

CRIME AND IMMIGRATION

Professor Imran Beg Mirza
Fall 2019

This course is designed to explore issues arising when immigrants and others non-citizens are charged with crimes. Non-citizens who commit or are convicted of crimes have always faced serious immigration consequences involving prolonged detention and expulsion from the United States. But recent legislative focus on the “criminal alien” has resulted in drastic changes. In 1996, Congress passed two major pieces of legislation, the Anti-Terrorism and Effective Death Penalty Act (AEDPA) and Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), both of which mandate detention and substantially alter the grounds and remedies for deportation and exclusion (now called “removal”) of foreign nationals charged with crimes. Unfortunately, in this rapid changing field, attorneys who represent non-citizens in criminal proceedings are often unaware of the immigration penalties their clients face. This course combines consideration of immigration, criminal, and constitutional themes with statutory and regulatory analysis. The course will provide students with an understanding of the immigration consequences of crimes, the tools to craft effective defenses, and the unique opportunity to analyze trends as new statutes take effect and are interpreted.

The required texts are: a compilation of cases and articles in Mirza, *Crime and Immigration (Fall 2019)*, and *Immigration and Nationality Law of the United States, Selected Statutes, Regulations and Forms* (West, 2019).

Classes are held Tuesday’s from 5:30-7:30 p.m. Students are expected to be prepared for class and have read the assigned material prior to class. The course is a cooperative venture, and I expect students to attend class and contribute in the discussion.

SYLLABUS

CLASS 1: August 20

INTRODUCTION AND EARLY SOURCES ON IMMIGRATION LAW

The class will begin with an overview of the course purpose and requirements. We will then examine the players in the field of immigration and crimes, and discuss the history of the immigration law and policy in the United States. The law relating to foreign nationals, particularly criminals, is harsh. To understand why Congress and the courts are not disposed to leniency in even the strongest humanitarian case, one must examine the history of admission and expulsion as it relates to criminals and undesirables.

CLASS 2: August 27 HISTORICAL OVERVIEW

The class will provide a historical overview of immigration as it relates to foreign nationals convicted of crimes during the colonial period, after independence and the Chinese Exclusion Act period. The discussion will continue on early immigration cases. We will also discuss the many provisions relating to United States citizenship, which have become particularly important as a defense to deportation/removal of those convicted of offenses with no immigration relief.

Assignment: INA §301 and §320; Mirza at 1-35 (36-48 optional).

CLASS 3: September 3 INTRODUCTION TO GROUNDS OF INADMISSIBILITY

The session will center on theories and policies relating to exclusion of foreign nationals convicted of crimes. We also will begin with an overview of the grounds for inadmissibility, will discuss the concept of “entry” and compare it to the new definition of “admission.” The session also will center on the effects of admission to criminal activity, foreign convictions, and juvenile dispositions.

Assignment: INA §212(a); INA §101(a)(13); Mirza at 49-69.

CLASS 4: September 10 INTRODUCTION TO GROUNDS OF DEPORTABILITY

Discussion centers on the deportation of non-citizens, and the grounds for expelling those who have been admitted to the United States. We will then examine what constitutes a conviction for federal immigration purposes, including discussion on recent efforts to broaden the scope of criminal dispositions which are now considered convictions.

Assignment: INA §237(a); INA §101(a)(48); Mirza at 70-98.

CLASS 5: September 17 CRIMES OF MORAL TURPITUDE OFFENSES

We will more closely examine crimes of moral turpitude. These offenses dominated the crimes-based grounds of deportation and exclusion before the advent of aggravated felonies, and domestic violence crimes.

**Assignment: INA §212(a)(2)(A)(B); INA §237(a)(2)(A)(i) & (ii)
Mirza at 99-119.**

CLASS 6: September 24 DRUG AND WEAPONS OFFENSES

We will more closely examine drug and weapons offenses. These offenses dominated the crimes-based grounds of deportation and exclusion before the advent of aggravated felonies, and domestic violence crimes.

**Assignment: INA §212(a)(2)(A)(i)(II) & (C); INA§237(a)(2)(B) & (C)
Mirza at 120-146.**

CLASS 7: October 1 AGGRAVATED FELONIES, CRIMES OF DOMESTIC VIOLENCE

In 1988, 1990, 1994 and finally in 1996, Congress redefined certain offenses as “aggravated felonies,” drastically increased their penalties, and limited or eliminated relief and appeal rights. Discussion will center on the crimes considered aggravated felonies and the new deportation grounds based on domestic violence and child abuse offenders. Federal prosecutions of immigration related crimes have increased dramatically in recent years.

**Assignment: INA §237(a)(2)(A)(iii); INA §101(a)(43); INA §237(a)(2)(E);
Mirza at 147-206.**

CLASS 8: October 8 ARREST, DETENTION / REMOVAL PROCEEDINGS

The war on crime and illegal immigration has generated a significant increase in law enforcement personnel and an expansion of their authority to arrest and detain. We will discuss federal and state authority to arrest in a number of contexts; at the border, in the interior, abroad and for civil violations. We will address the notice requirements for removal proceedings. We will then examine issues relating to the detention of foreign nationals pending administrative proceedings and removal.

**Assignment: INA §236; INA §240(a),(b)(1), (b)(5) & (d); INA §241(a)(1)& (2);
Mirza at 207-223.**

CLASS 9: October 15 RELIEF FROM REMOVAL

There are a number of forms of relief available to foreign nationals facing removal. Relief to the criminal defendant however is either diminished or unavailable, depending on his/her status, length of residence, family ties to U.S. citizens and permanent residents, and the crime. We will address retroactivity and relief under INA Section 212(c), as well as its successor statute, cancellation of removal for lawful permanent residents.

**Assignment: INA §212(c); INA §240(A)(a).
Mirza at 224-269.**

CLASS 10: October 22 RELIEF FROM REMOVAL (Continued)

We will continue addressing applications for relief that may be available to foreign nationals who have gotten divorced/widowed, relief under INA section 212(h), and the effect of criminal convictions upon those trying to seek the relief of asylum, withholding of removal, and protection under the Convention Against Torture (CAT).

**Assignment: INA §216(a) and (c); INA §212(h).
Mirza at 270-286.**

**CLASS 11: October 29 JUDICIAL REVIEW AND POST-CONVICTION
REMEDIES**

Judicial review of deportation has been seriously curtailed for criminal non-citizens by AEDPA and IIRIRA. Post-conviction remedies have become the focus of advocacy for non-citizens facing removal based on criminal convictions.

Assignment: INA §242(a)(2) & (g), Mirza at 287-306.

CLASS 12: November 5 EFFECTIVE ASSISTANCE OF COUNSEL

This session will analyze the landmark Supreme Court decision *Padilla v. Kentucky*, concentrating on the constitutional significance of properly advising non-citizens of the consequences of criminal conduct. Student will analyze selected statutes and develop strategies to resolve such criminal cases.

Assignment: Mirza at 307-355.

CLASS 13: November 12 VIDEO

Students will view a documentary called “Split Decision” about the deportation of the champion boxer, Jesus Chavez (watching this video is optional, but doing so will give you bonus points on the exam).

CLASS 14: November 19 EXAM

Exams will be handed out.