

IMMIGRATION LAW AND IMMIGRANTS' RIGHTS
PROF. MING HSU CHEN
SPRING 2011 - TuTh 4:15-5:55pm – Wolf 301
Office Hours 2:30-3:30 pm

[Last revised 4/2/2012]

Course description

An immigration law course typically addresses four broad questions: Who is a citizen of the United States? Who else can come to this country? When and why can noncitizens be forced to leave? Who has the authority to answer these questions? These questions prompt us to examine the history of U.S. immigration, the constitutional-statutory-regulatory framework that governs immigration and citizenship law, and the federal agencies that administer it. In its extended form, this course will also address contemporary challenges to, and assertions of, immigrants' rights.

Examples of topics to be taken up in the immigrants' rights portion of the class include: undocumented immigration, state-local immigration enforcement, and the rights of noncitizens. While the focus of the course is on US immigration law, an effort will be made to situate the study of immigration law in a broader context that recognizes migration as a global phenomenon and US institutions as a particularized set of choices within a range of possibilities. Course materials consist of traditional legal texts (cases and statutes), plus theoretical and empirical scholarship drawn from a range of disciplinary contexts that illuminate other aspects of immigration and citizenship.

Course Materials

This course entails substantial reading, with 50 pages or so assigned for each class. Two books are required. Both are available in the bookstore and on reserve in the law library:

Aleinikoff, Martin, Motomura, and Fullerton, *Immigration and Citizenship: Process and Policy* (Thompson West 7th ed. 2012). *Note: This new edition is substantially revised from the 6th edition.*

2011 Statutory Supplement: *Immigration and Nationality Laws of the United States: Selected Statutes, Regulations, and Forms* (Aleinkoff, Martin, Motomura, and Fullerton eds., Thompson West 2011)

Other interdisciplinary materials and current events articles will be posted on TWEN. Additional suggested readings are available via the law library reserve and upon request (all optional).

Guest speakers will visit throughout the semester to lend their expertise and professional experience. Opportunities for informal interaction will be arranged when possible. The line-up currently includes: Immigration Judge James Vandello; Mekela Goehring, Rocky Mountain Immigrant Advocacy Network; Violeta Chapin and Norm Aaronson, CU Law Civil and Criminal clinics; Immigration practitioners and CU Law alum Brad Hendricks and Hans Meyer; DHS attorney Don O'Hare; and interdisciplinary immigration scholars from other CU departments.

Course Assessment

This course will be taught as a hybrid survey and seminar course, with significant reading, discussion, and writing. In part, it is a survey-level course on immigration law. It is also a seminar on immigrants' rights. The grading reflects this dual focus:

Mid-term on Immigration Law: The established Immigration Law course focuses on the acquisition of US citizenship and the rules governing migration to and entry into the US. A midterm covering these materials will be given on *March 20, 2011 (week prior to spring break)* and count for 50% of your grade.

Paper and Presentation on Immigrants' Rights: Contemporary developments in immigration law and policy exceed the scope of the typical survey. Most of these topics relate to immigrants' rights and immigrants' incorporation into the US polity post-migration or post-naturalization. Examples of such topics include: undocumented students' rights after *Plyler v. Doe* and state-level DREAM Acts; undocumented worker rights after *Hoffman Plastics*; and the changing benefits of birthright citizenship in mixed status families; and the changed structure of immigration law with the encroachment of criminal law and state-local laws regulating immigration. These topics will be covered with 10-page research papers and presentation of supporting materials to supplement readings in the casebook worth 40% of your grade. *Outline due during last week of class; paper due at end of final exams (May 11, 2012).*

Class participation includes regular attendance and participation in class discussions. In order to keep everyone engaged throughout the term, questions and problems may be assigned to accompany readings. Students will also be expected to scan current events throughout the semester. 10% of your grade.

Note: I will welcome volunteers during class discussion, but technically everybody is on-call. You have 2 passes during the semester without question or consequence. This includes absences since you're not participating if you're not in class.

Preliminary Topics (week-by-week assignments to be developed)

Immigration Law

- I. Citizenship and Membership
 - a. Acquisition by birth - Jus Sanguinis and Jus Soli
 - b. Dual Nationality
 - c. Naturalization
- II. History and Foundations of Immigration Power in US Immigration Law
- III. Institutions in US Immigration Law: Federal Agencies and Courts
- IV. Admissions
 - a. Categories
 - i. Family-sponsored immigration
 - ii. Employment-based immigration
 - iii. Diversity immigration
 - iv. Non-immigrant Visas and Guest Workers

- b. Constitutional Due Process and Admission Procedures

- V. Inadmissibility, Deportability and Relief from Removal
 - a. Constitutional constraints and recent reforms
 - b. Statutory grounds: public charge, public health, national security, crime-related
 - c. Cancellation of removal and its consequences
 - d. Asylum and Refugee Law: Brief Overview

- VI. Removal Procedures and Detention

Immigrants' Rights

- VII. Enforcement [new topic]
 - a. Unauthorized Migration
 - b. Borders, Interior, and Alternative Sites (e.g. State and Local)

- VIII. Immigration and National Security [new topic]

- IX. Immigration and Crime [new topic]

- X. Alienage Law and Immigrant Incorporation [new topic]
 - a. Constitutional Protections for Aliens
 - b. Social and economic incorporation, segmented assimilation
 - c. Political incorporation and noncitizen rights
 - i. Legal Permanent Residents
 - ii. Second-generation and beyond

- XI. Comparative Perspectives on Migration and Globalization [new topic]

- XII. Comprehensive Immigration Reform [new topic]

First Assignments: Intro reading and Family Migration History

Read syllabus and casebook 1-23 (for background), 24-36, 201-212 for Tues 1/17. Posted on TWEN.

Family migration history and second readings (CB 212-224, GCIM Report Intro) are due Thurs 1/19. Please prepare a family immigration history of 1-2 pages and bring it to class. Consult your parents, grandparents, aunts, uncles on the circumstances of their migration and their motivations for doing so. Some of your families may not have very much accessible information on their migration; may have a history that includes thin documentation; or may have remote or broken ties due to involuntary migration, slavery, annexation, Native American roots, or family flux. Simply do the best that you can based on the information available. If you are a recent immigrant, you may focus on your own immigration story.

As an alternative, please provide an immigration history for a prominent person whom you admire.

SCHEDULE OF READING ASSIGNMENTS

UNIT I: MIGRATION & CITIZENSHIP

Class 1 – 1/17: Overview of US Immigration (CB 1-23 (for background only), 24-36, 201-212.) *Outline responses to Q1 and Q4 on p.34-35 and read note 6. Additional background is listed in note 7.*

Class 2 – 1/19: Theories of Migration (CB 212-224, family migration history; GCIM Report Intro). *Outline Q1 and Q2 on p.224 and consider whether your migration history accords with the theories.*

Class 3 – 1/24: Concept and Means of Acquiring Citizenship: Jus Sanguinis and Jus Solis (CB 37-88; INA 301, 309). *Outline problems on p.41-42. Consider responses to Q2 p.49, Q3 p.61, Q3 p.78, Q3 p.88.*

Class 4 – 1/26: Naturalization and Complications in Citizenship (CB 88-133; INA 312, 313, 316, 319(a), 334, 337). *Consider responses to Q1, Q2, Q3 p.110. Outline problems on p.115 and p.132-133.*

UNIT II: FOUNDATIONS OF US IMMIGRATION POWER

Class 5 – 1/31: Foundations of Immigration Law (CB 162-201). *Read notes 1-3 (p.186-187). Consider questions listed at top of p. 188. Review handout on Congressional power and consider whether plenary power is consistent with traditions of judicial review and other principles in Constitutional law?*

Class 6 – 2/2: Challenges to Legal Framework for Immigration Regulation (CB 224-237; TWEN Kevin Johnson, Open Borders? 51 UCLA L. Rev 193 (focus on Part II) or GCIM Report (focus on Chapter 5). *What limitations to plenary power are posed by moral, economic, human rights, and policy concerns?*

Class 7 – 2/7: Institutions in US Immigration Law: Agencies and *Chevron* doctrine (CB 238-267, 338-342, TWEN Adam Cox, Deference, Delegation, Immigration Law). *Evaluate the merits of deference to Congress vs. deference to agencies, taking into consideration the institutional competence of each.*

Class 8 – 2/9: Institutions in US Immigration Law: Courts and Immigration Practice (CB 267-271, 1158-1169; 1270-1300; TWEN Immigration Briefings: Ethics, Professionalism, Immigration Law - optional. Speakers: IJ James Vandello and DHS Don O'Hare. *Consider the sufficiency of administrative and judicial review of IJ decisions. How would you strike a balance between administrability and justice?*

UNIT III: CATEGORIES OF IMMIGRANTS AND NONIMMIGRANTS

Class 9 – 2/14: Overview of Admissions Categories and Constitutional Limits (CB 272-293, 294-305; INA 101(b)(1)-(2), 201(b)(2)(A), 203(a)-(d), Table 5.5 on CB 289). *Outline problems on CB 276.*

Class 10 – 2/16: Family-sponsored Immigration and VAWA (CB 305-338, INA 101(a)(35), 101(b)(1)(E), 101(b)(2), 201(b), 203(a)(4), 204, 216, 245(d)-(e)). *Outline problems on CB 320. Reception with Professor Hiroshi Motomura after class.*

Class 11 – 2/21: Employment-based Immigration and Intro to Visas (CB 346-374, 379-387, 394-407, INA 203(b), 212(a)(5), Form ETA 9089, Form I-140)

Class 12 – 2/23: Guest Workers, T/U Visas and Undocumented Immigrants (CB 421-436, Q1 and Q2 on 426; 451-461; 469-485) Speaker: Brad Hendrick, Immigration Lawyer

Class 13 – 2/28: Admissions Procedures (CB 496-530 and CB 565-569, Form I-130 and I-140; INA 245, 212(a)(6)(A)(i), 212(a)(9)(B)(i)). *Problems on CB 506, 515, 517.*

Class 14 – 3/1: Due Process and Expedited Removal (CB 530-565, 569-574 including CB 560 note 3b on *Eldridge*; preview INA 101(a)(13)(C), INA 235(b)-(c) and 2002/2004 regs). *Exercises on 564 and 581.*

UNIT VI: INADMISSIBILITY, DEPORTABILITY, RELIEF FROM REMOVAL

Class 15 – 3/6: Inadmissibility Grounds (CB 582-606, 614-629, 639 n.2; review INA 101(a)(13)(C), INA 212(a) and waiver provisions). *Problems CB 584 #1, CB 586 #4, CB 594 #5, CB 596 #7-8, CB 627 #10.*

Class 16 – 3/8: Deportability Grounds (CB 648-679, review INA 212(a), INA 237(a)). *Problem CB 650 #1, CB 679 Exercise: Rethinking Deportability.*

Class 17 – 3/13: Crime and Immigration (CB 680-702, 739-742, 948-952; INA 237(a)(2), INA 101(a)(43), INA (a)(48)(A) and 212(h); Problem 4, exercise on criminal deportability). Guest Speakers: Hans Meyer and Violeta Chapin.

Class 18 – 3/15: Relief from Removal (CB 750-796; INA 240A, 212(c), 242(a)(2)(B)(I), 240B, exercise on cancellation of removal (CB 763) and questions on Morton memo (CB 786)

Class 19 – 3/20: MIDTERM EXAM [switched from 3/22]

Class 20 - 3/22: Asylum and Refugee Law -- Basic definitions (CB 800-810, 814-818, 825-835; 849-850, 857-865, 872-880); INA 101(a)(42), INA 208, Form I-589. Guest Speakers: Civil Litigation Clinic

UNIT V: ENFORCEMENT & IMMIGRANTS' RIGHTS

Class 21 – 4/3: Detention (CB 1216-1257 and INA 241. Optional - DHS Report on Detention, LA Times on Civil Detention). Mekela Goehring, Rocky Mountain Immigrant Advocacy Network.

Class 22 – 4/5: Removal and Enforcement, Part I (INA 235(b)(1), INA 238(b), INA 240, INA 241(a)(5); CB 1147-1150, 1187-1189, 1209-1215; 920-948. Optional – Practice Manual: Chapter 4 and IJ Worksheet on Removal Proceedings; review *INS v. Jacinto*).

Class 23 – 4/10: Enforcement, Part II: Federal (CB 972-987 *Hoffman*; CB 1035-1052 *Plyler*; Optional - Bureaucratic Incorporation article by Prof. Chen)

Class 24 – 4/12: Enforcement, Part III: State-Local (1076-1103; TWEN – skim *US v. AZ* merits briefs. Optional - Secure Communities Reports and *US v. AZ* amicus briefs). *Assignment: Bring one-page describing your paper topic, relevant laws, and preliminary research. Sign-up for individual conferences.*

Class 25 – 4/17: Limits on Enforcement (CB 988, 998-1004, 1012-1020) and Anti-Terrorism (CB 1020-1035; TWEN Bayoumi, *Racing Religion* article. Optional – Alienated article by Prof. Chen)

UNIT VI: INCORPORATION, COMPARATIVE IMMIGRATION & REFORM

Class 26 – 4/19: U.S. Immigration Policy Reform (CB 1103-1147, TWEN MPI Report Immigration Policy Since 2001: Understanding the Stalemate)

Class 27 -- 4/24: Global Perspectives on Immigrant Integration (TWEN MPI Brief on Integration; Secularism as Barrier to Integration; Citizenship Trajectories)

Class 28 – 4/29: Course Conclusion and Student Presentations