

**IMMIGRATION LAW  
440A  
Spring 2012  
Thursdays 6:30 p.m. – 9:45 p.m.  
Room 206**

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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) Stephen H. Legomsky & Cristina M. Rodriguez, Immigration and Refugee Law and Policy (5th ed. 2009).
- 2) Immigration and Nationality Act (American Immigration Lawyers Association Publications 2011).

The assigned readings should keep you sufficiently busy and I recommend that you read the assigned material 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. Another common practice-based book is by Ira Kurzban, Immigration Law Sourcebook (12<sup>th</sup> 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.bibdaily.com](http://www.bibdaily.com)), which also appears as a weekly print publication.

Finally, two helpful resources on scholarly writing for law students are Elizabeth Fajans & Mary J. Falk, Scholarly Writing for Law Students (3d ed. 2005) and Eugene Volokh, Academic Legal Writing: Law Review Articles, Student Notes, and Seminar Papers (4th ed. 2010). These are on reserve in the WSU library.

## GENERAL GUIDELINES REGARDING WRITTEN ASSIGNMENTS

This class is designed to satisfy the WSU upper division writing requirement, which is based on guidelines established by the American Bar Association. Your final grade will be based primarily on a 15 to 20 page research paper, as well as class participation.

You will work on the research paper throughout the semester. There are a number of smaller written assignments that precede the submission of the final paper, and a number of deadlines associated with these assignments. You should plan to devote time every week – not only in the weeks when a written assignment is due – to planning, researching, and drafting your research paper. I highly recommend that you input the various course deadlines into a daily planner (or other personal calendaring system), and that you schedule time each week to work on your research paper.

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](mailto: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. A late paper is one handed in any time after it is due, even if late by one minute. I recommend turning in assignments a day in advance. For graded assignments, penalties for lateness are as follows: (1) Submitted within 24 hours after deadline: 10% grade reduction; (2) After the first 24 hours, an additional 20% grade reduction for each additional 24 hour time period in which the assignment is past due. For example, if the assignment is due on Tuesday by 5 p.m., then your grade on the assignment would be reduced by 10% if emailed at any time between Tuesday at 5:01 p.m. and Wednesday at 5:00 p.m., by 30% if emailed at any time between Wednesday at 5:01 p.m. and Thursday at 5 p.m., and by 50% if emailed at any time between Thursday at 5:01 p.m. and Friday at 5 p.m.

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:

- 1) Personal Immigration History (ungraded, but mandatory). Write a brief (1-2 page) description of your and/or your family’s immigration history, to the extent that you know it. Feel free to include immigration histories in countries other than the U.S., as appropriate. Why did you/your family come to the U.S.? When and under what circumstances? If you would like me to keep your paper confidential, please indicate this on your submission by including the phrase, “CONFIDENTIAL” in capital letters at the top of your paper. Otherwise, I may make reference to these papers in class from time to time.

This assignment is due by 5 p.m. on **Tuesday, January 24.**

- 2) Class Participation (30% of total grade). Your class participation grade will take into account your preparation for and participation in class discussion, casebook problems, in-class simulation exercises and potential quizzes. The simulation exercises will take place

in the second half of the semester. More information about these exercises will be circulated later on in the course.

- 3) RESEARCH PAPER (70% of total grade). Preparation of your research paper will begin right away and will continue throughout the semester. Your preparation will include turning in your thesis statement and topic, research plan, and outline, all of which will be graded. You are required to meet with me in person at least once during the semester, after you have turned in your research log, so that I can provide you with early feedback on your paper. You will also be required to turn in a rough draft of the paper for feedback. You are welcome to meet me more often during the semester to discuss your paper. The final version of your paper will be due no later than **Friday, May 18, 2012 at 5 p.m. (the last day of finals)**.

More detailed information about each of the assignments will be provided later in the semester. We will also spend a portion of class time discussing each of the assignments.

- a. Topic and Preliminary Thesis Statement (ungraded, but mandatory). A preliminary statement of your paper topic and thesis will be due by 5 p.m. on **Friday, February 17, 2012**. The topic and thesis statement should be about 1 page in length. As you conduct your research, the details of your thesis statement may change, but the initial description of the topic should be detailed enough to allow you to begin conducting meaningful research into the issue you have selected. The topic should also require you to analyze one or more immigration statute(s), regulation(s), or case(s).
- b. Research Log (5% of total grade). A research log, which is an alphabetical list of the sources you have consulted in the early stages of preparation of your paper, is due by 5 p.m. on **Friday, March 2, 2012**. You may or may not end up using the sources listed in your research log in your final paper. The purpose of the log is to give me an idea of what you have done so I might make suggestions.
- c. In-Person Meeting (ungraded, but mandatory). Please plan to meet with me in person during the week of **March 5 to 9**, so that I can provide feedback on your research log and progress thus far. I will distribute a sign-up sheet on prior to these meetings. These meetings are not graded. However, they are required. If you do not attend your scheduled meeting, your grade for your research log will be reduced by one-half. We will also reschedule the meeting.
- d. Paper Outline (5% of total grade). A 3-5 page outline of your paper is due by 5 p.m. on **FRIDAY, March 23, 2012**.
- e. Draft of Paper (10% of total grade). You will be required to submit a rough draft of your paper by 5 p.m. on **Friday, April 13, 2010**. While the rough draft is not held to the same expectations as the final draft, it should be sufficiently developed

to provide the reader with a sense of the organization, content, and argument. It is fine to have areas that require further work, but the draft should indicate where further work is contemplated, and what the nature of that work will be.

- f. Final Paper (50% of total grade). As stated above, your final research paper should be approximately 15-20 pages in length (and no more than 20 pages). The final paper is due by 5 p.m. on **Friday, May 18, 2012 (the last day of finals)**. Students are both permitted and encouraged to submit their final papers before the due date.

Final papers will be graded according to the following evaluation grid: quality of analysis (50%); quality of planning and organization (10%); breadth and depth of research (25% ); and quality of writing (including grammar, spelling, and cite-checking) (15%).

### **CLASS FORMAT, ATTENDANCE AND PARTICIPATION**

Law teaching is a cooperative venture. I will commit to being prepared for class and will expect to have thoroughly read and reflected upon the assigned readings, notes and problems. I expect the same of you. This course will work best if our examination of the materials we will study includes a considerable amount of lively and thoughtful class discussion, in which every student participates. (As noted above, class participation counts for 30 percent of your final grade).

In accordance with the WSU academic policy and as described in the Student Handbook, a student who misses more than 2 (two) class sessions will be withdrawn from class.

### **CLASS SCHEDULE**

Class will meet from 6:30 p.m. – 9:45 p.m. on Thursdays in Room 206. We will typically take a break from 8:00 p.m. – 8:15 p.m.

### **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](mailto: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 and moderate a discussion of student questions 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 Judy Andresen 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 half of the semester. I will update the syllabus halfway through the semester. 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.

You will soon become familiar with the Immigration and Nationality Act (which I will commonly refer to as the “INA” or, at times, simply “the statute”). 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**.

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, and have also directed you to omit certain problems from the reading because we will not cover those problems in class. 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, you should bring to class a set of typewritten answers, along with a record of the sources you consulted to answer the problem. From time to time, I may collect these prepared answers from you.

### I. Overview of Immigration Law

#### **CLASS 1 THURSDAY, JANUARY 19**

Course Overview

Overview of U.S. Immigration Law

Chapter 1: The Immigration Debate

- A. History of Immigration Law
- B. The Politics of Immigration

Chapter 2: Immigration and the Constitution

- A. Sources of the Federal Immigration Power

B. Limits to the Federal Immigration Power (intro)

**Casebook** pp.1-24, 91-97, 113-55

Be prepared to discuss Chae Chan Ping (p. 120) and Fong Yue Ting (p. 136)

**CLASS 2 THURSDAY, JANUARY 26**

**Chapter 2: Immigration and the Constitution (cont'd.)**

- C. Limits to the Federal Immigration Power (cont'd.)
  - a. Foundation Cases
  - b. Procedural Due Process in Deportation Cases
  - c. Substantive Application of Plenary Power Doctrine

**Discussion of topic selection and thesis statement**

Be prepared to discuss Yamataya v. Fisher (p. 171), Harisiades (p. 177), and Zadvydas (p. 206).

**Casebook and INA** 171-177 (skip note 7), 177-195, 206-221  
**INA** §§ 241(a)

**CLASS 3 THURSDAY, FEBRUARY 2**

**Chapter 3: Immigrant Priorities**

- A. Fundamentals of Quotas and Preferences
- B. Family Immigration
  - 1. The Basics
  - 2. Spouses
- C. Employment-Related Immigration
  - 1. The First Three Preferences: Superstars, Stars and Others

**Casebook** pp. 250-261 (skip Problem 2); 262-267; 282-288 (Skip Problems 7, 9, and 10); 304-24  
**INA** §§ 201 (*skim*); 202 (*skim*); 203 (*skim*); 204(a)(1)(A)(i) – (iii); 216; 212(a)(5); 201(d); 203(b)(1)-(3).

Be prepared to discuss Problem 1 on p. 255; Problems 3 and 4 on pp. 266-267; Problems 5, 6, 8, and 11 on pp. 287-88; and Matter of Marion-Graham (p. 310).

**CLASS 4 THURSDAY, FEBRUARY 9**

- C. Employment-Related Immigration (cont'd.)

2. Fourth and Fifth Preferences
3. Diversity Immigrants

#### **Chapter 4: Nonimmigrant Priorities**

- A. Commercial Categories of Nonimmigrants
  1. Business Visitors
  2. Treaty Traders and Investors
  3. Temporary Workers
- B. Educational Categories
  1. Students
  2. Exchange Visitors
- C. Tourists
- D. Fiancés and Fiancées
- E. Crime Victim Visas
- F. General Nonimmigrant Problems
  1. Intent to Remain Permanently
  2. Change of Nonimmigrant Status

**Casebook** pp. 344-50, 355-369 (skip Problem 2), bottom of 371-383, middle of 386-middle of 388, 393 – bottom of 398, 403 – 419 (skip Problems 9 and 12)

**INA** §§ 203(b)(4)-(5); 101(a)(27) (*skim*); 101(a)(15)(B); 101(a)(15)(E), 101(a)(15)(H)(i)(b); 101(a)(15)(O)-(P); 101(a)(15)(F); 101(a)(15)(J); 212(e); 101(a)(15)(S)-(U); 248.

**TWEN** Patrick McGeehan and Kirk Semple, “Rules Stretched as Green Cards Go to Investors,” N.Y. Times, Dec. 18, 2011

Be prepared to discuss International Bricklayers (p. 358); Problem 1 (p. 368); Problems 4-5 (p.388); Problem 8 (p. 403); Matter of Healy and Goodchild (p. 404); Moss v. INS (p. 408); Problem 10 (p. 411); and Problems 11 and 13 (pp. 417-418)

#### **CLASS 5 THURSDAY, FEBRUARY 16**

##### **Chapter 5: Exclusion Grounds and Waivers**

- A. Historical Background
- B. Grounds Related to Immigration Control
- C. Political and National Security Grounds
- D. Criminal Grounds
- E. Economic Grounds
- F. Public Health and Morals

##### **Chapter 6: Admission Procedure**

- A. The Early Days
- B. Modern Procedure: Preliminary Comments
- C. Visa Petitions

## **Discussion of Research Log**

**Casebook** pp. 420-21, 429-62 (see p. 14 of casebook supplement) (skip Problems 2, 4, 6, 12), 463-69 (see p. 16 of casebook supplement), 469-480 (skip Problem 3)

**INA** §§ 212(a) (pay particular attention to the sections highlighted in the text); 212(h).

Be prepared to discuss Problems 1, 3, and 5 (pp. 435-36); Problems 7 and 8 (pp. 442-43); Matter of S-K (p. 444); Problems 9, 10 and 11 (pp. 456-457); Florida Bar v. Matus (p. 476); and Problems 1 and 2 (pp. 479-80).

## **CLASS 6 THURSDAY, FEBRUARY 23**

### **Chapter 6: Admission Procedure (cont'd)**

- D. Visa Applications
- E. Actual Admission
- F. Adjustment of Status

### **Chapter 7: Deportability Grounds**

- A. General Considerations
- B. The Meaning and Significance of “Entry” and “Admission”
- C. Deportability Grounds Concerned with Immigration Control
- D. Crime-Related Deportability Grounds
  - 1. What is a Conviction?

**Casebook** pp. 480 (bottom)-487, 503-512 (skip Problems 6 and 7), 514-523, 539, 543-561 (skip Problems 5, 6, 11, 12 and 13),

**INA** §§ 221 (*skim*); 245(a); 101(a)(13); 291; 235; 237(a)(1); 101(a)(48)(A).

Be prepared to discuss Problems 4-5 (p. 512), Fong Haw Tan (p. 519), Problems 4 (pp. 543-44); Problems 7, 8, 9 and 10 (pp. 546-547), the definition of a “conviction” (INA § 101(a)(48)(A))

## **CLASS 7 THURSDAY, MARCH 1**

### **Chapter 7: Deportability Grounds (cont'd.)**

- E. Crime-Related Deportability Grounds (cont'd.)
  - 1. Crimes Involving Moral Turpitude
  - 2. Drug Offenses
  - 3. Aggravated Felonies
  - 4. Miscellaneous Criminal Grounds
  - 5. The Merits of Removing Noncitizen Criminal Offenders

### **Chapter 8: Relief from Removal**

- A. Lasting Relief

1. Cancellation of Removal, Parts A and B

**Casebook** pp. 561-608 (skip Problems 16, 18, 24, and drafting exercise on p. 588) (read casebook supplement at p. 20).

**INA** §§ 237(a)(2); 101(a)(43); 240A.

**TWEN** Judulang v. Holder

Be prepared to discuss Marciano v. INS (p. 561); Problems 14 and 15 (p. 570); Problem 17 (p. 570); Problem 19 (p. 571); Problems 20-21 (p. 574), Leocal v. Ashcroft (p. 576); Problems 22 and 23 (p. 585), Problems 25-27 (p. 592), and Judulang v. Holder (TWEN).

**CLASS 8 THURSDAY, MARCH 8**

**Chapter 8: Relief from Removal (cont'd.)**

A. Lasting Relief (cont'd.)

1. Cancellation of Removal, Part B (cont'd.)
2. NACARA
3. Registry
4. Legalization
5. Adjustment of Status

B. Limited Relief

1. Deferred Action
2. Voluntary Departure
3. Objections to Destination
4. Stays of Removal

C. Miscellaneous Defenses

D. Perspective on Relief from Deportability

**Chapter 9: Deportation Procedure**

A. Overview

1. Apprehension
2. Before the Hearing
3. The Removal Hearing
4. Administrative Review
5. Judicial Review

B. A Sampling of Specific Procedural Ingredients

1. Immigration Judges
2. Representation

**Discussion of deportation simulation exercise and paper outlines**

**Casebook** pp. 617-639, 644 (starting with subsection 4) – 647, 648-72 (see casebook supplement at p. 22), 680-88  
**INA** §§ 240A(b); 249; 245.

Be prepared to discuss Matter of Recinas (p. 618), Problems 5 and 6 (pp. 637-38).

*Meetings with Professor Koh re research logs*

*Start preparing for deportation simulation (skim pp. 790-806).*

*Class will not meet on Thursday, March 15 (Spring Break)*

**CLASSES 9 – 14: THURSDAY, MARCH 26 – THURSDAY, APRIL 26**

*Syllabus to be updated*

**Chapter 9: Deportation Procedure (cont'd)**

**Chapter 10: Immigration and National Security**

**Chapter 11: Refugees**

**Chapter 12: Undocumented Migration**

**Chapter 13: Citizenship**

*Congratulations! Final reminder: papers are due by Friday, May 18 at 5 p.m.*