

**UNIVERSITY OF THE DISTRICT OF COLUMBIA
DAVID A. CLARK SCHOOL OF LAW**

IMMIGRATION AND ASYLUM LAW

Fall 2011

Thursday 6:30-9:00 PM – Building 52, Room L-108

SYLLABUS

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THE SCOPE AND PURPOSE OF THE COURSE

Welcome to Immigration and Asylum Law! The purpose of this course is to introduce you to the increasingly complex field of immigration law. During the last three decades or so, immigration has been the subject of intense public debate. As a result, Congress has been very active in legislating a series of immigration reforms that have not only kept immigration practitioners busy, but have also provided expanded opportunities for graduating law students to enter this unique field of law. The courts are still grappling with complex issues raised by the implementation of the Illegal Immigration and Reform and Immigrant Responsibility Act of 1996 (IIRIRA). IIRIRA brought fundamental changes to our immigration laws. These changes, most of which became effective on April 1, 1997, have resulted in increased litigation, as well as greater concern among immigrants who are in the United States in an unlawful status. The events of 9/11 precipitated a new round of legislative and administrative measures designed to enhance immigration controls. In particular, the Immigration and Naturalization Service (INS) was abolished and its functions were transferred to the newly created Department of Homeland Security (DHS). Additionally, Congress recently enacted the REAL ID Act, partly as an effort to streamline judicial review of immigration decisions.

Even if you never plan to practice immigration law for a living, it is almost certain that you will run into someone who has an immigration problem. Or perhaps you will do some badly needed pro bono immigration work for your future law firm. This course will introduce you to the basics of immigration and asylum law, and to the complex changes brought about by IIRIRA and the events of 9/11.

In general, the objective of the course is to examine the administrative and legal framework regulating the admission and removal of non-citizens from the United States and to provide you with an introduction to asylum and refugee law. The course will also provide a series of exercises to introduce you to certain practical aspects of immigration law.

As demonstrated by the ongoing debate about what to do with the 10 to 15 million non-citizens who are here in an unlawful status, immigration issues necessarily raise difficult policy questions which now sharply intersect with homeland security issues. Although the focus of the course is on a "survey of the law," we will discuss some of the most significant policy questions facing the decision makers and the public at large.

REQUIRED TEXTS

1. THE CASE BOOK: Aleinikoff, Martin, Motomura, Fullerton, Immigration: Process and Policy, West Publishing (6th Ed.).
2. THE STATUTE & REGULATIONS: Immigration and Nationality Laws of the United States, West Publishing (2011 Ed.).

ASSIGNED READINGS

Most of the required reading for this course will be from the casebook. However, the statutory readings from West's statutory supplement are indispensable. Supplemental reading materials will be made available either in class or through the normal distribution channels.

Because each participant is expected to contribute to weekly class discussions, you must read the assigned reading materials. You will be responsible for proactively reading and studying the

materials assigned whether or not they are discussed in class. The amount you learn is directly proportional to the amount of time you spend reading and engaging the material.

You are expected to brief each case and be prepared to discuss the legal concepts of each case and answer questions relating to what you have read. You are encouraged to supplement the required readings by reading and/or referring to a treatise of immigration law. One good source is Immigration Law and Procedure by Gordon, Mailman, Yale-Loehr (Matthew Bender).

ATTENDANCE POLICY

Prompt attendance and active participation is required for each class. Attendance will be taken at each class and tardiness will be recorded. The American Bar Association and the University of the District of Columbia School of Law require your attendance at a minimum of 85 percent of the scheduled classes. The number of permitted absences are intended to account for the range of minor illnesses, family obligations, unplanned events and interviews. The professors also may make special exceptions for religious observances upon written request in advance. The attendance policy will be monitored by the use of attendance sheets circulated at the beginning of class and signed by the students.

TARDINESS AND EARLY DEPARTURES

Timely attendance is not optional for members of the legal profession. Likewise, for this course, you are expected to arrive on time for the beginning of each class and to stay until the class is over. Simple politeness and consideration for other students and for the professor require that you not disrupt the class sessions by walking in late or leaving early.

DECORUM

Students are expected to conform to the UDC-DCSL, Decorum Policy, as reprinted in the Student Handbook.

GRADES

Your final grade will be based on a midterm examination (35%), a PowerPoint presentation (15%), and a final examination (50%).

CLASSROOM PARTICIPATION

Class participation is strongly encouraged and may be taken into account in borderline grade situations.

BROAD OUTLINE OF THE COURSE

1. INTRODUCTION
 - a. Agencies
 - b. Immigration law sources

2. ADMISSION OF NONCITIZENS (“ALIENS”)
 - a. Sources of the Federal Power Over Immigration
 - b. Whom Shall We Welcome? The Immigration Selection System
 - i. Immigrant Categories
 - ii. Nonimmigrants Categories
 - iii. Refugees
 - c. The Admission Procedures - Applying for a visa
 - i. Consular Determinations
 - ii. Border
 - iii. Adjustment of Status
 - d. Visa Procedures

3. IMMIGRATION CONTROLS & ENFORCEMENT
 - a. Qualitative Controls
 - b. Constitutional Limitations On the Government’s Power
 - c. Removal Procedures
 - d. Relief from Removal
 - e. Immigration Detention

4. ASYLUM AND REFUGEES
 - a. Refugees, Asylum & Withholding of Deportation
 - i. Procedures
 - ii. Standards
 - iii. Definition of Persecution
 - b. Basis of Persecution
 - c. The Convention Against Torture

5. ADMINISTRATIVE AND JUDICIAL OVERSIGHT
 - a. Administrative Review
 - b. Judicial Review

READING ASSIGNMENTS*

Class 1

1. Introduction

2. The Federal Agencies

Read INA § 103(a); skim pp. 267-295
See www.udclaw.com for additional assignments

Visit and surf the following web sites:

www.uscis.gov

www.usdoj.gov/eoir/vll/libindex.html

<http://travel.state.gov/visa/>

3. Immigration Law Sources

Statutes, regs, internal guidance

4. Who Has the Power to Regulate Immigration? The Sources of the Federal Power over Immigration

Skim pp. 157-192; read pp. 192-233 and brief the following cases:

The Chinese Exclusion Case, 130 U.S. 581 (1889) [p.197]

Fong Yue Ting v. United States, 149 U.S. 698 (1893) [p. 214]

Wong Wing v. United States, 163 U.S. 228 (1896) [p. 230]

*Always check www.udclaw.com where additional course info and materials will be posted.

Classes 2-3

5. Representation of Aliens

Forms G-28 (Notice of Entry of Appearance) and I-130 (Petition for Alien Relative)

Locate these forms on the USCIS web site - Print them and bring them to class

6. Overview of the Immigration Selection System

Read pp. 296-345

Fiallo v. Bell, 430 U.S. 787 (1977) [p. 314]

7. Immigrant Categories - Family-Based

Read INA §§ 214(b)(first sentence), 101(a)15)(first two lines); read pp. 300-303

a. Immediate Relatives

Read INA §§ 201(b)(2), 101(b)(1)

b. Marriage Issues

Adams v. Howerton, 673 F.2d 1036 (9th Cir. 1982) [p. 328]

Dabaghian v. Civiletti, 607 F.2d 868 (9th Cir. 1979) [p. 334]

Violence Against Women Act of 1994 (VAWA)[skim pp. 345-48]

Defense of Marriage Act (DOMA)

c. Siblings

Read INA §§ 101(b), 203(a)

Young v. Reno, 114 F.3d 879 (9th Cir. 1997) [p. 350]

d. Family Based Preference Categories

- i. FB-1 Unmarried sons & daughters of USCs
- ii. FB-2 Spouses & children of LPR; unmarried sons and daughters of LPRs
- iii. FB-3 Married sons and daughters of USCs
- iv. FB-4 Brothers and sisters of USCs

Class 4

8. Immigrant Categories - Employment-Based

Read pp. 360–96, skim INA § 203(b)

a. Employment Based Preferences

- i. EB-1 Priority workers
- ii. EB-2 Members professions holding advanced degree and aliens of exceptional ability
- iii. EB-3 Skilled workers, professionals, and other workers
- iv. EB-4 Certain special immigrants
- v. EB-5 Investors

b. Labor Certification - PERM

Matter of Information Industries, 88 INA 82 (BALCA 1989) [p. 370]
Muni v. INS, 891 F. Supp. 440 (N.D.Ill. 1995) [p. 388]

c. Ethical Considerations

9. Immigrant Categories - Diversity Immigrants

Skim INA § 203(c)

Surf http://travel.state.gov/visa/immigrants/types/types_1322.html

10. Refugees

Skim INA § 207

Class 5

11. Nonimmigrant Categories

Read pp. 396-438; skim INA §§ 214(b)-(c), 221(a), 222(c)-(d)

a. Those Who Come for Pleasure

Read INA § 101(a)(15)(B)(2)

b. Those Who Come to Study

Read INA §§ 101(a)(15)(F)

c. Those Who Come to Work

i. Visitors for business

Read INA § 101(a)(15)(B)(1)

International Union of Bricklayers v. Meese, 616 F. Supp. 1387
(N.D. Cal. 1985) [pp. 408]

ii. Temporary Workers

Read INA §§ 101(a)(15)(H), 218

iii. Intracompany Transferees

Read INA §§ 101(a)(15)(L), 101(a)(44)

iv. Treaty traders and investors

Read INA §§ 101(a)(15)(E), 101(a)(45)

d. NAFTA & Free Trade Agreements

e. The Chosen Ones: Admission Without Visas

Skim INA § 217

Class 6

12. Visa Procedures

Skim pp. 625-42, read pp. 642-56; INA §§ 104, 221, 222(a)-(b)

a. Nonimmigrant Visas Procedures

- i. Consular Processing - "I want to go to America"
Read 687-92
- ii. Change of Status – INA § 248

b. Immigrant Visas Procedures

- i. Consular Processing
Read 687-92
- ii. Adjustment of Status

Read pp. 656-62
Read INA §§ 245(a), 245(i)

c. Parole

Skim 663-65, read INA § 212(d)(5)(A)

d. Class Exercise: Completion of I-130 Visa Petition

Class 7

13. Qualitative Controls at Admission

a. Grounds of Inadmissibility

Read pp. 507-26, skim INA § 212(a)

i. Crime-Related Grounds

- Conviction
- Aggravated felony

ii. Fraud and Willful Misrepresentation

Read pp 512-15; read INA § 212(a)(6)(C)(i)
Matter of Cervantes-Gonzales, 22 I&N Dec. 560 (BIA 1990)

iii. Public Charge

Read pp. 523- 24; read INA § 212(a)(4); skim INA § 213A
Matter of Kohama, 17 I&N Dec. 257 (INS 1978) [p. 524]

iv. Health Related Grounds

Read pp. 531-32; read INA § 212(a)(1)

v. National Security

Kleindienst v. Mandel, 408 US. 753 (1972) [p. 543]
Matter of S-K-, 23 I&N Dec. 936 (BIA 2006) [p. 570]

b. When Are Aliens Seeking Admission?

Read INA § 101(a)(13)

i. Initial Entry

ii. Adjustment of Status after Initial Entry, Reread INA § 245(a)

iii. Parole

Read INA § 212(d)(5)(A)

c. Constitutional Considerations At the Border

Knauff v. Shaughnessy, 338 U.S. 537 (1950) [p. 591]
Japanese Immigrant Case, 189 U.S. 86 (1903) [p. 594]
Kwong Hai Chew v. Colding, 344 U.S. 590 (1953) [p.598]
Schaughnessy v. Mezei, 345 U.S. 206 (1953) [p. 602]
Landon v. Plasencia, 459 U.S. 21 (1982) [p. 614]

Class 8

14. The Deportation Power

Read pages 693-96

a. Constitutional Perspective

Read 701-718

Harisiades v. Shaughnessy, 342 U.S. 580 (1952) [p. 701]

b. Grounds of Removal (Grounds of Deportability)

Read pp. 725-771; read INA § 237(a) (formerly INA § 241)

i. Immigration Control Grounds

ii. Crime-Related Grounds

Read INA §§ 101(a)(48), 101(a)(43), 237(a)(2)

Goldeshtein v. INS, 8 F.3d 645 (9th Cir. 1993) [p. 738]

Matter of Silva-Trevino, 24 I&N Dec. 687 (BIA 2008) (SUPP)

Leocal v. Ashcroft, 543 U.S. 1 (2004) [p. 746]

Lopez v. Gonzales, 127 S. Ct. 625 (2006) [p. 751]

Guerrero-Perez v. INS, 242 F.3d 727 (7th Cir. 2001) [p. 756]

Lara-Chacon v. Ashcroft, 345 F.3d 1148 (9th Cir. 2003) [p. 762]

Padilla v. Kentucky, 130 S.Ct. 1473 (2010) (SUPP)

iii. National Security

Read INA § 237(a)(4)

Class 9

15. Removal Procedures

Read pp. 1027-50

a. Constitutional Requirements

b. Removal Proceedings under INA § 240

Read INA §§ 239-40

i. Overview

ii. Right to Counsel

Aguilera-Enriquez v. INS, 516 F.2d 565 (6th Cir. 1976) [p. 1029]

Saakian v. INS, 252 F.3d 21 (1st Cir. 2001) [p. 1065]

Anin v. Reno, 188 F.3d 1273 (11th Cir. 1999) [p.1069]

Matter of Compean, 25 I&N Dec. 1 (BIA 2009) (SUPP)

iii. The Immigration Judge's Role

Jacinto v. INS, 208 F.3d 725 (9th Cir. 2000) [p. 1037]

iv. Evidentiary Issues

v. Motion to Reopen

c. Alternative Removal Procedures

Read INA §§ 238(b), 241(a)(5)

Morales-Izquierdo v. Gonzales, 486 F.3d 484 (9th Cir. 2007) [p.

1077]

16. Immigration Detention

a. Indefinite Detention

Zadvydas v. Davis, 533 U.S. 678 (2001) [p. 1102]

Clark v. Martinez, 543 U.S. 371 (2005) [p. 1131]

b. Detention During Removal Proceedings

Demore v. Kim, 123 S.Ct. 1708 (2003) [p. 1116]

Class 10

17. Relief From Removal

Read pp. 775-828

a. Regularization of Status

i. Cancellation of Removal

Read INA § 240A

Matter of Gonzalez Recinas, 23 I & N Dec. 467 (BIA 2002) [p. 795]

Hernandez v. Ashcroft, 345 F.3d 824 (9th Cir. 2003) [p. 802]

ii. Waivers

Read INA § 212(h)

iii. Registry

Read INA § 249

b. Relief Short of Permanent Resident Status

i. Voluntary Departure

Matter of Arguelles, 22 I & N Dec. (BIA 1999) [p. 821]

ii. Prosecutorial Discretion

iii. Stay of Removal

Classes 11-12-13

18. Protection from Persecution

Read INA §§ 101(a)(42), 208, and 241(b)(3)

a. Introduction & Background

Skim pp. 828-49; read pp. 849-53

i. Overseas Refugees

Skim INA § 207

ii. Asylum Procedures

Skim 8 C.F.R. § 208.1-208.17

iii. The I-589

b. Persecution

Read pp. 859-886

i. Meaning of Persecution

Matter of Chang, Int. Dec. 3107 (BIA 1986) [p. 862]

Tagaga v. INS, 228 F.3d 1030 (9th Cir. 2000) [p. 871]

ii. Level of Risk

INS v. Cardoza-Fonseca, 480 U.S. 421 (1987) [p. 878]

iii. Denial of Asylum as a Matter of Discretion

Read INA § 208(b)

c. The Basis of Persecution (the ‘On Account Of’ Nexus)

Read pp. 887-929

i. Persecution on Account of Political Opinion

INS v. Elias-Zacarias, 502 U.S. 478 (1992) [p. 888]

Matter of Fuentes, 19 I&N Dec. 658 (BIA 1988) [pp. 900-03]

ii. Persecution on Account of Race, Nationality, and Religion

iii. Persecution on Account of Membership in a Particular Social Group

Matter of H-, 21 I&N Dec. 337 (BIA 1996) [p. 897]

Fatin v. INS, 12 F.3d 1233 (3d Cir. 1993) [p. 903]

Matter of Kasinga, 21 I&N Dec. 357 (BIA 1996) [p. 910]

Matter of R-A-, 22 I&N Dec. 906 (BIA 1999) [p. 917]

Matter of S-E-G-, 24 I&N Dec. 579 (BIA 2008) (SUPP)

iv. Population control issues

d. Limitations on Asylum

Read pp. 929-46

INS v. Aguirre-Aguirre, 526 U.S. 415 (1999) [p. 932]

Neguse v. Holder, 129 S.Ct. 1159 (2009) (SUPP)

Matter of Rodriguez-Majano, 19 I&N Dec. 811 (1988) [p. 941]

e. Convention Against Torture (CAT)

Read pp. 947-62

Matter of Y-L-, 23 I&N Dec. 270 (AG 2002) [p. 951]

Matter of M-B-A-, 23 I&N Dec. 474 (BIA 2002) [p.957]

Class 14

19. Immigration and National Security

Narenji v. Civilletti, 617 F.2d 745 (D.C. Cir. 1979) [p. 988]

20. Administrative and Judicial Oversight

Read pp. 1148-57

a. Appeals to the BIA

b. The Federal Courts

- i. Review under the INA
- ii. Habeas Corpus Review

INS v. St. Cyr, 533 U.S. 289 (2001) [p. 1157]

c. The REAL ID Act

Chen v. Gonzales, 471 F.3d 315 (2d Cir. 2006) [p. 1169]

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