

BOOK REVIEW

Immigration Law as Contract Law

EVERYDAY LAW FOR IMMIGRANTS. By Victor C. Romero. Boulder: Paradigm Publishers, 2009. Pp. 160. \$24.95.

Review by Won Kidane[†]

I. INTRODUCTION

Described by leading scholars as intricate,¹ “hopelessly convoluted,”² “byzantine,”³ or even a “hideous creature,”⁴ immigration law is a conundrum of a sort—very difficult to teach to law students, let alone explain to the ordinary migrant new to the American legal system. A learned judge described the difficulty associated with immigration law, stating, “Whatever guidance the regulations furnish to those cognoscenti familiar with [immigration] procedures, this court, despite many years of legal experience, finds that they yield up meaning only grudgingly and that morsels of comprehension must be pried from mollusks of jargon.”⁵ In his book, *Everyday Law for Immigrants*, Professor Victor Romero breaks this “hideous creature” down into its most basic cells with astounding efficiency and care to provide the ordinary person with the essentials of how immigration status is acquired, maintained, and lost.

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1. See THOMAS ALEXANDER ALENIKOFF ET AL., IMMIGRATION AND CITIZENSHIP: PROCESS AND POLICY, at viii (6th ed. 2008).

2. Stephen H. Legomsky, *reviewing* VICTOR C. ROMERO, EVERYDAY LAW FOR IMMIGRANTS, at back cover (2009).

3. STEPHEN H. LEGOMSKY, IMMIGRATION LAW AND REFUGEE POLICY 1 (4th ed. 2005).

4. *Id.*

5. ALENIKOFF ET AL., *supra* note 1, at viii (citing *Dong Sik Kwon v. INS*, 646 F.2d 909, 919 (5th Cir. 1981)). The law has become significantly more complicated in the decades following this statement.

The book is quite remarkable. It not only presents complex materials in plain and understandable language, but also employs a creative analogy between immigration law and contracts to help the reader gain a better understanding of immigration law. Throughout the book, Professor Romero masterfully demonstrates, for the benefit of those who make and interpret the law, the needlessness of immigration law's complexity. As such, it is an extraordinary success in simplifying complex materials in the tradition of the *Everyday Law Series*—as attested to by the editors of the series, Professors Richard Delgado and Jean Stefancic⁶—and in guiding the efforts of lawmakers and the judiciary to simplify the puzzle that is immigration law.⁷ This Review examines the fundamental assumptions, theories, approaches, and contents of each section of Professor Romero's book to demonstrate how he effectively simplifies immigration law; a few humble critiques and suggestions are offered along the way.

II. THE THEORETICAL AND CONSTITUTIONAL UNDERPINNINGS OF IMMIGRATION LAW AND PROFESSOR ROMERO'S CONTRACTARIAN PARADIGM

Professor Romero's primary approach is the use of contract theory to explain the theoretical and constitutional underpinnings of immigration law. He tells his readers that "[a]lthough it is tempting to think of immigration law as primarily involving human rights (especially when we consider the protections afforded refugees), it is perhaps more accurate to view it as a form of contract law between the United States and the foreigner."⁸ He explains that the "United States grants the noncitizen the privilege to enter the country for some specific purpose and amount of time, and, in exchange, the noncitizen promises to abide by the terms the country sets forth. Should the noncitizen breach his promise, he must leave the United States."⁹ This is a remarkable way of simplifying the complex equation for the ordinary migrant.

Professor Romero simplifies immigration law better than perhaps anyone who has attempted it before. When a party thinks about entering

6. Author's discussion with Professors Richard Delgado and Jean Stefancic. Other leading scholars further attest to this accomplishment. See, e.g., Legomsky, *supra* note 2; Ronald Schmidt, Sr., *reviewing* VICTOR C. ROMERO, *EVERYDAY LAW FOR IMMIGRANTS*, at back cover (2008).

7. This point is essential because immigration laws do not have to be as complicated as they are now and could be rewritten to avoid needless complexity. For example, Canada attempted to avoid unnecessary complexity by adopting a comprehensive and more coherent version of immigration law in 2001. See Immigration and Refugee Protection Act, S.C. 2001, c. 27 (Can.), *available at* <http://www.laws.justice.gc.ca/en/1-2.5/>. It is sixty-seven pages long, easy to understand, and probably accomplishes the same objective as the Immigration and Nationality Act of 1952 (INA), codified as amended under 8 U.S.C. (2006).

8. VICTOR C. ROMERO, *EVERYDAY LAW FOR IMMIGRANTS* 5 (2008).

9. *Id.*

a contract, the party first wonders what her side of the bargain will be. Professor Romero helps migrants understand and appreciate this aspect of the immigration “contract.” This approach is pragmatic and exceedingly helpful for the ordinary migrant. Perhaps the second topic a party to a contract will think about is the fairness of the contract terms.

The question of fairness has a universal character, and as such, each migrant, regardless of cultural background, will be concerned with the fairness of the contract that he gets into. Although a substantial portion of Professor Romero’s body of academic writing, including his recent and excellent book *Alienated*,¹⁰ is devoted to the inquiry of fairness from different perspectives, in the interest of simplicity and brevity, he does not import those discussions to this book. For a person who is not familiar with Professor Romero’s rich body of work,¹¹ his equating immigration law with contract law might appear as if he is either ignoring the issue of contract fairness or subscribing to the assumption that contracts are intrinsically fair so long as they are freely entered into. The latter school of thought assumes that a contract simply consists of keeping one’s promises regardless of their nature.¹² According to this theory, a contract by its very nature is fair.¹³ A more acceptable approach, however, would look at the fairness of the terms before, during, and after the conclusion of the agreement, as well as the bargaining powers of the parties involved. Supporters of the latter view even suggest that contract law is basically a part of tort law because an agreement to injurious terms should not exonerate the party who causes the injury.¹⁴

In an excellent piece published in the *Harvard Civil Rights–Civil Liberties Law Review*, Professor Romero himself advocates for an analogy between state tort law and immigration law. He notes that “immigration theorists can learn from states that have abandoned the traditional premises liability classifications in favor of a unitary ‘reasonable person’ tort law standard. This abandonment reflects the belief that the traditional premises liability classifications dehumanize the injured party.”¹⁵

10. See generally VICTOR C. ROMERO, *ALIENATED: IMMIGRANT RIGHTS, THE CONSTITUTION, AND EQUALITY IN AMERICA* (2005).

11. For a catalog of Professor Romero’s works, see *Victor Romero’s Publications*, PENN. ST. DICKINSON SCH. OF L., http://law.psu.edu/_file/romero.pdf (last modified Apr. 30, 2009).

12. See, e.g., J.R. LUCAS, *ON JUSTICE* 208 (1980) (cited in Michel Rosenfeld, *Contract and Justice: The Relation Between Classical Contract Law and Social Contract Theory*, 70 *IOWA L. REV.* 769, 771 (1985)).

13. Rosenfeld, *supra* note 12, at 773.

14. *Id.*

15. Victor C. Romero, *The Domestic Fourth Amendment Rights of Undocumented Immigrants: On Gutterez and the Tort Law/Immigration Law Parallel*, 35 *HARV. C.R.-C.L. L. REV.* 57, 60 (2000).

Professor Romero suggests that the fairness of terms must be measured with objective and independent criteria regardless of the status of the individual.¹⁶ Although it is perhaps difficult to perceive his fairness point of view in the book under review, readers of this book should note that Professor Romero is highly sensitive to the issue of fairness of contracts, and omission of its discussion is obviously due to the need for brevity and simplicity in creating a work that is accessible for the average reader. Fortunately, the last chapter of the book itself provides a list of excellent resources for further reference.

III. THE CONTRACTS PARADIGM AND SUBSTANTIVE AND PROCEDURAL DUE PROCESS

Consider next the substantive and procedural due process aspects of Professor Romero's contracts analogy.

A. Substantive Due Process

Professor Romero indicates that Congress, as the representative of the American people, writes the terms of the immigration contract. He cites numerous examples to substantiate his contract theory. Two examples are worth evaluating. First, he notes that in the immigration setting, the courts have given Congress unreviewable discretion—under the “plenary power” doctrine—beginning with the *Chinese Exclusion Case* in 1889.¹⁷ The plenary power doctrine, according to Professor Romero, is additional evidence of immigration law as contract.¹⁸ He suggests that

16. Professor Romero states:

Just as immigration law and immigrants' rights law classify non-citizens in order to determine what rights the U.S. government owes them, traditional tort law assigns rights to land entrants against landowners based on an entrant's status. In tort law, there are three general approaches to the question of landowner liability for harms suffered by persons entering the owner's property. Most states follow the common law tradition of examining the status of an entrant to determine landowner liability (“Model 1”). In this model, a landowner would owe a duty of reasonable care towards an *invitee* (someone permissibly on the property for the landowner's benefit), but would generally owe a lesser duty, such as the duty not to act willfully or wantonly, to a *licensee* (someone permissibly on the property for his or her own benefit) or a *trespasser* (someone on the property without permission). Some states, notably California and New York, have abolished this traditional scheme of entrant classification in favor of a reasonable person standard. This standard assumes that all entrants have equal status as persons, and that the foreseeability of harm to the entrant, rather than the entrant's status as an invitee, licensee, or trespasser, should determine the landowner's liability.

Id. at 79–80.

17. See *Chae Chan Ping v. United States (Chinese Exclusion Case)*, 130 U.S. 581 (1889).

18. ROMERO, *supra* note 8, at 7. Professor Romero also notes Professor Hiroshi Motomura's support for the notion that immigration law is functionally like contracts law based on the *Chinese Exclusion Case*. See HIROSHI MOTOMURA, AMERICANS IN WAITING: THE LOST STORY OF IMMIGRATION AND CITIZENSHIP IN THE UNITED STATES 15 (2005).

because Congress has unreviewable discretion, thus distinguishing immigration law from human rights law, migrants should not be disappointed with unfair terms. It might be noted, however, that this phenomenon may actually distinguish immigration law from contract law because in contract law, courts often provide a remedy for grossly unfair terms predicated on principles of law and equity, including reasonable expectations, undue influence, unconscionability, mistake, and impossibility. None of these principles of law or equity apply in immigration law under the plenary power doctrine.

That said, the contract analogy would make perfect sense under the notion of contracts that existed at about the same time as the *Chinese Exclusion Case*, which could rightly be classified as the “*Lochner* era.”¹⁹ Several Supreme Court decisions in that era, including *United States v. E.C. Knight Co* (1895),²⁰ *Smyth v. Ames* (1898),²¹ and *Lochner v. New York* (1905),²² support this proposition.²³ These decisions firmly established the laissez-faire notion of contracts, i.e., if a contract is entered into “freely,” the Constitution imposes no restrictions on its fairness. As the Court paid more attention to the Due Process Clause of the Fourteenth Amendment in the decades following these decisions, this understanding of contract law became irreversibly eroded.²⁴ Unfortunately, the same did not happen in the area of immigration law. The *Lochner* era immigration decisions—including the *Chinese Exclusion Case*, which held that Congress has unreviewable discretion even when the exclusion is based on race—remained substantially unaffected. For these reasons, perhaps, Professor Romero’s contract notion must be understood in the sense of the *Lochner* era’s laissez-faire notion of contracts.

Second, Professor Romero also relies on a 2006 Supreme Court case, *Fernandez-Vargas v. Gonzales*,²⁵ to show the continuity of the plenary power doctrine and, thus, the contracts analogy. It certainly does

19. See *Lochner v. New York*, 198 U.S. 45 (1905) (striking down a New York law prohibiting bakery work for more than sixty hours per week on grounds that it violates the rights of the contracting parties to freely enter into any type of contract regardless of the possible harm to the workers).

20. 156 U.S. 1 (1895) (holding that a manufacturing monopoly of 98% of the country’s sugar refining many not be prohibited).

21. 169 U.S. 466 (1898) (striking down a Nebraska law relating to a minimum railway fare).

22. 198 U.S. 45 (1905).

23. Although the *Lochner* era cases did the exact opposite of the *Chinese Exclusion Case*’s plenary power doctrine by striking down any limitation Congress made on freedom of contract, if we view immigration law as contract, the end result of the two sets of decisions is the same in an almost perverse way.

24. See, e.g., *Wickard v. Filburn*, 317 U.S. 111 (1942) (assigning expanded meaning to interstate commerce during the New Deal and beginning the erosion of the *Lochner* era freedom of contract notion).

25. 548 U.S. 30 (2006).

support the analogy, but again, the contract must be understood in the *Lochner* sense. *Fernandez-Vargas* is a case of a Mexican national who lived in the United States for twenty years and prospered while having a deportation order against him.²⁶ He married a U.S. citizen who petitioned for him to get permanent residence. But the authorities reinstated the twenty-year-old deportation order and proceeded to remove him.²⁷ He challenged the order all the way to the Supreme Court, which failed to agree with him and approved the removal order.²⁸

Interestingly, the Supreme Court ruled that Congress can change the law and make the respondent subject to new terms without his consent.²⁹ Had Congress not changed the law since he was ordered deported twenty years earlier, he would have been eligible for the kind of relief he was denied. Perhaps this unilateral changing of terms, particularly when the new terms are unfavorable to the weaker party, makes immigration law look more like a credit card contract than a typical bargained-for agreement.³⁰

B. Procedures and Evidence

In terms of procedures and evidence relating to enforcement, the parallel between immigration law and contracts is limited to two aspects: (1) both are civil proceedings,³¹ and as such, (2) there is no right to appointed counsel.³² Professor Romero rightfully points to these. The similarities, however, end there, and the dissimilarities are many. At the most basic level, contract disputes often entail property interests, but removal proceedings invariably raise liberty interests. As such, the ordinary person would reasonably expect better procedural guarantees to exist for removal proceedings. Unfortunately, that ordinary person will be seriously disappointed when he learns two things: (1) removal proceedings often

26. *Id.* at 35–36.

27. *Id.*

28. *Id.* at 46–47.

29. *See id.* at 37–42.

30. For a good description of the nature and problems of credit card contracts, see generally Oren Bar-Gill, *Seduction by Plastic*, 98 NW. U. L. REV. 1373 (2004), which also proposes regulatory intervention to ensure fairness because of the obvious lack of parity in bargaining power.

31. Despite the striking similarity between deportation proceedings and criminal proceedings, courts have consistently held that deportation proceedings are civil proceedings. *See, e.g.*, *INS v. Lopez-Mendoza*, 468 U.S. 1032, 1038 (1984); *Fong Yue Ting v. United States*, 149 U.S. 698, 730 (1893).

32. *See* INA § 292, 8 U.S.C. § 1362 (2006) (“In any removal proceedings before an immigration judge and in any appeal proceedings before the Attorney General from any such removal proceedings, the person concerned shall have the privilege of being represented (at no expense to the Government) by such counsel, authorized to practice in such proceedings, as he shall choose.”).

result in detention, just like criminal proceedings,³³ and (2) the rules of procedure and evidence in removal proceedings are almost arbitrary, unlike in contracts cases, which are often governed by systematic rules of procedure and evidence.³⁴

The average migrant with some familiarity with adversarial judicial proceedings having to do with contracts might be surprised to learn that immigration hearings can be quite different. For instance, the rules allow the immigrant to be cross-examined not only by the prosecutor, a U.S. Immigration and Customs Enforcement attorney, but also by the immigration judge, who is supposed to be a neutral adjudicator.³⁵ Another important distinction is that, unlike in regular contract adjudications, the evidentiary rules in removal proceedings allow the admissibility of hearsay.³⁶ That, of course, may include airport interviews, police notes, letters from home government agencies or even persecutors, etc.³⁷ Moreover, statistically, outcomes of removal proceedings are utterly unpredictable. Perhaps the single most important variable is the judge, but judges' approval rates may vary from three percent to over seventy-five percent.³⁸ And the governing statutes make no provisions for meaningful administrative³⁹ or judicial review.⁴⁰ Finally, for those who are detained

33. See Won Kidane, *Revisiting the Rules of Procedure and Evidence Applicable in Adversarial Administrative Deportation Proceedings: Lessons from the Department of Labor Rules of Evidence*, 57 CATH. U. L. REV. 93, 114–15 (2007) (“The similarities between immigration deportation proceedings and criminal proceedings are not limited to the involvement of liberty interests and the physical restraint and removal of the individual. The actual proceedings are also quite similar. The government is represented by an attorney and the proceedings are quite adversarial. The respondent, just like a criminal defendant, is often detained and appears in a courtroom with a prison uniform guarded by a police officer at all times. The respondent answers charges filed against him by attorneys representing the Department of Homeland Security (DHS). If the respondent is unsuccessful in defending against the charges, he is sent back to wherever it is believed that he came from. The actual deportation involves the physical custody of the deportee before deportation and the forced physical removal of the individual, often in handcuffs or other forms of body chains. For anyone observing these proceedings and following the consequences thereof, there is nothing civil about them. For all intents and purposes, they are the functional equivalent of criminal proceedings without the constitutional guarantees applicable in criminal proceedings.”) (internal citations omitted).

34. See *id.* at 115.

35. See INA § 240(b)(1), 8 U.S.C. § 1229a (2006) (“The immigration judge shall administer oaths, receive evidence, and interrogate, examine, and *cross-examine the alien and any witnesses.*”) (emphasis added).

36. See Kidane, *supra* note 33, at 115–19, 142–50. See also generally INA § 240, 8 U.S.C. § 1229a (2006).

37. Courts sometimes check the fundamental fairness of the admissibility of hearsay evidence. See, e.g., *Richardson v. Perales*, 402 U.S. 389, 401–03 (1971); see also *Alexandrov v. Gonzales*, 442 F.3d 395, 404–07 (6th Cir. 2006); *Ezeagwuna v. Ashcroft*, 325 F.3d 396, 405–08 (3d Cir. 2003).

38. See *Asylum Disparities Persist, Regardless of Court Location and Nationality*, TRAC IMMIGRATION (April 2009), <http://trac.syr.edu/immigration/reports/183/>.

39. See Board of Immigration Appeals (BIA) rules relating to Affirmance Without Opinion (AWO), 8 C.F.R. § 1003.1(e)(4) (2002).

40. See INA § 242(a)(2), 8 U.S.C. § 1252(a)(2) (2006).

during the proceedings, the conditions of detention are probably much worse than what any migrant would expect to see in America.⁴¹ Although Professor Romero's procedural discussions in Part III of the book are excellent, and his prior works address some of these deficiencies in detail, his contracts theory could do more to sufficiently warn the unwary migrant about the extent of the arbitrariness in adjudication and the severity of the conditions associated with removal proceedings.

IV. THE BASICS

Professor Romero divides the body of law applying to noncitizens into immigration law and alienage law,⁴² each of which he discusses in turn.

For Professor Romero, immigration law is all about who *may* come in and who *must* leave.⁴³ He describes the conditions of entry or admission and the conditions of exclusion or deportation/removal under the Immigration and Nationality Act (INA). With respect to the admission requirements, he begins by refuting a commonly held belief that there are many ways of immigrating to America. In actuality, according to Professor Romero, there are only four ways of immigrating to the United States for permanent residence: family relationships, employment, refugee/asylum, and diversity visas.⁴⁴ Perhaps the only other category that could be added to this list would be the possibility of immigrating permanently based on some specific visa, such as "U" visas for victims of specific crimes,⁴⁵ "T" visas for victims of severe forms of trafficking,⁴⁶ and "S" visas for those who provide essential information for law enforcement purposes.⁴⁷ Professor Romero discusses these visas under the nonimmigrant category and points out that holders of these visas could change their status to immigrant (i.e., lawful permanent resident); he does not include these visas in the main categories. The addition of these

41. See *Jailed Without Justice: Immigration Detention in the USA*, AMNESTY INT'L (March 2009), <http://www.amnestyusa.org/document.php?id=ENGUSA20090325002&lang=e>.

42. See ROMERO, *supra* note 8, at 25.

43. See *id.* Although this is accurate and perhaps the best way of explaining it to the ordinary person, it carries the risk of understating laws and regulations pertaining to the conditions of stay that cannot be classified as alienage law. These conditions include whether one can work at all and, if so, where and for how many hours, as in holders and spouses of "F-1" visas, see INA § 101(a)(15)(F)(i) & (ii), and "J-1" visas, see INA § 101(a)(15)(J)(i) & (ii), which he discusses under the nonimmigrant category. Other examples of immigration law regulating conditions of residence might include the "H" visa categories and regulations relating to whom visa holders may work for and for how long.

44. See ROMERO, *supra* note 8, at 26–36.

45. See INA § 101(a)(15)(U), 8 U.S.C.A. § 1101(a)(15)(U) (West 2010).

46. See INA § 101(a)(15)(T), 8 U.S.C.A. § 1101(a)(15)(T) (West 2010).

47. See INA § 101(a)(15)(S), 8 U.S.C.A. § 1101(a)(15)(S) (West 2010).

smaller and discrete categories would help exhaust almost all avenues of permanently immigrating to America. He goes through some of the non-immigrant categories, but not in the same depth as the immigrant categories, perhaps because his targeted audience is primarily prospective immigrants.⁴⁸

Following his brief discussion of the various categories under which noncitizens may gain admission to the United States, Professor Romero notes that qualifying under any one of the several immigrant and nonimmigrant categories does not ensure admission, and he outlines grounds of inadmissibility. He correctly indicates that these grounds include health, poverty, crimes, national security, and prior immigration violations.⁴⁹ He makes several interesting points under these headings.

First, he recognizes that it is almost impossible to adequately describe the grounds of inadmissibility or deportability in a short survey book such as his. As such, the discussion obviously understates the complexity. Second, Professor Romero points to the most frequent grounds of inadmissibility: criminal history and immigration violations. The laws relating to these two grounds are unreasonable and defy common sense. A migrant from any culture is likely to be surprised when he is told that he will be deported for shoplifting that he committed fourteen years earlier when he was eighteen, or for possession of marijuana for personal use.⁵⁰ A few examples of this sort would have provided a more sufficient warning to the unaware migrant.

Professor Romero also discusses the category of offenses called “aggravated felonies” and notes that these are particularly serious crimes that typically include drug or violent offenses.⁵¹ He explains that “[s]ince the term [was] introduced in 1988, the definition of aggravated felony has grown tremendously to now include such crimes as the sexual abuse of a minor, child pornography, forgery, obstruction of justice, racketeering offenses, and crimes of violence.”⁵² But ordinary readers need to recognize that aggravated felonies include crimes that are neither felonies nor aggravated. A good example would be shoplifting. If a person shoplifts and gets a suspended sentence of one year, that crime is considered an aggravated felony,⁵³ which means that he or she is not only deportable

48. See ROMERO, *supra* note 8, at 36–42.

49. See *id.* at 43–49.

50. See INA § 212(a)(2)(A)(i)(II), 8 U.S.C.A. § 1182(a)(2)(A)(i)(II) (West 2010) (noting that there is no exception for drug-related offenses).

51. See ROMERO, *supra* note 8, at 45.

52. *Id.*

53. See INA § 101(a)(43)(G), 8 U.S.C.A. § 1101(a)(43)(G) (West 2010) (defining aggravated felony as “a crime of theft (including receipt of stolen property) for which the term of imprisonment

but also lacks any form of remedy or relief, including cancellation of removal⁵⁴ and even asylum from persecution.⁵⁵

Professor Romero raises the terrorism grounds of exclusion as well but does not go into detail. It is, however, important to note the needless and unreasonable breadth of the definition of terrorism.⁵⁶ In fact, this has increasingly become a trap for asylum seekers. All prospective immigrants need to be warned about this time and again. If you contribute money to a humanitarian organization and the humanitarian organization contributes money to a group of two or more people who cause injury to persons or damage to property by throwing stones in any corner of the world, you may be excluded for providing material support to terrorists.⁵⁷

Following his discussion of the various grounds of inadmissibility and deportability, Professor Romero provides an excellent summary of the various forms of relief. One form in particular begs some comments: citizenship as relief from deportation.⁵⁸ Viewing citizenship as a form of defense from removal, although not uncommon, is interesting because citizens are not subject to immigration law. As Professor Romero acknowledges, before a person may be deported, the government bears the burden of proving that the person is not a U.S. citizen. If a U.S. citizen is subject to removal proceedings, it is almost always because of an error of fact, and sometimes of law. Immigration officials do not have the authority to grant citizenship as a form of relief from removal. Although it is difficult to view citizenship as a form of relief from removal, Professor Romero's inclusion of citizenship in his relief section is quite understandable because of the need for simplification.

Other leading scholars view citizenship as either the beginning or the end of the inquiry on immigration. For example, the authors of the two leading law-school textbooks on immigration take these opposite approaches. Aleinikoff et al. begin their book with a discussion of citizenship.⁵⁹ They define membership in a community and establish the right of a nation to define its polity and exclude others. In that sense, citi-

is at least one year.”). The fact that the sentence is suspended does not make a difference. *See* INA § 101(a)(48)(B), 8 U.S.C.A. § 1101(a)(48)(B) (West 2010).

54. *See, e.g.*, INA § 240A, 8 U.S.C.A. § 1229(a)(3) (West 2010) (excluding a person who has committed an aggravated felony from getting cancellation of removal).

55. *See* INA § 208(b)(2)(B), 8 U.S.C.A. § 1158(b)(2)(B) (West 2010) (excluding a person who has committed an aggravated felony from receiving asylum).

56. *See* ROMERO, *supra* note 8, at 46.

57. For a discussion of this possibility, see Won Kidane, *The Terrorism Exception to Asylum: Managing the Uncertainty in Status Determination*, 41 U. MICH. J.L. REFORM 669, 689–709 (2008).

58. *See* ROMERO, *supra* note 8, at 49–50.

59. *See generally* ALEINIKOFF ET AL., *supra* note 1.

zenship would be at the beginning of the spectrum as the authors approach the whole issue from the perspective of the nation.⁶⁰

The author of the other leading textbook, Professor Legomsky, approaches immigration from the perspective of the immigrant. For him, citizenship is at the end of the spectrum,⁶¹ not the beginning.⁶² Professor Romero's view of citizenship as a defense from removal resembles Professor Legomsky's in some respects; however, because of the potential for misunderstanding and confusion with other forms of relief under immigration law, a brief and separate discussion of the rules of acquisition and loss of citizenship would have been helpful to the ordinary reader. Professor Romero does exactly that for the procedures—he has a separate discussion of the procedures of naturalization and an excellent discussion of the special circumstances where children can acquire citizenship by operation of law.⁶³ Similar treatment regarding the rules of acquisition and loss of citizenship would have added to the book's achievements.

V. ALIENAGE LAWS

Having laid out the contours of immigration law, Professor Romero ends his book by venturing into the treacherous territory of alienage law. By doing so, he comes full circle because, as indicated above, he begins his discussion with the constitutional and theoretical underpinnings of immigration law. The same principles, in particular the plenary power doctrine, substantially inform alienage laws. But as the plenary power doctrine applies only to Congress, alienage-based classifications by states add an additional layer of complexity. While Professor Romero does not discuss the constitutional standards of review that apply to state laws as opposed to federal law for obvious reasons, he uses *Plyler v. Doe*⁶⁴ to inform readers that states cannot constitutionally deny children of undocumented migrants access to their public schools.

This is a simple and straightforward message: more rules are tolerated when they are made by Congress than by the several states—as in Texas's denial of access to children of undocumented migrants in *Plyler*. He omits complexities from this section, but for those who are interested in the reasons for this disparate treatment, Professor Romero provides the

60. *Id.* at 1–144.

61. See LEGOMSKY, *supra* note 3, at 1265–1372.

62. But see STEPHEN H. LEGOMSKY & CRISTINA M. RODRIGUEZ, IMMIGRATION LAW AND REFUGEE POLICY 645 (5th ed. 2009) (supporting Professor Romero's view that citizenship may be viewed as a defense from removal in certain circumstances).

63. See ROMERO, *supra* note 8, at 70–71.

64. 457 U.S. 202 (1982).

answer in his first chapter. There, Professor Romero properly explains the different standards of review that apply to federal and state laws justifying different results for the exact same regulation. In particular, he uses *Mathews v. Diaz*,⁶⁵ which upheld a federal law limiting the provision of Medicare assistance to immigrants who had not lived in the United States for more than five years,⁶⁶ and *Graham v. Richardson*,⁶⁷ which struck down a similar public aid policy because it was made by a state,⁶⁸ to demonstrate the applicability of the rational relations test for review of federal alienage laws in line with plenary power decisions. Although the ordinary reader may have trouble connecting the dots, Professor Romero comes full circle when he discusses *Plyler* in the last chapter. The reader need only refer back to be reminded that the distinct treatment of state and federal laws is rooted in the courts' view of the role of federal and state governments in the regulation of the admission and exclusion of migrants as well as the conditions of their sojourn.⁶⁹

VI. CONCLUSION

In *Everyday Law for Immigrants*, Professor Romero succeeds remarkably in breaking down the complex rules governing admission, exclusion, and conditions of residence of noncitizens. His attempt to explain the rules by injecting theoretical and constitutional inquiries has made the book more than a simple guide for newly arriving migrants. It has numerous characteristics that make it useful for various audiences.

First, as indicated above, it is full of theoretical approaches, assertions, opinions, and new ways of expression, which make it a very rich source for scholarly inquiry. As this Review suggests, some of these theorizations and assertions are highly provocative and are suitable for academic scrutiny.

Second, it simplifies and expounds complex concepts and rules, which makes it an excellent resource not only for those who have their own immigration problems but also for those who are in the process of studying this area of the law, including law students and other would-be immigration practitioners.

Third, it does not leave out the fundamental assumptions and underpinnings of the law for the sake of simplicity, which makes it a valuable guide for practitioners and nonprofit advocacy groups that provide

65. 426 U.S. 67 (1976).

66. See ROMERO, *supra* note 8, at 15.

67. 403 U.S. 365 (1971).

68. See ROMERO, *supra* note 8, at 17.

69. See *id.* at 17–18.

representation and, perhaps more importantly, those that conduct legal orientation programs for migrants.

Fourth, it superbly demonstrates the law's needless complexity and, as such, is a great resource for those who are engaged in drafting immigration laws and regulations, as well as those who routinely write judicial and administrative opinions.

Finally, it makes very suitable reading for anyone who wants to be better informed about the controversies surrounding the sensitive issue of immigration and the reality of the nation's treatment of migrants.