



**Homeland
Security**

August 20, 2020

Mr. Chris Warner
Director, Portland Bureau of Transportation
1120 SW Fifth Avenue, Suite 1331
Portland, OR 97204

Dear Director Warner,

I am the Assistant Director of Policy, Communications and Engagement for the Federal Protective Service (FPS). FPS is a law enforcement agency within the Department of Homeland Security (DHS) with the primary responsibility of preventing, protecting, responding to and recovering from terrorism, criminal acts, and other hazards threatening the Federal government's critical infrastructure, services, and the people who provide or receive them.

This is a follow up to my August 11, 2020, letter to you concerning the August 3, 2020, Notice of Violation your office issued to the General Services Administration (GSA), as well as the July 31, 2020, Warning Notice sent to Storie & Associates, regarding the metal fencing and concrete barriers installed around the Hatfield Federal Courthouse in Portland, Oregon.

FPS shares Portland's concern with protecting the safety of the public; however, state and local laws may not prohibit or impede the actions of DHS or FPS in carrying out their statutorily authorized activities under the Supremacy Clause. Pursuant to its authority under 40 U.S.C. § 1315, FPS installed the fencing and barriers on Federal property to protect the Courthouse building, grounds, and persons on the property. FPS took this action, in furtherance of its statutory authority, as a necessary and proper means of preventing individuals from gaining illegal entry into the building or otherwise causing damage to the building or injury to its occupants.

To the extent the permit requirements of the Portland City Code purport to prohibit or impede FPS from erecting fencing or from taking any other actions necessary to carry out its statutorily authorized functions, those requirements are unconstitutional because they violate the Supremacy Clause, which prohibits local governments from regulating Federal government activities. Moreover, the Federal government is absolutely immune from fines or penalties issued by local governments unless there is a clear waiver of sovereign immunity by Congress. There has been no such waiver here.

This immunity from local regulation extends to the contractors retained by FPS to assist in its statutorily mandated protection of the Courthouse. Consequently, any fines or penalties issued

by your Bureau to either FPS, or any contractor retained by FPS, are unlawful and cannot be collected from either the Federal government or its contractors.

It is my hope that we can work towards a cooperative resolution of this situation. Once FPS determines that the fence is no longer necessary to protect the Courthouse and persons on the property, FPS will remove the fence and the barriers as quickly as possible. FPS looks forward to working with the City of Portland and the Portland Police Bureau to resolve the security issues around the Courthouse as quickly as possible, so that we can once again partner to help keep the entire Portland community safe and secure.

Sincerely,

David A. Hess
Assistant Director
Policy, Communication and Engagement

Enclosure: Notice of Violation

cc: Chief Judge Marco Hernandez
U.S. Attorney Billy Williams
U.S. Marshal Russel Burger
GSA Region Administrator Roy Atwood
Peter Andrews, Federal Protective Service