SELECTIVE USE OF MEDIATION FOR IMMIGRATION CASES

By

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BACKGROUND

FEDERAL IMMIGRATION POLICY BEFORE AND AFTER, 2017

Before

- More relaxed
- Less I.C.E officers
- Little Enforcement & Removal
- No hiring (employment freeze)
- Prosecutorial discretion

After

- More stringent rules
- More I.C.E. Officer Presence
- Facilitated Hiring
- Prosecutorial discretion has been reduced
After Continued:

Impact of Executive Orders as compared to comprehensive immigration reform

- Single executive authority v. collective legislative action
- Misses important aspects of immigration
  - Communities
  - Families
  - Familial Employment is Disturbed
  - Local economies are disrupted

Immigration, Customs and Enforcement Powers

- Unlimited
- No oversight
- Abuses of agency powers
CURRENT ATMOSPHERE

Law Enforcement emboldened, state and federal level

- State law enforcement officers required to cooperate with federal agencies
- Disturbs and disrupts community policing
- Creates hostile conditions within the community
- Undocumented Persons are less likely to report crime
CURRENT ATMOSPHERE

Collaborative Efforts to Shore-up toll on the system has begun

What has happened:

- hiring more I.C.E agents

What needs to happen:

- More judges are necessary
- State attorney burdened
- Communities are crisis
CURRENT FLORIDA IMMIGRATION IMPACT

State of Immigration

- Legal Immigrant Status and their children are a large and growing share of Florida’s electorate
- One quarter Floridians self-identify as Latino and they vote
- Immigrant workers and tax payers are integral to Florida's Economy
- Immigrant Latino and Asian Entrepreneurs and Consumers are integral Florida’s Economy
- Immigrants are integral as students
- Naturalized citizens excel at education

(American Immigration Council, 2015)
IMPACT ON COMMUNITY

A. Families being separated
B. Children with US Citizen status left in a void
C. Loss of Income from one family member creates the need for implementation of social services (i.e. food stamps, vouchers, health) a burden to our economic system
CONSTITUTIONAL ISSUES

Due process

No due process
  · Family unit disrupted due to detention and eventual deportation (permanent removal)
  · Charged with violation of federal laws
  · Expedited removal offers little to no due process

Human Rights
  · Expedited Removal
  · Lengthy detentions
  · Health concerns
  · Racial, national and ethnic violations
CATEGORIES

Small Business Owner – *Matter of J.*
- Successful Restaurant owner**
- Employer of American workers
- Currently under deportation proceedings

Construction Worker – *Matter of G.*
- Father of three American-born children
- In the US since 1991
- DUI on the record
- Was deported in March 2017
NINTH CIRCUIT

Foundation

- Immigration courts are limited by the rule of law in achieving best outcomes for specific cases despite the existence of positive factors in favor of legal status.
- Many are unable to reach optimal resolution for petitioner's and respondents facing permanent deportation and separation from their families.
- Many can be resolved by the joint efforts of the government and private attorney’s.
- In 2004, the Ninth Circuit adopted a mediation program that sought to identify cases that were ripe for mediation.
NINTH CIRCUIT

Framework

- Immigration courts are flooded with cases that could be resolved with the joint efforts of government and private attorneys
- The ninth circuit has focused on the need for mediation between parties involved at the appellate level where resolution may be futile and deportation may be certain

We need to ensure that enforcement policies remain consistent with due process and the constitution.
The Ninth Circuit has focused on the need for mediation between all parties involved at the appellate level by identifying candidates that can benefit from the mediation process:

- The Ninth Circuit has focused on the need for mediation between all parties involved at the appellate level by identifying candidates that can benefit from the mediation process.

- Once the candidate has been identified, joint efforts are taken to facilitate the processing of applications for relief.

- Immigration courts are flooded with cases that could be resolved with the joint efforts of government and private attorneys.

- The Ninth Circuit has focused on the need for mediation between all parties involved at the appellate level by identifying candidates that can benefit from the mediation process.

Identification of candidates that can benefit from the mediation process and the joint efforts of the government and private attorneys has allowed for optimal resolution:

- Takes into consideration the Immigrants current life conditions.

- Allows for resolution of cases that may otherwise never go before an Immigration Judge.

- Allows for the identification of pre-and post immigration reform laws that affect resolution of cases.

(United States Courts for the Ninth Circuit, 2017)
OTHER ATTEMPTS

Other Attempts at Mediation for Immigration Cases

- The Second Circuit implemented a mediation program for Asylum Cases thereby reducing the court's backlog and achieving optimal results for the person.
Florida mediators can address needs for children and spouses of those detained

- Parental concerns
- Economic support
- Legal costs associated with detention
- Safety concerns
- Health concerns

Explore the possibility of the Ninth Circuit Selective Use of Mediation in other states

- Retains family cohesion
- Maintain the Integrity of the Community through Economic Stability
- Lower-Case Loads in Federal Courts
- Allows for Asylum claims to be scrutinized
NINTH CIRCUIT MEDIATION PROCEDURE

Approach: All or Nothing Legal Disputes

- Motion to Reopen
- Explore all Possible Forms of Relief
- Rare Cases: Equities
- “Dream Act” or other forms of Deferred Action


