

The Supreme Court
State of Washington

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Kevin K. McAleenan
Commissioner
U.S. Customs and Border Protection
1300 Pennsylvania Ave. NW
Washington, DC 20229

Reference: #190412-001264

Dear Commissioner McAleenan:

I am Chief Justice of the Washington State Supreme Court and Co-Chair of the Washington State Board for Judicial Administration. In March 2017, I wrote then-Department of Homeland Security (DHS) Secretary John F. Kelly to express concern about Immigration and Customs Enforcement (ICE) officers and agents taking enforcement action in and around our local courthouses with increasing frequency. I explained that such enforcement action impeded the fundamental mission of our courts, which is to ensure due process and access to justice for everyone regardless of their immigration status, whether such persons were victims in need of protection from domestic violence, witnesses summoned to testify, or families who may be in crisis. I further explained that enforcement action in and around our local courts deterred individuals from accessing our courthouses and spread fear in our immigrant communities, both those lawfully present and those undocumented.

I was pleased that, following the publication of my letter, lawyers and advocacy communities regularly practicing at the affected courts observed a significant decrease in such ICE enforcement action. I was also pleased that, while not prohibiting civil immigration enforcement action in or around local courthouses, ICE's Directive Number 11072.1 (published in January 2018), directed ICE officers and agents to "minimize their impact on court operations," to "generally avoid enforcement actions in courthouses," and to "avoid unnecessarily alarming the public." I was additionally further pleased that ICE established a set of standards identifying when such enforcement action was appropriate (*e.g.*, to target undocumented immigrants with criminal convictions or who pose national security threats) and created processes to ensure supervisory review and documentation of such incidents.

I write you today to express my concern that, as has been publicly reported, U.S. Customs and Border Protection (CBP) officers and agents recently have taken up the troubling mantle of conducting enforcement operations against undocumented immigrants at or near our local

courthouses. As reported to local law enforcement, these operations impact court proceedings by deterring individuals from seeking the services of our courts which, in turn, curtails the capacity of our courts to function effectively. These operations have further unnecessarily alarmed those accessing court services, as it has been publicly reported that these operations have not been narrowly targeted to those class of dangerous individuals identified in the ICE Directive above.

I do not question the legitimate role of law enforcement or cooperative efforts with other law enforcement agencies. However, I am genuinely concerned when these enforcement actions take place at or around courthouses because of the impact upon our mission. Our ability to function relies on individuals who voluntarily appear to participate and cooperate in the process of justice. When people are afraid to appear for court hearings out of fear of apprehension by immigration officials, their ability to access justice is compromised, courts cannot function efficiently, and our communities become less safe.

As Chief Justice, I respectfully ask you to take the necessary and appropriate steps to mitigate, if not eliminate CBP's enforcement actions in and around our local courthouses because of the effect on our courts, and the people of Washington State who wish to access the courts. As I did in my letter to Secretary Kelly, I encourage you to designate the courthouses and their immediate vicinities as "sensitive locations." Such a clear designation will permit our Washington State Courts to be the safe and neutral public forum all Washington residents deserve.

Also as I stated to Secretary Kelly, I do not believe our organizations' respective missions are naturally in conflict, as long as the CBP ensures it does not impede the fundamental mission of our courts.

Finally, I would welcome the opportunity to meet with you or your staff, including those copied on the letter below, to discuss this matter further and to explore additional possible resolutions.

Very truly yours,



MARY E. FAIRHURST
Chief Justice

cc:

Todd C. Owen, Executive Assistant Commissioner, Office of Field Operations
Carla L. Provost, Chief, United States Border Patrol
Tim Quinn, Executive Director, Intergovernmental Public Liaison Office
Adele Fasano, CBP Director of Field Operations, Blaine Sector
Chris Bippley, Acting Chief Patrol Agent, Blaine Sector
Matthew Lacelle, CBP Port Director, Officer in Charge Moses Lake Office
Brian T. Moran, United States Attorney, Western District of Washington
Joe Harrington, United States Attorney, Eastern District of Washington