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September 8, 2017

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Via Email (supreme@courts.wa.gov) and U.S. Mail

CLERK OF THE SUPREME COURT

PO Box 40929
Olympia WA 98504-0929

RE: *Proposed ER 413*

I am supporting Proposed ER 413. This rule would correct the current practice where irrelevant questions about immigration status deter vulnerable crime victims and witnesses from seeking help from the criminal justice system. It would also prevent use of a witness's immigration status to unjustly lessen the credibility of a witness simply because of their immigration status.

As a Prosecutor in a County with a large population of people who have immigration issues, I know of the reluctance of many to cooperate with the criminal justice system. This leaves them vulnerable, and hampers our ability to keep them and our community safe. It also obstructs the ability of our courts to provide equal justice to defendants and victims of crime.

Local law enforcement has worked to communicate to our community that State and local law enforcement agencies are not involved in immigration enforcement. It is challenging enough to communicate the difference between Federal and State law enforcement. That challenge is increased when witnesses are asked in court or in pre-trial interviews questions, such as, "Are you here illegally?"

There was such questioning in *State of Washington v. Gregorio Luna Luna*. Sergio Perez-Ramos and Santiago Perez-Ramos were two farm workers outside the residence of their friend, Griselda Ocampo Meza, when the defendant entered the residence and stabbed her to death.

During a pre-trial interview with a Spanish interpreter, Sergio was asked:

DEFENSE COUNSEL: Do you have a work Visa?

SERGIO: No.

DEFENSE COUNSEL: Are you here illegally?

PROSECUTOR: We talked about this before, and it is just totally an inappropriate question.

DEFENSE COUNSEL: Will you repeat the question? I asked him if he was illegal. His legal status.

PROSECUTOR: You don't have to answer that.

DEFENSE COUNSEL: I'm going to tell you right now that case law is on point that says you...

SERGIO: I cannot answer the question.

In a separate interview of Santiago Perez-Ramos, the following occurred:

DEFENSE COUNSEL: Are you here legally right now?

PROSECUTOR: I don't think that is an appropriate question.

A hearing followed with defense counsel arguing that there was no need for any showing of relevancy. While the trial court ultimately ruled that the witnesses did not have to answer those questions, I learned that there was scarce case law. The issue was not raised on appeal in that case. The main effect was that both Sergio and Santiago were fearful to come to trial.

ER 413 does allow for questioning about immigration status, if there is a showing of relevancy. My past experience on cases and the opposition to the proposed rule is that no showing of relevancy is needed. Sadly, in a way, the opponents to the rule are correct. Evidence about the immigration status of a witness lessens the witness's credibility in the eyes of many jurors. It should not, but it does. That is why ER 413 is needed.

Sincerely,



ANDY MILLER
Prosecuting Attorney

AKM/clp

Tracy, Mary

From: OFFICE RECEPTIONIST, CLERK
Sent: Friday, September 8, 2017 3:00 PM
To: Tracy, Mary
Subject: FW: Proposed ER 413 - Letter of Support
Attachments: Proposed ER 413 - Letter of Support - Andy Miller.pdf

Forwarding.

From: Cheryl Pochert [mailto:Cheryl.Pochert@co.benton.wa.us]
Sent: Friday, September 8, 2017 2:18 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Cc: Andy Miller <Andy.Miller@co.benton.wa.us>
Subject: Proposed ER 413 - Letter of Support

Good Afternoon,

Attached hereto, please find a scanned copy of a letter of support of proposed ER 413 from Benton County Prosecutor Andy Miller. The original letter will follow via today's U.S. Mail outgoing run.

Thank you.

Cheryl L. Pochert

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T.E.A.M.: Together Each Achieves Magnificence

"Handle them carefully, for words have more power than atom bombs."