

February 2, 2020

By Email and 1st Class U.S. Mail

Susan L. Carlson
Clerk of the Supreme Court
P.O. Box 40929
Olympia, WA 98504-0929
supreme@courts.wa.gov

Dear Madam Clerk,

We are retired Washington judges deeply concerned with immigration enforcement at and near our state's courthouses because it deters individuals from accessing the courts and impedes the administration of justice.¹ Because of that concern, we submit these comments in support of Proposed New Washington State Court Rule GR 38, with amendments proposed by the coalition of advocacy organizations. We have attached the proposed rule with amendments to this letter for your reference.

Our state courts play an essential role in upholding the rule of law in Washington. The courts touch every facet of life, and the justice they administer every day depends upon the claimants, defendants, victims, witnesses, and other important stakeholders who appear before them just as certainly as it depends upon judges and judicial personnel. We know firsthand that in order for the courts to function properly and do justice, ensure public safety, and serve their communities, all of these stakeholders must regard courthouses as safe and open spaces.

Unfortunately, a marked increase in arrests and enforcement activity by U.S. Immigration and Customs Enforcement ("ICE") in and near courthouses in recent years, as well as ICE's own public statements supporting those enforcement activities², has seriously threatened that vital perception, creating a chilling effect and deterring stakeholders from participating in the justice system.

¹ We are among 17 retired judges who filed an amicus brief expressing concern about immigration enforcement in and near Washington courthouses in *Washington v. U.S. Department of Homeland Security*, No. 2:19-cv-020430TSZ. These comments are taken from that brief prepared on our behalf by counsel at Wilmer Cutler Pickering Hale and Dorr, LLP, and the Korematsu Center for Law and Equality at Seattle University School of Law.

² Letter from Attorney General Jefferson B. Sessions III & Secretary of Homeland Security John F. Kelly to the Hon. Tani G. Cantil-Sakauye, Chief Justice, Supreme Court of California, Mar. 29, 2017, <https://www.politico.com/f/?id=0000015b-23c8-d874-addf-33e83a8c0001>. A September 2017 statement by an ICE spokesperson confirmed that civil courthouse arrests would continue indefinitely: "If that's the only place we can find them, why wouldn't we? . . . We will continue to make those arrests. . . . ICE plans to continue arresting individuals in courthouse environments." Linley Sanders, *Federal Immigration Officials Will Continue Nabbing Suspects at New York Courthouses to Subvert Sanctuary City Status*, Newsweek (Sept. 15, 2017, 2:09 PM), <https://www.newsweek.com/new-york-immigration-courthouse-arrests-continue-sanctuary-city-665797>.

Judges, and courts more broadly, cannot effectively administer justice in the face of this chilling effect. Fear of immigration authorities discourages crucial witnesses from appearing in court, frustrating the prosecution of serious crimes and allowing dangerous perpetrators to avoid being held responsible for their crimes.³ Crime victims and witnesses too afraid of ICE to come to court include domestic violence victims seeking orders of protection,⁴ victims robbed at gun- and knife-point,⁵ the mother of a sexual abuse victim,⁶ and an eyewitness to an assault.⁷ Indeed, in a July 2019 study by the Washington State Coalition Against Domestic Violence, 83% of practitioners surveyed reported that immigrant survivors they worked with had dropped civil or criminal cases related to abuse due to fear and the most common reason cited for this fear (73%) was concern about alerting immigration authorities.⁸

Thank you for your consideration of this proposed rule that will do much to help ensure that no one is afraid to seek the protection of, or participate in, our court system.

Justice Bobbe Bridge (ret.), Washington Supreme Court and King County Superior Court
Judge Harriett M. Cody (ret.), King County Superior Court
Judge Ronald E. Cox (ret.), Washington Court of Appeals, Division I
Judge Tari S. Eitzen (ret.), Spokane County Superior Court
Judge Deborah Fleck (ret.), King County Superior Court
Justice Faith Ireland (ret.), Washington Supreme Court and King County Superior Court
Judge Eileen Kato (ret.), King County District Court Judge James M. (Jim) Murphy (ret.), Spokane

³ Angela Irvine, Ph. D. et al., *The Chilling Effect of ICE Courthouse Arrests: How Immigration and Customs Enforcement (ICE) Raids Deter Immigrants from Attending Child Welfare, Domestic Violence, Adult Criminal, and Youth Court Hearings* at 9-11 (Ceres Policy Research Oct. 2019).

⁴ Asian-Pacific Institute on Gender Based Violence, *Immigrant Survivors Fear Reporting Violence* (June 2019), <https://static1.squarespace.com/static/5b9f1d48da02bc44473c36f1/t/5d02ea986a2e6d0001537f31/1560472217547/May+2019+Advocate+Survey+Key+Findings.pdf>; Dan Satterberg, *Crackdown on Immigrants Undermines Public Safety*, Seattle Times (Mar. 24, 2017, 2:20 PM), <https://www.seattletimes.com/opinion/crackdown-on-immigrants-undermines-public-safety/> (King County Prosecuting Attorney noting importance of undocumented immigrants to office's prosecutions); see also Mark Joseph Stern, *ICE Agents Arrest Alleged Victim of Domestic Violence, Likely Acting on Tip From Her Abuser*, Slate (Feb. 16, 2017, 4:47 PM), <https://slate.com/news-and-politics/2017/02/ice-agents-arrest-alleged-victim-of-domestic-violence.html>.

⁵ ICE Out of Courts Coalition, *Safeguarding the Integrity of Our Courts: The Impact of ICE Courthouse Operations in New York State* at 12 (Mar. 2019) ("Safeguarding Report"), <https://www.immigrantdefenseproject.org/wp-content/uploads/Safeguarding-the-Integrity-of-Our-Courts-Final-Report.pdf> (reporting a 1736% increase in ICE courthouse enforcement in and around New York's courts since 2016).

⁶ See Eric Gonzalez & Judy Harris Kluger, *How ICE Harms the Justice System: The Feds' Aggressive Tactics in Our Courthouses are Emboldening Violent Criminals*, N.Y. Daily News (Aug. 2, 2019, 5:00 AM) <https://www.nydailynews.com/opinion/ny-oped-how-ice-harms-the-justice-system-20180801-story.html> ("Perhaps most disturbingly, the Special Victims Bureau is prosecuting a case involving an undocumented single mother who witnessed the sexual abuse of her adolescent daughter. The mother struggled with whether to come forward because she feared her daughter would be worse off if her mother were deported after cooperating with law enforcement.").

⁷ Safeguarding Report, *supra* note 5, at 13.

⁸ See Center for Human Rights at the University of Washington, *Justice Compromised: Immigration Arrests at Washington State Courthouses* (Oct. 16, 2017) <https://jsis.washington.edu/humanrights/2019/10/16/ice-cbp-courthouse-arrests/16,2017> ("Justice Compromised").

Judge Kenneth Kato (ret.), Washington Court of Appeals, Division III, and Spokane County Superior Court

Judge James M. (Jim) Murphy (ret.), Spokane County Superior Court and Spokane County District Court

Judge Kathleen O'Connor (ret.), Spokane County Superior Court

Judge Michael Spearman (ret.), Washington Court of Appeals, Division I, and King County Superior Court

Judge Dennis Yule (ret.), Benton and Franklin Counties Superior Court

PROPOSED AMENDMENT LANGUAGE TO PETITION GR 38 COURT RULE PROHIBITION ON CIVIL ARRESTS

1. No person shall be subject to civil arrest without a judicial arrest warrant or judicial order for arrest while the person is inside a court of law of this state in connection with a judicial proceeding or other business with the court.
2. No person shall be subject to civil arrest without a judicial arrest warrant or judicial order for arrest while the traveling to a court of law of this state for the purpose of participating in any judicial proceeding, accessing services or conducting other business with the court, or while traveling to return home or to employment after participating in any judicial proceeding, accessing services or conducting business with the court. Participating in a judicial proceeding includes, but is not limited to, participating as a party, witness, interpreter, attorney or lay advocate. Business with the court and accessing court services includes, but is not limited to, doing business with, responding to, or seeking information, licensing, certification, notarization, or other services, from the office of the court clerk, financial/collections clerk, judicial administrator, courthouse facilitator, family law facilitator, court interpreter, and other court and clerk employees.
3. Washington courts may issue writs or other court orders necessary to enforce this court rule. Unless otherwise ordered, the civil arrest prohibition extends to within one mile of a court of law. In an individual case, the court may issue a writ or other order setting forth conditions to address circumstances specific to an individual or other relevant entity.

For purposes of this rule:

- A. "Court of law" means any building or space occupied or used by a court of this state and adjacent property, including but not limited to adjacent sidewalks, all parking areas, grassy areas, plazas, court-related offices, commercial spaces within buildings or spaces occupied or used by a court of this state, and entrances to and exits from said buildings or spaces.
- B. "Court Order" and "Judicial Warrant" include only those warrants and orders signed by a judge or magistrate authorized under Article III of the United States Constitution or Article IV of the Washington Constitution or otherwise authorized under the Revised Code of Washington. Such warrants and orders do not include civil immigration warrants or other administrative orders, warrants or subpoenas that are not signed by a judge or magistrate as defined in this section. Civil immigration warrant means any warrant for a violation of federal civil immigration law issued by a federal immigration authority and includes, but is not limited to, administrative warrants issued on forms I-200 or I-203, or their successors, and civil immigration warrants entered in the national crime information center database.
- C. "Subject To Civil Arrest" includes, but is not limited to, stopping, detaining, holding, questioning, interrogating, arresting or delaying individuals by state or federal law enforcement officials or agents acting in their official capacity.

From: [OFFICE RECEPTIONIST, CLERK](#)
To: [Tracy, Mary](#)
Subject: FW: Comments by retired Washington Judges In support of GR 38 and amendment to RPC 4.4 comments
Date: Monday, February 3, 2020 8:14:01 AM
Attachments: [Retired judges in support of amendment to RPC 4.4 comments FINAL.pdf](#)
[Retired judges in support of GR 38 FINAL.pdf](#)

From: Bannai, Lorraine [mailto:bannail@seattleu.edu]
Sent: Sunday, February 2, 2020 7:28 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Comments by retired Washington Judges In support of GR 38 and amendment to RPC 4.4 comments

Attached, please find two letters submitted by retired Washington judges, one in support of GR 38 and the other in support of amendments to the RPC 4.4 comments. Thank you.

Lorraine K. Bannai
Professor of Lawyering Skills and
Director, Fred T. Korematsu Center for Law and Equality

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