

Crimmigration: Spring 2020
The University of Oklahoma College of Law
Kit Johnson, Associate Professor of Law
FINAL EXAMINATION

Instructions:

1. Your response must be submitted as a .doc or .docx file. The document must conform to U.S. letter dimensions (8.5 by 11 inches) with 1-inch margins all around using 13-point Century Schoolbook font with line spacing set at single.
2. This is an open book examination in that you may use your own notes and the readings from this course, whether printed or electronic, to help formulate your response. You may not, however, use any materials from outside this class (printed or electronic) to assist you in responding to this examination.
3. During the exam: You may not collaborate with anyone or get anyone's help in composing your response except to the extent you are getting technical help with regard to using software as necessary to do your response and turn it in.
4. After the exam: Communicate nothing about the exam, including even vague impressions or characterizations, to any member of the class who has not yet taken it.
5. The duration of this exam is eight hours.
6. Please note the word limits for each of the four problems. The phrase “__ words” should be the first thing noted in response to each problem, where the blank is replaced by the word count for the words appearing in your response to the problem. The word count for the response does not need to include the two words represented by the word count report itself. Any response that goes over the word count will be heavily penalized in grading and may be given zero points in my discretion. I will be independently checking word counts. Inaccurate self-reported word counts will presumptively be treated as academic misconduct.
7. Your goal is to show your mastery of the material presented in the course and your skills in analyzing legal problems within the scope of this course's subject matter. It is upon these bases that you will be graded.
8. Base your exam answer on the general state of U.S. law, including all rules, procedures, and cases discussed in class.
9. Organization counts.
10. Feel free to use reasonable abbreviations.
11. Do not write your name on any part of the exam response or identify yourself in any way, other than to use your examination I.D. number appropriately. Self-identification on the exam will, at a minimum, result in a lower grade, and may result in disciplinary action.
12. Good luck.

Problem 1

(500 words maximum -- please note your word count at the start of your response)

Patrycja Paczynski, an LPR from Poland, pled guilty to 29 Ohio Revised Code § 1280(A): Having a firearm while committing a felony. The statute provides: “Any person who, while committing or attempting to commit a felony, possesses a pistol, shotgun or rifle or any other offensive weapon in such commission or attempt, whether the pistol, shotgun or rifle is loaded or not, or who possesses a blank or imitation pistol, altered air or toy pistol, shotgun or rifle capable of raising in the mind of one threatened with such device a fear that it is a real pistol, shotgun or rifle, or who possesses an air gun or carbon dioxide or other gas-filled weapon, electronic dart gun, conductive energy weapon, knife, dagger, dirk, switchblade knife, blackjack, ax, loaded cane, billy, hand chain or metal knuckles, in addition to the penalty provided by statute for the felony committed or attempted, upon conviction shall be guilty of a felony for possessing such weapon or device, which shall be a separate offense from the felony committed or attempted and shall be punishable by imprisonment in the custody of the Department of Corrections for a period of not less than two (2) years nor for more than ten (10) years for the first offense, and for a period of not less than ten (10) years nor more than thirty (30) years for any second or subsequent offense.”

The Department of Homeland Security (DHS) contends that Paczynski’s plea renders her deportable under INA § 237(a)(2)(A)(iii) with reference to INA § 101(a)(43)(E)(ii) and 18 U.S.C. § 924(b). The latter statute reads: “Whoever, with intent to commit therewith an offense punishable by imprisonment for a term exceeding one year, or with knowledge or reasonable cause to believe that an offense punishable by imprisonment for a term exceeding one year is to be committed therewith, ships, transports, or receives a firearm or any ammunition in interstate or foreign commerce shall be fined under this title, or imprisoned not more than ten years, or both.”

Should Paczynski be removed as an aggravated felon? Why or why not?

Problem 2

(500 words maximum -- please note your word count at the start of your response)

In April 2008, Renata Roman entered the United States without authorization. Roman has led a largely exemplary life in the United States, with just one slip up. In 2010, Roman pled guilty to simple possession of 1.4 grams of marijuana. She served no time in jail. In 2015, Roman married U.S. Army Specialist Adam Armstrong. The couple has one child, Cristina Celeste.

In 2020, Renata Roman received a Notice to Appear, seeking to remove her from the United States on the basis of her 2010 conviction.

Roman wants to fight removal. She notes that if she's deported back to her home country of Sierra Leone, she will likely die. Roman suffers from lupus, a long-term autoimmune disease in which the body's immune system becomes hyperactive and attacks normal, healthy tissue. She relies on medicines and treatments available in the United States that are not available in Sierra Leone. Indeed, Sierra Leone currently bears the dubious distinction of being the nation recognized by the World Health Organization as providing the worst healthcare in the world to its citizens.

What, if any, forms of relief from removal might Roman be eligible for?

Problem 3

(500 words maximum -- please note your word count at the start of your response)

Lino López is an undocumented migrant living in San Diego, California. He has been separated from his wife and 10-year-old son, both Mexican citizens, for more than five years. Lino is determined to reunite with them.

Lino's wife and son surreptitiously cross the U.S.-Mexico border through the desert east of San Diego. Lino meets them on the U.S. side and attempts to drive them home.

Lino and his family are intercepted by Border Patrol Agent Alicia Armstrong. In the course of taking the three into custody, Agent Armstrong discovers a handgun in the glove compartment of Lino's car. Lino explains that he keeps the weapon there for his safety since he lives in a bad neighborhood, and it is often unsafe for him to drive home late at night when he's finished his work as a dishwasher in a high-end restaurant.

Agent Armstrong also discovers that Lino has a criminal record. In 2010, he pled guilty to driving without a license pursuant to California Vehicle Code § 12500 and served 70 days in jail. In 2011 and 2013, Lino pled guilty to 8 U.S.C. § 1325, was sentenced to time served (seven and 14 days respectively) and removed from the country.

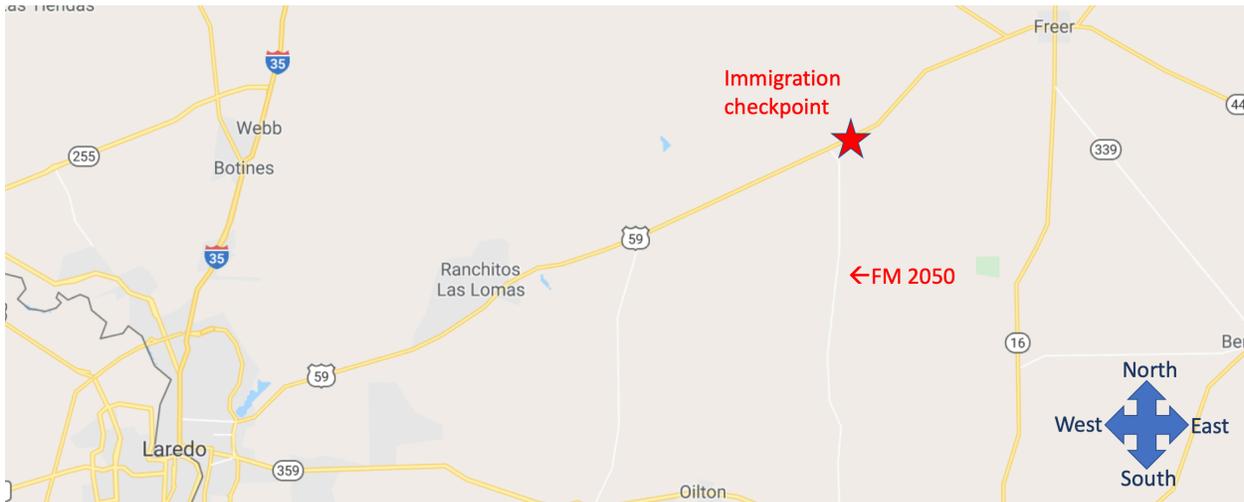
If criminally prosecuted under 8 U.S.C. § 1324 for transporting unauthorized migrants, what sentence is Lino facing and why? What if, instead, he pleads guilty to 8 U.S.C. § 1326 – what sentence would Lino be facing and why?

Problem 4

(800 words maximum -- please note your word count at the start of your response)

Agent Arvin Axel has been a Border Patrol agent at the Freer, Texas immigration checkpoint for over eight years. His duties at the checkpoint consist of working the inspection lanes and conducting immigration inspections on vehicles that approach the checkpoint.

The Freer checkpoint is about 50 miles from the border of the United States and Mexico and approximately 43 miles from Laredo, Texas. It sits on U.S. Highway 59, just north of where highway FM 2050 dead-ends into Highway 59. If a motorist traveling north on Highway 59 turned right (south) onto FM 2050, he would avoid the Freer checkpoint. Turning right onto FM 2050 from Highway 59 will add about an hour onto a trip from Laredo to Houston. It is undisputed that FM 2050 is known for alien and contraband smuggling.



Nevertheless, there are legitimate reasons to be on FM 2050. There are a dozen homes, a wind farm, oil and gas sites, ranches, and other businesses along FM 2050. While Agent Axel is familiar with some of the vehicles belonging to homeowners and people who work at places on the road, he is not familiar with all the vehicles. Over the eight years that he has worked at the Freer checkpoint, Agent Axel has driven on FM 2050 numerous times.

It is the practice of Border Patrol to not stop vehicles prior to turning down FM 2050, but once a vehicle makes the turn, Border Patrol will attempt to chase down the vehicle and conduct a roving stop to see if there are any immigration violations occurring. Indeed, Border Patrol's practice is to stop 100% of vehicles that turn down FM 2050. The process works as follows: an agent on the primary inspection lane, upon seeing a vehicle turn south on FM 2050, alerts an agent inside the checkpoint who comes out and attempts to chase down the vehicle. Once the pursuing agent finds the vehicle matching the description of the vehicle the primary

agent called out, he attempts to run a registration check to determine where the vehicle is from, as it is uncommon for vehicles from out of the area to be traveling down FM 2050. While following the vehicle, the agent will observe the vehicle's speed, the driving of the vehicle, and how the driver is reacting to being pursued.

The Border Patrol makes approximately 10 to 20 roving stops per week on FM 2050. Agent Axel himself has conducted approximately 20 to 30 stops throughout his eight years there, and only two or three of those stops resulted in seizures.

On February 13, 2017, Agent Axel was working inside the Freer checkpoint rather than on the inspection lanes. Around 4:10 p.m., an agent called out that a white Chevy pickup truck turned onto FM 2050 and Agent Axel got into the pursuit vehicle and attempted to chase down the truck. Agent Axel estimates it took him about 20 seconds to walk to the vehicle, and another 10 seconds to turn onto FM 2050. Agent Axel thinks it took him five minutes to catch up to the truck and that he traveled about 100 miles an hour to reach it, although he knows he slowed down significantly when he caught up to the truck. Agent Axel describes the road as windy and hilly, and he believes the truck he was pursuing was swaying side to side within the lane, creating dust clouds from driving on the soft shoulder of the road. Agent Axel acknowledges that the road was under construction.

Prior to conducting the stop, Agent Axel contacted radio dispatch to run a check on the truck's paper license plate. According to Agent Axel, paper license plates are often used by smugglers to avoid suspicion or inspection. Dispatch told Agent Axel that the vehicle was registered to an individual (Felipe Freeman, who turned out to be the driver of the truck) out of Houston, Texas. Agent Axel noted it is uncommon to see vehicles based out of Houston on FM 2050 because it is not a direct route to Houston. Houston is about 250 miles Northeast from Freer, and the truck was heading south on FM 2050. However, nothing else stood out to Agent Axel about the truck; in fact, it was the type of vehicle commonly used by oil and gas companies on FM 2050.

While in pursuit of Freeman, Agent Axel could not see into the back of the truck but was able to see Freeman's face in the side view mirror. He thought Freeman appeared to be nervous because he seemed to be glancing into the side mirror several times. Agent Axel activated his emergency lights and conducted a patrol stop about 7.6 miles from the checkpoint and approximately nine and a half minutes after Freeman's truck was spotted turning on to FM 2050.

After Agent Axel stopped Freeman, Agent Axel discovered there was a passenger in Freeman's truck, Ms. Miriam Manolo. Ms. Manolo did not have legal status to be in the United States.

According to Ms. Manolo, Freeman appeared to be driving at a normal rate of speed on FM 2050, and he only veered off the road when he was stopped by the agents.

She also believed his behavior to be normal and that everything seemed to be fine prior to the car being stopped and Agent Axel coming up to the truck.

If criminally prosecuted under 8 U.S.C. § 1324 for transporting an unauthorized migrant, would Felipe Freeman have any basis for challenging Agent Axel's conduct? Why or why not?

SHORT ANSWER QUESTIONS

The following questions do not have a word limit but can be answered very briefly -- in one word, just a few words, one sentence, or a few short bullet points

1. What word does the U.S. Code use for noncitizens?
2. Name the two categories of legal migrants and explain how they differ.
3. True or False: It is a crime to be present in the United States without authorization.
4. Why are some noncitizens subject to removal under INA § 212 and others are subject to removal under INA § 237?
5. True or False: Noncitizens are subject to removal on criminal grounds only if they've been convicted of a crime.
6. Explain your answer to question five.
7. The U.S. government's "zero-tolerance" policy applies to what criminal offense?
8. In what case did the Supreme Court find 18 U.S.C. § 16(b) to be unconstitutionally vague?
9. Give one example of a crime involving moral turpitude.
10. True or False: Adult noncitizens in civil immigration detention are frequently held in the same conditions as criminal defendants awaiting trial.
11. Criminal defense counsel have an obligation to inform noncitizen clients of the immigration consequences of any plea when the immigration statute is ____, ____, and ____. What are the missing words? Where does this obligation come from?

12. True or False: A typical criminal defendant who pleads guilty to 8 U.S.C. § 1325 in fast-track proceedings will see an immigration judge before being deported from the United States.
13. Identify three of the characteristics of family detention identified by children (not adults) in *The Least of These*.
14. What percentage of immigration detainees are transferred at least once while awaiting their removal proceedings?
15. In Problem 2 above, would Renata Roman be subject to mandatory detention? Why or why not?
16. What was Jose Padilla's job at the time of his arrest?
17. How did Jose Padilla attempt to help the federal authorities investigating his case?
18. True or False: Noncitizens in detention are entitled to bond hearings every six months.
19. True or False: INA § 236(c) applies only to noncitizens arrested by immigration officials as soon as they are released from jail.
20. According to public defender Bill Foster, what type of noncitizen defendant is likely to plea at the first available opportunity regardless of the sentence offered?
21. How would the motivations of a lawful permanent resident and a transient unauthorized migrant (one who recently arrived in the United States to work) differ when considering the criminal and immigration consequences of a plea?
22. What crimes were the Postville meatpackers charged with? What did most plea to? What was the legal basis for the misgivings of the interpreter (and judge) regarding the meatpackers' culpability for the crime pled to?
23. What are the three types of removal that do not involve an immigration judge?
24. What law was the basis for the criminal complaint against Scott Warren? How did the facts surrounding Warren's complaint differ from typical violations of that statutory provision?

25. 21 Ok. St. § 446(A) states that “It shall be unlawful for any person to transport, move, or attempt to transport in the State of Oklahoma any alien knowing or in reckless disregard of the fact that the alien has come to, entered, or remained in the United States in violation of law, in furtherance of the illegal presence of the alien in the United States.” If you had a client charged with violating this provision, what challenge(s) would you raise to the statute itself?
26. What standard of review applies to searches of vehicles at the Border Patrol’s fixed checkpoints?
27. Identify three tools utilized by Border Patrol to thwart unlawful migration.
28. True or False: Secure Communities has been abandoned by the Trump administration in favor of the Priority Enforcement Program.
29. If Cleveland County were to enter into a memorandum of understanding with the Department of Homeland Security to authorize county sheriffs to investigate immigration violations, it would be pursuant to what provision of the INA?
30. True or False: Sanctuary jurisdictions can be found in every state.

***** END OF EXAMINATION *****