

SYLLABUS- Fall (2013)
Immigration Law (5389)
University of Houston Law Center
Professor: Wafa Abdin
August 26 –December 7, 2013

Time: 4:00p-5:30p MW

[I reserve the right to modify this proposed schedule]

Welcome to Immigration Law! I wanted to take this opportunity to introduce myself. In addition to teaching this course, I work full time as the Vice President for Immigration Legal Services at Catholic Charities. I oversee the Cabrini Center for Immigrant Legal Assistance, the largest non-profit provider of immigration legal services for low-income and indigent non-citizens. The Cabrini Center comprises of the family visa program, crime victims program, detained and released unaccompanied juveniles program, refugee, asylee and citizenship program. I have more than twelve years experience in representing detained adults and juveniles, asylum seekers, victims of human trafficking and other serious crimes before the Department of Homeland Security, the Immigration Court, and the Board of Immigration appeals.

Required texts

- T. Alexander Aleinikoff, David A. Martin, Hiroshi Motomura, & Maryellen Fullerton, *Immigration and Citizenship: Process and Policy* (West 7th ed. 2012).

- 2012 Statutory Supplement: *Immigration and Nationality Laws of the United States: Selected Statutes, Regulations and Forms* (Aleinikoff, Martin, Motomura, & Fullerton eds., West 2012).

Please be sure to read the materials as they are assigned before each class. I will also provide other materials, as necessary. We will also discuss current issues in the news concerning immigration law and policy.

Class discussion, recording class, preparation, and attendance

This class will be discussion-oriented. I'll try to frame issues so that we can discuss them as you might in a law-office or other practice situation, instead of your merely acquiring pure information.

You may miss up to 2 classes without excuse. A sign-up sheet will be provided at the beginning of each class and collected during the first 15 minutes. If you miss more than 2 classes please see me unless of course a present emergency exists. Immigration Law, unlike some other areas of the law, is cumulative.

Your grade will be determined as follows: (i) class participation; (ii) a written closed book final exam (80%); and (iii) short assignments (20%). Several short assignments will be provided to

give you an opportunity to react to issues, respond to questions, as well as explore the policy implications concerning the detailed legal rules and standards we will be learning about this semester.

As required by UHLC policy, I reserve the right to alter any final grade by a half-letter grade based upon class participation. I may ask for volunteers during class. I may also call on students so that everyone must be ready to discuss the materials and prepared for each class.

I look forward to a great semester discussing these issues and covering these important topics! It is a great subject and one which is very much in the news, especially with the national discussion about immigration reform.

About the course

This course addresses these four broad questions:

- Who is a citizen of the United States, and why does it matter?
- Who else comes to this country as an immigrant or a visitor, lawfully or unlawfully?
- When and why can noncitizens in the United States be forced to leave?
- Who has the authority to answer the three questions above?

These questions will prompt us to examine the history of immigration to the United States, categories of immigrants, immigration outside the law, refugees and asylum, the constitutional aspects of immigration law, the federal agencies that apply immigration and citizenship laws, and state and local involvement with immigration and immigrants.

This course covers a very broad range of topics from the practical and technical to the conceptual and policy-oriented. More generally, this course is an opportunity to learn and apply general principles of constitutional law and administrative law in a substantively focused setting, to learn to read complex, technical statutes, and to analyze the interaction between statutes and the Constitution.

Reading assignments

Here are the reading assignments for the first few weeks, from T. Alexander Aleinikoff, David A. Martin, Hiroshi Motomura, & Maryellen Fullerton, *Immigration and Citizenship: Process and Policy* (West 7th ed. 2012) (“AMMF”).

Each assignment has questions to help you read efficiently (even if we won’t always discuss all of them). You should also read all statutes pertinent to problems mentioned in the assignments. (You may safely skip any statutory problems that the syllabus doesn’t mention.) *Unless I clearly say otherwise, please assume that the next class will cover the next assignment.*

Chapter One: Immigration and Citizenship in Historical Context

1) Monday, August 26: AMMF 1-36: history of immigration to the United States and an exercise in setting immigration priorities;

What milestones and trends in the history of U.S. immigration and citizenship law do you find most surprising? Most disturbing? Most encouraging?

What factors have most shaped the immigration policy of the United States? Of these factors, which are less influential than they were a century ago? Which have become more influential in recent years? See note 1 on page 34.

We'll next jump ahead for two sessions to material in Chapters Four and Five to follow up on our first session's exercise in setting immigration priorities.

2) Wednesday, August 28: AMMF 201–12 immigrants in the United States today; AMMF 272–93: immigrant admission categories;

Is there anything that you find surprising about the patterns described in Chapter 3–B? Encouraging? Troubling?

Please work through problems 1 and 2 on page 276 using the September 2013 Visa Bulletin, available at <http://www.travel.state.gov/visa/bulletin/>

Labor Day Holiday: Monday, September 2

3) Wednesday, September 4: AMMF 238–71: admissions (cont'd); federal agencies and courts

Please do problems 3, 4, and 5 on page 277 using the September 2012 Visa Bulletin.

To appreciate the practical aspects of the problems on pages 276–77, imagine that you represent someone who wants to help her new spouse immigrate as a lawful permanent resident. Where would you file the required papers? How long will the process take? If it results in an initial agency denial, where (if at all) can you seek review of that decision?

Chapter Two: Citizenship

4) Monday, September 9: AMMF 37–50: citizenship by birth: jus sanguinis;

Please do all parts of problems 1 and 2 on pages 41–42.

How would you draft a gender-neutral statute for non-marital children? See the Exercise on pages 49–50, and consider the constitutional reasoning set out in the excerpts from *Nguyen* on pages 44–49. You need not draft exact language, but please prepare to discuss options.

5) Wednesday, September 11: AMMF 50–80: citizenship by birth: jus soli

Why didn't *Wong Kim Ark* read the fourteenth amendment to confer citizenship only on the children of citizens and of persons who are eligible to naturalize?

If *jus soli* were eliminated for children of parents who are unlawfully in the United States, what would be the practical consequences?

Are the arguments for *jus soli* citizenship for a child of parents without lawful immigration status the same as for a child of lawfully present tourists? See note 4 on pages 78–79.

6) Monday, September 16: AMMF 80–105: dual nationality and the concept of citizenship; AMMF 105–26, 131–33: naturalization

What are the practical consequences of allowing or forbidding dual nationality? Does it matter how dual nationality would be acquired?

Can it be conceptually consistent to favor a strong national sense of citizenship and at the same time strongly favor allowing dual nationality?

Please do problems 1 and 2 on page 115.

Should it be easier or harder than current law (or about the same) to naturalize?

Please think about the scenarios in problems 1 and 2 on pages 132–33.

Chapter Three: Foundations of Immigration Law

7) Wednesday, September 18: AMMF 162–87: early constitutional immigration law, part; AMMF 188–201: early constitutional immigration law, part 2

What, if anything, is wrong with the reasoning and outcome in *Chae Chan Ping*? Are there parts of the decision that make sense as policy or as constitutional law today?

In *Fong Yue Ting*, why does Justice Gray treat deportation and exclusion alike?

Why do Justices Brewer, Field, and Fuller object to the 1892 Act? How do they distinguish *Chae Chan Ping*? See note 2 on pages 186–87.

Is *Chae Chan Ping* consistent with *Yick Wo*?

Based on *Chae Chan Ping*, *Yick Wo*, *Wong Wing*, and *Fong Yue Ting*, is the hypothetical Counterterrorism Act in the handout (to be distributed) constitutional?

Syllabus (part 2)

(Back to) Chapter Five: Immigrants and Nonimmigrants: Qualifying Categories and a Look at the Undocumented

8) Monday, September 23: AMMF 293–313; the Constitution and family-based immigration AMMF 314–32: marriage-based immigration under the INA

How would you advise a same-sex couple (citizen and noncitizen) about immigration based on their relationship? See notes 1 and 2 on page 309, and notes 4 and 5 on pages 310–13.

How, if at all, does *Fiallo* affect the answer to the previous question?

Why not simply provide that marriages are valid for federal immigration law purposes if they are valid in the jurisdiction where the marriage was entered into?

Please do (all parts of) problems 1, 2, 3, and 4 on pages 320–21.
As an attorney, what would you do in the four situations described on page 329?

How if at all should Congress revise IMFA?

- 9) *Wednesday, September 25: 342–74 (not including Muni): employment-based immigration;*
How would you advise a U.S. Senator who is trying to decide whether or not to support a bill to eliminate the EB–5 investor category from the current admissions scheme?

Please be prepared to discuss the Exercise on page 350.

Should Congress revise the labor certification system? Why and how?

- 10) *Monday, September 30: AMMF 382–96 (middle), 402–07, 416–21: nonimmigrants*

What nonimmigrant categories are available to the Engineer and the Vice President in the Exercise on pages 386–87? What are the advantages and disadvantages of each?

What advice do you have regarding the Vice President's wife and older child?

- 11) *Wednesday, October 2: AMMF 421–51: trafficking and crime victims; temporary workers; AMMF 451–85: unauthorized migration*

What is the difference between T and U visas? Who qualifies for one but not the other?

Should U.S. immigration law include some kind of temporary worker program(s)?

Would it be better policy for all initial admissions to be for a limited term, and only later allow some noncitizens to stay indefinitely as permanent residents? See pages 427–28.

What responses to unauthorized immigration do these reading selections suggest? After reading these pages, do some policy options seem more or less promising to you?

Chapter Six: Admission Procedures

- 12) *Monday, October 7: AMMF 486–517: overview of procedures; adjustment of status; AMMF*

If Congress asked you to testify to suggest improvements to the modern system of admission procedures, what would you suggest, and why?

Please do problems 4, 5, and 6 on pages 515–16.

- 13) *Wednesday, October 9: 518–42: parole; processing & screening; constitutional due process, part 1;*

Was NSEERS ill-advised as a policy matter? Could it have been better designed? How?

Why did the Supreme Court reach a different outcome in *Yamataya* as opposed to *Knauff*?

Why did the Supreme Court reach a different outcome in *Chew* as opposed to *Knauff*?

14) Monday, October 14: AMMF 542–65: constitutional due process, part 2

Do the reasons for denying a constitutional right to a hearing in *Knauff* also apply in *Mezei*?

What are the best arguments for each side in the Exercise on pages 564–65?

Was NSEERS unconstitutional?

Chapter Seven: Inadmissibility, Deportability, and Relief From Removal

15) Wednesday, October 16: AMMF 582–94: inadmissibility: crimes; immigration control; fraud; AMMF 594–605: inadmissibility: unlawful presence; public charge; public health

Please do problems 1 and 2 on pages 585–86, and problem 6 on page 594.

Please do problems 7 and 8 on page 596.

What explains the difference in outcome between the two cases on pages 598–601?

What advice would you give to Juan in the Exercise on page 603?

16) Monday, October 21: AMMF 605–29: inadmissibility: national security

Please do problem 12 on page 628.

In problem 12, if Z is inadmissible under the INA, is that result constitutional, given the constitutional law decisions that we've read so far this semester, including *Mandel*?

Syllabus (part 3)

Chapter Seven: Inadmissibility, Deportability, and Relief From Removal (continued)

17) Wednesday, October 23: AMMF 648–64: deportability: immigration control; the Constitution; AMMF 664–79: the concept of deportability

Please do problems 1 and 2 on page 652.

According to *Harisiades*, what does it mean to be a lawful permanent resident of the United States, as compared to being a citizen, a lawfully present nonimmigrant, or an unauthorized migrant?

Should Congress or the courts limit the retroactive application of any new or amended deportability grounds (see pages 665–67)? Or as an overlapping alternative, should some type of time limit apply to deportability grounds (see pages 671–73)?

How would the U.S. Supreme Court decide a First Amendment challenge to removing permanent residents based on membership in a terrorist organization? See note 1 on pages 677–78.

Please think through the questions in the Exercise on page 679.

18) Monday, October 28: AMMF 679–701: crime-related deportability, part 1; AMMF 701–28: crime-related deportability, part 2

If the immigration consequences of a criminal conviction aren't clear, what is a criminal defense attorney's duty? See note 1 on page 692.

Please do problems 3, 4, and 5 on pages 696–97.

How did the Supreme Court reach the result in *Gonzalez–Duenas*? How does the *Gonzalez–Duenas* analysis differ from the analysis in *Lara–Chacon*?

Practically speaking, how does the choice between *Silva–Trevino* and *Jean–Louis* (or some other approach) make a difference in criminal law practice and in immigration law practice?

19) Wednesday, October 30: AMMF 728–39: crime-related deportability, part 3: AMMF 750–65: cancellation of removal

Please think through the questions in the Exercise on pages 738–39. (You need not draft any specific language, but think how you would approach the task.)

Please do problems 1 and 2 on page 752.

What is the smallest change in the *Gonzalez Recinas* facts that would change the outcome?

As an immigration judge, would you grant cancellation in the Exercise on pages 763–65?

20) Monday, November 4: AMMF 765–90 and handout on DACA: VAWA cancellation; registry, private bills, prosecutorial discretion (inc. DACA), voluntary departure

What is the smallest change in the facts in *Martinez* that would have led to a different outcome in the BIA? See note 2 on page 773.

Please think through the Exercise on page 778.

To what extent does the Deferred Action for Childhood Arrivals (DACA) program represent an approach to prosecutorial discretion that differs from the approach in the June 2011 Morton memos? [See handout on DACA to be distributed.]

Chapter Ten: Removal, Detention, and Judicial Review

21) Wednesday, November 6: AMMF 1147–50, plus handout to be distributed; Special session: a look at immigration court practice

Guest:

Syllabus (part 4)

Chapter Eight: Asylum and the Convention Against Torture

22) *Monday, November 11: AMMF 797–800, 810–26, 860–69: refugee and asylum overview; “particular social group”*

What if any changes in the asylum adjudication system would you recommend?
How would you have decided *Matter of S–E–G–*? See notes 1, 2, and 3 on pages 867–68.

23) *Wednesday, November 13: AMMF 872–88: gender-based claims*

Can lawyers representing clients like *Fatin* avoid the problems that kept her from being granted asylum? See note 1 on page 879.

Under *Fatin*’s reasoning, what must a gay or lesbian asylum seeker who fears sexual orientation–related persecution show to support an asylum claim? See note 2 on page 879.

What explains the difference in outcomes between the BIA decisions in *Matter of S–A–* and *Matter of R–A–*, just one year apart? See notes 1 and 2 on pages 886–87.

(Back to) Chapter Ten: Removal, Detention, and Judicial Review

24) *Monday, November 18: AMMF 1216–38: detention under the statute and Constitution*

Justice Scalia apparently believes that since both *Ma* and *Zadvydas* had final removal orders that ended their permanent resident status, *Mezei* should control the result. What is the majority’s response to this argument? See note 1 on page 1235.

Why and how do the majority and the two dissents in *Zadvydas* reach different outcomes?

Chapter Nine: Enforcement

25) *Wednesday, November 20: AMMF 920–26, 932–55, 965–72: federal enforcement*

If you were Secretary of Homeland Security, how (if at all) would you modify border enforcement? How would you decide to divide limited resources between border and interior enforcement? Among different types of border or interior enforcement? Between civil removal and criminal prosecution of immigration offenders? What policy choices go into answering these questions?

26) *Monday, November 25: AMMF 985–87, 1020–35: discretion and immigration law as anti-terrorism law*

Is there a meaningful difference—as a matter of policy or constitutional law—between the focus on nationality in *Narenji* and the measures adopted after September 11? See note 1 on page 1025.

What aspects of the “war on terror” are “profiling”? What, if anything, is wrong as a policy matter with profiling in immigration enforcement? Is it constitutional? See note 2 on page 1025.

Thanksgiving Holiday: Wednesday, November 27

27) Monday, December 2: AMMF 1035–36 (top), 1055–76: indirect state and local enforcement; AMMF 1076–78 (section 2.a.), 1084–86 (notes 2, 3, and 4), 1102–03, and handout (*Arizona v. United States*): direct state and local enforcement

What are the implications of *Chamber of Commerce v. Whiting* for state and local laws, such as in *Hazleton*, that limit unauthorized migrants’ access to housing? See note 3 on page 1076

After *Chamber of Commerce v. Whiting* and *United States v. Arizona*, how and when can state and local governments regulate immigration?

What are the policy reasons for and against state and local enforcement of federal immigration law? See the Concluding Question on page 1103.

28) Wednesday, December 4: AMMF 1103–19, 1138–46: immigration reform proposals

If you were a U.S. Senator who supports both the DREAM Act and a broader legalization program, which would you push for first as a matter of political strategy?

Should Congress adopt some kind of legalization program, and if so, what should it provide? If you were a U.S. Senator generally supportive of legalization, how much would you push for a legalization program and how much for permanent changes to the INA itself? How if at all are these two areas of reform linked to each other?

That’s all, folks!