From:	Bill Pierson
To:	Tracy, Mary
Subject:	Opposition to Proposed Change to RPC 4.4
Date:	Monday, March 2, 2020 8:21:03 AM
Attachments:	Proposed Changes to RPC 4.4.pdf 11.21.2019_doj_dhs_letter_to_chief_justices_walters_and_fairhurst_0.pdf

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Article 1, section 2 of the Washington state Constitution declares that the Constitution of the United States is the supreme law of the land.

In accordance with Article IV, section 28 of the Washington state Constitution, every judge of the supreme court before entering upon the duties of his or her office, takes and subscribes an oath that he or she will support the Constitution of the United States.

On November 6, 2019 the Washington Supreme Court approved and suggested amendments to RPC 4.4 Comment 4 (see attached).

On November 21, 2019 the Attorney General of the United States, along with the Acting Secretary for the U.S. Department of Homeland Security, jointly wrote the Chief Justice of the Washington Supreme Court and notified her they considered the adoption of this suggested amendment to be a dangerous and unlawful course of action (see attached).

8 U.S.C. sec. 1324(a)(1) states:

> A. Any person who—
> …
> **(iii)** knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, conceals, harbors, or shields from detection, or attempts to conceal, harbor, or shield from detection, such alien in any place, including any building or any means of transportation;
>
> shall be punished as provided in subparagraph (B).
>
> B. A person who violates subparagraph (A) shall, for each alien in respect to whom such a violation occurs—
> …
>
> **(ii)** in the case of a violation of subparagraph (A)(ii), (iii), (iv), or (v)(II), be fined under title 18, imprisoned not more than 5 years, or both;…

The Washington Supreme Court appears to be on the cusp of adopting an addition to the Washington Rules of Professional Conduct that would potentially require an attorney licensed to practice law in the state of Washington to commit a felony under the United States Code. If the Washington Supreme Court should choose to go down this perilous path, it would leave any Washington attorney committed to faithfully obeying the U.S. Constitution no choice but to seek relief for a violation of his or her federal civil rights, 42 U.S.C. §1983.

Bill Pierson
Law Office of William E. Pierson, Jr. | PC
The Delmar Building

108 S. Washington St., Suite 202
Seattle, WA 98104
email: bill.pierson@weplaw.com
direct dial: 206.254.0915
https://smex-ctp.trendmicro.com:443/wis/clicktime/v1/query?url=www.weplaw.com&umid=af74aff9-70c4-49cd-8771-85eb9626d8f8&auth=307af4a8b3e2584c3e2a57c41227f86cfbf88d45-8014ea089f7e5a219a5c9760e7d34904037eebd5

November 21, 2019

Dear Chief Justice Walters and Chief Justice Fairhurst:

We understand that the Oregon Supreme Court has adopted, and the Washington Supreme Court is considering adopting, court rules that would attempt to preclude U.S. Immigration and Customs Enforcement (ICE) and U.S. Customs and Border Protection (CBP) from making administrative arrests in and around courthouses in your respective states. We urge you both to reconsider this dangerous and unlawful course of action.

Cooperation among local, state, and federal law enforcement officers is in the public interest and promotes safe communities. The federal government needs cooperation from state and local law enforcement to identify, temporarily hold, and ultimately deport criminal aliens who present dangers to communities. Your States' political branches have, we understand, adopted laws and policies that prevent cooperation with federal law enforcement in the area of immigration. Instead of permitting the safe transfer of custody of criminal aliens in a secure environment, these dangerous state laws and policies force federal law enforcement officers to locate and arrest criminal aliens at-large within communities at potentially great peril to the officers and the public.

These state laws and policies force state and local officers to release criminal aliens into communities in your States, endangering the public and forcing it to bear the cost of any additional criminal acts they may proceed to commit. These policies have resulted in the release of criminal aliens with convictions for serious and violent offenses, such as domestic violence assaults, firearm offenses, drug trafficking offenses, and violation of protection orders. Although there are too many examples to cite in this letter, we are including as an attachment some instances of released criminal aliens who have gone on to commit even more heinous crimes—including murder—in your communities. Again, these are not isolated cases. There are many more instances of violence that have occurred as a result of the release of violent criminal aliens who returned to your communities and endangered the lives of the citizens of your states.

Given the clear public danger posed by these state laws and policies, we urge you not to adopt or enforce court rules that would make the situation worse by purporting to require ICE or CBP to obtain a judicial arrest warrant prior to making an administrative arrest for deportation.

Put simply, an administrative arrest warrant is all that Congress requires for authorities to make an arrest of an alien inside the United States for violations of federal immigration laws,

subject to the exceptions specifically delineated by Congress in the Immigration and Nationality Act for immigration officers to make warrantless arrests. Administrative arrest warrants while civil in nature are issued based on probable cause, carry the full authority of the United States, and should be honored by any state or local jurisdiction. And such a warrant-based arrest is followed by additional appropriate process in immigration court where custody status and applicable bond are addressed, similar to how a federal or state court would address custody of a criminal suspect. Put simply, the policies you are considering endanger the public and hamper law enforcement by interfering with that lawful process. While judicial arrest warrants can be obtained in certain cases to effectuate a criminal prosecution of a federal criminal offense such as illegal reentry pursuant to 8 U.S.C. § 1326 a readily provable federal criminal offense is not necessary in the civil immigration enforcement context.

We will further note that ICE and CBP officers are not subject to state rules that purport to restrict ICE and CBP from making administrative arrests on property that is otherwise open to the public and other law enforcement officers. Under the Supremacy Clause of the United States Constitution, such rules cannot and will not govern the conduct of federal officers acting pursuant to duly enacted laws passed by Congress when those laws provide the authority to make administrative arrests of removable aliens inside the United States.

Regardless of how one views our immigration laws, we should all agree that public safety should be of paramount concern. Court rules that would purport to further restrict the lawful operations of federal law enforcement officials only serve to exacerbate sanctuary laws and policies that continue to place our communities at unacceptable risk.

We thus urge you to reconsider these misguided rules.

William P. Barr,
Attorney General
U.S. Department of Justice

Chad F. Wolf,
Acting Secretary
U.S. Department of Homeland Security

- **First Degree Murder of a 16-Year-Old Teen**

In October 2019, Rudy Garcia-Hernandez and Carlos Iraheta-Vega were charged with First-Degree Murder in the death of 16-year-old Juan Carlos Con Guzman. Iraheta-Vega claimed membership in the notorious MS-13 gang. It is alleged that these two men contacted the victim on SnapChat and picked him up for a "pre-arranged fight to settle a dispute." Prosecutors allege the two men had "a plan to torture and kill" the victim, that they "beat the victim with a baseball bat and mercilessly chopped his neck repeatedly with a machete," and dumped his body in the Green River. Iraheta-Vega is in the U.S. illegally from El Salvador, and was released from the King County jail when local officials did not honor an ICE detainer last year. Officials also did not allow ICE to question Garcia-Hernandez, so his nationality could not be immediately confirmed.

https://www.kiro7.com/news/local/ice-criticizes-sanctuary-laws-in-murder-of-federal-way-teen/996519679

- **A Seattle Light Rail Rider was Stabbed "Without Provocation"**

In September 2019, King County prosecutors charged Jesus Sanchez with second-degree assault and possession of methamphetamine in King County Superior Court after he stabbed a stranger on a light-rail train "without provocation." In 2013, before sanctuary laws and policies took effect, local officials cooperated with ICE and released Sanchez to their custody after his proceedings were complete. Sanchez was not then deportable and was put in an Alternative to Deportation Program. However, by 2017 when sanctuary laws and policies had taken effect, Sanchez had three more convictions – two for domestic violence and one for violating a protection order. Although these are deportable offenses, a detainer was not honored by the county jail and the defendant was released into the community without alerting ICE.

https://mynorthwest.com/1538683/dori-ice-repeat-offender-stabbing/

- **Released Rapist Returned to Assault Victim**

In June 2019, Francisco Carranza-Ramirez, 35, a citizen of Mexico, was released from prison following his conviction for the rape of a 32-year-old disabled woman in King County, WA. Carranza-Ramirez had raped the wheelchair-bound victim in her home. He was sentenced to nine months (time served) and at his sentencing hearing (and imminent release) his defense counsel argued against any post-release supervisory probation because he was homeless and planned to board the next flight to Mexico. The judge granted him full release on condition that he register as a sex offender and provide later proof that he had left the country by June 25, 2019. Thus, leniency was predicated on his alienage. No one notified ICE that Carranza-Ramirez was released to return to Mexico. Carranza-Ramirez did not in fact return to Mexico. On June 15, 2019, just two days after he was sentenced and released, he violated a protection order by coming within 1,000 feet of the victim. He later went into the victim's home, knocked her out of her wheelchair, and attempted to strangle her in front of her three-year-old son. Sheriff's deputies found the victim on the ground with cuts and bruises and her wheelchair overturned.

https://q13fox.com/2019/06/20/rapist-who-attacked-victim-after-jail-release-believed-to-have-fled-to-mexico/

- **Criminal Alien Arrested for Murdering, Dismembering Victim after Local Police Fail to Notify ICE of his Release**

In October 2017, ICE identified Rosalio Ramos-Ramos, at a city jail in Washington State, as an illegally present Honduran citizen with prior criminal convictions and four prior removals from the United States. Ramos-Ramos fought with jail staff and was taken to Harborview Medical Center. ICE lodged a detainer, but after treatment Ramos-Ramos was released without notification to the police department or ICE as the hospital was considered a sensitive location. In January 2018, Ramos-Ramos was arrested again and booked for the second degree murder and the dismemberment of his cousin.

https://komonews.com/news/local/police-man-charged-in-tukwila-human-remains-case-was-in-country-illegally

- **Teen Murdered in Bellevue Park**

One of four men charged with murdering a teen in Bellevue, Washington's Goldsmith Park should have been deported the month before the April 2019 murder. Carlos Carillo-Lopez, a native from Guatemala, had multiple run-ins with law enforcement: theft third degree to malicious mischief, drug paraphernalia. Each time, ICE lodged a detainer with the jail and they were ignored.

https://mynorthwest.com/1552670/bellevue-murder-ice-suspect-sanctuary/

- **County Jail Ignores ICE Detainer, Illegal Alien Suspected of Killing Wife After Release**

In March 2018, ICE located and lodged a detainer on Martin Gallo-Gallardo, a citizen of Mexico who was unlawfully present in the United States, after locating him in an Oregon county jail. Jail officials did not honor the immigration detainer and released the convicted criminal two days later, without notifying ICE. Following his release, ICE made multiple, unsuccessful attempts to locate and arrest the man. In October 2018, Gallo-Gallardo was arrested again, this time on a felony murder charge for allegedly killing his wife.

https://katu.com/news/local/multnomah-county-sheriffs-office-blames-ice-for-not-holding-murder-suspect-martin-gallo-gallardo-accountable

- **County Jail Refuses to Honor ICE Detainer of Man Who Sexually Assaulted Dog**

In February 2019, Fidel Lopez, an illegally present Mexican citizen, was encountered by ICE officials at a local Oregon county jail. ICE lodged an immigration detainer on Lopez the same day for violating immigration laws. In April 2019, Lopez was convicted of multiple charges involving animal abuse. The county jail did not honor the immigration detainer and released him without notice to immigration officials. ICE apprehended Lopez at his residence and served him a notice to appear. He is currently being held at the Northwest Detention Center in Tacoma pending immigration proceedings.

https://www.oregonlive.com/news/2019/05/ice-detains-convicted-dog-rapist-for-deportation-hearing.html

SUGGESTED RULE CHANGES

RULES OF PROFESSIONAL CONDUCT 4.4 COMMENT [4]

[4] The duty imposed by paragraph (a) of this Rule includes a lawyer's assertion or inquiry about any ~~third~~ person's immigration status when the lawyer's purpose is to intimidate, coerce, or obstruct that person from participating in a civil or criminal matter, or otherwise assist with civil immigration enforcement. Issues involving immigration status carry a significant danger of interfering with the proper functioning of the justice system. See *Salas v. Hi-Tech Erectors, 168 Wn.2d 664, 230 P.3d 583 (2010*). When a lawyer is representing a client ~~in a civil matter~~, whether the client is the State or one of its political subdivisions, an organization, or an individual, a lawyer's communication to a party or a witness that the lawyer will report that person to immigration authorities, or a lawyer's report of that person to immigration authorities, furthers no substantial purpose of the ~~civil~~ adjudicative system and violates this Rule. A communication in violation of this Rule can also occur by an implied assertion that is the equivalent of an express assertion prohibited by paragraph (a). Sharing personal information with federal immigration authorities, including but not limited to, home address, court hearing dates, citizenship or immigration status, or place of birth, absent a court order, for the purpose of facilitating civil immigration arrests is conduct that is in violation of this Rule. See also Rules 1.6(a) (prohibiting a lawyer from revealing information relating to the representation of a client), 8.4(b) (prohibiting criminal acts that reflect adversely on a lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects), 8.4(d) (prohibiting conduct prejudicial to the administration of justice), and 8.4(h) (prohibiting conduct that is prejudicial to the administration of justice toward judges, lawyers, LLLTs, other parties, witnesses, jurors, or court personnel or officers, that a reasonable person would interpret as manifesting prejudice or bias on the basis of sex, race, age, creed, religion, color, national origin, immigration status, disability, sexual orientation, or marital status).

Government officials may provide federal immigration authorities with information relating to any person involved in matters before a court only pursuant to chapter 7.98 RCW, or upon request and in the same manner and to the same extent as such information is lawfully made available to the general public, or pursuant to a court order. Additionally, under 8 U.S.C. § 1373, government officials are not prohibited from sending to or receiving from immigration authorities a person's immigration status or citizenship. Lawyers employed by federal immigration authorities engaged in authorized activities within the scope of lawful duties shall not be deemed in violation of this rule.