



April 11, 2019

The Honorable Ron Johnson
Chairman, Committee on Homeland
Security and Governmental Affairs
United States Senate
328 Hart Senate Office Building
Washington, DC 20515

The Honorable Bennie Thompson
Chairman, Committee on Homeland
Security
United States House of Representatives
2466 Rayburn House Office Building
Washington, DC 20515

The Honorable Gary Peters
Ranking Member, Committee on Homeland
Security and Governmental Affairs
United States Senate
724 Hart Senate Building
Washington, DC 20515

The Honorable Mike Rogers
Ranking Member, Committee on Homeland
Security
United States House of Representatives
2184 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Johnson, Ranking Member Peters, Chairman Thompson, and Ranking Member Rogers:

We at the Project On Government Oversight are deeply alarmed by recent reports that President Trump has instructed immigration officials and agents to disobey court rulings and violate the law. We ask that you ensure that no federal employees have been advised to disregard court orders.

Two recent events have sparked our concern. First, the President reportedly asked the secretary of homeland security to resign after she refused to engage in illegal actions he had requested, such as preventing migrants from seeking asylum, which would be prohibited by the limitations imposed on the Department of Homeland Security (DHS) by the courts, federal law, and international treaty obligations.¹

Second, and equally troubling, is a report indicating that in a recent meeting with DHS officials and border agents in California, the President instructed border agents to ignore court orders; and that once the President left the room, agency leaders told their agents that “if they did what the President said they would take on personal liability,” according to *CNN*.²

¹ Zolan Kanno-Youngs, Maggie Haberman, Michael D. Shear, and Eric Schmitt, “Kirstjen Nielsen Resigns as Trump’s Homeland Security Secretary,” *New York Times*, April 7, 2019.

<https://www.nytimes.com/2019/04/07/us/politics/kirstjen-nielsen-dhs-resigns.html> (Downloaded April 10, 2019)

² Jake Tapper, “Trump pushed to close El Paso border, told admin officials to resume family separations and agents not to admit migrants,” *CNN*, April 9, 2019. <https://www.cnn.com/2019/04/08/politics/trump-family-separation-el-paso-kirstjen-nielsen/index.html> (Downloaded April 10, 2019)

A president's statements to officials and employees charged with executing the law carry serious weight. Telling executive branch employees to disregard judicial orders—whether in an informal setting or as official policy—sends a signal that such illegal activities have the President's blessing, and that those who carry out their work in violation of the law can do so with impunity. Furthermore, federal employees should not be placed in the untenable position of determining whether they must heed the instructions of the President, or those of their agency leader.

There are lawful routes for the President to take when faced with an adverse court decision on a policy matter. He may appeal the ruling, try to convince Congress to change the law, or adjust his Administration's policy to comport with the law. Instructing federal employees to violate court orders is not a lawful option. In fact, the Whistleblower Protection Act of 1989 enshrines in law protections for federal employees—including border agents—who refuse to carry out orders that would require them to violate a law.

Given your vital role in overseeing the execution of the country's laws, we urge you to ensure that federal employees and officials are not being directed to disobey court orders. No one is above the law, and no policy objective is so important that an elected leader may flout the law to achieve it—or instruct others to do so.

Sincerely,

Sarah E. Turberville
Director
The Constitution Project at the Project On Government Oversight

cc Senate Committee on Homeland Security and Governmental Affairs
 House Committee on Homeland Security
 Senate Committee on the Judiciary
 House Committee on the Judiciary