

Immigration Law and Policy
Professor Kris Kobach
Winter Term 2009
(Revised 1/21/09)

Course Description:

This two/three hour course exposes students to the basics of immigration law procedures as well as to the most important questions of immigration law policy. Although the course covers both procedure and policy, the emphasis is on the latter. Immigration bills in Congress have been the subject of heated debate, particularly in recent years. However, to have a truly informed opinion on the subject, one must understand the history of immigration law in the United States, the statutory framework into which any new legislation must fit, and the legal process used to enforce U.S. immigration law. This course provides that historical, statutory, and procedural background. The subject matter is useful for the student who intends to practice immigration law, as well as for the non-specialist interested in immigration law as a policy matter.

Course Requirements and Grading:

Grades will be based on two factors: performance on a short multiple-choice exam administered during the final class session, and a short research paper (approx. 20 pages) on a subject of the student's choosing. Grades may be adjusted upward or downward on the basis of class participation.

Required texts:

Aleinikoff, Martin, & Motomura, IMMIGRATION AND CITIZENSHIP: PROCESS AND POLICY (West, 6th ed., 2008) ("Aleinikoff"); and Aleinikoff, Martin, & Motomura, IMMIGRATION AND NATIONALITY LAWS OF THE UNITED STATES: SELECTED STATUTES, REGULATIONS, AND FORMS (West, 2005) ("INA").

Additional readings indicated below ([available on TWEN](#)) can be downloaded from the course website on Westlaw's TWEN (The West Education Network) system. Please go to www.lawschool.westlaw.com and register yourself for the course, or it is available in Roo Prints in the law library.

Recommended supplementary texts:

Peter Schuck, CITIZENS, STRANGERS, AND IN-BETWEENS: ESSAYS ON IMMIGRATION AND CITIZENSHIP (Westview, paper ed. 2000); Peter Schuck, IMMIGRATION STORIES (D. Martin & P. Schuck, eds., Foundation Press, 2005); and Gordon & Gordon, IMMIGRATION LAW AND PROCEDURE (Matthew Bender, student ed.).

Topics and Readings

I. Introduction—Normative Justifications for US Immigration Controls

- Aleinikoff: 1-14, 237-266.
- Schuck, *CITIZENS, STRANGERS, AND IN-BETWEENS: ESSAYS ON IMMIGRATION AND CITIZENSHIP*, 4-11, 139-48.
- Donald L. Bartlett and James B. Steele, *Who Left the Door Open?*, *TIME*, Sept. 20, 2004.
- Public's View of Immigration, *CIS BACKGROUNDER*, Nov. 2006.

II. The History of U.S. Immigration Laws

- Aleinikoff: 157-237.
- U.S. Department of Justice, "An Immigration Nation: United States Regulation of Immigration, 1798-1991".
- Michael Lemay & Elliott Barkan, "U.S. Immigration and Naturalization Laws and Issues: A Documentary History" (selected immigration statutes).
- *Henderson v. Mayor of New York*, 92 U.S. 259 (1875).

III. Immigration, Assimilation, and the American Identity

- Samuel P. Huntington, *WHO ARE WE? THE CHALLENGES TO AMERICA'S NATIONAL IDENTITY* (2004) (excerpts).
- Nathan Glazer, "Book Review: Who Are We?," *EDUCATION NEXT*, Sept. 22, 2004.
- *Becoming American: The Hidden Core of the Immigration Debate*, *CIS BACKGROUNDER*, Jan. 2007.

IV. Immigration Enforcement, Immigration Courts, and Judicial Review

- Aleinikoff: 267-85, 291-95, 1027-64, 1148-89.
- Kris W. Kobach, *Courting Chaos: Senate Proposal Undermines Immigration Law*, *HERITAGE FOUNDATION REPORT*, May 17, 2006.
- David A. Martin, *Eight Myths About Immigration Enforcement*, 10 *N.Y.U. J. Legis. & Pub. Pol'y* 525 (2007).

V. Removals and Detention

- Aleinikoff: 1097-1148.
- Report of the Inspector General of the Department of Justice, *Removal of Nondetained Aliens*, February 2003.
- Report of the Inspector General of the Department of Justice, *Detention of Special Interest Aliens after 9/11*, June 2003.

- David A. Martin, *Two Cheers for Expedited Removal in the New Immigration Laws*, 40 VA. J. INT'L L. 673, 682-703 (2000).

VI. Refugee and Asylum Law Issues

- Aleinikoff: 828-77.
- David A. Martin, “*Abankwa, Kasinga, and the Dilemmas of Political Asylum*,” in Schuck & Martin, *IMMIGRATION STORIES*, 245-77 (2005).
- Don Barnett, *A New Era of Refugee Resettlement*, CIS BACKGROUNDER, Dec. 2006.
- Rachel Swarns, *Terror Laws Cut Resettlement of Refugees*, NEW YORK TIMES, Sept. 28, 2006.

VII. Immigration Law and Terrorism in the Wake of 9/11

- Aleinikoff: 986-1015.
- Rachel Swarns, *Program’s Value in Dispute as a Tool to Fight Terrorism*, NEW YORK TIMES, Dec. 21, 2004.
- Janice Kephart, *Immigration and Terrorism*, CIS REPORT, Sept. 2005.

VIII. Recent Immigration Legislation in Congress

- Kris W. Kobach, Testimony before the U.S. House of Representatives, Committee on International Relations, Subcommittee on International Terrorism and Nonproliferation, July 5, 2006.
- Robert E. Rector & Christine Kim, *The Fiscal Cost of Low-Skill Immigrants to the US Taxpayer*, HERITAGE FOUNDATION, May 22, 2007.
- Kris W. Kobach, *Attrition Through Enforcement: A Rational Approach to Illegal Immigration*, 15 TULSA J. COMP. & INT’L L. 155 (2008).

IX. State and Local Immigration Arrest Authority

- Aleinikoff: 1015-27.
- Kris W. Kobach, *The Quintessential Force Multiplier: The Inherent Authority of Local Police to Make Immigration Arrests*, 69 ALBANY L. REV. 179 (2005).
- Michael A. Olivas, *Immigration-Related State and Local Ordinances* (excerpt), 2007 U. CHI. L. FORUM 47.

X. State Immigration Legislation

- Aleinikoff: 1354-60, 1372-1406.
- *CPLC v. Napolitano*, 544 F.3d 976 (2008).
- Kris W. Kobach, *Reinforcing the Rule of Law: What States Can and Should Do to Reduce Illegal Immigration*, 22 GEORGETOWN IMMIGR. L.J. 459 (2008).

- Julia Preston, *In Refersal, Courts Uphold Local Immigration Laws*, NEW YORK TIMES, Feb. 10, 2008.
- *Gray v. Valley Park*, No. 4:07CV00881 (E.D. Mo. Jan. 31, 2008).
- Michael Sandler, *Immigration: From the Capitol to the Courts*, CONGRESSIONAL QUARTERLY WEEKLY, Dec. 10, 2007.

XI. Illegal Aliens and Education

- Aleinikoff: 1360-72.
- Kris W. Kobach, *A Sleeper Amnesty: Time to Wake Up from the DREAM Act*, HERITAGE FOUNDATION REPORT, Sept. 13, 2007.
- June Kronholz, "Should Illegal Immigrants Get Tuition Help?," WALL STREET JOURNAL, Feb. 22, 2006, p. A4.
- *Martinez v. Bd. of Regents*, 166 Cal. App. 4th 1121 (2008).

XII. Citizenship and Naturalization

- Aleinikoff: 15-90.
- H.R. 698 Citizen Reform Act 2005 (U.S. Congress, 2006).
- Charles Wood, *Losing Control*, 22 HARV. J.L. & PUB. POL'Y 465 (1999).

XIII. Comparison of U.S. and European Immigration Laws

- Transcript of Prime Minister Tony Blair's Press Conference, August 5, 2005.
- Craig S. Smith, "Furor over a French Immigration Crackdown," NY TIMES, July 8, 2006, p. A8.
- Stefan Theil, *The End of Tolerance*, NEWSWEEK, March 6, 2006.
- David Gauthier-Villars, *Ruling May Heighten France-Muslim Tension*, WALL ST. J., July 12-13, 2008, p. A6.
- Angela Charlton, *Secular, or Intolerant?*, KANSAS CITY STAR, July 17, 2008, p. A10.
- *Immigration Controls: Guarding British Soil*, THE ECONOMIST.