LITIGATION STRATEGIES

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AGENDA

- Why litigation?
- Overview of types of litigation
- Illustrative cases from 2017-2018
- Organizing strategies
Why Litigation?

- In this environment, may be one of the most effective (and only!) tools we have.
- Courts are emboldened right now.
- Class actions can effect systemic change.
- Slows down the detention and deportation machine.
- It can be another bite at the apple (or two or three).
- Litigation can work in concert with communications and policy strategies.
Federal Litigation Defined

- **Federal district court**
  - Challenges to agency action in violation of the law and Constitution
  - Individual actions and class actions

- **Federal court of appeals**
  - Appeals from the district court
  - Petitions for review from the Board of Immigration Appeals
Types of Federal Litigation

- **Mandamus** – Compelling agency action that is delayed
- **Administrative Procedure Act** – Agency is acting contrary to law, agency’s decision is arbitrary or capricious, or decision not supported by evidence
- **Habeas** – Challenging detention
- **Petitions for Review** – Appeal of a final removal order
- **Freedom of Information Act (FOIA)** – Lawsuit for agency’s failure to provide documents
A “writ of mandamus” is a court order to an agency directing it to perform a non-discretionary duty.

Under the Administrative Procedure Act, a court can order an agency to act if their decision has been unreasonably delayed.

Examples:

- U visa cases – unreasonable delays of now 4-5 years
- Asylum application delayed 6 years
A court may undo actions of immigration agencies which are:

- Arbitrary, capricious, abuse of discretion, unlawful
- Violates the Constitution
- Violates federal law
Habeas Corpus

- A type of lawsuit for detained clients, alleging their detention is unlawful.

- Habeas remedy available if –
  - (1) the person is in custody of the United States (in this case, ICE custody)
  - (2) the custody violates the Constitution or laws, or treaties of the United States
Habeas: What relief?

- Release from detention
- Provide a bond hearing

Does it stop removal?

- No; would need a Temporary Restraining Order from judge
- Recently courts have found removing noncitizens before given a chance to present their claims violates the Constitution
Petition for Review

- Immigration court → Board of Immigration Appeals → Court of Appeals via a petition for review
- Challenges that an individual final order of removal is violates the law
- Does not stop removal unless a motion to stay is filed and granted
- Most common types of cases:
  - Asylum / withholding of removal / Convention Against Torture
  - Criminal issues
- Can be the last line of defense before removal
FOIA requests are a mechanism to obtain government documents and information from a federal agency.

Don’t need to be a lawyer to request—advocacy organizations, media, private citizens can request.

Requests are free and must be returned within 20 working days.

If the agency doesn’t respond in that time, federal lawsuit can be filed.

If the agency denies or responds insufficiently, appeal and then federal lawsuit.

ICE and CBP are VERY slow right now, so litigation pressure critical.

States have equivalent means to obtain information.
Illustrative Cases: Federal/state law enforcement

- Tomas-Pedro v. Holden (N.D. OH 2018 – pending)
  - § 1983 case brought on behalf of nine plaintiffs stopped by Ohio State Highway Patrol troopers and referred to U.S. Border Patrol
  - Constitutional claims based on racially-motivated traffic stops and prolonged detentions
  - Alternative form of getting information when FOIAs and Public Records Act requests are ineffective

- Ohio Bureau of Motor Vehicles advocacy
  - Addresses anti-immigrant BMV policies: co-signer requirements and refugee I-94 “expiration”
  - Relies on Arizona v. United States (U.S. Supreme Court 2012) holding that local law enforcement may not implement its own federal immigration rules
Illustrative Cases: Sanctuary Cities

City of Chicago v. Sessions (7th Cir. 2018)

- City of Chicago sued Department of Justice (DOJ) regarding new conditions on criminal justice grants.
  - Conditions:
    - Honor immigration detainers;
    - Participate in immigration enforcement;
    - Communicate immigration status with DHS.
- Seventh Circuit found that DOJ conditions are unlawful under the Administrative Procedure Act.
Illustrative Cases: Petitions for Review

- **Trujillo Diaz v. Sessions, 880 F.3d 244 (6th Cir. 2018)**
  - Maribel apprehended in 2007, denied asylum by immigration judge in 2012; Board of Immigration Appeals denied appeal in 2014
  - Prosecutorial discretion requests granted from 2014-2017
  - Motion to reopen asylum case based on changed country conditions with stay of removal filed at BIA in 2017; BIA denied in opinion with little analysis and impermissible, blanket rejection of evidence without explanation
  - Petition for Review filed at 6th Circuit. Court essentially holds that evidence on motions to reopen must be taken in the light most favorable to the plaintiff; BIA’s summary denial of evidence was an abuse of discretion
  - 6th Circuit mentions ICE’s methods of detention and deportation
  - Overall outcome: immigrants deserve their day in court!

- Class action brought on behalf of approx. 115 Iraqi nationals who were arrested and detained last summer in Michigan.
- Lawsuit sought release from detention and the opportunity to file immigration applications before removal.
- Court granted injunction first as to 115 class members, but then expanded nationwide (more than 1,000 people).
- Gave class members several months to file immigration applications.
Illustrative Cases: DACA Litigation

  - Two cases with substantially same reasoning and result: nationwide preliminary injunction granted; DHS must accept renewals but not new applications
  - Rescission decision violated the APA—the government gave bad reasons for rescission
  - Both courts vacated the rescission
- **NAACP v. Trump**, District of Columbia
  - Again arbitrary and capricious; vacated rescission
  - Vacatur effective 90 days from order (July 23, 2018)
  - Government has now issued new rescission decision
Organizing Strategies: Working with Law Enforcement

- Immigrant-friendly policing policies
  - Education on immigration laws and statuses, including information about Arizona v. US
  - U Visa and TVisa certification trainings
  - Language access policies
Organizing Strategies: Fighting Detainer Policies & Creating Sanctuary Cities

- Examples:
  - City of Cincinnati
  - City of Louisville
Organizing Strategies: Fighting Immigration Detention

- Bond hearing projects
  - Collaboration with local law school clinics
- Universal representation model
Organizing Strategies: Resisting New Detention Centers

- Example: Elkhart, IN
  - CoreCivic planned to build detention center in Elkhart, IN
  - Group of organizers resisted building the center, advocated publicly
  - CoreCivic withdrew plans