

**LUCAS GUTTENTAG**  
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## **EMPLOYMENT**

United States Department of Justice. 2021-present.  
Senior Counselor to the Deputy Attorney General. Senior advisor for immigration policy.

Stanford Law School. 2012-present (on leave)  
Professor of the Practice of Law; previously lecturer in residence. Courses: Immigration Law; Advanced Immigration Policy Reform; Santa Clara Policy Lab; Social Justice Impact Litigation; Advanced Immigration Law.

Yale Law School. 2009-present (on leave)  
Martin R. Flug Lecturer in Law & Senior Research Scholar. Previously Robina Foundation Distinguished Senior Fellow and Senior Research Scholar; Ford Foundation Distinguished Research Scholar. Courses: Immigration Law; Strategic Constitutional Impact Litigation; Advanced Immigration Issues; Advanced Administrative Immigration Policy.

United States Department of Homeland Security. 2014-2016  
Senior Counselor to Secretary of Homeland Security; Senior Counselor to Director of U.S. Citizenship and Immigration Services. Senior policy advisor on immigration policy and litigation; coordination with White House Domestic Policy Counsel, White House Counsel, and Department of Justice. (Top secret security clearance.)

American Civil Liberties Union Foundation (ACLU), National Office, New York and California. 1985-2010  
Founder and national director ACLU Immigrants' Rights Project (IRP). Created and directed nationwide litigation program with offices in New York and San Francisco. Active nationwide complex class action and appellate litigation on behalf of refugees and immigrants in federal courts throughout the country; oral argument in numerous courts of appeals and U.S. Supreme Court. Senior counsel 2010-2013.

University of California, Berkeley School of Law (Boalt Hall). 1996-2009  
Lecturer (adjunct). Annual course on immigration law and constitutional and civil rights of immigrants. Awarded continuing appointment based on University excellence review in 2009.

Columbia University School of Law. 1983-1997  
Associate Clinical Professor of Law and Director of Immigration Law Clinic 1983-87 (full-time); adjunct lecturer teaching immigration law 1987-1997.

Center for Law in the Public Interest, Los Angeles, California. 1979-1983  
Staff attorney. Civil rights class action and appellate litigation on employment discrimination, police practices, freedom of speech, environmental protection, and attorneys' fees. Active litigation in federal and state trial and appellate courts, including oral argument in California Supreme Court.

Hon. William Wayne Justice, 1978-1979. United States District Court (E.D. Tex). Law Clerk.

## **EDUCATION**

Harvard Law School, J.D. *cum laude*. Board of Student Advisers (BSA)  
University of California at Berkeley, A.B. History with honors; Phi Beta Kappa.

## **PROFESSIONAL EXPERIENCE**

### **Representative Litigation** (Unless otherwise indicated, listing only cases argued or lead counsel.)

*INS v. St. Cyr*, 533 U.S. 289 (2001) (upholding right to habeas corpus review of immigration removal order and overturning retroactive application of new deportation law) (argued)

*Calcano-Martinez v. INS*, 533 U.S. 349 (2001) (holding that petition-for-review jurisdiction over final removal order is repealed and that habeas corpus jurisdiction is preserved) (argued)

*Ali v. Rumsfeld*, 479 F. Supp. 2d 85 (D.D.C. 2007) (constitutional and international law damages suit on behalf of Iraqi and Afghan civilians tortured in United States military custody overseas) (argued) *aff'd* 649 F.3d 752 (2011)

*Soskin v. Reinertson*, 353 F.3d 1242 (10th Cir. 2004) (class action equal protection challenge to state law authorized by 1996 Welfare Act terminating benefits of legal permanent resident immigrants) (argued)

*Flores-Chavez v. Ashcroft*, 362 F.3d 1150 (9th Cir. 2003) (due process challenge to denial of notice to juvenile detained by immigration authorities) (argued as amicus by invitation of the court)

Designed and executed national legal strategy to challenge jurisdiction-stripping provisions of 1996 immigration act (partial list of cases argued):

*Calcano-Martinez v. INS*, 232 F.3d 328 (2d Cir. 2000) *aff'd* 533 U.S. 348 (2001)

*Henderson v. Reno*, 157 F.3d 106 (2d Cir. 1998), *cert denied sub nom. Reno v. Navas*, 526 U.S. 1004 (1999)

*Magana-Pizano v. INS*, 152 F.3d 1213 (9th Cir. 1998) *vacated and remanded* 526 U.S. 1001 (1999) *aff'd* 200 F.3d 603 (9th Cir. 1999)

*Hose v. INS*, 180 F.3d 992 (9th Cir. 1999) (*en banc*)

*Requena-Rodriguez v. Pasquarel*, 190 F.3d 299 (5th Cir. 1999)

*Jurado-Gutierrez v. Greene*, 190 F.3d 1135 (10th Cir. 1999)

*LaGuerre v. INS*, 164 F.3d 1035 (7th Cir. 1998)

*Williams v. INS*, 114 F.3d 82 (5th Cir. 1997)

*Fernandez v. INS*, 113 F.3d 1151 (10th Cir. 1997)

*Haitian Centers Council v. McNary*, 823 F.Supp. 1028 (E.D.N.Y. 1993) (co-lead trial counsel in three-week trial challenging indefinite detention and conditions of confinement of Haitian refugees at Guantanamo Naval Base) related to 509 U.S. 155 (1993) (challenging summary repatriation of Haitian refugees interdicted on the high seas)

*American Baptist Churches v. Thornburgh*, 760 F. Supp. 796 (N.D. Cal. 1991) (co-lead counsel in nationwide class action culminating in settlement providing for new and unbiased asylum adjudications for more than 240,000 Salvadoran and Guatemalan class members)

*Manwani v. U.S. Department of Justice*, 736 F. Supp. 1367 (W.D.N.C. 1990) (declaring federal immigration "marriage fraud" statute unconstitutional) (argued)

*Azizi v. Thornburgh*, 908 F.2d 1130 (2d Cir. 1990) (constitutional challenge to federal immigration "marriage fraud" statute) (argued)

*Press v. Lucky Stores Inc.*, 34 Cal. 3d 311, 667 P.2d 704 (1983) (California Supreme Court) (holding that enforcing free speech rights at private shopping center constitutes broad public benefit under attorneys' fees statute) (argued)

### **Awards and Recognition** (partial)

Honorary Juris Doctor, City University of New York (CUNY) School of Law (2013)

American Law Institute (ALI) (elected 2014)

Lawdragon 500 Leading Lawyers in America (2017, 2018)

Fellow, American Bar Foundation (elected 2007)

Honor Roll of Nation's 25 Leading Advocates of Last 25 Years, National Immigration Forum, Washington DC (2007)

California Lawyer of the Year (CLAY) in Appellate Law, *California Lawyer* magazine (2002)

Human Rights Hero, American Bar Association *Human Rights* magazine (2001)

California's "Top 100 Lawyers" 2008, 2007 *San Francisco/Los Angeles Daily Journal*

Jack Wasserman Litigation Award, American Immigration Lawyers Association (2002, 1997, 1991, 1990)  
(organization's highest litigation award)

Human Rights Award, American Immigration Lawyers Association (co-recipient 1992)

Carol King Award for Outstanding Contribution to Immigration Law, National Immigration Project of the National Lawyers Guild (1998, 1991)

Civil Rights Award, Chinese for Affirmative Action (San Francisco, 2002)

Philip Burton Immigration and Civil Rights Award, Immigrant Legal Resources Center (San Francisco 1999)

Central American Refugee Center "CARECEN" (New York 1991)

### **Selected Publications**

Immigration Policy Tracking Project. An interactive online comprehensive catalogue of Trump administration immigration policy changes (conceptualization and implementation) (2017-present) <https://immpolicytracking.org>. Profiled in [New York Times](#) and [New Yorker](#).

*The President and Immigration Law: The Danger and Promise of Presidential Power* (October 2020) (book review), <https://www.justsecurity.org/72863/the-president-and-immigration-law-the-danger-and-promise-of-presidential-power/>

*Coronavirus Border Expulsions: CDC's Assault on Asylum Seekers and Unaccompanied Minors* (April 2020), <https://www.justsecurity.org/69640/coronavirus-border-expulsions-cdcs-assault-on-asylum-seekers-and-unaccompanied-minors/> (expanded and updated in 25 Benders Immigration Bulletin 815 (June 2020))

*Trump Is Using the Pandemic to Flout Immigration Laws*, New York Times (May 2020) (with Stefano Bertozzi) <https://www.nytimes.com/2020/05/11/opinion/trump-coronavirus-immigration.html>

*Reflections on Bureaucratic Barriers to Immigration Reform*, The Regulatory Review (December 2019), <https://www.theregview.org/2019/12/24/guttentag-reflections-bureaucratic-barriers-immigration/>

*In Alabama, Challenging Hidden Racial Discrimination*, New York Times (August 2018), <https://www.nytimes.com/2018/08/20/opinion/politics/minimum-wage-discrimination-alabama.html>

*The Forgotten Equality Norm in Immigration Preemption: Discrimination, Harassment, and the Civil Rights Act of 1870*, 8 Duke J. Con. Law & Pub. Pol'y 1 (2013)

*Immigration Preemption and the Limits of State Power: Reflections on Arizona v. United States*, 9 Stan. J. Civ. Rights & Civ. Liberties 1 (2013)

*Extending the Promise of Gideon: Immigration, Deportation and The Right to Counsel*, ABA Human Rights Journal (2013) (with Ahilan Arulanantham) (selected for republication of leading ABA articles)

*Discrimination, Preemption, and Arizona's Immigration Law: A Broader View*, 65 Stan. L. Rev. Online 1 (2012)

*Strong on Theory While Profiling Ignored*, (commentary on *Arizona v. US*) SCOTUSBLOG (June 25, 2012)

*Arizona's Immigration Law Violates Civil Rights*, The New Republic Online (May 14, 2012), <https://newrepublic.com/article/103188/sb1070-arizona-immigration-civil-rights-federalism>

*Immigration and American Values: Some Initial Steps for a New Administration*, ABA Human Rights Journal (2008)

*Immigration Reform: A Civil Rights Issue*, 2 Stan. J. Civ. Rights & Civ. Liberties 157 (2007) (originally delivered September 2006)

*Immigrants' Rights in the Courts and Congress: Constitutional Protections and the Rule of Law after 9/11*, 25 Wash. U. J. L & Pol'y 11 (2007) (originally delivered as invited lecture for Public Interest Law & Policy Speakers Series)

*Immigrants' Rights Post-9/11: Detention, Deportation and Discrimination*, 25 In Defense of the Alien (2003)

*1996 Immigration Act: Federal Court Jurisdiction -- Statutory Restrictions and Constitutional Rights*, 74 Interpreter Releases 245 (1997)

*'Court-Stripping' in the 1996 Immigration Laws: A Dangerous Precedent*, 20 In Defense of the Alien 213 (1997)

### **Selected Affiliations and Service**

Co-Faculty, Arthur Liman Center for Public Interest Law, Yale Law School (2020-present)

Biden-Harris Transition Team (2020-21)

Distinguished Fellow, Emerson Collective (2017-2020)

Unbound Philanthropies, Advisor to the Board of Directors (2011-2014; 2017-2019)

Fellow, Davenport College, Yale University (2009-present)

International (formerly Iraqi) Refugee Assistance Project (IRAP) Board of Directors (2012 – 2014)

American Immigration Council, Board of Trustees (2011 – 2014)

National Immigration Law Center, Board of Directors (1998 – 2014)

American Immigration Lawyers Association, Federal Litigation Section (founding member) (2011 – 2012)

American Constitution Society, Co-Chair Access to Justice Issues Group (2005 – 2008)

American Bar Association, Vice-Chair Rights of Immigrants Committee, Section on Individual Rights and Responsibilities (2006 – 2010)

National Immigration Forum, Washington, DC, Board of Directors (1989-2001)

American Bar Association Coordinating Committee on Immigration Law (1994-98)

Co-Chair, Immigration Law Committee, Section on Labor Law, American Bar Association (1987-96)

Advisory Group, Columbia University Center for the Study of Human Rights, Human Rights Advocates Program (1992-98)

Chair, National Advisory Committee, Asylum Study Project of Harvard Law School (1992-94)

Clinton-Gore Administration Presidential Transition Team for Immigration and Naturalization Service – consultant (1992)

Harvard Law School, Faculty-appointed committee to evaluate HLS immigration program; principal author committee report (1989) (with Prof. Mary Ann Glendon & Robert Juceam)

Advisory Board, American Immigration Law Foundation Legal Action Center (1988-92)

Advisory Board, American Friends Service Committee Immigration Law Enforcement Monitoring Project (ILEMP) (1984-86)

### **Selected Lectures and Presentations**

California Law Review and Miller Institute for Global Challenges and the Law, *Refugees and Responsibility Sharing* (2021)

California CEO Immigration Funder Group, *Federal Immigration Policy Update and Outlook* (2020)

Center for Migration Studies, respondent on book presentation *The President and Immigration Law* with authors Adam Cox and Cristina Rodriguez (2020)

Practising Law Institute (PLI) annual national immigration program, *The Supreme Court's Immigration Docket*, New York City (annually)

American Bar Association, Supreme Court Preview (2020)

Liman Center Colloquium, Economic Injustice: Courts, Law Schools, and Institutionalizing Reforms, presenter *Creating New Data: The Impact of Law School Research* (2019)

Federal Bar Association, *Immigration Litigation and the Role of 'Nationwide' Injunctions*, presenter Austin, TX (2019)

World Affairs Council (Peninsula Chapter), *International Migration and American Values Under a Trump Presidency* (2019)

University of Pennsylvania Law School Administrative Constitutionalism, *Debating Administrative Constitutionalism – Practice*, presenter (2018)

Center for Migration Studies, *A Tribute to Juan Osuna: Access to Justice, Due Process and the Rule of Law in the U.S. Immigration System – Present Realities and Outlining a Vision for the Future*, presenter (2018)

Keynote, Immigration Law Scholars and Teachers Workshop (Philadelphia 2018)

Harvard Law School Reunion Class Symposium, *Is the Rule of Law Just Another Endangered Species*, presenter (2018)

World Affairs Council, Marin County, *The Trump administration and the State of Immigrants' Rights: An Historical Perspective*, (2018)

American Association of Law Schools, Section on Immigration Law, presenter (2017)

The Robert H. Jackson Center, *Jackson's Immigration Legacy*, presenter (2017)

Keynote and panelist, Occidental College, symposium on private colleges and "sanctuary" protection for non-citizens (2017)

Georgia State University, The Global Studies Institute, Emerging Global Issues Forum, presenter (2017)

Boston College School of Law and Rappaport Center for Law and Public Policy, *State/Federal Tensions in Immigration Enforcement: Looking Back and Looking Forward*, Policy and Legislative Issues, presenter (2017)

G. Rollie White Scholar in Residence, University of Texas School of Law (2015)

Keynote, Michigan Journal of Law Reform, *Symposium on Immigration Reform* (2015)

Keynote, Duke Journal of Constitutional Law & Public Policy and Keenan Center on Ethics, Duke Law School, *Symposium: Perspectives on Migration, Governance and Citizenship* (2013)

Sparer Symposium, University of Pennsylvania Law School, *Repairing the Broken Door: Strategies for Immigration Advocacy and Reform*, presenter (2013)

Migration Policy Institute & Catholic Legal Immigration Network, Georgetown Law School, *Immigration Enforcement: The Role of States, the Federal Government & Litigation Developments*; plenary presenter (2012)

University of California at Davis Hemispheric Institute on the Americas, *The Civil Rights Battle for Immigrant Justice: Arizona, Alabama, and the Future of America* (2012)

Cornell University, Institute for Social Sciences, *Criminalizing Immigration: Perspectives on Regulation, Citizenship and Advocacy; Strategies for Immigration Advocacy: Challenges and Alternatives*, presenter (2012)

Harvard Law School, Harvard Immigration Project, *National Implications of State Immigration Laws*, lecture (2011)

ACLU of Massachusetts, Keynote, *Civil Liberties and State Immigration Laws* (2011)

Hofstra Law School, *Immigrants' Rights and Constitutional Principles: Today's Challenges*, lecture (2011)

Hunter College Human Rights Faculty Seminar, *The Role of Human Rights in Immigration Law and Rights*, Hunter College and Graduate Center, The City University of New York (2011)

Princeton University, Center for Migration and Development, Roundtable on Deportation and National Security (2011)

American Constitution Society, 2010-2011 Annual Supreme Court Review (2011)

Duke Law School, *Immigration Rights and Constitutional Values: Contemplating the Future*, lecture (2011)

Stanford Law School, *Immigrants' Rights in Historical Context*, lecture (2011)

University of Iowa College of Law Practitioner-in-Residence. Invited faculty talk, *Immigration Federalism: A Civil Rights Perspective on Preemption and Local Regulation*. Law school lecture on *Immigrants' Rights and Constitutional Values: Is Arizona the Future?* Various panels and classroom presentations. (2010)

Arizona State University Sandra Day O'Connor College of Law; The Role of States in Immigration Policy and Enforcement. *Preemption and the Protection of Individual Rights: From Hazleton to SB1070* (2010)

Keynote, University of Texas, 34<sup>th</sup> Annual Conference on Immigration and Nationality Law; *Immigration Rights and Reform: Prospects, Promises and Pitfalls in the Courts and Congress* (2010)

Claremont McKenna College, *Protecting Immigrants' Rights in the Era of Arizona SB1070: Politics, Race and Constitutional Principles*, lecture (2010)

Ninth Circuit Appellate Practice Workshop; panel on conducting effective oral argument (with various Ninth Circuit judges) (2010)

Yale Law School Human Rights Workshop; *Immigrants' Rights and the Obama Administration: Developments and Dangers*, presentation (2009)

Judicial Conference of the Fifth Circuit; *Should I Stay or Should I Go Now – Evolving Changes in Immigration Law*, presenter (2009)

Yale Law School Orville Schell Center Symposium; Beyond Borders: Immigration Policy in the New Century, presentation on *A Reform Agenda for the Obama Administration* (2009)

Immigration Law Professors Conference, *Innocents Abroad: Judicial Review and the Water's Edge*, University of Miami (2008)

University of Pennsylvania, The Second Founding of the Constitution, *The Fourteenth Amendment and Birthright Citizenship: The Danger of Abandoning Settled Principles*, presenter, American Constitution Society (2008)

Building an Immigration System in Mexico; Migration Policy Institute and Secretaria De Relaciones Exteriores, multi-day roundtable with governmental and non-governmental experts (Mexico City, 2008)

Keynote, *Confronting Hidden Borders: Immigration and Uniting Communities of Color*, Symposium sponsored by Hastings Race and Poverty Law Journal (2008)

Austin Sarat's Colloquium on the Constitution and Imagining of America; Amherst College. The Constitution and Citizenship, presentation *Beyond the Shackles of History: Bringing Constitutional Rights for Non-Citizens Into the 21<sup>st</sup> Century* (2007)

National Conference of State Legislators, *State Law and Immigration: Crossing the Constitutional Border*, presenter (Phoenix 2007)

The Bellagio Dialogue on Migration; German Marshall Fund of the United States (Bellagio, Italy 2006)

UCLA School of Law, Immigration Law Policy Shifts in Response to Terrorist Threats, *Human Rights Across Borders: The Impact of Global Terrorism on Immigration Law and Policy*; lecture (2006)

Cornell Law School, Symposium on Developments in the Law of Habeas Corpus. Presentation *Navigating the Road to the Courthouse Door: Judicial Review for Immigrants After INS v. St. Cyr* (2005)

*Employer Sanctions and the National Identity Card*, written Testimony before House Judiciary Subcommittee on International Law, Immigration and Refugees (1993)

American Bar Association Annual Meeting, *IRCA-Related Employment Discrimination: Problems, Procedures and Recent Developments* (1992)

*Temporary Protected Status for Haitians*, written Testimony before House Judiciary Subcomm. on International Law, Immigration, and Refugees (1991)

Department of Justice, Annual Conference of Immigration Judges, *Marriage Fraud: Yesterday, Today and Tomorrow* (1991)

Testimony before House Judiciary Subcommittee on Immigration, Refugees, and International Law, *Marriage Fraud and Immigration Reform* (1989)

*Report of the Committee on Immigration and Nationality Law of the Bar of the City of New York: An Analysis of Discrimination Resulting from Employer Sanctions and a Call for Repeal*, 26 San Diego L. Rev. 711 (1989) with M. Davis & A. Wernick

Administrative Law Judge Course on the Immigration Reform and Control Act of 1986 sponsored by The Legal Education Institute of the U.S. Department of Justice, *IRCA's Anti-Discrimination Prohibitions and Procedures* (1987)

*The INS and Outs of Immigration Law* (clinical course book) with H. Rabb (2d ed. 1984)

### **Bar Admissions**

California; New York; U.S. Supreme Court; most U.S. courts of appeals; multiple district courts.

2022