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Preface

In preparing the first edition of *Understanding Immigration Law*, we faced a formidable set of challenges. Commencing work on the second edition, we, to our surprise, found that the challenges may have become even more formidable.

First, this book analyzes one of the most disputed public policy issues facing the United States. A heated national debate over immigration reform has spanned the 15 years of the new millennium, with no end in sight. Its contentiousness is a function of the complex, important, and, in certain respects, personal issues implicated by the policy choices that the nation must make. Immigration law and policy responds to a number of competing demands and interests that touch on contested conceptions of national identity, class and socioeconomic status, and related issues. Simply finding the proper tone to encourage rational discussion of the legitimate differences of opinion can at times prove to be challenging.

Second, U.S. immigration law is incredibly complex. Part of the law’s complexity arises from the fact that it deviates in important respects from mainstream public law, a characteristic known as “immigration exceptionalism.” As the Supreme Court has emphasized, “[i]n the exercise of its broad power over naturalization and immigration, Congress regularly makes rules that would be unacceptable if applied to citizens.” *Mathews v. Diaz*, 426 U.S. 67, 79–80 (1976). The fundamental question of the role of the judiciary in reviewing the constitutionality of immigration laws remains in dispute. The Supreme Court has never overruled its foundational decisions upholding immigration laws that were racially discriminatory. See, e.g., *Chae Chan Ping v. United States* (The Chinese Exclusion Case), 130 U.S. 581 (1889). It has not disturbed the ruling that the courts lack the power to review the constitutionality of the substantive immigration admissions criteria passed by Congress. See Gabriel J. Chin, *Segregation’s Last Stronghold: Race Discrimination and the Constitutional Law of Immigration*, 46 UCLA L. REV. 1 (1998). Indeed, it remains contested whether the U.S. Constitution applies to the review of the immigration laws and what precise protections it extends to noncitizens. Put simply, immigration exceptionalism requires a fair amount of explanation.

Nor is the Immigration & Nationality Act of 1952 (INA), which is the centerpiece of American immigration law, known for its accessibility to students and lawyers. To the contrary, only the much-maligned Internal Revenue Code rivals the intricate, lengthy, and all too often obtuse INA. See *Castro-O’Ryan v. INS*, 847 F.2d 1307, 1312 (9th Cir. 1988) (“With only a small degree of hyperbole, the immigration laws have been termed ‘second only to the Internal Revenue Code in complexity.’”) (citation omitted); *Lok v. INS*, 548 F.2d 37, 38 (2d Cir. 1977) (stating that U.S. immigration laws resemble “‘King Minos’s labyrinth in ancient Crete’”). Consequently, explaining concisely and clearly the statute’s complexities and nuances requires great care and attention. In addition, striking a balance in one volume between simplifying while not dumbing down the fundamentals of U.S. immigration law proves to be difficult. Seeing the forest through the trees often proves most difficult for both the expert in, as well as the newcomer to, immigration law. We strive throughout *Understanding Immigration Law* to provide the reader with the basics of immigration law without getting lost in the minutiae.

To exacerbate the complexities of immigration law, Congress amends the Immigration & Nationality Act (INA) just about every year, with the changes slowly making the law
lengthier and more complex, if not clearer and easier to understand. Moreover, the immigration bureaucracy (see Chapter 5) regularly promulgates new regulations and amends existing ones. The courts and the Board of Immigration Appeals issue many opinions in immigration cases. Changes in the law, including the Supreme Court’s decision in Arizona v. United States, 132 S. Ct. 2492 (2012) and the Obama administration’s announcement in 2012 of the Deferred Action for Childhood Arrivals program (and its controversial expansion in 2014), which provides relief to certain undocumented immigrants, see Chapter 12, required extensive changes from the first edition of Understanding Immigration Law. Scholars must work diligently to just keep up with the frequent changes in this highly technical body of law.

Change in the law — perhaps even wholesale “comprehensive immigration reform” — in the near future is a distinct possibility. Discussion of immigration reform has been in the air for well over a decade. Massive changes in the law can come with little notice. In 1990, to the surprise of many informed observers, Congress overhauled the immigration laws and expanded lawful immigration. In 1996, Congress passed far-reaching, reforms that one informed observer characterized as “the most radical reform of immigration law in decades — or perhaps ever.” PETER H. SCHUCK, CITIZENS, STRANGERS, AND IN-BETWEENS 143 (1998). Within months of September 11, 2001, Congress passed the USA PATRIOT Act, which added tough new immigration provisions ostensibly designed to combat terrorism.

Since publication of the first edition in 2009, rumblings in Congress of comprehensive immigration reform repeatedly have come and gone. Although much-debated, Congress has failed to pass a major immigration reform package. It also has been unable to pass any of the versions of the DREAM Act introduced in Congress that would have benefited undocumented college students. See Chapter 18.

The inability of Congress to enact immigration reform legislation has contributed to the long-running, and often over-heated, national debate over immigration. President Obama’s 2014 executive action, including expansion of the deferred action program, provoked great controversy and is tangled in legal challenges. A growing number of state and local governments have passed laws designed to facilitate enforcement of the immigration laws. Chapter 4, which has been substantially revised since the first edition, critically reviews the constitutionality of such efforts, and whether they intrude on the federal power to regulate immigration.

Current events also regularly transform the immigration landscape. In 2014, for example, public attention and the Obama Administration focused on the much-publicized increase in unaccompanied minors from Central America. See Frances Robles, Fleeing Gangs, Children Head to U.S. Border, N.Y. TIMES, July 9, 2014. We attempt to integrate such developments into Understanding Immigration Law but cannot always predict how significant and lasting they will be.

Despite the many challenges, the second edition of Understanding Immigration Law strives to lay out the basics of U.S. immigration law in a way accessible to newcomers to the field. Readers can judge whether we met our goal.

The early chapters of this volume offer background about the intellectual, historical, and constitutional foundations of U.S. immigration law. They also identify factors that have historically fueled migration to the United States, including the economic “pull” of jobs and family in the United States and the “push” of economic hardship, political
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Instability, and other aspects of life in the sending country. The middle chapters provide a capsule summary of the law concerning admissions and removals under the Immigration and Nationality Act, as amended, and implementing regulations. We end with a chapter making some tentative speculations about the future of U.S. immigration law.

Understanding Immigration Law has been designed to be used by students as a supplement to the most-widely adopted immigration law casebooks, including Stephen H. Legomsky & Cristina M. Rodriguez, Immigration and Refugee Law and Policy (5th ed. 2009), Thomas Alexander Aleinikoff, David A. Martin, Hiroshi Motomura & Maryellen Fullerton, Immigration and Citizenship: Process and Policy (7th ed. 2012), and other leading immigration law casebooks. The background to leading Supreme Court immigration decisions can be found in Immigration Stories (David A. Martin & Peter H. Schuck eds., 2005).

Immigration is the topic of many websites and blogs. For up-to-date immigration law news and analysis, visit the Immigration Prof blog, http://lawprofessors.typepad.com/immigration/, which is managed by two co-authors (Kevin R. Johnson and Bill Hing) of Understanding Immigration Law. LexisNexis Immigration Law Newsroom (http://www.lexisnexis.com/legalnewsroom/immigration/default.aspx) also provides comprehensive immigration news, court decisions, and other immigration materials.

A Note on Terminology

Although not defined in the Immigration & Nationality Act, the emotion-laden phrase “illegal aliens” often is employed in the public debate over immigration. See generally Mae M. Ngai, Impossible Subjects: Illegal Aliens and the Making of Modern America (2004). Because the lawfulness of the status of some undocumented immigrants is not always clear, characterizing them as “illegal” is not entirely accurate. Restrictionists frequently decry “illegal aliens” and advocate their mass deportation from the United States. The use of the very term “illegal aliens” ordinarily betrays a restrictionist bias in the speaker. We avoid use of the term in this book. Similarly, the term “alien,” although literally the DNA of the INA, which addresses in general terms the treatment of “aliens,” as opposed to citizens, has negative connotations. See Kevin R. Johnson, “Aliens” and the U.S. Immigration Laws: The Social and Legal Construction of Nonpersons, 28 U. MIAMI INTER-AM. L. REV. 263 (1996–97); D. Carolina Nuñez, War of the Words: Aliens, Immigrants, Citizens, and the Language of Exclusion, 2013 BYU L. REV. 1517. Because the term “aliens” is effectively the organizing term of the entire immigration statute, we must employ it, although we strive to do so carefully and sensitively throughout.

Kevin R. Johnson
Raquel Aldana
Bill Ong Hing
Leticia M. Saucedo
Enid Trucios-Haynes
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## Chapter 1 UNDERSTANDING AND EVALUATING U.S. IMMIGRATION LAW AND POLICY

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