

Immigration and Refugee Law—Fall 2006  
Law 7311-1, room 387  
Revised November 27, 2006

**Course outline (by topic)**

1. Introduction [classes 1–2]
  - A. introduction/overview
  - B. citizenship
  - C. mastering the basics
2. Foundations of the immigration power [classes 3-4]
  - A. sources of federal immigration power
  - B. federal and state government power to classify noncitizens
3. Admission and inadmissibility [classes 5-6]
  - A. admission: constitutional limits
  - B. inadmissibility
    1. grounds of inadmissibility
    2. due process in the inadmissibility context
4. Removal [class 7]
  - A. constitutional limits on removal power
  - B. grounds of deportability
5. Refugee and asylum law [classes 8-9]
  - A. refugee law
  - B. asylum law
6. Guest lecture by Professor Vernon Briggs [class 10]
7. Detention [class 10]
8. Legislative exercise re H.R. 4437 [class 11]
9. Employer sanctions and antidiscrimination [class 12]
10. Judicial review [class 13]

Also: Reprise from first day of class on who we should admit and why  
Employment opportunities in immigration law

**Course outline (by week)**

**Class No. 1**

Date: August 28

Topic: Introduction/overview (first hour)

Reading:

1. Skim Aleinikoff, Martin & Motomura text (AM&M) pp. 218-37 (moral constraints on exercise of immigration power)
2. George Borjas, ["The Top Ten Symptoms of Immigration,"](http://www.cis.org/articles/1999/back1199.htm) Center for Immigration Studies Backgrounder (Nov. 1999)

Optional:

1. AM&M pp. 146-70 (re history of immigration to the U.S.)
2. Stephen Yale-Loehr & Lindsay Schoonmaker, ["Overview of Immigration Law"](http://www.millermayer.com/resources/general20cont.htm)
3. Demetrios Papademetriou, ["U.S. Immigration: Fact, Fear and Fantasy,"](http://www.afsa.org/fsj/jun01/Papademetrioujune01.cfm) Foreign Service Journal (June 2001)
4. Center for Immigration Studies, ["United States Technological Superiority and the Losses from Migration"](http://www.cis.org/articles/2005/back205.html) (Feb. 2005)
5. National Immigration Forum, ["Facts, Not Fiction: Common Myths About Immigrants"](http://www.immigrationforum.org/DesktopDefault.aspx?tabid=836) (Aug. 4, 2006)
6. Leo Achondo, ["Myths About Immigration,"](http://www.ilw.com/articles/2006,0130-anchondo.shtm) Immigration Daily, Jan. 30, 2006
8. Center for Immigration Studies, ["Economy Slowed, But Immigration Didn't: The Foreign-Born Population 2000-2004"](http://www.cis.org/articles/2004/back1204.html) (Nov. 2004)
9. Bob Herbert, ["Who's Getting the New Jobs?,"](http://www.lexis.com/xlink?showcidslinks=on&ORIGINATION_CODE=00142&searchtype=bo&search=headline%28Who%27s%20Getting%20the%20New%20Jobs%29&source=news;nyt) N.Y. Times, July 23, 2004
10. An Alleged Wife: One Immigrant in the Chinese Exclusion Era (see Blackboard: course documents: introductory class documents folder)
11. George Borjas, ["Increasing the Supply of Labor Through Immigration: Measuring the Impact on Native-born Workers,"](http://www.cis.org/articles/2004/back504.html) Center for Immigration Studies (May 2004)
12. Ricardo Alonso-Zaldivar, ["Study Says Illegal Immigrants Cost U.S. \\$10 Billion a Year; Analysis Is Disputed,"](http://www.lexis.com/xlink?showcidslinks=on&ORIGINATION_CODE=00142&searchtype=bo&search=headline%28Study%20Says%20Illegal%20Immigrants%20Cost%29&source=news;lat) Los Angeles Times, Aug. 26, 2004
13. D'Vera Cohn, ["Census Finds Steady Flow Despite Economy, 9/11,"](http://www.lexis.com/xlink?showcidslinks=on&ORIGINATION_CODE=00142&searchtype=bo&search=headline%28Census%20Finds%20Steady%20Flow%20Despite%20Economy%29&source=news;wpost) Washington Post, Nov. 23, 2004

14. [http://www.aifl.org/awards/dubroff\\_index.asp](http://www.aifl.org/awards/dubroff_index.asp) target="\_Top"> AILF Dubroff Immigration Legal Writing Competition </a> (information on AILF immigration writing competition, which Cornell law students have won many times)

Questions:

1. What is our national interest in having an immigration policy?
2. Should our immigration policy benefit U.S. natives? Immigrants? Those who remain in source countries? Some mixture of the three?
3. How many and what kinds of people should we admit to the United States each year?
4. What should our immigration policy be after 9/11?

Topic: Citizenship (second hour)

Reading: AM&M pp. 1-34

Questions:

1. How should we define membership in U.S. society? What does it mean to be a member?
2. What turns, or should turn, on membership?
3. Was Bickel correct in saying that citizenship doesn't matter much because nothing much turns on it?
4. What are the normative arguments for limiting membership?
5. Should we deny automatic U.S. citizenship to children born in the United States of undocumented alien parents? Would an amendment to the 14th Amendment along those lines be constitutional?

## **Class No. 2**

Date: September 4

Topic: Mastering the basics

Reading:

1. AM&M pp. 266-67, 274-90, 392-97, 401-11, 420-21
2. Migration Policy Institute, <http://www.migrationinformation.org/USfocus/display.cfm?id=362> target="\_Top"> Who Does What in US Immigration </a>
3. [http://travel.state.gov/visa/frvi/bulletin/bulletin\\_1360.html](http://travel.state.gov/visa/frvi/bulletin/bulletin_1360.html) target="\_Top"> State Department Visa Bulletin </a>

Optional:

1. Congressional Research Service, <http://fpc.state.gov/documents/organization/66512.pdf> target="\_Top"> U.S. Immigration Policy on Permanent Admissions </a> (May 12, 2006)
2. USCIS, [http://www.uscis.gov/graphics/publicaffairs/DayinLife\\_050629.pdf](http://www.uscis.gov/graphics/publicaffairs/DayinLife_050629.pdf) target="\_Top"> "A Day in the Life of USCIS" </a> (June 29, 2005) (fact sheet re what USCIS does every day)

Questions:

1. AM&M pp. 277 (immigrant visa problems)

2. Business immigration law problem set (see Blackboard: course documents: second class documents folder)

Written assignment due by noon September 4 via e-mail to me (SWY1@cornell.edu): submit 2-page personal or family immigration history

### **Class No. 3**

Date: September 11

Topic: Sources of the federal immigration power

Reading: AM&M pp. 170-210

Questions:

1. AM&M pp. 177-86, 204-10
2. Does *Chinese Exclusion* hold that Congress's power to exclude is free of constitutional limitations?
3. What constitutional claims could the alien have raised in *Chinese Exclusion*?
4. Is Justice Field's dissent in *Fong Yue Ting* consistent with his own reasoning in *Chinese Exclusion*?
5. What are the arguments for extraordinary judicial deference to immigration policy in general? To exclusion in particular? How convincing are those arguments? Are those arguments any different after 9/11?

Monday September 18: No class

### **Class No. 4**

Date: Wednesday September 20

Topic: How to research immigration law (first hour) (Pat Court will lead class in discussion of traditional and computerized research techniques for immigration law; tentatively scheduled to be held in computer training classroom (Room 375)) [Note: Please bring your Lexis and Westlaw passwords to the session]

Reading: <a href=http://library.lawschool.cornell.edu/guides/immigration.htm target="\_Top"> Research Sources for Immigration Law at Cornell Law Library </a>

Optional reading: Pat Court, "A Guide to Researching Immigration Law," <AHREF=http://www.westlaw.com/find/default.wl?cite=94%2D05+immigr+briefings+1&FindType=F&ForceAction=Y&SV=Full&RS=ITK3.0&VR=1.0 target="\_Top"> </a> 94-5 Immigration Briefings (May 1994)

Topic: The federal and state governments' power to classify noncitizens (second hour, room 389)

Reading: AM&M pp. 1016-69

Questions:

1. What are the constitutional limits, if any, on Congress' power to classify on the basis of alienage?

2. What are the justifications, if any, for an equal protection "double standard" between federal and state classifications?
3. Do the classic *Carolene Products* criteria of "suspectness" justify strict scrutiny of alienage classifications?
4. Would any state alienage classifications survive a strict scrutiny test?
5. How does the preemption approach to alienage classification differ from the equal protection approach? Why might the Supreme Court favor the preemption approach?
6. Under a preemption approach, why wouldn't the statute in *Plyler* pass muster?
7. Is California's Proposition 187 constitutional?
8. Do you agree with the court's decision in *City of Chicago v. Shalala* upholding the constitutionality of § 402 of the 1996 welfare law, which bars most legal aliens from food stamps and the SSI program? How would you distinguish this provision from the one upheld in *Mathews v. Diaz*?

### **Class No. 5**

Date: September 25

Topic: Admission: constitutional issues (first hour)

Reading: AM&M pp. 290-302 (*Fiallo v. Bell*)

Questions: AM&M pp. 299-301

Topic: Grounds of inadmissibility (second hour)

Readings:

1. AM&M pp. 427-43

2. INA § 212(a)-(i) (See External Links on Blackboard course site for link to INA)

Questions: AM&M pp. 431-32, 439, 442

Written assignment due September 25 via e-mail by noon: submit 1-page analysis of one of the problems assigned for this class (I will assign which one you do)

**Friday September 29:** submit 2-page outline for paper: due via e-mail to me by noon. See Blackboard: course documents for examples of good outlines and for paper topic ideas.

### **Class No. 6**

Date: October 2

Topic: Grounds of inadmissibility (cont'd) (first hour)

Readings:

1. AM&M pp. 1203-15, 1223-43 (*Kleindienst v. Mandel*; terrorism grounds of inadmissibility)

2. INA § 212(a)(3)

3. Anushka Asthana, <A

href="http://www.lexis.com/xlink?showcidslinks=on&ORIGINATION\_CODE=00142&searchtype=bo&search=headline%28Bars%20Many%20Academics%29&source=news;wpost" target="\_blank"> "Advocates Say U.S. Bars Many Academics," </a> Washington Post, Aug. 4, 2006

4. Tariq Ramadan, <A

href="http://www.lexis.com/xlink?showcidslinks=on&ORIGINATION\_CODE=00142&searchtype=bo&search=headline%28Why%20I%27m%20Banned%20in%20the%20USA%29&sour

e=news;wpost" target="\_blank"> "Why I'm Banned in the USA," </a> Washington Post, Oct. 1, 2006

Questions: AM&M pp. 1208-09, 1242 (question no. 4)

Topic: Due process in the admission context (second hour)

Reading:

1. AM&M pp. 453-83 (*Knauff; Mezei; Landon v. Plasencia*), 522-34 (expedited removal)

2. INA § 235(b)

3. Nina Bernstein, <A

HREF="http://www.lexis.com/xlink?showcidslinks=on&ORIGINATION\_CODE=00142&searchtype=bo&search=headline%28Defends%20Detentions%20at%20Airports%29&source=news;nyt" target="\_blank"> "U.S. Defends Detentions at Airports," </a> New York Times, Aug. 10, 2005

Optional:

1. Charles D. Weisselberg, "The Exclusion and Detention of Aliens: Lessons from the Lives of Ellen Knauff and Ignatz Mezei," 143 U. Pa. L. Rev. 933, 958-64, 970-85 (1995) <A

HREF="http://www.lexis.com/xlink?searchtype=get&search=143%20U.%20Pa.%20L.%20Rev.%20933" target="\_TOP"> 143 U. Pa. L. Rev. 933</A>

2. Anthony DePalma, <A

HREF="http://www.lexis.com/xlink?showcidslinks=on&ORIGINATION\_CODE=00142&searchtype=bo&search=headline%28New%20Rules%20at%20U.S.%20Borders%20Provoke%20Criticism%29&source=news;nyt" target="\_blank"> "New Rules at U.S. Borders Provoke Criticism," </a> New York Times, Nov. 14, 1997

3. Susan Sachs, <A

HREF="http://www.lexis.com/xlink?showcidslinks=on&ORIGINATION\_CODE=00142&searchtype=bo&search=headline%28Inspectors%20Are%20Judge%2C%20Jury%20and%20Deporter%29&source=news;nyt" target="\_blank"> "I.N.S. Inspectors Are Judge, Jury and Deporter, Report Says," </a> New York Times, Oct. 6, 2000

4. Eric Schmitt, <A

HREF="http://www.lexis.com/xlink?showcidslinks=on&ORIGINATION\_CODE=00142&searchtype=bo&search=headline%28When%20Asylum%20Requests%20are%20Overlooked%29&source=news;nyt" target="\_blank"> "When Asylum Requests are Overlooked," </a> New York Times, Aug. 15, 2001

Questions:

1. AM&M pp. 469-71, 478-83, 532-34

2. Do expedited removal proceedings of asylum-seekers at ports of entry violate due process?

No class October 9

## **Class No. 7**

Date: October 16

Topic: Constitutional limits on removal power (first hour)

Reading: AM&M pp.1192-1202 (*Harisiades v. Shaughnessy*); 542-49

Topic: Grounds of deportability (second hour)

Reading:

1. AM&M pp. 550-81
2. INA § 237

Questions:

1. How convincing are Justice Jackson's arguments in *Harisiades* that deportation is not punishment?
2. If deportation is not punishment, to what should it be analogized?
3. Should Congress redefine what constitutes a crime of moral turpitude? An aggravated felony?

### **Class No. 8**

Date: October 23

Topic: Refugees

Reading:

1. AM&M pp. 790-831
2. Peter Schuck, <A

href="http://www.lexis.com/xlink?showcidslinks=on&ORIGINATION\_CODE=00142&searchtype=bo&search=headline%28Share%20the%20Refugees%29&source=news;nyt" target="\_blank"> "Share the Refugees," </a> New York Times, Aug. 13, 1994

Optional:

1. Sara Corbett, <A

href="http://www.lexis.com/xlink?showcidslinks=on&ORIGINATION\_CODE=00142&searchtype=bo&search=headline%28sudan%20and%20Long%20Road%20to%20Fargo%29&source=news;nyt" target="\_blank"> "The Lost Boys of Sudan: The Long, Long, Long Road to Fargo," </a> New York Times Magazine, Apr. 1, 2001

2. Alisa Solomon, <A href="http://www.villagevoice.com/issues/0219/solomon.php" target="\_Top"> "The Golden Ticket: Will Our Refugee Program Survive 9-11 and the Breakup of the INS?," </a> Village Voice, May 8, 2002 (a good story about an attorney trying to determine who qualifies for refugee status in Africa)

3. <A href="http://www.refugeecamp.org" target="\_Top "> (a virtual tour of a refugee camp) </A>

Questions:

1. What is the legal definition of a "refugee"? How does it differ from sociological and lay usages of the term?
2. Should we expand or contract the legal definition of "refugee"? For example, should gender or sexual orientation be separate categories? What are the pros and cons of alternative definitions?
3. Given limited resources, how much of the total amount of money allocated to refugees should go to refugee assistance overseas v. domestic resettlement?
4. How much of overseas assistance funding should go to repatriation v. resettlement in a neighboring country?

5. How many people should we admit each year as refugees to the United States? Should we continue to have regional allocations? Should we continue to have such a large percentage of the worldwide total allocated just for refugees from the former Soviet Union?
6. Should we allow some people to enter the United States even if they do not qualify as refugees, but are of special concern to U.S. foreign policy interests?
7. Should we give any refugee slots for private funding by ethnic groups? If so, are such privately funded refugees fair to other ethnic groups who cannot raise money to bring "their" refugees?
8. How should we restructure U.S. refugee policy to best meet U.S. foreign policy interests? Domestic interests? Refugees' interests? Should budgetary constraints matter?

**Friday October 27:** first drafts of papers due by 3:00 p.m. by email to me

### **Class No. 9**

Date: October 30

Topic: Asylum

Reading:

1. AM&M pp. 831-56, 858-59, 863-65, 885-98, 916-25, 946-64
2. INA § 101(a)(42)
3. TRAC Immigration, <a href=http://trac.syr.edu/immigration/reports/159/ target="\_Top"> The Asylum Process</a>

Optional:

1. Eric Lichtblau, <A HREF="http://www.lexis.com/xlink?showcidslinks=on&ORIGINATION\_CODE=00142&searchtype=bo&search=headline%28Airport%20Killer%20to%20Terrorists%29&source=news;nyt" target="\_blank"> "Threats and Responses: The Airport Attack: I.N.S. Ignored Possible Link of Airport Killer to Terrorists," </a> New York Times, Sept. 25, 2002 (asylum applicants to be screened for terrorism connections)
2. Nina Bernstein, <a href=http://www.nytimes.com/2006/10/08/nyregion/08immigration.html?pagewanted=all target="\_Top"> "In New York Immigration Court, Asylum Roulette," </a> New York Times, Oct. 8, 2006
3. Chris Hedges, <A HREF="http://www.lexis.com/xlink?showcidslinks=on&ORIGINATION\_CODE=00142&searchtype=bo&search=headline%28Asylum%20Policy%20in%20Gender%20Abuse%29&source=news;nyt" target="\_blank"> "Agency Struggles with Asylum Policy in Gender Abuse Cases," </a> New York Times, Mar. 12, 2000
4. Linda Myers, <a href=http://www.news.cornell.edu/stories/May05/CU.asylum.law.class.html target="\_Top"> "Law students take on real-life cases saving asylum seekers," </a> Cornell Chronicle, May 16, 2005
5. <a href=http://www.lawschool.cornell.edu/newsstory.cfm?pageid=51355 target="\_Top"> Cornell Law Students Win Two Victories for Immigrants</a> (article about Cornell asylum/CAT clinic)

Questions:

1. AM&M p. 858-59
2. Does the Supreme Court's decision in *Elias-Zacarias* spell the end of asylum claims based on neutrality or imputed political opinion?
3. Should Chinese nationals who claim they oppose their country's family planning policies be eligible for asylum? Why or why not? If so, on what basis? What do you think of Congress' attempt to resolve this issue by amending INA § 101(a)(42)?
4. Was the BIA correct in *Matter of R-A*? Why or why not?

### **Class No. 10**

Date: November 6

First hour: guest lecture by Professor Vernon Briggs on immigration reform

Reading:

1. Vernon Briggs, [http://judiciary.senate.gov/testimony.cfm?id=1034&wit\\_id=2959](http://judiciary.senate.gov/testimony.cfm?id=1034&wit_id=2959) target="\_Top"> "Guestworker Programs for Low-Skilled Workers: Lessons from the Past and Warnings for the Future" </a> (testimony before the Senate Judiciary committee (Feb. 12, 2004))
2. Vernon Briggs, "Immigration: A Rogue Labor Market Policy," *in* Perspectives on Work 28-30 (Summer 2004) (see Blackboard: course documents)
3. Vernon Briggs, <http://www.cis.org/articles/2006/briggstestimony082906.html> target="\_Top"> "Immigration Reform and the U.S. Labor Force: The Questionable "Wisdom" of S.2611</a> (testimony before the House Judiciary Committee (Aug. 29, 2006))
4. Barry Chiswick, <A HREF="http://www.lexis.com/xlink?showcidslinks=on&ORIGINATION\_CODE=00142&searchtype=bo&search=headline%28Worker%20Next%20Door%29&source=news;nyt" target="\_blank"> "The Worker Next Door," </a> New York Times, June 3, 2006
5. Robert J. Samuelson, <A HREF="http://www.lexis.com/xlink?showcidslinks=on&ORIGINATION\_CODE=00142&searchtype=bo&search=headline%28We%20Don%27t%20Need%20Guest%20Workers%29&source=news;wpost" target="\_blank"> "We Don't Need 'Guest Workers'," </a> Washington Post, Mar. 22, 2006

Second hour: Detention

Reading:

1. AM&M pp. 696-750
2. INA §§ 236(c), 241(a)(6)

Questions:

1. AM&M pp. 723-29, 748-50

### **Class No. 11**

Date: November 13

Topic: Legislative exercise re H.R. 4437

Reading: see Blackboard: course documents

### **Class No. 12**

Date: November 20

Topic: Employer sanctions and antidiscrimination

Reading:

1. AM&M pp. 1128-51
2. INA §§ 274A, 274B, 8 C.F.R. Part 274a, <A  
HREF="http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=31b3ab0a43b5d010VgnVCM10000048f3d6a1RCRD&vgnnextchannel=db029c7755cb9010VgnVCM10000045f3d6a1RCRD" target="\_Top"> Form I-9 </A> (opens very slowly; be patient; it's the government, after all)
3. National Council of La Raza, "Racing Toward Big Brother: Computer Verification, National ID Cards, and Immigration Control," pp. ii-vii (1995) (see Blackboard: course documents: employer sanctions class materials folder)
4. Stanley Mailman & Stephen Yale-Loehr, "Criminalizing Employer Sanctions: Employers Walk a Tightrope," N.Y.L.J., Aug. 25, 2006, at 3 (see Blackboard: course documents: employer sanctions class materials folder)
5. U.S. Department of Justice, Office of Special Counsel for Immigration-Related Unfair Employment Practices, "Look at the Facts, Not at the Faces," at 6-8 and addendum (1994) (see Blackboard: course documents: employer sanctions class materials folder)
6. Stanley Mailman & Stephen Yale-Loehr, "The Complexity of Verifying Work Authorization," N.Y.L.J., Oct. 27, 1997, at 3 (see Blackboard: course documents: employer sanctions class materials folder)
7. Steven Greenhouse, <A  
HREF="http://www.lexis.com/xlink?showcidslinks=on&ORIGINATION\_CODE=00142&searchtype=bo&search=headline%28Labor%20Violations%20Go%20With%20the%20Job%29&source=news;nyt" target="\_blank"> "Among Janitors, Labor Violations Go With the Job," </a> N.Y. Times, July 13, 2005

Questions:

1. AM&M pp. 1135-36
2. Employer Sanctions Qs.rtf (see course documents: employer sanctions class materials folder)
2. Should Congress repeal employer sanctions? Strengthen antidiscrimination enforcement? Both? Neither?
3. Should Congress enact a national ID card for work authorization purposes and to control illegal immigration, as recommended by the U.S. Commission on Immigration Reform?
4. Can any employer comply with both IRCA's employer sanctions and antidiscrimination provisions without violating either?

### **Class No. 13**

Date: November 27

Topic: Judicial review

Reading:

1. AM&M pp. 750-74
2. INA § 242

Questions:

1. AM&M pp. 757-60, 771-74; prepare oral answers to exercise on p. 774 to discuss in class

2. Are Congress' efforts to limit federal court jurisdiction in certain immigration decisions constitutional? What does *St. Cyr* say on this issue?

Also on November 27:

Reprise from first day of class on who we should admit and why  
Employment opportunities in immigration law

Optional reading:

Michael Maggio, "The Lawyer and Our History: Practicing Immigration Law has Rarely Been More Important to the Country," *Legal Times*, July 28, 2003 (see Blackboard: course documents: last class documents folder)

**Friday, December 15:** final papers due by 3:00 p.m. via email to me