A DREXEL LAW REVIEW SYMPOSIUM

TWENTY YEARS AFTER THE
1996 IMMIGRATION LAWS

REVISITING AN EXPERIMENT IN COMPREHENSIVE SEVERITY

10.14.16
In 1996, Congress enacted a series of statutes that ushered in sweeping changes to immigration law. The legislation dramatically expanded the ground for deporting noncitizens and mandated greater use of detention, while curtailing procedural safeguards, eliminating avenues for discretionary relief from removal, and creating barriers for refugees seeking safety on a humanitarian basis. Many noncitizens also were rendered ineligible for public benefits. As a result, immigration control has grown into an enormous enterprise, with the United States now expelling unprecedented numbers of noncitizens each year.

With immigration again the subject of election-year controversy and with social movements and immigrant communities forcefully advocating reform, the 2016 Drexel Law Review Symposium will critically reassess this experiment in “comprehensive immigration severity.” Leading experts will examine the origins and operation of those laws and their broader legacy and significance. Speakers will also discuss visions and strategies for reform and the challenges that advocates face in pursuing those reforms.

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REVISITING AN EXPERIMENT IN COMPREHENSIVE SEVERITY

SCHEDULE

8—8:30 a.m.  Registration and Continental Breakfast

8:30—8:45 a.m.  Welcome and Introductions

Roger Dennis, Founding Dean and Professor of Law, Drexel University Thomas R. Kline School of Law
Anil Kalhan, Associate Professor of Law, Drexel University Thomas R. Kline School of Law

8:45—10 a.m.  Panel One: The Origins and Consequences of Immigration Severity (I)

Moderator:
Jaya Ramji-Nogales, I. Herman Stern Professor of Law and Co-Director, Institute for International Law and Public Policy, Temple University Beasley School of Law

Panelists:
T. Alexander Aleinikoff, Visiting Professor of Law, Columbia Law School
• Expedited Exclusion and Credible Fear: The Unintended Consequences of a Reasonable Compromise
Nancy Morawetz, Professor of Clinical Law, New York University School of Law
• Stealth Provisions of the 1996 Laws and Illusory Congressional Intent
Wadie Said, Professor of Law, University of South Carolina School of Law
• Material Support, Secret Evidence, and the National Security Implications of the 1996 Immigration Statutes

10—10:15 a.m.  Break

10:15—11:45 a.m.  Panel Two: The Origins and Consequences of Immigration Severity (II)

Moderator:
Sarah Paoletti, Practice Professor of Law and Director, Transnational Law Clinic, University of Pennsylvania Law School

Panelists:
Lucas Guttentag, Professor of the Practice of Law, Stanford Law School; Senior Research Scholar in Law, Robina Foundation Visiting Human Rights Fellow, and Lecturer in Law, Yale Law School; and Senior Counselor to the Secretary of Homeland Security, U.S. Department of Homeland Security
• Reflections on INS v. St. Cyr: Theory and Strategy in the Battle Over Judicial Review
Eleanor Acer, Senior Director, Refugee Protection, Human Rights First
• Undermining Asylum, Human Rights, and Efficient Processing: The 1996 Immigration Law’s Barriers to Asylum Twenty Years Later
Jason A. Cade, Assistant Professor of Law, University of Georgia School of Law
• Judging Immigration Equity: Proportionality and the Deportation System
Rebecca Sharpless, Clinical Professor of Law, Director, Immigration Clinic, and Roger Schindler Fellow, University of Miami School of Law
• At the Border of Agency Expertise: Chevron Deference and the Immigration Consequences of Crimes
In the 1994 wave election, Californians approved the anti-immigrant ballot measure called Proposition 187 and voters gave Republicans control over both the Senate and the House of Representatives. With Senator Alan Simpson (R-WY) and Lamar Smith (R-TX) leading the way, Republicans in Congress went for broke. They endeavored to pass the most restrictive immigration laws since the 1920s. The ensuing battle resulted in harsh laws enacted, harsh laws defeated, and momentous decisions on the right and the left. The current immigration policy battles over the presence of 11 million undocumented immigrants in America and the role of immigration enforcement can trace their lineage to the 1996 immigration wars.
3:15—4:45 p.m.  Panel Four: Rethinking Immigration Severity

Moderator:
Jennifer J. Lee, Assistant Clinical Professor of Law, Temple University Beasley School of Law

Panelists:
Annie Lai, Assistant Clinical Professor of Law, University of California, Irvine, School of Law
  • Life After the Plea: Crime-Based Deportation and Post-Conviction Rehabilitative Relief 20 Years After IIRIRA

Angélica Cházaró, Assistant Professor of Law, University of Washington School of Law
  • Dismantling the “Criminal Alien” Paradigm

Jennifer Chacón, Professor of Law, University of California, Irvine, School of Law
  • Liminal Legality and the 1996 Immigration Laws

Jill E. Family, Commonwealth Professor of Law and Government and Director, Law and Government Institute, Widener University Commonwealth Law
  • The Future Relief of Immigration Law

4:45—5 p.m.  Closing Discussion

Anil Kalhan, Associate Professor of Law, Drexel University Thomas R. Kline School of Law

Richard Frankel, Associate Professor of Law, Drexel University Thomas R. Kline School of Law

5—6:30 p.m.  Reception
Eleanor Acer
Human Rights First (@humanrights1st)

Eleanor Acer is the Senior Director of the Refugee Protection program at Human Rights First, where she oversees research and advocacy on issues related to refugee protection, asylum, and immigrants’ rights. She works closely with Human Rights First’s pro bono representation team, conducts field research, has authored numerous reports and articles, and has testified before the U.S. Congress. She was selected by the American Bar Association to serve on its Commission on Immigration, and serves on the Advisory Board of the International Detention Coalition. She was also vice chair of the Refugee Council USA from 2006 to 2008 and has taught classes on refugee protection and migrants rights as an adjunct professor at the New School’s Graduate Program in International Affairs. Before coming to Human Rights First, she handled federal litigation as an associate at Kirkpatrick & Lockhart LLP. She received her J.D. from Fordham University School of Law.

T. Alexander Aleinikoff (@aalainikoff)
Columbia Law School (@ColumbiaLaw)

T. Alexander Aleinikoff is a Visiting Professor of Law at Columbia Law School. He is also a Senior Fellow at the Migration Policy Institute in Washington, D.C. From 2010 to 2015, he served as the United Nations Deputy High Commissioner for Refugees in Geneva. Prior to his service with the United Nations, he was a professor at Georgetown University Law Center, where he also served as dean. He was a professor of law at the University of Michigan Law School from 1981 to 1997. Professor Aleinikoff was co-chair of the Immigration Task Force for President Barack Obama’s transition team. From 1994 to 1997, he served as general counsel, and then executive associate commissioner for programs, at the Immigration and Naturalization Service. He received his J.D. from Yale Law School.

Caitlin Barry
Villanova University Charles Widger School of Law (@Villanova_Law)

Caitlin Barry is an Assistant Professor of Law at the Villanova University Charles Widger School of Law. A community lawyer whose work focuses on migrant justice, gender self-determination, and grassroots empowerment, Professor Barry directs the law school’s Farmworker Legal Aid Clinic and co-directs the Community Interpreter Internship Program. She previously supervised the Temple Immigration Law Clinic at Nationalities Service Center as an adjunct professor. Prior to her clinical teaching, Caitlin served as a staff attorney at NSC and as Immigration Specialist at the Defender Association of Philadelphia, a position she created with a post-graduate fellowship from the Berkeley Law Foundation. She received her J.D. from the Temple University Beasley School of Law, where she was awarded the Beth Cross Memorial Award for Public Interest Service and the Leonard Sigal Memorial Award for Academic Excellence in Criminal Law.

Jason A. Cade
University of Georgia School of Law (@UGASchoolofLaw)

Jason A. Cade is an Assistant Professor of Law at the University of Georgia School of Law, where he teaches Immigration Law and directs the Community Health Law Partnership Clinic. Professor Cade’s current scholarship explores intersections between immigration enforcement and criminal law, focusing primarily on the role of prosecutorial discretion in the modern immigration system. Previously, he served as an acting assistant professor at the New York University School of Law, where he taught in the Lawyering Program and assisted in the Immigrant Rights Clinic. Before teaching, Professor Cade clerked for Judge Steven Gold in the Eastern District of New York and then represented noncitizens in immigration proceedings and family court matters while working in both small firm and nonprofit settings. He received his J.D., magna cum laude, from Brooklyn Law School.
Jennifer Chacón
University of California, Irvine School of Law (@UCILaw)

Jennifer Chacón is a Professor of Law at the University of California, Irvine School of Law, where she also has served as Senior Associate Dean of Academic Affairs. She also has been a visiting professor at Stanford Law School and Harvard Law School and a scholar-in-residence at the University of California, Berkeley School of Law. Professor Chacón conducts research in immigration law, constitutional law, criminal law, and citizenship issues. She received National Science Foundation funding for one of her research projects, “Executive Relief and the Roles of Mediating Institutions in Immigration Law and Policy,” and Russell Sage Foundation support for another, “Liminal Legalities along Pathways to Citizenship: The Role of Brokering Organizations.” After receiving her J.D. from Yale Law School, she clerked for the Hon. Sidney R. Thomas of the U.S. Court of Appeals for the Ninth Circuit and practiced at Davis Polk & Wardwell in New York.

Angélica Cházaro
University of Washington School of Law (@UWSchool of Law)

Angélica Cházaro is an Assistant Professor of Law at the University of Washington School of Law, where she teaches Critical Race Theory, Poverty Law, Professional Responsibility, and Immigration Law. Before teaching, Professor Cházaro was supervising attorney at the Northwest Immigrant Rights Project, where she headed an office that provided legal services to low-income immigrants in Eastern Washington and directed local outreach and education efforts. She was previously a staff attorney in the organization’s Domestic Violence Unit in Seattle. Professor Cházaro is a member of the Blue Ribbon Commission convened by the National Day Laborer Organizing Network to provide the executive branch with recommendations on administrative relief for undocumented people. She received her J.D. from Columbia University School of Law, where she was an editor of the Columbia Human Rights Law Review, was named a James Kent Scholar, received a Lowenstein Fellowship, and was awarded the Jane Marks Murphy Prize for Excellence in Clinical Advocacy.

Jill Family
Widener University Commonwealth School (@WidenerLawCW)

Jill Family is Commonwealth Professor of Law and Government and Director of the Law and Government Institute at the Widener University Commonwealth Law School. She is an internationally-known and widely published expert in immigration law who studies the U.S. immigration court system, immigration agency policymaking, the role of the federal courts in immigration law, and the relationships between the three branches of government in setting, implementing, and interpreting immigration law. A fellow of the American Bar Association’s American Bar Foundation, she previously served as a member of the governing council of the American Bar Association Section on Administrative Law. After receiving her J.D. with high honors from Rutgers University School of Law—Camden, she clerked for the Hon. Morton I. Greenberg of the U.S. Court of Appeals for the Third Circuit and practiced at Dechert LLP.

Richard Frankel
Drexel University Thomas R. Kline School of Law (@DrexelKline)

Richard Frankel is an Associate Professor of Law at the Drexel University Thomas R. Kline School of Law, where he is the founder and Director of the Appellate Litigation Clinic. Since its inception, the clinic has handled an array of cases on behalf of indigent and needy individuals, including matters involving immigration, prisoner rights, employment discrimination, family law, and environmental protection. He has supervised students arguing numerous matters in venues that include the U.S. Court of Appeals. Professor Frankel’s scholarship explores the intersection of civil rights, civil procedure, and the federal courts. Before joining the law school faculty, he served as a teaching fellow and supervising attorney for the Georgetown University Law Center’s Appellate Litigation Program. He previously was the Goldberg-Deitzler Fellow for Trial Lawyers for Public Justice in Washington, D.C., where he litigated class-action consumer protection and civil rights cases. He received his J.D. from Yale Law School. After law school, he clerked for U.S. District Court Judge Henry Kennedy Jr. and for U.S. Court of Appeals Judge William C. Canby.
Lucas Guttentag (Stanford Law School (@Stanford Law) / Yale Law School (@YaleLawSch))

Lucas Guttentag is the founder and former national director of the ACLU Immigrants’ Rights Project, which he led from 1985 until 2010. He is currently serving as Senior Counselor to the Secretary of Homeland Security, Jeh Johnson. He is Professor of the Practice of Law at Stanford Law School, and Robina Foundation Distinguished Senior Fellow and Senior Research Scholar at Yale Law School. He has litigated complex civil rights, class action, and constitutional cases on behalf of immigrants and refugees in federal courts throughout the United States. After enactment of IIRIRA in 1996, he was the architect of a five-year legal battle to preserve judicial review over immigration deportation orders, culminating in his successful arguments in INS v. St. Cyr and Calcano-Martinez v. INS in the Supreme Court. He writes on immigration law, immigrants’ rights, and civil rights; is a member of the American Law Institute; has served on numerous non-profit boards; and has been recognized widely for his litigation and leadership. He received his J.D. from Harvard Law School.

Helen Gym (@HelenGym2015 @HelenGymAtLarge) / Philadelphia City Council (@PHLCouncil)

Helen Gym is a Philadelphia City Councilwoman At-Large and chair of the Committee on Children and Youth. She is a community and education leader whose work supports the right to a quality public education for all children. A former school teacher and journalist, she co-founded Parents United for Public Education, a citywide group that advocates for new revenue in Philadelphia’s public schools. She also co-founded the Philadelphia Public School Notebook, an independent education newspaper that has investigated school district budgeting and evaluated major policy initiatives. She previously was interim executive director of Asian Americans United, where she has been a longtime board member. Councilwoman Gym is the recipient of the Philadelphia Inquirer Citizen of the Year and received the National Award of Distinction from the University of Pennsylvania’s Graduate School of Education, from which she graduated. She was also chosen as one of 10 people nationally as a Cesar Chavez Champion of Change by the White House. She is a graduate of the University of Pennsylvania and the University of Pennsylvania Graduate School of Education.

Anil Kalhan (@kalhan) / Drexel University Thomas R. Kline School of Law (@DrexelKline)

Anil Kalhan is an Associate Professor of Law at the Drexel University Thomas R. Kline School of Law and Chair of the New York City Bar Association’s International Human Rights Committee. He also is an affiliated faculty member at the University of Pennsylvania’s South Asia Center and a faculty advisory board member for the Drexel University Center for Mobilities Research and Policy, and he previously has been a visiting scholar at the University of California, Berkeley, School of Law. His recent immigration law scholarship has focused on the litigation challenging DAPA and DACA; detention-related issues; and the intersection between immigration, privacy, and surveillance. Before coming to Drexel, he was a visiting assistant professor of Law at the Fordham University School of Law and an associate in law at the Columbia University School of Law. He previously worked as an associate at Cleary, Gottlieb, Steen & Hamilton LLP and as a volunteer attorney with the ACLU Immigrants’ Rights Project. He received his J.D. from Yale Law School.

Annie Lai (@annie_lai1) / University of California, Irvine School of Law (@UCILaw)

Annie Lai is an Assistant Clinical Professor of Law and Co-Director of the Immigrant Rights Clinic at the University of California, Irvine School of Law. Her teaching, research and practice focus on state and local immigration enforcement, civil rights, immigrant workers’ rights and the immigration consequences of criminal convictions. She previously was a clinical teaching fellow and Lecturer in Law at Yale Law School. Prior to teaching, Professor Lai worked as a staff attorney and racial justice fellow at the American Civil Liberties Union of Arizona, where she litigated cases concerning police misconduct, religious freedom, and prisoners’ rights. She also spent time as a staff attorney at the Urban Justice Center in New York and as a consultant with the Ford Foundation’s Migrant and Refugee Rights Portfolio. She received her J.D. cum laude from New York University School of Law and clerked for the Hon. James C. Francis IV of the Southern District of New York.
Jennifer Lee is an Assistant Clinical Professor of Law Law at the Temple University Beasley School of Law. She directs the Social Justice Lawyering Clinic at the Sheller Center for Social Justice, where she works with law students to represent individuals and organizations on issues affecting low-income individuals in the region, with a focus on low-wage workers and immigrants. Professor Lee’s research focuses on low-wage workers, with a special interest in the ways that immigration status intersects employment and labor rights. Before teaching, Professor Lee practiced in Colorado and North Carolina, representing farm workers in wage and hour, civil rights, human trafficking, and immigration cases. She and her colleagues were awarded the Paul & Sheila Wellstone Award to Combat Human Trafficking and the Cesar Chavez Organizational Leadership Award. She previously was a staff attorney at the ACLU of Colorado, a Clifton Everett Fellow at Legal Aid of North Carolina, and a staff attorney at South Brooklyn Legal Services. She clerked for the Hon. Franklin Van Antwerpen in the Eastern District of Pennsylvania after receiving her J.D. from Columbia Law School.

Alison Parker is the Director of Human Rights Watch’s U.S. Program, guiding the organization’s work on national security, immigration, and criminal justice in the United States. She previously served as a Sandler Fellow and the organization’s director of refugee policy, in both positions documenting and advocating against violations of the rights of refugees around the world. Ms. Parker has conducted human rights investigations in refugee settings in Africa and Central Asia and in prisons, jails, immigration detention centers, and immigrant communities throughout the United States. She has conducted extensive advocacy before the governments of the United States and Europe and has testified before state legislatures and the U.S. Congress. She previously worked with the United Nations High Commissioner for Refugees and engaged in sovereign litigation as an attorney at Cleary Gottlieb Steen & Hamilton LLP. Ms. Parker received a J.D. from Columbia University Law School and a master’s degree from Columbia’s School of International and Public Affairs.
Jaya Ramji-Nogales  
Temple University Beasley School of Law (@TempleLaw) 

Jaya Ramji-Nogales is the I. Herman Stern Professor of Law and the Co-Director of the Institute for International Law and Public Policy at the Temple University Beasley School of Law, where she teaches Refugee Law and Policy. She is a founding Co-Chair of the Migration Law Interest Group at the American Society of International Law and a Senior Research Associate of the University of London’s Refugee Law Initiative. She is the co-author of quantitative and qualitative studies of the U.S. asylum system, including “Refugee Roulette: Disparities in Asylum Adjudication” and “Lives in the Balance: Asylum Adjudication by the Department of Homeland Security,” both published by NYU Press. She also writes in the field of international and comparative migration law. Before entering academia, Professor Ramji-Nogales taught in Georgetown’s asylum clinic, created a refugee law clinic at the University of the Witwatersrand in Johannesburg, South Africa, and supervised the asylum program at the international law firm of Debevoise & Plimpton. She received a J.D. from Yale Law School and an LL.M., with distinction, from Georgetown University Law Center.

Rebecca Sharpless  
University of Miami School of Law (@MiamiLawSchool) 

Rebecca Sharpless is a Clinical Professor at the University of Miami School of Law, where she is also Director of the Immigration Clinic and a Roger Schindler Fellow. Her research focuses on progressive lawyering, feminist theory, and the intersection of immigration and criminal law. Professor Sharpless was previously a visiting clinical professor of law at Florida International University’s College of Law. She previously was a supervising attorney at Americans for Immigrant Justice (formerly Florida Immigrant Advocacy Center), where she engaged in extensive litigation on behalf of low-income immigrants as lead counsel in cases before the U.S. Court of Appeals and U.S. District Courts. She speaks on immigration law at events such as the annual conference of the American Immigration Lawyers Association. She is a longstanding board member of the National Lawyers Guild’s National Immigration Project. She received her J.D. from Harvard Law School.

Frank Sharry (@FrankSharry)  
America’s Voice (@AmericasVoice) 

Frank Sharry is the Founder and Executive Director of America’s Voice and America’s Voice Education Fund. Before founding America’s Voice and America’s Voice Education Fund, Mr. Sharry served for 17 years as executive director of the National Immigration Forum, one of the nation’s premier immigration policy organizations. He is one of the nation’s leading spokespersons for immigration reforms. During the 1980s, Mr. Sharry served as executive director of Centro Presente, a local organization working with Central American refugees in the greater Boston area, and was a co-founder of the Massachusetts Immigrant and Refugee Coalition. His career started with work on refugee rescue and resettlement for the U.S. Committee for Refugees and Immigrants in Asia and the United States. Mr. Sharry is also the 2015 recipient of the National Council of La Raza’s Capital Award for Public Service which honored his life commitment to Immigration Reform. Mr. Sharry is a native of Connecticut and a graduate of Princeton University.

Wadie E. Said  
University of South Carolina School of Law (@UofSCLaw) 

Wadie E. Said is a Professor of Law at the University of South Carolina School of Law, where he teaches courses in criminal law, criminal procedure, immigration law, and international human rights law. Professor Said is the author of “Crimes of Terror: The Legal and Political Implications of Federal Terrorism Prosecutions,” which was published in 2015 by Oxford University Press. His scholarship analyzes challenges inherent in modern prosecution of terrorism, such as coercive interrogation and the use of informants. He previously was a visiting professor in the Law and Society Program at the University of California, Santa Barbara. Prior to teaching, Professor Said was an assistant federal public defender in the Office of the Federal Public Defender for the Middle District of Florida and a litigation associate at Debevoise & Plimpton, where he helped coordinate the pro bono political asylum program. He clerked for Chief Judge Charles P. Sifton of the U.S. District Court for the Eastern District of New York after receiving his J.D. from Columbia University School of Law.
Michael J. Wishnie (@MikeWishnie)  
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Michael Wishnie is Deputy Dean for Experiential Education at Yale Law School, where he is the William O. Douglas Clinical Professor of Law and Director of the Jerome N. Frank Legal Services Organization. His teaching, scholarship, and law practice have focused on immigration, labor and employment, habeas corpus, civil rights, government transparency, and veterans’ law. For years, Professor Wishnie and his students have represented low-wage workers, immigrants and veterans in federal, state, and administrative litigation. He and his students have also represented unions, churches, veterans’ groups, and grassroots organizations in a range of legislative, media, and community education matters. From 1998 to 2006, Professor Wishnie taught at New York University School of Law. Previously, he worked at the American Civil Liberties Union Immigrants’ Rights Project as a Skadden Fellow; in the Brooklyn Neighborhood Office of The Legal Aid Society; as a law clerk to Judge H. Lee Sarokin of the District Court of New Jersey and U.S. Court of Appeals for the Third Circuit; and as a clerk for Justice Harry A. Blackmun, retired, working in the chambers of Associate Justice Stephen G. Breyer of the Supreme Court of the United States.

For their invaluable assistance, input, and support in planning and organizing this symposium, we are very thankful to Jerry Arrison, Caitlin Barry, Kristin Brown Parker, Jennifer Chacón, Emily Derstine Friesen, Jill Family, Richard Frankel, Autumn Gramigna, Sarah Greenblatt, Marielena Hincapié, Annie Lai, David Leopold, Mary McGovern, Emily Storz, Claire Thomas, Shoba Sivaprasad Wadhia, Mike Wishnie, and many student volunteers from the Drexel Law Review. We are particularly thankful to Dean Roger Dennis for his support for this event, and to all of the symposium participants for sharing their time and expertise with us today.

Jacqueline Porter ’17  
Executive Editor, Symposium  
Drexel Law Review

Anil Kalhan  
Associate Professor of Law  
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The Drexel Law Review is a general-interest journal run by students at the Thomas R. Kline School of Law. Published semi-annually, each volume contains articles written by legal scholars and student editors.