2017, <https://www.congress.gov/bill/115th-congress/house-bill/1815/text>; US Congress, Senate, *Protecting Sensitive Locations Act*, S 845, introduced in Senate April 5, 2017, <https://www.congress.gov/bill/115th-congress/senate-bill/845/text>.

<sup>97</sup> For example, California’s SB 54 requires the Attorney General to create model policies for adoption by medical facilities that limit cooperation with immigration enforcement as much as possible. California Legislature, *Law Enforcement: Sharing Data*, § 7284.8 (a), SB 54, enacted September 11, 2017, [https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=201720180SB54](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB54).

<sup>98</sup> “Freezing out Justice,” *American Civil Liberties Union*, 2018, [https://www.aclu.org/sites/default/files/field\\_document/rep18-icecourthouse-combined-relo1.pdf](https://www.aclu.org/sites/default/files/field_document/rep18-icecourthouse-combined-relo1.pdf). The ACLU’s report relied partly on interviews with law enforcement agents, court employees, judges, and lawyers.



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