



## Ramsey County to add community services attorney

By: Nancy Crotti July 24, 2018 0

Ramsey County Attorney John Choi wants to develop an immigration policy and hire a community services attorney to help staffers handle immigration-related issues and possibly prevent deportations.



John Choi

Choi, who is seeking a third term, said he has money in the budget to fund the position next year. Although he raised the issue in a political fundraising email, Choi said he began thinking of developing the policy and adding the position in 2012. That was in response to the U.S. Supreme Court's 2010 decision in *Padilla v. Kentucky*, which holds that criminal defense attorneys must inform defendants whether their plea carries a risk of deportation.

"This established a really bright-line duty that defense attorneys have, but there's also an obligation on the part of the prosecutor," he added. "Our duty is not to solely seek convictions. Our duty is to seek justice."

The community services attorney would "help us better understand how our decisions in criminal cases could impact people who become subject to federal immigration proceedings or face other collateral consequences, and to help people obtain expungements in cases where justice compels it," Choi's email said.

### Guided decision-making

The issue is personal for Choi, who emigrated from Korea with his family when he was a child. While he was in elementary school, Choi's entire family became U.S. citizens in what he described as "a very easy process."

When federal immigration policies began to stiffen following President Trump's election in November 2016, Choi began researching whether other county prosecutors had added an immigration attorney to their staff but found very little.

"The only policies that came back and trials to read were from the Los Angeles county DA's office, and they did it because they were required to by statute, because the legislature had recently passed a law," he said. "We've been doing this kind of ad hoc. We want a policy that will guide our decision-making."

"We also recognized that if we wanted to do this right we'd need some resources so a person would be in charge of handling these kinds of requests."

One such ad-hoc situation was the case of Chamroeun Phan, who was detained in 2016 under threat of deportation to Cambodia. Phan had been convicted of criminal damage to property for breaking three windows in a bar. Because the damage was more than \$1,500, Phan was charged with a felony and sentenced to 365 days in jail. For immigration purposes, a sentence of 365 days or more made the crime an aggravated felony and made Phan eligible for deportation, according to his immigration attorney, Mai Moua of Minneapolis.

Phan was born in a refugee camp and never set foot in Cambodia, but because of citizenship law he was considered a citizen of Cambodia, Moua said. Choi's office intervened and changed the sentence to 364 days to avert deportation. Phan was released in September 2017.

"It was a very long process, a very difficult process, but it's also a political process," Moua added. "Working with any government agency is hard, with such negative immigration rhetoric, especially in today's environment."

As for expungements, people typically ask a judge to seal a criminal record. The police, FBI, immigration officers, and other public officials may still see sealed court files for certain purposes, under Minnesota law. The law allows a prosecutor to consider individual requests to expunge records when they meet the legal requirements and are appropriate from a public safety and justice perspective.

"This is not just about holding somebody accountable, getting a conviction, but it's also about recognizing the important concept of a second chance, recognizing rehabilitation," Choi said. "People do change their lives, and

people shouldn't be weighed down by convictions if they really have changed their lives. We have to balance all that with public safety issues."

It would be unusual to have an immigration attorney working in a prosecutor's office, but a couple of area public defenders found the idea intriguing.

"I think it could be a great position, maybe in setting policy, maybe in establishing pre-charge diversion," said Chela Guzman-Wiegert, who supervises the immigration unit in the Hennepin County Public Defender's Office.

"Prosecutors have a wonderful amount of discretion, so if they were to become better informed of how this may impact people's lives, the charges that they select, that would be great."

Ramsey County Chief Public Defender James Fleming wanted to know more about Choi's plans but agreed that the immigration implications for defendants have radically changed.

"Everything right now is a deportation consequence if you're criminally charged," Fleming said. "They're deporting people if you're charged with a DUI. Our clients' only hope is they actually get out of custody."

Choi's election opponent, Luke Kyper Bellville, did not respond to phone calls requesting comment.

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