

PLENARY POWER: TEACHING THE IMMIGRATION LAW OF THE TERRITORIES

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I. INTRODUCTION

*Humberto Marchand: “You’re denying me? You’re denying me
because I have a driver’s license which is a valid ID.”*

*Hertz Employee: “What’s your first and last name? . . . Would you
like me to call the police?”¹*

In May of 2023, Humberto Marchand attempted to rent a car from the Hertz rental car company at the New Orleans International Airport.² When he arrived, employees of the company refused to accept his Puerto Rican driver’s license, suggesting that he was a foreign national and insisting on seeing his passport.³ When Marchand pressed acceptance of his validly-issued form of U.S. identification, a Hertz employee called law enforcement.⁴ The responding officer directed Marchand to leave.⁵ According to Marchand, the officer threatened Marchand that if he

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1. David Begnaud (@DavidBegnaud), X (May 13, 2023, 7:03 PM), <https://twitter.com/DavidBegnaud/status/1657521972031676416>.

2. David Begnaud, *Hertz Apologizes for Denying Puerto Rican Man Car Because He Didn’t Have His Passport*, CBS NEWS, <https://www.cbsnews.com/news/hertz-apologizes-denying-puerto-rican-man-rental-car-new-orleans-passport-humberto-marchand/> (May 15, 2023, 1:45 PM) [hereinafter *Hertz Apologizes*].

3. *Id.*

4. *Id.*; Begnaud (@DavidBegnaud), *supra* note 1.

5. *Hertz Apologizes*, *supra* note 2.

did not comply, the officer would contact “the border authorities,” if necessary.⁶

Humberto Marchand, like the vast majority of the more than three million residents of Puerto Rico,⁷ is a U.S. citizen.⁸ Yet, the ignorance of the Hertz employee, and allegedly the Louisiana police officer, is typical of many Americans who do not recognize that Puerto Rico is a part of the United States—inhabited by fellow Americans. According to a 2017 poll, almost half of the Americans surveyed did not know that Puerto Ricans are citizens of the United States.⁹ So significant is this misunderstanding that following the experience of Humberto Marchand and others, the Puerto Rican Government announced in 2023 that it would begin issuing driver’s licenses with the endorsement “USA” next to “Puerto Rico.”¹⁰

Of the five populated U.S. territories, Puerto Rico is the most populous and is the closest in proximity to the U.S. mainland. American Samoa, Guam, the Northern Mariana Islands, and the U.S. Virgin Islands are even more unknown to many U.S. citizens. There is clearly a need for greater study of and education on the territories. Encouraging signs are evident in the law of the territories’ recent resurgence in law scholarship and legal education.¹¹ This Article is part of a symposium and accompanying journal issued to highlight pedagogy related to the law of the territories. In it, I argue that immigration law professors have a

6. *Id.*

7. DPO5, *ACS Demographic and Housing Estimates, 2019: ACS 5-Year Estimate Data Profiles*, U.S. CENSUS BUREAU, <https://data.census.gov/table/ACSDP5Y2019.DP05?q=dp05%20puerto%20rico> (last visited Sept. 30, 2024) [hereinafter *Puerto Rico Table DP05*].

8. Alexandra C. Rivera-González et al., *The Other US Border: Health Insurance Coverage Among Latino Immigrants in Puerto Rico*, 40 HEALTH AFFS. 1117, 1117 (2021) (noting that about 3% of Puerto Rico’s population is foreign-born and that there are an estimated 30,000 undocumented immigrants on the island).

9. Claire Hansen, *Poll Finds Americans Don’t Know Puerto Ricans Are Citizens*, U.S. NEWS & WORLD REP. (Sept. 26, 2017), <https://www.usnews.com/news/national-news/articles/2017-09-26/almost-half-of-americans-dont-know-puerto-ricans-are-us-citizens-poll>.

10. Kiko Martinez, *Here’s Why Puerto Rico is Adding ‘USA’ to Driver’s Licenses*, REMEZCLA (Oct. 11, 2023, 11:31 AM), <https://remezcla.com/culture/heres-why-puerto-rico-is-adding-usa-to-drivers-licenses/>; see also Ingrid Cruz, *Spirit Airlines in Hot Water After Denying Service to Puerto Rican Family — Here’s Why*, REMEZCLA (May 19, 2023, 11:52 AM), <https://remezcla.com/culture/spirit-airlines-in-hot-water-after-denying-service-to-puerto-rican-family-heres-why/>.

11. See *U.S. Territories*, YALE L.J., <https://www.yalelawjournal.org/tag/us-territories> (last visited Sept. 24, 2024); see also *U.S. Territories*, HARV. L. REV., <https://harvardlawreview.org/topics/us-territories/> (last visited Sept. 24, 2024). See generally Cori Alonso-Yoder, *Imperialist Immigration Reform*, 91 FORDHAM L. REV. 1623 (2023).

special responsibility to integrate study of the law of territories into the immigration law curriculum. As one group of researchers put it when discussing the paucity of inquiries related to issues of immigration in Puerto Rico, “US border . . . research has largely overlooked the island.”¹²

Indeed, a survey of the most influential immigration law casebooks reveals no focused attention on the immigration law of the territories.¹³ Instead, these sources generally teach that there is one system of immigration regulation that falls under the U.S. federal government, ignoring the existence of local immigration controls in the territories. While these same sources do touch on territorial law when discussing the status of non-citizen nationals, a legal condition unique to Americans born in the territory of American Samoa, they omit entirely the remarkable fact that American Samoa regulates its own form of immigration law.¹⁴ These sources also neglect to mention that since entering into a political union with the United States in the 1970s, the Commonwealth of the Northern Mariana Islands has never fully incorporated federal immigration law.¹⁵ The very existence of these separate immigration regulatory schemes strikes against core concepts of immigration doctrine taught on a daily basis throughout the country. Yet, immigration professors and scholars barely acknowledge them.

This Article proceeds in three Parts. Part II introduces some of the central concepts from U.S. immigration law to suggest how the law of the territories illustrates the subjects presently taught in immigration law coursework. Part III describes the current

12. Rivera-González et al., *supra* note 8.

13. See generally KIT JOHNSON, IMMIGRATION LAW: AN OPEN CASEBOOK (2d ed. 2023); T. ALEXANDER ALEINIKOFF ET AL., IMMIGRATION AND CITIZENSHIP: PROCESS AND POLICY (9th ed. 2020) [hereinafter IMMIGRATION AND CITIZENSHIP 9th ed.]; STEPHEN H. LEGOMSKY & DAVID B. THRONSON, IMMIGRATION AND REFUGEE LAW AND POLICY (7th ed. 2019).

14. JOHNSON, *supra* note 13, at 536 (synthesizing 8 U.S.C. §§ 1101(a)(29), 1408, and Immigration and Nationality Act §§ 101(a)(29), 308(1)); LEGOMSKY & THRONSON, *supra* note 13, at 6; U.S. GOV'T ACCOUNTABILITY OFF., GAO-10-638, AMERICAN SAMOA: PERFORMING A RISK ASSESSMENT WOULD BETTER INFORM U.S. AGENCIES OF THE RISKS RELATED TO ACCEPTANCE OF CERTIFICATES OF IDENTITY 11 (2010), <https://www.gao.gov/assets/gao-10-638.pdf>.

15. See *U.S. Immigration Law in the Commonwealth of the Northern Mariana Islands (CNMI)*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/laws-and-policy/other-resources/us-immigration-law-in-the-commonwealth-of-the-northern-mariana-islands-cnmi> (Oct. 11, 2024) (indicating that while the 2008 Consolidated Natural Resources Act “extended most provisions of U.S. immigration law to the Commonwealth of the Northern Mariana Islands,” the transition period for implementation has been extended through December 31, 2029).

state of immigration law in the five inhabited U.S. territories, while summarizing the history of U.S. involvement, geography, and relevant demographics in each. Part IV proposes how immigration law professors can present and teach the immigration law concepts introduced in Part II through the existing curriculum. The Article concludes with resources for legal educators in the form of an Appendix with a sample syllabus that builds on existing immigration topics by integrating materials relevant to the territories and a sample exercise applying the immigration law of the territories.

In doing so, the Article demonstrates how the central concept in immigration law—the political branches’ plenary power to regulate immigration—is also foundational in the application of territorial law. By studying these areas of law together, students and professors can begin to better understand immigration law’s reach while improving familiarity with and knowledge of how law operates in the territories. This not only enhances students’ learning of the law; it also interrupts what Professor Maggie Blackhawk terms the law of American colonialism as “fractured and siloed,” thereby “avoiding the backlash and retrenchment seen in areas of race, gender, and LGBTQIA+ constitutional reform.”¹⁶ As Professor Jennifer Chacón observes in her response to Professor Blackhawk, “[a]mple intellectual space remains for analyzing the operation of immigration law in the context of U.S. colonialism,”¹⁷ and “we must continue to fight for the teaching of the histories of the borderlands.”¹⁸ This Article shares that perspective and invites immigration law professors to broaden their curriculum to account for the immigration law of the territories.

II. CONSTITUTIONAL PLENARY POWER AND FOUNDATIONAL IMMIGRATION LAW DOCTRINE

Much of the foundational doctrine in immigration law is tied to questions of constitutional law and federalism. Students in immigration courses spend a fair amount of their studies

16. Maggie Blackhawk, *Foreword: The Constitution of American Colonialism*, 137 HARV. L. REV. 1, 12 (2023).

17. Jennifer M. Chacón, *Legal Borderlands and Imperial Legacies: A Response to Maggie Blackhawk's The Constitution of American Colonialism*, 137 HARV. L. REV. F. 1, 9 n.57 (2023).

18. *Id.* at 21.

understanding the separation of powers as it relates to federal versus state and local authority to regulate immigration. Professors also teach from sources that explain the limit of judicial intervention on matters of immigration law. Increasingly, materials that highlight the salience of race in U.S. law and policy feature prominently in immigration coursework.

This Part provides a general survey of some of the key aspects of immigration law. It begins by exploring the historical antecedents that established immigration policy, including the doctrinal justifications for determining the separation of powers in immigration law. These precedents continue today and restrict judicial review while concentrating law reform and enforcement in the political branches of the federal government. This Part begins with the historical and jurisprudential contexts for modern immigration law. It proceeds with concepts categorized around the three main buckets of immigration law that exist today: employment-based immigration, family-based immigration, and humanitarian protections.

A. Regulation of Immigration & the U.S. Constitution

The starting point for the instruction of immigration law varies among academic resources. Some begin with the European disruption of Native American settlement while others focus on the modern United States. Immigration regulation, however, has been largely influenced by race, and this trend must be understood alongside the federal government maintaining the authority to regulate immigration law.

1. Immigration Law Precursors: Open Frontier Versus Indigenous Dispossession

Many immigration law casebooks proceed from a chronological accounting of U.S. immigration regulation within a historical context.¹⁹ Some authors begin the timeline with the modern United States already formed noting that “[u]ntil the late 1800s, United States immigration law was largely a matter for the states.”²⁰ These accounts tend to focus on European settlement,

19. See generally IMMIGRATION AND CITIZENSHIP 9th ed., *supra* note 13; LEGOMSKY & THRONSON, *supra* note 13.

20. LEGOMSKY & THRONSON, *supra* note 13, at 2.

explaining that from the founding of the country in 1776 until 1875, the country was an “open frontier” with “generally unimpeded immigration.”²¹ Others move the timeline earlier, recognizing the existence of Native Americans in the areas European settlers colonized and noting how today’s Native Americans “sometimes joke that the ‘Indians had bad immigration laws.’”²² Jokes aside, Professor Maggie Blackhawk observes how far from restricting immigration, the laws of the European colonists promoted unfettered immigration of settlers to displace Native nations:

From the earliest days of the United States, illegal settlement and military violence disrupted Native nations and plundered Native lands—violence and dispossession justified, in part, under the “Doctrine of Discovery” rooted in *terra nullius*, a law-of-nations principle that lands held by non-Christian savages were “vacant,” eligible for “discovery” by civilized, Christian peoples, as well as the origins of conquest.²³

By using legal concepts that dispossessed Native peoples, early European settlement relied on the free flow of immigrants from Europe to establish individual property rights under state-sanctioned violence in order to make the nation.

2. The Role of Race in Immigration Regulation

While few immigration law courses take up this history in more detail, understanding immigration within the larger context of racial subjugation is an important topic, particularly in analyzing the eventual exercise of U.S. control over the nation’s overseas territories. Teaching students this history is critical to exposing the development of immigration law within the larger social, legal, and economic systems of white supremacy. As settlers continued to dispossess and decimate Native inhabitants, the economic system of the nation also began to rely on the forced migration of enslaved Africans. The earliest restriction on

21. *Id.* at 15.

22. See T. ALEXANDER ALEINIKOFF ET AL., IMMIGRATION AND CITIZENSHIP: PROCESS AND POLICY 3 (8th ed. 2016) [hereinafter IMMIGRATION AND CITIZENSHIP 8th ed.] (quoting LAWRENCE H. FUCHS ET AL., SELECT COMM’N ON IMMIGR. AND REFUGEE POL’Y, U.S. IMMIGRATION POLICY AND THE NATIONAL INTEREST 162 (1981)).

23. Blackhawk, *supra* note 16, at 28.

movement to the United States related to ending the transatlantic slave trade and was accounted for in the U.S. Constitution²⁴ and in the “Act Prohibiting the Importation of Slaves” in 1808.²⁵

Yet, few immigration professors teach this legislation as forming part of the canon of immigration law, and most point to the 1882 Chinese Exclusion and Immigration Acts as the dawn of American legislation restricting immigration to the United States.²⁶ While many professors omit discussion of the 1808 Act based on the distinction between restrictions on voluntary and involuntary migration, both the 1808 and 1882 acts demonstrate how restrictions on movement were designed around racial lines from the beginning. The undercurrent of racist sentiment is well-documented in the later enactments, particularly in the overtly titled Chinese Exclusion Act. In 1889, the U.S. Supreme Court blessed the legislation and affirmed the political power of the federal government to exclude Chinese nationals.²⁷ In a decision rendered by the same court that would decide *Plessy v. Ferguson*, and the *Insular Cases*,²⁸ the Court determined that the federal government was empowered to “preserve its independence, and give security against foreign aggression and encroachment . . . from vast hordes . . . crowding in upon us.”²⁹ This power, while not explicitly enumerated in the Constitution, derived from the federal government’s naturalization power, war power, foreign affairs power, and as an incident of sovereignty.³⁰ The Court went on to explain that in this arena, the federal government’s determination “is conclusive upon the judiciary.”³¹

This language from *Chae Chan Ping v. United States*, also known as the *Chinese Exclusion Case*, would come to stand for the proposition that the federal government enjoys “plenary power” in

24. See U.S. CONST. art. I, § 9, cl. 1.

25. *An act to prohibit the importation of slaves into any port or place within the jurisdiction of the United States, from and after the first day of January, in the year of our Lord, one thousand eight hundred and eight . . . March 2, 1810. Approved.*, LIBR. CONG., <https://www.loc.gov/item/2020767984/> (last visited Sept. 30, 2024).

26. See HIROSHI MOTOMURA, *AMERICANS IN WAITING: THE LOST STORY OF IMMIGRATION AND CITIZENSHIP IN THE UNITED STATES* 16–17 (2006).

27. *Chae Chan Ping v. United States (The Chinese Exclusion Case)*, 130 U.S. 581, 603–04 (1889); see also *Chy Lung v. Freeman*, 92 U.S. 275, 279–80 (1875) (striking down a California exclusion law for infringing on Congress’ authority to regulate foreign commerce).

28. See Alonso-Yoder, *supra* note 11, at 1632.

29. *The Chinese Exclusion Case*, 130 U.S. at 606.

30. *Id.* at 603–04.

31. *Id.* at 606.

determining immigration law.³² It remains good law today and explains in large part why most of the United States is subject to a uniform system of immigration at the federal level. Today, the federal government wields its broad control of immigration law to express priorities for certain forms of immigration. The Sections below categorize those priorities according to three principal categories of immigration that are taught in most immigration law courses: employment, family, and humanitarian protections.

B. Employment: Foreign Labor Importation

The Chinese Exclusion Act passed into law after concerted efforts by U.S. interests to facilitate migration of Chinese nationals to the United States to labor in various industries, most notably, the transcontinental railroad.³³ When the railroad was completed, Chinese laborers were regarded as undesirable and expendable.³⁴ Mutual interest in foreign labor in the United States has led to a series of employment-based immigration categories. Today, employment-based permanent immigration³⁵ is provided for, as is employment-based status for nonimmigrant, or temporary workers.³⁶ Both programs are highly restrictive, burdensome, and politically charged.

C. Family-Based Immigration

The modern immigration program for uniting family members bloomed out of the post-World War II era. While immigration laws had become quite restrictive, particularly given the implementation of racist national origin quotas in the 1924 Immigration Act,³⁷ some of these restrictions were eased to allow for the entry of spouses and children of American servicemen.³⁸

32. *Id.* at 603–04, 606, 608.

33. *Hall of Honor Inductee: The Chinese Railroad Workers*, U.S. DEPT LAB., [https://www.dol.gov/general/aboutdol/hallofhonor/2014_railroad#:~:text=The%20Chinese%20Railroad%20Workers%20\(1865,engineering%20feats%20in%20American%20history](https://www.dol.gov/general/aboutdol/hallofhonor/2014_railroad#:~:text=The%20Chinese%20Railroad%20Workers%20(1865,engineering%20feats%20in%20American%20history) (last visited Sept. 30, 2024).

34. *See* MOTOMURA, *supra* note 26, at 16–17 (recounting the history of anti-Chinese sentiment leading up to the passage of the Chinese Exclusion Act).

35. *See* 8 U.S.C. §§ 1153(b), 1154(e), 1255.

36. *See id.* §§ 1101(a)(15)(A), (C)–(E), (G)–(I), (L), (O)–(Q).

37. Immigration Act of 1924, Pub. L. No. 68-139, 43 Stat. 153 (repealed 1965).

38. *See* LEGOMSKY & THRONSON, *supra* note 13, at 17–18 (referencing the War Brides Act and Fiancées Act).

Today's immigration system is notoriously long and labyrinthine with certain family categories backlogged by decades.³⁹

D. Humanitarian Protections

Another innovation of the post-World War II era was the expansion of immigration pathways for humanitarian-based reasons. The 1948 Displaced Persons Act admitted roughly 400,000 war refugees into the United States.⁴⁰ In 1951, the recently formed United Nations adopted the Convention Relating to the Status of Refugees.⁴¹ The United States did not sign the Convention until 1968 when it became an indirect party through the endorsement of the U.N.'s 1967 Protocol Relating to the Status of Refugees.⁴² The 1980 Refugee Act incorporated these international commitments into federal law.⁴³ Despite these efforts to liberalize the immigration system to allow for humanitarian benefits, the more general trend in immigration law continued to be one of restriction. As a result, a new series of immigration protections for compelling humanitarian needs continued into the 1990s. The 1994 Violence Against Women Act created immigration relief for certain survivors of domestic violence.⁴⁴ The 2000 Victims of Trafficking and Violence Protection Act also created an immigration status provision for survivors of human trafficking and certain crime victims.⁴⁵

III. OVERVIEW OF THE U.S. TERRITORIES

It bears noting at the outset that while the territories have largely been reduced to a singular political and legal status at the federal level, they are in fact separated by thousands of miles of geography and disparate cultural traditions. U.S. immigration law

39. See *Visa Bulletin for April 2024*, U.S. DEP'T. OF STATE, BUREAU CONSULAR AFFS. 1–3 (Mar. 4, 2024), <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin/2024/visa-bulletin-for-april-2024.html> (indicating that visas issued in April 2024 to married sons and daughters of U.S. citizens went to applicants from September 1998).

40. LEGOMSKY & THRONSON, *supra* note 13, at 17–18.

41. Convention Relating to the Status of Refugees, *opened for signature* July 28, 1951, 19 U.S.T. 6259, 189 U.N.T.S. 137.

42. Protocol Relating to the Status of Refugees, *opened for signature* Jan. 31, 1967, 19 U.S.T. 6223, 606 U.N.T.S. 267.

43. See Refugee Act of 1980, Pub. L. No. 96-212, 94 Stat. 102.

44. See Violence Against Women Act of 1994, Pub. L. No. 103-322, 108 Stat. 1902.

45. See Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464; see also 8 U.S.C. § 1101(a)(15)(T)–(U).

also pretends to treat foreign nationals in a uniform manner despite a series of historical precedents that have done quite the opposite. Today, only three of the five U.S. territories apply federal immigration law. American Samoa and the Commonwealth of the Northern Mariana Islands still rely on their own forms of local immigration authority,⁴⁶ though the Marianas are in a transition period toward full federal incorporation.⁴⁷ Four of the five allow for U.S. citizenship by birth to those who are born in the territories.⁴⁸ American Samoa retains the unique status of U.S. national for its inhabitants.⁴⁹ This deviation from U.S. immigration and nationality law is tied to race, culture, and political and historical considerations in the U.S. approach to the territories.

This Part gives an overview of the legal framework governing the territories and introduces each of the U.S. territories in the chronological order in which they came under the colonial rule of the United States.⁵⁰ It lays forward specifics about the geography, demographics, and pertinent aspects of immigration law today.

Colonialism has been the organizing force propelling the formation of the United States since the earliest days of European settlement, and the experience of the country's modern colonies reflects a variation on that theme. Initially, the country used the process of territorial expansion to expand white settlement into what is today the Western United States. Under this process, territories were presumed to be on the trajectory to eventually become new states of the Union.⁵¹ This process was supported by the U.S. Constitution, which laid out a provision for the incorporation of new states into the nation and gave broad

46. See David North, *What Can America Learn from the Immigration Rules of American Samoa?*, CTR. FOR IMMIGR. STUDS. (Nov. 21, 2023), <https://cis.org/North/What-Can-America-Learn-Immigration-American-Samoa>; Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, Pub. L. No. 94-241, 90 Stat. 263 (1976) (codified at 48 U.S.C. § 1801).

47. *U.S. Immigration Law in the Commonwealth of the Northern Mariana Islands (CNMI)*, *supra* note 15.

48. Natasha Frost, *People born in American Samoa, which has been held by the United States for more than 120 years, are not automatically citizens of the United States*, N.Y. TIMES (Nov. 25, 2022), <https://www.nytimes.com/2022/11/25/world/australia/american-samoa-birthright-citizenship.html>.

49. North, *supra* note 46.

50. This timeline is not meant to denigrate the important histories and cultural patrimonies that predated U.S. intervention in the territories. This Article merely adopts the U.S. "gaze" toward the territories in as far as it is a study of the operation of federal constitutional and immigration law in the territories.

51. See Kristina M. Campbell, *Citizenship, Race, and Statehood*, 74 RUTGERS UNIV. L. REV. 583, 585 (2021).

authority to Congress to work with state legislatures to decide on the admission of new states.⁵² This territory-to-statehood process generally applied to the U.S. acquisition of new territories in the nineteenth century, though questions of race, ethnicity, and language at times led to delays in the grant of statehood.⁵³

The Constitution also gave Congress the power to “dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States.”⁵⁴ This clause created a legal proposition under which “[f]ederal power is theoretically plenary and unlimited with respect to the territories.”⁵⁵ The resulting doctrine that legal scholars have identified as Congress’ “plenary power” to regulate the territories was strengthened by an infamous series of cases in the early twentieth century.⁵⁶

Resulting from the U.S. victory over the Spanish in the Spanish-American War, the United States in 1898 entered into a new era of territorial expansion and imperialist experimentation.⁵⁷ As the spoils of war, the United States took possession of Guam, Puerto Rico, and the Philippines.⁵⁸ While prior territorial endeavors had generally rested on westward expansion premised on white settlement, these new non-contiguous territories were populated by non-white residents who differed in language, custom, and geography. Law and policy soon deviated from many

52. U.S. CONST. art. IV, § 3, cl. 1 (“New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.”).

53. See, e.g., Kathleen Ferris, *Racism as an Impediment to Statehood*, UNIV. N.M. DIGIT. REPOSITORY (Sept. 9, 2011), <https://digitalrepository.unm.edu/cgi/viewcontent.cgi?article=1002&context=nmstatehood2> (comparing the 62 years it took for New Mexico’s majority Mexican and Indigenous population to achieve statehood to the experiences of other Western States that varied from 14 to 46 years).

54. U.S. CONST. art. IV, § 3, cl. 2.

55. ARNOLD H. LEIBOWITZ, *DEFINING STATUS: A COMPREHENSIVE ANALYSIS OF UNITED STATES TERRITORIAL RELATIONS* 110 (1989).

56. See cases cited *infra* note 60.

57. *Spanish American War*, HISTORY (May 2, 2022), <https://www.history.com/topics/early-20th-century-us/spanish-american-war>.

58. See Treaty of Peace Between the U.S. and Spain, Spain-U.S., art. II, Dec. 10, 1898, LIBR. CONG., <https://catalog.loc.gov/vwebv/citeRecord?searchId=12319&recPointer=0&recCount=25&searchType=1&bibId=8722052> [hereinafter Treaty of Paris] (“Spain cedes to the United States the island of Porto Rico and other islands now under Spanish sovereignty in the West Indies, and the island of Guam in the Marianas or Ladrones.”); see also *Spanish American War*, *supra* note 57. The Philippines would eventually gain independence from the United States on July 4, 1946. See Philippine Independence Act of 1934, ch. 84, 48 Stat. 456, <https://govtrackus.s3.amazonaws.com/legislink/pdf/stat/48/STATUTE-48-Pg456.pdf>.

norms with regard to its treatment of the new territorial possessions. Three days after the treaty that ended the war, the United States established a Division of Customs and Insular Affairs under the Secretary of War “to administer customs and civil affairs in the islands acquired by the United States.”⁵⁹ Policies that suspended the extension of political and legal rights in the islands were concretized in what would come to be known as the *Insular Cases*.⁶⁰

It bears noting, for this pedagogical Article, that judicial reckoning with the question of the legal status of these territories followed a lively scholarly debate by some of the nation’s most prominent legal educators of the time.⁶¹ Dean Christopher Columbus Langdell of Harvard Law School, who is credited with establishing the casebook method of legal education that still dominates the curriculum today, reasoned that: “None of these islands have been acquired with a view to their being admitted as States, and it is to be sincerely hoped that they never will be so admitted, *i.e.*, that they will never be permitted to share in the government of this country.”⁶²

This concept—that the territories were not intended by the national government to become part of the greater United States—would form the basis of the territorial incorporation doctrine. Justice Edward D. White’s concurring opinion in *Downes v. Bidwell* embraced this differentiation between territories bound

59. *Records of the Bureau of Insular Affairs (Record Group 350) 1868-1945*, NAT’L ARCHIVES, <https://www.archives.gov/research/guide-fed-records/groups/350.html#350.1> (last visited Sept. 24, 2024).

60. While some scholars include decisions regarding the territories made well into the late twentieth century as comprising the *Insular Cases*, the series of cases decided immediately following the conclusion of the Spanish-American War are most widely regarded as making up the *Insular Cases*. According to Judge Juan Torruella, they include *De Lima v. Bidwell*, 182 U.S. 1 (1901); *Goetze v. United States*, 182 U.S. 221 (1901); *Dooley v. United States*, 182 U.S. 222 (1901); *Armstrong v. United States*, 182 U.S. 243 (1901); *Downes v. Bidwell*, 182 U.S. 244 (1901); and *Huus v. N.Y. & P.R. Steamship Co.*, 182 U.S. 392 (1901). Juan R. Torruella, *The Insular Cases: The Establishment of a Regime of Political Apartheid*, 29 UNIV. PA. J. INT’L L. 283, 284 n.4 (2007).

61. See Simeon E. Baldwin, *The Constitutional Questions Incident to the Acquisition and Government by the United States of Island Territory*, 12 HARV. L. REV. 393, 394 (1899) (arguing for the application of constitutional law in the territories with full vigor through a combination of the Territorial Clause and the Privileges and Immunities Clause of the Constitution); see also James Bradley Thayer, *Our New Possessions*, 12 HARV. L. REV. 464, 466–67 (1899) (positing that the Constitution affords the federal government “[the] legal, constitutional power to govern these islands as colonies, substantially as England might govern them” because this would “teach[] nations how to live”).

62. C. C. Langdell, *The Status of Our New Territories*, 12 HARV. L. REV. 365, 391 (1899).

for statehood—incorporated territories—and the country’s new island possessions.⁶³ When determining the reach of the Constitution to protect the rights of Puerto Ricans, Justice White concluded that Congress had not acted to incorporate the island for statehood in the Treaty of Paris.⁶⁴ As a result, the Constitution’s reach was limited in Puerto Rico. Writing for the plurality opinion, Justice Henry B. Brown more directly addressed the racist underpinnings of the jurisprudential debate:

It is obvious that in the annexation of outlying and distant possessions grave questions will arise from differences of race, habits, laws, and customs of the people, and from differences of soil, climate, and production, which may require action on the part of Congress that would be quite unnecessary in the annexation of contiguous territory inhabited only by people of the same race, or by scattered bodies of native Indians.⁶⁵

Downes v. Bidwell would serve as the leading decision in the series of Supreme Court precedents limiting the rights of territorial residents that would come to be known collectively as the *Insular Cases*.⁶⁶ These cases have yet to be formally overruled and continue to cast a shadow on the application of constitutional law on the five U.S. territories today.

A. Puerto Rico & Guam

As described above, Puerto Rico and Guam both came under U.S. political influence at the conclusion of their colonial relationships with the country of Spain. Both territories were ceded to the United States with the 1898 Treaty of Paris at the conclusion of the Spanish-American War.⁶⁷ Despite this commonality in the circumstances generating their political relationship with the United States, the two territories are separated by thousands of miles of geography, demographics, and population. This Part sets forward these differences as they relate to understanding the operation of immigration law in each.

63. *Downes*, 182 U.S. at 340 (White, J., concurring).

64. *Id.*

65. *Id.* at 282 (plurality opinion).

66. See cases cited *supra* note 60.

67. Treaty of Paris, *supra* note 58.

1. Puerto Rico

As explained in the Introduction, Puerto Rico is the most densely populated of the five U.S. territories with more than three million residents on the island,⁶⁸ the majority of whom are Latino.⁶⁹ The total white non-Hispanic population accounts for 17.1%.⁷⁰ Its proximity to the U.S. mainland—981 miles separate the Puerto Rican city of Aguadilla from Miami, Florida⁷¹—has also created a significant diaspora of Puerto Rican descendants on the U.S. mainland. The Pew Research Center estimates the population of Americans of Puerto Rican descent at about 5.8 million individuals.⁷²

As explained above, the status of Puerto Rico as one of the nation's newest overseas possessions quickly brought the legal question of the rights of the territories under judicial review. Beginning with *Downes v. Bidwell*'s proclamation that Puerto Rico was "foreign to the United States in a domestic sense,"⁷³ a series of cases sought to clarify the legal protections afforded to the island. In 1902, Isabel Gonzalez arrived to New York from Puerto Rico and was detained by U.S. immigration officials.⁷⁴ She was denied entry to the United States as an "alien immigrant" likely to become a public charge.⁷⁵ Gonzalez challenged her detention on the grounds that she was a U.S. citizen.⁷⁶ The Court agreed that Gonzalez should not be excluded from the country, only because she was not an "alien immigrant."⁷⁷ The Court refused to affirm Gonzalez's

68. *Puerto Rico Table DP05*, *supra* note 7.

69. Rivera-González et al., *supra* note 8, at 2.

70. America Counts Staff, *Puerto Rico Population Declined 11.8% From 2010 to 2020*, U.S. CENSUS BUREAU (Aug. 25, 2021), <https://www.census.gov/library/stories/state-by-state/puerto-rico-population-change-between-census-decade.html>.

71. *How Far Is Aguadilla from Miami, FL?*, AIR MILES CALCULATOR, <https://www.airmilescalculator.com/distance/mia-to-bqn/> (last visited Sept. 24, 2024).

72. Mohamad Moslimani et al., *Facts on Hispanics of Puerto Rican Origin in the United States, 2021*, PEW RSCH. CTR. (Aug. 16, 2023), <https://www.pewresearch.org/hispanic/fact-sheet/us-hispanics-facts-on-puerto-rican-origin-latinos/>.

73. 182 U.S. 244, 341 (1901) (White, J., concurring).

74. *Gonzales v. Williams*, 192 U.S. 1, 7 (1904); *see also* Brief of the Descendants of Dred Scott and Isabel Gonzalez as Amici Curiae Supporting Petitioners at 1, *Fitisemanu v. United States*, 143 S. Ct. 362 (2022) (No. 21-1394). While the Supreme Court named the Petitioner "Isabella Gonzales," I use the name acknowledged by her familial descendants in their amicus brief, Isabel Gonzalez.

75. *Gonzales*, 192 U.S. at 7.

76. *Id.* at 12.

77. *Id.* at 13.

contention that she was a citizen, and U.S. citizenship for the people of Puerto Rico was not settled until 1917.⁷⁸

In that year, the Jones Act finally conferred citizenship on the residents of Puerto Rico.⁷⁹ It provided for a kind of opt-out to Congress' blanket naturalization of the people of Puerto Rico,⁸⁰ offering an oath requirement whereby a resident could avoid U.S. citizenship by making a declaration in federal court to "retain his present political status."⁸¹ Notably, this provision did not account for birthright citizenship.⁸² Congress finally established citizenship for Puerto Ricans born in the territory with the Nationality Act of 1940.⁸³ Section 202 of that law provided that:

All persons born in Puerto Rico on or after April 11, 1899, subject to the jurisdiction of the United States, residing on the effective date of this Act in Puerto Rico or other territory over which the United States exercises rights of sovereignty and not citizens of the United States under any other Act, are hereby declared to be citizens of the United States.⁸⁴

Today, birthright citizenship in Puerto Rico continues under congressional enactment, and no court decision has ever affirmed birthright citizenship for Americans born in Puerto Rico under the Fourteenth Amendment to the U.S. Constitution.⁸⁵ The 1940 Nationality Act also affirmed the definition of Puerto Rico as part of the United States in a "geographical sense,"⁸⁶ and today immigration law operates in the territory in roughly the same fashion as in the fifty states. The largest immigrant group on the island is represented by 100,000 Dominican nationals, approximately 30,000 of whom are undocumented.⁸⁷

78. *See* Puerto Rican Federal Relations (Jones) Act, ch. 145, 39 Stat. 951, 953 (1917).

79. *Id.*

80. *See* 8 U.S.C. § 1101(a)(23) ("[N]aturalization' means the conferring of nationality of a state upon a person after birth, by any means whatsoever.").

81. Jones Act, ch. 145, 39 Stat. at 953.

82. *See id.*

83. *See* Nationality Act of 1940, Pub. L. No. 76-853, § 202, 54 Stat. 1137, 1139.

84. *Id.*

85. *See* Brief of the Descendants of Dred Scott and Isabel Gonzalez as Amici Curiae Supporting Petitioners, *supra* note 74, at 3 ("Congress has extended citizenship to those born in the Commonwealth by statute. But no court has confirmed Puerto Ricans' status as birthright citizens under the Constitution.").

86. Nationality Act of 1940 § 101(d).

87. Rivera-González et al., *supra* note 8, at 2.

2. Guam

Guam is located in the Northern Pacific, approximately 8,000 miles from Washington, D.C., and 3,000 miles from the closest U.S. state.⁸⁸ It lies in the southern part of the Mariana Islands chain.⁸⁹ The island had a population of 153,836 people at the time of the most recent census, with a majority non-white populace.⁹⁰ This includes the largest census-created racial group, “Native Hawaiian and Other Pacific Islanders,” totaling 46% of the population.⁹¹ It also includes the majority Chamorro ethnic group at 32.8%.⁹² This category is followed by a large Asian population totaling 35.5%.⁹³ The white residents of the island account for a mere 6.8% of the total population.⁹⁴

When it comes to Guam’s integration into the nation, the U.S. Congress did not provide for a federally-recognized governmental structure on the island until more than fifty years after the territory came under U.S. control.⁹⁵ During that time, the political status of Guam was considered “anomalous, with a military governor holding all legislative, executive and judicial authority over the land.”⁹⁶ The Organic Act of 1950 established Guam as an unincorporated U.S. territory,⁹⁷ drawing on the legal status distinction established with the *Insular Cases*.⁹⁸ The Act also conferred citizenship status on the Guamanians, though by some accounts “Congress to date has acted as if obtaining U.S. citizenship was inconsequential.”⁹⁹ Today, nearly seventy-five years later, Guam still does not have its own constitution, and the

88. LEIBOWITZ, *supra* note 55, at 314.

89. *Id.*

90. *DPI: General Demographic Characteristics, Decennial Census of Island Areas, 2020: DECIA Guam Demographic Profile*, U.S. CENSUS BUREAU, <https://data.census.gov/table/DECENNIALDPGU2020.DP1?d=DECIA%20Guam%20Demographic%20Profile> (last visited Sept. 24, 2024) [hereinafter *Guam Table DPI*].

91. *Id.*

92. *Id.*

93. *Id.*

94. *Id.*

95. See *Guam History*, GUAM (Oct. 11, 2020), <https://guam.com/guam-com/guam-history/>.

96. LEIBOWITZ, *supra* note 55, at 313 (quoting Guam & Tutuila—Mil. Governors—Comm’ns, 25 Op. Att’y Gen. 292 (1904)).

97. *Id.*

98. See Torruella, *supra* note 60, at 284 n.4.

99. LEIBOWITZ, *supra* note 55, at 329.

Organic Act continues to form the legal basis of the relationship between Guam and the U.S. Government.

In terms of immigration, Guam's entry requirements "are the same as for any U.S. destination."¹⁰⁰ But the foreign-born share of Guam is not at all like the general foreign-born population of the United States. According to the selected data from the 2020 census, the foreign-born population of Guam is 50,374 individuals¹⁰¹ out of a total population of 153,836 people.¹⁰² This means the foreign-born population of Guam accounts for nearly 33% of the total population. The total foreign-born population of the United States is 13.9%.¹⁰³ Of the total foreign-born population in Guam, 31,058 individuals were born in the Philippines,¹⁰⁴ meaning that Filipino immigrants alone account for 20% of the total Guamanian population.

B. American Samoa

Located in the South Pacific Ocean, American Samoa is one of the territories most distant from the contiguous United States. Comprised of seven islands and atolls (including the port town of Pago Pago on the main island of Tutuila), it is over 2,000 miles southwest of Hawaii¹⁰⁵ and nearly 7,000 miles from Washington, D.C.¹⁰⁶ The legal system of the territory is also remarkably distant from the system of laws recognized by most American lawyers. Federal jurisdiction is limited in American Samoa,¹⁰⁷ and the territory is entirely exempt from federal immigration law.¹⁰⁸

100. *Entry & Exit Formalities*, GUAM VISITORS BUREAU, <https://www.visitguam.com/about-guam/entry-and-exit-formalities/> (last visited Sept. 25, 2024).

101. *DP2: Selected Social Characteristics, Decennial Census of Island Areas, 2020: DECIA Guam Demographic Profile*, U.S. CENSUS BUREAU 1, 12, <https://data.census.gov/table/DECENNIALDPGU2020.DP2?d=DECIA%20Guam%20Demographic%20Profile> (last visited Sept. 24, 2024) [hereinafter *Guam Table DP2*].

102. *Guam Table DP1*, *supra* note 90.

103. Jeanne Batalova, *Frequently Requested Statistics on Immigrants and Immigration in the United States*, MIGRATION POL'Y INST. (Mar. 13, 2024), <https://www.migrationpolicy.org/article/frequently-requested-statistics-immigrants-and-immigration-united-states>.

104. *Guam Table DP2*, *supra* note 101, at 14.

105. LEIBOWITZ, *supra* note 55, at 402.

106. Michael W. Weaver, *The Territory Federal Jurisdiction Forgot: The Question of Greater Federal Jurisdiction in American Samoa*, 17 WASH. INT'L L.J. 325, 325 (2008).

107. *Id.*

108. *American Samoa*, U.S. DEP'T INTERIOR, <https://www.doi.gov/oia/islands/american-samoa#:~:text=American%20Samoa%C20came%C20under> (last visited Sept. 26, 2024) ("American Samoa . . . controls its own immigration and border matters.").

American Samoa's unique legal arrangement with the United States originates in part from the distinctive way in which it came under U.S. influence. U.S. interests in the island chain began in the mid-nineteenth century when the area was already subject to the colonizing influences of European powers, most notably the British and German.¹⁰⁹ In 1899, the British, German, and American colonizing powers agreed that Germany and Great Britain would renounce "in favor of the United States of America all . . . rights and claims over and in respect to the Island of Tutuila and all other islands of the Samoan group east of Longitude 171."¹¹⁰

After such a disruptive and exploitative colonial past, it is more than understandable that the people of American Samoa have taken great pride in preserving their cultural practices and maintenance of self-government. Indeed, unlike in the experiences of Guam and Puerto Rico, ethnically indigenous political interests also participated in the U.S. acquisition of the territory.¹¹¹ In 1900 and 1904, Samoan high chiefs (*Matai* in Samoan) formally ceded six of the seven islands in an agreement that would come to form part of the Code of American Samoa.¹¹² As part of this agreement, the United States agreed to "respect and protect the individual rights of all people dwelling in Tutuila to their lands and other property in said District."¹¹³ Another central feature of the agreement permitted inhabitants of American Samoa to retain property rights based on blood ties in a system that persists today.¹¹⁴

The population of American Samoa is 49,710, with ethnic Samoans accounting for 83.2% of the total population.¹¹⁵ The white population totals 0.8%¹¹⁶ and the foreign-born population totals

109. LEIBOWITZ, *supra* note 55, at 413.

110. *Id.* at 414 (quoting Convention for the Adjustment of Jurisdiction in Samoa art. II, Dec. 2, 1899, 31 Stat. 1878).

111. Cession of Tutuila and Anu'u, Tutuila Samoa-U.S., Apr. 17, 1900, *preface to AM. SAMOA CODE ANN.* at 2 (1992).

112. LEIBOWITZ, *supra* note 55, at 415; see Cession of Tutuila and Anu'u, *supra* note 111, at 2. The final island, Swain's Island, was eventually annexed by congressional enactment. H.R.J. Res. 294, 68th Cong. (1925).

113. Cession of Tutuila and Anu'u, *supra* note 111, at 2.

114. *Id.*

115. *DPI: General Demographic Characteristics, Decennial Census of Island Areas, 2020: DECIA American Samoa Demographic Profile*, U.S. CENSUS BUREAU, <https://data.census.gov/table/DECENNIALDPAS2020.DP1?d=DECIA%20American%20Samoa%20Demographic%20Profile> (last visited Sept. 26, 2024).

116. *Id.*

17,683 individuals, or roughly 36% of the population overall.¹¹⁷ The country that is represented with the largest share of the “foreign-born” population, nearly 79%, is the independent nation of Samoa.¹¹⁸

American Samoa is the only jurisdiction within the United States that does not recognize birthright citizenship.¹¹⁹ Instead, Americans born in American Samoa are subject to the anachronistic political status of non-citizen nationals under the U.S. Code.¹²⁰ Individual American Samoans have challenged this designation in recent federal litigation,¹²¹ gaining legal traction and public awareness in the effort. But the circuit courts of appeals have denied these claims for the extension of constitutional birthright citizenship.¹²² In these decisions, courts have leaned heavily not only on Supreme Court precedent in the *Insular Cases* but have also invoked the cultural preservation of the ethnic Samoan way of life.¹²³

Some have attributed the limited federal political rights as a tradeoff for the expanded local autonomy granted to American Samoa.¹²⁴ Among the more expansive authorities granted to the territory is its entirely unprecedented exemption from federal immigration law.¹²⁵ American Samoa is the only locality to enjoy this absolute exemption.¹²⁶ Stunningly, even U.S. citizens are limited from immigrating to Samoa and are broadly treated as foreign nationals.¹²⁷ Initially, American citizens could not even enter the territory without proper documentation.¹²⁸ Today, the immigration laws of American Samoa recognize just three immigration statuses: U.S. nationals, temporary residents, and

117. DP2: *Selected Social Characteristics, Decennial Census of Island Areas, 2020: DECIA American Samoa Demographic Profile*, U.S. CENSUS BUREAU, <https://data.census.gov/table/DECENNIALDPAS2020.DP2?d=DECIA%20American%20Samoa%20Demographic%20Profile> (last visited Sept. 26, 2024).

118. *Id.*

119. See 8 U.S.C. § 1408.

120. *Id.*

121. See *Tuaua v. United States*, 788 F.3d 300, 301–02 (D.C. Cir. 2015); *Fitisemanu v. United States*, 1 F.4th 862, 864 (10th Cir. 2021).

122. *Tuaua*, 788 F.3d at 311; *Fitisemanu*, 1 F.4th at 881.

123. *Tuaua*, 788 F.3d at 312; *Fitisemanu*, 1 F.4th at 870.

124. North, *supra* note 46.

125. *American Samoa*, *supra* note 108.

126. See North, *supra* note 46.

127. LEIBOWITZ, *supra* note 55, at 448; see also *American Samoa*, *supra* note 108 (“The requirements for an alien’s entry into American Samoa mirror those for a U.S. citizen or national.”); AM. SAMOA CODE ANN. § 41.0403 (2021).

128. *Id.* at 447–48.

the undocumented.¹²⁹ Compared to the bloated U.S. immigration system, American Samoa provides only ten categories of immigration classifications.¹³⁰ The categories under which non-nationals may obtain temporary residency in American Samoa are limited to family and employment-based immigration.¹³¹ These temporary statuses are all subject to renewal, either on an annual or triennial basis.¹³²

C. U.S. Virgin Islands

The U.S. Virgin Islands (“USVI”) are located in the Caribbean Sea, about 100 miles off the coast of Puerto Rico and 1,600 miles from Washington, D.C.¹³³ There were 87,146 inhabitants of the USVI at the time of the most recent census.¹³⁴ Of this number 71.4% identified as Black or African American and 18.4% as Hispanic or Latino, while 13.3% were classified as white.¹³⁵

Following a history of European colonial influence and control that began in the fifteenth century, the United States eventually purchased the islands from the Danish under a treaty ratified in 1917.¹³⁶ The question of the inhabitants of the islands’ political status was initially answered with a familiar refrain: “The civil rights and political status of the native inhabitants of the territories hereby ceded to the United States shall be determined by the Congress of the United States.”¹³⁷ The territory’s purchase concluded with legislation that established a governmental

129. North, *supra* note 46.

130. See *Residency Classifications*, DEP’T LEGAL AFFS., <https://www.legalaffairs.as.gov/residency-classifications> (last visited Sept. 27, 2024).

131. *Immigration Office*, DEP’T LEGAL AFFS., <https://www.legalaffairs.as.gov/copy-of-immigration-office-1> (last visited Sept. 27, 2024).

132. *Residency Classifications*, *supra* note 130.

133. Distance from the U.S. Virgin Islands to Puerto Rico, TRAVELMATH, <https://www.travelmath.com/distance/from/Christiansted,+U.S.+Virgin+Islands/to/San+Juan,+Puerto+Rico> (last visited Sept. 27, 2024); Distance from the Virgin Islands to Washington D.C., AIR MILES CALCULATOR, <https://www.airmilescalculator.com/distance/iad-to-stt/> (last visited Sept. 27, 2024).

134. Total Population of the U.S. Virgin Islands, 2020 Census, U.S. CENSUS BUREAU, [https://data.census.gov/table/DECENNIALDHCVI2020.P1?q=United States Virgin Islands](https://data.census.gov/table/DECENNIALDHCVI2020.P1?q=United+States+Virgin+Islands) (last visited Sept. 27, 2024).

135. *DPI: General Demographic Characteristics, Decennial Census of Island Areas, 2020: DECIA U.S. Virgin Islands Demographic Profile*, U.S. CENSUS BUREAU, <https://data.census.gov/table/DECENNIALDPVI2020.DP1?g=040XX00US78&d=DECIA%20U.S.%20Virgin%20Islands%20Demographic%20Profile> (last visited Sept. 27, 2024) [hereinafter *Virgin Islands Table DPI*].

136. LEIBOWITZ, *supra* note 55, at 245.

137. *Id.* at 248 (quoting Treaty of Paris, *supra* note 58, art. IX).

structure that mirrored the status of the U.S. territories in existence at that time.¹³⁸ Notably, this legislation omitted discussion of the legal status of the islands' inhabitants, but this was resolved by legislation in 1927 that granted U.S. citizenship to Virgin Islanders.¹³⁹

Today, the USVI is subject to the same system of immigration as in the fifty states and District of Columbia. The foreign-born population of the USVI is 29,579, or 34% of the total population.¹⁴⁰ The vast majority of these individuals, 26,836, immigrated from other countries in the Caribbean.¹⁴¹

D. Northern Mariana Islands

The Commonwealth of the Northern Mariana Islands ("CNMI") is located roughly 8,000 miles from Washington, D.C., in the Philippine Sea.¹⁴² Its population totals 47,329,¹⁴³ the majority of whom (22,054) are Asian.¹⁴⁴ The Native Hawaiian and Pacific Islander category, which includes the Native Chamorro ethnic group, is represented by 20,665 individuals.¹⁴⁵ The Filipino population is significant, with a staggering 17,719 individuals identifying as Filipino alone or in combination with another

138. See An Act to Provide a Temporary Government for the West Indian Islands Acquired by the U.S. from Den., Pub. L. No. 64-171, 39 Stat. 1132 (1917).

139. An Act to Confer United States Citizenship upon Certain Inhabitants of the Virgin Islands and to Extend the Naturalization Laws thereto, Pub. L. No. 69-192, 44 Stat. 1234 (1927).

140. DP2: *Selected Social Characteristics, Decennial Census of Island Areas, 2020: DECIA U.S. Virgin Islands Demographic Profile*, U.S. CENSUS BUREAU, <https://data.census.gov/table/DECENNIALDPVI2020.DP2?g=040XX00US78&d=DECIA%20U.S.%20Virgin%20Islands%20Demographic%20Profile> (last visited Sept. 27, 2024).

141. *Id.*

142. Distance from Washington, D.C. to Northern Mariana Island, DISTANCE.TO, [https://www.distance.to/Washington,DC,USA-\(District-of-Columbia\)/Northern-Mariana-Islands](https://www.distance.to/Washington,DC,USA-(District-of-Columbia)/Northern-Mariana-Islands) (last visited Sept. 27, 2024).

143. Total Population of the Commonwealth of the Northern Mariana Islands, U.S. CENSUS BUREAU, <https://data.census.gov/table/DECENNIALDHCMP2020.P1?q=commonwealth%20of%20the%20northern%20mariana%20islands> (last visited Sept. 27, 2024).

144. *2020 Island Areas Censuses Data on Demographic, Social, Economic, and Housing Characteristics Now Available for the Commonwealth of Northern Mariana Islands*, U.S. CENSUS BUREAU (Oct. 21, 2022), <https://www.census.gov/newsroom/press-releases/2022/2020-island-areas-northern-mariana.html>.

145. *Id.*

group.¹⁴⁶ In 2017, the white population of the territory represented a mere 1.1%.¹⁴⁷

The CNMI came under the political control of the United States as a result of negotiations between the political leadership of the Northern Mariana Islands and the U.S. Government following World War II.¹⁴⁸ Following a plebiscite vote that approved entering into a political union with the United States by a whopping 78.8%, Congress and President Gerald Ford ratified the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America and incorporated it into federal law.¹⁴⁹ During the negotiations leading to the approval of the covenant, the Samoan example was instructive to the leadership of the Northern Mariana Islands in navigating its relationship with the United States.¹⁵⁰ The covenant provided that the CNMI would initially be exempt from federal minimum wage¹⁵¹ and immigration laws.¹⁵² The covenant also established naturalization for the residents of the CNMI and birthright citizenship for future generations.¹⁵³

This history of U.S. relations with the CNMI is perhaps the most unique in its bilateral character. While it would be naïve to suggest that the relationship is one of equal partnership, the leaders of the CNMI did enjoy a greater level of autonomy and decision-making authority when it came to establishing itself as a political extension of the United States. One of the key conditions exerted by the leadership of the CNMI was Congress' concession to delay the full implementation of federal immigration law until an undetermined point in the future.¹⁵⁴ As of this writing, the federal

146. *Id.*

147. *CNMI Labor Force Participation Survey 2017 Population Characteristics*, N. MAR. I. DEPT COM., <https://ver1.cnmicommerce.com/lfp-population-characteristics-2017-by-ethnic-group/#:~:text=CNMI%20Total,6.2%25%20of%20the%20total%20population> (last visited Sept. 27, 2024).

148. See Alonso-Yoder, *supra* note 11, at 1627.

149. *Id.*; see also *Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America*, *supra* note 46.

150. LEIBOWITZ, *supra* note 55, at 94.

151. *Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America*, *supra* note 46, § 503(c). See generally *Fair Labor Standards in Employments in and Affecting Interstate Commerce Act*, Pub. L. No. 75-676, § 13, 52 Stat. 1060 (1938) (codified as amended in scattered sections of 29 U.S.C.); see also *id.* § 6 (codified as amended at 29 U.S.C. § 206).

152. *Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America*, *supra* note 46, § 503(a).

153. *Id.* art. III.

154. *Id.* § 503(a).

government has agreed to a further delay in the incorporation of U.S. immigration law until the end of 2029.¹⁵⁵ In a shocking policy deviation, President Donald Trump signed federal legislation to grant federal immigration status to CNMI inhabitants regardless of whether their original entry to the territory was authorized.¹⁵⁶

IV. TEACHING THE IMMIGRATION LAW OF THE TERRITORIES

While the history and circumstances of the U.S. involvement with territories have varied, commonalities emerge. Among these have been determining policies of naturalization, citizenship status, immigration control, and more fundamental questions of the reach of federal law into these jurisdictions. All these questions implicate the parameters of federal immigration law, yet few scholars, and fewer teachers of immigration law, have focused on the immigration and nationality laws of the territories. Even the top nonpartisan migration policy thinktank seemingly does not compile information on the rates of immigration to the territories.¹⁵⁷ This absence leads to reporting of questionable reliability, particularly as it relates to accurate accounting of the representation of certain groups in the United States. The Migration Policy Institute's 2014 report on Filipino immigration omits data from Guam and the CNMI despite the significant Filipino population present in both territories.¹⁵⁸ This lack of inquiry only furthers misunderstandings of the territories as

155. See *U.S. Immigration Law in the Commonwealth of the Northern Mariana Islands (CNMI)*, *supra* note 15 (indicating that while the Consolidated Natural Resources Act of 2008 “extended most provisions of U.S. immigration law to the Commonwealth of the Northern Mariana Islands,” the transition period for implementation has been extended through December 31, 2029).

156. *CNMI Long-Term Resident Status*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/working-in-the-united-states/cnmi-long-term-resident-status> (last updated Apr. 1, 2024); see also Northern Mariana Islands Long-Term Legal Residents Relief Act, Pub. L. No. 116-24, 133 Stat. 977 (2019) (codified as 48 U.S.C. § 1806(e)(6)); Alonso-Yoder, *supra* note 11, at 1630–32 (arguing that maintenance of white supremacy is such a central feature of U.S. immigration policy that government officials feel empowered to endorse politically inconsistent viewpoints when it comes to regulating immigration in the majority non-white CNMI).

157. *United States, Demographics & Social Data Profile*, MIGRATION POL’Y INST., <https://www.migrationpolicy.org/data/state-profiles/state/demographics/US> (last visited Sept. 30, 2024).

158. Sierra Stoney & Jeanne Batalova, *Filipino Immigrants in the United States*, MIGRATION POL’Y INST. (June 5, 2013), <https://www.migrationpolicy.org/article/filipino-immigrants-united-states-2011>.

existing outside of the United States and neglects the opportunities to explore how the territories have been treated by U.S. law *as if* they were foreign from the U.S. political project. In this Part, I suggest how teaching the immigration and nationality laws of the territories may be brought into the immigration law curriculum.

A. Regulation of Immigration, Federalism, and Race

The operation of immigration law in the territories offers unique opportunities to deepen the understanding of some of the foundational concepts in the development of immigration law. This Section explores how the concept of federal plenary power, including limitations on state and local regulation, and the importance of race are present in the immigration laws of the territories.

1. *Constitutional Plenary Power*

As explained above, the federal government is deemed to enjoy plenary power under the U.S. Constitution in regulating the territories and immigration alike. Under the Territorial Clause and subsequent territorial incorporation doctrine, courts have determined that Congress has the exclusive authority to determine the laws of the territories.¹⁵⁹ A similar authority under the plenary power doctrine has animated U.S. immigration law since some of the earliest restrictions on U.S. immigration.¹⁶⁰ As a result of this understanding, the federal government has claimed to preempt state and local control of U.S. immigration law.¹⁶¹ Immigration law professors teach this maxim of law unquestioningly, despite clear indications of a contrary system at play in two of the U.S. territories. Teaching the immigration laws of the CNMI and especially American Samoa can help to call into question the rigidity of the federal government's monopoly on the regulation of immigration law. At the time of this writing, both territories maintain their own unique systems of immigration control which reflect little of the federal system familiar to most immigration law professors. While the CNMI is working with federal officials to

159. *See supra* pt. II.

160. *The Chinese Exclusion Case*, 130 U.S. 581, 605–06 (1889).

161. *See Arizona v. United States*, 567 U.S. 387, 416 (2012).

achieve full incorporation of federal immigration law by 2029,¹⁶² there is no plan in place to dislodge American Samoa's control over immigration.

2. Local Regulation

As discussed in Part II, American Samoa and the Northern Mariana Islands have retained a level of autonomous control of local immigration affairs that is anomalous among the territories and inconsistent with immigration legal doctrine regulating the States and District of Columbia.¹⁶³ While Congress sought to bring CNMI under federal immigration law in the Consolidated Natural Resources Act of 2008,¹⁶⁴ American Samoa retains total control of its own system of immigration.¹⁶⁵ While this arrangement has been understood as the corollary to land preservation under the traditional *matai* system that limits land ownership to native Samoans, it “in fact . . . operates to assure political power is passed on to the ethnic compatriots of the governing group.”¹⁶⁶ The code of American Samoa is clear on the legislative purpose guiding its immigration system: “to protect the lands, customs, culture, and traditional American Samoan family organizations of persons of American Samoa ancestry, and to encourage business enterprises by American Samoans.”¹⁶⁷ Immigration restrictionists have taken note, musing that:

The American Samoa immigration system, unlike that of the Mainland, is not under attack; there is no danger of overpopulation created by masses of international migrants, or even migrants from the Mainland. Maybe our people in Washington should look to the migration policy makers in Pago Pago for some inspiration on controlling our borders.¹⁶⁸

This suggests that, for some, immigration control in American Samoa could function as a useful model for immigration policy in the United States writ large.

162. *U.S. Immigration Law in the Commonwealth of the Northern Mariana Islands (CNMI)*, *supra* note 15.

163. *See supra* pt. II.

164. Consolidated Natural Resources Act of 2008, Pub. L. No. 110-229, 122 Stat. 754.

165. *See Immigration Office*, *supra* note 131.

166. LEIBOWITZ, *supra* note 55, at 94.

167. AM. SAMOA CODE ANN. § 41.0201 (2021).

168. North, *supra* note 46.

3. Race

As suggested in Parts II and III, the federal government's acquiescence to this level of autonomy is almost certainly linked to the racial compositions of these territories and the federal government's disinterest in pursuing the islands for white settlement. As detailed above, the federal government generally permitted unfettered European immigration to the country and only began to limit entry into the country as an effort to exclude Chinese nationals whose labor was no longer desirable.¹⁶⁹ Indeed, immigration policy directing the exclusion of non-white immigrants led to fluctuations in the contours of U.S. territorial policy.

As discussed above, the United States gained control over the former Spanish colonies of Puerto Rico, Guam, and the Philippines as a condition of the cessation of hostilities in the Spanish-American War.¹⁷⁰ The Philippines is not a U.S. territory today, in part due to federal immigration policy.

In 1934, Congress passed the Philippine Independence Act which would eventually lead to the emancipation of the islands from U.S. colonial rule in 1946 following a series of political and military campaigns affecting the Filipino population.¹⁷¹ While this may initially appear to be the result of a benevolent emancipatory action on the part of the United States, the reality is that tensions around immigration policies barring Asian immigration to the United States forced the issue of Filipino political membership in the country. The Act treated Filipinos as "aliens" for purposes of immigration law and set an annual quota capping their admission to the United States at fifty persons.¹⁷²

But the impact of race on immigration and nationality policy is not limited to the historical record. Today, nationals of American Samoa, with its majority native population, continue to experience what some scholars have termed "third class citizenship."¹⁷³ Studying the federal court cases that have argued for

169. See, e.g., *The Chinese Exclusion Case*, 130 U.S. 581 (1889).

170. Treaty of Paris, *supra* note 58.

171. Ricardo Trota Jose, *July 4, 1946: The Philippines Gained Independence from the United States*, NAT'L WWII MUSEUM NEW ORLEANS (July 2, 2021), <https://www.nationalww2museum.org/war/articles/july-4-1946-philippines-independence>.

172. Philippine Independence Act of 1934, Pub. L. No. 73-84, § 8(a)(1), 48 Stat. 456, 462.

173. Anthony M. Ciolli & Dana M. Hrelie, *Third-Class Citizen: Unequal Protection Within the United States Territories*, 55 SUFFOLK U. L. REV. 179, 179 (2022).

constitutional birthright citizenship for Americans in American Samoa, including *Tuaua v. United States*¹⁷⁴ and *Fitisemanu v. United States*,¹⁷⁵ can help students understand these divergences from the norm within the context of racial difference.

Understanding the history of territories that now enjoy statutory birthright citizenship, such as through studying the immigration case of Isabel Gonzalez,¹⁷⁶ is also important not just



for intellectual curiosity, but for understanding the contours of birthright citizenship moving forward. In 2017, the Trump White House circulated a memo urging the president to investigate so-called birth tourism in the Northern Marianas.¹⁷⁷ In the 2024 presidential contest, more than one candidate has suggested that birthright citizenship may be overturned by political action.¹⁷⁸

174. *Tuaua v. U.S.*, 788 F.3d 300, 301 (D.C. Cir. 2015).

175. *Fitisemanu v. U.S.*, 1 F.4th 862, 864–65 (10th Cir. 2021).

176. *Gonzales v. Williams*, 192 U.S. 1, 10 (1904).

177. See Memorandum from Andrew Bremberg, Dir. of the Domestic Pol’y Council, Exec. Off. of the President of the U.S., to President Donald J. Trump (Jan. 23, 2017) (on file with the University of Wisconsin-Madison Social Science Computing Cooperative), <https://users.ssc.wisc.edu/~mchinn/Draft-executive-orders-on-immigration.pdf>.

178. Lawrence Hurley, *‘Litigation is a Certainty’: Trump’s Call to End Birthright Citizenship Would Face a Mountain of Opposition*, NBC NEWS (July 28, 2024, 7:00 AM), <https://www.nbcnews.com/politics/2024-election/litigation-certainty-trumps-call-end-birthright-citizenship-face-mount-rcna162314>; see also Lauren Sforza, *Ramaswamy Says at Debate He Would End Birthright Citizenship, Echoing Trump*, HILL (Sept. 28, 2023, 9:46 AM), <https://thehill.com/homenews/campaign/4227711-ramaswamy-end-birthright-citizenship-2024-debate/>.

These high profile discussions reveal how matter in immigration and citizenship law and their impact on the territories remains a salient and controversial discussion worthy of exploration in the law school classroom.

*Figure 1. Image from American Samoa Immigration Website*¹⁷⁹

B. Foreign Labor Importation in the Territories

Immigration premised on the importation of foreign labor has been a central feature in the United States generally and in the territories specifically. The USVI experienced an influx of foreign labor-based migration in the twentieth century, due in part to the federal government's more lax interpretation of temporary work visa rules.¹⁸⁰ The CNMI lobbied to retain immigration control, not only to protect native land rights but also to enforce a more relaxed system for importing foreign labor.¹⁸¹ Combined with the territory's exemption from federal minimum wage law, the CNMI's immigration system led to foreign labor exploitation and the need for congressional intervention.¹⁸² The result was the passage of the 2008 Consolidated Natural Resources Act which finally sought to bring the CNMI under federal immigration law.¹⁸³

By contrast, American Samoa has generally sought to restrict foreign labor-based immigration. Under the ten categories available, only one exists for employment-based immigration—for

179. *Immigration Office*, *supra* note 131. The attached historical image accompanies the American Samoa Immigration Office's information on "Employment Based Immigration."

180. See LEIBOWITZ, *supra* note 55, at 281.

181. Mark Krikorian, *Back in the CNMI: The Commonwealth of the Northern Mariana Islands is No Model When it Comes to Immigration*, CTR. FOR IMMIGR. STUD. (Dec. 31, 2005), <https://cis.org/Back-CNMI-Commonwealth-Northern-Mariana-Islands-No-Model-When-it-Comes-Immigration>.

182. Commonwealth of the Northern Mariana Islands Transitional Worker Classification, 76 Fed. Reg. 55502 (Sept. 7, 2011) (to be codified at 8 C.F.R. pts. 103, 214, 274a & 299); see also Consolidated Natural Resources Act of 2008, Pub. L. No. 110-229, 122 Stat. 754.

183. See Consolidated Natural Resources Act of 2008, 122 Stat. 754. It bears noting that the federal government has repeatedly extended the period by which it has required the CNMI to fully incorporate federal immigration law, with the latest extension set to expire on December 31, 2029. See *U.S. Immigration Law in the Commonwealth of the Northern Mariana Islands (CNMI)*, *supra* note 15 ("The transition period for implementing U.S. immigration law in the CNMI began on Nov. 28, 2009, and is now scheduled to end on Dec. 31, 2029.").

guest workers of “State of Samoa employed by the cannery.”¹⁸⁴ It bears note, however, that these workers are only temporarily authorized to be in the territory and inexplicably do not receive authorization to work.¹⁸⁵

C. Family-based Immigration in the Territories

The family-based immigration system of the Immigration and Nationality Act operates roughly the same way in the U.S. territories as it does in the fifty states—with the notable exception of American Samoa.¹⁸⁶ For all practical purposes, family-based immigration does not exist in that territory. Instead, the American Samoan Government provides only temporary resident status to non-national Samoans.¹⁸⁷

D. Humanitarian Protections in the Territories

American Samoa does not provide asylum protections within the territory.¹⁸⁸ Asylum also does not presently exist in the CNMI as a result of the federal extension of the deadline for immigration law into the territories.¹⁸⁹ Arguably, these prohibitions call into question U.S. compliance with international agreements protecting refugees, including the 1967 Protocol Relating to the Status of Refugees.¹⁹⁰ Teaching this aspect of U.S. immigration law is important, particularly as U.S. commitments to asylum protection form the basis for an ongoing debate about asylum protections at the United States-Mexico border.

Despite the absence of full integration of U.S. immigration law in both the CNMI and American Samoa, Congress has acted to extend certain humanitarian protections to those territories.¹⁹¹ The I-914 Application for T Nonimmigrant Status form purports to

184. *Residency Classifications*, *supra* note 130.

185. *Id.*

186. Immigration and Nationality Act, 8 U.S.C. § 1101, 66 Stat. 163 (1952) (amended Jan. 5, 2023, through Pub. L. No. 117-360); *see also* *Immigration Office*, *supra* note 131.

187. *See* LEIBOWITZ, *supra* note 55, at 448; *Immigration Office*, *supra* note 131.

188. *EOIR Extends Bar for Asylum in CNMI in 2030*, IMMIGR. POL’Y TRACKING PROJECT, <https://immpolicytracking.org/policies/doj-extends-bar-for-asylum-in-cnmi-to-2030/> (last visited Aug. 30, 2024).

189. *Id.*

190. Protocol Relating to the Status of Refugees, *opened for signature* Jan. 31, 1967, 19 U.S.T. 6223, 606 U.N.T.S. 267.

191. *Northern Mariana Islands*, DEP’T OF JUST. OFF. FOR VICTIMS OF CRIME, <https://ovc.ojp.gov/states/northern-mariana-islands?state=mp> (last visited Sept. 30, 2024).

extend protections to those physically present in American Samoa and CNMI.¹⁹² Given the history of labor abuses in the CNMI in particular, the extension of such protections seems vital, though it is unclear how effective they may be given the extremely low numbers of reported instances of human trafficking in both territories.¹⁹³

V. CONCLUSION

While few scholars have considered the immigration law of the territories, a more intentional study integrating the operation of immigration law in these areas of the country is possible and necessary. Such study is not only important for accuracy and comprehensiveness; it also reflects important commitments to fostering diverse viewpoints within the classroom and giving a voice to oppressed histories, a concept that has animated immigration and other critical legal scholarship for decades. The French philosopher Auguste Comte is credited with the maxim “demography is destiny,”¹⁹⁴ and perhaps nowhere is that clearer than in U.S. policies toward immigration and the territories.

VI. APPENDIX A: SAMPLE IMMIGRATION LAW SURVEY COURSE SYLLABUS WITH MATERIALS ON THE IMMIGRATION LAW OF THE TERRITORIES

This syllabus is based on the sample syllabus provided in the *Teacher’s Manual to the Ninth Edition of the Immigration and Citizenship: Process and Policy* casebook by T. Alexander Aleinikoff, David A. Martin, Hiroshi Motomura, Maryellen

192. U.S. CITIZENSHIP & IMMIGR. SERVS., DEP’T HOMELAND SEC., I-914 FORM: APPLICATION FOR T NONIMMIGRANT STATUS OMB NO. 1615-0099 (Apr. 1, 2024), <https://www.uscis.gov/sites/default/files/document/forms/i-914.pdf>.

193. See U.S. DEP’T HEALTH & HUM. SERVS. REGION IX, NORTHERN MARIANA ISLANDS: EFFORTS TO COMBAT HUMAN TRAFFICKING, https://www.acf.hhs.gov/sites/default/files/documents/otip/northern_mariana_islands_profile_efforts_to_combat_human_trafficking.pdf (Sept. 8, 2017) (reporting 6 cases of human trafficking); see also U.S. DEP’T HEALTH & HUM. SERVS. REGION IX, AMERICAN SAMOA: EFFORTS TO COMBAT HUMAN TRAFFICKING, https://www.acf.hhs.gov/sites/default/files/documents/otip/american_samoa_efforts_to_combat_human_trafficking.pdf (Sept. 8, 2017) (reporting fewer than 3 cases of human trafficking).

194. John Weeks, *Who First Said “Demography is Destiny”?*, WEEKS POPULATION (Oct. 30, 2013, 10:05 PM), <https://weekspopulation.blogspot.com/2013/10/who-first-said-demography-is-destiny.html>.

Fullerton, Juliet P. Stumpf, and Pratheepan Gulasekaram.¹⁹⁵ The authors of this syllabus designed it to cover 37 class assignments in a four-hour immigration survey course that meets 39 times in a span of a 13-week semester.¹⁹⁶

I am indebted to these brilliant scholars and teachers and have adapted their sample syllabus to incorporate sources relevant to the study of immigration law in the U.S. territories. Given the casebook's prominence in teaching immigration law, I have chosen it to show how incremental adjustments to integrate sources relevant to the immigration law of the territories can be readily inserted into the existing curriculum. Teachers working with smaller scale seminars or three-credit survey courses could also readily pick and choose from some of the sources below to supplement discussions of plenary power, race, federalism, local immigration control, immigration policy preferences, or citizenship and nationality.

Sources regarding immigration law in the territories have been added to the existing topics where relevant and are indicated with *** at the beginning and end of the source.

SAMPLE IMMIGRATION SURVEY COURSE SYLLABUS WITH
MATERIALS ON TERRITORIAL IMMIGRATION LAW

Chapter One: The Foundations of Immigration and Citizenship Law

(1) *early plenary power*

Territorial Clause of the U.S. Constitution

(2) *the boundaries of immigration law*

(3) *the evolution of plenary power*

(4) *the 2017 Trump exclusion order*

(5) *administrative law and the “public charge” rule*

Gonzales v. Williams, 192 U.S. 1 (1904)

(6) *moral constraints on the immigration power*

Chapter Two: Immigrants and Nonimmigrants: Admission Categories and the Undocumented

(7) *admission categories, part 1*

(8) *admission categories, part 2*

195. T. ALEXANDER ALEINIKOFF ET AL., *TEACHER'S MANUAL TO IMMIGRATION AND CITIZENSHIP: PROCESS AND POLICY* 6–13 (9th ed. 2021).

196. *Id.* at 6.

- (9) *the Constitution and family immigration*
- (10) *immigration based on marriage*
- (11) *employment-based immigration; investors*

CNMI Long-Term Resident Status¹⁹⁷

48 U.S.C § 1806(e)(6)¹⁹⁸

****American Samoa Department of Legal Affairs, Immigration Office****¹⁹⁹

- (12) *nonimmigrants*
- (13) *temporary workers, students*
- (14) *unauthorized migrants*

Minority Rights Group, Dominicans in Puerto Rico²⁰⁰

CNMI Long-Term Resident Status²⁰¹

48 USC § 1806(e)(6)²⁰²

Chapter Three: Admission Procedures

- (15) *admission procedures, esp. adjustment of status*
- (16) *constitutional due process, part 1*
- (17) *constitutional due process, part 2*
- (18) *detention, part 1*
- (19) *detention, part 2*

Chapter Four: Citizenship and Its Significance

- (20) *citizenship by birth, part 1*

****Gonzales v. Williams*, 192 U.S. 1 (1904)***

- (21) *citizenship by birth, part 2; multiple citizenship*
- (22) *citizenship by naturalization*

*** Act of March 2nd, 1917, Section 5***²⁰³

Chapter Five: Inadmissibility and Deportability

- (23) *the inadmissibility-deportability line; inadmissibility: crimes; fraud*
- (24) *inadmissibility: immigration law violations; public charge; public health*
- (25) *deportability: constitutional law and the meaning of lawful permanent residence*

197. *CNMI Long-Term Resident Status*, *supra* note 156; *see also* Northern Mariana Islands Long-Term Legal Residents Relief Act, 48 U.S.C. § 1806(6)(e) (1976) (amended Jan. 3, 2019).

198. 48 U.S.C. § 1806(6)(e).

199. *Immigration Office*, *supra* note 131.

200. *Dominicans in Puerto Rico*, MINORITY RTS. GRP., <https://minorityrights.org/communities/dominicans/> (last visited Sept. 30, 2024).

201. *CNMI Long-Term Resident Status*, *supra* note 156; *see also* § 1806(6)(e).

202. § 1806(6)(e).

203. Porto Rico Civil Government Act, 1917, Pub. L. No. 64-145, § 5, 39 Stat. 951, 953 (providing citizenship by birth in Puerto Rico).

(26) deportability: immigration control, public charge, and crime-based deportability, part 1

(27) crime-based deportability, part 2

(28) crime-based deportability, part 3: classifying convictions

Chapter Six: Relief From Removal

(29) cancellation of removal and other relief leading to lawful permanent residence

(30) voluntary departure; prosecutorial discretion, inc. DACA

Chapter Seven: Asylum and Other Humanitarian Protections

(31) asylum procedure; what is “persecution”?

(32) membership in a particular social group, part 1

(33) particular social group, part 2; Convention Against Torture; Temporary Protected Status

Chapter Nine: Enforcement and Beyond

(34) state and local governments: enforcement

(35) state and local governments: non-cooperation and integration

VII. APPENDIX B: LEGISLATIVE DEBATE SIMULATION EXERCISE

The goal of this exercise is to have students apply their understanding of the legal and policy considerations around the state of immigration law in the U.S. territories and their implications for immigration law and policy generally.

Instructors can spin out this exercise into a broader exercise by assigning the prompt to teams for the preparation of the arguments. It is recommended that the instructor assign students to a position, rather than allowing students to volunteer to represent a position. Depending on the size of the class, any students not assigned to the groups presenting their arguments can provide feedback on which presentations they found the most compelling and why. Generally, students should be allotted about five to ten minutes for preparation of their presentation and five to ten minutes for each presentation. The exercise can also be assigned for preparation outside of class to reserve valuable class time.

Instructors may consider issuing a general reminder before the exercise begins to recognize that the classroom is composed of students with a variety of experiences and to always strive to be

respectful and cordial to one's colleagues with their arguments, remarks, and commentaries.

SIMULATION EXERCISE ON IMMIGRATION AND NATIONALITY POLICY

Congress is debating a bill to extend U.S. citizenship to residents of American Samoa who presently hold U.S. national status.

One student (or group of students) will represent a member of Congress to argue that citizenship should be conferred on U.S. nationals and on those born in the territory prospectively. Another student (or group of students) will represent a member of Congress on the other side of the debate to argue that the current U.S. national status should remain.

As you are preparing your arguments, be sure to reference sources (judicial, legislative, historical, or cultural) that support your view. You should also consider the points you anticipate your opponent will make and consider how to respond in your presentation to the counterpoint.