

FEDERAL HABEAS CORPUS

Law 6930-25934

University of Florida Levin College of Law

Fall 2022

Professor Merritt McAlister

Pronouns: she/her/hers

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Zoom Personal Meeting Room:

<https://ufl.zoom.us/j/3085718560?pwd=QWpPa2NIWURDelh3bEZjZ2JnV2xkZz09>

Syllabus

1. Overview. This course will study the evolution of habeas corpus and how litigants utilize the habeas remedy the federal court system today. Our focus primarily is on how those who have been convicted in state court can obtain federal-court review of alleged constitutional defects in their original, direct criminal proceedings. Our course will provide an opportunity to observe how constitutional law, criminal law and procedure, civil procedure, and even trial and appellate practice all bear upon the courts' struggle to apply federal habeas corpus law to individual cases.

2. Required and Optional Materials. Our casebook is BRANDON L. GARRETT & LEE KOVARSKY, FEDERAL HABEAS CORPUS (2013).

3. Class Meetings. Our class meets on Mondays and Wednesdays from 9:00 am to 9:55 am in HH 270. Please do not attend class if you are feeling ill; in such case, you will have access to a video recording of class.

4. Contact Information. My e-mail address is mcalister@law.ufl.edu. E-mail is usually the best way to reach me, and please do not hesitate to contact me regularly throughout the semester. My office is HH 329, and the phone is 352.273.0981.

5. Office Hours. I will be available for in-person office hours in my office in HH 329 from 1:00 pm to 2:00 pm on Mondays and from 12:00 pm to 1:00 pm on Wednesdays. I am happy to meet at other times as well if those hours are not convenient for you. Please email me to arrange another in-person or virtual appointment. If I need to reschedule my office hours for any reason, I will make an announcement in class.

6. Canvas. I will use Canvas to communicate all relevant class information, including to make any additional material like classroom hypothetical problems available to students.

7. Course Objectives and Student Learning Outcomes. By the end of this course, you should be able to: (1) describe the history and origins of the great writ of habeas corpus as part of our federal constitutional scheme; (2) explain the ways in which the Antiterrorism and Effective Death Penalty Act of 1996 revised and limited access to a federal court forum to review a state court conviction; (3) articulate and apply the standard of review for a state-court conviction in federal court; (4) articulate and apply the procedural limitations on access to the habeas corpus remedy in federal court; and (6) identify and apply the basic requirements for obtaining federal habeas corpus review of a federal conviction.

8. Course Reading Map. At the end of this syllabus, you will find a Course Reading Map, which is a list of assignments by subject matter. The Reading Map itself may provide you with a useful organizational tool.

Each assignment corresponds roughly to one class period. I will confirm the next assignment at the end of class, but if you miss class, or I do not announce the assignment for any reason, you should prepare the next class assignment. I reserve the right to remove assignments from our planned reading map depending on how quickly we move through the material.

9. Class Preparation, Participation, and Experience. Consistent with the American Bar Association Standard 310, you should expect to spend at least **four hours** per week preparing for this two-hour course.

I have high expectations for the learning environment we create together. I rely heavily on classroom discussion to explicate cases and concepts and apply those frameworks to new problems. I expect each of you to attend class prepared. Preparation includes completing the assigned reading, reviewing notes and/or reading material from the prior class, and considering any practice problems or questions posted on Canvas. Please note that I will make use of practice problems occasionally in class, and I will make these available on Canvas prior to class, even though they do not appear on the reading map. Other times I may distribute questions in class.

I have an on-call policy that may be more rigorous than other upper-level courses. I will use a list randomizer to identify those who are “on-call,” and I will call on students from that list in that order. I will strive to call on multiple students each class—and sometimes many students—but, admittedly, I will occasionally have a longer dialogue with a single student when I believe it is important to work a particular dialogue to completion. Once I have completed the on-call list, I will re-run it. Thus, once you have been called on, you will not be called on again until I re-run the list, and I’ll announce in class when we have completed the list.

If for some reason you are not prepared, please email me (mcalister@law.ufl.edu) at least 10 minutes before class. Please do not abuse that policy. **If I call on you and you are not prepared for class and you have not notified me of your lack of preparation in advance, I reserve the right to reduce your grade by one-third of a point (e.g., from a B to a B-).** Do not tempt fate; notify me in advance of your lack of preparation.

10. Class Attendance. I record attendance using the law school’s online course attendance system. **If you are not present more than five times during the semester, I will lower your final grade by at least one-third of a point (e.g., from a B+ to a B).** I also reserve the right to refuse to let any student take the final exam if he, she, or they miss more than 7 of our scheduled classes.

You do not need to tell me why you are absent. If, however, you expect to be absent from class more than six times due to a family emergency or medical situation, please notify me. Observance of a University-recognized religious holiday does not count as an absence. Accordingly, please notify me of such absences.

11. Electronic Devices. A computer and/or smartphone is necessary to complete this course. It is necessary both for class participation and to record your attendance. I will use interactive polling

software during class, and I will expect you to participate in these polls. Do not use your computer for any non-class related purpose during class. I reserve the right to amend my electronic device policy if I observe students using computers for non-classroom related purposes.

12. Class Recording Policy. The Office of Student Affairs will continue to record all classes via Mediasite in case students must miss class for health reasons. The Office of Student Affairs will determine when students may have access to these recordings, and the recordings will be password protected. These recordings will be retained only for a short period of time and it is the student's responsibility to contact the Office of Student Affairs as soon as possible after an absence.

13. Evaluation. A final exam will count for 100% of your grade, subject to modification for exceptional participation (as discussed below). It will be an open-book, open-note take-home exam that you may take during any continuous four-hour period during the exam period. I will provide several mock exam questions throughout the semester for your review and use.

Exceptional participation will be considered to set the curve and, rarely, to adjust final grades by no more than 1/3 of a point if I determine that your exam grade does not reflect your classroom contributions and engagement with our course. Grade adjustments based on participation are the exception, not the norm.

14. Grading. Your grade in this class will be based on final exam and class participation, as described in Sections 9, 10, and 13, above. The Levin College of Law's mean and mandatory distributions are posted on the College's website and this class adheres to that posted grading policy. The following chart describes the specific letter grade/grade point equivalent in place:

Letter Grade	Point Equivalent
A (Excellent)	4.0
A-	3.67
B+	3.33
B (Average)	3.0
B-	2.67
C+	2.33
C (Satisfactory)	2.0
C-	1.67
D+	1.33
D (Poor)	1.0
D-	0.67
E (Failure)	0.0

The law school grading policy is at: <https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/current-students/uf-law-student-handbook-and-academic-policies>. The law school policy on exam delays and accommodations is at: <https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/current-students/forms-applications/exam-delays-accommodations-form>.

15. Accommodations. Students requesting accommodation for disabilities must first register with the Disability Resource Center (<http://www.dso.ufl.edu/drc/>). Once registered, students will

receive an accommodation letter which must be presented to the Assistant Dean for Student Affairs (Dean Mitchell) when requesting accommodation. Students with disabilities should follow this procedure as early as possible in the semester.

16. Student Course Evaluations. Students are expected to provide professional and respectful feedback on the quality of instruction in this course by completing course evaluations online via GatorEvals. Guidance on how to give feedback in a professional and respectful manner is available at <https://gatorevals.aa.ufl.edu/students/>. Students will be notified when the evaluation period opens, and can complete evaluations through the email they receive from GatorEvals, in their Canvas course menu under GatorEvals, or via <https://ufl.bluera.com/ufl/>. Summaries of course evaluation results are available to students at <https://gatorevals.aa.ufl.edu/public-results/>.

17. Academic honesty. Academic honesty and integrity are fundamental values of the UF Law School community. You should be sure that you understand and comply with the UF Student Honor Code, available at <https://www.dso.ufl.edu/sccr/process/student-conduct-honor-code/>, and the Law School’s application of it, available at <https://www.law.ufl.edu/life-at-uf-law/officeof-student-affairs/additional-information/honor-code-and-committee/honor-code>.

18. Changing your name on class roll. It is important to the learning environment that you feel welcome and safe in this class; and that you are comfortable participating in class discussions and communicating with me on any issues related to the class. If your preferred name is not the name listed on the official UF roll, please let me know as soon as possible by e-mail or otherwise. I would like to acknowledge your preferred name, and pronouns that reflect your identity. Please let me know how you would like to be addressed in class, if your name and pronouns are not reflected by your UF-rostered name. I welcome you to the class and look forward to a rewarding learning adventure together.

You may also change your “Display Name” in Canvas. Canvas uses the “Display Name” as set in myUFL. The Display Name is what you want people to see in the UF Directory, such as “Ally” instead of “Allison.” To update your display name, go to one.ufl.edu, click on the dropdown at the top right, and select “Directory Profile.” Click “Edit” on the right of the name panel, uncheck “Use my legal name” under “Display Name,” update how you wish your name to be displayed, and click “Submit” at the bottom. This change may take up to 24 hours to appear in Canvas. This does not change your legal name for official UF records.

19. Diversity, equity, and inclusion in the classroom. As a law student and future lawyer, it is important that you be able to engage in rigorous discourse and critical evaluation while also demonstrating civility and respect for others. This is even more important in the case of controversial issues and other topics that may elicit strong emotions.

As a group, we are likely diverse across racial, ethnic, sexual orientation, gender identity, economic, religious, and political lines. As we enter one of the great learning spaces in the world—the law school classroom—and develop our unique personality as a class section, I encourage each of us to:

- commit to self-examination of our values and assumptions
- speak honestly, thoughtfully, and respectfully
- listen carefully and respectfully
- reserve the right to change our mind and allow for others to do the same

- allow ourselves and each other to verbalize ideas and to push the boundaries of logic and reasoning both as a means of exploring our beliefs as well as a method of sharpening our skills as lawyers

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I. Introduction

1. **Monday, August 22.** The Birth of the Modern Writ of Habeas Corpus in the United States, pp. 1-12 (*Brown v. Allen*)

II. Constitutional Structure of the Habeas Privilege

2. **Wednesday, August 24.** The Drafting of the Suspension Clause and What Habeas Meant to the Framers, pp. 43-64 (*St. Cyr* and skim other notes); How the Government “Suspends” the Privilege, pp. 53-64 (*Merryman* and skim notes)
3. **Monday, August 29.** Does the Constitution Guarantee an Adequate Habeas Remedy, pp. 64-72 (*Hayman, Swain*, and § 2255)
4. **Wednesday, August 31.** Restrictions on Habeas for State Prisoners, pp. 72-76 (*Felker*) & Original Habeas and the Exceptions Clause, pp. 87-97 (*McCardle & Yerger*)

III. Testing Judicial Detention

A. Scope of the Writ

5. **Wednesday, September 7. [CLASS HELD VIA ZOOM]** Origins of Federal Review of State Convictions, pp. 99-118 (read *Siebold, Frank*, and *Moore*; skim notes)
6. **Monday, September 12.** *Brown v. Allen* and the Modern Era of Post-Conviction Review, pp. 119-132 (*Brown*)
7. **Wednesday, September 14.** Scope of Modern Federal Review and Cognizable Claims, pp. 133-150 (focus on *Stone*; skim other material)
8. **Monday, September 19.** Innocence (*Herrera*), pp. 150-167 (read *Herrera* carefully; skim notes)

B. Procedural Limitations

9. **Wednesday, September 21.** Creation of Exhaustion Requirement, pp. 169-181 (*Royal* and notes)
10. **Monday, September 26.** Mixed Petitions, pp. 181-191 (*Lundy* and notes)
11. **Wednesday, September 28.** Procedural Default: Early Doctrine, pp. 191-202 (*Fay v. Noia*)
12. **Monday, October 3.** Procedural Default: Modern Procedural Default Test, pp. 202-229 (*Sykes & Martinez*; skim notes)

13. **Wednesday, October 5.** Miscarriage of Justice Exception, pp. 229-244 (*House v. Bell*; you may skim notes)
14. **Monday, October 10.** Successive Petitions, pp. 244-257 (*McCleskey*) & 264-66 (AEDPA procedure)
15. **Wednesday, October 12.** Statute of Limitations, pp. 266-80 (*Duncan* and notes)
16. **Monday, October 17.** Equitable Tolling, pp. 281-297 (*Holland*)

C. Merits Review

17. **Wednesday, October 19.** “On the Merits” and Retroactivity, pp. 299-318 (*Harrington & Teague*; you may skim notes after *Teague*)
18. **Monday, October 24.** The AEDPA Review Standard, 28 U.S.C. 2254(d)(1), part 1, pp. 318-39 (*Terry Williams*; you may skim notes after case0)
19. **Wednesday, October 26.** The AEDPA Review Standard, 28 U.S.C. 2254(d)(1), part 2, pp. 339-358 (*Cullen v. Pinholster*)
20. **Monday, October 31.** Factual Defects in State Decisions, pp. 358-77 (*Miller-El*)
21. **Wednesday, November 2.** Supplementing the State Record on Federal Review, pp. 378-95 (*Michael Williams*; you may skim notes after case)
22. **Monday, November 7.** Harmless Error, pp. 395-416 (*Brecht*; you may skim notes after case)

D. Review of Federal Convictions

23. **Wednesday, November 9.** Introduction to 28 U.S.C. § 2255 & AEDPA’s Effects on § 2255, pp. 417-32 (*Frady*; you may skim notes)
24. **Monday, November 14.** The “Savings” Clause, pp. 432-442 (*Gilbert*)

E. Boundaries with Section 1983

25. **Wednesday, November 16.** Civil/Criminal Divide, pp. 677-700 (read *Heck* and *Osborne*; you may skim notes)
26. **Monday, November 21. Review Session.**