

Crimmigration Law Seminar: The Intersection of Criminal Law and Immigration Law  
Professor García Hernández  
Spring 2016

Course Meetings:

Mondays, 2:45 p.m. to 5:15 p.m.

Office Hours:

Mondays, 1:00 p.m.-2:30 p.m.

I am available at other times by appointment if you are unable to meet with me during my regular office hours. To schedule an appointment email me with a few times that you are available.

Professor's Contact Information:

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Course Description and Objectives:

This seminar addresses the historical and contemporary relationship between criminal and immigration law. In particular, the course explores how individuals perceived to have violated a criminal offense are treated in the immigration law system, how individuals thought not to be citizens of the United States are uniquely affected by criminal procedure norms and substantive criminal law, and how states and the federal government have sought to police criminal activity by noncitizens. In the process, course participants will learn to analyze constitutional, statutory, and regulatory provisions concerning immigration, as well as procedural and substantive requirements concerning criminal proceedings as they affect noncitizens. Participants will also consider the motivations that resulted in various enforcement policies grounded in civil or criminal law related to immigration and immigrants.

Required Texts:

- 1) César Cuauhtémoc García Hernández, *Crimmigration Law* (2015) (available in the DU bookstore or online at <http://crimmigration.com/book/>)
- 2) Immigration and Nationality Act (hard copy or electronic)
- 3) Title 8 of the Code of Federal Regulations (hard copy or electronic)

Other materials will be distributed in hard copy or electronically.

Class Participation:

Learning is a collective enterprise. In a small course such as this discussion is central to every participant's enhanced understanding of the material. As such, everyone is expected to be ready and willing to discuss each day's topics. Indeed, my presumption is that everyone will come

ready to share their thoughts by, preferably, volunteering or in response to my questions. That said, I will honor special requests not to actively participate in class discussion on a particular day if you have not been able to prepare for class as long as it does not become habitual. To receive this type of amnesty you must let me know before class starts either by email or in person.

Furthermore, as explained in the DU Law Student Handbook's section on class attendance and examinations, you will not be allowed to will receive a grade of F in the course if you fail to attend 20% or more of the class meetings. In this course, this means that you may miss no more than three class meetings during the semester.

### TWEN:

This course relies on TWEN, a web-based platform hosted by Westlaw. I will post class materials, including this syllabus, on TWEN. I will also use TWEN to periodically communicate with the class.

### Grading:

Your grade for this course will be comprised of your performance on three writing assignments of 8-10 pages each and your participation in class discussions. Each writing assignment is worth 25 percent of your total grade (cumulatively, your writing will constitute 75 percent of your final grade).

Deadlines and general information about the writing assignments are listed below, but details will be announced later.

- 1) Legal memorandum: Write a legal memorandum to an immigration court arguing whether a particular criminal offense is a crime of violence. Due February 15.
- 2) Legal memorandum: Write a legal memorandum to a trial court in support of a motion to vacate pursuant to *Padilla v. Kentucky*. Due March 11.
- 3) Policy paper: Write a policy paper arguing for or against an issue related to the enforcement of crimmigration law. Due May 2.

The remainder of your grade (25 percent) in the course will be based on your participation in class discussion.

Optional Grading Structure for Upper-Level Writing Requirement Credit: This course can satisfy the law school's upper-level writing requirement if you meet the following three additional requirements: a) inform me by email no later than March 1 that you plan to seek ULW credit, b) submit a draft of your policy paper to me no later than April 11 for feedback, and c) ensure that your policy paper is no shorter than 10 pages in length.

You can also raise your cumulative score used to compute your grade by attending the *Crimmigration Law Lecture Series* that will occur this semester. I will raise your score by one point for every lecture you attend (four are currently planned and details will be distributed as they become available).

## Reading Assignments

The following list contains the material that you are expected to read and discuss in class. Reading assignments may change. Any changes to these reading assignments will be announced in class or by email.

### *Week 1: Introduction to crimmigration law*

- What is crimmigration?
  - García Hernández 1-19 (<http://crimmigration.com/wp-content/uploads/2015/08/Crimmigration-Law-Introduction1.pdf>)
  - Here & Now, *Anthropologist Works To Return Migrants' Remains*, WBUR (November 21, 2013) (<http://hereandnow.wbur.org/2013/11/21/return-migrants-remains>)
  - Kevin R. Johnson, *Race-Based Law Enforcement: The Racially Disparate Impacts of Crimmigration Law*, -- CASE WESTERN LAW REVIEW 1-6 (forthcoming 2016) ([http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2640755](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2640755))
  - Yolanda Vázquez, *Constructing Crimmigration: Latino Subordination in a "Post-Racial" World*, 76 OHIO STATE LAW JOURNAL 599, 625-657 (2015) ([http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2610816](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2610816))

### Unit I: "Criminals" in the immigration system

#### *Week 2: Crime-based grounds of removal*

- Guest lecture by Katherine Evans, University of Minnesota Law School
- INA § 212(a)(2)
- INA § 237(a)(2)
- INA § 101(a)(43)
- García Hernández 23-66
- *Mellouli v. Lynch*, 135 S. Ct. 1980 (2015)

#### *Week 3: Relief from crime-based removal*

- Guest Lecture by Carlos M. García, García & García Attorneys at Law, P.L.L.C.
- INA § 240A
- 8 C.F.R. § 1240.8(d)
- García Hernández 67-91
- Prosecutorial Discretion
  - *United States v. Nava-Martinez*, No. B-13-441-1, slip op. (S.D. Tex. Dec. 13, 2013) (<http://www.scribd.com/doc/192557927/Judge-Hanen-Order-on-Child-Smuggling>)
- Immigration Court Practice Manual, Sample Cover Page, appx. F (<http://www.justice.gov/eoir/vll/OCIJPracManual/appendix.html>) (reference for use on first writing assignment)

#### *Week 4: Immigration Detention*

- INA § 236

- INA § 241
- INA § 287
- García Hernández 93-110
- Mark Noferi, Cascading Constitutional Deprivation: The Right to Appointed Counsel for Mandatorily Detained Immigrants Pending Removal Proceedings, 18 Mich. J. Race & Law 63, 75 (2012) (graphical display, “Detention Pending Removal Proceedings”)
- Andrea Saenz, *Not Dangerous, But Too Poor to Get Out of Detention*, crimmigration.com (September 8, 2015) (<http://crimmigration.com/2015/09/08/not-dangerous-but-too-poor-to-get-out-of-detention/>)
- Michael Kagan, *Immigration Arrests Violate the Fourth Amendment*, crimmigration.com (November 11, 2015) (<http://crimmigration.com/2015/11/12/immigration-arrests-violate-the-fourth-amendment/>)

*Unit II: “Migrants” in the criminal justice system*

*Week 5: Who is prosecuted and how are they identified?*

- Incidence of immigrants committing crime
  - Jacob I. Stowell & Stephanie M. DiPietro, *Ethnicity, Crime, and Immigration in the United States: Crimes By and Against Immigrants*, in THE OXFORD HANDBOOK OF ETHNICITY, CRIME, AND IMMIGRATION 505, 505-513 (Sandra M. Bucerius & Michael Tonry eds. 2014) (available on TWEN)
- Differing approaches to noncitizen criminal defendants
  - Ingrid V. Eagly, *Criminal Justice for Noncitizens: An Analysis of Variation in Local Enforcement*, 88 NEW YORK UNIVERSITY LAW REVIEW 1126, 1146-1223 (2013)

*Week 6: Sixth Amendment Right to Counsel*

- U.S. Const. amend. xi
- Padilla v. Kentucky, 130 S.Ct. 1473 (2010)
- García Hernández 111-133

*Week 7: Sixth Amendment Right to Counsel (continued)*

- Federal Rule of Criminal Procedure 11(b)(1)(O)
- García Hernández 133-145
- People v. Corrales-Castro, 2015 WL 1650923 (Colo. Ct. App. March 26, 2015), *cert. denied*, 2015 WL 5215964 (Colo. Sept. 18, 2015)

*Week 8: Federal immigration crimes*

- INA § 275
- INA § 276
- García Hernández 147-178
- Recent data on prosecutions (TBD)
- Watch *Dan Rather Reports: Operation Streamline* (May 14, 2013) (<https://vimeo.com/67640573>)

*Week 9: State immigration crimes*

- García Hernández 179-210
- Stephen Lee, *De Facto Immigration Courts*, 101 CALIFORNIA LAW REVIEW 553, 553-596 (2013)

*Unit III: Enforcing Immigration*

*Week 10: The border*

- Dane Schiller, *Marine's Shooting of Youth Still Haunts Border*, San Antonio Express-News (May 20, 2006), at 1A
- García Hernández 213-237
- TOM MILLER, BORDER PATROL NATION: DISPATCHES FROM THE FRONT LINES OF HOMELAND SECURITY 10-31 (2014) (available on TWEN)

*Week 11: Immigration imprisonment*

- Map: Immigration detention facilities, 1981-2011 (<http://investigativereportingworkshop.org/investigations/immigration-detention/htmlmulti/immigration-detention-map/>)
- Malik Ndaula with Debbie Satyal, "Rafiu's Story," in KEEPING OUT THE OTHER (Brotherton and Kretsedemas eds. 2008) (pp. 241-257) (available on TWEN)
- Justifications
  - "Proportionality and Hard-Core Public Security Detention," in DANIEL WILSHER, IMMIGRATION DETENTION: LAW, HISTORY, POLITICS 340-342 (2012)
- Jennifer M. Chacón, *Immigration Detention: No Turning Back?*, THE SOUTH ATLANTIC QUARTERLY (2014) ([http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2553535](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2553535))
- Mariela Olivares, *Intersectionality at the Intersection of Profiteering and Immigration Detention*, -- NEBRASKA LAW REVIEW -- (forthcoming 2016) (to be distributed in advance of class meeting)

*Week 12: State involvement in immigration law enforcement*

- García Hernández 257-273

*Week 13: Immigration Law in Colorado*

- Pre-*Padilla*: *People v. Pozo*, 746 P.2d 523 (Colo. 1987) (en banc)
- Fourth Amendment
  - Dan Frosch, *Paying Taxes, and Fearing Deportation*, NEW YORK TIMES (Feb. 1, 2009), at A9, 2009 WLNR 1939283
  - *People v. Gutierrez*, 222 P.3d 925 (Col. 2009) (en banc)
- Enforcement:
  - Colorado Rev. Stat. Ann. §§ 29-29-101, 102, 103 (2006) (please read the 2006 version of these sections and the current version effective April 26, 2013 as amended by Colorado House Bill 13-1258)
  - Colorado House Bill 13-1258 ([http://www.leg.state.co.us/clics/clics2013a/csl.nsf/fsbillcont/CCB0348136D717C387257AEE00584327?Open&file=1258\\_01.pdf](http://www.leg.state.co.us/clics/clics2013a/csl.nsf/fsbillcont/CCB0348136D717C387257AEE00584327?Open&file=1258_01.pdf))

*Week 14: Post-Removal*

- Charles R. Venator Santiago, *Deporting Dominicans*, 14 HARVARD LATINO LAW REVIEW 359 (2011)
- Amy Bracken, *No Mercy: Haitian Criminal Deportees*, NACLA 6-10 (September/October 2009) (2009 WLNR 20558070)
- Katie Dingeman-Cerda & Rubén G. Rumbaut, *Unwelcome Returns: The Alienation of the New American Diaspora in Salvadoran Society*, in THE NEW DEPORTATIONS DELIRIUM: INTERDISCIPLINARY RESPONSES 227-250 (Daniel Kanstroom & M. Brinton Lykes eds., 2015) (available on TWEN)