



**U.S. Department of Justice**

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February 3, 2020

Ms. Susan L. Carlson  
Clerk of the Washington Supreme Court  
P.O. Box. 40929  
Olympia, WA 98504-0929

Via Email to: [supreme@courts.wa.gov](mailto:supreme@courts.wa.gov)

**Re: Comment in Opposition to Proposed Revision to RPC 4.4, Comment 4**

Dear Madam Clerk,

I write to oppose the proposed revision to Comment 4 accompanying Rule 4.4 of the Rules of Professional Conduct (hereafter, "Revised Comment 4").<sup>1</sup> As the United States Attorney for the Eastern District of Washington, I am the chief federal law enforcement officer for the twenty Washington counties east of the Cascade Mountains. My responsibilities in this role include, among others, enforcing civil and criminal immigration laws passed by the United States Congress. I also maintain contact and communications with county prosecutors, sheriffs and police chiefs, as all levels of law enforcement work together to promote public safety for all citizens.

Chief among the reasons why Revised Comment 4 should be rejected is that it would endanger public safety. Most respectfully, there is no reason why attorneys in this State should be prohibited from sharing information with the Department of Homeland Security (DHS) that could assist in the detention and removal of illegal aliens who have committed crimes. As U.S. Attorney General William Barr highlighted in a letter to then-Chief Justice Fairhurst last November,<sup>2</sup> there are significant numbers of illegal aliens who are processed through and released from the State's justice system and then go on to commit serious crimes – including murder. That point was underscored more recently in declarations that were filed in federal court litigation between the State of Washington and DHS<sup>3</sup> concerning the legality of civil immigration arrests in and around

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<sup>1</sup> A comment letter opposing the adoption of Proposed GR 38 is being submitted separately. That comment letter is incorporated herein by reference.

<sup>2</sup> <https://www.justice.gov/ag/page/file/1219556/download>

<sup>3</sup> *State of Washington v. U.S. Department of Homeland Security, et al.*, Case No. 2:19-CV-02043-TSZ (W.D. Wash.) (the "Courthouse Arrest Litigation").

state courthouses. As noted by a Special Operations Supervisor with the United States Border Patrol, for example, civil immigration enforcement at state courthouses has resulted in the apprehension of illegal aliens who have been charged with or previously convicted of, among other offenses, sex with a minor, indecent exposure, manufacture and delivery of methamphetamine, trafficking of cocaine, domestic violence assault, domestic violence burglary, domestic violence unlawful imprisonment, vehicular hit-and-run, criminal trespass, disorderly conduct, and driving under the influence.<sup>4</sup>

To prohibit prosecutors and other attorneys from bringing those types of individuals to the attention of federal law enforcement is, quite frankly, irresponsible. All attorneys, including the members of this Court, have an obligation to uphold the law and to do their part to protect public safety. Regardless of how one feels about our Country's immigration laws, the fact of the matter is that these laws play a crucial role in maintaining public safety. As Revised Comment 4 would be a further avenue for dangerous individuals to be back on the streets rather than illegally deported, it should not be adopted.

Turning to the specific language of Revised Comment 4, there are several additional reasons why the proposed revision should be rejected. First, the proposed revision exceeds the scope of the rule itself. RPC 4.4 states, in relevant part, that a lawyer must not engage in conduct that has "no substantial purpose other than to *embarrass, delay, or burden* a third person." RPC 4.4(a) (emphasis added). Comment 4, in its existing form, explains that this restriction extends to inquiries into a person's immigration status when the lawyer's purpose is to "intimidate, coerce, or obstruct that person from participating in a civil matter." This existing commentary is a straightforward application of the rule, insofar as it links the prohibited conduct — inquiring into a person's immigration status for the *purpose of intimidating, coercing, or obstructing* — to the rule's overarching restriction on conduct designed to *embarrass, delay, or burden*.

By contrast, the proposed revisions are not directly tied to the restriction on conduct designed to embarrass, delay or burden. Indeed, the proposed revisions carve out a broad, brand new category of prohibited conduct—"otherwise assist[ing] with civil immigration enforcement"—without making any attempt to link that conduct to the improper purpose set forth in the rule. Indeed, the revised language seems to presuppose that providing information to immigration authorities is a sinister act and *inherently* improper.

While it is certainly possible that a lawyer might provide information for an improper purpose (*e.g.*, to prevent an adverse witness from testifying), the mere act of providing information

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<sup>4</sup> Declaration of Thomas D. Watts, ECF No. 96 at ¶¶ 12-28 (copy enclosed).

is not inherently improper. In imposing a categorical restriction on assisting immigration authorities, without tying the assistance to the improper purpose of causing embarrassment, delay or burden, the proposed revisions sweep far beyond the rule itself and should therefore be rejected.

Additionally, in a related vein, Revised Comment 4 runs afoul of the First Amendment. “[D]isciplinary rules governing the legal profession cannot punish activity protected by the First Amendment.” *Gentile v. State Bar of Nevada*, 501 U.S. 1030, 1054 (1991). Rules that impose “substantially overbroad” restrictions are facially invalid. *Standing Comm. on Discipline of U.S. Dist. Court for Cent. Dist. of California v. Yagman*, 55 F.3d 1430, 1437 (9th Cir. 1995). Further, rules like Revised Comment 4 that impose “outright prohibitions on speech” are subject to strict scrutiny. *Zauderer v. Office of Disciplinary Counsel of Supreme Court of Ohio*, 471 U.S. 626, 650 (1985). To survive a First Amendment challenge, such rules must be “narrowly tailored to serve a compelling interest.” *Williams-Yulee v. Florida Bar*, 575 U.S. 433, 444 (2015); *see also Nat’l Inst. of Family and Life Advocates v. Becerra*, \_\_\_ U.S. \_\_\_, 138 S.Ct. 2361, 2371-72 (2018) (restrictions on “professional speech” imposed by state licensing entities are subject to strict scrutiny).

In its existing form, Comment 4 survives strict scrutiny. It does so by identifying a compelling government interest — protecting persons against purposeful embarrassment, delay or burden at the hands of an attorney — and promotes that interest by prohibiting lawyers from inquiring into a person’s immigration status when their purpose is to “intimidate, coerce, or obstruct” that person from participating in a court proceeding.

Revised Comment 4, by contrast, sweeps much more broadly. As explained above, the new restriction on “otherwise assist[ing] with civil immigration enforcement,” is not limited to circumstances in which the lawyer’s purpose is to embarrass, delay or burden; on its face, it prohibits *any* attempt to assist with civil immigration enforcement, for *any* reason whatsoever. Revised Comment 4 is thus facially overbroad and not narrowly tailored to achieve a compelling interest. As such, the proposed revision invites constitutional challenge and, in my opinion, would invariably be invalidated on First Amendment grounds when challenged.

It also bears noting that, Revised Comment 4 directly conflicts with RCW 4.24.510. That statute provides, in relevant part:

A person who communicates a complaint or information to any branch or agency of federal, state, or local government . . . is immune from civil liability for claims

based upon the communication to the agency or organization regarding any matter reasonably of concern to that agency or organization.

RCW 4.24.510. In prohibiting lawyers from “sharing . . . information with federal immigration authorities . . . for the purpose of facilitating civil immigration arrests,” Revised Comment 4 prohibits precisely what RCW 4.24.510 expressly permits. The revised comment is therefore unenforceable under this Court’s own precedent, which recognizes that a lawyer’s right to provide information to federal, state or local law enforcement under RCW 4.24.510 takes precedence over any contrary restriction imposed by the Rules of Professional Conduct. *See In re Disciplinary Proceeding Against Schafer*, 149 Wn.2d 148, 168 (2003) (recognizing that RCW 4.24.510 provides attorneys a “safe harbor” for communications that are otherwise be prohibited by the RPCs).

Furthermore, adopting Revised Comment 4 could be inferred to establish a new cause of action by one aggrieved of the newly prohibited conduct against the one alleged to have violated the conduct. The RPCs, and especially the RPC comments, should not be used for this purpose. As more fully explained in my letter opposing the adoption of Proposed GR 38, this a matter of policymaking that is best left to the State Legislature.<sup>5</sup>

Finally, I feel compelled to respond to certain inaccurate and inflammatory statements made by the proponents of Revised Comment 4. In the GR 9 cover sheet accompanying Revised Comment 4, the proponents state that agents from U.S. Immigration and Customs Enforcement (ICE) and U.S. Customs and Border Protection (CBP) are “primarily target[ing] people of color, primarily Latinx Spanish speakers.” That assertion is false. ICE and CBP do not target minority groups. Rather, they work to identify *specific individuals* who are in the Country unlawfully and who may pose a threat to public safety. *See* Declaration of Thomas H. Watts (enclosed) at ¶¶ 7-9 (explaining that Border Patrol agents “review criminal dockets to locate and identify removable aliens,” complete “thorough investigations and records checks to determine if the alien is illegally present,” and then move forward with enforcement efforts specific to that individual). That is not racial profiling. The Court should disregard all misinformed statements to the contrary.

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<sup>5</sup> I also note that the Legislature recently adopted RCW 43.17.425, which purports to prohibit state agencies, including county prosecutors’ offices and law enforcement, from using agency funds to “investigate, enforce, cooperate with, or assist in the investigation or enforcement” of federal immigration law. While there is reason to doubt whether RCW 43.17.425 would survive a federal preemption challenge, the fact that the Legislature has already attempted to provide this protection obviates the need for this Court to do so through a Rule of Professional Conduct.

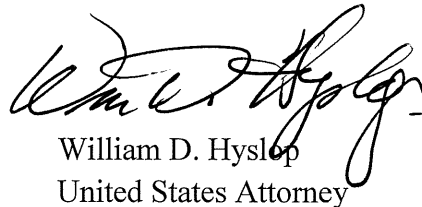
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For these and other reasons,<sup>6</sup> Revised Comment 4 should not be adopted. The protections set forth in the current Comment 4 to RPC 4.4 are sufficient to protect against the ill set forth in RPC 4.4. Additional change is neither needed nor appropriate. I urge the Court to abandon the proposed revisions and allow RPC 4.4 to continue serving its existing, proper purpose.

Very truly yours,



William D. Hyslop  
United States Attorney

WDH/jtd

Enc. Declaration of Thomas H. Watts filed in Courthouse Arrest Litigation

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<sup>6</sup> I join fully in the comments submitted by my counterpart Brian Moran, the United States Attorney for the Western District of Washington, and incorporate them here by this reference.

The Honorable Thomas S. Zilly

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

STATE OF WASHINGTON,

Plaintiff,

v.

U.S. DEPARTMENT OF HOMELAND  
SECURITY, et. al.,

Defendants.

No. C19-2043-TSZ

DECLARATION OF THOMAS D.  
WATTS REGARDING SPECIFIC  
ENFORCEMENT ACTIVITY

COMES NOW Thomas D. Watts, being duly sworn, does hereby swear and affirm:

1. I, Thomas D. Watts, am a Special Operations Supervisor (“SOS”) employed by the United States Border Patrol (“USBP”), U.S. Customs and Border Protection (“CBP”), U.S. Department of Homeland Security (“DHS”).
2. CBP is a federal law enforcement agency within DHS.<sup>1</sup> CBP is one of the world’s largest law enforcement organizations charged with keeping terrorists and their weapons out of the U.S. while facilitating lawful international travel and trade.<sup>2</sup> CBP is comprised of three law enforcement components: USBP, Office of Field Operations, and Air and Marine Operations.<sup>3</sup> USBP’s primary mission is to detect and prevent the illegal entry of aliens into the United States.<sup>4</sup> USBP employs approximately 21,000 Border Patrol Agents (“BPAs”) to patrol more than 6,000 miles of America’s land borders and 2,000 miles of America’s coastal waters.<sup>5</sup>

<sup>1</sup> <https://www.cbp.gov/about/>.

<sup>2</sup> *Id.*

<sup>3</sup> <https://www.cbp.gov/about/leadership-organization>.

<sup>4</sup> <https://www.cbp.gov/border-security/along-us-borders/overview>.

<sup>5</sup> *Id.*

1 USBP is divided into 20 sectors nationwide, and within each sector are numerous  
 2 stations.<sup>6</sup> Spokane Sector is one of the 20 sectors and patrols eastern Washington,  
 Idaho and Montana.<sup>7</sup> Spokane Sector operates and oversees eight stations.<sup>8</sup>

- 3
- 4 3. BPAs are immigration and customs officers.<sup>9</sup> The duties of a BPA include protecting  
 5 the United States from terrorism, unlawful immigration, and smuggling efforts,  
 6 specifically by performing law enforcement activities, such as apprehensions,  
 7 detentions, and arrests of persons.<sup>10</sup> BPAs have the authority to investigate, arrest,  
 8 and detain aliens who are suspected of being, or found to be, unlawfully present in  
 the United States.<sup>11</sup> BPAs can arrest aliens with or without a warrant pending a  
 decision on whether they are to be removed from the United States.<sup>12</sup> Neither CBP  
 nor USBP has issued a policy statement on arrests at and around courthouses.
- 9
- 10 4. I have been employed as a BPA by USBP since June 2006. I promoted to the  
 position of Supervisory Border Patrol Agent in February 2011 and the position of  
 SOS in August 2019.
- 11
- 12 5. I received basic training in federal law enforcement at the Federal Law Enforcement  
 Training Center in Artesia, New Mexico graduating in November 2006. Since then,  
 I have attended and completed various training courses and seminars on criminal  
 13 and immigration law, with an emphasis on interview techniques, fraudulent  
 14 identification practices, illegal arms possession, money laundering, alien  
 determination, human and narcotics smuggling, and legal authorities.
- 15
- 16 6. I am assigned to USBP's Spokane Sector, and have been continuously assigned to  
 Spokane Sector since February 2011. Since June 2014, my assignment has been the  
 supervisor over the Criminal and Administrative Prosecutions Unit. My duties  
 17 include oversight of all criminal and administrative cases processed by Spokane  
 Sector. This includes but is not limited to overseeing operations, reviewing cases for  
 18 legal sufficiency, and training BPAs on proper tactics and authorities. I am  
 generally very familiar with the criminal and administrative cases that Spokane  
 19 Sector as processed, and Spokane Sector BPAs properly use their statutory authority  
 20 when making arrests with probable cause at or around courthouses in Spokane  
 Sector.
- 21
- 22 7. USBP's Spokane Sector conducts its own targeted apprehensions at or near  
 courthouses. BPAs review criminal dockets to locate and identify removable aliens.  
 23 In these instances, BPAs conduct thorough investigations and records checks to

24 <sup>6</sup> <https://www.cbp.gov/border-security/along-us-borders/border-patrol-sectors>.

25 <sup>7</sup> <https://www.cbp.gov/border-security/along-us-borders/border-patrol-sectors/spokane-sector>

26 <sup>8</sup> *Id.*

27 <sup>9</sup> 19 U.S.C. § 1589a; 8 U.S.C. § 1357.

28 <sup>10</sup> <https://www.cbp.gov/border-security/along-us-borders/overview>.

<sup>11</sup> *See* 8 U.S.C. §§ 1226, 1357. In addition to 8 U.S.C. § 1357, under 19 U.S.C. § 1589a, a BPA may make an  
 arrest without a warrant for a felony offense committed outside his/her presence if the BPA has reasonable  
 grounds to believe that the person arrested committed a felony, like a 8 U.S.C. § 1326.

<sup>12</sup> *Id.*

1 determine if the alien is illegally present in the United States, and therefore  
2 removable, before arriving to investigate.

- 3 8. CBP does not track apprehensions in any information systems by any reportable  
4 data element indicating whether an arrest took place at or near a courthouse. CBP  
5 conducted a diligent search of CBP and USBP records in an attempt to locate and  
6 identify USBP's Spokane Sector arrests made at or around courthouses in the last  
7 two (2) years. I have identified that in Fiscal Year ("FY") 2018 (i.e., from October  
8 1, 2017 to September 30, 2018), 55 arrests were made at and around courthouses.  
9 Of those 55 cases, approximately 48 have criminal records and approximately 14  
10 have previously been ordered removed from the United States. In FY 2019 (i.e.,  
11 from October 1, 2018 to September 30, 2019), 96 arrests were made at and around  
12 courthouses. Of those 96 cases, approximately 80 of these subjects have criminal  
13 records and approximately 29 have previously been ordered removed from the  
14 United States.
- 15 9. The reason the number of USBP Spokane Sector arrests made at or around  
16 courthouses increased in FY 2019 is twofold. First, Washington's non-cooperation  
17 policies and sanctuary laws forbid state officials from cooperating with USBP and  
18 precludes them from honoring immigration detainers issued for criminal aliens upon  
19 their release from state custody, and thus, criminal aliens are released back into the  
20 community instead of being removed. Second, in FY 2019, USBP Spokane Sector  
21 received additional staffing and resources for its immigration enforcement mission.
- 22 10. CBP has conducted a diligent search of CBP records in an attempt to locate and  
23 identify the specific immigration enforcement activity referenced in the State of  
24 Washington's Complaint, Motion for Preliminary Injunction, and supporting  
25 declarations.
- 26 11. CBP has identified the following immigration enforcement activities that it believes  
27 may match the activity described by the State. The activity described by State,  
28 however, contains limited information and no personal identifiers. Without such  
biometric information, CBP cannot represent with certainty that these activities are a  
match, but CBP believes, based on the information provided and the information  
known to CBP, that the following activities match the activities referenced in the  
pleadings.
12. The Carnell and Mildon Declarations allege that a man was arrested outside the  
Grant County Courthouse after attending a court hearing on January 8, 2019. Dkt.  
No. 16, pg. 2-3, Dkt. No. 35, pg. 2-3. CBP believes this allegation pertains to the  
alien identified in the I-213 marked as Exhibit A, a citizen of Mexico, who was  
previously removed from the United States in July, 2006. While in the United  
States, he was convicted of Driving Under the Influence in Ephrata in December,  
2007. Border Patrol Agents encountered him on January 8, 2019 at the Moses Lake  
Municipal Court while he was appearing on criminal proceedings. He admitted that  
he was in the United States illegally. *See* Exhibit A.



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13. The Cassel Declaration alleges that an undocumented alien was arrested in October 2018, after a preliminary hearing in Spokane. Dkt No. 17, pg. 2-4. CBP believes this allegation pertains to the alien identified in the I-213 marked as Exhibit B, a citizen of Mexico, who was apprehended and granted voluntary removal four times: (1) on October 22, 2004; (2) on October 25, 2004; (3) on October 27, 2004; and (4) on February 28, 2005. While in the United States, he was charged with Assault 4 and Interference with Report of Domestic Violence by the Spokane County Sheriff's Office in September, 2017. Border Patrol Agents encountered him on October 1, 2018, at the Spokane County Courthouse. He admitted that he was in the United States illegally. *See Exhibit B.*
14. The Godoy and Restrepo Declarations allege that a woman was arrested at the Othello District Court in October, 2018, while in court as a result of a car accident. Dkt. No. 23, pg. 4; Dkt. No. 38, pg. 4. CBP believes these allegations pertain to the alien identified in the I-213 marked as Exhibit C, a citizen of Mexico, who was previously arrested by CBP on January 30, 2008, charged with Fraud and Misuse of Visas, Permits and Entry Documents, and Expedited Removal, and ordered removed from the United States. While in the United States, she was charged with Hit and Run Unattended Vehicle in Adams County on October 17, 2018. Border Patrol Agents encountered her in Othello, and she admitted that she was in the United States illegally. Records checks revealed that Santos had a petition for a U-Visa pending. *See Exhibit C.*
15. The Restrepo Declaration alleges that a man was arrested outside a District Court courtroom, and another man was arrested inside the Courthouse hallway on October 9, 2019, in Othello. Dkt. No. 38, pg. 12-13. CBP believes these allegations pertain to the following two aliens: (1) the alien identified in the I-213 marked as Exhibit E, a citizen of Mexico, was apprehended and granted voluntary removal in January, 2009. While in the United States, he was convicted in March, 2017 of Negligent Driving. Border Patrol Agents encountered him on October 9, 2019, at the Adams County Courthouse and determined he was in the United States illegally. (2) The alien identified in the I-213 marked as Exhibit F, a citizen of Mexico, was previously ordered removed from the United States in November, 2014, by an Immigration Judge. While in the United States, he was arrested and convicted of: (1) Driving Under the Influence, by Othello Police in August, 2009; (2) Driving While License Suspended and Refuse to Comply by Adams County Sheriff's Office in October, 2012; and (3) Assault 4 Domestic Violence by Franklin County Sheriff's Office in October, 2014. Border Patrol Agents encountered him on October 9, 2019, at the Grant County Courthouse while he was attending criminal proceedings. He refused to respond to questioning, but eventually admitted that he was in the United States illegally. He was referred for prosecution under 8 U.S.C. § 1326. *See Exhibit E & F.*
16. The Restrepo Declaration alleges that a man was arrested in November, 2018, on his way into the Othello Courthouse to attend a hearing on a criminal matter. Dkt. No.

1 38, pg. 4. CBP believes this allegation relates to the alien identified in the I-213  
2 marked as Exhibit G, a citizen of Mexico, who was excluded from the United States  
3 on May 2, 2012, who had his removal order reinstated again on October 17, 2013,  
4 and who was convicted of Illegal Reentry. While in the United States, he was  
5 arrested and convicted of: (1) Driving Under the Influence and Public Order in  
6 May, 2010; and (2) Domestic Violence in April, 2012. Border Patrol Agents  
7 encountered him on November 7, 2018, at the Adams County Courthouse. He  
8 admitted that he was in the United States illegally. *See* Exhibit G.

9 17. The C.G.R. Declaration alleges that he, and several others, were arrested by  
10 immigration officers on November 19, 2018, in Grant County. Dkt. No. 14, pg. 1-3.  
11 C.G.R. alleges that he was renewing a vehicle registration at the Grant County  
12 Department of Motor Vehicles (“DMV”). *Id.* at pg. 1. The Moss Declaration also  
13 references C.G.R.’s arrest. Dkt. No. 36, pg. 2. CBP believes these allegations  
14 pertain to the following three aliens: (1) the alien identified in the I-213 marked as  
15 Exhibit H, a citizen of Mexico, was previously apprehended and granted voluntary  
16 removal twice: (1) on December 27, 1997; and (2) on December 30, 1997. He was  
17 also excluded on November 3, 2002. While in the United States, he was convicted  
18 of: (1) Sex with a Minor in May, 1998; (2) Indecent Exposure in October, 2002; (3)  
19 Driving Under the Influence in Richland in November, 2014; and (4) Negligent  
20 Driving in Othello in January, 2016. Border Patrol Agents encountered him at the  
21 Grant County Courthouse on November 19, 2018, and he admitted that he was in  
22 the United States illegally. He was referred for prosecution under 8 U.S.C. § 1326.  
23 (2) The alien identified in the I-213 marked as Exhibit I, a citizen of Mexico, who  
24 overstayed an H2-A visa valid until November 10, 2015. Grant County law  
25 enforcement notified Border Patrol Agents of his presence and they encountered  
26 him on November 19, 2018, at the Grant County Courthouse. He admitted that he  
27 was in the United States illegally. (3) The alien identified in the I-213 marked as  
28 Exhibit J, a citizen of Mexico, who was previously apprehended and granted  
voluntary removal on November 3, 2000. Grant County law enforcement notified  
Border Patrol Agents of his presence and Border Patrol Agents encountered him on  
November 19, 2018, at the Grant County Courthouse. He admitted that he was in  
the United States illegally. *See* Exhibits H, I, & J.

18. The Restrepo Declaration alleges that a man was detained in February 2019, while  
leaving court in Othello for a hearing on charges for Driving Under the Influence.  
Dkt. No. 38, pg. 9. CBP believes this allegation pertains to the alien identified in  
the I-213 marked as Exhibit K, a citizen of Mexico, who was arrested and convicted  
of the following: (1) Driving Under the Influence in August, 2004; and (2) Driving  
Under the Influence in Adams County in April, 2017. He was arrested a third time  
on October 7, 2018, in Adams County for Driving Under the Influence. Local law  
enforcement authorities notified Border Patrol of his presence and they encountered  
him on February 6, 2019, at the Adams County Courthouse. He admitted that he  
was in the United States illegally. *See* Exhibit K.

1 19. The M.R.V. Declaration alleges that she, her uncle, her niece, and her cousin were  
2 arrested by immigration officers on February 24, 2019, in Ritzville, while they were  
3 trying to post bail for her cousin, who had been detained for Driving Under the  
4 Influence. Dkt. No. 31, pg. 1-3. CBP believes these allegations pertain to the  
5 following four aliens: (1) the alien identified in the I-213 marked as Exhibit L, a  
6 citizen of Mexico, was arrested on February 24, 2019, in Ritzville for Driving Under  
7 the Influence and Driving Without a License. Local law enforcement notified  
8 Border Patrol of Paz, and on February 24, 2019, Border Patrol Agents contacted Paz  
9 and five other people seeking to post bail for him. Paz admitted that he was in the  
10 United States illegally. (2) The alien identified in the I-213 marked as Exhibit M, a  
11 citizen of Mexico, was encountered by Border Patrol Agents on February 24, 2019,  
12 as one of the five individuals with Paz-Vazquez. Paz admitted that he was in the  
13 United States illegally. (3) The alien identified in the I-213 marked as Exhibit N, a  
14 citizen of Mexico, had previously been arrested by ICE in Eugene, OR, and was  
15 granted Voluntary Removal. She was encountered by Border Patrol Agents on  
16 February 24, 2019, as one of the five individuals with Paz-Vazquez. Vazquez  
17 admitted that she was in the United States illegally. (4) The alien identified in the I-  
18 213 marked as Exhibit O, a citizen of Mexico, was encountered by Border Patrol  
19 Agents on February 24, 2019, as one of the five individuals with Paz-Vazquez.  
20 Luna admitted that she was in the United States illegally. *See Exhibits L, M, N &*  
21 *O.*

22 20. The Godoy Declaration alleges that a man was arrested in March 2018, at the Grant  
23 County courthouse after he attended a hearing for Driving Without a License and  
24 Without Identification. Dkt. No. 23, pg. 4. CBP believes this allegation pertains to  
25 the alien identified in the I-213 marked as Exhibit P, a citizen of Mexico, who  
26 overstayed a Border Crossing Card. While in the United States, Ramirez was  
27 arrested for: (1) Fail to Comply by Grant County Sheriff's Office on August 2,  
28 2017; (2) Driving While License Suspended on September 15, 2017; and Fail to  
Comply on December 12, 2017. Border Patrol Agents encountered Ramirez on  
March 20, 2018, at the Grant County Courthouse while he was appearing for the  
Failure to Comply charge. Agents contacted him outside the courtroom following  
his courtroom appearance. Ramirez admitted that he was in the United States  
illegally. Ramirez was issued a Notice to Appear and released following resolution  
of the State criminal charges. *See Exhibit P.*

21 21. The Restrepo Declaration alleges that a man was detained in March 2019, in the  
22 parking lot of the Ephrata courthouse for a ticket related to not having proper car  
23 insurance. Dkt. No. 38, pg. 11. CBP believes this pertains to the alien identified in  
24 the I-213 marked as Exhibit Q, a citizen of El Salvador, who was previously  
25 arrested and convicted of: (1) Driving While Intoxicated on April 10, 2015; and (2)  
26 Driving Under the Influence in Grant County on December 14, 2018. Border Patrol  
27 Agents encountered Guevara at the Grant County Courthouse on March 28, 2019.  
28 Agents approached him as he left the courthouse, but he refused to respond to  
questioning. Guevara was verbally abusive to the Agents and accused them of

1 being racists. He later admitted that he was in the United States illegally. *See*  
2 Exhibit Q.

3 22. The Rodriguez Declaration alleges that a man was arrested on March 1, 2018, while  
4 checking in with probation. Dkt. No. 39, Ex. A, pg. 1. CBP believes this pertains to  
5 the alien identified in the I-213 marked as Exhibit R, a citizen of El Salvador, who  
6 was arrested on July 20, 2016, and served with a Warrant and Notice to Appear, and  
7 released on bond while his removal proceedings were pending. While in the United  
8 States, he was arrested for: (1) a controlled substance violation in January 2005, in  
9 Grant County; (2) Driving Under the Influence and Driving Without a License in  
10 April 2005, in Grant County; (3) Assault – Domestic Violence in September 2007 in  
11 Grant County; (4) two charges of Failure to Comply in August 2015, in Grant  
12 County; (5) Driving Under the Influence (felony) in May 2016, in Grant County; (6)  
13 Assault 4 – Domestic Violence and Harassment – Domestic Violence in July, 2016,  
14 in Grant County; (7) Driving While License Suspended or Revoked in November,  
2017, in Grant County; and (8) Littering/Abandoning a Vehicle in January, 2018, by  
the Washington State Patrol. Local law enforcement authorities notified Border  
Patrol of Velazquez's presence and they encountered him on March 1, 2018, at the  
courthouse in Moses Lake. He admitted that he did not have documentation to  
establish that he was legally in the United States, and informed the Officers he was  
on bond from the Immigration Court. He actively resisted arrest and was eventually  
apprehended. *See* Exhibit R.

15 23. The Rodriguez Declaration alleges that a man was arrested on July 22, 2019, outside  
16 the Adams County Superior Court and/or at the jail. Dkt. No. 39, Ex. A, pg. 3-4.  
17 CBP believes this pertains to the alien identified in the I-213 marked as Exhibit S, a  
18 citizen of Mexico who was previously removed from the United States three times:  
19 (1) on September 25, 2013; (2) on November 22, 2012; and (3) on December 22,  
20 2010. While in the United States he was convicted of: (1) Malicious Mischief 3 and  
21 Criminal Trespass in March, 2007, in Adams County; (2) Driving With License  
22 Suspended or Revoked twice in July, 2012, in Adams County; (3) Driving with  
23 License Suspended or Revoked in October, 2012, in Adams County; and (4)  
24 Criminal Trespass – 1 in October, 2012, in Adams County. While in the United  
25 States, he was also arrested for: (1) Theft 3 in September, 2012, in Othello; and (2)  
26 Manufacturing/Delivery of Methamphetamine in October, 2012 in Adams County.  
27 Local law enforcement authorities notified Border Patrol of his presence and they  
28 encountered him in Ritzville after he was arrested at the courthouse and booked into  
the Adams County Jail. He refused to respond to questioning. He was referred for  
prosecution under 8 U.S.C. § 1326. *See* Exhibit S.

24 24. The Restrepo Declaration alleges that a man went to court in Moses Lake for a  
25 Driving Under the Influence hearing in August, 2018, and has not been heard from  
26 since. Dkt. No. 38, pg. 4. CBP believes this allegation is related to two possible  
27 aliens: (1) the alien identified in the I-213 marked as Exhibit T, a citizen of Mexico,  
28 was previously removed from the United States three times: (1) on February 8,  
2011; (2) on December 5, 2011; and (3) on December 27, 2016. While in the

1 United States, Pina was arrested and charged with Trafficking of Cocaine on June 2,  
2 2016. He was identified by Grant County law enforcement personnel and Border  
3 Patrol Agents encountered him on August 27, 2018, at the Grant County District  
4 Court. He admitted that he was in the United States illegally. (2) The alien  
5 identified in the I-213 marked as Exhibit U, a citizen of Mexico, was previously  
6 removed from the United States two times: (1) on November 16, 2011; and (2) on  
7 November 30, 2011. While in the United States, he was arrested and found guilty of  
8 Negligent Driving in October, 2015. He was identified by Grant County law  
9 enforcement personnel and Border Patrol Agents encountered him on August 27,  
10 2018, at the Grant County District Court. He admitted that he was in the United  
11 States illegally, and was referred for prosecution under 8 U.S.C. § 1326. *See*  
12 Exhibits T & U.

13 25. The Restrepo Declaration alleges that a man was detained leaving the courthouse in  
14 Ephrata in August 2018, after a court date for a domestic violence incident. Dkt.  
15 No. 38, pg. 7. CBP believes this pertains to the alien identified in the I-213 marked  
16 as Exhibit V, a citizen of Mexico, who was previously removed from the United  
17 States five times: (1) on November 5, 2005; (2) on November 25, 2005; (3) on  
18 February 21, 2006; (4) on February 20, 2010; and (5) on November 26, 2013.  
19 While in the United States, Solis was arrested and convicted of: (1) Assault 2 in  
20 Wenatchee in July, 2005; (2) Disorderly Conduct in Wenatchee in February, 2010;  
21 and (3) Burglary 1 Domestic Violence, Unlawful Imprisonment Domestic Violence,  
22 and Violation of Court Order Domestic Violence in Wenatchee in October, 2015.  
23 He was identified by Grant County law enforcement personnel and Border Patrol  
24 Agents encountered him on August 27, 2018, near the Grant County Courthouse.  
25 He admitted that he was in the United States illegally, and was referred for  
26 prosecution under 8 U.S.C. § 1326. *See* Exhibit V.

27 26. The Restrepo Declaration alleges that a man was arrested at the Moses Lake  
28 Courthouse in August 2019, while at a court appearance related to a charge of  
driving with a suspended license. Dkt. No. 38, pg. 11-12. CBP believes this  
allegation pertains to the alien identified in the I-213 marked as Exhibit W, a citizen  
of Mexico, who was previously removed from the United States in December 2010.  
Border Patrol Agents encountered Silva at the Grant County Courthouse on August  
20, 2019. He refused to respond to questioning, but Agents were able to identify  
him and apprehended him. *See* Exhibit W.

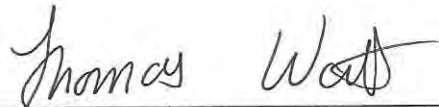
29 27. The Moss Declaration alleges that a man was arrested in October 2019, in front of  
the Ephrata Courthouse while appearing in court for Driving Under the Influence  
Charges. Dkt. No. 36, pg. 2. CBP believes this allegation pertains to the alien  
identified in the I-213 marked as Exhibit X, a citizen of Mexico, who was  
previously granted Voluntary Removal on May 26, 2009, was removed from the  
United States in March, 2016, and his removal order was reinstated two times: (1)  
on May 4, 2016; and (2) on May 7, 2016. While in the United States, he was  
arrested for and convicted of Driving Under the Influence in July, 2019, by Grant  
County Sheriff's Office. Border Patrol Agents encountered him at the Grant County

Courthouse on October 22, 2019, while he was attending a criminal proceeding. He admitted that he was in the United States illegally, and was referred for prosecution under 8 U.S.C. § 1326. See Exhibit X.

28. The Rodriguez Declaration and the Restrepo Declaration allege that two men were arrested on October 9, 2019, at the Othello Courthouse. Dkts. No. 39, Ex. A, pg. 5, No. 38, pg. 12-13. CBP believes this is related to two possible aliens: (1) the alien identified in the I-213 marked as Exhibit Y, a citizen of Mexico, who was previously apprehended and granted voluntary removal in 2009. While in the United States, he was convicted of Negligent Driving in March, 2017. Border Patrol Agents encountered him at the Adams County Courthouse on October 9, 2019, and apprehended him following his court appearance. (2) The alien identified in the I-213 marked as Exhibit Z, a citizen of Mexico, who was previously ordered removed by an Immigration Judge in November, 2014. While in the United States he was convicted of: (1) Driving While Under the Influence in August, 2009, in Othello; (2) Driving While License Suspended and Refuse to Comply in October, 2012, in Adams County; and (3) Assault 4 – Domestic Violence in October, 2014, in Franklin County. Border Patrol Agents encountered him at the Grant County Courthouse on October 9, 2019, and apprehended him following his court appearance in criminal proceedings. He admitted that he was in the United States illegally. See Exhibits Y & Z.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED this 22<sup>nd</sup> day of January, 2020, at Spokane, Washington.



THOMAS D. WATTS  
Special Operations Supervisor  
United States Border Patrol

**From:** [OFFICE RECEPTIONIST, CLERK](#)  
**To:** [Tracy, Mary](#)  
**Subject:** FW: Comment on Proposed Revisions to RPC 4.4, Comment 4 -- William D. Hyslop, U.S. Attorney for Eastern District of Washington  
**Date:** Monday, February 3, 2020 3:58:58 PM  
**Attachments:** [image001.png](#)  
[USAO Comment re Proposed Revision to RPC 4.4 Comment FINAL.pdf](#)  
**Importance:** High

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**From:** Drake, John (USAWAE) [mailto:John.Drake2@usdoj.gov]  
**Sent:** Monday, February 3, 2020 3:55 PM  
**To:** OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>  
**Cc:** Hyslop, Bill (USAWAE) <Bill.Hyslop@usdoj.gov>  
**Subject:** Comment on Proposed Revisions to RPC 4.4, Comment 4 -- William D. Hyslop, U.S. Attorney for Eastern District of Washington  
**Importance:** High

Hello,

Attached please find a comment in opposition to the proposed revisions to Comment 4 of RPC 4.4 submitted by William D. Hyslop, United States Attorney for the Eastern District of Washington.

Please confirm receipt.

John

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