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Office hours: Monday 2-3:30 or by appointment

Course Description

This course will address the concept of citizenship as a legal status as it is established and governed under constitutional law. Through readings in law and legal theory, the course will consider two broad questions: “Who Is a Citizen?” and “How Does Citizenship Matter?” The “Who” materials address citizenship’s acquisition, maintenance and loss. The “How Does It Matter” materials concern citizenship’s meaning and significance. The course will focus primarily on the institution of citizenship in the United States, but will also consider certain citizenship questions that have recently arisen in Europe and elsewhere.

Course Requirements

1) Active Reading and Class Participation:

This course lies somewhere between a traditional “stand-up” law school course and a graduate seminar. I will spend some time lecturing. However, this is also a discussion course which depends on active and informed participation by students

We will be reading a variety of materials on citizenship-- law review articles, social science papers and primary legal materials. The weekly assignment length is sometimes substantial. Careful and comprehensive reading is essential for material mastery and productive class discussion. I expect students to contribute through articulation of questions, arguments and viewpoints, and to listen actively and respectfully to others. One of our goals is to establish a rich, collaborative conversation about citizenship over the course of the semester.

One way to enhance class learning and discussion is to use the class webboard. Everyone is encouraged to engage in conversation in that forum.

It should go without saying that attendance is essential. If you are going to miss more than one class, you must confer directly with me.

2) Short Papers:

You are required to write four short (3-4 pages, double spaced) “analytical reaction papers” during the semester. The purpose of these papers is to facilitate and systematize your own critical engagement with the assigned materials. In the papers, you are to provide critical analytical commentary on the readings or some portion of the readings for the week, with attention to logical implications, policy implications and/or relationship to other issues we have covered. Note that the papers are not simply descriptions, summaries or personal responses to the readings.

You may choose the dates you submit your papers, but you must not submit two weeks in a row. Please keep track of the dates you submit the papers. The papers should be uploaded to Filestore on the course webpage.

I will not grade these papers individually, but will assign a grade to each set of papers at the end of the semester, per grading criteria below.

3) Final Essays: I will give you the final essay questions after our last class meeting. The answers will be due by December 12.

Grades:

Grades for the course will be assigned as follows:

Analytical reaction papers: 25%

General class participation: 25%

Final essays: 50%

FALL 2012

PROFESSOR BOSNIAK

CITIZENSHIP AND THE CONSTITUTION

I. INTRODUCTION

A. Defining Citizenship

Linda Bosniak, "Citizenship," *Oxford Handbook of Legal Studies*
(Oxford U. Press, 2003) [course webpage]

B. Dreamers and Citizenship

Julia Preston and John H. Cushman, "Obama To Permit Young Migrants to Remain
in the U.S.," *New York Times*, June 15, 2012 [course webpage]

Fabiola Santiago, "Next Big Step For Dreamers: Citizenship," *Miami Herald*, June
19, 2012 [course webpage]

II. WHO IS A CITIZEN? (CITIZENSHIP’S SUBJECTS)

A. Citizenship By Birth

1. Early American Citizenship and the Fourteenth Amendment

J.H. Kettner, <i>The Development of American Citizenship, 1608-1870</i> University of North Carolina Press, 1978, pp. 287-288; 300; 311-333; 340-343	21
Paul Brest, Sanford Levinson, Jack Balkin and Akhil Amar, <i>Processes of Constitutional Decisionmaking</i> (Aspen, 4 th ed., 2000), pp. 255-258 (section on “The Fourteenth Amendment, Birthright Citizenship, and American Indians.”)	36

2. Birthright Citizenship (Jus Soli)

U.S. v. Wong Kim Ark	39
Peter Schuck and Rogers Smith, <i>Citizenship Without Consent</i> (Yale University Press, 1985) (excerpts)	59
Gerald L. Neuman, <i>Strangers to the Constitution: Immigrants, Borders and Fundamental Law</i> (Princeton, 1996), pp. 165-187 and notes	68
Julia Preston, “Citizenship From Birth is Challenged on the Right,” New York Times, August 7, 2010.....	84
Fox News, “Boehner: End To Birthright Citizenship ‘Worth Considering,’” August 8, 2010.	87
Tamar Jacoby, “Kiss The Melting Pot Goodbye,” Wall Street Journal, November 19, 2005 (reprinted, Hispanic Business Journal).	89
“Born in the USA; But should they be citizens of America?,” The Atlanta Journal-Constitution, April 28, 2004	91
“Citizen Hamdi: The case against birthright citizenship,” The American Conservative, September 27, 2004	95
Daniel Gonzalez, “‘Birth Tourism’ Not a Widespread Practice in U.S., Data Show,” The Arizona Republic, August 17, 2011	Z-1
Jennifer Medina, “Arriving As Pregnant Tourists, Leaving With American Babies,” New York Times, March 28, 2011	Z-4

3. Citizenship by Descent (Jus Sanguinis)

INA Secs. 301, 308, 309	99
Steven Legomsky, <i>Immigration and Refugee Law and Policy</i> (Foundation Press, 2d ed., 1997), pp. 1031-1034	103
Rogers v. Bellei	107
Adam Liptak, A Hint of New Life to a McCain Birth Issue, <i>New York Times</i> , July 11, 2008	121
“Supreme Court Rejects Lawsuit Questioning Obama’s Citizenship,” <i>RushPR News</i> , December 11, 2008	123
Nguyen v. INS, 533 U.S. 53 (2001)	D-1

4. Comparative Perspectives

W.R. Brubaker, “Citizenship and Naturalization: Policies and Politics,” (excerpt), in <i>Immigration and the Politics of Citizenship in Europe and North America</i> , William Rogers Brubaker, ed., (1989)	125
John R. Harrington, “Citizenship and the Biopolitics of Post-Nationalist Ireland,” 32 <i>J. Law & Society</i> 424, 438-449 (2005).	131
“Germany Opens Up; German citizenship law; Brief Article,” <i>Information Access Company</i> , a Thomson Corp. Co; ASAP, The Nation Company Inc., June 21, 1999	143
Neil MacFarquhar, “In Egypt, Law of Man Creates A Caste of Shunned Children,” <i>N.Y. Times</i> , May 14, 2001, A1	145
M. P. Vink and G-R de Groot, "Birthright Citizenship: Trends and Regulations in Europe," <i>EUDO Citizenship Observatory</i> , November 2010	148

B. Naturalization

1. History and Current Requirements

INA Secs. 101(a)(23); 101(f); 312; 313; 315; 316; 322; 334; 337	187
Aleinikoff, Martin & Motomura, <i>Immigration and Citizenship: Process and Policy</i> (5 th ed., West, 2003), pp. 60-69, 80-84	202

Ozawa v. U.S., 260 U.S. 178 (2012)N-1

Ian Haney Lopez, *White By Law* (NYU, 1997) (excerpt) 213

2. Current Issues

a. English Language and Civics Requirements

Noah M.J. Pickus, “To Make Natural: Creating Citizens for the Twenty-First Century,” in Noah M.J. Pickus, ed., *Immigration & Citizenship in the 21st Century* (Rowman and Littlefield, 1998) (excerpt) 221

Peter J. Spiro, “Questioning Barriers to Naturalization,” 13 *Georgetown Imm. L.J.* 1479 (1999) (excerpt) 231

US Citizenship and Immigration Services[test materials on line]

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b. The Loyalty Oath

Sanford Levinson, “Constituting Communities Through Words That Bind: Reflections On Loyalty Oaths,” 84 *Mich. L. Rev.* 1440 (1986) 271

c. Military Service and Naturalization

U.S. Citizenship and Immigration Services, Fact Sheet: Naturalization Through Military Service287

3. Comparative Perspectives

Brubaker, “Citizenship and Naturalization: Policies and Politics,” in Brubaker (ed.), (excerpt)	289
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Rainer Baubock, “Who Are the Citizens of Europe?” Eurozine Magazine, December 23, 2006	293
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C. Denaturalization

INA Sec. 340	299
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Aleinikoff, Martin & Motomura, <i>Immigration and Citizenship: Process and Policy</i> (5 th ed., West, 2003), pp. 107-113 (Afroyim v. Rusk; Vance v. Terrazas)	302
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Schneiderman v. U.S.	309
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Dept. Of Justice, “Court of Appeals Affirms Denaturalization for Involvement in Wartime Nazi Roundups of Lithuanian Jews,” Federal Document Clearing House, September 5, 2000	348
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Patrick, McDonnell, “Battling to Save Their Citizenship,” Los Angeles Times, March 8, 1998	350
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D. Expatriation

INA Sec. 349	354
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Aleinikoff, Martin & Motomura, <i>Immigration and Citizenship: Process and Policy</i> (5 th ed., West, 2003), pp.113-144 (incl. Perez v. Brownell, Afroyim v. Rusk, Vance v. Terrazas).	356
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Schneider v. Rusk, 377 U.S. 163 (1964).	388
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Virginia Sapiro, “Women, Citizenship, and Nationality: Immigration and Naturalization Policies in the United States,” <i>Politics and Society</i> 13,	
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No. 1 (1984)	396
Mae M. Ngai, <i>Impossible Subjects: Illegal Aliens and the Making of Modern America</i> (Princeton U. Press, 2004), pp. 175-201.	407
Kenneth Heath, “The Symmetries of Citizenship: Welfare, Expatriate Taxation and Stakeholding,” 15 <i>Geor. Imm. L J</i> 533 (1999) (excerpts)	435
Clyde Haberman, “Giving Up Citizenship and the Taxes That Come With It,” <i>New York Times</i> , July 12, 2012	448
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Joanne Mariner, “Patriot Act II’s Attack on Citizenship,”	472
Yaser Hamdi, U.S. Citizen, <i>New York Times</i> , October 15, 2004	478

E. Citizenship, Nationality and the Territories

Lozada Colon v. U.S. Department of State.	T-1
Rogers M. Smith, “The Bitter Roots of Puerto Rican Citizenship,” in <i>Foreign In a Domestic Sense</i> (Burnett and Marshall, eds., 2001).	T-5
“Court Win Fuels Puerto Rican Citizenship Debate,” <i>McClatchy Washington Bureau</i> , July 23, 2007.	T-22
American Samoa: Tuaua v. U.S., Complaint [on line] http://theusconstitution.org/cases/tuaua-v-united-states	

F. Plural Citizenship

“Mexico’s Dual Nationality Opens Doors,” *Los Angeles Times*, March

20, 1998	479
“Torn Between Nations, Mexican-Americans Can Have Both,” New York Times, April 14, 1998 at A12	484
Linda Chavez, “Troubling: Dual Citizenship for Mexicans,” Courier-Post, April 8, 1998, at 13A	486
Mark Fritz, “Pledging Multiple Allegiances: A Global Blurring of Boundaries ...” Los Angeles Times, April 6, 2001, at A-1	488
Jonathan Turley, “No “battlefield detainee” should leave home without a U.S. birth certificate,” Insight, Jewish World Review, May 19, 2002	496
Carol Williams, “Germany: Citizenship Reform Has Lost Its Punch,” Los Angeles Times, January 8, 2000, at A-2	499
Peter Spiro, <i>Embracing Dual Nationality</i> (Carnegie Endowment for International Peace, 1998)	501
T. Alexander Aleinikoff, <i>Between Principles and Politics: The Direction of U.S. Citizenship Policy</i> (Carnegie Endowment for International Peace, 1998) (excerpt)	510
David A. Martin, “New Rules on Dual Nationality For a Democratic Globe: Between Rejection and Embrace,” 14 Georgetown Immigration Law Journal 1, 19-21 (1999)	512
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G. Citizenship Beyond Nationality: The Case of the European Union

Gerard Delanty, “European Citizenship: A Critical Assessment,” in <i>Citizenship Between Past and Future</i> (Engin F. Isin, Peter Nyers and Bryan S. Turner, eds., Routledge, 2008)	542
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H. Citizenship Distribution and Global Inequality

Ayelet Shachar, "Citizenship and Global Distribution of Opportunity," in <i>Citizenship Between Past and Future</i>	552
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III. HOW DOES CITIZENSHIP MATTER? SELECTED TOPICS

A. Citizenship and the Constitution: An Introduction

Kettner, <i>The Development of American Citizenship</i> , pp. 329-333, 340-343, 345-349	563
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Aleinikoff, Martin & Motomura, pp. 975-985 (A. Bickel, The Morality of Consent; Sugarman v. Dougall)	568
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Judith N. Shklar, <i>American Citizenship: The Quest For Inclusion</i> (1991). . .	574
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B. The Political Process

Minor v. Happersett (excerpts)	598
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Harper v. Virginia Bd. of Elections (excerpt), from Gunther, <i>Constitutional Law</i> (11 th ed., Foundation, 1985), pp. 808-810	607
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Kramer v. Union Free School District No. 15 (excerpt), from Gunther, <i>Constitutional Law</i> (11 th ed., Foundation, 1985), pp. 810-813	609
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Gerald Rosberg, <i>Aliens and Equal Protection: Why Not The Right To Vote?</i> 75 <i>Michigan L. Rev.</i> 1092 (1977) (excerpts)	612
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Jamin Raskin, <i>Legal Aliens, Local Citizens: The Historical,</i>	
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Constitutional and Theoretical Meanings of Alien Suffrage, 141 U. Penn. L. Rev. 1391 (1993) (excerpts)	619
Immigrant Voting Measure Defeated in San Francisco, by Felicia Mello, November 2, 2004, California and National Elections	635
Immigrant Voting Rights Receive More Attention, by Ron Hayduk, November 1, 2004, Migration Information Source	638
Sugarman v. Dougall, 413 U.S. 634 (1973) (excerpts)	642
Cabell v. Chavez-Salido, 454 U.S. 432 (1982)	647
Joyce Howard Price, “More states allow felons to regain Vote, study finds” Washington Times, December 28, 2003	663
Ruth Rosen, “Why Can’t They Vote?” San Francisco Chronicle, February 26, 2004	665

C. Citizenship and the “War On Terror”

Johnson v. Eistentrager, 339 U.S. 763 (1950).	668
Tung Yin and David Abraham, “The Alien-Citizen Distinction and the Global War on Terrorism,” in <i>Democratic Citizenship and War</i> (2011).	W-1
“Padilla’s Lawyers Suggest Indictment Helps Government Avoid Court Fight,” Washington Post.com, November 22, 2005.	685
Padilla v. U.S., Denial of Certiorari (2006); dissenting and concurring opinions	688

Boumediene v. Bush, Scalia, dissenting694

D. Right To Travel Abroad

Aptheker v. Sec. of State, 378 U.S. 500 (1964).706

U.S. Dept. Of State, “Child Support Payments and Getting a U.S.
Passport” 721

Jacobia Urist, “No Taxes, No Travel,” *The Atlantic*, April 2012 722