

*[This is my Spring 2006 Immigration & Citizenship
course syllabus, which I distributed in four installments.]*

University of North Carolina School of Law
Immigration & Citizenship: Hiroshi Motomura
January 4, 2006

Handout #2: Syllabus (part 1)

About the course

This course is about immigration and citizenship, including important questions like:

- Who is a citizen, and what is the meaning of U.S. citizenship?
- Who else comes lawfully or unlawfully to the United States?
- When and why can noncitizens in the United States be forced to leave?
- What is the right balance between openness to outsiders and national security?

Immigration and citizenship law has many practical applications, not only for those who specialize in it, but also in other practice areas, e.g., business law, criminal law, and family law. But the real reasons you should take this course may be these:

- You'll learn how constitutional law, statutes, and regulations work together.
- You'll get plenty of skills training in working with complex statutes and regulations.
- This course is about outsiders and is therefore a key part of the study of civil rights.
- You'll see how law makes sense only in historical, political, and economic context.

Required texts

- T. Alexander Aleinikoff, David A. Martin & Hiroshi Motomura, *Immigration and Citizenship: Process and Policy* (West Group: 5th ed. 2003), a/k/a "AM&M."
- 2005 Statutory Supplement: *Immigration and Nationality Laws of the United States: Selected Statutes, Regulations and Forms*.

Reaching me

My office is room 5134, on the fifth floor. My office hours this semester are Mondays and Tuesdays from 4:00 to 5:00 p.m., but please feel free to make an appointment for other times, or to just come whenever you find it convenient. My office phone is (919) 962-4126, and my email address is motomura@email.unc.edu.

Website and e-mail

The website—with announcements and handouts—is at blackboard.unc.edu, and there is a course email list. You can reach everyone in the class by emailing immcit@listserv.unc.edu

Class preparation

I'll rely on the reading to convey most of the information that we'll need, and then devote class to deepening our understanding through active discussion. I'll assume that you're ready to participate every day. But I also understand that you all have real lives, so if you're ever not prepared, please let me know before class starts.

Final exam and grading

There will be an “open book” final exam, i.e., you may consult any written materials (but you may not be on-line to access those materials). I’ll post old exams with answers a bit later in the semester. To derive your course grade, I will adjust your final exam grade upwards by up to 0.4 points based on the quality (not quantity) of class participation (but the overall course mean will stay in the historical range for all law school courses).

Outside reading: the essentials

For a very basic overview, see the “Nutshell,” David Weissbrodt & Laura Danielson, *Immigration Law and Procedure* (West 5th ed. 2005). At the other end of the spectrum—very detailed and more a practice resource than a study aid—is Ira Kurzban, *Immigration Law Sourcebook* (9th ed. 2004). On the constitutional aspects, consult two of my articles: *The Curious Evolution of Immigration Law: Procedural Surrogates for Substantive Constitutional Rights*, 92 Colum. L. Rev. 1625 (1992); and *Immigration Law After a Century of Plenary Power: Phantom Constitutional Norms and Statutory Interpretation*, 100 Yale L.J. 545 (1990).

For current information, see *Interpreter Releases* (on Westlaw) and *Bender’s Immigration Bulletin* (on Lexis/Nexis). The standard practice reference is the multi-volume treatise, Charles Gordon, Stanley Mailman & Stephen Yale-Loehr, *Immigration Law and Procedure* (on Lexis/Nexis). The ImmigrationProf Blog is the best website, with news and links to government, law firm, and nongovernmental sites <<http://lawprofessors.typepad.com/immigration/>>.

Reading assignments

Here is the first set of reading assignments. For each assignment, I’ve set out questions to focus your preparation for class discussion. You should also read all pertinent statutory provisions, especially when assignments ask you to work through statutory problems. *Unless I clearly say otherwise, please assume that we will cover the next assignment in the next class.*

Chapter One: Citizenship

1) AM&M 1-14: the concept of citizenship

Please consider the issues in notes 1a through 1d on pages 13-14. What are the underlying principles that help you develop positions on these issues?

To what extent and in what ways might noncitizens be understood as members of the U.S. community? See notes 1 and 3 on page 9.

How does Chief Justice Rehnquist’s characterization of citizenship differ from Alexander Bickel’s? What do they have in common? Which is more persuasive?

2) 15-34: birthright citizenship

Should we grant citizenship based simply on birth in the United States?

Please do problems 1, 2a, and 2b on page 34.

If the U.S. citizen parent in the problems 2a and 2b on page 34 were the mother, not the father, would that change your response?

How would you redraft the *jus sanguinis* rules to make them gender-neutral for children born out of wedlock to one U.S. citizen parent?

3) 53-69 (through next-to-last paragraph): *naturalization*

How would the Child Citizenship Act of 2000 change the result in the variation on problems 2a and 2b on page 34 (which asked you to assume that the citizen parent was the mother)?

Please do problems 1 and 2 on pages 60-61. (For problem 1, you should consult not only the sections listed in the third full paragraph on page 60, but also INA § 334.)

As a policy matter, would you change the English-language, civics and history, or good moral character requirements? What is their purpose?

Chapter Two: Foundations of the Immigration Power

4) 170-77, 187-89: *early plenary power, part 1*

Where in the *Chinese Exclusion Case* does the Court address the power of (1) the United States as a nation, (2) the federal government, and (3) the courts?

How does the *Chinese Exclusion Case* affect the constitutionality of the hypothetical Counterterrorism Act in handout #3?

How does *Yick Wo* affect the constitutionality of the hypothetical Counterterrorism Act?

5) 189-210: *early plenary power, part 2*

In *Fong Yue Ting*, why does Justice Gray treat deportation and exclusion alike?

How does *Fong* affect the constitutionality of the hypothetical Counterterrorism Act?

Why do Justices Brewer, Field, and Fuller object to the 1893 Act? How do they distinguish the *Chinese Exclusion Case*? See note 2 on pages 205-06.

6) 145-70: *history of immigration to the United States*

What are the recurring themes in the history of immigration to the United States, and in U.S. immigration and citizenship law?

Chapter Four: Admissions: Categories and Inadmissibility

7) 265-90: *admission categories*

Please work through problems 1 and 2 on page 277 using the current (February 2006) Visa Bulletin, available at http://travel.state.gov/visa/frvi/bulletin/bulletin_1360.html.

8) 238-64: *federal agencies and courts (this assignment backtracks to Chapter Three)*

Please work through problems 3 and 4 on page 277, also using the current Visa Bulletin.

In the problems on page 277, which agencies and courts will be most involved, and how?

9) 290-308: *constitutional limits on admission categories; spouses, part 1*

How does *Fiallo* affect the constitutionality of the hypothetical Counterterrorism Act?

Would *Adams* be decided the same way today? See notes 1, 2 and 4 on pages 305-08.

More to follow—in the rest of the semester, we'll cover:

More on admission categories and inadmissibility

Admission procedures

Deportability and relief from removal

Immigration and national security

Removal procedures
Unauthorized migrants
Refugees and asylum

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January 28, 2006

Handout #8: Syllabus (part 2)

“Anyone can make the simple complicated. Creativity is making the complicated simple.”
—Charles Mingus

Chapter Four: Admissions: Categories and Inadmissibility (continued)

10) 308-22: *spouses, part 2*

Please do problems 1 through 8 on page 318.

Bark and *Dabaghian* both predate IMFA. What would happen now in such scenarios?

How if at all should Congress revise IMFA?

11) 331-51: *labor certification*

Does *Information Industries* give lawyers useful guidance so that they can help employers get labor certification for immigrant employees? See note 2 on page 345.

12) 359-65, *update handout (to be posted)*, 210-25 (*through Ackerman; this goes back to Chapter 2*): *changes in labor certification, investors; theories of migration; moral constraints*

How would you change the labor certification system?

Should we expand, maintain, or reduce the investor immigrant program?

How does Borjas' analysis differ from Portes/Böröcz's? What kinds of immigration laws follow from Borjas? From Portes/Böröcz? See the Questions on page 218.

13) 365-92: *immigration reform proposals*

How would you change the current admission scheme? What values and assumptions do your proposals reflect?

14) 392 to bottom of 411, 420-27, *update handout (to be posted): nonimmigrants*

How would you advise the Engineer in the Exercise on pages 396-97 as to the advantages and disadvantages of any available nonimmigrant categories?

How would your advice to the Vice President differ from your advice to the Engineer?

Should the United States move more toward the European model, which has been to admit noncitizens without calling them nonimmigrants or immigrants, but then to allow them to acquire permanent resident status over time? See page 422.

15) 427-40: *inadmissibility: crimes; fraud*

Please do problems 1 and 3 on pages 431-32, and problem 6 on page 439.

16) 440-52: *inadmissibility: immigration control; public charge; public health*

Please do problems 7 and 8 on page 442.

What options are available in the Exercise on page 449?

Please do problem 10 on pages 451-52.

Chapter Ten: Unauthorized Migrants in the United States

17) 1096-1128, *update handout (to be posted): historical and social process; border enforcement*

How much of a problem is undocumented immigration? How should we control it?

With regard to border enforcement, what additional approaches would you adopt? What current approaches to border enforcement would you emphasize or deemphasize?

18) 1128-54, *update handout (to be posted): interior enforcement; current legislative proposals*

Please do problems 1 through 4 on pages 1135-36.

Should Congress change the employer sanctions and antidiscrimination provisions? How?

Should Congress adopt some kind of legalization program? If so, what should it be?

More to follow

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Handout #16: Syllabus (part 3)

“Forgive me if I don’t have the words. Maybe I can sing it and you’ll understand.”
—Ella Fitzgerald

Chapter Five: Admission Procedures

19) 453-72: *constitutional due process, part 1*

Why doesn’t the Constitution require a hearing in *Knauff*? Does the same reasoning apply in *Mezei*?

Why did the Court reach a different outcome in *Chew* than in *Knauff* and *Mezei*?

How if at all are *Knauff*, *Mezei*, and *Chew* helpful to either side in arguing for or against the constitutionality of the hypothetical Counterterrorism Act of 2007 (in handout #3)?

20) 473-97: *constitutional due process, part 2; a glance backward*

After *Plasencia*, what’s left of the *Knauff* and *Mezei* holdings and rationales?

What are the arguments for each side in the constitutional due process challenge in the Exercise on pages 482-83?

21) 497-515: *modern admission procedures; consular review; parole; efficiency and security*

If you were the Secretary of Homeland Security, how would you address the problem of delays, consistent with concerns about national security? Would you dispense with any of the national security initiatives adopted after September 11?

22) 515-28: *adjustment of status; expedited removal*

In the Exercise on pages 517-18, can Nora adjust status? Can Dennis? What about Zelda?

Should Congress enact § 245(i) permanently?

Does expedited removal provide enough protection for persons fleeing persecution?

Chapter Six: Deportability and Relief From Removal

23) 535-37, 550-63, update handout (to be posted): statutory deportability grounds, part 1

Please do problems 1 and 2 on pages 553-54.

Please do problems (a) and (b) on page 555.

24) 563-77, update handout (to be posted): statutory deportability grounds, part 2

Is it a problem that the immigration consequences of criminal convictions aren't uniform from state to state? How could you make them more uniform?

Should a DUI conviction make a noncitizen deportable?

25) 577-82, update handout (to be posted): statutory deportability grounds, part 3

Are there other ways to define crime-related deportability? Would you include a "statute of limitations" in your definition, and if so, what would it provide? What effect would you give to suspended sentences, expunctions, and pardons? See the Exercise on pages 579-80 (you don't need to draft a statute, but be prepared to discuss how you would approach the task of drafting a new set of criminal deportability grounds).

26) 582-600: cancellation of removal

How would you have decided *Gonzalez Recinas*? What is the smallest change in the facts that would make you change your mind?

If you were an immigration judge, would you grant cancellation in the Hernandez Problem on pages 599-600?

Do you think regulations should be adopted to more precisely guide the application of the hardship standard for cancellation of removal? What would such regulations say?

More to follow

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Handout #25: Syllabus (part 4)

"The soul never thinks without a mental picture."

—Aristotle

Chapter Eight: Refugees and Political Asylum

27) 790-805, 831-46, update handout (to be posted): introduction and procedures

Who should qualify as a "refugee"? How about persons who are fleeing war or civil strife? Or those who are fleeing natural disaster?

Should ideology and foreign relations play any role in refugee and asylum policy?

28) 863-74, 916-27: “persecution”; “particular social group”; past persecution

How would you have decided *Chang*? See notes 1 and 2 on pages 870-71.

How would you have decided *In re H—*? Does it matter if the Board applies the *Acosta* or *Sanchez-Trujillo* definition of “particular social group”? See note 1 on page 922-24.

Is *In re H—* consistent with *Chang*?

29) 927-46: gender-based cases

Would a different strategy have changed the result in *Fatin*? If so, can lawyers in future cases avoid the problems that Judge Alito sees in *Fatin*’s claim? See note 1 on page 934.

What is the “particular social group” to which *Kasinga* belongs? See note 2 on page 945.

Why does this custom amount to “persecution”? Is the intent behind the custom relevant? See note 3 on page 945.

Chapter Eleven: Immigration and National Security

30) 1183-1209: deportability and the First Amendment

How if at all are *Harisiades* and *Mandel* relevant to the constitutionality of the hypothetical Immigration Counterterrorism Act of 2007?

Should the courts apply greater constitutional scrutiny to deportability grounds than to inadmissibility grounds? Why?

31) 1209-12; 1223-26, update handout (to be posted): inadmissibility and deportability grounds

Please do problem 1 on page 1211.

Please do problem 4 on page 1212. If *Z* is deportable, is that result constitutional?

How if at all would you revise the terrorism-related inadmissibility and deportability grounds to prove better protection of First Amendment values?

32) 1243-67, update handout (to be posted): enforcement and ethnicity

Is there a difference between the focus on nationality in *Narenji* and the measures adopted after September 11? See note 3 on page 1255.

What aspects of the government’s campaign against terrorism constitute “profiling”? What, if anything, is wrong with profiling in this context? Is it unconstitutional?

Chapter Seven: Removal Procedures

33) 621-39, update handout (to be posted): constitutional due process; overview; immigration judges

How if at all is *Yamataya* relevant to the constitutionality of the hypothetical Immigration Counterterrorism Act of 2007?

In *Jacinto*, why isn’t it enough due process that *Jacinto* received written notice of her rights, including the right to have a lawyer represent her, plus a list of attorneys available to do so at little or no cost? See note 1 on page 637.

34) 696-729: *detention: overview and indefinite detention*

Justice Scalia apparently believes that since both Kim and Zadvydas had final removal orders that ended their permanent resident status, *Mezei* should control the result. What is the majority's response to this argument? What is your response?

What explains why the majority and the two dissenting opinions in *Zadvydas* reach different outcomes? Do they reflect different views of what detention is? Of the courts' role in immigration cases? Of the rights of noncitizens?

How big an exception does *Zadvydas* make for detaining terrorists? See note 9 on page 728.

35) 729-50, *update handout (to be posted): mandatory detention*

Is *Demore v. Kim* consistent with *Zadvydas*?

On the question of whether the Constitution requires a bond hearing, does it matter what the noncitizen's possible defenses to removal are (if any)? See note 1 on page 748.

Didn't Kim get an individualized hearing? See note 3 on pages 748-49.

How should a court respond to a constitutional challenge to § 236(c) by a noncitizen who is *not* a permanent resident? See note 8 on page 750.

[That's all, folks!]

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