

Immigration Litigation Clinic
SPRING SYLLABUS

Antonin Scalia Law School
Fall 2022 – Spring 2023
LAW 203 (4 credits)
Thursdays 3-5 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 fall. 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 19)

- Practicing in EOIR

Assignments

Required Readings:

- Hon. Dorothy Harbeck, *Objections in Immigration Court: Dost Though Protest Too Much or Too Little?* (on SharePoint)
- AHR Pro Bono Asylum Manual, Section II.4 (Removal Proceedings & Defensive Applications) (p.35-45) (on SharePoint)
- CLINIC Practice Advisory: Opening Statements and Closing Arguments: <https://cliniclegal.org/file-download/download/public/4197>
- CLINIC Practice Advisory: Direct Examination: <https://cliniclegal.org/resources/litigation/practice-advisory-direct-examination>

Watch at least two of the following: (be prepared to share/present to class)

- Watch:
 - Case Theory: <https://www.youtube.com/watch?v=K5e1L5BwWyM>
 - Mock Direct Exam of client: <https://www.youtube.com/watch?v=qWcVKhbdaUs>
 - Mock Cross Exam of client: <https://www.youtube.com/watch?v=g1Ak0t7pajg>
 - Direct Exam of expert: <https://www.youtube.com/watch?v=25M1FggewBY>
 - Cross Exam of expert: <https://www.youtube.com/watch?v=sNEhuHqG5U8>

Week 2 (Jan 26)

- Direct exam workshop day
 - Come prepared to write/edit/prepare a direct exam in your upcoming case. We will draft and workshop them as a class.

Assignments

- Bring bullet points of key facts/elements you need to draw out on direct exam for a client or witness in your case
- Draft/outline your direct exam
- (Confirm in supervision which direct exam you are working on in your case)

Required Readings:

- Direct exam of past asylum client or witness: https://legalaidjusticecenter.sharepoint.com/:f:/r/sites/GMUImmigrationLitigationClinic2020-21/Shared%20Documents/Clinic%20Cases_Open/Ramirez%20Diaz,%20Ana%20Elsy/EOIR/Direct%20Exams?csf=1&web=1&e=h55i9I

Week 3 (Feb 2)

- Prosecutorial Discretion & Negotiating with OPLA

Assignments

Required Readings:

- Prosecutorial Discretion and the ICE Office of the Principal Legal Advisor: <https://www.ice.gov/about-ice/opla/prosecutorial-discretion>
- Community FAQ: Status of Prosecutorial Discretion Under the Biden Administration: https://nipnl.org/PDFS/community/2022_19Aug-Status-of-PD-explainer.pdf
- Shoba Sivaprasad Wadhia, Penn State Law, article for ACS: <https://www.acslaw.org/expertforum/oral-arguments-in-u-s-v-texas-and-the-challenge-to-prosecutorial-discretion-in-immigration/>
- 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)

Optional:

- 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>
- 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>

Week 4 (Feb 9)

- Expedited Removal, Reinstatement, CFI, RFI

Assignments

- 8 USC 1225(b)
- 8 USC 1231(a), (b)
- 8 CFR 208.30, 1003.42, 1208.31
- *DHS v. Thuraissigiam*, 140 S.Ct. 1959 (2020) (majority opinion and Justice Breyer’s concurrence)
- *Tomas Ramos v. Garland*, 24 F.4th 973 (4th Cir. 2022)

Optional Readings:

- Understanding I-212s For Inadmissibility Related to Prior Removal Orders and the Permanent Bar, ILRC (March 2020), https://www.ilrc.org/sites/default/files/resources/i-212_advisory-final.pdf

Week 5 (Feb 16)

- 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 6 (Feb 23)

- Case Review

Week 7 (March 2)

- Post-final Order
 - Appeals Process
 - (Pre- and) Post-final order prolonged detention

Assignments

Required Readings:

- 8 U.S.C. § 1231(a)
- *Zadvydas v. Davis*, 533 U.S. 678 (2001), majority opinion only
- *Portillo v. Hott*, 322 F. Supp. 3d 698 (E.D. Va. 2018)

Optional reading:

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

Week 8 (March 9)

- Case Review

DUE 3/9/22: 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 23)

- Debrief Individual Hearing

Individual Hearing at EOIR

Thursday, 3/23/22, 8:30 a.m., Annandale Immigration Court

See Calendar invitation for details

Week 10 (March 30)

- Special Immigrant Juvenile Status

Assignments

Required Readings:

- 8 U.S.C. § 1101(a)(27)(J)
- USCIS Policy Manual: <https://www.uscis.gov/policy-manual/volume-6-part-j>
- An Overview to Special Immigrant Juvenile Status (ILRC):
https://www.ilrc.org/sites/default/files/resources/sijs-6th-2021-ch_03_final_0.pdf
- LAJC Practice Advisory: <https://www.justice4all.org/wp-content/uploads/2019/07/SIJS-Practice-Advisory-FINAL-07-29-2019.pdf>

Optional:

- End SIJS Backlog site and materials: <https://www.sijsbacklog.com/>
- 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>
- [*R.F.M. v. Nielsen*, 365 F. Supp. 3d 350 \(S.D. N.Y. 2019\)](#) (Class action about over 18 SIJS in NY)
- *Joshua M. v. Barr*, 439 F.Supp.3d 632 (E.D. Va. 2020)

Week 11 (April 6)

- Moot client for upcoming Individual Hearing

Assignments

Required Readings:

- Filed Brief and case materials (on SharePoint)

Week 12 (April 13)

- Guest Speaker

Week 13 (April 20)

- Case Closing, Transition Memos, Reflecting on the year

Assignments

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

Spring Semester Reflection Paper DUE April 27, 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.