

November 2011

Alien Language: Immigration Metaphors and the Jurisprudence of Otherness

Keith Cunningham-Parmeter

Follow this and additional works at: <https://ir.lawnet.fordham.edu/flr>



Part of the [Law Commons](#)

Recommended Citation

Keith Cunningham-Parmeter, *Alien Language: Immigration Metaphors and the Jurisprudence of Otherness*, 79 Fordham L. Rev. 1545 (2011).

Available at: <https://ir.lawnet.fordham.edu/flr/vol79/iss4/5>

This Article is brought to you for free and open access by FLASH: The Fordham Law Archive of Scholarship and History. It has been accepted for inclusion in Fordham Law Review by an authorized editor of FLASH: The Fordham Law Archive of Scholarship and History. For more information, please contact tmelnick@law.fordham.edu.

ARTICLES

ALIEN LANGUAGE: IMMIGRATION METAPHORS AND THE JURISPRUDENCE OF OTHERNESS

*Keith Cunningham-Parmeter**

Metaphors tell the story of immigration law. Throughout its immigration jurisprudence, the U.S. Supreme Court has employed rich metaphoric language to describe immigrants attacking nations and aliens flooding communities. This Article applies research in cognitive linguistics to critically evaluate the metaphoric construction of immigrants in the law.

Three conceptual metaphors dominate legal texts: IMMIGRANTS ARE ALIENS, IMMIGRATION IS A FLOOD, and IMMIGRATION IS AN INVASION. In order to gauge the prevalence of these metaphors, the Article engages in a textual analysis of modern Supreme Court opinions and presents original empirical data on the incidence of alienage terminology in federal court decisions. The Article explains how immigration metaphors influence not only judicial outcomes, but also social discourse and the broader debate over immigration reform. As such, the theoretical study of language has very practical consequences for the people defined by immigration metaphors.

The Article concludes by proposing an oppositional metaphoric framework based on the concepts of migration and economic sanctuary. These metaphors describe immigration in terms of movement, work, and community, in contrast to existing legal metaphors that describe immigration in terms of danger, attack, and criminality. Thus, while today's immigration metaphors signify a loss of economic security and cultural hegemony, the proposed terms emphasize immigrants' economic contributions and potential for social belonging. This process of evaluation and substitution diminishes the power of existing metaphors to conflate and

* Assistant Professor of Law, Willamette University. J.D., Stanford University. I am grateful to David Frank, Kevin Johnson, Hiroshi Motomura, and Leti Volpp for sharing their insights and expertise on this topic. I also thank Laura Appleman, Richard Birke, Caroline Davidson, and Paul Diller for their thoughtful comments on an earlier draft of this Article. David Anderson, Andrea Breinholt, Marshall Dunst, and Michael Owens provided outstanding research assistance throughout this project. Finally, I thank Dean Symeon Symeonides for providing generous research support for this Article. All errors are exclusively my own.

essentialize, while creating space in the legal imagination for new frames to emerge.

TABLE OF CONTENTS

| | |
|---|------|
| INTRODUCTION..... | 1546 |
| I. CONCEPTUAL METAPHORS AND THE LAW..... | 1551 |
| A. <i>The Traditional and Cognitive Accounts</i> | 1551 |
| B. <i>The Metaphoric Nature of Legal Reasoning</i> | 1555 |
| C. <i>Immigration Metaphors and the Dangers of Conflation</i> | 1556 |
| II. DECONSTRUCTING THE SUPREME COURT’S IMMIGRATION METAPHORS | 1559 |
| A. <i>Plyler: Educating the Shadow Population</i> | 1560 |
| B. <i>Hoffman: “An Illegal” Tries to Form a Union</i> | 1564 |
| C. <i>Lopez-Mendoza: Immigrants as Toxic Waste</i> | 1566 |
| D. <i>Metaphors of Alienage, Floods, and Invasions</i> | 1568 |
| 1. <i>Immigrants Are Aliens</i> | 1568 |
| a. <i>Alien Is Other</i> | 1570 |
| b. <i>Alien Is Illegal</i> | 1573 |
| Figure 1: Data on “Illegal Alien” in Federal Cases . | 1574 |
| Figure 2: Data on “Alien” in Federal Cases | 1575 |
| c. <i>Alien Is Mexican</i> | 1577 |
| 2. <i>Immigration Is a Flood</i> | 1580 |
| 3. <i>Immigration Is an Invasion</i> | 1582 |
| III. TOWARD A NEW IMMIGRATION DISCOURSE | 1584 |
| A. <i>Metaphors of Immigration Reform</i> | 1585 |
| B. <i>Legal Metaphors and Social Discourse</i> | 1588 |
| C. <i>Motivating Analogic Reasoning Through Similes</i> | 1590 |
| D. <i>Migration and Economic Sanctuary as Outlaw Metaphors</i> ... | 1591 |
| CONCLUSION | 1597 |

INTRODUCTION

“An Oriental invasion . . . a menace to our civilization . . .”

-Justice Stephen J. Field, 1889¹

“[T]his silent invasion of illegal aliens from Mexico”

-Chief Justice Warren E. Burger, 1975²

“[T]he northbound tide of illegal entrants”

-Justice Sandra Day O’Connor, 2000³

1. *Chae Chan Ping v. United States*, 130 U.S. 581, 595 (1889).
 2. *United States v. Ortiz*, 422 U.S. 891, 904 (1975) (Burger, J., concurring) (quoting *United States v. Baca*, 368 F. Supp. 398, 402–08 (S.D. Cal. 1973)).

William Rehnquist referred to Mexican children as “wetbacks.”⁴ No one disputes that the future Chief Justice of the Supreme Court used the ethnic slur in front of his colleagues in 1981.⁵ When a shocked Justice Thurgood Marshall objected, Justice Rehnquist defended himself arguing that “wetback” still carried “currency in his part of the country.”⁶

Justice Rehnquist would go on to author some of the most important immigration decisions of the late twentieth century. In those opinions, he did not refer to immigrants as “wetbacks.” Rather he employed a rich array of metaphors to describe a nation at risk. He wrote of “an *avalanche* of claims” coming from unauthorized immigrants.⁷ He described the fight against illegal immigration as a form of “national *self protection*.”⁸ He argued that federal law must “*combat*[] the employment of illegal aliens.”⁹ The larger cognitive frame structuring these statements might be described as IMMIGRATION IS A LOSING BATTLE.¹⁰ Illegal aliens are entering the country like an *avalanche*—dangerous, monolithic, overpowering, and unstoppable. Law enforcement officers are engaged in *combat* for national *self-protection*. In this metaphoric war, Supreme Court Justices become soldiers who must protect citizens against the impending alien offensive.

A growing body of research in cognitive linguistics demonstrates that human beings view the world in metaphoric terms.¹¹ In attempting to

3. *City of Indianapolis v. Edmond*, 531 U.S. 32, 38 (2000).

4. Justice William J. Brennan, Conference Notes, *Plyler v. Doe* (Nos. 80-1538, 80-1934) (Dec. 8, 1981) (on file with the Library of Congress, Manuscript Division, William J. Brennan Papers, Part I: Box 572). A “wetback” is a racist term first used in 1929 to refer to Mexican people crossing the Rio Grande River. 20 THE OXFORD ENGLISH DICTIONARY 173 (2d ed. 1989); *see also* *Rocha Virgil v. City of Las Cruces*, 119 F.3d 871, 871–74 (10th Cir. 1997) (Lucero, J., dissenting) (comparing the term to other racial epithets).

5. THE SUPREME COURT IN CONFERENCE (1940–1985): THE PRIVATE DISCUSSIONS BEHIND NEARLY 300 SUPREME COURT DECISIONS 760–63 (Del Dickson ed., 2001).

6. William J. Brennan, Conference Histories IX, *Plyler v. Doe* (Nos. 80-1538, 80-1934) (on file with author); *see also* Jim Newton, *The Brennan Memos*, SLATE (Jan. 9–11, 2007), available at <http://www.slate.com/id/2156940/entry/2156943/>.

7. *McNary v. Haitian Refugee Ctr., Inc.*, 498 U.S. 479, 504 (1991) (Rehnquist, C.J., dissenting) (emphasis added).

8. *United States v. Brignoni-Ponce*, 422 U.S. 873, 887 (1975) (Rehnquist, J., concurring) (emphasis added) (quoting *Carroll v. United States*, 267 U.S. 132, 154 (1925)).

9. *Hoffman Plastic Compounds, Inc. v. NLRB*, 535 U.S. 137, 147 (2002) (emphasis added).

10. Throughout this Article, I employ the linguistic convention of using small capital letters to refer to conceptual metaphors and italicized letters to refer to metaphoric linguistic expressions. *See infra* Part I.A and accompanying text (discussing the distinction between conceptual metaphors and metaphoric linguistic expressions); *see also* Bruce Kochis & Diane Gillespie, *Conceptual Metaphors as Interpretive Tools in Qualitative Research: A Re-Examination of College Students’ Diversity Discussions*, 11 QUALITATIVE REP. 566, 567 n.1 (2006) (using the convention).

11. *See generally* MARK JOHNSON, THE BODY IN THE MIND: THE BODILY BASIS OF MEANING, IMAGINATION, AND REASON (1987); GEORGE LAKOFF, WOMEN, FIRE, AND DANGEROUS THINGS: WHAT CATEGORIES REVEAL ABOUT THE MIND (1987); GEORGE LAKOFF & MARK JOHNSON, METAPHORS WE LIVE BY (1980).

comprehend new ideas, people borrow from familiar concepts.¹² The metaphors floating in our minds determine our linguistic choices, which in turn affect social discourse and ultimately social action. Thus, how we *think* metaphorically affects how we *talk* about problems and the *solutions* we formulate in response to those problems.¹³ This becomes a self-fulfilling prophecy: the more we repeat, circulate, and repackage certain metaphors, the more our conceptual domains become tied to a limited set of associations.¹⁴

Justice Rehnquist's description of immigrants illustrates this point. By using and defending the word "wetback" in front of his colleagues, Justice Rehnquist revealed a particular perspective on immigration. As his defense of the term suggests, he viewed "wetback" as a neutral word—simply a way to refer to Mexican immigrants that was linguistically and culturally appropriate in "his part of the country."¹⁵ His conceptual frame of immigrants, then, created a version of reality that highlighted certain features of immigrants, while obscuring others.¹⁶ Namely, the image of immigrants as "wetbacks" focuses on immigration-related characteristics such as illegality, ethnicity, and invasion, while concealing other characteristics such as personhood, diversity, and belonging. Through this process of metaphoric framing, inferences and understandings arise that severely restrict the universe of possible judicial outcomes.¹⁷

The external face of the law denies the importance of language, yet metaphor's prevalence in legal texts indicates otherwise.¹⁸ Supreme Court opinions that appear to express objective legal principles rely heavily on nonliteral language to reach their conclusions.¹⁹ For example, the Supreme Court frequently refers to corporations as *people*.²⁰ The *wall of separation*²¹ and the *marketplace of ideas* protect First Amendment

12. LAKOFF & JOHNSON, *supra* note 11, at 5; Jayne Seminare Docherty, *Narratives, Metaphors, and Negotiation*, 87 MARQ. L. REV. 847, 847–48 (2004) (applying conceptual metaphor theory to negotiation practice).

13. Gerald V. O'Brien, *Metaphors and the Pejorative Framing of Marginalized Groups: Implications for Social Work Education*, 45 J. SOC. WORK EDUC. 29, 32 (2009).

14. See Charles L. Briggs, *Communicability, Racial Discourse, and Disease*, 34 ANN. REV. ANTHROPOLOGY 269, 272 (2005) (explaining how narratives become authoritative through the processes of appropriation and reception).

15. Brennan, *supra* note 6, at IX (recounting Justice Rehnquist's explanation).

16. LAKOFF & JOHNSON, *supra* note 11, at 157–58.

17. *Id.*

18. See Robert L. Tsai, *Fire, Metaphor, and Constitutional Myth-Making*, 93 GEO. L.J. 181, 235 (2004) (arguing that legal metaphors are both regressive and dynamic).

19. HAIG BOSMAJIAN, METAPHOR AND REASON IN JUDICIAL OPINIONS 200 (1992) (discussing the prevalence of metaphors in legal texts).

20. See *Citizens United v. Federal Election Comm'n*, 130 S. Ct. 876 (2010); Linda L. Berger, *What Is the Sound of a Corporation Speaking? How the Cognitive Theory of Metaphor Can Help Lawyers Shape the Law*, 2 J. ASS'N LEGAL WRITING DIRECTORS 169, 171 (2004) (criticizing the use of metaphors to associate corporations with people).

21. BOSMAJIAN, *supra* note 19, at 73–94 (noting the prevalence of the *wall* metaphor in the Supreme Court's analysis of the Establishment Clause); Michael R. Smith, *Levels of Metaphor in Persuasive Legal Writing*, 58 MERCER L. REV. 919, 925–26 (2007) (analyzing the *wall* metaphor).

rights.²² States are *laboratories*.²³ The list goes on and on. Immigration is no exception to metaphor's ubiquity in the law.²⁴

This Article explores the prevailing metaphors of immigration law and examines the social and legal consequences of their use. Employing a critical discourse framework, I assert that three immigration metaphors dominate Supreme Court texts: IMMIGRANTS ARE ALIENS, IMMIGRATION IS A FLOOD, and IMMIGRATION IS AN INVASION.

Part I of this Article establishes a method for understanding these terms by introducing the conceptual theory of metaphor. According to cognitive linguists, human thought is defined by metaphors.²⁵ I evaluate Stephen Winter's claim that legal reasoning is grounded in metaphors that derive from our "embodied" experiences as physical, social, and cultural beings.²⁶ Applying Winter's theory to immigration metaphors, I explain why the dangers of distortion and conflation—risks associated with all metaphors—are heightened in the immigration context.

Working from the critical framework established in Part I, Part II analyzes the conceptual metaphors of three modern Supreme Court opinions. In undoubtedly the most important constitutional decision affecting unauthorized immigrants in the last century,²⁷ the Supreme Court referred to a "*shadow population*" of millions of "*illegal aliens*"²⁸ that constituted "an ever-increasing *flood*."²⁹ In its most important labor law decision involving immigrants, the Court described the *criminality* of "*illegal aliens*."³⁰ Finally, in the deportation context, the Supreme Court analogized the detention of immigrants to the discovery of "*contraband*

22. See BOSMAJIAN, *supra* note 19, at 200 (questioning whether the *marketplace* metaphor is appropriate in modern society).

23. See generally James A. Gardner, *The "States-as-Laboratories" Metaphor in State Constitutional Law*, 30 VAL. U. L. REV. 475 (1996).

24. Although legal scholars have not analyzed immigration metaphors comprehensively, several have offered thoughtful analyses of various aspects of immigration discourse. See, e.g., Linda S. Bosniak, *Opposing Prop. 187: Undocumented Immigrants and the National Imagination*, 28 CONN. L. REV. 555, 565–90 (1996) (analyzing the rhetoric of opponents of immigration restrictionists); 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, 272–73 (1997) [hereinafter Johnson, "*Aliens*" and the U.S. Immigration Laws]; Kevin R. Johnson, *The New Nativism: Something Old, Something New, Something Borrowed, Something Blue*, in IMMIGRANTS OUT!: THE NEW NATIVISM AND THE ANTI-IMMIGRANT IMPULSE IN THE UNITED STATES 165 (Juan F. Perea ed., 1997); Hiroshi Motomura, *Immigration Outside the Law*, 108 COLUM. L. REV. 2037, 2085–87 (2008) (discussing the dueling rhetorical formulations of "rule of law" rhetoric in immigration debates); Gerald L. Neuman, *Aliens as Outlaws: Government Services, Proposition 187, and the Structure of Equal Protection Doctrine*, 42 UCLA L. REV. 1425, 1428 (1995).

25. ZOLTÁN KÖVECSES, METAPHOR: A PRACTICAL INTRODUCTION viii (2002) (summarizing the "cognitive linguistic view of metaphor").

26. Steven L. Winter, *Transcendental Nonsense, Metaphoric Reasoning, and the Cognitive Stakes for Law*, 137 U. PA. L. REV. 1105, 1130–36, 1142–56 (1988).

27. *Plyler v. Doe*, 457 U.S. 202 (1982).

28. *Id.* at 218 (emphasis added).

29. *Id.* at 249 (Burger, C.J., dissenting) (emphasis added).

30. *Hoffman Plastic Compounds, Inc. v. NLRB*, 535 U.S. 137, 143 (2002) (emphasis added).

explosives or drugs."³¹ I explain that, rather than stand as outliers, these cases join a much larger body of Supreme Court decisions that use metaphors to describe immigration in terms of *criminality, flood, and attack*.

In Part III, I explain how the Supreme Court's metaphors interact with metaphors from other important cultural institutions like Congress to create a social understanding of "the immigration problem" and the necessary solutions to the problem.³² For example, if immigrants are viewed as *illegal alien criminals*, then they should be captured and deported. If immigration is an *invasion* from the south, then the government should construct a virtual fence across the border to resist the Mexican offensive. These "common sense" responses are made possible by selective metaphoric framing.

The Article concludes by proposing several avenues for discursive change. First, I assert that similes are more effective vehicles for understanding immigration-related concepts than metaphors. Because similes stimulate analogic reasoning, they are less likely than metaphors to encourage cognitive shortcuts and conflate ideas. Given that human reasoning depends on figurative associations, however, metaphors will remain fundamental components of discourse and thought. Because of metaphor's omnipresence in law, I argue that speakers must develop an oppositional metaphoric framework to compete with dominant accounts.³³ I suggest two alternative metaphors: unauthorized immigrants should be referred to as *migrants*, and illegal immigration should instead be thought of as a process of obtaining *economic sanctuary*.

In contrast to existing terms that describe nonhumans who attack, *migration* describes people who move. Whereas the Supreme Court's current immigration metaphors focus on criminality, *economic sanctuary* focuses on the human consequences of globalization and the displacement of workers. Finally, while current frames signify a loss of economic security and cultural hegemony, the proposed terms highlight immigrants' economic contributions and potential for social belonging.

In the midst of heated immigration debates and calls for greater restrictions, we should pause for a moment to consider the role metaphors play in the social and legal construction of noncitizens. As George Lakoff and Mark Johnson—the pioneers of conceptual metaphor theory—remind us, "[P]eople in power get to impose their metaphors."³⁴ The Supreme Court has imposed many immigration metaphors on the legal community.

31. *INS v. Lopez-Mendoza*, 468 U.S. 1032, 1046 (1984) (emphasis added).

32. GEORGE LAKOFF & SAM FERGUSON, *THE FRAMING OF IMMIGRATION* 1–2 (2006) (analyzing the "Immigration Problem Frame"); Lisa Marie Cacho, *'The People of California Are Suffering': The Ideology of White Injury in Discourses of Immigration*, 4 *CULTURAL VALUES* 389, 394 (2000) (explaining how immigration metaphors rationalize "commonsense" responses).

33. See Phyllis Pease Chock, *Ambiguity in Policy Discourse: Congressional Talk About Immigration*, 28 *POL'Y SCI.* 165, 180 (1995) (explaining how personal narratives can serve as oppositional frameworks).

34. LAKOFF & JOHNSON, *supra* note 11, at 157.

This Article seeks to critically evaluate the metaphors of immigration law so that competing frames might emerge.

I. CONCEPTUAL METAPHORS AND THE LAW

A. *The Traditional and Cognitive Accounts*

Metaphors are typically described as figures of speech used to understand one concept in terms of another.³⁵ The most common metaphoric expression employs an “A is a B” format.³⁶ Thus, the expression “*life is a dance*” makes the association between “life” and “dance” explicit.³⁷ But a person might also say, “I’m going to find a *life partner*” or “You take *the lead*,” thereby associating living with dancing more indirectly. Regardless of the format, however, the classical rhetorical definition of metaphor involves a tacit comparison between two concepts.³⁸

Philosophers of language have long studied the role metaphor plays in communicating ideas.³⁹ Aristotle, the father of the traditional approach, described metaphor as a method for producing understanding “through the generic similarity.”⁴⁰ Under this view, metaphor has both descriptive and normative components. On the descriptive side, metaphors are simply linguistic expressions used for nonliteral comparisons.⁴¹ Normatively, the traditional view holds that metaphors are linguistically deviant because they inhibit language’s primary function, which is to accurately represent reality.⁴²

The conventional wisdom on metaphor took a radical turn in the mid-twentieth century when theorists questioned the foregoing descriptive and normative accounts. Although traditionalists viewed metaphor as a rhetorical device, later theorists described metaphor in cognitive terms. The influential twentieth-century philosopher and literary critic I.A. Richards asserted that metaphor involves a “borrowing between and intercourse of *thoughts*, a transaction between contexts.”⁴³ According to Richards, we

35. See Michael Boudin, *Antitrust Doctrine and the Sway of Metaphor*, 75 GEO. L.J. 395, 405 (1986) (discussing the classical definition of metaphor); Bernard J. Hibbitts, *Making Sense of Metaphors: Visuality, Aurality, and the Reconfiguration of American Legal Discourse*, 16 CARDOZO L. REV. 229, 233 (1994) (defining metaphor).

36. Clay Calvert, *Regulating Cyberspace: Metaphor, Rhetoric, Reality, and the Framing of Legal Options*, 20 HASTINGS COMM. & ENT. L.J. 541, 547 (1998) (outlining metaphoric formatting).

37. Hibbitts, *supra* note 35, at 234 (noting that metaphors create images that emphasize specific qualities of particular referents).

38. See Andreas Musolff, *What Role Do Metaphors Play in Racial Prejudice? The Function of Antisemitic Imagery in Hitler’s Mein Kampf*, 41 PATTERNS OF PREJUDICE 21, 23 (2007) (discussing metaphor’s ubiquity in social discourse).

39. Dan Hunter, *Cyberspace as Place and the Tragedy of the Digital Anticommons*, 91 CAL. L. REV. 439, 462–65 (2003) (discussing the historical development of metaphor in law and philosophy).

40. ARISTOTLE, THE “ART” OF RHETORIC 235 (H.C. Lawson-Tancred trans., 1991).

41. Hunter, *supra* note 39, at 463.

42. *Id.* (discussing the “linguistic deviance” of metaphors and tracing the traditional view to Aristotle).

43. I.A. RICHARDS, THE PHILOSOPHY OF RHETORIC 94 (1965).

think metaphorically, and the figurative expressions we utter represent underlying cognitive processes.⁴⁴ Max Black extended Richards's initial assault on the traditionalist approach by describing metaphoric meaning not in terms of shared literal properties but in terms of shared concepts and relationships.⁴⁵ Black analyzed the phrase "*man is a wolf*" to illustrate what is known as the "interaction" theory of metaphor.⁴⁶ Under this approach, when listeners hear "*man is a wolf*," they associate certain characteristics and relationships with "man," which then interact with characteristics and relationships that they unconsciously associate with "wolf."⁴⁷ The interaction of these "associated commonplaces" produces a unique meaning that cannot be explained through paraphrase.⁴⁸

Although the interaction theory of metaphor challenged many core assumptions of the traditional view—that metaphors are solely ornamental, linguistic, and comparative⁴⁹—Richards and Black left other questions unanswered. Namely: how does the human mind select certain characteristics of a particular domain, while ignoring other potential "associated commonplaces"? Thus, in the phrase "*man is a wolf*," why do we map concepts such as anger and ferocity from wolf to man, but filter out other characteristics such as "has legs," "breathes air," or "drinks water"?⁵⁰ Cognitive linguists addressed these and other questions in the latter half of the twentieth century.

In their pioneering book *Metaphors We Live By*, Lakoff and Johnson applied research in philosophy and cognitive linguistics to the study of metaphor.⁵¹ Although prior theorists had discussed the cognitive nature of metaphors, Lakoff and Johnson were the first to offer a comprehensive, empirically tested approach.⁵² According to their account, metaphors live in the mind but reveal themselves in words and phrases.⁵³ We scale our conceptual metaphors according to familiarity, with abstract concepts

44. *Id.*

45. See Berger, *supra* note 20, at 174–77 (summarizing Black's theory).

46. MAX BLACK, MODELS AND METAPHORS: STUDIES IN LANGUAGE AND PHILOSOPHY 39–44 (1962).

47. Berger, *supra* note 20, at 175–76 (analyzing the *man is a wolf* metaphor); Hunter, *supra* note 39, at 468–69 (same).

48. BLACK, *supra* note 46, at 44–46; see also Berger, *supra* note 20, at 176; Linda L. Berger, *Of Metaphor, Metonymy, and Corporate Money: Rhetorical Choices in Supreme Court Decisions on Campaign Finance Regulation*, 58 MERCER L. REV. 949, 955 (2007) (discussing Black's theory).

49. David T. Ritchie, *Who Is on the Outside Looking in, and What Do They See?: Metaphors of Exclusion in Legal Education*, 58 MERCER L. REV. 991, 992 (2007) (describing the traditional view of metaphor as "a mere trick designed to conceal or cover over the truth").

50. Hunter, *supra* note 39, at 469 (discussing the limitations of Black's theory).

51. See LAKOFF & JOHNSON, *supra* note 11, at 3–9; see also Otto Santa Ana et al., *Awash Under a Brown Tide: Immigration Metaphors in California Public and Print Media Discourse*, 23 AZTLÁN 137, 142 (1998) (arguing that Lakoff and Johnson's work "signaled the advent of cognitive science in understanding how metaphors shape everyday thinking").

52. See KÖVECSES, *supra* note 25, at xi (discussing the significance of Lakoff and Johnson's work).

53. George Lakoff, *The Contemporary Theory of Metaphor*, in METAPHOR AND THOUGHT 202, 203 (Andrew Ortony ed., 2d ed. 1993).

understood in terms of more concrete experiences.⁵⁴ Thus, in the metaphor TIME IS MONEY, the abstract concept (time) is viewed in terms of a better-understood concept grounded in the real world (money).⁵⁵ Lakoff and Johnson refer to the more obscure concept (i.e., the one the listener is trying to understand) as the “target domain” (time) and the idea or experience from which the listener borrows attributes as the “source domain” (money).⁵⁶ Conceptual metaphors, thus, involve multiple mappings between domains.⁵⁷

Cognitive linguists emphasize the difference between conceptual metaphors and their linguistic expressions.⁵⁸ Conceptual metaphors involve the process of understanding one conceptual domain in terms of another.⁵⁹ Linguistic expressions are the words or phrases that reflect the conceptual metaphor.⁶⁰ For example, a speaker might express the conceptual metaphor THE MIND IS A CONTAINER by stating: “He’s *empty-headed*” or “She’s *full of ideas*.”⁶¹ Whether or not the speaker actually utters the conceptual metaphor, researchers can identify the underlying idea based on the number of linguistic metaphoric expressions that refer to it. Thus, conceptual metaphors are “ways of thinking” about concepts, while linguistic expressions are “ways of talking” about them.⁶² If a large number of similar metaphoric expressions or “tokens” of conceptual metaphors exist, then they likely evince an underlying conceptual association.⁶³

The conceptual theory of metaphor addresses two key issues that prior theories had failed to resolve: (1) the process through which the human mind selects certain source domains over others, and (2) the criteria used to map certain attributes within domains while ignoring others. According to

54. Hugh G. Petrie & Rebecca S. Oshlag, *Metaphor and Learning*, in METAPHOR AND THOUGHT 579, 589 (Andrew Ortony ed., 2d ed. 1993) (“[M]etaphor is what enables one to pass from the more familiar to the unfamiliar . . .”).

55. LAKOFF & JOHNSON, *supra* note 11, at 7–9.

56. See KÖVECSES, *supra* note 25, at 4 (discussing “conceptual domains”).

57. See Dan Hunter, *Reason Is Too Large: Analogy and Precedent in Law*, 50 EMORY L.J. 1197, 1212 (2001) (explaining how features of source domains are mapped onto target domains); Steven L. Winter, *Re-Embodying Law*, 58 MERCER L. REV. 869, 882 (2006) (discussing mappings).

58. See KÖVECSES, *supra* note 25, at 4–6; O’Brien, *supra* note 13, at 32 (distinguishing between conceptual and linguistic metaphors).

59. LAKOFF & JOHNSON, *supra* note 11, at 5.

60. KÖVECSES, *supra* note 25, at 4.

61. George Lakoff & Mark Johnson, *The Metaphorical Structure of the Human Conceptual System*, 4 COGNITIVE SCI. 195, 196–97 (1980) (examining various examples of ontological metaphors).

62. KÖVECSES, *supra* note 25, at 6 (describing metaphoric expressions as evidence of conceptual metaphors).

63. Thomas H. Smith, *When Experts Educate, What Do Their Metaphors Say? Complex Metaphor Structure in the Professional Conflict Resolution Literature*, 17 IBÉRICA 175, 176–77 (2009).

Lakoff and Johnson, the notion of “experientialism” explains these unconscious metaphoric choices.⁶⁴

Experientialism holds that our understanding of the world is rooted in our interactions with physical, social, and cultural environments.⁶⁵ For example, when a parent holds a child, the child feels affection and warmth at the same time.⁶⁶ By experiencing these stimuli simultaneously, the child conflates the ideas of affection and warmth. The conceptual metaphor AFFECTION IS WARMTH gives rise to statements such as: “Our relationship has *cooled* recently” and “I received a *warm* reception from the audience.”⁶⁷ Because the human mind operates in conjunction with a physical body that dwells in the physical world, physical and spatial perceptions largely determine our metaphoric understandings.⁶⁸

Source domains can be culturally grounded as well. In fact, the notion of experientialism extends to *every* environment a human being encounters, whether physical, cultural, social, economic, or moral.⁶⁹ For example, Western speakers often articulate the concept TIME IS MONEY through a series of linguistic expressions such as “She *spent* her time wisely” or “I should *budget* my time more effectively.”⁷⁰ Listeners draw meaning from these statements based on shared cultural understandings of money and business. Yet non-capitalist societies have very different perceptions of transactions and therefore do not describe the concept of time in economic terms.⁷¹ Whether metaphors are grounded in physical, social, or cultural knowledge, listeners will evaluate the accuracy of a particular metaphoric statement based on their embodied knowledge.⁷² As explained below, this experiential approach to human reasoning provides a useful tool for evaluating the operation of legal metaphors in general and immigration metaphors in particular.

64. See Marina Rakova, *The Philosophy of Embodied Realism: A High Price to Pay?*, 13 COGNITIVE LINGUISTICS 215, 216 (2002) (discussing Lakoff and Johnson’s theory of “experientialism” or “embodied realism”).

65. Mark Johnson, *Law Incarnate*, 67 BROOK. L. REV. 949, 950 (2002) (“[O]ur conceptualization and reasoning are grounded in our bodily experience, shaped by patterns of perception and action.”).

66. See Mark L. Johnson, *Mind, Metaphor, Law*, 58 MERCER L. REV. 845, 859–60 (2007) (discussing associations between domains).

67. GEORGE LAKOFF & MARK JOHNSON, *PHILOSOPHY IN THE FLESH: THE EMBODIED MIND AND ITS CHALLENGE TO WESTERN THOUGHT* 48–49 (1999); see also Johnson, *supra* note 66, at 859–60 (explaining how physical associations give rise to many primary metaphors).

68. LAKOFF & JOHNSON, *supra* note 11, at 14–21 (discussing orientational metaphors); Stuart J. Kaplan, *Let Me Hear Your Web Sights: Visual and Aural Metaphors for the Internet*, 40 IDAHO L. REV. 299, 306–08 (2004) (same).

69. Johnson, *supra* note 66, at 846 (“Our embodiment shapes both what and how we experience, think, mean, imagine, reason, and communicate.”).

70. See LAKOFF & JOHNSON, *supra* note 11, at 7–9 (analyzing the TIME IS MONEY metaphor); BRUCE MCCONACHIE, *AMERICAN THEATER IN THE CULTURE OF THE COLD WAR: PRODUCING AND CONTESTING CONTAINMENT, 1947–1962*, at 14–15 (2003) (discussing the cultural grounding of metaphor).

71. LAKOFF & JOHNSON, *supra* note 11, at 7–9.

72. See *id.*

B. The Metaphoric Nature of Legal Reasoning

Much like traditional philosophers of language, early legal commentators viewed metaphor with great skepticism. Lord Mansfield opined that “nothing in law is so apt to mislead as a metaphor,”⁷³ Jeremy Bentham stated tersely that “[m]etaphors are not [r]easons,”⁷⁴ and Justice Benjamin Cardozo warned that metaphors “end often by enslaving [thought].”⁷⁵

Early critics of legal metaphors embraced a rationalist view of law that dismissed metaphors as distracting rhetorical flourishes.⁷⁶ Rationalists viewed the law as a product of logical, impartial discernment.⁷⁷ According to this account, lawyers are not reality-makers but rather creative applicators of a rule-based system.⁷⁸ As such, metaphors cannot create multiple realities because the law embodies a singular version of reality.

In his groundbreaking application of research in cognitive linguistics to the law, Steven Winter offered an alternative account of the role played by metaphor in legal thought.⁷⁹ According to Winter, those who dismiss legal metaphors as rhetorical trifles rely on flawed assumptions about human rationality. Winter argues that legal reasoning is grounded in human interactions, which become institutionalized first in social practices, and later in cultural and legal norms.⁸⁰ Just as human reasoning is metaphoric, so too is the law.⁸¹ Because we think metaphorically based on our “embodied interactions” with physical, social, and cultural environments, the law also derives from these experiences.⁸² The law’s metaphoric grounding allows for dynamic change as social practices and cultural understandings develop.⁸³ As Winter states, “Actual examination of legal metaphors—how they work, how they come to be, how they come to be meaningful and persuasive to us as embodied, socially-situated human beings—shows that . . . metaphor is both the product and embodiment of constraint.”⁸⁴

73. *Knox v. Gye*, (1871) 5 L.R.E. & I. App. 656, 676 (H.L.); see also Thomas Ross, *Metaphor and Paradox*, 23 GA. L. REV. 1053, 1057 n.9 (1989) (discussing early criticisms of metaphors in law).

74. JEREMY BENTHAM, *THEORY OF LEGISLATION* 69–71 (1911).

75. *Berkey v. Third Ave. Ry. Co.*, 155 N.E. 58, 61 (N.Y. 1926).

76. See Ross, *supra* note 73, at 1057 n.9 (examining the formalist view of metaphor).

77. See Berger, *supra* note 20, at 178 (discussing legal fundamentalism).

78. See MILNER S. BALL, *LYING DOWN TOGETHER: LAW, METAPHOR, AND THEOLOGY* 8 (1985) (characterizing objectivism as the “received tradition” of law).

79. See generally STEVEN L. WINTER, *A CLEARING IN THE FOREST: LAW, LIFE, AND MIND* (2001); Winter, *supra* note 26; Steven L. Winter, *The Metaphor of Standing and the Problem of Self-Governance*, 40 STAN. L. REV. 1371 (1988) [hereinafter Winter, *The Metaphor of Standing*]; Steven L. Winter, *The “Power” Thing*, 82 VA. L. REV. 721 (1996).

80. WINTER, *supra* note 79, at 193.

81. See *id.* at 197 (arguing that legal reasoning does not operate in a rule-like way).

82. Johnson, *supra* note 65, at 958.

83. See Winter, *supra* note 57, at 895–96 (challenging both the objectivist and subjectivist accounts of law).

84. *Id.* at 897.

According to this experientialist account, there is no law without metaphor.⁸⁵ Metaphors do not misrepresent the law; metaphor *is* the law because human reasoning is essentially metaphoric. At its core, then, the conceptual theory of metaphor “humanizes” the law by situating it within social institutions and ordinary thought processes.⁸⁶

Winter’s experiential understanding of legal metaphors raises several questions about the metaphoric construction of immigrants in the law. If human beings comprehend foreign concepts through metaphors, then we would expect the law to employ many metaphors to describe immigrants and immigration (i.e., people and processes perceived as “different” or “foreign” and therefore in need of greater explanation). In addition, if source domains are experientially grounded, then we would expect immigration metaphors to reference basic human experiences such as survival and self-protection, as well as basic culturally constructed concepts such as race and ethnicity. As seen below, the Supreme Court’s immigration metaphors bear these hypotheses out, producing reified images of immigrants that legal actors have largely adopted through unconscious associations.

C. *Immigration Metaphors and the Dangers of Conflation*

Cognitive linguists warn that metaphors can mislead as well as enlighten.⁸⁷ As a selective process that emphasizes certain aspects of source and target domains, while masking others, metaphors do not tell stories completely. For example, the metaphor IMMIGRATION IS A FLOOD utilizes certain characteristics of “flood” (the source domain), while underutilizing others. Thus, the metaphor brings focus to a flood’s destructive qualities, while ignoring the fact that floods often recede and leave fertile soil in their wake. Such mappings never capture the entire source. The same is true for the selective highlighting of target domains. The metaphor IMMIGRANTS ARE ILLEGAL ALIENS, for example, highlights the criminal characteristics of some immigrants (the target domain), while ignoring the fact that most immigrants reside legally in the United States.⁸⁸

Metaphors are most likely to deceive listeners when they conflate two domains entirely. If the target domain *becomes* the source domain in the listener’s mind, then the mapping process changes from metaphoric to literal.⁸⁹ An inverse relationship exists between a metaphor’s potential to

85. See Jonathan Simon, *Governing Through Crime Metaphors*, 67 BROOK. L. REV. 1035, 1063 (2002) (summarizing the cognitivist description of metaphor as a “feature of reason itself”).

86. Johnson, *supra* note 65, at 951–53 (explaining how cultural understandings constrain legal concepts).

87. Winter, *The Metaphor of Standing*, *supra* note 79, at 1387.

88. Randy Capps, *U.S. Immigrant Workers and Families: Demographics, Labor Market Participation, and Children’s Education*, 14 VA. J. SOC. POL’Y & L. 170, 170 (2007) (stating that approximately thirty percent of U.S. immigrants lack legal status).

89. See STEPHEN ULLMAN, *LANGUAGE AND STYLE* 237–38 (1964) (“By unthinkingly and mechanically repeating the same image, we may in the end forget that it is metaphorical . . .”).

mislead and the extent to which readers understand it as a metaphoric representation, rather than as a semi-literal representation.⁹⁰

Here I explain why the risk of distortion associated with all metaphors is heightened in the immigration context. Most immigration metaphors are what I call “personal metaphors,” meaning figurative representations that describe people or social processes. For example, the Supreme Court describes immigration using metaphors such as *illegal alien*, *northbound tide*, and *silent invasion*.⁹¹ The target domains of these metaphors (i.e., the subjects that the metaphors are trying to explain) are not novel rules or legal principles, but rather involve immigrants themselves. As explained below,⁹² immigration opinions often literalize these personal metaphors: through metaphor, the immigrant becomes the *alien*, the *alien* becomes the *illegal*, and the *illegal* becomes the *Mexican*.

The personal nature of immigration metaphors differs sharply from the doctrinal nature of most legal metaphors. By “doctrinal metaphor” I mean a figurative statement that attempts to summarize a legal rule or concept (e.g., *marketplace of ideas*, *wall of separation*, *stream of commerce*).⁹³ In contrast to the personal nature of immigration metaphors, doctrinal metaphors have received widespread evaluation and criticism from the legal community, thereby reducing the risk that these metaphors will pass unconsciously into the legal imagination. For example, even though the *marketplace of ideas* metaphor⁹⁴ is an established part of the First Amendment vernacular, it remains a statement that readers can observe and assess. When the *marketplace* metaphor appears in written opinions, it stands as an obvious shortcut to a broader legal principle, thereby inviting criticism and proposals for change. Demonstrating the testability of the metaphor, Cass Sunstein has argued that the *marketplace* concept improperly commodifies the First Amendment,⁹⁵ and Kathleen Sullivan has argued that speech is more like self-government than a sale of goods.⁹⁶ These assessments are made possible because, like all doctrinal metaphors,

90. See Martha Grace Duncan, *In Slime and Darkness: The Metaphor of Filth in Criminal Justice*, 68 TUL. L. REV. 725, 795 (1994) (arguing that readers often mistake metaphors for “more literal approximations of reality”).

91. *City of Indianapolis v. Edmond*, 531 U.S. 32, 38 (2000) (emphasis added) (referring to “the *northbound tide* of illegal entrants”); *United States v. Ortiz*, 422 U.S. 891, 904 (1975) (Burger, J., concurring) (emphasis added) (internal citation and quotations omitted) (referring to the “*silent invasion of illegal aliens*”).

92. See *infra* Part II.D.1 (examining different permutations of the *alien* metaphor).

93. See Smith, *supra* note 21, at 921–23 (defining “doctrinal metaphors” and describing them as both “powerful” and “dangerous”).

94. See Cass R. Sunstein, *The First Amendment in Cyberspace*, 104 YALE L.J. 1757, 1759 (1995) (discussing the history of the *marketplace* metaphor); see also Tsai, *supra* note 18, at 230 (referring to the *marketplace* metaphor as the “single most recognized metaphor in all of constitutional law”).

95. See CASS R. SUNSTEIN, *DEMOCRACY AND THE PROBLEM OF FREE SPEECH* 17–18 (1993); see also Jonathan H. Blavin & I. Glenn Cohen, *Gore, Gibson, and Goldsmith: The Evolution of Internet Metaphors in Law and Commentary*, 16 HARV. J.L. & TECH. 265, 267 (2002) (explaining how metaphors can mislead readers).

96. See Kathleen M. Sullivan, *Free Speech and Unfree Markets*, 42 UCLA L. REV. 949, 963 (1995).

the *marketplace* metaphor summarizes a legal concept that lawyers, judges, and scholars are predisposed to identify and debate.

Even if doctrinal metaphors pass unwittingly into everyday use, they never conflate source and target domains completely. For example, we know when we speak of a *wall of separation* that we are not talking about a *wall* literally. Legal critics continue to question the *wall* metaphor, despite its ubiquity.⁹⁷ Likewise, scholars have questioned whether corporations are really *people*⁹⁸ and whether property rights are really *bundles of sticks*.⁹⁹

In contrast to doctrinal metaphors, the images of ethnicity and danger contained in immigration metaphors create the impression that immigrants can *only* be described in terms of alienage and criminality. Thus, although scholars have paid substantial attention to doctrinal metaphors, immigration metaphors have generated significantly less critical evaluation.

I propose two explanations for why immigration metaphors are more likely to conflate source and target domains, while enjoying uncritical acceptance. First, doctrinal metaphors attempt to neatly summarize complex rules or concepts—a purpose arguably necessary to the interpretation and enforcement of laws. They are “cognitively efficient” because they establish criteria for resolving unpredictable problems that are yet to occur.¹⁰⁰ As such, doctrinal metaphors are indicative of a “healthy legal culture” because they facilitate a shared understanding of legal norms and explain difficult legal concepts.¹⁰¹ In contrast, there is no way to “neatly summarize” a group of noncitizens with varied backgrounds and objectives. Thus, unlike doctrinal metaphors, the goals of immigration metaphors are neither necessary nor attainable; metaphors that attempt to capture the essence of immigrants will inevitably miss the mark and therefore distort.

Second, although metaphors are a natural product of experiential knowledge, not all experiences exist on equal cognitive planes. The social and cultural understandings associated with immigration metaphors are more likely to involve race, ethnicity, and self-protection—source domains that operate on deeply unconscious levels because of the mind’s tendency to sort this type of information based on invisible categorical structures.¹⁰² The intergroup judgments that flow from racialized perspectives are largely unintentional and non-motivational.¹⁰³ If legal actors are unable to

97. See Stephen J. Safranek, *Can Science Guide Legal Argumentation? The Role of Metaphor in Constitutional Cases*, 25 LOY. U. CHI. L.J. 357, 372 (1994) (discussing criticism of the *wall* metaphor).

98. Berger, *supra* note 20, at 187 (considering the implications of using metaphors to associate corporations with people).

99. Safranek, *supra* note 97, at 399–403.

100. Berger, *supra* note 20, at 173 (discussing metaphor’s cognitive benefits).

101. Tsai, *supra* note 18, at 189–90; see also BOSMAJIAN, *supra* note 19, at 46–47 (arguing that metaphors are necessary for explaining abstractions).

102. See Linda Hamilton Krieger, *The Content of Our Categories: A Cognitive Bias Approach to Discrimination and Equal Employment Opportunity*, 47 STAN. L. REV. 1161, 1216–20 (1995) (applying social cognition theory to discrimination claims under Title VII).

103. See *id.* at 1187–88.

recognize the mind's methods for sorting information related to outside social groups, then they are equally unable to question the assumptions upon which many immigration metaphors depend. As such, lawyers and scholars have found it much easier to question assumptions contained in doctrinal metaphors, such as whether ideas are *commodities*, than to question the assumptions embedded in immigration metaphors, such as whether immigrants are *criminals* or whether all illegal aliens come from Mexico.

The foregoing discussion has established a framework for understanding immigration metaphors from a cognitive perspective. According to the theoretical approach outlined above, immigration metaphors tend to highlight certain characteristics of noncitizens, while conflating and distorting others. Until now, this discussion has been entirely a matter of theory. It is now time to evaluate the metaphors of immigration law in practice.

II. DECONSTRUCTING THE SUPREME COURT'S IMMIGRATION METAPHORS

Law is told through stories, and stories are told through metaphors. Here I analyze the metaphors of immigration stories told by the Supreme Court. These opinions address vastly different areas of the law and reach vastly different conclusions about the extent of rights that immigrants should enjoy. I tell an "immigrant-friendly" story that has been called a "conceptual watershed in immigration law" for its focus on the universal rights of noncitizens.¹⁰⁴ I tell an "anti-immigrant" story that has been labeled a "human rights . . . crisis in immigration policy" for denying unauthorized immigrants basic workplace remedies.¹⁰⁵

What links these stories is not legal subject matter or judicial perspective. Rather, these immigration stories demonstrate how Supreme Court Justices with very different legal philosophies often engage in the shared endeavor of constructing immigrants through metaphors. Justice Rehnquist, the author of the "anti-immigrant" story, described "*illegal aliens*" as criminals who trick businesses.¹⁰⁶ Justice William Brennan, the author of the "immigrant-friendly" story (and Justice Rehnquist's intellectual rival on the left of the Court)¹⁰⁷ wrote of a "*shadow population* of illegal migrants" who live within our borders.¹⁰⁸ These cases—ranging from constitutional law,

104. Peter H. Schuck, *The Transformation of Immigration Law*, 84 COLUM. L. REV. 1, 54–58 (1984); see also LINDA BOSNIAK, *THE CITIZEN AND THE ALIEN: DILEMMAS OF CONTEMPORARY MEMBERSHIP* 64–68 (2006) (summarizing reactions to *Plyler v. Doe*, 457 U.S. 202 (1982)).

105. LANCE COMPA, *UNFAIR ADVANTAGE: WORKERS' FREEDOM OF ASSOCIATION IN THE UNITED STATES UNDER INTERNATIONAL HUMAN RIGHTS STANDARDS* xxi (2004) (criticizing the outcome in *Hoffman Plastic Compounds, Inc. v. NLRB*, 535 U.S. 137 (2002)).

106. *Hoffman*, 535 U.S. at 147–48 (emphasis added).

107. Newton, *supra* note 6 (discussing the rivalry between Justices Rehnquist and Brennan).

108. *Plyler v. Doe*, 457 U.S. 202, 218 (1982) (emphasis added) (internal citation and quotations omitted).

to labor law, to immigration law—suggest that the metaphoric construction of immigrants is a conceptual process that cuts across ideological lines.

After telling three immigration stories, I explain how the metaphors contained therein join a much larger body of metaphors in Supreme Court opinions. I selected these cases based on their impact and relevance. To that end, I considered Supreme Court opinions authored after 1965—the year Congress amended the Immigration and Nationality Act (INA) to eliminate national origin quotas.¹⁰⁹ That year is widely regarded as the beginning of the modern era of immigration law.¹¹⁰ Older cases contain metaphoric language as well, much of which is explicitly racist.¹¹¹ Such decisions, however, do not provide the same insight into the contemporary construction of immigrants in the law.

The conceptual metaphors that emerge from a critical evaluation of numerous Supreme Court texts are: IMMIGRANTS ARE ALIENS, IMMIGRATION IS A FLOOD, and IMMIGRATION IS AN INVASION. Applying the framework established above, I explain how the Court's metaphors draw from embodied knowledge to construct a psychologically reductive image of immigrants in the legal imagination. In order to understand this symbol-making process and consider discursive alternatives, we now turn to the symbols themselves.

A. Plyler: *Educating the Shadow Population*

In 1977, a rural school district in Texas began charging \$1000 tuition to unauthorized immigrant children attending public school.¹¹² The Tyler Independent School District adopted the requirement after the Texas legislature voted to limit free public education to “[e]very child in this state who is a citizen of the United States or a legally admitted alien.”¹¹³ By altering the Texas Education Code in this way, the state legislature effectively cut off funding to local school districts that wanted to educate every child, regardless of status. As such, Tyler and other Texas towns enacted measures designed to prevent the state from becoming a “haven for illegal aliens.”¹¹⁴

Parents of sixteen unauthorized immigrant children in Tyler brought suit against Superintendent James Plyler.¹¹⁵ All of the children were under the

109. Immigration and Nationality Act of 1965, Pub. L. No. 89-236, § 2, 79 Stat. 911.

110. See, e.g., Hugh Davis Graham, *Affirmative Action for Immigrants? The Unintended Consequences of Reform*, in *COLOR LINES: AFFIRMATIVE ACTION, IMMIGRATION, AND CIVIL RIGHTS OPTIONS FOR AMERICA* 53, 66 (John David Skrentny ed., 2001) (discussing the impact of the 1965 amendments to immigration law).

111. See, e.g., *Fong Yue Ting v. United States*, 149 U.S. 698, 738 (1893) (Brewer, J., dissenting) (emphasis added) (“And it may be that the national government . . . has the power to build, as it were, a *Chinese wall* around our borders and absolutely forbid aliens to enter.”); *Chae Chan Ping v. United States*, 130 U.S. 581, 606 (1889) (emphasis added) (referring to “*vast hordes* of . . . people crowding in upon us”).

112. *Doe v. Plyler*, 458 F. Supp. 569, 574 (E.D. Tex. 1978).

113. *Plyler*, 457 U.S. at 205 & n.1 (citing Tex. Educ. Code Ann. § 21.031 (Vernon Supp. 1981)).

114. *Doe*, 458 F. Supp. at 572 (internal quotations omitted).

115. *Id.* at 574–75.

age of fourteen and each lived with a sibling who had legal status.¹¹⁶ The families' decision to sue did not come without risks. The local U.S. Attorney had reportedly asked the Immigration and Naturalization Service (INS) to deport the plaintiffs and conduct an immigration sweep in Tyler.¹¹⁷ To the plaintiffs' lawyers, this was the Latino community's chance to achieve a civil rights victory comparable to *Brown v. Board of Education*¹¹⁸: an opportunity to challenge an egregious instance of discrimination against a subordinated ethnic group.¹¹⁹ To supporters of the Texas statute, this was one state's admirable attempt to do what the federal government had failed to achieve: contain the growing illegal alien problem.

The case of *Plyler v. Doe*¹²⁰ represented a seven-year legal battle that culminated in a 5-4 Supreme Court ruling striking down the Texas statute on equal protection grounds.¹²¹ Immigration scholars regard *Plyler* as "the ultimate aliens' rights decision" for opposing "caste legislation in America."¹²² According to many accounts, the case represents a high-water mark in immigration law because of its steadfast focus on universalism and equal personhood.¹²³ Despite the praise heaped on *Plyler*'s holding, however, less attention has been paid to the metaphors used to achieve this outcome.¹²⁴ In fact, an analysis of *Plyler*'s text reveals that, despite the case's famously egalitarian ends, the decision relies on restrictive metaphors to portray a nation overcome by illegal immigration.

Plyler depicts immigrants in hiding. The opinion refers to a "shadow population of illegal migrants—numbering in the millions—within our borders."¹²⁵ Because they dwell in the shadows, members of this

116. See Brief for Appellees at 2 & 3 n.9, *Plyler v. Doe*, 457 U.S. 202 (1986) (No. 80-1538), 1980 WL 339676 at *2-3.

117. Michael A. Olivas, *Plyler v. Doe, The Education of Undocumented Children, and the Polity*, in IMMIGRATION STORIES 197, 203-04 (David A. Martin & Peter H. Schuck eds., 2005) (discussing *Plyler*'s case history).

118. 347 U.S. 483 (1954).

119. *Id.* at 201.

120. 457 U.S. 202 (1982).

121. *Plyler*, 457 U.S. at 230.

122. BOSNIAK, *supra* note 104, at 65-66 (internal citation and quotations omitted); see also Kevin R. Johnson, *Civil Rights and Immigration: Challenges for the Latino Community in the Twenty-First Century*, 8 LA RAZA L.J. 42, 44 (1995) (discussing *Plyler*'s historical significance); María Pabón López, *Reflections on Educating Latino and Latina Undocumented Children: Beyond Plyler v. Doe*, 35 SETON HALL L. REV. 1373, 1385 (2005) (same).

123. See BOSNIAK, *supra* note 104, at 65-67 (noting that critical commentary has both castigated and celebrated *Plyler*'s outcome); Motomura, *supra* note 24, at 2043 (arguing that the Supreme Court has largely contained *Plyler*'s holding); Nina Rabin et al., *Understanding Plyler's Legacy: Voices from Border Schools*, 37 J.L. & EDUC. 15, 15 (2008).

124. Although *Plyler*'s metaphors have not been analyzed in great detail, several scholars have discussed the opinion's competing rhetorical frames. See, e.g., BOSNIAK, *supra* note 104, at 66-67 (discussing the role of moral culpability in *Plyler*); Motomura, *supra* note 24, at 2041-47 (analyzing *Plyler*'s discussion of unlawful presence, state power, and immigrant integration); Schuck, *supra* note 104, at 55 (analyzing *Plyler*'s description of immigrant parents and children).

125. *Plyler*, 457 U.S. at 218 (emphasis added) (internal quotations omitted).

population are “defenseless against any abuse, exploitation, or callous neglect.”¹²⁶ Denying them education would create “a subclass of illiterates within our boundaries, surely adding to the problems and costs of unemployment, welfare, and crime.”¹²⁷

Plyler is littered with metaphors of paternalism that cast immigrants as nameless actors who depend on the Supreme Court for protection. But *Plyler*'s metaphors do not construct all immigrants equally. The majority opinion contrasts “undocumented children *disabled* by this classification”¹²⁸ with the adult parents who brought the infirmity of illegal status on their offspring:

The children who are plaintiffs in these cases are special members of this *underclass* [T]hose who elect to enter our territory by *stealth* and in violation of our law should be prepared to bear the consequences, including, but not limited to, deportation. But the children of those illegal entrants are not comparably situated.¹²⁹

Plyler castigates parents who enter the country illegally through “voluntary action. Indeed, entry into the [undocumented] class is itself a *crime*.”¹³⁰ According to *Plyler*'s metaphors, bad aliens are criminal adults, while good aliens are infantilized immigrants who remain quiet and vulnerable.¹³¹ Legal responses emerge naturally from these frames: good immigrants deserve an education; bad aliens deserve swift removal from the country.

Although they disagreed on the substantive rights at issue, the *Plyler* Justices shared a common vision of immigration as a dangerous body of water. The word “influx,” which means “an inflow, as of a physical fluid,” appears six times in the decision.¹³² Justice Brennan wrote of Texas's attempt to “*stem the tide* of illegal immigration.”¹³³ Chief Justice Warren Burger referred to “millions of illegal aliens *flooding* across our southern border” and “an *ever-increasing flood* of illegal aliens—aliens over whose entry or continued presence [the federal government] has *no control*.”¹³⁴

Rising floods must be contained, lest they drown the citizenry. Accordingly, the solutions proposed in *Plyler* match the metaphors used to define the problem. The majority described the need to “*control[] the*

126. *Id.* at 219 n.18 (quoting *Doe v. Plyler*, 458 F. Supp. 569, 585 (E.D. Tex 1978)).

127. *Id.* at 230; *see also id.* at 241 (Powell, J., concurring) (referring to the “subclass of illiterate persons” who would add to the current problems of “unemployment, welfare, and crime”).

128. *Id.* at 230 (majority opinion) (emphasis added).

129. *Id.* at 219–20 (emphasis added).

130. *Id.* at 219 n.19 (emphasis added).

131. *See* T. Alexander Aleinikoff, *Good Aliens, Bad Aliens and the Supreme Court*, in IX IN DEFENSE OF THE ALIEN 46, 46–47 (L. Tomasi ed., 1987) (discussing the legal differentiation between aliens based on relative culpability); *see also* BOSNIAK, *supra* note 104, at 66–67 (examining the “innocent child/culpable adult opposition” in *Plyler*).

132. *Plyler*, 457 U.S. at 228–49 (majority opinion); 7 THE OXFORD ENGLISH DICTIONARY 941 (2d ed. 1989).

133. *Plyler*, 457 U.S. at 228–29 (emphasis added) (quoting *Doe v. Plyler*, 458 F. Supp. 569, 585 (E.D. Tex 1978)).

134. *Id.* at 249, 253 (Burger, C.J., dissenting) (emphasis added).

influx of illegal entrants into the State,”¹³⁵ while the dissenting Justices proposed “*sealing* our vast borders.”¹³⁶ According to *Plyler*, however, these efforts will ultimately prove unsuccessful given the overwhelming strength of the immigrant wave. Bodies of water are difficult to hold back. Thus, notwithstanding “the serious national problems caused by the *influx of uncountable millions* of illegal aliens across our borders,”¹³⁷ the alien inundation remains “virtually uncontrollable.”¹³⁸

Despite *Plyler*’s many references to floods, illegal immigration was more like a trickle at the time the opinion was written in 1982. In fact, immigrant children from Mexico accounted for less than two percent of the student population in Texas schools.¹³⁹ In contrast to the “influx of uncountable millions of illegal aliens” described by the *Plyler* dissent,¹⁴⁰ roughly two million unauthorized immigrants lived in the United States in the early 1980s and accounted for less than fifteen percent of the foreign-born population.¹⁴¹ Immigrants were not an advancing body of water, but an identifiable group of people that represented a relatively small proportion of noncitizens in the United States. But *Plyler*’s water metaphors ignored this demographic information. Through metaphor, waves washed away facts and left a new reality in their wake.

According to the conceptual theory of metaphor, human beings naturally map physical experiences onto more abstract domains.¹⁴² *Plyler*’s metaphors achieve this end by presenting an image of aliens submerging the United States. When human beings are forced under water, they will do anything to reach the surface. By creating the image of a sinking nation, *Plyler* draws on our fear of drowning and our instinct to respond aggressively to existential threats.

Plyler’s story begins with innocent children hiding in the shadows and ends with adult criminals deluging the nation. The more *Plyler* imbues immigrants with a sense of agency, the more menacing the metaphors become. But submersion is not the only basic human experience triggered by the Supreme Court’s immigration metaphors. Human beings also fear criminal attack. In *Hoffman Plastic Compounds, Inc. v. NLRB*,¹⁴³ the next immigration story told here, the Supreme Court employed metaphors of stealth and criminality to describe the dangers of illegal immigration.

135. *Id.* at 228 n.24 (majority opinion) (emphasis added).

136. *Id.* at 243 (Burger, C.J., dissenting) (emphasis added).

137. *Id.* at 242 (emphasis added).

138. *Id.* at 237 (Powell, J., concurring).

139. See *Doe v. Plyler*, 458 F. Supp. 569, 575 (E.D. Tex. 1978); Brief for Appellees at 3, *Plyler*, 457 U.S. 202 (No. 80-1538), 1980 WL 339676.

140. *Plyler*, 457 U.S. at 242 (Burger, C.J., dissenting).

141. See Jorge Chapa, *A Demographic and Sociological Perspective on Plyler’s Children, 1980–2005*, 3 *Nw. J.L. & Soc. POL’Y* 186, 186–91 (2008) (examining the popular association of illegal alienage with Mexican national origin).

142. See Hunter, *supra* note 39, at 474–75 (explaining how legal scholarship often describes virtual concepts in physical terms).

143. 535 U.S. 137 (2002).

B. Hoffman: “An Illegal” Tries to Form a Union

In May 1988, Jose Castro applied for a job at a plastics factory in Southern California.¹⁴⁴ Castro was a low-skilled employee who worked in gardening and construction. The company, Hoffman Plastic Compounds, was a family-owned business that made PVC pellets for customers.¹⁴⁵ As a limited-English speaker with little education, Castro could not complete Hoffman’s six-page job application without assistance.¹⁴⁶ Hoffman hired Castro anyway, and he soon began earning the minimum wage while cooking and mixing plastic formulas at Hoffman’s plant.¹⁴⁷

Seven months into Castro’s tenure at Hoffman, around Christmas 1988, several employees tried to form a union.¹⁴⁸ Castro joined the campaign and solicited support from his coworkers.¹⁴⁹ When they caught wind of the nascent union efforts, Hoffman’s managers began interrogating workers.¹⁵⁰ One employee, Moises Gonzalez, identified Castro as a union leader.¹⁵¹ Several weeks later, Ronald Hoffman, the company president, laid off every single organizer.¹⁵² Hoffman argued that a decline in business caused the layoffs, despite displaying a “Help Wanted” sign before the layoffs and hiring new employees shortly thereafter.¹⁵³ The union lost the campaign and the workers never organized.¹⁵⁴

The National Labor Relations Board (NLRB) found that Hoffman had illegally interrogated employees and discharged workers “in order to rid itself of known union supporters.”¹⁵⁵ At a compliance hearing to determine damages, Castro testified that he was born in Mexico and had used a friend’s birth certificate to obtain employment at Hoffman.¹⁵⁶ Despite this admission, the NLRB ordered Hoffman to pay Castro over \$60,000 in backpay.¹⁵⁷ On appeal, the Supreme Court reversed, issuing a landmark decision that denied monetary remedies to unauthorized immigrants in labor cases.¹⁵⁸

144. See Catherine L. Fisk & Michael J. Wishnie, *The Story of Hoffman Plastic Compounds, Inc. v. NLRB: Labor Rights Without Remedies for Undocumented Immigrants*, in *LABOR LAW STORIES* 399, 408 (Laura J. Cooper & Catherine L. Fisk eds., 2005) (noting that Jose Castro’s real name may have been Samuel Perez).

145. *Hoffman Plastic Compounds, Inc. v. NLRB*, 208 F.3d 229, 232 (D.C. Cir. 2000); Fisk & Wishnie, *supra* note 144, at 409.

146. See Fisk & Wishnie, *supra* note 144, at 408 (summarizing *Hoffman*’s procedural history).

147. *Hoffman*, 208 F.3d at 232.

148. *Hoffman Plastic Compounds, Inc. and Casimiro Arauz*, 306 N.L.R.B. 100, 102 (1992).

149. *Id.* at 108.

150. *Id.* at 106.

151. *Id.* at 108.

152. *Id.* at 102.

153. *Id.* at 103.

154. See Fisk & Wishnie, *supra* note 144, at 410 (describing the workplace environment at Hoffman following the Supreme Court’s decision).

155. *Hoffman*, 306 N.L.R.B. at 100.

156. *Hoffman Plastic Compounds, Inc. v. NLRB*, 208 F.3d 229, 232 (D.C. Cir. 2000).

157. *Hoffman Plastic Compounds, Inc. v. NLRB*, 535 U.S. 137, 141–42 (2002).

158. *Id.* at 151–52.

None of the Supreme Court Justices uttered Jose Castro's name during oral argument. Instead, the two most common terms the Justices used to refer to Castro were "the alien" and "the illegal alien."¹⁵⁹ At one point in the oral argument, one Justice used the adjective "illegal" as a noun, referring to situations in which an "employer did not know that the employee was *an illegal*, hence the employer was not violating the immigration law."¹⁶⁰

The Court went on to describe aliens as stealthy criminals. Unlike *Plyler*, in which immigrants hide from exploitation, *Hoffman*'s immigrants hide their criminality. The alien is a person who "*conceal[s]* the facts . . . that he's here illegally and has no right to work."¹⁶¹ This person tries to "*phony up* more documents and . . . extend for the longest possible time the *charade* that the worker is here lawfully . . ."¹⁶² He "*subverts* the cornerstone" of immigration law, all the while "*evading* apprehension by immigration authorities."¹⁶³ At one point in oral argument, Justice Antonin Scalia assumed the first-person voice of a crafty, lazy alien: "I can just sit home and eat chocolates and get my back pay."¹⁶⁴

The Court lamented the "*massive* problem of illegal immigration" in the United States.¹⁶⁵ One Justice said that "*we* have to do something to reduce this *massive* number of . . . illegal aliens."¹⁶⁶ Seen from this vantage, illegal immigration is a crisis that we, the citizens and victims of illegal immigration, must address immediately.

A choice of frames is as important for the problems it overlooks as for the problems it emphasizes. Although the *Hoffman* Court referred to Jose Castro as an "illegal alien," it could just as easily have labeled him a "union organizer" or "discrimination victim." Likewise, the Court could have described the "massive problem" of "employee exploitation" or "blatant unfair labor practices." By choosing to describe illegal immigration not only as *a* problem, but *the* problem, Ronald Hoffman's obvious illegal behavior became virtually irrelevant. Although Jose Castro was an *illegal alien*, Ronald Hoffman was not an *illegal employer*.

The conceptual theory of metaphor holds that cognitive understandings begin from basic, unmediated human experiences, which lead to the formation of more abstract knowledge.¹⁶⁷ One such basic human experience is the fear of criminal attack. By emphasizing the criminal nature of Jose Castro's wrongdoing and the need to "*combat*" aliens

159. See Transcript of Oral Argument, *Hoffman*, 535 U.S. 137 (2002) (No. 00-1595), 2002 WL 77224. The Justices used the term "illegal alien" fifteen times and the term "alien" ten times. No other term involving illegal immigration was used more than twice. *Id.*

160. *Id.* at 12 (emphasis added).

161. *Id.* at 42 (emphasis added).

162. *Id.* at 38 (emphasis added).

163. *Hoffman*, 535 U.S. at 148-49 (emphasis added).

164. Transcript of Oral Argument, *supra* note 159, at 33.

165. *Id.* at 28 (emphasis added).

166. *Id.* at 43 (emphasis added).

167. Winter, *supra* note 26, at 1133 (arguing that the process of "motivation . . . makes meaning possible").

“forcefully,” *Hoffman*’s metaphors draw upon this survival instinct.¹⁶⁸ Aliens *conceal* their criminal activity by silently crossing the border and tricking employers like Ronald Hoffman into giving them jobs. Aware of the alien’s cunning ways, the *Hoffman* Court employed metaphors of criminality to highlight the silent threat posed by illegal immigration.

C. Lopez-Mendoza: *Immigrants as Toxic Waste*

Many noncitizens could tell Adan Lopez-Mendoza’s immigration story. At the age of twenty-four, Lopez-Mendoza left his family in Mexico to find work in the United States and send small remittances home when he could.¹⁶⁹ After departing from Mexico on foot, Lopez-Mendoza eventually found a job at a transmission repair shop in San Mateo, California.¹⁷⁰

Several months after Lopez-Mendoza arrived in the United States, the INS received a tip that seven unauthorized immigrants were employed at the business where Lopez-Mendoza worked.¹⁷¹ Believing they lacked sufficient information to obtain a search warrant, two INS agents proceeded directly to the repair shop without going to court.¹⁷² One agent guarded the building’s only exit, while the other agent spoke to the owner, Art Bradley.¹⁷³ Bradley refused to grant the agents access to the shop, asking instead that they return with a search warrant. Ignoring Bradley, one agent entered the business and began questioning the workers.¹⁷⁴ According to the agents, Lopez-Mendoza provided suspicious answers and was brought to a local INS office for further questioning. There, he admitted that he had entered the United States illegally. This confession eventually served as the primary basis for Lopez-Mendoza’s deportation.¹⁷⁵

In *INS v. Lopez-Mendoza*, the Supreme Court addressed the issue of whether the normal rules for excluding illegally obtained evidence in criminal cases applied to civil deportation proceedings.¹⁷⁶ According to the doctrinal metaphor in criminal law known as the “*fruit of the poisonous tree*,” courts should not admit evidence discovered derivatively from illegal searches, arrests, or interrogations.¹⁷⁷ The tainted evidence (i.e., the target of the *poisonous tree* metaphor) is seen as diseased fruit that must be discarded before it harms the judicial process.

168. *Hoffman*, 535 U.S. at 147 (emphasis added) (internal quotations omitted).

169. See Joint Appendix at 117, 129, *INS v. Lopez-Mendoza*, 468 U.S. 1032 (1984) (No. 83-491), 1984 U.S. S. Ct. Briefs LEXIS 209.

170. *Lopez-Mendoza*, 468 U.S. at 1035.

171. Brief in Opposition to Petition for Writ of Certiorari at *2, *Lopez-Mendoza*, 468 U.S. 1032 (No. 83-491), 1983 U.S. S. Ct. Briefs LEXIS 1064.

172. *Id.* at *2.

173. *Id.*

174. *Id.*

175. *Lopez-Mendoza*, 468 U.S. at 1035–36.

176. *Id.* at 1040–41; see also *Wong Sun v. United States*, 371 U.S. 471, 484–87 (1963) (discussing the foundations of the exclusionary rule).

177. See, e.g., *Colorado v. Spring*, 479 U.S. 564, 571–72 (1987) (discussing the exclusion of derivative evidence); *Taylor v. Alabama*, 457 U.S. 687, 694 (1982) (barring the admission of confession obtained from illegal arrest).

In a ruling that created the “illegal alien exception” to the exclusionary rule, the Supreme Court declined to suppress Lopez-Mendoza’s confession.¹⁷⁸ The Court concluded that although the exclusionary rule might discourage police officers from engaging in misconduct, the same prophylactic rationale carried little force in civil deportation proceedings.¹⁷⁹ Beyond the legal significance of this holding, it is once again *Lopez-Mendoza*’s metaphors that are most remarkable.

Writing for the 5-4 majority, Justice Sandra Day O’Connor radically altered the target domain of the *poisonous tree* metaphor. In contrast to criminal cases, in which pieces of evidence are viewed as tainted *fruit* that defile the courtroom, the metaphors of *Lopez-Mendoza* describe immigrants as tainted bodies that defile the nation. As Justice O’Connor wrote:

Presumably no one would argue that the exclusionary rule should be invoked to prevent an agency from ordering corrective action at a *leaking hazardous waste dump* if the evidence underlying the order had been improperly obtained, or to compel police to return *contraband explosives* or *drugs* to their owner if the contraband had been unlawfully seized.¹⁸⁰

Thus, unlike criminal defendants who are viewed as victims of illegally obtained evidence, *Lopez-Mendoza* presents immigrants as the objects of taint. As Thomas Ross has observed: “To see something as ‘defiled’ is to feel a special sense of the rightness, indeed the obligation, to cut it off, to exclude it, at whatever cost.”¹⁸¹ Drugs destroy the body. Hazardous waste pollutes the environment. *Lopez-Mendoza* equates immigrants with these toxic items. According to the Supreme Court’s metaphors, aliens are like poisonous agents that should be removed from the national body immediately.

Just as cleanup crews must do everything in their power to contain toxic waste and protect society, so too must the Supreme Court contain immigrants who would otherwise pollute the country. The task before the Justices is imperative. The illegal alien problem is like “*contraband explosives*” that could detonate at any time.¹⁸² If something is not done immediately, the alien bomb will blow up, destroying everything around it.

Organism metaphors describe the social community in terms of a physical body.¹⁸³ Mapping concepts of health and life onto concepts of country and society, *Lopez-Mendoza*’s organism metaphors describe the

178. Christopher Slobogin, *The Poverty Exception to the Fourth Amendment*, 55 FLA. L. REV. 391, 396–400 (2003) (surveying examples of “anti-egalitarianism in Fourth Amendment law”).

179. *Lopez-Mendoza*, 468 U.S. at 1044–46 (distinguishing between civil deportation proceedings and criminal trials).

180. *Id.* at 1046 (emphasis added).

181. See Ross, *supra* note 73, at 1068 (explaining how the *poisonous tree* metaphor connects readers to known realities).

182. *Lopez-Mendoza*, 468 U.S. at 1046.

183. Gerald V. O’Brien, *Indigestible Food, Conquering Hordes, and Waste Materials: Metaphors of Immigrants and the Early Immigration Restriction Debate in the United States*, 18 METAPHOR & SYMBOL 33, 35–38 (2003) (discussing the prevalence of organism metaphors in the immigration discourse of the early 1900s).

poisonous effects of immigration.¹⁸⁴ Just as infectious diseases threaten our health, illegal aliens contaminate the social body.¹⁸⁵ The associations created by these metaphors tie directly into our experiential understanding of the world. We know that drugs endanger our well-being. When foreign substances enter our bodies, our immune systems immediately attempt to combat them. By comparing immigrants to drugs and toxic waste, *Lopez-Mendoza*'s metaphors draw on the universal human desire to fend off internal contaminants.¹⁸⁶

As in previous immigration stories, *Lopez-Mendoza* speaks of the “*staggering dimension* of the problem that the INS confronts.”¹⁸⁷ Unlike *Plyler*'s metaphors that describe the scale of immigration in terms of flooding, however, *Lopez-Mendoza* refers to the “*massed numbers* of ascertainably illegal aliens” in terms of national health.¹⁸⁸ *Lopez-Mendoza* proposes to remove the pollution of illegal immigration from the United States by allowing courts to deport aliens with evidence obtained in violation of the Fourth Amendment. Thus, organism metaphors empower judges to overlook constitutional violations in order to purge the nation of the contamination caused by illegal immigration.

D. Metaphors of Alienage, Floods, and Invasions

Consistent with the conceptual theory of metaphor, the foregoing immigration stories contain rich figurative language tied to our embodied understanding of the world. *Plyler* contains numerous water metaphors that engage readers' fear of drowning. *Hoffman* employs metaphors of crime and attack that trigger self-defense instincts. *Lopez-Mendoza* describes a national body polluted by immigrants. These cases not only establish basic principles for the legal treatment of immigrants, they dictate how legal actors talk and think about noncitizens.

Although these three stories are among the most important immigration decisions in the modern era, they are rather unexceptional in the prominent role metaphors play in their texts. Here I explain how these stories join a much larger body of metaphors in the Supreme Court's immigration jurisprudence. By analyzing numerous metaphoric expressions in diverse legal contexts, three conceptual metaphors emerge: IMMIGRANTS ARE ALIENS, IMMIGRATION IS A FLOOD, and IMMIGRATION IS AN INVASION.

1. Immigrants Are Aliens

“Alien” is the most dominant metaphor in all of immigration law. In fact, lawyers and judges refer to “aliens” so frequently that few would

184. See Musolff, *supra* note 38, at 25–26 (examining the pervasiveness of such mappings in political discourse).

185. See O'Brien, *supra* note 183, at 36 (arguing that modern societies adopt organism metaphors because of their focus on public health and disease prevention).

186. See Musolff, *supra* note 38, at 28 (discussing the relationship between the concepts of body, illness, and cure in Nazi rhetoric).

187. *Lopez-Mendoza*, 468 U.S. at 1049 (emphasis added).

188. *Id.* at 1049–50 (emphasis added).

identify the word as a metaphor. This reaction is understandable. Metaphors are traditionally viewed as simple comparisons between non-literal concepts. So, for example, statements such as “the *flood* of immigration” or “the immigrant *invasion*” are obvious metaphors because they describe immigration in terms of something that it is not—a body of water or an advancing army. In contrast to such “strong” metaphors, the word “alien” appears to be definitional, rather than metaphoric. The INA presents the term in this manner, defining “alien” as “any person not a citizen or national of the United States.”¹⁸⁹ Stated mildly in the statutory context, “alien” seems to be a neutral word that means simply “noncitizen.” As such, the INA presents “alien” in profoundly *unmetaphoric* terms.

Despite this benign appearance, however, several metaphoric references lie just beneath the surface. Here I employ the conceptual definition of metaphor, rather than the traditional linguistic definition that involves an “A is a B” format.¹⁹⁰ The theory of experientialism holds that human beings formulate knowledge by drawing metaphoric associations between abstract concepts and more meaningful concepts.¹⁹¹ As bridges between the familiar and unfamiliar, metaphors serve as critical tools for understanding the world.¹⁹² In this way, “alien” is the central metaphor of immigration law because it relies on a wide body of experiential knowledge—social, cultural, and historical—to create meaning. The term is a metaphor not because it involves a comparison between concepts—as the linguist definition of metaphor holds—but because it serves as the primary vehicle for mapping culturally embedded references onto the legal identity of immigrants.

Words cannot be divorced from their culturally grounded meanings. When legal actors speak of “aliens,” a series of qualities comes to mind about the target group: *aliens* are nonhuman; *aliens* are illegal border-crossers; and *aliens* are Mexicans. Those who doubt the metaphoric nature of “alien” and reduce its meaning to simple statutory or definitional terms assume a level of mutual exclusivity in language that does not exist. “Alien” is both a metaphor and a statutory term. In addition to defining immigrants as noncitizens in the INA, “alien” conveys three distinct qualities: otherness, illegality, and ethnicity. The following sections consider each of these metaphoric associations in turn.

189. 8 U.S.C. § 1101(a)(3) (2006); *see also* Johnson, “*Aliens*” and the U.S. Immigration Laws, *supra* note 24, at 272 (describing “the blandness of the definition”).

190. *See* Rakova, *supra* note 64, at 217 (noting that the experientialist account challenges the older definition of metaphor as a means of expressing similarity between concepts); *see also* Calvert, *supra* note 36, at 547 (describing the traditional definition of metaphor).

191. *See* Rakova, *supra* note 64, at 216 (discussing the breadth and attractiveness of experiential theory).

192. Petrie & Oshlag, *supra* note 54, at 589 (explaining how metaphors allow for the transfer of meanings).

a. Alien Is Other

The etymology of “alien” informs the modern use of the word. The English definition of “alien” derives from the Old French word *allien*, which means “strange, foreign,” and the Latin words *alienus* and *alius*, which mean “of or belonging to another person or place,” “hostile,” “strange,” and “other.”¹⁹³ Thus, according to early definitions, aliens are dangerous others who are marked by their strangeness.

The contemporary definition of “alien,” reflects its origins:

A. *adj.* 1. *gen.* Belonging to another person, place, or family; strange, foreign, not of one’s own

B. *n.* 1.a. A person belonging to another family, race, or nation; a stranger, a foreigner.¹⁹⁴

From these definitions, American immigration law was born. Under the Naturalization Act of 1790 only “free white person[s]” could *naturalize* (i.e., escape from the *unnatural* state of alienage).¹⁹⁵ The Alien and Sedition Acts of 1798 allowed the president to remove aliens “judge[d] dangerous to the peace and safety of the United States.”¹⁹⁶ Multiple states enacted Alien Land Laws in the early 1900s out of fear of competition from aliens.¹⁹⁷ The Alien Registration Act of 1940 expanded the grounds for deporting immigrants engaged in subversive activities.¹⁹⁸ All of this alien-specific legislation reflected a conceptual understanding of aliens that matched the word’s etymology. Because aliens were defined as “hostile” and “strange,” early legislatures enacted laws to protect citizens from the other-worldly threat depicted by these metaphoric representations.

The same dehumanizing associations presented in the statutory context (i.e., strangeness, hostility, and otherness) appear in contemporary judicial decisions as well. Several variations of the Supreme Court’s *alien* metaphors emphasize the nonhuman qualities of immigrants:

193. 1 THE OXFORD ENGLISH DICTIONARY 314–15 (2d ed. 1989); WALTER W. SKEAT, AN ETYMOLOGICAL DICTIONARY OF THE ENGLISH LANGUAGE 13 (1968); *see also* ONLINE ETYMOLOGY DICTIONARY, Alien, <http://www.etymonline.com/index.php?term=alien>.

194. 1 THE OXFORD ENGLISH DICTIONARY 314–15 (2d ed. 1989).

195. Naturalization Act of Mar. 26, 1790, ch. 3, 1 Stat. 103, 104, *repealed by* Act of Jan. 29, 1795, ch. 20, 1 Stat. 414.

196. Alien Friends Act, ch. 58, § 1, 1 Stat. 570, 570–71 (1798); HIROSHI MOTOMURA, AMERICANS IN WAITING: THE LOST STORY OF IMMIGRATION AND CITIZENSHIP IN THE UNITED STATES 18–19 (2006) (discussing the Alien and Sedition Acts of 1798).

197. *See* ALEJANDRO PORTES & RUBÉN G. RUMBAUT, IMMIGRANT AMERICA: A PORTRAIT 38–40 (3d. ed. 2006) (explaining the effects of Alien Land Laws on immigrant communities); Dudley O. McGovney, *The Anti-Japanese Land Laws of California and Ten Other States*, 35 CAL. L. REV. 7 (1947) (discussing differences between various Alien Land Laws).

198. *See* ROGER DANIELS, GUARDING THE GOLDEN DOOR: AMERICAN IMMIGRATION POLICY AND IMMIGRANTS SINCE 1882, at 83 (2004) (explaining the political and substantive effects of the Alien Registration Act).

[T]he *alien* must first either surrender to the INS for deportation or wait for the INS to *catch him* and commence a deportation proceeding¹⁹⁹

[T]he Government may continue to detain an *alien* who still remains here or *release that alien* under supervision.²⁰⁰

Routine checkpoint inquiries apprehend many smugglers and *illegal aliens* who *succumb to the lure* of such highways. And the prospect of such inquiries [slows] their movement and [makes] them more vulnerable to detection by *roving patrols*.²⁰¹

Thus, in certain instances, the Supreme Court employs dehumanizing metaphors to describe aliens as *animals* that are *caught* and *released*. In other Court opinions, dehumanization occurs by describing aliens as creatures from outer space. Extraterrestrials are the ultimate nonhumans. Recognizing the ability of “alien” to convey foreignness, science fiction writers co-opted the word in the mid-twentieth century.²⁰² Born in a foreign galaxy, space creatures do not eat our food or breathe our air; they possess fewer human qualities than even animals on Earth. At times, the Court has described immigrants in this way:

[T]he relationship between the United States and our *alien visitors* has been committed to the political branches of the Federal Government.²⁰³

Empirical data discussed in detail below show that “alien” and “illegal alien” are by far the most common terms used to refer to immigrants in the law.²⁰⁴ Because metaphors connect listeners to deeply embedded cultural knowledge, the repeated use of “alien” in legal texts unavoidably triggers readers’ inclinations to associate aliens with extraterrestrials. For example, the Court frequently employs the metaphor ALIENS ARE INVADERS to discuss immigration.²⁰⁵ According to popular science fiction narratives, extraterrestrials seek to dominate the universe.²⁰⁶ As a method for creating multiple, overlapping correspondences, the *invasion* metaphor relates simultaneously to popular images of space creatures attempting to overtake the galaxy, as well as more conventional notions of warfare. By connecting readers to this cultural imagery, the Court’s *alien* metaphors present

199. *Reno v. Catholic Soc. Servs., Inc.*, 509 U.S. 43, 55 (1993) (emphasis added).

200. *Zadvydas v. Davis*, 533 U.S. 678, 683 (2001) (emphasis added) (internal quotations omitted).

201. *Mich. Dep’t of State Police v. Sitz*, 496 U.S. 444, 471 n.15 (1990) (emphasis added).

202. See 1 THE OXFORD ENGLISH DICTIONARY 314–15 (2d ed. 1989); see also Leighton B. Cooke, *The Human Alien: In-Groups and Outbreeding in Enemy Mine*, in ALIENS: THE ANTHROPOLOGY OF SCIENCE FICTION 179, 181 (George E. Slusser & Eric S. Rabkin eds., 1987) (explaining how popular science fiction stories often express xenophobic attitudes).

203. *Mathews v. Diaz*, 426 U.S. 67, 81 (1976) (emphasis added).

204. See *infra* Part II.D.1.b and accompanying Figures 1 and 2 (presenting empirical data on alien terminology in federal court opinions).

205. See *infra* Part II.D.3 (examining different permutations of *invasion* metaphors in Supreme Court opinions).

206. STEPHANIE CARVIN & STUART JILL, SCIENCE FICTION OR SCIENCE FANTASY? THE GENDERED PORTRAYAL OF ALIENS AND THE DISCOURSE OF DOMINANCE IN OUTER SPACE 3, presented at the International Studies Association 48th Annual Convention, Chicago, Ill. (Feb. 28, 2007) (discussing stories of invasion contained in science fiction accounts).

immigrants not only as invaders from foreign countries, but also as nonhuman aggressors from foreign worlds.

Metaphors can dehumanize through direct comparisons to nonhumans, such as animals or space creatures, or by refusing to ascribe human qualities to immigrants.²⁰⁷ Such attribute-based metaphors dehumanize immigrants by presenting aliens as inanimate objects that are transported and pulled by outside forces:

[T]he general purpose of the immigration statute's employment prohibition is to diminish the *attractive force* of employment, which like a *magnet* pulls illegal immigrants toward the United States²⁰⁸

[M]any Mexicans being *imported* into this country²⁰⁹

[Respondent] and respondent[']s wife paid a professional *smuggler* \$450 to transport them into this country²¹⁰

[S]he had attempted to *smuggle aliens* for gain.²¹¹

As nonhuman things, aliens can be pulled, smuggled, or transported, much like boxes of books or cases of wine. The law does not extend personal rights to such goods. According to these metaphors, aliens should be controlled and regulated in the same manner as other articles of commerce.

Another form of attribute-based dehumanization in Supreme Court texts presents aliens as dangerous diseases. Much like *Lopez-Mendoza's* reference to aliens as *hazardous waste* and *drugs*, these organism metaphors describe immigrants as health risks:

Illegal aliens pose a potential *health hazard* to the community since many seek work as nursemaids, food handlers, cooks, housekeepers, waiters, dishwashers, and grocery workers.²¹²

Congress recognized that the *influx of foreign infectious diseases*, mass immigration coupled with poor housing and sanitation, hunger, and malnutrition had taken their toll.²¹³

[T]he flow of traffic tends to be too heavy to allow the particularized study of a given car that would enable it to be identified as a *possible carrier of illegal aliens*.²¹⁴

207. See Steve Loughnan et al., *Understanding the Relationship Between Attribute-Based and Metaphor-Based Dehumanization*, 12 GROUP PROCESSES & INTERGROUP REL. 747, 747–49 (2009) (examining different methods of dehumanization).

208. *Hoffman Plastic Compounds, Inc. v. NLRB*, 535 U.S. 137, 155 (2002) (Breyer, J., dissenting) (emphasis added) (internal quotations omitted).

209. *United States v. Brignoni-Ponce*, 422 U.S. 873, 902 (1975) (Burger, C.J., concurring) (emphasis added) (quoting *United States v. Baca*, 368 F. Supp. 398 (S.D. Cal. 1973)).

210. *INS v. Rios-Pineda*, 471 U.S. 444, 446 (1985) (emphasis added).

211. *Landon v. Plasencia*, 459 U.S. 21, 30 (1982) (emphasis added).

212. *Brignoni-Ponce*, 422 U.S. at 903 (Burger, C.J., concurring) (emphasis added) (quoting *Baca*, 368 F. Supp. at 398).

213. *Rice v. Cayetano*, 528 U.S. 495, 532 (2000) (Stevens, J., concurring) (emphasis added).

214. *United States v. Martinez-Fuerte*, 428 U.S. 543, 557 (1976) (emphasis added).

Much as diseases enter the body, aliens enter the country and quickly spread throughout communities. Through attribute-based dehumanizing metaphors, the Supreme Court presents illegal immigration as a form of public health emergency that justifies aggressive containment measures.²¹⁵

According to the conceptual theory of metaphor, the process of mapping qualities from source domains onto target domains is always partial and incomplete.²¹⁶ The aspects of each domain obscured by a particular metaphor remain a crucial (yet concealed) function of this mapping process. By presenting immigrants as animals, diseases, and inanimate objects, the metaphor IMMIGRANTS ARE ALIENS conceals immigrants' personhood and potential for social contribution. The metaphor brings focus to images of foreignness and otherness, producing a narrowly focused picture of nonhumans who can never belong.

b. Alien Is Illegal

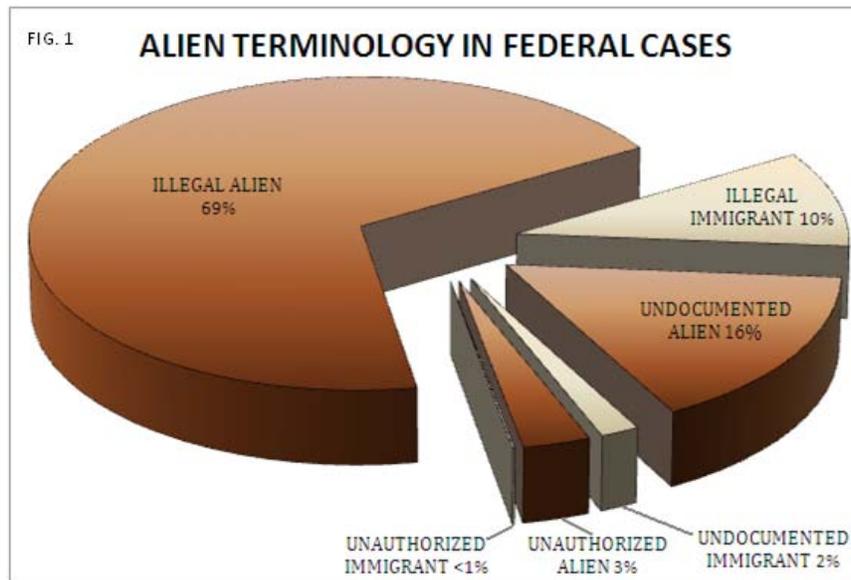
The metaphoric image of *illegal aliens* is omnipresent in law. To demonstrate the metaphoric association between immigrants and illegality, this Article presents original empirical data on alienage terminology in legal opinions. The data derives from post-1965 federal court decisions that contain any combination of three adjectives ("illegal," "undocumented," and "unauthorized") and three nouns ("immigrant," "alien," and "noncitizen").²¹⁷ The study produced 4200 instances of separate adjective-noun combinations. As Figure 1 indicates, "illegal alien" was by far the most common term, appearing in 69% of opinions (2905 cases). No other term appeared in more than 10% of opinions, except "undocumented alien," which accounted for 16% of the results in 670 cases. Distinguishing between the nouns "alien," "immigrant," and "noncitizen" in the data set, judges used "alien" in 88% of opinions (3706 cases), while "immigrant" appeared in only 12% of opinions (494 cases).

215. See O'Brien, *supra* note 13, at 36 (examining metaphors that involve harm to national health).

216. See Thomas W. Joo, *Contract, Property, and the Role of Metaphor in Corporations Law*, 35 U.C. DAVIS L. REV. 779, 782–83 (2002) (describing metaphor as a complex mapping process).

217. These data were generated from a textual search on Westlaw conducted on January 6, 2010. The search consisted of all federal court opinions that appeared in the following Westlaw databases: All U.S. Supreme Court Cases (SCT), Reported U.S. Court of Appeals Cases (CTAR), and Reported U.S. District Court Cases (DCTR). The search contained the singular and plural versions of the following terms: "illegal alien," "undocumented alien," "unauthorized alien," "illegal immigrant," "undocumented immigrant," "unauthorized immigrant," "illegal noncitizen," "undocumented noncitizen," and "unauthorized noncitizen." Opinions that contained more than one search term (e.g., both "illegal alien" and "undocumented immigrant") were counted as separate instances in the data set. Multiple appearances of the same term within an opinion, as well as plural and singular versions of the same term within an opinion, were counted as one instance in the data set.

Figure 1: Data on “Illegal Alien” in Federal Cases



The prevalence of “illegal alien” in legal opinions is extraordinary given that the law provides no clear definition of the term.²¹⁸ Although “illegal alien” is often used to refer to people who overstay their visas or enter the country without inspection, there are several scenarios in which these immigrants may remain lawfully in the United States. For example, many of the people described as “illegal aliens” have family connections, community ties, or legitimate fears of persecution that entitle them to discretionary relief.²¹⁹ But when courts use “illegal alien” as a descriptive term, these rights have rarely been adjudicated. As Beth Lyon has noted, referring to such people as “illegal aliens” is equivalent to referring to defendants awaiting trial as “convicted criminals.”²²⁰ Although lay audiences may not grasp this distinction, federal judges should.

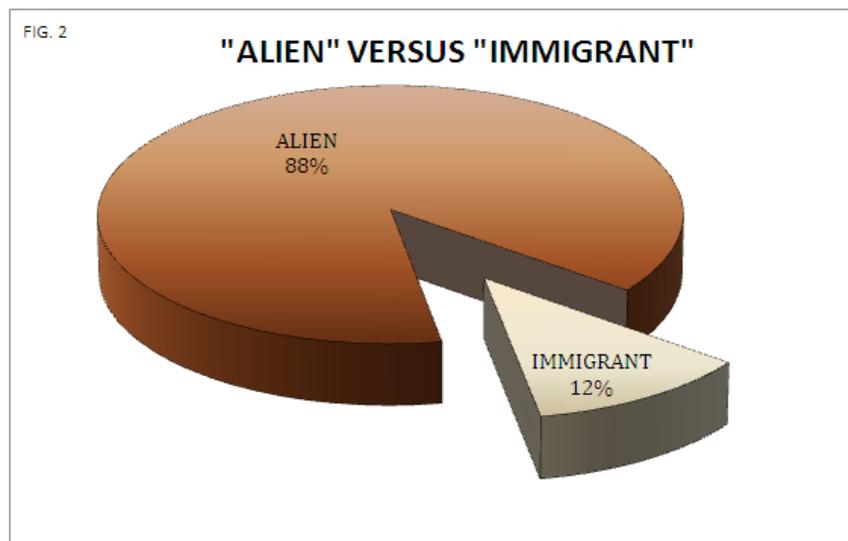
218. See Johnson, “Aliens” and the U.S. Immigration Laws, *supra* note 24, at 276; Karl Manheim, *State Immigration Laws and Federal Supremacy*, 22 HASTINGS CONST. L.Q. 939, 949 n.61 (1995) (describing “illegal alien” as a term “unknown to federal immigration law”); Neuman, *supra* note 24, at 1440–41 (arguing that the catch-all phrase “illegal alien” fails to account for the variable contexts of unauthorized immigration).

219. See Johnson, “Aliens” and the U.S. Immigration Laws, *supra* note 24, at 276–78; Neuman, *supra* note 24, at 1440–41 (describing situations in which unauthorized immigrants may assert valid claims to remain in the United States).

220. Beth Lyon, *When More “Security” Equals Less Workplace Safety: Reconsidering U.S. Laws that Disadvantage Unauthorized Workers*, 6 U. PA. J. LAB. & EMP. L. 571, 576 (2004).

Even Supreme Court Justices overlook basic notions of due process when describing “illegal aliens.” For instance, in *Lopez-Mendoza*, the Supreme Court wrote: “The constable’s blunder may allow the *criminal* to go free, but we have never suggested that it allows the *criminal* to continue in the commission of an ongoing *crime*.”²²¹ Remarkably, the Court conceded that the person described in the above passage as a “criminal” had never been convicted of any crime.²²² Because the immigrant in *Lopez-Mendoza* was an “alien,” however, the Justices simply presumed that he had engaged in criminal wrongdoing even though no court had ruled as such.

Figure 2: Data on “Alien” in Federal Cases



In addition to ignoring the nuanced nature of immigration status, the *illegal alien* metaphor distorts the severity of an immigrant’s offense. For example, entering the country without inspection (i.e., crossing the border illegally) is a first-time misdemeanor that federal officials rarely prosecute.²²³ Further, nearly half of all people described as “illegal aliens” obtained their “illegal” status by overstaying valid visas—a civil immigration violation that involves no criminal conduct whatsoever.²²⁴

221. *INS v. Lopez-Mendoza*, 468 U.S. 1032, 1047 (1984) (emphasis added).

222. *Id.* at 1047 n.3; see also *In re Sandoval-Sanchez*, No. A22 346 925, 168 (INS Oct. 7, 1977) (“There is nothing in the record to show that he has any criminal record.”).

223. 8 U.S.C. § 1325(a) (2006); Lenni B. Benson, *By Hook or by Crook: Exploring the Legality of an INS Sting Operation*, 31 SAN DIEGO L. REV. 813, 823 n.39 (1994) (discussing criminal prosecutions of immigration-related crimes).

224. 8 U.S.C. § 1227(a)(1)(B) (2006); Stephen H. Legomsky, *Portraits of the Undocumented Immigrant: A Dialogue*, 44 GA. L. REV. 65, 143-44 (2009); see also Manheim, *supra* note 218, at 949 n.61 (noting that many people described as “illegal aliens” have committed only civil immigration violations).

Nevertheless, the language of alienage equates these misdemeanors and non-criminal acts with serious crimes:

[T]he minivan was registered to an address . . . north of the border in an area notorious for *alien and narcotics smuggling*.²²⁵

[I]t seems that the Immigration and Naturalization Service is powerless to stop the *tide of illegal aliens*—and *dangerous drugs*—that daily and freely crosses our 2,000-mile southern boundary.²²⁶

If “illegal” means “criminal” and “alien” means “stranger,” then through the *illegal alien* metaphor, immigrants become *criminal strangers*. As such, the *illegal alien* metaphor presents immigrants as more than mere border-crossers; like murderers, robbers, and drug dealers, they threaten the social order.

Once understood as “illegal aliens,” immigrants garner little sympathy from a public accustomed to punishing its convicts. A society that constantly seeks to separate the “wicked” from the “righteous” relies on the sorting function provided by the *illegal* frame.²²⁷ If a crime has been committed, then arrests must be made, convictions obtained, and penalties assessed.²²⁸

The conflation of source and target domains encouraged by the *illegal alien* metaphor fuels a growing public distrust of both authorized and unauthorized immigrants.²²⁹ Based on the popular misconception that most immigrants lack legal status, over fifty percent of Americans want to reduce *all* levels of immigration, legal and illegal.²³⁰ As a proxy for criminality and immigration in general, the *illegal alien* metaphor fosters misunderstandings about the scope of illegal immigration and the appropriate responses to the perceived problem.²³¹

225. *United States v. Arvizu*, 534 U.S. 266, 271 (2002) (emphasis added).

226. *United States v. Brignoni-Ponce*, 422 U.S. 899, 899 (1975) (Burger, C.J., concurring) (emphasis added).

227. *See* Duncan, *supra* note 90, at 793 (discussing images of “criminal contamination” in American law).

228. *See* Johnson, *supra* note 66, at 868 (describing social responses to metaphorical frames involving crime).

229. *See* Knud S. Larsen et al., *Threat Perception and Attitudes Toward Documented and Undocumented Immigrants in the United States: Framing the Debate and Conflict Resolution*, 7 EUR. J. SOC. SCI. 115, 116 (2009) (examining public fears of authorized and unauthorized immigrants).

230. Deenesh Sohoni, *The ‘Immigrant Problem’: Modern-Day Nativism on the Web*, 54 CURRENT SOC. 827, 829 (2006) (discussing social attitudes toward immigrants). Roughly two-thirds of immigrants reside legally in the United States. Jeffrey S. Passel & D’Vera Cohn, *Pew Hispanic Ctr.: Trends in Unauthorized Immigration, Undocumented Inflow Now Trails Legal Inflow* ii (2008), available at <http://pewhispanic.org/files/reports/94.pdf>; *see also* Capps, *supra* note 88, at 170 (estimating that at least thirty percent of immigrants lack legal status).

231. *See* MAE M. NGAI, IMPOSSIBLE SUBJECTS: ILLEGAL ALIENS AND THE MAKING OF MODERN AMERICA 2–3 (2004) (arguing that the presence of a large number of unauthorized immigrants within Asian and Latino communities creates a perception that members of those communities are illegitimate).

According to cognitive linguists, metaphors are more likely to mislead listeners when they are repeated and accepted without evaluation.²³² As George Lakoff, the pioneer of conceptual metaphor theory, states, “The things most alive in our conceptual system are those things that we use constantly, unconsciously, and automatically.”²³³ But metaphors that appear “dead” are in fact very much alive in our minds, silently influencing our perceptions of people and concepts. *Illegal alien* is one such metaphor. Through constant, uncritical repetition, the *illegal alien* metaphor has transformed immigrants into a monolithic group of criminal strangers who must be captured, convicted, and expelled.

c. *Alien Is Mexican*

The immigration laws of the United States have been marred by a long history of racist restrictions.²³⁴ From Chinese exclusion, to bans on “undesirable races” from Europe, to a host of other racial and ethnic barriers, immigration laws during the nineteenth and twentieth centuries exhibited an undeniable preoccupation with race.²³⁵ Much like the explicitly racist language of the past, today’s *illegal alien* remains a highly racialized figure.

Although “illegal alien” could theoretically refer to any group of immigrants, the term has a much tighter racial focus. In contemporary legal discourse, references to “illegal aliens” facilitate a coded discussion on immigration that—rather than involving immigrants in general—focuses on Mexicans in particular²³⁶:

232. See Winter, *The Metaphor of Standing*, *supra* note 79, at 1382 (warning against the uncritical use of metaphors).

233. GEORGE LAKOFF & MARK TURNER, *MORE THAN COOL REASON: A FIELD GUIDE TO POETIC METAPHOR* 62 (1989).

234. See generally DAVID BACON, *ILLEGAL PEOPLE: HOW GLOBALIZATION CREATES MIGRATION AND CRIMINALIZES IMMIGRANTS* 205–07 (2008) (summarizing race-based exclusions in early immigration laws); Cristina M. Rodríguez, *The Citizenship Paradox in a Transnational Age*, 106 MICH. L. REV. 1111, 1114 (2008) (discussing the ideology of Anglo-Saxon superiority embedded in the Supreme Court’s early immigration decisions).

235. See MOTOMURA, *supra* note 196, at 121–32 (summarizing the history of racial restrictions in immigration law); NGAI, *supra* note 231, at 17–55 (examining the racial restrictions embedded in American immigration law and policy from 1924 to 1965); Kevin R. Johnson, *Public Benefits and Immigration: The Intersection of Immigration Status, Ethnicity, Gender, and Class*, 42 UCLA L. REV. 1509, 1543 (1995) (discussing immigration status and ethnicity); Ediberto Román, *The Alien Invasion?*, 45 HOUS. L. REV. 841, 872–81 (2008) (discussing the racial effects of immigration laws during the twentieth century).

236. See NGAI, *supra* note 231, at 2–3, 264 (discussing the close relationship between illegal status and race); Neuman, *supra* note 24, at 1429 n.17 (examining the role race played in early immigration restrictions); Frank H. Wu, *The Limits of Borders: A Moderate Proposal for Immigration Reform*, 7 STAN. L. & POL’Y REV. 35, 36–37 (1996) (examining the race-based objectives of pre-1965 immigration policies); see also KENT A. ONO & JOHN M. SLOOP, *SHIFTING BORDERS: RHETORIC, IMMIGRATION, AND CALIFORNIA’S PROPOSITION 187*, at 40 (2002) (discussing popular media images of a “generalized brown figure encroaching from the south”).

The net effect of this *silent invasion of illegal aliens from Mexico* is suffering by the aliens²³⁷

These local problems are particularly acute in California in light of the *significant influx . . . of illegal aliens from neighboring Mexico*.²³⁸

Like metaphors of criminality that distort the nature of an immigrant's wrongdoing, the *illegal alien* metaphor suggests that the unauthorized immigrant population is entirely composed of Mexican residents. But this is simply not the case. For example, the two Supreme Court passages listed above were written in the mid-1970s, at a time when nearly half of unauthorized immigrants came from countries other than Mexico.²³⁹ Although immigration from Mexico represented a substantial proportion of the unauthorized population, the "invasion" from Mexico described in those passages simply did not exist. Nonetheless, the Supreme Court has employed the *illegal alien* frame to describe a massive number of aliens approaching from the south:

Access from *Mexico* into this country, across our 2,000-mile border, is readily available and *virtually uncontrollable*.²⁴⁰

[T]he *colossal problem* presented by illegal entries from *Mexico*.²⁴¹

Although the number of unauthorized Mexican immigrants has increased substantially in recent decades,²⁴² thus making the metaphor's associations more "accurate," the *illegal alien* metaphor has never been concerned with conveying a true picture of real demographics.

Citizens and immigrants alike are affected by the racial and ethnic implications of the illegal alien frame. Just as the *alien* metaphor merges every immigrant category into one, thereby raising public opposition to all forms of immigration, the *illegal alien* metaphor merges all Latino residents into one group of unauthorized outsiders. Historian Mae Ngai describes "alien citizenship" as the concept of existing as a foreigner in one's own country.²⁴³ Thus, although they reside legally in the United States, naturalized citizens remain presumptive foreigners within American society because of the immutability of their alien citizenship status.²⁴⁴ By transferring qualities of criminality and otherness to residents based on

237. *Brignoni-Ponce*, 422 U.S. at 904 (Burger, C.J., concurring) (emphasis added) (quoting *United States v. Baca*, 368 F. Supp. 398 (S.D. Cal. 1973)).

238. *DeCanas v. Bica*, 424 U.S. 351, 357 (1976) (emphasis added).

239. Robert Warren & Jeffrey S. Passel, *A Count of the Uncountable: Estimates of Undocumented Aliens Counted in the 1980 United States Census*, 24 *DEMOGRAPHY* 375, 380 (1987) (estimating that from 1960 to 1975, 1,116,000 people immigrated to the United States illegally, 571,000 (51%) of whom were from Mexico).

240. *Plyler v. Doe*, 457 U.S. 202, 237 (1982) (Powell, J., concurring) (emphasis added).

241. *United States v. Valenzuela-Bernal*, 458 U.S. 858, 864 n.5 (1982) (emphasis added).

242. In 2008, 7 million unauthorized immigrants from Mexico resided in the United States, as compared to 4.9 million unauthorized immigrants from other countries. Passel & Cohn, *supra* note 230, at 3–5.

243. NGAI, *supra* note 231, at 8 (arguing that the experience of Asian and Latino immigrants should be understood within the context of exclusionary racial quotas and colonialism).

244. *Id.* at 2.

ethnicity, the *illegal alien* metaphor brands Latino residents as unassimilable foreigners who remain ineligible to attain full membership in society, regardless of their legal status.²⁴⁵

The Supreme Court established a direct link between “alien” and “Mexican” in *Rosales-Lopez v. United States*.²⁴⁶ That case involved a criminal defendant charged with “smuggling” people into the United States from Mexico.²⁴⁷ The defense sought to ask prospective jurors about any personal biases they held against Mexican immigrants.²⁴⁸ The presiding judge disallowed the question, instead asking: “Do any of you have any feelings about the *alien problem* at all?”²⁴⁹ On review, the Supreme Court held that asking about “the alien problem” was equivalent to asking about Mexican immigration.²⁵⁰ According to the Supreme Court, because “alien” meant “Mexican,” the presiding judge did not have to utter the word “Mexican” in order for the jury to comprehend the reference. In other words, because every juror understood that the “alien problem” was the “Mexican problem,” no further inquiry was necessary. This association was possible only because of the racial code provided by the *illegal alien* metaphor.

American society no longer sanctions racist language in legal discourse. Because “illegal alien” is facially ambiguous, however, the term enables speakers to express racialized concerns in a race-neutral way.²⁵¹ Society will accept Supreme Court Justices who are “anti-crime” or “anti-illegal immigration,” but will reject those Justices viewed as “anti-Mexican.”²⁵² As such, the code provided by the *illegal alien* metaphor enables a silent transfer of meaning without the social sanction that would otherwise accompany more overt language.²⁵³

As discussed above, conceptual metaphors are most likely to conflate subject and target domains when describing people and social movements.²⁵⁴ No longer seen as figurative, the metaphor becomes mistaken for a semi-literal representation of a target group.²⁵⁵ The *illegal*

245. See Leti Volpp, *The Culture of Citizenship*, 8 THEORETICAL INQUIRIES L. 571, 575–77 (2007) (criticizing the view of immigrants as “racialized others overburdened with culture”).

246. 451 U.S. 182 (1981).

247. *Id.* at 184–85 (emphasis added).

248. *Id.* at 185.

249. *Id.* at 185–88 (emphasis added).

250. *Id.* at 193 (“There can be no doubt that the jurors would have understood a question about aliens to at least include Mexican aliens.”).

251. See generally Phyllis Pease Chock, *Ambiguity in Policy Discourse: Congressional Talk About Immigration*, 28 POL’Y SCI. 165 (1995) (examining the racial codes of immigration rhetoric).

252. Robert Short & Lisa Magana, *Political Rhetoric, Immigration Attitudes, and Contemporary Prejudice: A Mexican American Dilemma*, 142 J. SOC. PSYCHOL. 701, 702–03 (2002) (arguing that anti-immigrant labels avoid the psychological burdens associated with explicitly racist discourse).

253. See O’Brien, *supra* note 183, at 44 (explaining how inhumane social policies often follow dehumanizing rhetoric).

254. See *supra* Part I (examining personal and doctrinal metaphors).

255. Duncan, *supra* note 90, at 795.

alien metaphor achieves this end by transferring meaning from *alien* to *criminal* to *Mexican*.²⁵⁶ These associations are difficult to recognize, however, because their definitions derive from unspoken racial codes. What emerges in legal texts is an essentialized understanding of immigrants as dangerous *things* that are infused with ethnicity.²⁵⁷ Just as the root word *alienus* means “hostile” or “other,” the term “*illegal alien*” presents immigrants as racialized outsiders who are unable to contribute to a common social endeavor.

2. Immigration Is a Flood

Conceptual metaphors often describe social changes in terms of moving objects.²⁵⁸ According to these metaphors, just as we cannot control the speed or direction of some physical forces, we cannot control changes in our lives and communities.²⁵⁹ For example, some people might say that the country is “*sliding* into disaster”²⁶⁰ or “the winds of change are *blowing*.” The Supreme Court frequently frames immigration in this way, describing the movement of people across borders as an uncontrollable body of water that harms the nation.

The metaphor IMMIGRATION IS A FLOOD involves three distinct characteristics of immigration: direction, size, and force. With regard to direction, the Supreme Court’s metaphors depict a northward immigrant stream:

[T]he “formidable law enforcement problems” posed by the *northbound tide* of illegal entrants into the United States.²⁶¹

[S]temming the flow of illegal aliens along the *Mexican-American* border²⁶²

These metaphors suggest that most immigrants flow into the United States without first obtaining authorization at the border. Once again, immigration demographics do not bear out the metaphor’s implications. Forty-five percent of unauthorized immigrants living in the United States entered the country legally;²⁶³ they did not gush into the country as the

256. See Lisa A. Flores, *Constructing Rhetorical Borders: Peons, Illegal Aliens, and Competing Narratives of Immigration*, 20 CRITICAL STUD. MEDIA COMM. 362, 363 (2003) (discussing metaphors of immigration and criminality).

257. See Joo, *supra* note 216, at 799 (noting that the “essentialized part” of a domain may appear to represent the whole).

258. KÖVECSES, *supra* note 25, at 136 (examining the conceptual metaphor “changes are movements”).

259. *Id.*

260. *Id.*

261. *City of Indianapolis v. Edmond*, 531 U.S. 32, 37 (2000) (emphasis added) (quoting *United States v. Martinez-Fuerte*, 428 U.S. 543, 551–54 (1976)).

262. *United States v. Brignoni-Ponce*, 422 U.S. 899, 902 (1975) (Burger, C.J., concurring) (emphasis added) (quoting *United States v. Baca*, 368 F. Supp. 398 (S.D. Cal. 1973)).

263. PEW HISPANIC CTR., *MODES OF ENTRY FOR THE UNAUTHORIZED MIGRANT POPULATION 1* (2006), available at <http://pewhispanic.org/files/factsheets/19.pdf> (estimating that up to forty-five percent of unauthorized immigrants enter the country on a valid visa but

flood metaphor suggests, but instead came to the country on valid visas that later expired. Nonetheless, the Supreme Court describes unauthorized immigrants as a monolithic group of border-crossers that approaches from Mexico in an overwhelming fashion:

[T]he presence of large numbers of undocumented aliens in this country creates law enforcement problems of *titanic proportions*.²⁶⁴

[T]he *vast tide* of illegal immigration that had produced a shadow population of literally *millions* of undocumented aliens in the United States.²⁶⁵

With . . . the facilities at Guantanamo and available Coast Guard cutters *saturated*, . . . the Government could no longer . . . *protect* our borders . . .²⁶⁶

The Court's many references to massive flows²⁶⁷ and influxes²⁶⁸ are too numerous to list. Just as levies attempt to hold back large bodies of water, the border is presented as a fragile dike that might burst at any moment, given the pressure coming from the alien flood:

The entire system, however, has been notably unsuccessful in deterring or *stemming this heavy flow*; and its costs, including added burdens on the courts, have been substantial.²⁶⁹

[T]he *flow* of illegal aliens *cannot be controlled* effectively at the border.²⁷⁰

The unrestrained immigrant flood portends dangerous social change.²⁷¹ The immigrant waves described in Supreme Court opinions appear as foreboding bodies that submerge everything in their path, including American culture. As Justice Rehnquist wrote, aliens are not like naturalized citizens who have adjusted "to our patterns of living and attitudes, and have demonstrated a basic understanding of our institutions, system of government, history, and traditions."²⁷² Instead, as Justice Lewis

overstay or otherwise violate a condition of entry); *see also* Johnson, *supra* note 235, at 1546 (discussing misperceptions about the number of illegal border-crossers residing in the United States).

264. *INS v. Delgado*, 466 U.S. 210, 239 (1984) (Brennan, J., dissenting) (emphasis added).

265. *McNary v. Haitian Refugee Ctr., Inc.*, 498 U.S. 479, 481 (1991) (emphasis added) (internal citations and quotations omitted).

266. *Sale v. Haitian Ctr. Council, Inc.*, 509 U.S. 155, 163 (1993) (emphasis added).

267. *See, e.g., Reno v. Flores*, 507 U.S. 292, 296 (1993) (emphasis added) (describing the "increased *flow* of unaccompanied juvenile aliens into California").

268. *See, e.g., Jean v. Nelson*, 472 U.S. 846, 849 (1985) (emphasis added) (discussing attempts to control the "*influx* of undocumented aliens"); *United States v. Valenzuela-Bernal* 458 U.S. 858, 876 (1982) (O'Connor, J., concurring) (emphasis added) (discussing the "*tremendous influx* of illegal aliens").

269. *United States v. Ortiz*, 422 U.S. 891, 915 (1975) (White, J., concurring) (emphasis added).

270. *United States v. Martinez-Fuerte*, 428 U.S. 543, 556 (1976) (emphasis added).

271. *See* Jonathan Charteris-Black, *Britain as a Container: Immigration Metaphors in the 2005 Election Campaign*, 17 DISCOURSE & SOC'Y 563, 572-73 (2006) (discussing water metaphors in political discourse).

272. *Sugarman v. Dougall*, 413 U.S. 634, 662 (1973) (Rehnquist, J., dissenting).

Powell said, aliens bring “significant economic and social problems” with them.²⁷³ Water is supposed to cleanse and give life.²⁷⁴ But the immigrant surge in Supreme Court opinions is a brown tide that immerses the American way of life.²⁷⁵

According to cognitive linguists, much of human reasoning derives from basic physical and social interactions.²⁷⁶ Floods constitute a core component of this embodied knowledge. Great floods have devastated societies throughout human history. In addition, people possess a keen sense of rivers and tides based on their knowledge of the physical world.²⁷⁷ Drawing on these associations, the Supreme Court’s water metaphors emphasize the dangers of a growing immigrant population.

Although they would like to right our national ship before it capsizes, the Justices are nihilistic in their figurative accounts of immigration, describing a nation *saturated* by an uncontrolled *flow* of aliens.²⁷⁸ According to the Court’s water metaphors, the immigrant wave is too massive and the federal government is too inept for citizens to hold back the alien surge.

3. Immigration Is an Invasion

Human beings instinctively fear outside physical threats. Throughout recorded history, nations have built walls and raised armies in response to real and perceived enemies. There are few, if any, aspects of our embodied experience more central than self-defense.

Drawing on this social, historical, and cultural knowledge, we often explain foreign concepts in terms of battle. Consider the following conceptual metaphors and their linguistic tokens: POLITICS IS WAR²⁷⁹ (“The *fight erupted* over abortion”),²⁸⁰ ARGUMENT IS WAR (“I couldn’t *defend* that point”),²⁸¹ and SPORT IS WAR (“My team did not use the right *strategy*”).²⁸² Reflecting the centrality of war metaphors in human thought, the Supreme Court often describes immigration in terms of invasion.

273. *United States v. Brignoni-Ponce*, 422 U.S. 873, 878 (1975).

274. *See* Duncan, *supra* note 90, at 749 (explaining how the image of water plays a central role in metaphors of crime control).

275. *See generally* OTTO SANTA ANA, BROWN TIDE RISING: METAPHORS OF LATINOS IN CONTEMPORARY AMERICAN PUBLIC DISCOURSE 65–155 (2002) (analyzing the use of water metaphors in recent immigration debates in California); Santa Ana et al., *supra* note 51, at 152–53 (arguing that water metaphors mask the individuality and humanity of immigrants).

276. Winter, *supra* note 26, at 1130–31.

277. Charteris-Black, *supra* note 271, at 570–71 (arguing that water metaphors often describe an increase in the rate of immigration).

278. Santa Ana et al., *supra* note 51, at 154–56 (explaining how water metaphors portray the nation as a sinking boat).

279. KÖVECSES, *supra* note 25, at 22, 62, 94.

280. *Id.* at 22.

281. *Id.* at 80.

282. *Id.* at 75.

Mirroring popular media accounts of an “alien invasion,”²⁸³ the Supreme Court’s metaphoric wars present immigrants as aggressors who threaten national sovereignty²⁸⁴:

Congress [is] vested by the Constitution with the responsibility of *protecting our borders*.²⁸⁵

[W]e leave no *unprotected* spot in the Nation’s *armor*.²⁸⁶

The *deployment* of border patrol agents along the border . . . maximize[s] . . . personnel, with the first *line of defense* being called the “line watch.”²⁸⁷

At times the Supreme Court’s war metaphors depict aliens engaged in direct conflict. At other times, however, the intruders approach silently:

[T]he *evasion* of the federal regulatory program that is the mark of undocumented status . . .²⁸⁸

[I]llegal entrants from Mexico pose[] formidable law enforcement problems. The principal problem arises from *surreptitious* entries.²⁸⁹

Through these metaphors, immigrants appear as guerrilla warriors who hide and wait to attack. The battles in the Court’s metaphoric wars will cease only when the foreign invaders surrender:

In attempting to *protect* California’s fiscal interests . . . from the deleterious effects on its economy . . . [the statute] . . . is tailored to *combat* effectively the perceived evils.²⁹⁰

[M]ost aliens . . . can ensure themselves review in courts of appeals only if they voluntarily *surrender* themselves for deportation.²⁹¹

In addition to depicting conventional and guerilla warfare, the Court also employs metaphors that describe a more exotic attack involving female immigrants overtaking the nation through reproduction. These fertility metaphors depict unauthorized immigrant women as people who wish to conquer the United States by bearing American citizens:

[D]eportation by aliens creative and *fertile* enough to continuously produce new and material facts . . .²⁹²

283. See generally Román, *supra* note 235, at 843–55 (challenging media descriptions of an “alien invasion”).

284. See Leo R. Chávez, *Public Discourse, Immigration, and Control of the U.S.-Mexico Border: Reflections on Jorge Durand and Douglas S. Massey’s “The Costs of Contradiction: US Border Policy 1986–2000”*, 1 *LATINO STUD.* 253, 255 (2003) (discussing media depictions of immigrants as hostile invaders).

285. *Plyler v. Doe*, 457 U.S. 202, 237 (1982) (Powell, J., concurring) (emphasis added); see also *Michigan v. Summers* 452 U.S. 692, 699 (1981) (emphasis added) (describing the “difficulty in *patrolling* the long Mexican border”).

286. *Zadvydas v. Davis*, 533 U.S. 678, 695–96 (2001) (emphasis added) (quoting *Kwong Hai Chew v. Colding*, 344 U.S. 590, 602 (1953)) (internal quotations omitted).

287. *United States v. Brignoni-Ponce*, 422 U.S. 873, 907 (1975) (Burger, J., concurring) (emphasis added).

288. *Plyler*, 457 U.S. at 224 (majority opinion) (emphasis added).

289. *United States v. Martinez-Fuerte*, 428 U.S. 543, 552 (1976) (emphasis added).

290. *De Canas v. Bica*, 424 U.S. 351, 357 (1976) (emphasis added).

291. *McNary v. Haitian Refugee Ctr., Inc.*, 498 U.S. 479, 480 (1991) (emphasis added).

[S]he managed to become the actual parent of a United States citizen by *conceiving and bearing an illegitimate child* here.²⁹³

[M]ore significant demographic or economic [problems] . . . are engendered by the illegal entry into the State of *entire families* of aliens for indefinite periods than by the periodic sojourns of *single adults* . . .²⁹⁴

The female alien does not use force to overtake the country. Rather she utilizes her superior reproductive power to attain conquest.²⁹⁵ By manipulating American law to achieve power, the female alien is a clever invader who relies on legal technicalities to gain advantage.

These fertility metaphors feed into larger debates over *jus soli*, or birthright citizenship, in which opponents frequently express fears about the changing racial demographics of the country.²⁹⁶ According to the fertility frame, the nation can accept single men who will work temporarily in the United States without bringing their culture and traditions with them. But the nation cannot bear the social consequences that come with importing entire families who will reside in our communities, study in our schools, and worship in our churches. If the fertile invader is not thwarted soon, her massed offspring will overtake the nation. As such, the fertility metaphor presents the loss of cultural hegemony as the most dangerous consequence of the alien invasion.

Whether the attack is by stealth, invasion, or reproduction, the Supreme Court's war metaphors share a common theme: America is under assault by a different kind of enemy. Through metaphor, Supreme Court Justices become protectors of a nation besieged by an ominous alien attack.

III. TOWARD A NEW IMMIGRATION DISCOURSE

Words affect thought, and thought affects action. As demonstrated above, the Supreme Court's immigration decisions are filled with evocative words that fuse the concept of immigration with notions of criminality, devastation, and attack. Here I consider the consequences of these associations and propose an alternative account. Just as cognitive linguists challenged the traditional description of metaphors as minor poetic flourishes, I challenge the notion that the Supreme Court's metaphors are nothing more than insignificant textual ornaments.

292. *INS v. Jong Ha Wang*, 450 U.S. 139, 143 n.5 (1981) (emphasis added) (quoting *Villena v. INS*, 622 F.2d 1352, 1362 (9th Cir. 1980) (en banc) (Wallace, J., dissenting)).

293. *INS v. Errico*, 385 U.S. 214, 226 (1966) (Stewart, J., dissenting) (emphasis added).

294. *Plyler v. Doe*, 457 U.S. 202, 249 n.10 (1982) (Burger, C.J., dissenting) (emphasis added) (internal citations and quotations omitted).

295. See O'Brien, *supra* note 13, at 39 (analyzing immigration rhetoric that focuses on different birth rates among immigrants and citizens).

296. See Jonathan C. Drimmer, *The Nephews of Uncle Sam: The History, Evolution, and Application of Birthright Citizenship in the United States*, 9 GEO. IMMIGR. L.J. 667, 709–13 (1995) (discussing the racial dynamic of birthright citizenship debates); Gerald L. Neuman, *Back to Dred Scott?*, 24 SAN DIEGO L. REV. 485, 499–500 (1987) (reviewing PETER H. SCHUCK & ROGERS M. SMITH, *CITIZENSHIP WITHOUT CONSENT* (1985)) (arguing that much of the debate over *jus soli* can be traced to issues of race and culture).

This section begins by comparing the Supreme Court's metaphors to the metaphors of immigration policy. Whether Congress is building a virtual fence, requiring tamperproof identification cards, or sanctioning the mass incarceration of aliens, each step can be understood in terms of the metaphors discussed above.

The conceptual theory of metaphor explains why Congress legislates metaphorically in the same way that the Supreme Court rules metaphorically. Because meaning is culturally grounded, the social construction of immigrants depends on numerous voices coming from multiple cultural institutions such as Congress and the Supreme Court. No one institution is an exclusive or independent source of social meaning. Through metaphors, Congress, the Court, and other cultural bodies facilitate a discussion among lawyers, commentators, and legislators about "the immigration crisis" and the proposed responses to the crisis.²⁹⁷ Thus, the Court's metaphoric choices do far more than *reflect* popular understandings of immigration. By appropriating, repackaging, and circulating certain immigration metaphors, the Court joins other cultural institutions in creating a dominant account of who immigrants are and how they should be treated.²⁹⁸

The Article concludes by considering opportunities for discursive change. I offer the concepts of *migration* and *economic sanctuary* as alternative metaphors for understanding immigration. The idea of *migration* focuses on the movement of people, rather than on an invasion of aliens. Likewise, the idea of *economic sanctuary* presents immigration as a product of trade and structural adjustment policies, rather than as a product of simple criminal intent. These metaphors highlight immigrants' personhood and potential for economic cooperation—characteristics concealed by current accounts.

A. *Metaphors of Immigration Reform*

Cognitive linguists speak of "entailments" as additional information that listeners logically adopt from metaphors.²⁹⁹ As such, entailments are underspecified pieces of knowledge that emerge naturally from conceptual metaphors.³⁰⁰ For example, the metaphor IMMIGRATION IS A FLOOD directly maps information about the size and power of floods, while indirectly entailing additional information that listeners associate with floods. Thus, we know that communities raise levies against floods and that floodwaters carry disease. When lawmakers understand a problem in metaphoric terms, they often formulate policies based on these metaphoric entailments. Therefore, a metaphor's entailments are as important, if not

297. LAKOFF & FERGUSON, *supra* note 32, at 1–2 (arguing that the "immigrant problem" could also be understood as a "foreign policy problem" or a "trade problem").

298. See Briggs, *supra* note 14, at 272 (explaining how meaning derives from "appropriation and reception").

299. See Hunter, *supra* note 39, at 471–72 (arguing that the conceptual metaphor LIFE IS A JOURNEY entails that people may face *roadblocks* or *spin their wheels* at times).

300. KÖVECSES, *supra* note 25, at 94–95 (defining metaphoric entailments).

more important, than the information utilized directly in the mapping process.³⁰¹

The Supreme Court's immigration metaphors—*alien*, *flood*, and *invasion*—contain several entailments that are reflected in contemporary immigration policies. Consider the recent debate over immigration reform. The last serious congressional attempt to alter the nation's immigration laws contained three core proposals: enhanced border *security*, an expanded *guestworker* program, and *amnesty* for the nearly twelve million unauthorized immigrants living in the United States.³⁰²

Each component of immigration reform can be seen as an entailment of the metaphors discussed above. For example, the *alien* metaphor is evident in proposals to modify the nation's guestworker system. A new guestworker program would import hundreds of thousands of workers into the United States each year.³⁰³ Advocates of this proposal promise that guestworkers will work in the United States several years and then return home. The description of immigrants as temporary visitors situates the nation as a family and aliens as guests of the family.³⁰⁴ "Aliens" are defined as people "belonging to another . . . family."³⁰⁵ When a guest arrives at a family's house, the family controls the conditions of the guest's residency; the guest is told where to sleep and how long to stay. According to the vision fostered by the guestworker proposal, aliens will express gratitude to the nation by making food for their hosts, cleaning their homes, and washing their dishes. Because they are aliens (i.e., strangers to the national family), the guests cannot stay indefinitely. Once their temporary stay is over, the alien guests will leave politely and make room for other guests to begin work in the United States.³⁰⁶ This image of foreign-born guests working in the national house becomes possible only when immigrants are first understood as *alien strangers*.

As discussed above, the *alien* metaphor conceals the humanity of immigrants. The mapping of nonhuman qualities onto immigrants was evident in Congress's attempt to prevent unauthorized immigrants from obtaining driver's licenses in the REAL ID Act of 2005.³⁰⁷ Drawing on the

301. Simon, *supra* note 85, at 1041 (discussing the importance of entailments).

302. See Comprehensive Immigration Reform Act of 2007, S. 1348, 110th Cong. (introduced May 9, 2007); Comprehensive Immigration Reform Act of 2006, S. 2611, 109th Cong. (passed by the Senate on May 25, 2006); JEFFREY S. PASSEL & D'VERA COHN, PEW HISPANIC CTR., A PORTRAIT OF UNAUTHORIZED IMMIGRANTS IN THE UNITED STATES ii (2009), available at <http://pewhispanic.org/reports/report.php?ReportID=107> (estimating that 11.9 million unauthorized immigrants live in the United States); Michael J. Wishnie, *Labor Law After Legalization*, 92 MINN. L. REV. 1446, 1446–47 (2008) (examining immigration reform proposals).

303. See Cristina M. Rodríguez, *Guest Workers and Integration: Toward a Theory of What Immigrants and Americans Owe One Another*, 2007 U. CHI. LEGAL F. 219, 219–20 (2007) (analyzing recent guestworker proposals).

304. See KÖVECSES, *supra* note 25, at 62 (discussing the metaphor SOCIETY IS A FAMILY).

305. 1 THE OXFORD ENGLISH DICTIONARY 314–15 (2d ed. 1989).

306. See Rodríguez, *supra* note 305, at 220–22 (discussing the difficulties associated with a large-scale guestworker program).

307. Pub. L. No. 109-13, 119 Stat. 231, 302 (2005) (codified at 49 U.S.C. § 30301 (2006)).

alien metaphor, the REAL ID Act labeled people who belong in the United States as “real,” while describing unauthorized immigrants as unreal or inauthentic people. Unreal people are not entitled to basic credentials needed to live and work in society; they do not open bank accounts or rent apartments.³⁰⁸ Unreal people live nowhere because they are make-believe. By rejecting the personhood of immigrants, the *alien* metaphor facilitates this outcome.

The *amnesty* component of immigration reform is an entailment of the *invasion* metaphor. “Amnesty” is defined as “the overlooking of the past offences of (rebels).”³⁰⁹ Because the *invasion* metaphor describes immigration as an especially dangerous threat, however, citizens are reluctant to overlook the past offenses of aliens through amnesty. If immigrants are *enemy soldiers*, as the *invasion* metaphor suggests, then the country should capture and defeat them rather than forgive their war crimes. Although the law of war allows governments to grant amnesty, public attitudes have become so shaped by the image of battle against aliens that such acts of forgiveness appear treasonous.

The *invasion* metaphor entails the need for weapons, fronts, and battle lines. In the last decade, Congress has allocated billions of dollars to militarize the border.³¹⁰ Touting the need for greater “border security,” the government has installed electronic intrusion sensors and a virtual fence along sections of the border, while providing agents with night-vision equipment to see the enemy at all hours.³¹¹ Enacting battle plans with names such as “*Operation Hold the Line*” and “*Operation Blockade*,” immigration officials have coordinated with the U.S. military to deploy soldiers along the border.³¹² Reflecting metaphor’s power to conflate, the border is now an actual militarized zone with real soldiers and real casualties.

The *flood* metaphor also informs contemporary immigration policy. Immigration reform proposals focus on the need to create a “more manageable and *controlled flow* of legal immigrants who can be *absorbed*

308. See Raquel Aldana, *On Rights, Federal Citizenship, and the “Alien”*, 46 WASHBURN L.J. 268–69 (2007) (discussing recent anti-immigrant legislation).

309. 1 THE OXFORD ENGLISH DICTIONARY 941 (2d ed. 1989) (emphasis added).

310. See NGAI, *supra* note 231, at 266 (describing the “stunning militarization” of the border that occurred in the 1990s); Anne Demo, *Sovereignty Discourse and Contemporary Immigration Politics*, 91 Q.J. SPEECH 291, 302 (2005) (explaining how the U.S. military has constructed elaborate barriers along the border).

311. Demo, *supra* note 310, at 302 (emphasis added); see also Kate Philips, *The War of Words*, NIEMAN REP., Fall 2006, at 63, available at <http://www.nieman.harvard.edu/reports/article/100346/The-War-of-Words.aspx> (summarizing political efforts to employ the terms “illegal alien” and “border security” to frame immigration-related issues).

312. See Demo, *supra* note 310, at 296–97 (summarizing the expansion of defense-related funding to patrol the border) (emphasis added); see also J. David Cisneros, *Contaminated Communities: The Metaphor of “Immigrant as Pollutant” in Media Representations of Immigration*, 11 RHETORIC & PUB. AFF. 569, 593 (2008) (discussing the relationship between border fencing and the image of immigrants as invaders).

by our economy.”³¹³ These reforms are set against a backdrop of failure in immigration enforcement. As discussed above, the *flood* metaphor describes the overwhelming force of immigration. An entailment of the metaphor, therefore, is that attempts to secure the border are futile given the strength of the immigrant wave. Through decades of purposeful underenforcement of immigration laws, millions of unauthorized immigrants have entered the United States without permission.³¹⁴ Much like local emergency workers who sandbag levies, knowing all the while that rising floodwaters will overtake their community, politicians discuss the need to control the alien stream, but enact ineffective enforcement techniques to achieve that end.³¹⁵ Understandably, Americans share a widespread belief that the government is not doing enough to *seal* the border.³¹⁶

B. Legal Metaphors and Social Discourse

The conceptual theory of metaphor explains the common immigration discourses of legal opinions and legislation. Because reasoning is grounded in our embodied experiences, the social understanding of immigrants derives from multiple sources. Human beings absorb metaphors unconsciously through repeated interactions with their physical worlds and cultural environments. It is the *recurrence* of these experiences in a wide array of social and cultural settings that establishes the basis of human reasoning.³¹⁷ Thus, cognition is not a simple process in which *either* the media, *or* politicians, *or* Supreme Court Justices construct the image of immigrants out of whole cloth. Rather, the “truth” about immigration emerges from a confluence of discourses produced and repeated by many cultural institutions.

Supreme Court Justices are among the most prominent members of the American linguistic community. They are “symbolic elites” who wield extra-legal power by recreating immigration narratives and presenting them to the social world.³¹⁸ Justices express themselves predominately through

313. Press Release, Schumer Announces Principles for Comprehensive Immigration Reform Bill in Works in Senate (June 24, 2009) (emphasis added), available at http://schumer.senate.gov/new_website/record.cfm?id=314990.

314. See Adam B. Cox & Eric A. Posner, *The Second-Order Structure of Immigration Law*, 59 STAN. L. REV. 809, 813–14 (2007) (describing the nation’s “illegal immigration system”); see also MOTOMURA, *supra* note 196, at 129–35 (arguing that government officials largely tolerate unlawful immigration).

315. See Hiroshi Motomura, Comment, *Choosing Immigrants, Making Citizens*, 59 STAN. L. REV. 857, 867 (2007) (examining the underenforcement of immigration laws).

316. See Jeesun Kim, More than a Political Hot Potato: News Framing of the U.S. Immigration Debate in Election Years 3, presented at the International Communication Association Annual Conference, San Francisco, Cal. (May 25, 2007) (showing that eighty-two percent of Americans believe that the government has failed to control illegal entry into the United States).

317. See Berger, *supra* note 20, at 176–77 (describing metaphor as a form of “imaginative rationality”).

318. See Majid Khosravinik, *The Representation of Refugees, Asylum Seekers and Immigrants in British Newspapers During the Balkan Conflict (1999) and the British*

written opinions,³¹⁹ and metaphors often provide the most quotable passages of those opinions.³²⁰ By enhancing the apparent persuasive force of a particular decision, the Supreme Court's immigration metaphors increase the likelihood that lower courts will rely upon and cite to them.³²¹

But the Supreme Court's discursive influence extends well beyond the legal community. By authoritatively expressing beliefs shared in law and society, Supreme Court Justices engage citizens, government officials, and other non-legal actors through their written opinions.³²² News outlets publicize Supreme Court decisions within minutes of their release. Reporters, many of whom have no formal legal training, rarely have time to read and digest opinions before informing the public of a particular judicial outcome.³²³ Accordingly, members of the media are more likely to quote vivid metaphoric language that reconfirms existing conceptions about immigrants. In this way, media reports serve as discrete linguistic acts that interact with legal texts to provide a prevailing narrative on immigration.³²⁴

Robert Tsai has argued that the Court's First Amendment metaphors exude a "disturbing ethos of judicial centrality" that influences the behavior of non-legal actors.³²⁵ For example, members of the Court have employed *fire* metaphors in their free expression rulings to cast themselves as would-be firefighters against state attempts to restrict specific speech acts. According to Tsai, the juricentric posture of the *fire* metaphor discourages inter-community dialogue and political engagement by standing as *the* definitive account on certain First Amendment matters.³²⁶ The same is true with metaphoric depictions of immigrants in the law. The Court's metaphors absorb and repackage cultural assumptions about immigration, adding an air of authority, neutrality, and exclusivity to representations that non-legal actors are invited to accept uncritically.

The Supreme Court's immigration metaphors are models *for* understanding the world that masquerade as models *of* the world.³²⁷ In order to make this transition believable to readers who interpret texts based

General Election (2005), 20 DISCOURSE & SOC. 477, 479 (2009) (discussing the relationship between language and ideology).

319. See Maureen Archer & Ronnie Cohen, *Sidelines on the (Judicial) Bench: Sports Metaphors in Judicial Opinions*, 35 AM. BUS. L.J. 225, 227 (1998) (describing written opinions as "the most important expression of judicial authority").

320. See generally BOSMAJIAN, *supra* note 19, at 13–15 (discussing how courts circulate and repeat certain metaphors).

321. See Chad M. Oldfather, *The Hidden Ball: A Substantive Critique of Baseball Metaphors in Judicial Opinions*, 27 CONN. L. REV. 17, 20–21 (1994) (explaining how metaphors provide legal opinions with substantive force).

322. See Tsai, *supra* note 18, at 192 (arguing that courts are "intent upon engaging the American populace").

323. See Archer & Cohen, *supra* note 319, at 227–28 (discussing the cultural significance of Supreme Court opinions).

324. Khosravinik, *supra* note 318, at 479 (explaining how different public discourses are formed).

325. Tsai, *supra* note 18, at 185, 236–39 (criticizing the notion that "the legal system functions as the hub around which other American institutions orbit").

326. *Id.* at 238–39.

327. NEIL MACCORMICK, LEGAL REASONING AND LEGAL THEORY 103–04 (1978).

on their own social experiences, the Court employs metaphors that conform to existing cultural knowledge about the scope and nature of the perceived problem.³²⁸ This becomes an entirely circular process in which the Court's metaphors join discourses from other cultural institutions to sustain and reconstitute a "regime of truth" about immigration.³²⁹ In this way, metaphors become self-fulfilling prophecies by highlighting certain realities, masking others, and entailing a narrow universe of responses for readers to consider.³³⁰

Metaphors of *criminality*, *flood*, and *invasion* leave little space for readers to understand immigration-related issues outside frames selected for them by the Court and other cultural institutions.³³¹ Because the mind develops metaphoric associations unconsciously over a prolonged period of time, readers are unaware that, absent concerted efforts to critically analyze Supreme Court texts, images from the past will be recycled as frames for understanding immigration in the future.³³² As such, without methods for challenging existing representations, readers will continue to serve as unknowing accomplices to immigration metaphors and the legal realities they entail.³³³

C. Motivating Analogic Reasoning Through Similes

Metaphor is not an exclusive vehicle for figurative representation. Like metaphors, similes enable speakers to imagine new concepts in terms of embodied physical and cultural knowledge. But similes do not conflate domains in the same manner as metaphors. Instead, similes enable speakers to recognize and evaluate proposed correspondences with a level of transparency that metaphors fail to offer.

Similes create explicit associations between target and source domains by using the words "like" or "as" in their phrasing.³³⁴ Consider the following simile: "Illegal immigration is like a military invasion." The statement invites listeners to notice and assess the contention that illegal entry into the United States is much like a foreign attack. If readers disagree about the appropriateness of the comparison, they can articulate their objections and propose alternative accounts.

328. Steven L. Winter, *The Cognitive Dimension of the Agon Between Legal Power and Narrative Meaning*, 87 MICH. L. REV. 2225, 2270 (1989) (describing judges as people who "retail" legal rules by drawing from cultural experiences created at the "wholesale" level).

329. See Hector Amaya, *Latino Immigrants in the American Discourses of Citizenship and Nationalism During the Iraqi War*, 4 CRITICAL DISCOURSE STUD. 237, 238 (2007) (citing Michel Foucault, *Truth and Power*, in THE FOUCAULT READER 51, 74 (Paul Rabinow ed., 1984)).

330. See LAKOFF & JOHNSON, *supra* note 11, at 156–58 (examining the limitations of metaphoric entailments).

331. ONO & SLOOP, *supra* note 236, at 123.

332. See Blavin & Cohen, *supra* note 95, at 267 (warning against the unconscious acceptance of metaphors).

333. Boudin, *supra* note 35, at 413–14 (explaining how metaphors facilitate interactions between writers and readers).

334. See Shaul E. Cohen & David A. Frank, *Jerusalem and the Riparian Simile*, 21 POL. GEOGRAPHY 745, 750 (2002) (examining the descriptive attributes of similes).

In contrast to similes, metaphors such as “the *silent invasion* of illegal aliens” or “border *security*” morph the figurative into the literal, thereby concealing the analogic nature of each statement. The metaphor subsumes differences between the two domains, producing a dangerous literalism that readers may fail to recognize.³³⁵ Through metaphor, the immigrant becomes the *alien*; illegal immigration becomes an *invasion*.

Given the central role of analogic reasoning in law, the shift from metaphor to simile involves more than a simple alteration of verbiage.³³⁶ Lawyers are professional deductionists and analogists. They are trained to deduce a legal rule from a statute or holding of a case;³³⁷ they then argue whether the particular legal norm does or does not govern a given set of facts based on the similarities or dissimilarities between the norm and the facts.³³⁸ As discussed above, the personal metaphors of immigration law rarely facilitate this kind of analysis.³³⁹ Rather than attempt to capture a specific legal concept through analogic reasoning, immigration metaphors attempt to capture the “essence” of noncitizens by conflating different domains.

Although lawyers are hard-wired to reason analogically, metaphors short-circuit the process. In contrast, similes facilitate new modes for understanding problems by directly engaging lawyers’ analogic senses. For example, in the context of immigration discourse, similes allow legal actors to assess whether immigration is like a flood, or whether unauthorized immigrants are like violent criminals.³⁴⁰ If readers determine that aspects of the source and target domains are divergent or contradictory, they will reject the simile in favor of other frames that comport with their physical and cultural understandings of the world. Thus, similes not only allow for the rational evaluation of current figurative expressions, they make room for new immigration frames as readers reject other models. As such, similes ask members of the linguistic community to recognize and contest certain representations of immigrants that, if stated in metaphoric terms, would pass silently into the legal imagination without discussion.

D. Migration and Economic Sanctuary as Outlaw Metaphors

Even if similes attain a more prominent place in legal discourse, metaphors will remain a fundamental component of language and

335. Winter, *The Metaphor of Standing*, *supra* note 79, at 1386–87 (explaining how metaphoric statements can transform into myths).

336. See Cass R. Sunstein, *On Analogical Reasoning*, 106 HARV. L. REV. 741, 748 (1993) (discussing the centrality of analogy in law).

337. Hunter, *supra* note 57, at 1238–42 (discussing assumptions about the processes of legal deduction and analogy).

338. See Boudin, *supra* note 35, at 406 n.73 (arguing that lawyers use analogy “to invoke the accepted norm that, if two different situations are sufficiently alike, they should be treated alike by the law”).

339. See *supra* Part I.C and accompanying text (discussing the dangers of conflation posed by immigration metaphors).

340. Cohen & Frank, *supra* note 334, at 761 (arguing that similes can restructure conflict frames that appear entrenched).

thought.³⁴¹ The human mind cannot always rationally assess multiple and overlapping correspondences. In order to simplify decisions, we depend on the cognitive shortcuts provided by metaphors.³⁴² Therefore, in order to challenge the popular metaphoric representations of immigrants in the law, critics cannot simply ignore existing representations, but rather must offer a new set of words, images, and modes of figurative thought to compete with current frames.

The Supreme Court's immigration metaphors are not immutable. Because metaphors are socially contingent, the Court's metaphoric choices will change as social understandings of immigrants change. At first glance, then, the goal of altering existing representations appears exceedingly difficult; after all, major cultural shifts take time. But the introduction of competing metaphors does not require such a radical change. Linguistic metaphors are not merely products of embodied knowledge but also methods for re-creating culture. Like political discourse, the law is situated and contingent.³⁴³ When legal actors present new methods for talking about a problem, they create opportunities for altering social discourse and the social understanding of the problem as well.

Because today's immigration metaphors represent only a partial selection of reality, competing representations should draw from aspects of *existing* cultural knowledge that current metaphors fail to utilize. For example, the Supreme Court's immigration metaphors rely on embodied understandings of crime and invasion, but ignore issues related to movement and economic survival—concepts deeply embedded in our historical and cultural knowledge. Thus, the task of introducing new legal metaphors is not so much about modifying culture as it is accessing cultural references that members of the linguistic community already possess.

Before competing representations can emerge, however, legal actors must unwrap and evaluate current frames. Because metaphors loosen their hold on the human imagination only through negotiation and debate, much of the foregoing analysis has been directed toward that end.³⁴⁴ The limitation of this approach, however, is that it largely retells someone else's story.³⁴⁵ The critical discussion must extend beyond the problems associated with existing metaphors so that legal actors might imagine new metaphoric possibilities.

341. See Michael J. Yelnosky, *If You Write It, (S)he Will Come: Judicial Opinions, Metaphors, Baseball, and "The Sex Stuff,"* 28 CONN. L. REV. 813, 817–18 (1996) (describing metaphors as unavoidable aspects of discourse).

342. See Charteris-Black, *supra* note 271, at 565–72 (examining the role metaphor plays as a cognitive heuristic); Duncan, *supra* note 90, at 799–800 (explaining how human communication depends on metaphors).

343. See David T. Ritchie, *The Centrality of Metaphor in Legal Analysis and Communication: An Introduction*, 58 MERCER L. REV. 839, 841–42 (2007) (arguing that discourses can change as speakers employ new metaphors).

344. See Otto Santa Ana, *'Like an Animal I Was Treated': Anti-Immigrant Metaphor in U.S. Public Discourse*, 10 DISCOURSE & SOC. 191, 203 (1999) (examining entrenched metaphors).

345. See Boudin, *supra* note 35, at 420–21 (discussing the limitations of rebuttal as a mechanism for challenging metaphoric associations).

According to cognitive linguists, the human mind is more likely to adopt metaphors stated in positive terms.³⁴⁶ Metaphors “work” when they offer affirmative correspondences between source and target domains. Thus, it is insufficient to explain why immigrants are *not* criminals or why immigration is *not* like an overwhelming flood. Likewise, terms such as “undocumented worker” and “noncitizen” present rather unconvincing accounts because they describe immigrants in the negative.³⁴⁷ In contrast, new metaphors must explain affirmatively what immigration is and who immigrants are based on a shared body of cultural knowledge.³⁴⁸

Here I examine the ideas of *migration* and *economic sanctuary*³⁴⁹ as “outlaw” metaphors.³⁵⁰ By “outlaw,” I mean a category of concepts that tie into existing embodied knowledge but have not gained currency in popular discourse. Outlaw discourses appear strange because they do not comport with dominant accounts created by conventional metaphors. As they are circulated and tested against experiential knowledge, however, these metaphors may eventually shift from outlaw to dominant components of a new immigration vernacular.³⁵¹

The concept of migration focuses on the personhood of unauthorized immigrants. Under the taxonomy proposed here, noncitizens residing lawfully in the United States are referred to as “immigrants,” while those without authorization are called “migrants.” A migrant is “a person who moves temporarily . . . from place to place.”³⁵² Unlike illegal aliens who commit crimes in the shadows, migrants are people who move, work, and live openly in and between societies.

Migration involves a *temporary* movement between places that results in permanent residence in sending and receiving countries. Migrants travel between places, but their travel will not last forever; they will someday settle within a nation-state. An entailment of *migration*, therefore, is that

346. *Collective Latino Power—Myth or Reality*, 7 HARV. LATINO L. REV. 75, 107–08 (2004).

347. LAKOFF & FERGUSON, *supra* note 32, at 4 (listing problems with the “undocumented” frame).

348. *See* Smith, *supra* note 63, at 186–91 (examining methods for establishing new metaphors).

349. Although many scholars have examined the legal, moral, and policy-based implications of these and similar terms, this Article examines the concepts of migration and economic sanctuary purely from a metaphoric standpoint. *See generally* Howard F. Chang, *The Economics of International Labor Migration and the Case for Global Distributive Justice in Liberal Political Theory*, 41 CORNELL INT’L L.J. 1 (2008); Gregory A. Loken & Lisa R. Babino, *Harboring, Sanctuary and the Crime of Charity Under Federal Immigration Law*, 28 HARV. C.R.-C.L. L. REV. 119 (1993); Cristina M. Rodríguez, *Building Capacity for the Transnational Regulation of Migration*, 110 COLUM. L. REV. SIDEBAR 1, 2–7 (2010) (explaining the need to manage migration through bilateral mechanisms); Cristina M. Rodríguez, *The Significance of the Local in Immigration Regulation*, 106 MICH. L. REV. 567, 600–05 (2008) (discussing the evolution of sanctuary laws in the United States); Rose Cuisson Villazor, *What Is a “Sanctuary”?*, 61 S.M.U. L. REV. 133, 137–38 (2008) (differentiating between public and private sanctuaries in the immigration debate).

350. ONO & SLOOP, *supra* note 236, at 22 (defining “outlaw discourses”).

351. *Id.* at 139–40.

352. 9 THE OXFORD ENGLISH DICTIONARY 758 (2d ed. 1989); *see also* THE OXFORD ENGLISH DICTIONARY ONLINE (3d ed. 2010), <http://dictionary.oed.com>.

both sending and receiving countries must adopt frameworks for encouraging belonging among all residents—an outcome that is especially needed in a transnational era.³⁵³

Upon arrival in the United States, migrants inevitably formulate ties to employers, social networks, and cultural institutions. Migrants who travel to a specific nation with only a temporary intent to stay often become legal permanent residents as their community connections expand.³⁵⁴ But even migrants who never obtain legal status should be treated as presumptive members of receiving countries. Nations maintain a vested interest in fostering social belonging among all residents. Both citizens and noncitizens benefit from modes of social discourse that offer migrants a long-term stake in the welfare of their communities.³⁵⁵ As such, the *migration* metaphor recognizes the inevitability of migrants in a transnational age and the need to encourage cooperation between community members, regardless of the outcome of any one person's migrant journey.

The idea of *economic sanctuary* brings focus to the reasons people migrate between nations.³⁵⁶ By “economic sanctuary,” I employ a decidedly non-legal definition, as immigration law does not provide relief for economic persecution alone.³⁵⁷ In addition, unlike the *migrant* metaphor (a linguistic term that could conceivably displace “illegal alien” in the legal vernacular), I examine the *economic sanctuary* metaphor for its conceptual benefits only. In other words, *migration* is a method for talking about immigration, whereas *economic sanctuary* is a method for thinking about immigration.

To grant “sanctuary” means “to place in safety” or “to afford protection or shelter.”³⁵⁸ As such, *economic sanctuary* describes migrants as people seeking shelter in the United States in order to endure economically. Most immigrants come to the United States in order to escape poverty and find

353. See generally MOTOMURA, *supra* note 196, at 168–88 (arguing that legal immigration should serve as a process of transition to citizenship); T. Alexander Aleinikoff, *Between National and Post-National: Membership in the United States*, 4 MICH. J. RACE & L. 241, 241–42 (1999) (explaining how migrants can maintain transnational identities while residing within traditional nation-states); Jennifer Gordon, *Transnational Labor Citizenship*, 80 S. CAL. L. REV. 503, 579–80 (2007) (discussing modes for fostering greater political and economic participation among immigrants); Rodríguez, *supra* note 234, at 1116 (explaining why nations should establish mechanisms for encouraging belonging among noncitizens).

354. See Keith Cunningham-Parmeter, *Redefining the Rights of Undocumented Workers*, 58 AM. U. L. REV. 1361, 1410–11 (2009) (explaining why extending rights of inclusion to unauthorized immigrants enhances the workplace rights of all employees).

355. Rodríguez, *supra* note 305, at 267 (discussing the inevitability of future immigrant generations and the need to encourage immigrant integration).

356. See LAKOFF & FERGUSON, *supra* note 32, at 4–5 (describing immigrants as “economic refugees”); Philips, *supra* note 311, at 63 (discussing the political implications of the term “economic refugee”).

357. See *Osorio v. INS*, 18 F.3d 1017, 1028 (2d Cir. 1994); see also John S. W. Park, *Who Belongs in America? Presidents, Rhetoric, and Immigration*, 10 RHETORIC & PUB. AFF. 747, 751 (2007) (book review) (discussing the inability of economic refugees to obtain immigration relief).

358. 14 THE OXFORD ENGLISH DICTIONARY 443 (2d ed. 1989).

work.³⁵⁹ Yet current immigration metaphors conceal migrants' economic entrepreneurship, instead presenting immigrants as criminals and invaders. In contrast, the *economic sanctuary* metaphor brings focus to the forced displacement of people, thereby inviting readers to evaluate the complex causes of illegal immigration.³⁶⁰ For example, recent trade and structural adjustment policies have hampered employment opportunities in many developing countries.³⁶¹ When small businesses cannot compete with transnational corporations in the production of goods and services, local farms and factories must close and lay off workers. Migrants are born from these circumstances.³⁶² Seen in this light, migrants are neither criminals nor invaders, but instead people who cross international borders in order to survive. As such, the *economic sanctuary* metaphor brings focus to the human consequence of globalization.

Metaphors are effective only to the extent that they rely on shared cultural frames.³⁶³ Thus, listeners will accept *migration* and *economic sanctuary* as metaphors only if the concepts comport with their physical, social, and cultural experiences. American historical narratives shed an exceedingly positive light on the concept of migration. Since colonial times, Americans have sought to improve their economic status through relocation.³⁶⁴ Tied to notions of "frontier" and "exploration," migration draws on popular historical accounts of national progress.³⁶⁵ Likewise, neoclassical economic theory posits that societies flourish when markets allow human capital to flow freely.³⁶⁶ As such, members of society gain

359. See Ruben J. Garcia, *Ghost Workers in an Interconnected World: Going Beyond the Dichotomies of Domestic Immigration and Labor Laws*, 36 U. MICH. J.L. REFORM 737, 741–42 (2003) (arguing that the factors causing dislocation among international migrants have increased in recent years); see also Capps, *supra* note 88 at 187–88 (examining high labor participation rates among unauthorized immigrants).

360. See BACON, *supra* note 234, at 68 (arguing that immigration reform proposals rarely account for the effect of trade policy on migrants).

361. See Christopher W. Rudolph, *Globalization, Sovereignty, and Migration: A Conceptual Framework*, 3 UCLA J. INT'L L. & FOREIGN AFF. 325, 330–31 (1998); Katherine E. Seitz, Comment, *Enter at Your Own Risk: The Impact of Hoffman Plastic Compounds v. National Labor Relations Board on the Undocumented Worker*, 82 N.C. L. REV. 366, 368 n.12 (2003) (discussing the relationship between trade agreements and international migration); see also STEPHEN CASTLES & MARK J. MILLER, *THE AGE OF MIGRATION: INTERNATIONAL POPULATION MOVEMENTS IN THE MODERN WORLD* 104 (2d ed. 1998) (discussing causes of increased international migration).

362. See Keith Cunningham-Parmeter, Book Review, 63 INDUS. & LAB. REL. REV. 356, 357–59 (2010) (reviewing DAVID BACON, *ILLEGAL PEOPLE: HOW GLOBALIZATION CREATES MIGRATION AND CRIMINALIZES IMMIGRANTS* (2008)) (examining the interrelation of trade and immigration policies).

363. See Margaret Webb Smith, *The Minutemen Versus the 'United Army of Illegal Aliens': A Critical Discourse Analysis of WWW Representations* 169 (2007) (unpublished Ph.D. dissertation, University of Arizona) (on file with author) (arguing that altering dominant metaphors is a "monumental task").

364. See generally JAMES W. ELY, JR., *THE GUARDIAN OF EVERY OTHER RIGHT: A CONSTITUTIONAL HISTORY OF PROPERTY RIGHTS* 10 (2d ed. 1998) (explaining the historical association of migration with financial reward).

365. See Wu, *supra* note 236, at 42 (discussing internal migration in the United States).

366. Michael J. Trebilcock & Matthew Sudak, *The Political Economy of Emigration and Migration*, 81 N.Y.U. L. REV. 234, 236 (2006).

economically when all workers can travel between jobs. Seen through these frames, migration is an economically effective process that governments should encourage.

In addition to the foregoing social, economic, and historical accounts, the *migration* metaphor relates to readers' personal life experiences as well. People often associate economic growth with physical movement. We move to attend schools. We travel to new cities in search of employment. We understand that personal advances in education, wealth, and security often require physical movement. Drawing on these associations, the concept of migration depicts immigrants as economically motivated people whose movement enhances social welfare.

The *economic sanctuary* metaphor also references shared experiences. Popular accounts of globalization present displaced American workers as victims of outsourcing. Society remains largely sympathetic to Americans who have lost their jobs through no fault of their own. Accordingly, state and federal legislatures extend unemployment benefits and job training to these workers. Building on this embodied knowledge, the *economic sanctuary* metaphor emphasizes the connections shared by migrants and displaced American workers; just as Americans become unemployed when their jobs are shipped overseas, migrants feel the consequences of international trade from the other side of the border. In this way, the *economic sanctuary* metaphor taps into cultural beliefs about the need to assist innocent, hard-working people who are harmed by international forces beyond their control.

The terms proposed here offer admittedly imperfect representations. Because the process of mapping qualities from source to target domains is always partial, no single metaphor can fully capture any one concept.³⁶⁷ For example, not every instance of migration is motivated by poverty or a lack of opportunity, as the *economic sanctuary* metaphor suggests; some people migrate in order to flee political persecution, while others move to live with family members. Even for those people who migrate out of economic necessity, nations may still choose to deny them sanctuary. In this way, the *economic sanctuary* metaphor is not a prescription for immigration policy but rather a conceptual vehicle for thinking about immigration in a global context. The metaphor does not foreclose realistic immigration restrictions but encourages policymakers to develop those restrictions based on representations that reflect the diverse and nuanced causes of international migration.³⁶⁸

367. See Stephanie A. Gore, "A Rose by Any Other Name": *Judicial Use of Metaphors for New Technologies*, 2003 U. ILL. J.L. TECH. & POL'Y 403, 425 (2003) (noting that even "'correct' metaphor[s] constrain thought"); Elizabeth G. Thornburg, *Metaphors Matter: How Images of Battle, Sports, and Sex Shape the Adversary System*, 10 WIS. WOMEN'S L.J. 225, 273-77 (1995) (explaining the process of formulating alternatives to existing metaphors).

368. See O'Brien, *supra* note 183, at 45 (examining how immigration policies emerge from social myths).

Because metaphors involve individualized, unconscious associations, these proposals may cause readers to ascribe characteristics to target groups that are neither intended nor desired. For example, although the concept of migration highlights immigrants' entrepreneurship and economic contributions, it may also encourage an image of migrants as rootless wanderers. These associations cannot be avoided. As stated above, migration involves a *temporary* movement that results in permanent residence. Therefore, the metaphor encourages thought about how to treat members of this "wandering" class, given that a person's transient presence often morphs into permanent residence. But even if readers overlook the temporary nature of migration and view migrants as a perpetual class, the term still stimulates debate about the global factors causing international migration and the need to enhance the affiliations that members of this perceived transient class have with existing social, civic, and cultural institutions.

Abstract concepts such as immigration entail different, sometimes contradictory, realities. Therefore, multiple metaphoric expressions are needed in order to establish meaning.³⁶⁹ The goal of this project, then, is not to offer terms that comprehensively describe immigration, but rather to expand the cluster of metaphors used to talk and think about immigration.³⁷⁰

The potential awkwardness of the *migration* and *economic sanctuary* metaphors speaks to the ubiquity of existing representations. Outlaw discourses may seem strange or unrealistic to readers.³⁷¹ But the *economic sanctuary* metaphor appears peculiar only because other metaphors such as *invasion* and *flood* appear normal. Likewise, the *migration* metaphor feels artificial only when terms such as *illegal alien* and *undocumented worker* appear to delineate the bounds of our discursive realities. Thus, in addition to highlighting new aspects of immigration-related issues, the terms proposed here serve as effective tools for deconstructing popular representations. This critical process diminishes the power of existing metaphors to conflate and essentialize, while creating space for new frames in the legal imagination.

CONCLUSION

Human beings tell stories in order to comprehend the world around them. As the nation's preeminent legal storyteller, the Supreme Court has employed a host of metaphors to tell its immigration stories. Complete with heroes, villains, and foreboding plotlines, these stories describe *aliens* attacking, *invaders* encroaching, and *floods* overwhelming communities. Behaving like good audience members, most judges, lawyers, and scholars have passively accepted this narrative.

369. Winter, *The Metaphor of Standing*, *supra* note 79, at 1492 (arguing that multiple metaphors create meaning).

370. See Lakoff & Johnson, *supra* note 61, at 200–06 (discussing the limitations of individual metaphoric representations).

371. Cisneros, *supra* note 312, at 592 (discussing the ubiquity of standard narratives).

If they were not obscured by metaphors, the images of immigrants in Supreme Court texts would appear comical, if not utterly tragic. For example, immigrants are not animals that succumb to “*lure[s]*” or are hunted by “*roving patrols*.”³⁷² Capturing migrants is not equivalent to cleaning up a “leaking *hazardous waste dump*,” even if the Supreme Court describes immigration in those terms.³⁷³ Yet metaphor’s power to distort and pass without notice enables these and other dehumanizing representations to evade evaluation.

Because conceptual metaphors live in the imagination, attempts at revision must draw on the imaginative possibilities of language. If we can imagine immigration as an *invasion*, then we can also imagine it as a method for improving economic stability and national welfare. If, through metaphor, immigrants can be viewed as *aliens* and *illegals*, then they can also be viewed as *migrants*, *workers*, and *community members*. By critically evaluating metaphor—the cornerstone of immigration stories—we can approach legal opinions with a sense of agency, thereby rejecting the inevitability of current frames. From there, we might imagine a new immigration discourse for future legal texts—one that emphasizes cooperation over struggle, contribution over battle, and personhood over alienage.

372. *Mich. Dep’t of State Police v. Sitz*, 496 U.S. 444, 471 n.15 (1990) (Stevens, J., dissenting) (emphasis added).

373. *INS v. Lopez-Mendoza*, 468 U.S. 1032, 1046 (1984) (emphasis added).