

United States Senate

WASHINGTON, DC 20510

November 13, 2017

The Honorable Elaine Duke
Acting Secretary of Homeland Security
U.S. Department of Homeland Security
3801 Nebraska Avenue NW
Washington, DC 20528

The Honorable Kevin McAleenan
Acting Commissioner
U.S. Customs and Border Protection
1300 Pennsylvania Avenue NW
Washington, DC 20229

Dear Acting Secretary Duke and Acting Commissioner McAleenan:

We write to follow up on our previous inquiry regarding reports of violations of U.S. Customs and Border Protection (“CBP”) and U.S. Immigration and Customs Enforcement (“ICE”) policies on enforcement actions at sensitive locations.

On October 17, we wrote to share our concerns about reports of immigration enforcement agents apprehending undocumented immigrants at or near sensitive locations, such as schools, hospitals, and places of worship. As you know, these arrests run contrary to existing policy. A 2013 CBP memorandum, *U.S. Customs and Border Protection Enforcement Actions at or Near Certain Community Locations*, limits CBP’s ability to conduct enforcement actions at or focused on a sensitive location unless exigent circumstances exist or prior approval is obtained.¹ This CBP memorandum resembles a 2011 ICE memorandum that lays out similar rules.²

Since our letter, a new alleged violation of the policy has come to light. On the morning of October 24, R.M.H., a 10-year-old girl with cerebral palsy, and her cousin were on their way to Driscoll Children’s Hospital in Corpus Christi, Texas, where R.M.H. was scheduled to receive necessary gallbladder surgery.³ According to news reports and an October 31 lawsuit filed by the American Civil Liberties Union, they were stopped by Border Patrol agents at a checkpoint between their home and the hospital.⁴ After questioning them for about 30 minutes, the agents notified them that R.M.H. would be processed for deportation after the surgery and began following them to the hospital. There, armed agents kept watch at the door before allegedly arresting her directly from her hospital bed. R.M.H. was detained under the custody of the Office of Refugee Resettlement before being released on November 3.

¹ *U.S. Customs and Border Protection Enforcement Actions at or Near Certain Community Locations*, U.S. CUSTOMS AND BORDER PROTECTION, January 18, 2013, <http://foiarr.cbp.gov/streamingWord.asp?i=1251>.

² *Enforcement Actions at or Focused on Sensitive Locations*, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, October 24, 2011, <https://www.ice.gov/doclib/ero-outreach/pdf/10029.2-policy.pdf>.

³ R.M.H. are initials of the minor used for her privacy.

⁴ *R.M.H. v Lloyd Complaint*, AMERICAN CIVIL LIBERTIES UNION, October 31, 2017, <https://www.aclu.org/legal-document/rmh-v-lloyd-complaint>; Marwa Eltagouri, *A 10-year-old immigrant was rushed to the hospital in an ambulance. She was detained on the way*, WASHINGTON POST, October 27, 2017, <https://www.washingtonpost.com/news/post-nation/wp/2017/10/26/a-10-year-old-immigrant-was-rushed-to-the-hospital-in-an-ambulance-she-was-detained-on-the-way/>.

If these reports are accurate, these actions are not only horrifying—they are also an egregious violation of established Department policy. As you know, CBP rules bar agents from conducting an arrest inside a hospital except in an “exigent circumstance,” such as when national security or public safety is threatened, or with prior written approval. According to the lawsuit, neither of those conditions were met. There were no indications that R.M.H. or others were in danger, as R.M.H.’s cousin had papers that gave her authority to transport R.M.H. to the hospital. In addition, CBP agents also reportedly did not obtain a warrant or their supervisor’s approval for the arrest. When lawyers from the hospital asked them to leave, they refused to do so.

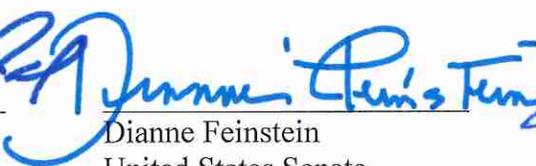
We ask that the Department launch an investigation into possible violations of the sensitive locations policy. We also ask that you respond to these questions within 30 days:

- Did the arrest of R.M.H. occur at a “sensitive location,” as that term is defined in the above-referenced January 18, 2013 CBP memorandum?
- Did CBP agents seek and receive written supervisory approval to arrest R.M.H. from the Chief Patrol Agent, Director of Field Operations, Director of Air and Marine Operations, or the Internal Affairs Special Agent in Charge? If yes, which supervisors provided written approval for the arrest?
- Was there an “exigent circumstance” that necessitated R.M.H.’s arrest? If so, what was it?
- Did CBP agents deem that R.M.H. posed a threat to public safety? If so, what threat did she pose?
- Did CBP agents contemplate alternative measures in deciding whether and how to take custody of R.M.H.? If so, what were those alternative measures?
- Did CBP agents violate the CBP sensitive locations policy when they arrested R.M.H.?
- After reviewing R.M.H.’s arrest, do you believe that CBP should have done anything differently?
- Has the Department launched an investigation into the circumstances surrounding R.M.H.’s arrest—particularly whether agents violated sensitive locations policy? If so, when will the investigation be completed?
- What disciplinary action, if any, will the CBP agents face if the investigation finds that they violated the sensitive locations policy?
- What are CBP’s policies and operating procedures regarding medical treatment cases necessitating transit through a Border Patrol checkpoint?
- What are CBP’s policies and operating procedures regarding personnel on duty inside hospitals?

We look forward to your timely response.

Sincerely,


Richard Blumenthal
United States Senate


Dianne Feinstein
United States Senate


Sheldon Whitehouse
United States Senate

Edward J. Markey

Edward J. Markey
United States Senate

Catherine Cortez Masto

Catherine Cortez Masto
United States Senate

Tom Udall

Tom Udall
United States Senate

Bernard Sanders

Bernard Sanders
United States Senate

Kamala D. Harris

Kamala D. Harris
United States Senate

Ron Wyden

Ron Wyden
United States Senate

Cory A. Booker

Cory A. Booker
United States Senate

Jeffrey A. Merkley

Jeffrey A. Merkley
United States Senate

Kirsten Gillibrand

Kirsten Gillibrand
United States Senate

Elizabeth Warren

Elizabeth Warren
United States Senate

Patrick Leahy

Patrick Leahy
United States Senate

Tammy Duckworth

Tammy Duckworth
United States Senate

A handwritten signature in blue ink, reading "Al Franken". The signature is fluid and cursive, with a long horizontal stroke at the end.

Al Franken
United States Senate