SEMINAR: CURRENT ISSUES IN IMMIGRANTS' RIGHTS

Professor Judy Rabinovitz
Wednesday, 4:05 - 6:55 p.m.
Room 318 New Building

Course Background

Immigration issues present politically charged topics at both the governmental and community level. These issues involve how the United States views its population and treats immigrants -- both those who are lawfully admitted to our country and those who are present without legal permission. Today's laws reflect the history of our country's attitudes and policies towards immigrants -- from the anti-Chinese sentiment of the late 19th century to the anti-communist hysteria that characterized McCarthyism in the 1950's -- as well as more current concerns about drugs and crime, AIDS, and terrorism.

At the same time, immigration issues present fundamental legal questions involving constitutional, administrative, and international law. The study of immigration history and policy involves an examination of the roles of the three branches of government and the consideration of individual liberties. It entails the exploration of a rich body of jurisprudence as well as statutory and regulatory interpretation. Finally, to a significant extent, it reveals aspects of United States foreign policy and how this country views itself in the world and the international community.

Course Description

This is a 3-credit course for students who are interested in expanding their knowledge and analytic thinking about current issues in immigration law and policy.

The course will be run as a seminar. Discussion and in-class participation are emphasized and will form a portion of each student's grade. In past years the only other requirement has been a final examination. (Based on a vote of the students, some years this has been an in-class examination, and more recently a 24-hour take-home.) This year, for a number of reasons, I am considering instead eliminating the final examination and substituting a take-home midterm examination, followed by a short final writing assignment.

Course Materials

1. The primary required text for the course is Legomsky, "Immigration and Refugee Law and Policy," Third Edition, 2002. It is available at the NYU Bookstore. Unfortunately, I neglected to place a special order for the 2003 supplement to the textbook. I have now placed an order and have been assured that it will arrive by next class. In the meantime, I will distribute relevant pages of the supplement and place a copy on reserve in the library.

2. Students should also obtain a copy of Immigration and Nationality Laws of the United States (referred to below at "Stat."). Copies are also available at the bookstore.

3. Throughout the semester I will be assigning additional readings (cases, articles, briefs, etc.) beyond the text. Most of these assignments will be by citation. Otherwise, I will make them available over "Blackboard," or if not available in electronic form, I will distribute them in class.

4. Occasionally I will be assigning pages from another textbook, Aleinikoff, Martin, Motomura, "Immigration and Citizenship: Process and Policy," both the Fourth and Fifth editions ("AM&M IV") and ("AM&M V").

Preliminary Syllabus - spring 2004

January 13, 2004
Copies of the relevant pages will be on reserve at the library and/or distributed in class.

Guest Speakers, etc.

Circumstances and schedules depending, I am also hoping to include guest speakers. Past guest speakers have included immigration practitioners and litigators with specialties in particular areas as well as an immigration judge.

In conjunction with our class on procedural due process in immigration removal hearings, I also ask that all students spend a few hours observing immigration proceedings, either at 26 Federal Plaza or at 201 Varick Street. Additional specifics will be provided.

Contact Information

I can be reached at the ACLU Immigrants’ Rights Project, 125 Broad Street, N.Y. 10004; 212-549-2618; (fax) 212-549-2654; or at my E-mail address: jrabinovitz@aclu.org

Preliminary Syllabus

What follows is a preliminary syllabus that will be modified during the course of the semester to incorporate new developments and the availability of guest speakers.

I. Introduction and Overview (Classes 1-5)

A. Introduction to Themes of Class (Class 1)

Various readings related to President Bush’s proposal to provide temporary visas for undocumented workers (See announcement on “Blackboard” for specific links to suggested articles, and questions to think about)

B. Overview of U.S. Immigration Statute and History (Class 2)

Legomsky:
Overview v-ix
Supp. 1-15
Immigrant Categories/history 123-136
Inadmissible Aliens/more history 380-394
Deportable Aliens/history 467-472
Criminal Grounds of Deportation 499-500
The Significance of “Entry” and “Admission” 475-476

C. The Legal Framework: Review and Critique of Plenary Power Doctrine, and the Importance of Statutory Construction (Classes 2 - 5)

1. Sources of plenary immigration power and the foundation cases

Legomsky 9-49
Chae Chan Ping v. U.S. (1889)
Nishimura Ekiu (1892)
Fong Yue Ting (1893)

2. The Alien’s Rights Cases

Aleinikoff, Martin and Motamura, 187-89, 206-208
3. Modern Developments

**Legomsky:**

--- Procedural Due Process in
Exclusion Cases
- Shaughnessy v. Mezei (1953)
--- Procedural Due Process in
Deportation Cases
- Yamataya v. Fisher (1903)
--- Substantive Limits on plenary Power
- Harrissiades v. Shaughnessy (1952)
- Fiallo v. Bell (1977)
- Francis v. INS (1976)
--- Separation of Powers
- INS v. Chadha (1983)
--- Indefinite detention
- Zadvydas v. Davis (2001)
--- Statutory interpretation and
deferece to agency
- 328 (pts 2, 3, 6)
--- The Plenary Power Doctrine: Where
Are We Now?
- 472-475
- SIMULATION EXERCISE

**Supp:**

--- AM&M V” (on reserve)
- Mathews v. Diaz 1029-1033
- Hampton v. Mow Sun Wong 1040-1046
- H. Motomura, “Immigration Law After a Century of
Plenary Power: Phantom Constitutional Norms
and Statutory Interpretation” 100 Yale L. J.
545 (1990), pp. 546-560, 607-613
- S. Legomsky, “Ten More Years of Plenary Power:
Immigration, Congress and the Courts,” 22
of Confinement and the Porous Borders of the
Plenary Power Doctrine,” 22 Hastings Const.
L. Q. 1087, pp. 1127-1139 (1144?)

**Optional:**

--- AM&M IV & V (on reserve)
- More on Chew, Fleuti, & Plasencia 478-482 (?)
- More on Jean v. Nelson (contains 900-911
Good discussion of immigration/
aliens’ rights distinction)

II. Substantive Limits on Admission: Arguments For And Against Limiting
Immigration and the extent to which such restrictions are subject to judicial review (Class 6)

A. Overview of current statutory limits on admission
(review readings under I.B.: 134-136, 380-381, 390-391)

**Legomsky**

The fundamentals of quotas and 136-140 (skip
Preferences problem)
Family Immigration: The Basics 147-149  
Family Unification Policy in 186-189  
Perspective  
Employment-Based Immigration 189-190 (up to I.)  
Exclusion Grounds and Waivers 394-414 (skip Problems)  

Supp: Copy of intake letter from U.S. citizen  
Whose husband has been denied admission  

Statute: INA Sections 201-203, 212 (skim)  

B. Arguments for and against limiting immigration  
Legomsky  
The Moral Dimensions of 241-251  
Immigration Control  
The Economic Impact 236-237  
The Politics of Immigration 297-302  

C. Judicial Review of Substantive Limits on Admission  
(review readings under I.C.3.: Fiallo, 81 (n.6) – 83, and Francis and notes that follow, 88-93 (up to n.5))  
Legomsky  
Discussion of Former Marriage Fraud 172-175  
Provision, IMFA Section 5, and  
Excerpt from brief challenging it  
As “irrational”  

D. The HIV exclusion: a case study of the strengths and limitations of advocacy  

III. Procedural Protection in the Admission/Exclusion Context  
(class 7)  

A. Expedited Removal and Detention of Asylum Seekers  
(possible guest speaker)  

1. Expedited Removal  
Legomsky: 458-461  
Supp:  
--Excerpts from LCHR report on expedited removal, “Is This America? The Denial of Due Process to Asylum Seekers in the United States,” available on LCHR website, www.lchr.com  
(Click on section "asylum and refugee rights" and then click on the report); read executive summary and Part III ("An Inherently Unfair Process") and look at the expedited removal flow chart at Appendix 5.  
-Li v. Eddy, 259 F.3d 1132 (5th Cir. 2001) (finding lack of habeas jurisdiction to review expedited removal order of non-asylumseeker)  
-American Immigration Lawyers Ass’n v. Reno, 199 F. 3d 1352 (D.C. Cir. 2000) (dismissing challenge to expedited removal system for lack of jurisdiction and standing) (skim discussion on third party standing)  
-Regulatory comments recently submitted by Florida Immigrant Advocacy Center (FIAC) in response to the Administration’s promulgation of a rule which expand expedited removal to individuals who have already entered the United States by sea [sent as PDF document by e-mail]
-INS announcement which accompanied the rule change, and actual language of the new rule [sent as PDF document by e-mail] Stat: Section 235 (expedited removal)

2. Detention of Asylum Seekers
Legomsky: review pp 64-65 (on detention of Haitian asylumseekers/ Jean v. Nelson)
Supp: AM&M IV(on reserve) 901-911 (Jean v. Nelson) 912(n.3)-913(n.6) Optional (re conditions of detention)

-Moise v. Bulgar, 2003 WL 360107 (this is the 11th circuit’s decision; because it is basically a summary affirmance of the district court’s decision, I think it’s worth reading that decision as well)
-Government and FIAC pleadings in Moise

B. The Legacy of Mezei: Indefinite Detention of Excludable Noncitizens post-Zadvydas
Legomsky: Review pp.61-64 (detention of excluded noncitizens) pp.100-112 (Zadvydas v. Davis, 121 S. Ct 2491 (2001))
Supp: [[to be revised/updated in light of developments!]]
--Transcript of oral argument before Supreme Court in Zadvydas [e-mailed]
--Li Guo Xi v. Ashcroft, 298 F.3d 832 (9th Cir. 2002) (recent case applying Zadvydas to an “inadmissible” immigrant from China)
--Rosales-Garcia v. Holland, 322 F. 3d 386 (6th Cir. 2003) (en banc)
--Benitez v.

Question to think about: What effect should the Zadvydas decision have on the indefinite detention of Mariel Cubans? Be prepared to argue both sides.

IV. Substantive Limits on Deportation?: Deportation of Immigrants With Criminal Convictions (class 8)

A. The View From the Ground – Advising Criminal Defense Lawyers on How to Protect Noncitizens from the Immigration Consequences of Criminal Convictions

(Possible guest speakers)

Supp:
People v. Ford, 86 N.Y. 2d 397 (NY 1995)
Matter of L-G 21 I&N Dec 89 (BIA 1995)
Matter of Elgendi, 23 I&N Dec. 515 (BIA 2002), Patriot II write up (e-mailed)
One page immigration consequences checklist (to be handed
out in class)

Stat:
INA 212(a)(2) criminal inadmissibility grounds
INA 237 (a)(2) (criminal deportability grounds)
INA 101(a)(43 (definition of aggravated felony)

B. Congress’ attempt to eliminate deportation relief and federal court review for long-time lawful permanent residents with criminal convictions (Class 8)

The Supreme Court’s decision in INS v. St. Cyr, and where it leaves us now

(Guest Speakers to be announced)

Supp:
INS v. St. Cyr, 121 S. Ct. 2271 (2001)
Chambers v. Reno, 307 F. 3d 284 (4th Cir. 2002)
INA Section 242

V. The Erosion of Procedural Due Process in Removal Proceedings: The Legacy of Yamataya – what does due process require? (Class 9)

STUDENTS SHOULD HAVE OBSERVED AN IMMIGRATION HEARING BY THIS TIME; Hearings at 201 Varick Street begin at 8:30 am and 1 pm Monday through Friday. Enter at 201 Varick Street and go up to courtroom on 11th floor. You can try calling the immigration court, 212-620-6279, late afternoon of the day before to confirm number and type of hearings scheduled (bond, master calendar, merits)

(I will try to arrange for an immigration judge to join us for part of the class)

A. Overview of procedural protections in regular removal proceedings
Legomsky:
Overview 630-643
Rt to Counsel 652 (first para. only); 658 (start at point c.) - 667
Evidence and proof 681-700
(Exclusionary rule)

Supp:
U.S. v. Galab, 2003 U.S. App. LEXIS 6538 (suppression of evidence in criminal proceeding as a result of 4th amendment violation: think about whether comparable argument could be made to terminate (or suppress evidence in) removal proceeding)
Batista-Taveras v. Ashcroft, 2003 U.S. Dist. LEXIS 4465 (recent district court decision finding ineffective assistance of counsel in removal proceeding, notwithstanding lack of right to appointed counsel) (NO NEED TO READ CLOSELY, YOU CAN JUST SKIM)

Optional:
Montero v. INS, 124 F. 3d 381 (2d Cir. 1997) (unsuccessful attempt to exclude evidence obtained from INS raid during organizing
B. Special Removal Proceedings” (including administrative removal of aggravated felons, reinstatement of removal, and “expedited removal” of “arriving aliens,”) [For the most part, “expedited removal” of “arriving aliens” will be addressed in Part III above]  
Legomsky: 837-846

**Supp:**
Ramirez-Molina v. Pasquarell, (W.D. Texas, March 14, 2003) (recent Magistrate Recommendation finding that reinstatement of removal order violates due process [will e-mail]

**Stat:**
Section 238 (Expedited removal of aggravated felons)
Section 241(a)(5) (Reinstatement of Removal);
Section 238(b) (administrative removal);

C. BIA streamlining, limitations on judicial review, and other current due process issues

D. More on immigration detention (?)

VI. **Other Immigration Enforcement Issues Post-Sept 11** [to be revised/updated based on current developments] (Class 9-10)

A. Selective Enforcement: Discrimination Based on National Origin/
Overview of Special Registration Process and Potential Legal Challenges

(Possible guest speaker/ lawyer representing individuals in proceedings as a result of special registration)

B. Secret Detentions and Closed Immigration Hearings

Guest Speaker: Lee Gelernt, senior staff counsel ACLU IRP and lead counsel in Third Circuit case challenging closed hearings

**Supp:**
Detroit Free Press v. Ashcroft, 303 F. 3d 681 (6th Cir. 2002)
North Jersey Media Group v. Ashcroft, 308 F. 3d 198 (3d Cir. 2002)
cert petition in North Jersey Media (e-mailed as PDF document; also posted on ACLU website)

C. Local Police Enforcement of Immigration Laws

(Possible guest speakers) (Possible Guest Speakers: Professor Mike Wishnie, NYU Immigration Clinic; Omar Jadwat, Skadden fellow with ACLU IRP, NYU Law alum, and former student in “current issues” class)

**Supp.** (to be revised/updated based on current developments)
Migration Policy Institute (MPI) memo on “Authority of State and Local Officers to Arrest Aliens Suspected of Civil Infractions of Federal Immigration Law” and Reply Letter from White House Counsel, Alberto Gonzalez [both posted on MPI website: Http://www.migrationpolicy.org]
Carrasca v. Pomeroy, 313 F. 3d 828 (3d Cir. 2002)  
Freedom of Information Act (FOIA) request for copy of Office of  
Justice Dept’s Office of Legal Counsel (OLC) memo finding inherent  
authority on part of state and local police to enforce civil  
immigration laws  
Ashcroft response to FOIA request  

Stat:  
INA Section 287(g), 8 U.S.C. 1357(g) (authorizing INS to enter  
into agreements with local police to enforce immigration laws);  
28 U.S.C. Section 534 (authorizing National Crime Information  
Center database)  

VII. Constitutional Protection of Immigrants Outside of Admission and  
Removal (classes 10-13)  

A. Review of Legal Framework: alien’s rights tradition, equal  
protection, federalism and preemption  
State and federal discrimination against lawful immigrants  

Legomsky  1172(middle)- 1174  

Supp:  
AM&M IV  511-516  

B. Immigrants and Public Benefits  
1. Lawful Permanent Residents and the 1996 Welfare Reform Bill  

Legomsky  1174-1179  

Supp  
AM&M IV (on reserve)  516-530  
Graham v. Richardson, 403 U.S. 365 (1971)  
AM&M IV Supp (on reserve)  47-55  
City of Chicago v. Shalalah  
Lewis v. City of New York, 252 F. 3d 567 (read Intro and  
III.A and B)  

2. Undocumented Immigrants and Benefits  

Legomsky:  1142-1167  
Plyler v. Doe  
Prop 187  

C. Immigrants and Employment: Discrimination in Employment Against  
Lawful permanent residents
Supp:
AM&M IV: 559-561

[[D. State Involvement in Immigration Law and Policy-Making: An Alternative View]] (?)

[[possible guest speaker: Professor Peter Spiro, Hofstra Law School, discussing his “steam-valve” theory of federalism]]

Supp:

Optional: [but highly recommended]

E. Labor Rights of Undocumented Workers

(Possible guest speakers)

Supp:
Michael Wishnie, “Emerging Issues for Undocumented Workers” [will e-mail]

Optional
Transcript of oral argument before Supreme Court in Hoffman Plastics [should be available on Westlaw]
“Los Trabajadores,” documentary film about day labor controversy in Austin, Texas (??)

VIII. Sum Up/Review (class 14)