

IMMIGRATION LAW
Spring 2020
Thursday, 6:40PM-9:50PM

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Office Hours: Thursday afternoons
by appt

COURSE DESCRIPTION

This course provides an overview of immigration law and practice. The course surveys the legal, historical, and political considerations that shape U.S. immigration law. It is also a practical course to assist the student in understanding both the substantive and procedural aspects of practicing in this dynamic area of law. The course will involve analysis of immigration events that frequently appear in the news. As this course is only a semester long, the student will get the basics of many areas of immigration including:

- History of immigration law and constitutional basis for regulating immigration;
- Contours of the immigration bureaucracy and roles of the various federal agencies involved in immigration decisions;
- Admission of immigrant and non-immigrants into the U.S, understanding the common visas in each category and procedure for applications;
- Deportation/Removal procedure and law;
- Grounds of Inadmissibility vs. Grounds of Removal/Deportability;
- Waivers of Inadmissibility and Relief from Removal;
- Asylum and refugee law and procedure, and other Humanitarian Forms of Immigration Relief;
- Citizenship and Naturalization, and Expatriation;
- Immigration Federalism and the Role of Executive Action/Discretion in the Immigration System.

A significant portion of the course focuses on the Immigration and Nationality Act of 1952 (“INA”), as amended by numerous laws and their implementing regulations. While international law and comparisons to immigration law and policy of other countries may be referenced, this class focuses primarily on immigration law in the U.S. In light of the heightened focus on immigration in the national debate, the course will provide a space for dialogue about immigration policy in the news and address changes in the law and policy proposals as they occur, to the extent possible.

LEARNING GOALS¹

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

1. Analyze the federal immigration statute, regulations, case law and other legal authorities relevant to immigration law.
2. Apply the relevant statutes, standards, principles, and rules when presented in hypothetical and unfamiliar fact patterns.
3. Understand, and think critically about, the principles and policies behind our current and past system of immigration law.
4. 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.
5. Communicate, both orally and in writing, with immigrant clients (including those with limited formal education) regarding prospective eligibility for immigration relief and matters related to effective case preparation.

¹ These learning goals arise out of Western State College of Law at Westcliff University's Programmatic Learning Outcomes, which are reproduced here. Western State College of Law's curriculum is designed so that every student achieves a level of competency prior to graduation in each of the eight Programmatic Learning Outcomes listed below: (1) Doctrinal Knowledge (Students will demonstrate knowledge of substantive and procedural law in the core curriculum subjects, including Contracts, Criminal Law, Criminal Procedure, Torts, Real Property, Business Association, Evidence, Civil Procedures, Constitutional Law, Estates, Community Property, Remedies, and Professional Responsibility); (2) Practice Skills (Students will demonstrate the development of other law practice skills. Each student's chosen outcomes within this category will be varied based on the student's particular interests, coursework and work experiences. They may include, but are not limited to, the following topics: oral presentation and advocacy; interviewing; counseling; client service and business development; negotiations, mediation, arbitration, or other alternate dispute resolution methods; advanced legal research and writing (excluding purely academic papers and the first four units earned in introductory first-year legal research and writing class); applied legal writing such as drafting contracts, pleadings, other legal instruments; law practice management or the use of technology in law practice; cultural competency; collaboration or project management; financial analysis, such as accounting, budgeting project management, and valuation; cost benefit analysis in administrative agencies; use of technology, data analyses, or predictive coding; business strategy and behavior; pre-trial preparation, fact investigation, such as discovery, e-discovery, motion practice, assessing evidence, or utilizing experts; trial practice; professional civility and applied ethics; a law clinic that includes a classroom component; or a legal externship that includes a classroom component. (3) Legal Analysis (Students will demonstrate the ability to identify the factual and legal issues implicated by a fact pattern and to appropriately use cases (including identifying the salient features of an appropriate precedent case, identifying legally significant similarities or differences between the precedent case and a fact pattern and explaining why those are legally significant) and rules (including the ability to connect legally significant facts in a fact pattern to the rule) to predict how a court would decide the issue. Students will also demonstrate the ability to identify and evaluate the public policies of a precedent case or rule, and be able to evaluate how public policy can impact the application of a rule to the legal issue.) (4) Legal Research (Students will demonstrate the ability to locate relevant legal authority using a variety of book and electronic resources, and to properly cite to such legal authority. (5) Communication (Students will demonstrate the ability to communicate both orally and in writing in a manner appropriate to a particular task to effectively convey the author or speaker's ideas. This includes audience sensitivity in written and oral communication (the ability to adopt a tone, style and level of detail appropriate to the needs, knowledge and expertise of the audience); and written communication basic proficiency (the ability to use the conventions of grammar, spelling, punctuation, diction and usage appropriate to the task and sufficient to convey effectively the author's ideas). (6) Advocacy of Legal Argument (Students will demonstrate the ability, in both oral and written formats, to evaluate the legal, economic and social strengths and weaknesses of a case and use case and statutory authority as well as public policy to persuade others. Making policy-based arguments includes the ability to identify and evaluate the public policies of a precedent case or rule and their implications, and be able to assert such appropriate arguments to support a particular application or distinction of a precedent case to a legal controversy or a particular resolution of the application of a rule to the legal controversy.) (7) Client Sensitivity and Cultural Competency (Students will demonstrate an awareness of clients' needs and goals, including a sensitivity to clients' background and circumstances (including, but not limited to, socio-economic, gender, race, ethnicity, educational, disability and/or religious background(s)), the ability to make decisions that reflect an appropriate focus on those needs and goals, and awareness that cultural issues may affect the relevance of facts and application of the law.) (8) Legal Ethics (Students will demonstrate the ability to identify ethical issues in law practice contexts and make appropriate decisions to resolve such issues.

COURSE MATERIALS

The following course materials are *required*:

- 1) Stephen H. Legomsky & David B. Thronson, Immigration and Refugee Law and Policy (7th ed. 2018).

The seventh edition of the Legomsky textbook was used during the Spring 2019 Immigration Law course. Do not use the sixth edition, as the seventh edition made substantial updates.

- 2) Immigration & Nationality Act (INA) + Regulations. You have two options:
 - a. Aleinikoff, Martin, Motomura, Fullerton, and Stumpf, Immigration and Nationality Laws of the United States: Selected Statutes, Regulations, Forms, 2018. (2016 version also acceptable.)
 - b. American Immigration Lawyers Association (AILA), Immigration & Nationality Act + Immigration Regulations (CFR). 2019, 2018 or 2016 Editions are acceptable.

We will not begin to use INA + regulations until week 3. Also, either option will suffice for the course. As a practitioner, I have used both the Aleinikoff and AILA texts and prefer the AILA books for daily use. The separate AILA INA and CFR books are considerably more expensive than the Aleinikoff text, which includes both INA and certain regulations in the same book. The AILA regulations publication includes the entire Title 8 C.F.R., as well as a second volume comprised of Titles 6 and various others. Unfortunately, AILA only sells the regulations as a two-volume combo. We will reference Title 8, but we will rarely, if ever, reference the other regulation titles during the course. A considerable student discount is available for the AILA INA & regulations books. So if you plan to purchase the AILA publication(s), be sure to obtain the student code purchase form from me or Sarah Eggleston. But I assure you that the Aleinikoff text will suffice for the course, including a 2016 copy.

The assigned readings are often significant and will keep you sufficiently busy. I recommend that you read the assigned material, including statutory references, multiple times before turning elsewhere. If you want to read supplementary materials, 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). By far the most common practice-based book is the Immigration Law Sourcebook by Ira Kurzban, which is also in the Immigration Clinic library. For current immigration information, an online resource is *Bender’s Immigration Bulletin* (available at www.bibdaily.com).

GRADING AND LIST OF ASSIGNMENTS

Immigration Law is an elective course. If you are a candidate for the Immigration Law Certificate, then Immigration Law is a required course in order to obtain the Certificate. Immigration Law also satisfies the elective component of the Criminal Law Practice Certificate. Please note that Immigration Law does *not* satisfy the Upper Level Writing Requirement.

The course will be graded according to the following evaluation criteria:

- ***Class Preparation, Participation and Teamwork (25% of grade):***² Like the rest of the faculty, I value in-class contributions and professionalism. Assigned reading will vary from week to week and may be substantial on occasion. Nonetheless, I expect you to come to class prepared. I aim for all classes to include substantial dialogue about the assigned material and expect all students to participate in class discussion every week. We will also conduct several in-class exercises, including simulated client interviews, which will be factored into the class participation grading.
- ***Immigration News Briefing (5% of grade):*** Each student will receive a date to present a current immigration issue that has been discussed in the news. Beginning in week 2, class will begin with an “Immigration News Briefing”. The assigned student will give a summary of the news item, relating the information to relevant coursework or policy issues that have been discussed. The student will lead a short class discussion following the news briefing. Students are required to submit an electronic copy to their classmates in anticipation of their presentation on their assigned day. More information will be provided during Class 1.
- ***Naturalization Workshop: (10% of grade):*** I greatly value volunteerism. Students will apply client interviewing and legal analysis skills from the class by participating in a naturalization workshop. Date, time and location TBD.
- ***Topic Quizzes (10% of grade):*** I will administer periodic quizzes during the semester that may include multiple choice, short answer, and brief essay questions.
- ***Final Examination (50% of grade):*** The final examination will likely consist of a combination of multiple choice, short answer, and essays. It will likely be a three-hour exam in which you are able to bring the textbook, INA and regulations.

² While I take 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 four 1.5-hour class sessions will be withdrawn from class.

APPOINTMENTS AND OFFICE HOURS

I will hold office by appointment on Thursday afternoons. You may schedule an appointment by contacting me directly at djs977@hotmail.com. I am happy to discuss the course, assignments, policy issues, and career opportunities.

DISABILITY SERVICES STATEMENT

Western State College of Law provides accommodations to qualified students with disabilities. The **Disabilities** Services Office assists qualified students with disabilities in acquiring reasonable and appropriate accommodations and in supporting equal access to services, programs, and activities at Western State College of Law.

To seek reasonable accommodations, a student must contact Senior Assistant Dean Donna Espinoza, Student Services Director and Disabilities Services Coordinator, whose office is in the Students Services Suite 119. Dean Espinoza's phone number and email address are: (714) 459-1117; despinoza@wsulaw.edu. When seeking accommodations, a student should notify Dean Espinoza of her or his specific limitations and, if known, her or his specific requested accommodations. Students who seek accommodations will be asked to supply medical documentation of the need for accommodation. Classroom accommodations are not retroactive, but are effective only upon the student sharing approved accommodations with the instructor or professor. Therefore, students are encouraged to request accommodations as early as feasible with Dean Espinoza to allow for time to gather necessary documentation. If you have a concern or complaint in this regard, please notify Dean Espinoza; or please notify Dean Allen Easley at aeasley@wsulaw.edu or (714) 459-1168. Complaints will be handled in accordance with the College of Law's "Policy against Discrimination and Harassment."

SYLLABUS

I have provided the topics that I expect to cover for the semester, as well as readings to be covered throughout the semester. However, I will update the syllabus as we progress and assigned readings may change. Check in with me before getting more than a week ahead on the readings. 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. Please expect occasional adjustments to the syllabus throughout the semester.

Immigration law is governed primarily by one large, sprawling statute: the Immigration and Nationality Act, or INA. Familiarity with the INA is critical to success in this course, and in the practice of immigration law generally. Where I have assigned a section of the INA that contains subsections, 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”), some 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 recommend that you bring to class a set of typewritten answers, along with a record of the sources you consulted to answer the problem.

You should expect to spend at least **6 hours** each week outside of class on readings, exercises, note-taking, review, assignments and other class preparation. This is a rough estimate. You will likely find that some weeks you need to spend more (and possibly less) than the estimated amount of time. I appreciate that students have many demands on their time, including other classes, employment, and family. Given the breadth of the subject matter, however, significant reading time is necessary. The class involves substantive law from a practitioner’s perspective, as well as analysis of various constitutional and policy issues. Those who plan to practice immigration law may find this “big picture” perspective rewarding before delving into a career of casework. There is, however, no way to engage in this valuable exercise without a substantial time investment.

WEEK 1 January 23, 2020. Introduction; Constitutional Foundations

- **Legomsky & Thronson (“L & T”): pp. 1-27, 107-146**
 - NOTE: reading for week 2 is substantial. Students are encouraged to read ahead.
- **American Immigration Council, *Did My Family Really Come “Legally”?*, Aug. 10, 2016. Available at:**
https://www.americanimmigrationcouncil.org/sites/default/files/research/did_my_family_really_come_legally.pdf
- **Prior to Thursday’s class, complete the “Immigration Priorities” Exercise (distributed via email).**

WEEK 2 January 30, 2020. Immigration Law and the U.S. Constitution; Immigration Detention;

- **L & T: 151-186 (through note 5); 192 (beginning at note 11) – 215; 228 – 266.**
- **César Cuauhtémoc García Hernández, *The political history of locking up immigrants in the U.S.* L.A. Times, Jan. 5, 2020. Available at:**
<https://www.latimes.com/opinion/story/2020-01-05/immigrants-prisons-cold-war-era-eisenhower>
- **Take some time to review the following website:**
<https://www.prolongeddetentionstories.org>

WEEK 3 February 6, 2020. Immigrant Priorities: Quota System and Family-Based Immigration

- L & T: 325 – 347 (Problems 1, 3, 4); 362 – 386 (Problems 8 & 9 on p. 367; Problem 13 on p. 379)
 - INA § 201 (skim), 202 (skim), 203 (skim), 204(a)(1)(A)(i)-(iii); § 216
- Before class, find and skim the February 2019 Visa Bulletin. Be resourceful (hint: Google!)

WEEK 4 February 13, 2020. Immigrant Priorities: Recap of Family-Based Immigration; Employment-Based Immigration; Diversity Immigration.

- L & T: 386- 408, 412 – 438.
 - INA § 203(b)(1) – (5), 212(a)(5)
- Immigrant Visa interview simulation exercise (materials distributed by email prior to class)

Nonimmigrant Visa presentation instructions and groupings distributed during class.

WEEK 5: February 20, 2020. Nonimmigrant Visas

- L & T: 439 – 502 (problems 1-2 on p. 452), 506-507.
 - INA § 101(a)(15) (skim sections 101(a)(15)(T) and 101(a)(15)(U), which will be covered in depth later in the class)

In-class presentations on Nonimmigrant Visas

WEEK 6: February 27, 2020. Exclusion/Inadmissibility Grounds and Waivers.

- L & T: 513 – 542 (problems 1, 3, 5); 543 – 579 (problem 7 on p. 550; 9, 10, and 11 on p. 572).
 - INA § 212(a), 212(h); 221, 245(a), 101(a)(13), 291, 235
 - In-class hypos and exercises

WEEK 7: March 5, 2020. Admission Procedure;

- L & T: 581 – 597, 602 – 614, 617 – 639 (Problems 4 & 5 on p. 639);
- INA § 101(a)(13), 221, 245(a)-(i); 235; 291

WEEK 8: March 12, 2020. Grounds of Deportability; Review of First Half

- Grounds of Deportability. L & T: 684 – 755 (Problems 14, 15 & 16 on p. 751-52, problems 18, 19 & 21 on p. 754-55);
 - INA § 237(a); 101(a)(43), 101(a)(48)(B).

NO CLASS on March 19 for SPRING BREAK. Note: reading for upcoming 3 weeks is substantial. Consider reading ahead!

WEEK 9: March 26, 2020. Inadmissibility/Deportability Review; Relief from Removal

- L & T: 773 – 856 (problem 2 on p. 782; problem 4 on p. 787; problems 5-6 on p. 854); 861 – 864.
 - INA § 240A, 240B
 - Take a look at the LPR Cancellation of Removal Toolkit, available at https://pennstatelaw.psu.edu/sites/default/files/Final_Toolkit_Public.pdf
- We will do an in-class interviewing exercise in groups, which will cover immigrant visa eligibility and grounds of inadmissibility/deportability. Instructions will be distributed prior to class.

WEEK 10: April 2, 2020. Removal Procedure; Access to Counsel Rights of Noncitizens. Citizenship & Naturalization

- L & T: 865-906, 913 (beginning at note 7) – 931.
- INA § 240 (skim), 235; 241(a)(5); 238(b); 240(d); 240(b)(5)
- Citizenship & Naturalization, L & T: 1513 – 1548
 - INA § 316.
 - In-class interview exercises.

WEEK 11: April 9, 2020. Refugees & Asylees

- L & T: 1133 – 1138, 1144 (beginning at last paragraph) – 1190; 1196 – 1214 (skim); 1250 – 1270.
- Susan Bibler Coutin, *Falling Outside: Excavating the History of Central American Asylum Seekers*, *Law & Social Inquiry* 36 (3), 569-596 (Summer 2011), available at: <https://escholarship.org/content/qt2pv4d9nj/qt2pv4d9nj.pdf> (optional but very worthwhile)
 - Nicaraguan Adjustment & Central American Relief Act (NACARA) § 203 (skim)

- Instructions for in-class asylum exercise for week 12 distributed at the end of class.

WEEK 12: April 16, 2020. Refugees & Asylees (conti.); Humanitarian Immigration: U Visa, T Visa, S Visa, Special Immigrant Juvenile Status, VAWA.

- L & T: 1278 – 1288; 1291 (beginning at second paragraph from bottom) – 1294.
- In-class asylum applicant interview exercise in groups.
- U, T, S Visas;
- INA § 101(a)(15)(S), (T) and (U); INA § 244
- CARECEN U Visa Training Manual (distributed by email)
- SB 674: Immigrant Victims of Crime Equity Act Summary by Immigrant Legal Resource Center, available at:
https://www.ilrc.org/sites/default/files/resources/sb_674_fact_sheet_final-20161011.pdf
- Immigrants' Rights, Penn State Law School (June 2012). Skim pgs 9-39:
<https://pennstatelaw.psu.edu/sites/default/files/Cover%20Page%20and%20Handbook%20FINAL.pdf>

WEEK 13: April 23, 2020. Immigration Federalism & State Action on Immigration

- L & T: 598 - 601
- American University Washington College of Law and the Catholic Legal Immigration Network, Inc., *Stopping Immigration Services Scams: A Tool for Advocates and Lawmakers* (2017). Available at:
<https://cliniclegal.org/resources/stopping-immigration-services-scams-tool-advocates-and-lawmakers> (skim)
- L & T: 293 - 323

WEEK 14: April 30, 2020. Executive Action & DACA; Immigration Fraud; Putting It All Together: Course Review.

- American University Washington College of Law and the Catholic Legal Immigration Network, Inc., *Stopping Immigration Services Scams: A Tool for Advocates and Lawmakers* (2017). Available at:
<https://cliniclegal.org/resources/stopping-immigration-services-scams-tool-advocates-and-lawmakers> (skim)
- Other reading to be assigned at the end of class 13.
- Multi-issue hypos.

FINAL EXAM: TBD