

## **Syllabus – The National Security Impact of Immigration Law**

George Mason University, Antonin Scalia Law School – Summer 2021

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### **LEARNING OUTCOMES:**

This course will explore the relationship between national security and immigration. The course will first provide a historical backdrop of this issue and continue with threshold national security issues that have immigration implications. Particularly, the current legal framework that surrounds this issue will be explored to include specific provisions in the Immigration and Nationality Act, as well as peripheral legal issues such as material support of a terrorist organization. Other national security questions will be discussed to include protecting the borders, criminal immigration prosecutions, and population control. Lastly, this course will explore the conflict between individual rights and national security and attempt to answer the threshold question of whether it is appropriate to use immigration laws as a national security enforcement tool.

The primary goal of this course is to give students a working knowledge of how immigration law impacts national security in order to help students determine if this is an area of the law they might be interested in and, if so, help find employment in this field.

The course is designed to be a practitioners' course for two specific reasons. First, immigration is the fastest growing area of law in the federal government. A student demonstrating experience with this critical subject area has an advantage in both the public and private sectors.

This course is also oriented toward the practitioner due to the focus it places on the legal framework and litigation strategies necessary for removing or detaining individuals who are national security threats. At the same time, we will spend time learning how to defend an alien against the government. To facilitate this, students will not learn through lectures and group discussions alone, but also through examining real legal documents that have been filed in the United States District Courts and the Courts of Appeals. Students will also have the opportunity to examine a real A-file (alien) in order to practice issue spotting.

### **COURSE EVALUATIONS & OPTIONS:**

Class discussions showing thoughtful review and critical analysis of the assigned materials will be an integral part of the learning process. As such, 10% of your final grade will be based on class participation and presentations. There will also be an in-class exercise with short writing assignment will account for 10% of your final grade

The majority of the class evaluation will be via a final paper, which will count for 80% of your final grade. Below you will find the dates for submission of a paper topic, paper outline, and draft paper. These due dates are intended to allow me to provide meaningful

advice and feedback to you. Through this process, you will develop skills in selecting an original topic, presenting and defending a clear thesis, researching in law and other disciplines and writing a well-organized and thoughtful article.

### **COURSE LENGTH AND FORMAT:**

The course will consist of 7 classes held virtually on Wednesdays from 6-9:50pm. Active participation in class discussions is required and students are expected to be fully prepared for each class session.

### **OFFICE HOURS:**

Students are welcome to make appointments to discuss paper topics, revisions, the course, or other matters of school or career concern. Please confer with me through email or by telephone. I will be available after every class for students who do not want to make an appointment and I will stay as late as needed.

### **COURSE MATERIALS:**

The book, *Arthur Rizer, National Security Implications of Immigration Law* [hereinafter NSIIL] can be purchased. However, I will provide all students with a free online version. Additional course materials [hereinafter CM] for the class will also be provided electronically. USE THE PAGE NUMBER in the top left corner when referencing the materials. In addition, I will also assign and make recommendations for additional reading on each topic, offering different perspectives.

### **READING ASSIGNMENTS:**

**May 19th: Introduction, course overview, and Immigration law 101.** Very basic immigration law will be covered, not to provide a working knowledge of how the immigration system works, but rather so students understand the “language” of immigration law. This will lead directly into the topic for Class 2 and 3 – how specific immigration statutes are used in the national security apparatus. Prepared to come to class to discuss your perspective on this topic. In addition, we will be covering the History of the national security implications of immigration law. In order to fully understand the impact immigration law has had on the national security field, we must first understand how this issue has evolved throughout the history of our nation. National security has been an inherent aspect of immigration law since the founding of the country. In 1798, a mere ten years after the Constitution was ratified, the country’s fear of violence to advance a political message (terrorism) manifested itself into the Alien Act of 1798, which authorized the President to arrest and deport any alien non-citizen who was deemed dangerous and a threat to national security.

- **Reading Assignment:**
  - **NSIIL pages ix-xii**
  - **NSIIL chapter 1**

- skim CM 1-7 (when I say skim I mean look it over – but you do not have to read in depth),
- read CM 8-16

**May 26: Immigration removals of national security threats.** The INA has historically provided for both the exclusion and deportation (removal) of aliens from the United States who were deemed to pose a national security risk. Between 1950 and 1990, the INA focused on removing aliens who were associated with organizations that advocated communism or overthrowing the government. In 1990, the INA included bars with respect to terrorists, aliens who present adverse foreign policy consequences, and the catch-all provision of aliens who pose a national security risk, which include aliens involved in espionage sabotage, and sedition.

- **Reading Assignment:**
  - NSIIL chapter 2; CM 17-19

**June 2: Material Support and Denaturalization.** Material support of a terrorist organization is a critical topic when addressing the intersection between national security and immigration law. This is true because material support is an act that prevents aliens from adjusting status (to legal permanent resident or citizen) and may make an alien removable. The Department of Homeland Security defines material support very broadly. Denaturalization will also be discussed at length through the case *United States v. Almallah*.

- **Reading Assignment:**
  - NSIIL chapter 3; CM 20-29,
  - skim 29-42, read 44-51, skim 52-65, read 66-106 (I know this seems like a huge reading assignment but most of what is hear is double spaced court documents – you can get through all of it in 90 minutes.)
- **Topic Selected for Papers – please come preprepared to talk about your paper for 5 minutes in class.**

**June 9: Protecting Classified Information.** Obviously, the protection of classified information in national security cases is important. In the criminal setting, when the government brings a national security or terrorism charge, the accused is entitled to the same constitutional protections as he would be if he were charged with theft, such as the right to discovery, public trial by jury, confront witnesses (and evidence), and the right to due process. However, because immigration proceedings are civil, most of these rights are inapplicable. Therefore, there are times when the information/evidence that could be used against an alien in a criminal case is so sensitive that its release is more harmful to the nation's security, and the government chooses not to bring the criminal case at all.

- **Reading Assignment:**
  - NSIIL chapter 4; skim CM 107-130, read page 130-131

- **Paper outlines are due – paper students should be prepared to talk for 5 minutes about their paper.**

**June 16: Civil Detention.** Detention law is at the front line of the immigration and National Security crossroad. Section 236A of the INA specifically provides for the mandatory detention of suspected terrorists and sets forth requirements of habeas corpus and judicial review. In addition, the Supreme Court has long held detention to be a necessary part of the deportation process in national security cases.

- **Reading Assignment:**
  - **NSIIL chapter 5**

**June 23: Protecting the border and criminal immigration prosecutions.** Anytime there is a motive for individuals to enter the United States, there is a possible national security issue. Furthermore, when those individuals cross the border, it is not only a national security concern but also an immigration concern. The United States Attorney's Offices throughout the country combat this issue head on with 8 U.S.C. § 1324, 1325, and 1326 prosecutions. These prosecutions will be explored both for how they protect the physical border and how they are used to combat bigger national security issues.

- **Reading Assignment:**
  - **NSIIL chapter 6; CM 132-196**
- **In Class exercise – DO NOT MISS CLASS**

**June 30: The rule of law and liberty issues.** The concept of the rule of law plays a key role in the immigration and national security debate. In ancient Greece, the term referred primarily to the concept that the government is subordinate to the law. Thus, many argue that the rule of law in the immigration context should focus on the ends that the system should serve: upholding the larger goal of human and civil rights. On the other side of the spectrum, rule of law means a strict observance to “law and order” and that the government should adhere to standing laws. This argument on the “rule of law” is often casted into a debate over security versus civil liberties or human rights.

- **Reading Assignment:**
  - **NSIIL chapter 7; CM 197-294**
- **In Class exercise paper due (one page paper)**
- **Students will present their research for their final paper.**

**FINAL PAPER is due July 16. There will be no extensions for this date. Students will lose 5% of their final paper grade for each day the paper is late.**