

Immigration Litigation Clinic
SPRING SYLLABUS

Antonin Scalia Law School
Fall 2021 – Spring 2022
LAW 203 (4 credits)
Thursdays 1:50-3:50 p.m.
Legal Aid Justice Center

Professors

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Clinic Overview

The Immigration Litigation Clinic is a legal clinic in its third year at ASLS. Students will meet for a 2-hour seminar once a week, virtual or in-person team supervision, and virtual and in-person client and case work. Virtual client work may be conducted in person as well as via video chat (Zoom, WhatsApp, etc.) or by phone. All students should have or set up a Google Voice number for contacting clients.

In this clinic, students will represent clients in a range of immigration litigation matters before the immigration court in Arlington, the Board of Immigration Appeals in Falls Church, the federal district court in Alexandria, and/or the U.S. Court of Appeals for the Fourth Circuit. This clinic may also include work on immigration-related federal litigation cases, and comment on proposed federal regulations. The focus of clinic students' efforts is their casework outside the classroom on behalf of immigrant clients.

The Immigration Litigation Clinic is year-long, and open to second and third-year Law students.

Office Hours

To be arranged with your Clinic Supervisor. In addition to any lectures or class meetings, you will be required to attend weekly individual case reviews with your Clinic Supervisor. These will take place via Zoom or in-person, according to the preferences of instructors and students.

We are regularly available at additional times by appointment, and available by phone and email. We are not available outside of normal working hours, so please do not expect responses to emails or calls in the evenings or on the weekends.

Course Materials

Readings will be provided to you by handout, links, Westlaw/LexisNexis, or books on reserve at the Law Library.

Course Requirements

1) Attendance and class participation

NOTE: Attendance requirements for academic credit will follow the policies set forth in Academic Regulation 4-1. Should a student anticipate the possibility of missing a substantial number of class sessions (e.g. a serious illness), please immediately contact the Assistant Dean, Student Academic Affairs.

2) Client representation and case work

3) Confidentiality and sensitivity with clients

4) Communicating with your supervisor with respect to representations, counseling, and intakes

Note: The Immigration Law Clinic meets for two hours a week but students will receive four credits total because of meetings and work required outside of the regularly scheduled classroom time. Each credit requires approximately 60 hours of work. Plan to spend approximately 10 hours of work *per week* on casework *in addition* to your weekly seminar and readings. Please bring your laptop to every class, every supervision meeting, and every client meeting or intake.

Learning Outcomes

By the end of the course, students should have acquired/be able to:

- Conduct client interviews effectively
- Write legal declarations
- Understand the structure of the immigration system
- Understand the basic elements of asylum, Withholding of Removal, CAT, and immigration detention and bond, and draft briefing in support of legal claims
- Gather and marshal evidence to support a legal claim

Presenting a case at a hearing in the immigration court depends on the court's scheduling of the clinic's cases, which is highly unpredictable given turbulent and constantly shifting dockets in the wake of the COVID-19 pandemic, and thus cannot be guaranteed to every student this academic year.

Assignments

1) Course Readings & Assignments

Some course assignments after Week 6 will be assigned throughout the semester. Week 1 assignments should be completed *prior* to the first class.

2) Client representation

Includes meeting with clients, gathering and presenting facts of client cases, client counseling, keeping meticulous case notes, documenting time, and work product/legal writing.

3) Court observation

NOTE: Due to COVID 19 – court observation will depend on court accessibility. If a student is unable to attend court hearings in person, we have included video assignments to take the place of court observation.

4) Self-Evaluations

Students will be expected to complete a short mid-semester and end of semester self-evaluation in the form of reflection papers.

Grading

There will be no final exam. The grade will consist of 30% class participation during seminar; 20% participation and preparation for supervision meetings, including case reviews during seminar; and 50% case work product. Work product includes written case work, including case notes, timekeeping and client representation (25%), and also includes client interviews, client preparation, and, if applicable, representation of clients in immigration court (25%).

Instructor Expectations & Course Rules and Structure

- Students must complete and submit a pre-clinic student survey and promptly provide their availability for client work for the Fall Semester to clinic instructors.
- For virtual meetings and seminars, videos must be on. Active participation is expected.
- Each student or student team will send a weekly email or submit a weekly case update to supervisor
- Pursuant to Academic Regulation 4-2.2, no portion of a class session or an examination may be preserved by means of a recording device such as an audio recording device or camera. Any exceptions to this policy must be expressly permitted in writing by the clinic director. This is extremely important as confidential case information will frequently be discussed during class.

COVID HEALTH & SAFETY REQUIREMENTS: Mason is using a hybrid approach this spring. Please refer to the most up-to-date University policies [here](#). If students meet with clients in person at the LAJC office, students and clients must follow the policies laid out in the LAJC clinic manual or provided by your supervisor. Please consult with your supervisor to obtain permission to meet with a client in person and review current COVID protocols.

Week 1 (Jan 20)

- Hernandez Guzman Moot

Assignments

Required:

- Case briefs (on SharePoint)

Week 2 (Jan 27)

- Ana Elsy Asylum Moot

Assignments

Required Readings:

- Asylum brief and exhibits (filed –in SharePoint)

Week 3 (Feb 3)

- Case Review

Week 4 (Feb 10)

- Special Immigrant Juvenile Status (SIJS)

Assignments

Required Readings:

- 8 U.S.C. § 1101(a)(27)(J)
- USCIS Policy Manual: <https://www.uscis.gov/policy-manual/volume-6-part-j>
- *Joshua M. v. Barr*, 439 F.Supp.3d 632 (E.D. Va. 2020)
- LAJC Practice Advisory: <https://www.justice4all.org/wp-content/uploads/2019/07/SIJS-Practice-Advisory-FINAL-07-29-2019.pdf>

Optional:

- Federal Bar Association SIJS Practice Advisory: <https://www.fedbar.org/wp-content/uploads/2019/12/FBA-SIJS-Outline-FINAL-pdf.pdf>
- ILRC SIJS Practice Advisories
 - SIJS & Grounds of Inadmissibility: <https://www.ilrc.org/special-immigrant-juveniles-grounds-inadmissibility>
 - SIJS Policy Update and Proposed Regs Alert: <https://www.ilrc.org/practice-alert-sijs-policy-updates-and-proposed-regulations-november-2019>
- *R.F.M. v. Nielsen*, 365 F. Supp. 3d 350 (S.D. N.Y. 2019) (Class action about over 18 SIJS in NY)

Week 5 (Feb 17)

- Suppression of evidence in immigration proceedings

Assignments

Required Readings:

- *INS v. Lopez Mendoza*, 468 U.S. 1032 (1984), majority opinion only

- *Matter of Barcenas*, 19 I. & N. Dec. 609 (BIA 1988)
- *Yanez-Marquez v. Lynch*, 789 F.3d 434 (4th Cir. 2015) -- sections I; II.D.2.c; II.E.2.e, f; II.E.3
- *Ferino Sanchez v. Sessions*, 885 F.3d 782 (4th Cir. 2018)

Optional:

- *Yanez-Marquez v. Lynch*, 789 F.3d 434 (4th Cir. 2015), all

Week 6 (Feb 24)

- Guest speakers – Becoming an immigration lawyer

Week 7 (March 3)

- Prosecutorial Discretion

Assignments

Required Readings:

- September 30, 2021, Mayorkas Guidelines for the Enforcement of Civil Immigration Law, <https://www.ice.gov/doclib/news/guidelines-civilimmigrationlaw.pdf>
- INA § 237(d)(4), 8 U.S.C. § 1227(d)(4); INA § 212(d)(5), 8 U.S.C. § 1182(d)(5); INA § 237(d)(2); 8 U.S.C. § 1227(d)(2)
- Law Professors’ Letter to Mayorkas re: executive branch legal authority for prosecutorial discretion in immigration law enforcement, August 24, 2021, <https://pennstatelaw.psu.edu/sites/default/files/Final%20Law%20Prof%20Letter%20Aug%202021.pdf>
- Brief of Former Commissioners of the U.S. INS as *Amici Curiae*, *Arizona v. United States*, 567 U.S. 387, 396 (2012), <https://www.nilc.org/wp-content/uploads/2016/04/US-v-AZ-SCOTUS-11-182-amicus-formerINS.pdf>

Optional:

- AILA Practice Alert: Impact of Ongoing Litigation on the Exercise of Prosecutorial Discretion (September 2021 – assign if updated), <https://www.aila.org/advo-media/aila-practice-pointers-and-alerts/practice-alert-impact-of-ongoing-litigation>
- Human Rights Watch, “Groups Urge DHS Secretary Mayorkas to Clarify Enforcement Priorities,” November 4, 2021, <https://www.hrw.org/news/2021/11/04/groups-urge-dhs-secretary-mayorkas-clarify-enforcement-priorities#>
- Memorandum from Sam Bernsen, General Counsel, INS, “Legal Opinion Regarding Service Exercise of Prosecutorial Discretion,” July 15, 1976, <https://www.ice.gov/doclib/foia/prosecutorial-discretion/service-exercise-pd.pdf>

Week 8 (March 10)

- Case Review

DUE 3/10/22: Mid-semester reflection paper (2-3 pages)

- Brief list and overview of your cases and your role in each case (explain team division of work)
- Self-evaluation of work so far (effort, time, improvement, strengths, weaknesses)
- Goals for remaining semester
- Goals for next semester

Week 9 (March 24)

- Post-final order detention

Assignments

Required Readings:

- 8 U.S.C. § 1231(a), (b)
- *Zadvydas v. Davis*, 533 U.S. 678 (2001), majority opinion only
- *Julius v. Crawford* (E.D. Va. 2021) materials on Sharepoint
- *Miranda Sanchez v. Byers* (E.D. Va. 2021) materials on Sharepoint

Optional reading:

- *Johnson v. Chavez*, 141 S. Ct. 2271 (2021)

Week 10 (March 31)

- Ethics

Assignments

Required Readings:

- G.M. Filisko, Hot Zone: Immigration Law Raises a Unique Mix of Ethics Issues for Lawyers - https://www.abajournal.com/magazine/article/hot_zone_immigration_law_raises_a_unique_mix_of_ethics_issues_for_lawyers/
- *Matter of Lozada*, 19 I. & N. Dec. 637 (1988)
- AILA Ethics compendium Ch. 4.3 (Dealing with Unrepresented Person) (p.543-571) – skim (in readings folder and available here: <https://www.aila.org/File/Related/13100890.pdf>)
- Lisa Lerman & Phil Schrag, *Flight from Sudan*, Ethical Problems in the Practice of Law (2012) (excerpt) (in readings folder)

Resources:

- VA Rules of Professional Conduct - <https://www.vsb.org/pro-guidelines/index.php/rules/preamble/>
- Quick Facts about Legal Ethics and Social Networking: <https://www.vsb.org/site/regulation/facts-ethics-social-networking>
- EOIR Rules of Professional Conduct (in readings folder)

Week 11 (April 7)

- Case Review/Race in immigration

Assignments

Required:

- *U.S. v. Carillo-Lopez* (Order, D. Nev. 2021) - focus on the history of racial animus sections
- Karla Mari McKanders, Sustaining Tiered Personhood: Jim Crow and Anti-Immigrant Laws, 25 HARV. J. RACIAL & ETHNIC J.163 (2010), <https://scholarship.law.vanderbilt.edu/cgi/viewcontent.cgi?article=2014&context=faculty-publications>

Optional:

- Jennifer M. Chacón, Immigration Federalism in the Weeds, 66 UCLA L. REV. 1330 (2019), uclalawreview.org/immigration-federalism-in-the-weeds/

Week 12 (April 14)

- Guest Speaker – Different ways to practice in immigration law

Assignments

TBD

Week 13 (April 21)

- Case Closing, Transition Memos, Reflecting on the year

Assignments

- **Ensure all hours are recorded in Justice Server**

Spring Semester Reflection Paper DUE April 28, 2021

- 3-5 pages
- *Brief* list and overview of your cases and your role in each case (explain team division of work)
- Self-evaluation of work over the course of the semester and year (effort, time, improvement, strengths, weaknesses)
 - One thing you learned that you will take with you in your practice
 - One thing you improved over the course of the year in clinic
 - One thing you will focus on improving as you continue in your legal studies/career
- Feedback for the clinic
 - What would you change? What would you keep the same? Any classes you wish you had? Classes you wish you didn't have? Overall feedback for professors, or on clinic as a whole.