
CONTENTS

<i>Preface</i>	xxi
<i>Acknowledgments</i>	xxv
CHAPTER 1	
An Introduction to Immigration Law Through a Social Justice Lens	1
I. Introduction	1
II. Background and Brief History on Immigration Flows and Policies	10
A. Enslavement of African Workers as Forced Immigration Policy	18
B. A Brief Chronology of U.S. Immigration Laws	19
III. Racialization of Immigration Law	22
<i>De Avila v. Civiletti</i>	23
IV. Background on the Effects of Globalization	37
V. Playing the National Security Card	42
VI. Congress's Plenary Power over Immigration	48
<i>Chinese Exclusion Case (Chae Chan Ping v. United States)</i>	50
<i>Fiallo v. Bell</i>	52
<i>Mathews v. Diaz</i>	56
VII. Morality of Immigration Restrictions	61
A. Introduction	61
B. The Golden Venture	62
C. Elimination of INA §212(c) Relief	63
CHAPTER 2	
The Immigration Social Justice Lawyer	83
I. Introduction	83
II. Theoretical Underpinnings in Collaborative, Rebellious Lawyering	84
A. Example One: Thai Garment Worker Case	84
B. Example Two: James Yen and Rebellious Advocacy	96
C. Example Three: The Immigrant Legal Resource Center	113
D. Example Four: Law School Clinic Programs	129
III. Race and Race-Conscious Lawyering	136
A. Racial Justice and Immigration Law Enforcement	148
1. Criminal Convictions	148
2. Detention	149
B. Police Brutality Against Black Immigrants	150

C. Case Law	151
D. Legislation	153
E. Moving Forward	154
CHAPTER 3	
The Administration of Immigration Law	157
I. Introduction	157
II. Common Sources of Immigration Law	157
A. Immigration and Nationality Act	157
B. Regulations	158
C. Administrative Decisions	158
D. Federal Cases	159
III. Terminology; INA §101(a); 8 U.S.C. §1101(a)	159
IV. Immigration-Related Federal Agencies	162
A. Department of Homeland Security	162
B. Department of Justice	179
1. Executive Office for Immigration Review	179
2. Office of Immigration Litigation	183
C. Department of State	185
D. Department of Labor	185
E. Department of Health and Human Services	186
V. Discretion in the Administration of Immigration Laws	187
VI. Federalism and State Roles	209
A. Anti-Immigrant Laws	209
<i>Arizona v. United States</i>	209
<i>United States v. Alabama</i>	219
<i>Keller v. City of Fremont</i>	225
B. Pro-Immigrant Laws	230
<i>United States v. California, et al.</i>	244
CHAPTER 4	
Citizenship	255
I. Introduction	255
II. Birthright Citizenship	255
<i>United States v. Wong Kim Ark</i>	257
III. Naturalization	263
A. Basic Requirements	264
B. Military Service	269
C. The History and Government Test	273
D. English Literacy Exam	274
E. Good Moral Character	285
<i>In re Petition for Naturalization of Konrad Garstka</i>	287
F. Oath of Allegiance	291
<i>In re De Bellis</i>	291
G. Philosophy Behind Encouraging Naturalization	294

IV. Acquisition and Derivation	298
A. Acquisition of U.S. Citizenship by a Child Born Abroad	299
1. Birth Abroad to Two U.S.-Citizen Parents in Wedlock	299
2. Birth Abroad to One Citizen and One Alien Parent in Wedlock	299
3. Birth Abroad Out of Wedlock	299
4. Child Born to Surrogate: Out of Wedlock?	300
5. Stepchild v. Adopted Child	300
B. Derivation of U.S. Citizenship for Children of Naturalized Parents	301
V. Loss of U.S. Citizenship	305
A. Revocation of Naturalization	305
<i>Fedorenko v. United States</i>	305
<i>United States v. Munyenyezi</i>	316
<i>United States v. Odeh</i>	321
B. Expatriation and Renunciation	333
<i>Afroyim v. Rusk</i>	336
CHAPTER 5	
Nonimmigrants	343
I. Introduction	343
II. An Introduction to Nonimmigrant Visas	345
III. Student Visas	347
A. F, M, and J Visa Requirements	347
B. The Politics of Student Visas	349
<i>Yassini v. Crosland</i>	349
C. Problems with Cultural Exchange Visas	359
IV. Nonimmigrant Visas Designed for Workers: Bs, Hs, Ls, Os, and Ps	361
A. Specialized Workers	362
1. H-1B Visas	362
2. L Visas	364
3. O and P Visas	365
4. E, I, Q, and R Visas and TNs	365
B. Other Workers	366
C. Category Problems: B or H?	368
V. Nonimmigrant Visas for Family Unification Purposes	373
A. K Visas	373
<i>Moss v. INS</i>	374
<i>Mayle v. Holder</i>	377
B. V Visas	382
VI. Special Visas for Informants (S), Trafficking Victims (T), and Crime Victims (U)	383
VII. Common Nonimmigrant Issues Faced by Practitioners	388
A. Change of Nonimmigrant Status and Adjustment of Status	388
B. Intent	389
C. No Catch-All Categories	389

CHAPTER 6	
Immigrants	391
I. Introduction	391
II. Worldwide Quotas and Preference Categories	392
A. Worldwide Quotas	392
B. Per-Country Ceilings	394
III. Family-Based Visas	396
A. Restrictions on Family	396
1. Qualifying Marriages: Who Is a “Spouse”?	396
<i>Adams v. Howerton</i>	396
<i>Matter of Zeleniak</i>	401
<i>Matter of H—</i>	404
a. Marriage Fraud	406
<i>Bark v. INS</i>	406
b. Domestic Violence	410
2. Children in the Family-Based Visa Process	411
a. Defining “Child”	411
b. Aging-Out and the CSPA	413
c. Special Immigrant Juvenile Status	415
B. Controversies in Family-Based Immigration	417
IV. Employment-Based Visas	419
A. First Preference: Individuals with Extraordinary Ability in the Sciences, Arts, Education, Business, or Athletics	420
1. The EB-1A	421
2. The EB-1B	421
3. The EB-1C	422
B. EB-2: Advanced Degree Professionals	422
1. The Labor Certification Process	423
2. National Interest Waivers	425
C. EB-3: Skilled Workers, Professionals, and Other Workers	426
D. Certain Special Immigrants	427
E. Employment Creation (Investor) Visas (EB-5)	427
V. Diversity Visas	427
VI. Adjustment of Status in the United States	432
<i>Matter of Arrabally and Yerrabelly</i>	433
CHAPTER 7	
Grounds of Inadmissibility	445
I. Introduction	445
II. Inadmissibility Grounds	445
A. Immigration Control Grounds	446
1. INA §212(a)(6)—Illegal entrants and immigration violators	446
2. INA §212(a)(7)—Documentation requirements	447
3. INA §212(a)(9)—Aliens previously removed and unlawful presence	447

B. Political and National Security Grounds	451
<i>Kleindeinst v. Mandel</i>	451
<i>Trump v. Hawaii</i>	462
<i>Matter of S—K—</i>	499
<i>Matter of A—C—M—</i>	505
C. Criminality	516
D. Inadmissibility on Economic Grounds and the “Public Charge”	
Exclusion	518
E. Public Health and Morality	520
III. Inadmissible or Deportable?	523
A. Determining Who Is Subject to Deportation and Who Is Subject to Exclusion	523
<i>Vartelas v. Holder</i>	524
B. Deportable or Excludable: Why Does It Matter?	531
<i>United States ex rel. Knauff v. Shaughnessy</i>	532
<i>Shaughnessy v. Mezei</i>	535
<i>Landon v. Plasencia</i>	541
CHAPTER 8	
Grounds for Deportation/Removal	549
I. Introduction	549
II. Immigration Control Grounds and Waivers	549
<i>Avila-Anguiano v. Holder</i>	551
III. Criminal Grounds	555
A. Aggravated Felonies	556
1. How Do Courts Assess the Question of Whether a Crime Is an Aggravated Felony?	557
<i>Juan Esquivel-Quintana, Petitioner v. Jefferson B. Sessions, III</i>	558
<i>Descamps v. United States</i>	564
<i>Nijhawan v. Holder</i>	570
2. What Are “Drug Trafficking” Offenses for Purposes of the Aggravated Felony Provision?	577
<i>Moncrieffe v. Holder</i>	579
3. What Is a “Crime of Violence” for Purposes of the Aggravated Felony Definition?	588
<i>Leocal v. Ashcroft</i>	588
<i>Sessions v. Dimaya</i>	592
4. How Is a “Sentence” Defined for Purposes of Deportation Grounds?	612
B. Crimes Involving Moral Turpitude	613
1. Convictions	614
2. “Moral Turpitude”	615
<i>Barbosa v. Barr</i>	616
C. Controlled Substance Offenses	622
D. Firearms Offenses	623

IV. National Security-Related Grounds, Foreign Policy Grounds, and Other Grounds of Deportation	624
CHAPTER 9	
The Detention Nightmare	625
I. Introduction	625
II. Constitutional Authority	626
<i>Wong Wing v. United States</i>	626
<i>Zadvydas v. Davis and Ashcroft v. Kim Ho Ma</i>	630
<i>Clark v. Martinez</i>	641
<i>Demore v. Kyung Joon Kim</i>	646
III. Background on Immigration Detention in the United States	658
IV. Detention Since 9/11 and the ICE Age	671
<i>Flores v. Lynch</i>	677
<i>Flores v. Sessions</i>	689
V. The Effects of Detention	699
A. Psychological Effects on Children of Detainees	699
B. Detention as an Obstacle to Case Preparation	702
VI. Bond and Other Options	707
A. Release on Bond	707
<i>Matter of Guerra</i>	707
B. Electronic Monitoring Devices (EMD) Under ISAP	712
C. Release to NGO Shelters that Provide Community Ties	712
D. Catch and Release	713
E. Rate of Absconding	713
VII. Detention of Unaccompanied Minors	714
VIII. Detention in the Era of COVID-19	718
<i>Zepeda Rivas, et al. v. Jennings, et al.</i>	719
CHAPTER 10	
Enforcement	729
I. Introduction	729
II. Border Apprehensions	729
III. Border Prosecutions	736
IV. Border Policing	739
A. Policing at the Border	739
B. Policing Near the Border: Roving Stops and Checkpoints	744
<i>United States v. Brignoni-Ponce</i>	744
<i>United States v. Martinez-Fuerte</i>	752
C. Interior Policing	764
1. Workplace Enforcement	765
<i>INS v. Delgado</i>	765
D. Enlisting State and Local Law Enforcement	779
E. Immigration Surveillance	785

CHAPTER 11	
Relief from Removal	787
I. Introduction	787
II. Cancellation of Removal	787
<i>Pereira v. Sessions</i>	788
A. Lawful Permanent Residents	795
<i>In re C—V—T—</i>	795
B. Nonpermanent Residents	801
<i>In re Ariadna Angelica Gonzalez Recinas</i>	801
<i>Matter of J—J—G—</i>	807
III. Voluntary Departure	823
<i>In re Eloy Arguelles-Campos</i>	823
IV. Victims of Domestic Violence	831
<i>Hernandez v. Ashcroft</i>	831
V. Relief for Trafficking Victims	844
<i>United States v. Sabhmani</i>	847
VI. Special Immigrant Juvenile Status	849
VII. Registry, “Amnesty,” Legalization	851
A. Registry	851
B. “Amnesty”?	851
C. Private Bills and Deferred Action	859
D. Adjustment of Status	859
<i>Hernandez v. Ashcroft</i>	859
E. Stays of Removal	866
<i>Leiva-Perez v. Holder</i>	866
F. DACA and TPS	873
1. DACA	873
<i>Department of Homeland Security v. Regents of the University of California</i>	874
2. TPS	892
CHAPTER 12	
Removal Proceedings and Immigration Judges	895
I. Removal Hearings and the Right to Counsel	895
<i>Aguilera-Enriquez v. INS</i>	896
<i>Jacinto v. INS</i>	901
<i>Franco-Gonzales v. Holder</i>	912
<i>Matter of M—A—M—</i>	920
II. Burden of Proof and the Exclusionary Rule	928
<i>Woodby v. INS</i>	928
<i>INS v. Lopez-Mendoza</i>	933
<i>Oliva-Ramos v. Attorney General of the United States</i>	940
<i>In re Quevara-Mata</i>	949

III. Immigration Judges' Powers and Responsibilities	953
A. Power to Terminate or Grant Continuance	953
<i>Lopez-Telles v. INS</i>	953
<i>Matter of Castro-Tum</i>	956
B. Responsibility to Inform of Apparent Eligibility for Relief	966
<i>C.J.L.G. v. Barr</i>	966
IV. Bond Hearings	971
CHAPTER 13	
Asylum	979
I. Introduction	979
II. Presenting Case Facts	982
<i>Matter of A—S—</i>	982
III. Well-Founded Fear of Persecution	986
<i>INS v. Cardoza-Fonseca</i>	987
<i>Matter of L—S—</i>	996
IV. Statutory Requirements for Asylum	1004
V. Membership in a Particular Social Group	1012
<i>Demiraj v. Holder</i>	1012
<i>Matter of Acosta</i>	1021
<i>Sanchez-Trujillo v. INS</i>	1024
<i>Ramos v. Holder</i>	1028
<i>Matter of H—L—S—A—</i>	1034
<i>Mockeviciene v. U.S. Attorney General</i>	1043
VI. Women and Gender Claims	1047
<i>In re Fauziya Kasinga</i>	1048
<i>Matter of A—R—C—G—</i>	1053
<i>Hernandez-Chacon v. Barr</i>	1066
VII. Convention Against Torture (CAT) Claims	1072
<i>Xochihua-James v. Barr</i>	1073
VIII. Credibility Revisited	1080
A. Evaluating Inconsistencies and PTSD	1080
<i>Matter of A—S—</i>	1081
B. Effect of REAL ID on Credibility Determinations	1104
<i>Ren v. Holder</i>	1104
CHAPTER 14	
Judicial Review	1117
I. Introduction	1117
II. Immigration Regulation and Late 1800s Adjudication	1117
III. Constitutional Scope and Limits on Judicial Review of Immigration Decisions	1118
A. Review of the Right to Enter: The Doctrine of Consular Absolutism	1118
<i>Bustamante v. Musakey</i>	1118
B. Due Process Rights	1123
<i>Landon v. Plasencia</i>	1123

C. Removal	1131
D. Limits on Judicial Review	1131
<i>Demore v. Kim</i>	1132
E. Deference to Administrative Agencies	1139
IV. The Modern Immigration and Nationality Act Provisions on Judicial Review	1139
A. Standards of Review	1140
B. Commencing Proceedings or Stays of Removal	1140
C. Class Actions	1141
<i>Orantes-Hernandez v. Thornburgh</i>	1141
D. The Nuts and Bolts of Judicial Review	1160
E. Criminal Grounds	1160
F. Discretionary Relief	1160
G. Expedited Removal	1161
<i>Department of Homeland Security v. Thuraissigiam</i>	1161
H. Detention	1187
CHAPTER 15	
The Rights of Noncitizens	1189
I. Introduction	1189
II. First Amendment Rights	1189
III. Public Benefits	1190
IV. Protections for Undocumented Workers	1191
<i>Hoffman Plastic Compounds, Inc. v. National Labor Relations Board</i>	1191
V. State Employment and Licenses	1198
<i>In re Sergio C. Garcia</i>	1198
VI. Employment Discrimination	1210
A. The Anti-Discrimination Provisions of the Immigration Reform and Control Act	1210
B. Title VII	1210
<i>Espinoza v. Farah Manufacturing Co.</i>	1211
VII. Elementary and Secondary Education	1214
<i>Plyler v. Doe</i>	1215
VIII. Higher Education	1225
<i>Toll v. Moreno</i>	1225
IX. The Civil Rights Implications of State and Local Governments' Involvement in Immigration Enforcement	1230
X. State Regulation of Day Laborers	1232
XI. Driver's Licenses	1232
XII. Official English/English-Only Laws	1233
Appendix <i>INA to USC Conversion Table</i>	1235

<i>Table of Cases</i>	1239
<i>Table of Statutes and Regulations</i>	1253
<i>Table of Authorities</i>	1271
<i>Index</i>	1291