

**IMMIGRATION LAW
440A
Spring 2014
Tuesdays and Thursdays, 1-2:30
Room TBA**

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Office Hours: TBA

COURSE DESCRIPTION

This course surveys the legal, historical, and political considerations that shape U.S. immigration law. The course will review the constitutional basis for regulating immigration into the United States, and, to some extent, the constitutional rights of noncitizens in the country; the contours of the immigration bureaucracy, including the roles played by various federal agencies in immigration decisions; the admission of nonimmigrants (i.e., temporary visitors) and immigrants into the U.S.; the deportation and exclusion of nonimmigrants and immigrants; refugee and asylum law; administrative and judicial review; citizenship and naturalization; and undocumented migration.

Much of the course focuses on the comprehensive immigration law, the Immigration and Nationality Act of 1952 (“INA”), as amended by numerous laws (including the 1996 Anti-Terrorist and Effective Death Penalty Act (“AEDPA) and the Illegal Immigration Reform and Immigrant Responsibility Act (“IIRIRA”), the 2001 USA PATRIOT Act, and the 2005 REAL ID Act) and its implementing regulations. Although comparisons to immigration law and policy of other countries, as well as various sources of international law, are drawn upon from time to time, the primary focus of this class is immigration law in the U.S.

Successful completion of this course will satisfy the Western State University upper division writing requirement.

LEARNING GOALS

After completion of this course, you should be able to competently:

1. Understand, and think critically about, the principles and policies behind our current and past system of immigration law.
2. Analyze the federal immigration statute, regulations, case law and other legal authorities relevant to immigration law.
3. Gain exposure to the substantive and procedural aspects of immigration law practice.
4. Apply the relevant statutes, standards, principles, and rules when presented in hypothetical and unfamiliar fact patterns.
5. Communicate, both orally and in writing, appropriate legal and factual arguments in support of each side of controversies involving commonly encountered issues in immigration law.
6. Produce a thoroughly researched, well-reasoned piece of legal writing that satisfies the Western State University upper division writing requirement (assuming that you receive a grade of 2.0 or higher on the final paper).

COURSE MATERIALS

The following course materials are *required*:

- 1) Lenni B. Benson, Lindsay A. Curcio, Veronica A. Jeffers & Stephen W. Yale-Loehr, *Immigration and Nationality Law: Problems and Strategies* (LexisNexis, 2013)
- 2) *Immigration & Nationality Act, 2013* (American Immigration Lawyers Association, 2013)

From time to time, you will be assigned casebook problems that contain a list of “essential materials.” You should not purchase any of the essential materials (other than the *Immigration and Nationality Act*, which is listed above). Most of the materials can be obtained from simple internet searches or via Lexis/Westlaw.

The assigned readings should keep you sufficiently busy and I recommend that you read the assigned material, including statutory references, several times before turning elsewhere. But if you want to read supplementary materials, either to understand a topic better or to identify a research paper topic, the most thorough reference work for immigration practice is the multi-volume treatise by Charles Gordon, Stanley Mailman, & Stephen Yale-Loehr, *Immigration Law and Procedure* (Matthew Bender), which is available in the Immigration Clinic library. (This treatise appears on several “essential materials” lists). Another common practice-based book is by Ira Kurzban, *Immigration Law Sourcebook* (12th ed. 2010), which is also in the Immigration Clinic library. For current immigration information, an excellent online resource is *Bender’s Immigration Bulletin* (available at www.bibdailly.com), which also appears as a weekly print publication.

GENERAL GUIDELINES REGARDING WRITTEN ASSIGNMENTS

This class is designed to satisfy the WSCL upper division writing requirement, which is based on guidelines established by the American Bar Association. Instead of a long research paper, the ULWR will be satisfied by the completion of three writing assignments, which are described briefly in the syllabus and will be described in more detail as the course progresses.

General Format Requirements. Written assignments should conform to the following requirements:

- (1) Typewritten, double-spaced, in Times New Roman 12-point font.
- (2) One-inch margins for the top, bottom, left and right margins.
- (3) Each page should contain a page number, and your name, in either the header or footer.
- (4) The electronic title of each document should conform to the following format: your last name, first name, and the nature of the assignment (e.g., “Koh Jennifer Thesis Statement”).

- (5) The final version of the paper should contain citations that conform to Bluebook format.

Submission and Grading. Unless otherwise instructed, all written assignments should be emailed to me at jkoh@wsulaw.edu. I will generally return graded assignments via email.

Late Assignments. As a professional, you are responsible for handing in all assignments on time. All assignments are due by midnight on the due date. Late submissions of the final versions of the memos will receive a 10% penalty for each day submitted late. (For instance, if the assignment is due Friday at midnight, then a memo submitted at 1am would be reduced by 10%, a memo submitted the following day by 20%, and so on).

If you have an unforeseen emergency involving a serious illness, an accident, or some other comparable event, please contact me as soon as possible. In my sole discretion, I may extend your due date to provide you with enough time to address the emergency.

GRADING AND LIST OF ASSIGNMENTS

Your grade will be based on the following components:

- ***Class Preparation, Participation and Teamwork (20% of grade):***¹ Like the rest of the faculty, I expect you to come to class prepared. I value in-class contributions, and encourage volunteers in class. Professionalism in class, and online participation in the course's TWEN discussion forum also go towards your class participation grade. Throughout the course you will be assigned problems and exercises to work on in teams that will be created during the first class. A portion of this grade will be based upon your contribution to your team's efforts as set out in the evaluations submitted periodically by your team members and my observations during class sessions.
- ***Written Assignment #1 (20% of grade):*** You will be given a written assignment that will require you to research relevant statutes, regulations, subregulatory agency guidance, caselaw, and/or secondary source materials. This assignment will likely involve the analysis of a hypothetical set of facts regarding a client from you, an associate at an immigration law firm, to one of the firm's partners. More information about this assignment is forthcoming and will be distributed no later than Friday, February 7. You must submit a rough draft or outline no later than Monday, February

¹ Although I will be taking attendance, it is always your own responsibility to keep track of your absences. Absences, if at all occurring, should be reserved for exceptional circumstances. If you have missed or will miss class, please review a classmate's notes and the class Powerpoint slides and see me as soon as possible after the absence if you still have questions about the material. In accordance with the WSCL academic policy and as described in the Student Handbook, a student who misses more than 4 (four) 90-minute class sessions will be withdrawn from class.

17 and sign up for an in-person conference with me within the week. The assignment will be due on Friday, February 29.

- **Written Assignment #2 (40% of grade):** As with the first written assignment, you will be given an assignment that will require you to research relevant statutes, regulations, subregulatory agency guidance, caselaw, and/or secondary source materials. The second assignment is likely to involve research, analysis and suggestions for reform of a topic covered in roughly the second half of the semester (with the specific topic to be selected by you). More information about this assignment is forthcoming and will be distributed no later than Friday, March 28. You must submit a rough draft or outline no later than Monday, April 19 and will receive written feedback from me on the draft. The assignment will be due on Friday, May 9.
- **Experience-Based Memo (20% of grade):** You will also be required to prepare a written memo that is based on a real-life encounter that you have with immigration law. More information about the experience-based memo is forthcoming, but examples of the experiences you may use to prepare this memo include (and are likely not limited to) the following: volunteering at a naturalization fair or immigration intake clinic; observing a full morning or afternoon of immigration court hearings; participating in the trip to the U.S.-Mexico border that Professor Koh will be organizing in late March/early April; interviewing an immigration lawyer (including preparation of a detailed interview outline). This assignment is NOT akin to a “journaling” experience. Instead, as with the other assignments, the memo will require you to research and analyze legal authorities. A draft of this memo must be submitted for peer review at least one week prior to its final submission date. The last date on which this memo may be submitted is the last day of finals, Friday, May 16. (Note: I HIGHLY recommend completing this memo as soon as possible, and not waiting until the end of the semester to complete!).

APPOINTMENTS AND OFFICE HOURS

I will hold office hours regularly during the week, but will schedule these office hours after the first week of classes. You can also schedule an appointment by contacting me directly at jkoh@wsulaw.edu. I am happy to discuss the course, written assignments, your research papers, career paths, law school, or anything else of interest to you.

TWEN

I will post class-related material and announcements on TWEN, the online program administered by Westlaw. Please be sure that you are registered to use TWEN. If you have any questions about using this program, or to get registered, please contact Scott Frey or Lei Zhang in the library. They can be reached at (714) 459-1111 or via email.

SYLLABUS

I have provided the topics that I expect to cover for the semester, as well as readings to be covered for the first few weeks of the semester. I will update the syllabus as we go along. Keep in mind that it is difficult to anticipate how long it will take to discuss each topic and occasionally we may spend more time on a topic than initially anticipated. Accordingly, we may need to make adjustments to the syllabus throughout the semester.

As you will soon learn (or may already know), immigration law is primarily governed by one large, sprawling statute: the Immigration and Nationality Act, or INA. Familiarity with the INA is critical to success in this course, or in immigration practice generally. Where I have assigned a section of the INA that contains subsections, then you should read all of the subsections (e.g., if INA § 212(a) is assigned, then please read all of the subsections of 212(a)). The INA is a complicated statute, and it is difficult to read in isolation. You should therefore read the assigned sections of the INA **when they are referenced in the casebook**, even if I have not specifically assigned them.

The casebook contains a number of hypothetical fact patterns (“problems”), many of which will be discussed in class. I have designated specific problems for you to be prepared to discuss. Many of the problems will require you to engage in a detailed analysis of the statute and apply the principle or rule from the reading to a new, hypothetical fact pattern. It is very difficult to be prepared in class, or to have a sophisticated discussion of the problem, if you are working from memory or if your preparation was vague. Therefore, for each problem, I highly recommend that you bring to class a set of typewritten answers, along with a record of the sources you consulted to answer the problem.

CLASS 1 January 14, 2014: Introduction & Overview, Federal Agencies

Casebook pp. 1 – 33

Be prepared to discuss Problem 1-1

Prior to class, take the PBS, The New Americans, Immigration Myths and Realities Quiz:

<http://www.pbs.org/independentlens/newamericans/quiz.html>

CLASS 2 January 16, 2014: Immigration Law and the U.S. Constitution: Who has the Power to Regulate Immigration?

Casebook pp. 33 – 57

CLASS 3 January 21, 2014: The Federal and State Government’s Power to Regulate Immigration

Casebook: pp. 74-122

CLASS 4 January 23, 2014: Rights and Procedures at the Border

Casebook: pp. 123-127; 202-209; 154-175

CLASS 5 January 28, 2014: Constitutional Analysis: Rights at the Border

Casebook: pp. 175-190 (stop at Problem 2-5, but be prepared to discuss Problem 2-4)
INA: Sections 101(a)(13); 212(a)(6); 212(a)(7); 235
Exercise: Due Process at the Border (available on TWEN)

CLASS 6 January 30, 2014: Crossing into the Interior? Rights within the U.S. Territory?

Casebook: pp.210-236

CLASS 7 February 4, 2014: Non-immigrant visas

Casebook: pp. 239 – 272; 325 – 328, and portions of casebook necessary for your presentation
INA Section 101(a)(15)
Mike Flynn, et al., “What Part of Legal Immigration Don’t you Understand?” (Sept. 24, 2008)
<http://reason.org/files/a87d1550853898a9b306ef458f116079.pdf> (a great flow chart showing the complexity of legal immigration options) (available on TWEN)

In-class team presentations on non-immigrant visas (written instructions to be distributed in prior class)

CLASS 8 February 6, 2014: Non-immigrant Visas

Casebook pp. 272-285, 362-366, 383-388
Be prepared to discuss Problem 3-1 and Problem 3-8

Additional topics to be covered during the course:

Immigrant Visas (Family-based and Employment-Based)
Adjustment of Status
Grounds of Inadmissibility
Grounds of Deportability
Removal Proceedings
Post-Conviction Relief

Immigration Detention
Relief from Removal
Asylum and other Humanitarian Protections
Undocumented Migration
Citizenship
Comprehensive Immigration Reform

Syllabus to be updated