

Crimmigration: Issues at the Intersection of Criminal Law and Immigration
Professor: Geoffrey A. Hoffman
Clinical Assoc. Prof., Director-UH Immigration Clinic
Summer IV 2016

Welcome to Crimmigration! This is a fascinating subject, which is ever-changing and one which will be challenging, enlightening, and eye-opening. It is also an important topic which has been in the news a lot lately, and is at the center of immigration reform proposals circulating in Congress. I am a professor and practicing attorney. As the director of the Immigration Clinic at UH, I work daily as an attorney and am working on cases currently this summer. While previously in private practice, I handled a wide variety of immigration cases –especially criminal-related immigration cases. Because of my background, I will be discussing various actual cases I've worked on (with client names withheld as appropriate). Some of you may have taken a clinical course at UH or you may have experience as a clerk or student attorney and therefore may also offer your own real world experiences in law practice. I welcome your participation by discussing your own legal experiences or background during class to the extent they impact the concepts relating to immigration law we'll be learning this summer. I will provide you with hypos and other practical examples from my experience as an attorney throughout the course.

Throughout the summer, if you wish to read more about any particular topic or prepare more for a specific class, you may also reference appropriate sections of Kurzban's Immigration Law Sourcebook (14TH Ed.) or later edition if available by the time of our course. This is an excellent resource which is available through the AILA.org website or on reserve in our law library. This resource has chapters and further information relating to all the topics we will be covering. For example, you may consult Kurzban's Chapter 10 for further materials on judicial review; Chapter 8 on relief from removal; Chapter 4 on asylum; Chapter 3 on admission and removal, etc.

Below are some of the housekeeping items, including our course text and other details which you should keep in mind this summer. Please read closely.

Course Meetings:

M-W, 6:00-8:20 p.m.

Room TBA

Professor's Contact Information:

ghoffman@central.uh.edu

Tel. (713) 743-2094

Course Description and Objectives:

This course addresses the historical and contemporary relationship between criminal and immigration law. In particular, the course will explore how individuals perceived to have violated a criminal offense are treated in the immigration law system, how individuals thought not to be citizens of the United States are uniquely affected by criminal procedures as well as substantive criminal law, and how states and the federal government have sought to police criminal activity by noncitizens. In the process, course participants will learn to analyze statutes and regulations concerning immigration, as well as procedural and substantive constitutional requirements concerning criminal procedures as they affect noncitizens. Participants will also consider the motivations of various policies related to immigration and immigrants, and identify the implications of these policies. I envision this as an interactive, lively and discussion-oriented class so please feel free to speak up and participate!

Required Text:

1) Mary E. Kramer, *Immigration Consequences of Criminal Activity* (AILA 6th ed.) (abbreviated in syllabus as *ICCA*). All references in the syllabus therefore will be to the 6th edition.

Recommended:

2) *Immigration and Nationality Act* (hard copy or electronic) (look at Cornell's version) see <http://www.law.cornell.edu/uscode/text/8>

3) *Title 8 of the Code of Federal Regulations* (hard copy or electronic)
<http://www.law.cornell.edu/cfr/text>

Other materials will be posted electronically on *Blackboard* (all material distributed will be either required or recommended reading).

Class Participation:

Learning is a collective enterprise. In a course such as this discussion is central to every participant's enhanced understanding of the material. As such, everyone is expected to be ready and willing to discuss each day's topics. Indeed, everyone should come ready to share their thoughts by volunteering or responding to questions. Class attendance is required. If you need to miss a class, email me beforehand. This is required. Please don't be late to class. Part of being a professional is being on time and this will affect your future practice, consequently please don't be late unless you email me beforehand or unless there is an emergency.

Grading:

Your grade for this course will be comprised of your *class participation*, performance on three short writing assignments (reaction pieces) not to exceed 5 pages each, as well as a final exam. The exam will be worth 80% of your grade. I reserve the right to increase/decrease final grade by half a letter grade to reflect class participation.

SINCE THIS IS A SUMMER COURSE, IT GOES BY FAST! IF YOU FALL BEHIND, IT WILL BE DIFFICULT TO CATCH UP. ALSO PLEASE BE AWARE THAT THIS COURSE IS CUMMULATIVE. IN OTHER WORDS, MATERIAL LATER IN THE COURSE BUILDS UPON PREVIOUS MATERIAL.

I have made a chart of the material (see last page of this Syllabus)– look at the chart to get a “bird’s eye” view of the course this summer. Use this chart also to study for the final. The chart is located at the end of the syllabus. Note: *Outside speakers will be announced when confirmed for select classes.*

Schedule:

July 11 (Mon.) (first class)

TOPIC: Introduction to Basic Immigration Law Concepts: Agencies, Inadmissibility and Deportability Grounds for Criminal Aliens; The Immigration System

Required Reading: Chapter 1 (ICCA)

Recommended: Slavin and Marks, "A View Through the Looking Glass: How Crimes Appear from the Immigration Court Perspective," 39 Fordham Urb. L.J. 91 (2012).

July 12 (Tues.)

TOPIC: Laying the Ground Work: Crimes Involving Moral Turpitude and Aggravated Felonies; Crime-Based Grounds; What is a "Conviction"?

Required Reading: ICCA Chapter 3, 98-107 (on inadmissibility/deportability); Chapter 6, 239-245 and 263-265 (Consequences of CIMTs and AFs); and Chapter 2 (on Definition of a "Conviction"?)

*Recommended: INA § 212(a)(2); INA § 237(a)(2); INA § 101(a)(43); *Leocal v. Ashcroft*, 543 U.S. 1 (2004); Chapter 5 of ICCA*

July 13 (Wed.)

TOPIC: The "Right" to Counsel in Immigration Removal Proceedings– and the Right to Counsel in Criminal Proceedings; Ineffective Assistance Claims-*Padilla*

Required Reading: Padilla v. Kentucky, 559 U.S. 356 (2010); *Matter of Lozada*, 19 I. & N. Dec. 637 (BIA 1988).

Recommended: Matt Adams, Advancing the "Right" to Counsel in Removal Proceedings, Seattle Journal (2010).

July 18 (Mon.)

TOPIC: Fashioning The Plea to Avoid Immigration Consequences / Post-Conviction Relief

Required Reading: Chapter 11 (ICCA) ; Matter of Pickering (and Ch. 2, discussing post-conviction relief beginning at page 64).

Recommended from first class: Slavin and Marks, "A View Through the Looking Glass: How Crimes Appear from the Immigration Court Perspective," 39 Fordham Urb. L.J. 91 (2012).

Note: we will also discuss some of the methods for getting post-conviction relief – habeas petitions and once vacated how respondents can pursue motions to reopen and we will further discuss *Matter of Lozada*.

July 19 (Tues.)

TOPIC: The Fugitive Disentitlement Doctrine ("FDD") / Habeas Corpus

Required Reading: PRACTICE ADVISORY: "The Fugitive Disentitlement Doctrine: FOIA and Petitions for Review" (August 19, 2010). The fugitive disentitlement doctrine arises in the immigration context when courts of appeals use the doctrine to dismiss petitions for review and when government agencies invoke the doctrine to deny FOIA requests. This Practice Advisory examines how the courts and the agencies apply the doctrine in these contexts.

Geoffrey A. Hoffman, Susham M. Modi, Symposium Article: "The War on Terror as a Metaphor for Immigration Regulation: A Critical View of a Distorted Debate," 15 *J. Gender Race & Just.* 449 (Spring 2012) (read especially pages relating to FDD).

If time allows we will also will discuss habeas relief, read: "Introduction to Habeas Corpus," available at http://www.legalactioncenter.org/sites/default/files/lac_pa_0406.pdf

July 20 (Wed.)

TOPIC: Controlled Substance Offenses; Drug-trafficking and related issues

Required Reading: pp. 394-401, in Chapter 9 (ICCA) ; revisit Chapter 5; Lopez v. Gonzales; Carachuri v. Holder and Mellouli v. Holder (the “sock” case)

July 25 (Mon.)

TOPIC: Deportation Procedure; The Notice to Appear; Expedited Removal; Administrative Orders; Reinstatements of Removal

Required Reading: ICCA, Appx. 1E (Notice to Appear); Ch. 1, pp.20-end of chapter; Ch. 3, pp. 104-107; 111-115; Recommended: Further Material to be posted.

July 26 (Tues.)

TOPIC: Criminal Aliens and the Detention System; Detainers; Secured Communities; 236(c); Mandatory detention

Required Reading: ICCA, Chapter 4.

Recommended Reading: Confronting Cops in Immigration Court (law review article) (see also for next class as well)

July 27 (Wed.)

TOPIC: Removal Defense: Types of Relief for Criminal Aliens: Waivers, 212(c), Cancellation of Removal, Adjustment, Pardons, and other relief

Required Reading: ICCA, Chapter 10. (Note also review pardons in your text, pp. 62-64)

Aug. 1 (Mon.)

TOPIC: Continued: Removal Defense: Types of Relief for Criminal Aliens: Waivers, 212(c), Cancellation of Removal, Adjustment, Pardons, and other relief

Required Reading: Continue ICCA, Chapter 10.

ALSO HIGHLY RECOMMENDED: Chapter 13 (on preparing and presenting applications). This will be especially important for those who plan to practice immigration law.

Aug. 2 (Tues.)

TOPIC: Crime Bars for Asylum and other related relief; Terrorist-related Inadmissibility Grounds

Required Reading: ICCA, p. 391-393; 572; 582-583 and 514 ; see also 414-415 ; 526-528 and 459-462 and other materials will be provided including materials from the following book relating to asylum procedure which I have used in the past: Regina Germain, Asylum Primer (6th ed.)

Aug. 3 (Wed.)

TOPIC: Citizenship and Criminal Issues; Good Moral Character and the Statutory Period

Required Reading: ICCA, 384; 387-390, 400, 404, 409-410; 415; 418-419; 424 ; other materials will be provided.

Aug 8 (Last Day) (Mon.)

TOPIC: Judicial Review and the Criminal Alien; Petitions for Review and Federal Court Jurisdiction after the “Real ID Act”

Required Reading: ICCA, pp. 18-33; INA § 242; other materials will be provided.

A review of the entire course will be held a convenient time for all after the final class. (I usually provide the pizzas at the review.) If sufficient time exists, we can do the review as part of the final class or have a separate class for the review.

TABLE OF TOPICS – DAY BY DAY

<p>July 11 (first class)</p> <p>Introduction to Basic Immigration Law: The Agencies, Inadmissibility and Deportability for Criminal Aliens; The Immigration System</p>	<p>July 12</p> <p>Laying the Ground Work: Crimes Involving Moral Turpitude and Aggravated Felonies; Crime-Based Grounds; What is a “Conviction”?</p>	<p>July 13</p> <p>The “Right” to Counsel in Immigration Removal Proceedings– and the Right to Counsel in Criminal Proceedings; Ineffective Assistance Claims</p>
<p>July 18</p> <p>Fashioning The Plea to Avoid Immigration Consequences / Post-Conviction Relief</p>	<p>July 19</p> <p>The Fugitive Disentitlement Doctrine / Habeas Corpus</p>	<p>July 20</p> <p>Controlled Substance Offenses; Drug-trafficking and related issues</p>
<p>July 25</p> <p>Deportation Procedure; The Notice to Appear; Expedited Removal; Administrative Orders; Reinstatements of Removal</p>	<p>July 26</p> <p>Criminal Aliens and the Detention System; Detainers; Secured Communities; 236(c); Mandatory detention</p>	<p>July 27</p> <p>Removal Defense: Types of Relief for Criminal Aliens: Waivers, 212(c), Cancellation of Removal, Adjustment, Pardons, and other relief</p>
<p>Aug. 1</p> <p>Removal Defense: (Continued)</p>	<p>Aug. 2</p> <p>Crime Bars for Asylum and other related relief; Terrorist-related Inadmissibility Grounds</p>	<p>Aug. 3</p> <p>Citizenship and Criminal Issues; Good Moral Character and the Statutory Period</p>
<p>Aug 8 (Last Day) <i>(note we will need to reschedule the last class due to a pre-existing conflict)</i> Judicial Review and the Criminal Alien; Petitions for Review and Federal Court Jurisdiction after the “Real ID Act”</p>	<p>REVIEW CLASS – TBA</p>	<p>Final Exam – TBA 6-9 PM</p>