

REFUGEES WELCOME?*

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INTRODUCTION

Along the southern portion of the Interstate-5 freeway (I-5), which runs from the United States-Mexico border crossing at San Ysidro, California all the way to the border between the United States and Canada, appears a yellow road sign depicting the silhouette of a man, woman, and female child in flight. The sign is captioned with text in black, stating: “CAUTION.”¹ It is the last of ten similar signs erected by the California Department of Transportation (“Caltrans”) along the I-5, both south and north of San Diego, starting in 1990.² While the sign is still displayed along the freeway, what it signifies has evolved in the intervening decades. The sign has become an iconic symbol of different forms of migration, in the United States, and, unexpectedly, in Europe. Tracing the sign’s various meanings, as well as its movement as a cultural artifact across both geographical and political divides, illuminates diverging understandings of human flight.

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1. See Figure 1.

2. Cindy Carcamo, *With Only One Left, Iconic Yellow Road Sign Showing Running Immigrants Now Borders On the Extinct*, Los Angeles Times (July 7, 2017), <http://www.latimes.com/local/california/la-me-immigrants-running-road-sign-20170614-htmlstory.html>; Leslie Berestein, *Highway Safety Sign Becomes Running Story on Immigration*, San Diego Union Tribune (Apr. 10, 2005), legacy.sandiegouniontribune.com/uniontrib/20050410/news_1n10signs.html.



Fig. 1. Jonathan MacIntosh, *Caution Economic Refugees*, licensed under CC BY 2.0.

The sign's original purpose was to alert drivers to pedestrians crossing the freeway. Between 1987 and 1991, at least 227 people were struck by cars and trucks when trying to cross the freeway in order to avoid capture by immigration agents; 127 were killed and many were injured.³ Particularly dangerous were two areas: one by the San Ysidro checkpoint just north of the border, where eighty-seven people had been killed by cars as they tried to run into the United States from Mexico, and the second, an area by Camp Pendleton, south of an interior border checkpoint at San Clemente, where another forty had been killed. Agents at the San Clemente checkpoint seized 75,000 undocumented immigrants in 1990, mostly from the floors or trunks of vehicles.⁴

To avoid the checkpoint at San Clemente, immigrant smugglers would stop vehicles before they reached the checkpoint, tell their passengers to cross eight lanes of freeway and instruct them to continue north along the west side of the freeway, abutting the shoreline of the Pacific Ocean. After the immigrants had skirted the checkpoint, and re-crossed the freeway again, the smugglers would pick them up on the northern side of the checkpoint.

Many immigrants were seen “in the early evening hesitating by the side of the road before dashing, often hand-in-hand, into the oncoming traffic.”⁵ Most accidents occurred between 8 p.m. and midnight. Many immigrants were from rural areas and did not realize the speed of freeway traffic; victims ranged in age from three-

3. Seth Mydans, *One Last Deadly Crossing for Illegal Aliens*, N.Y. Times (Jan. 7, 1991), www.nytimes.com/1991/01/07/us/one-last-deadly-crossing-for-illegal-aliens.html

4. *Id.* While this number seems staggering, a 2005 GAO report indicates that approximately 144,000 vehicles passed daily through the San Clemente checkpoint. U.S. GOV'T ACCT. OFF., BORDER PATROL: AVAILABLE DATA ON INTERIOR CHECKPOINTS SUGGEST DIFFERENCES IN SECTOR PERFORMANCE (2005).

5. Mydans, *supra* note 3.

to eighty-years old. In the words of Captain Ronald Phulps, commander of the Oceanside office of the California Highway Patrol, “They usually cross in groups of people, rather than one or two at a time Often they are holding hands, forming human chains, and the chain gets broken as these people try to cross the highway.”⁶ Phulps added: “Often what you get is a group of people running in different directions at the moment of panic Much like a pinball machine, you don’t know which way an individual may be darting.”⁷

Text signs were initially posted by Caltrans, urging “Caution Watch For People Crossing Road,” but their wordiness made them difficult to decipher.⁸ Caltrans then asked a graphic artist named John Hood to design an image that would, in the blink of an eye, alert drivers. Before Hood began drawing the sign, he and his supervisors met with California Highway Patrol and saw photos of accident scenes. Moved particularly by the deaths that involved families, Hood decided to depict a family that projected a sense of urgency in flight—running both across the freeway and running from something else as well. The family he illustrated was made up of the silhouetted image of a man, followed by a woman grabbing a female child by her wrist, all in desperate flight. Hood, who grew up on the Navajo reservation in New Mexico, drew on his own experiences fighting in Vietnam, where he had seen families run for their lives as villages were attacked, and also remembered stories about his ancestors who had died trying to escape from U.S. soldiers.⁹

The first graphic signs were unveiled in September 1990 at Camp Pendleton. To try to further deter freeway crossers, Caltrans put tall fences in the center divider along the I-5 shortly thereafter. Freeway deaths diminished. But the decrease was not the product of the signs, but of shifting border control strategies.

Beginning in 1994, the federal government embarked on a strategy of attempting to deter illegal migration through a program named “Operation Gatekeeper.” The idea was to stem the tide of illegal migration crossing the border from Mexico into the United States by shifting traffic eastward, where the Border Patrol believed it enjoyed a “strategic advantage” over would-be crossers.¹⁰ By moving migration away from popular suburban migration routes around San Diego and controlling the “main gates” of illegal entry, in the words of then Commissioner of the Immigration and Naturalization Service Doris Meissner, “geography would do the rest,” meaning that crossings would be deterred because of the climate of Arizona and its topography, its mountains and deserts.¹¹

A primary fence was made of welded-together landing mats of corrugated steel, obtained from the Department of Defense and left over from the Vietnam War, erected along stretches of the border starting at the ocean. Other sections were made up of closely spaced concrete poles. I was told on a tour with the Border Patrol in the San Diego sector in 2001 that these poles were spaced as they were, five or six inches

6. *Id.*

7. *Id.*

8. Berestein, *supra* note 2.

9. *Id.*

10. U.S. DEP’T OF JUST. OFF. OF INSPECTOR GEN., BACKGROUND TO THE OFFICE OF THE INSPECTOR GENERAL INVESTIGATION: OPERATION GATEKEEPER: AN INVESTIGATION INTO ALLEGATIONS OF FRAUD AND MISCONDUCT, (1998) (available at oig.justice.gov/special/9807/gkp01.htm).

11. Wayne Cornelius, *Controlling “Unwanted” Immigration: Lessons from the United States: 1993–2004*, 31 J. ETHNIC & MIGRATION STUDIES 775 (2005).

apart, because the area bridging Mexico and the United States south of San Diego is a transnationally protected wetland, so that non-human animals would still be able to cross.¹²

The Caltrans sign also spurs thought about the relationship between human and animal movement. With its instruction to drivers to watch out, via an image of the flattened silhouette of a body in motion, the Caltrans sign evokes the ubiquitous sign found throughout the United States warning drivers of “Deer Crossing.” Considering the Deer Crossing sign, is its purpose pastoral care, a kind of humanitarianism directed at deer to protect them from injury, or is it intended to protect motorists from vehicular accidents?¹³

By creating a wall and militarized zone along the border between the United States and Baja California, Operation Gatekeeper was successful in reducing illegal crossing near San Diego. That this was successful is apparent in government data about immigration arrests. Between 1992 and 2004, the number of attempts to cross in the San Diego/Chula Vista/San Ysidro sectors dramatically decreased. However, crossings were not eliminated, but merely displaced eastward to Arizona.¹⁴ This strategy of shifting border crossings eastward correlated with a brutal escalation in deaths—so that the injunction to let geography do the rest became a gruesome message, not about deterrence, but about death. Data from the Medical Examiner of Pima County (which sits in the center of Arizona’s southern border with Mexico) indicates a striking increase in dead bodies found, with an average of 163 deaths occurring each fiscal year after 1999, in contrast to an average of twelve deaths annually between 1990 and 1999.¹⁵

Pushing crossings east into Arizona created tremendous tensions in that state, and helped foster the political pre-conditions for Arizona’s passing of the “Save our State Initiative,” S.B. 1070, designed to encourage undocumented immigrants to engage in what was named “attrition through enforcement,” or “self-deportation.”¹⁶ This movement of border crossing away from California also rendered the Caltrans sign something of a relic in terms of its intended role. Caltrans has no intention to replace the one remaining sign when it disappears, whenever it is torn down like its

12. See Kiah Collier & Neena Satija, *Scientists Say Trump’s Border Wall Would Devastate Wildlife Habitat*, TEX. TRIBUNE (Mar. 3, 2017), www.texastribune.org/2017/03/03/environmental-impacts-border-wall/ (discussing how existing fencing was constructed through waiving environmental regulations, and its impact on wildlife).

13. Linked to this question is the infamous call to a radio station that went viral from a woman in North Dakota named Donna, who said officials should move the deer crossing signs from high traffic areas to low traffic ones, because deer were being encouraged to cross at the interstate, which was entirely too dangerous (in other words, Donna believed the deer were obeying the sign). Brett French, “*Donna the Deer Lady*” Admits She Was Wrong, *Billings Gazette* (Nov. 14, 2012), billingsgazette.com/lifestyles/recreation/donna-the-deer-lady-admits-she-was-wrong/article_ead9697e-8a1a-5154-9d6f-653416a3273e.html.

14. U.S. LIBR. CONG., CONG. RESEARCH SERV., *BORDER SECURITY: BARRIERS ALONG THE U.S. INTERNATIONAL BORDER*, CRS REPORT FOR CONGRESS: RL33659 (2009) at 14–15.

15. DANIEL MARTINEZ ET AL., *A CONTINUED HUMANITARIAN CRISIS AT THE BORDER: UNDOCUMENTED BORDER CROSSER DEATHS RECORDED BY THE PIMA COUNTY OFFICE OF THE MEDICAL EXAMINER, 1990-2012* at p. 12 (Binational Migration Inst. 2013).

16. Luis F.B. Plascencia, *Attrition through Enforcement and the Elimination of a “Dangerous Class,”* in *LATINO POLITICS AND ARIZONA’S IMMIGRATION LAW SB 1070* at p. 140 (Lisa Magaña & Erik Lee eds., 2013).

fellow signs, through vandalism, traffic accident, or stormy weather.¹⁷ Yet the sign has a lingering afterlife in other spaces, in the process accreting new meanings as an image.

In a 1996 article titled “Official Graffiti of the Everyday,” sociologists Joe Hermer and Alan Hunt examine the spatial aspects of regulatory prohibition, in the form of signs such as road traffic signs, Entry or Exit signs in public buildings, and signs stating No Smoking; they call these pervasive and visible forms of regulation “official graffiti.”¹⁸ Hermer and Hunt argue that traffic signs appear as the “paradigm case” of the ability of such signs to create a public discourse of “prohibition, warning, and advice,” with authority emanating not only from a legal authority exemplified in the road sign, but also from a “standardized and impersonal form” that aspires to be fixed and permanent.¹⁹

Prohibitory signs—such as a sign stating “No Smoking”—are, according to Hermer and Hunt, never simply “iconic injunctions.”²⁰ Rather, they are “part of a much larger series of articulations that seek to direct the behavior of people in a wide variety of social situations and spaces.”²¹ Thus, the sign is not just about behavior at the site of the sign. Moreover, the behavior being shaped by the sign is not only controlled by the sign. And here we should note that some of the Caltrans signs were labeled with words both in English and Spanish, including one placed on the shoulder of the northbound I-5 by the San Clemente border stop.²²



Fig. 2. Sean Biehle, *Prohibido*, licensed under CC BY 2.0.

¹⁷ Carcamo, *supra* note 2.

¹⁸ Joe Hermer & Alan Hunt, *Official Graffiti of the Everyday*, 30 L. & SOC. REV. 455, 463–64 (1996).

¹⁹ *Id.* at 463.

²⁰ *Id.*

²¹ *Id.*

²² *See* Figure 2.

The two words on the sign: “CAUTION” topping the figures on the yellow background, and “PROHIBIDO” added below with black text on a white background, do not mean the same thing. “Prohibido” does not mean caution; it means, variously: prohibited, forbidden, taboo, barred, restricted, and no.²³ “Caution” is clearly directed to the motorist; “prohibido” is plainly directed to the undocumented immigrant. The motorist is presumptively English speaking; the undocumented immigrant is presumptively Spanish speaking, even while Berestein and Cervantes report that 370,000 residents of San Diego County in the early 1990s identified themselves as Spanish speakers.²⁴ Although two parties are addressed, this is not a symmetrical relationship.

As Hermer and Hunt point out, regulatory signs invoke a “common underlying discursive framework.”²⁵ This shared framework is constructed through three elements: an “implied reader,” an “implied regulatory object,” and an “implied author who exercises regulatory authority.”²⁶ The bilingual Caltrans sign suggests two implied readers: the driver, and the undocumented immigrant. The driver, who is cautioned, and the undocumented immigrant, who is prohibited. The mode of address directed to the driver and to the undocumented immigrant diverge. As a mode of articulation, a prohibition differs from a caution, which we could consider a warning or an alert. Prohibition orders the reader to cease and desist; a warning or an alert allows the reader to exercise his judgment in proceeding with a particular activity.

The implied regulatory object seems two-fold: both driving conduct and the crossing of the freeway by pedestrians. Yet the implied regulatory object is actually three-fold. Also regulated here is the undocumented immigrant herself. What the sign seeks to regulate is not just the conduct of these bodies; also governed is the presence of the bodies themselves. The sign does not just tell undocumented immigrants that running across the freeway is forbidden; the sign also communicates that their own presence is “prohibido”—forbidden—as well. We could consider the fact that the original purpose for these signs (decreasing freeway deaths of immigrants running across the I-5) has been rendered moot by Operation Gatekeeper, but the sign is still posted.²⁷ As a result, what does the freeway driver learn through seeing this sign? Many drivers assume that it means that “illegal immigrants” are not just a traffic hazard, but a generic danger against which they are being cautioned.

The implied author exercising regulatory authority here, of course, is the government, which, through this sign, is simultaneously telling drivers to drive cautiously, and engaging in pastoral humanitarian care, trying to ensure that humans are not killed. Yet the government is also responsible for the policing of the border, which creates the phenomenon of illegal migration in the first place.²⁸

23. *Prohibido*, WORD REFERENCE ENGLISH-SPANISH DICTIONARY (2017) (available at www.wordreference.com/es/en/translation.asp?spen=prohibido).

24. Leslie Berestein & Danielle Cervantes, *Languages Fill the Melting Pot*, SAN DIEGO UNION TRIBUNE (Sept. 24, 2008), legacy.sandiegouniontribune.com/news/metro/20080924-9999-1m24spanish.html.

25. Hermer & Hunt, *supra* note 18, at 466.

26. *Id.*

27. The one remaining sign is posted on the northbound I-5 near the San Ysidro Port of Entry. According to Caltrans, there are occasional pedestrian crossings at the above locations, “primarily by transients.” E-mail from Cathryne Bruce-Johnson to Abigail Stepnitz (Apr. 28 2017) (on file with author).

28. One might note that attributing responsibility to “the government” for both patrolling

Both drivers and immigrants are being told that illegal immigrants are prohibited; the so-called “illegal alien” is, in the words of Mae Ngai, an impossible subject, a subject who is not supposed to exist.²⁹ Rather than understanding the “illegal alien” to be a creation of shifting laws which can make and unmake illegal immigration, the “illegal alien” is believed to have committed a personal sin through her presence. This is a sin which can only be expiated through her self-deportation: she can only make the wrong go away by removing herself from the United States, by ceasing to exist.

I. ILLEGAL IMMIGRATION

In the U.S. context, the sign, with its image of immigrants in flight, along with the text “CAUTION,” has been deployed as a symbol of undocumented immigrants by those who oppose illegal immigration, as well as by those who are sympathetic to undocumented immigrants.

Here are three examples created by those opposing illegal immigration, each of which alters the sign in increasingly complex ways. The first refiguring of the sign, not pictured here, simply adds more text. It retains the yellow background with the heading “CAUTION” over the figures of the trio running, with the only change in the form of additional text at the bottom of the sign stating: “UNDOCUMENTED DEMOCRATS.” The term “undocumented Democrats” is one that former Republican presidential candidate Ted Cruz repopularized in 2016, as the “politically correct” term for “illegal aliens.”³⁰ Invoked here by the term is the suggestion of possible voter fraud by noncitizens ineligible to vote; in addition, the sign intimates the idea of collusion between the Democratic Party, eager to quickly legalize a voting base, and immigrants seeking legal status.

The second reworking of the sign pairs a diamond shaped rendition of the original sign under the caption “Before Amnesty” with a new sign to its right, illustrating the running immigrants multiplied tenfold under the caption “After the Amnesty.”³¹ Changing the rectangular shape of the original sign to that of a diamond could be read as suggesting that the viewer is to be warned: the U.S. Federal Highway Administration of the Department of Transportation mandates that warning signs be

nation-state borders and engaging in pastoral care is too simple a story. This is also a story about federalism, with its overlapping systems of state and federal government. The California Department of Transportation, which commissioned and erected the signs, is a state agency. The admission, exclusion, and deportation of noncitizens is today considered a federal power, although until the latter part of the 19th century, this immigration power was also exercised by states. While today, California has been articulated by many who seek to defend immigrants living in California against the policies of President Donald Trump as a “sanctuary state,” during the era of the Caltrans sign, California was a site of intense anti-immigrant political activity, including by state government. This activity included the attempt of then-Governor Pete Wilson to litigate against what he called an “invasion” and culminated in the passage of the ballot initiative Proposition 187, which sought to deny public education, health, and social services to undocumented immigrants throughout the state. Douglas Massey, *The Racialization of Latinos in the United States*, in *THE OXFORD HANDBOOK OF ETHNICITY, CRIME, AND IMMIGRATION* 21–40 (Sandra M. Bucerius & Michael Tonrey eds., 2014).

29. MAE NGAI, *IMPOSSIBLE SUBJECTS: ILLEGAL ALIENS AND THE MAKING OF MODERN AMERICA* (Princeton Univ. Press 2004).

30. Danielle Kurtzleben, “*Undocumented Democrats*” Is Ted Cruz’s “*New Politically Correct*” Term, NPR (Dec. 17, 2015), www.npr.org/2015/12/17/460149169/undocumented-democrats-is-ted-cruzs-new-politically-correct-term.

31. See Figure 3.

diamond shaped, with black writing on a yellow background, with only limited exceptions.³² Here, the background of the sign appears not yellow, but orange. Orange is the color of U.S. road signs associated with temporary traffic control, presenting the notion that this movement is a temporary activity that should soon end.

The reformulated image appears intended to warn of the dangers of “amnesty,” such as was created through the Immigration Reform and Control Act in 1986, which legalized approximately 2.6 million undocumented immigrants.



Fig. 3. Image downloaded from <http://the-american-catholic.com/2014/01/31/all-you-need-to-know-about-the-leaders-of-the-house-gops-embrace-of-amnesty/> in January 2017.

The Immigration Reform and Control Act had sought to end illegal immigration through both destroying the “magnet” of jobs by newly requiring work authorization (via a program called employer sanctions), and through legalizing those who were undocumented (via amnesty). At the time, the term amnesty did not have the negative valence it has today. In fact, in 1984, then President Ronald Reagan expressed his support for “amnesty for those who have put down roots and lived here, even though some time back they may have entered illegally.”³³ But over time, amnesty has for many come to represent an inexplicable forgiveness of bad behavior, an inappropriate condoning of moral culpability.³⁴ Many argue, in addition, that any amnesty cannot end illegal immigration but actually incentivizes the movement of

32. U.S. DEP’T TRANS. FED. HIGHWAY ADMIN., MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES FOR STREETS AND HIGHWAYS (2009) (available at mutcd.fhwa.dot.gov/pdfs/2009r1r2/mutcd2009r1r2edition.pdf).

33. Muneer Ahmad, *Beyond Earned Citizenship*, 52 HARV. CIVIL RIGHTS-CIVIL LIBERTIES L. REV. 257, 268 (2017).

34. *Id.* at 271–72.

those who hope for such a program in the future. The suggestion we see in the reworking of the Caltrans sign is that any future amnesty, such as was most recently contemplated by the U.S. Senate in 2006 and 2013, will lead to a massive influx of “illegal immigrants” entering the country.

The multiplying of the figure of the running man, woman, and child suggests an out-of-control reproduction, echoing nativist concerns about immigrant birth rates, as well as representing a stampeding across the border in a dehumanized swarm of insects, replicating zombies, or a threatening horde. We could think here of the language used in *Chae Chan Ping v. United States*, the first Supreme Court decision upholding the power of Congress to exclude immigrants from the United States, which evoked Chinese immigrants as “vast hordes” engaged in “foreign aggression and encroachment”: “To preserve its independence, and give security against foreign aggression and encroachment, is the highest duty of every nation . . . It matters not in what form such aggression and encroachment come, whether from the foreign nation acting in its national character, or from vast hordes of its people crowding in upon us.”³⁵

Note also the “¡Aviso!” replacing “Caution” at the top of the sign, suggesting two implied readers of the sign. “Aviso” can be translated as “warning,” or “caution.”³⁶ At the same time, “aviso” can also refer to a notice or advertisement. Thus “¡Aviso!” can be doubly read as both warning of a danger, and as advertising a benefit, presumably to those who would profit from an amnesty and who, when notified of its promise, would run across the border.

The third alteration of the original sign inveighs against what it labels “Obam-igration,” in a sign with a black background, pairing the running family silhouetted in white, over large yellow text announcing “Obam-igration,” with small white text at the bottom stating “You Don’t Need No Stinkin’ Papers!”³⁷ The O in “Obam-igration” is what was known as the signature “O” logo of President Barack Obama’s campaign, which appeared in presidential campaign material in red, blue and white, and was designed to invoke a rising sun. The term “Obam-igration” is clearly intended to be a reference to two programs announced by President Obama in 2012 and 2014, called Deferred Action for Childhood Arrivals (DACA) as well as Deferred Action for Parents of Americans (DAPA). These are programs that do not create legal status, but provide a temporary and revocable reprieve from deportation, as well as work authorization pursuant to preexisting regulation. While most legal scholars agree that these programs were created by the executive branch as a form of constitutionally permissible prosecutorial discretion, members of the public perceived DACA and DAPA as monarchical, unconstitutional law making—and as actually legalizing undocumented immigrants, which these programs did not do.³⁸

35. *Chae Chan Ping v. United States*, 130 U.S. 581, 606 (1889).

36. *Aviso*, WORD REFERENCE ENGLISH-SPANISH DICTIONARY (2017) (available at www.wordreference.com/es/en/translation.asp?spen=aviso).

37. See Figure 4.

38. Leti Volpp, *Immigrants Outside the Law: President Obama, Discretionary Executive Power, and Regime Change*, 3 CRITICAL ANALYSIS OF L. 385, 385 (2016).

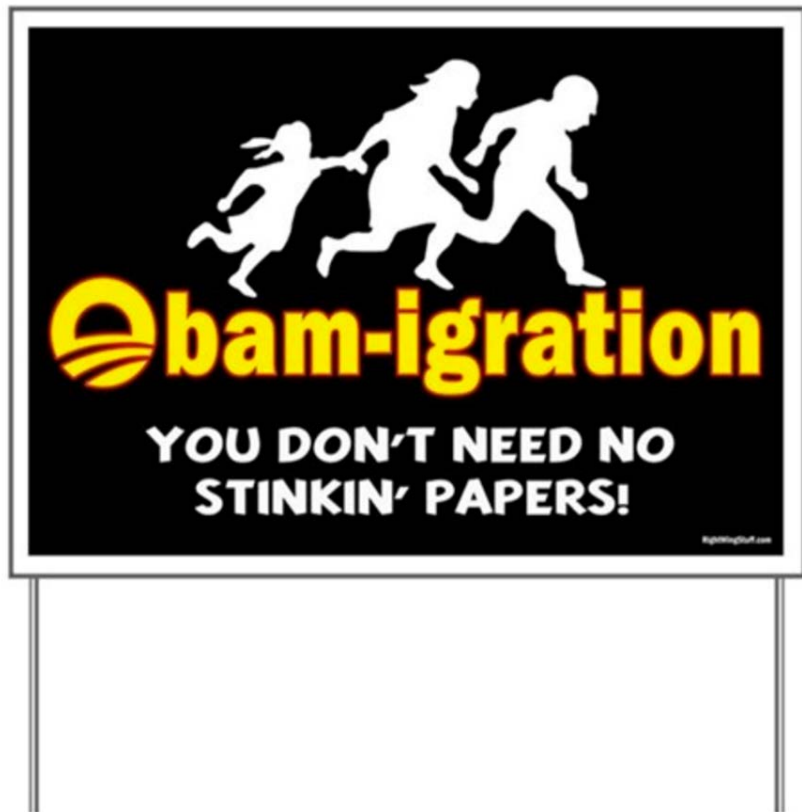


Fig. 4 Image downloaded from <http://ronbosoldier.blogspot.com/2014/07/illegal-alien-protest-signs.html> in January, 2017.

The idea that “you don’t need no stinkin’ papers” is a cultural reference to the 1948 film *The Treasure of the Sierra Madre* and the line “Badges? We don’t need no stinkin’ badges!”³⁹ This line is uttered in the film by a Mexican bandit leader trying to convince American gold prospectors in Mexico that the bandits are in fact Mexican police.⁴⁰ Here, “You don’t need no stinkin’ papers” flips the “we” to a “you,” a you who is hailed and who is presumptively both Mexican and an “illegal” immigrant who needs no papers, thanks to “Obam-igration.”

The “papers” that one does not need refers to the idea of having the correct papers, equating status with papers.⁴¹ Not having papers renders one “undocumented,” the term used in progressive American discourse for being without lawful immigration status. How then to read the phrase “You don’t need no stinkin’ papers”? The double negative, as in the film quote, simultaneously suggests “You do need papers!” while

39. Robert Deis, “*We Don’t Need No Stinking Badges!*” (*Or Badgers!*), QUOTE/COUNTERQUOTE.COM (Feb. 8, 2017), <http://www.quotecounterquote.com/2010/10/we-dont-need-no-stinking-badges-or.html>.

40. *Id.*

41. SUSAN BIBLER COUTIN, *LEGALIZING MOVES: SALVADORAN IMMIGRANTS’ STRUGGLE FOR LEGAL RESIDENCY* 49 (Univ. Mich. Press 2003).

also asserting that “Obam-igration” means “You don’t need papers!” The latter implies that the person on DACA or DAPA is granted the ability to live freely in the United States without going through appropriate channels, in a sense rebuking the rule of law. DACA or DAPA do in fact involve papers; the new term “DACAmended” denotes the person who is a beneficiary of the DACA program and who is in possession of a federally-issued employment authorization card. Interestingly, the family in Figure 4 is running in the opposite direction of the family in the original traffic sign, communicating that “Obam-igration” has upended and turned around the normal course of things.

The road sign has also been redeployed in ways that ask the viewer to question the linkage of the image with a condemnation of “illegal immigrants.” Following are four signs which appear to use the original sign in the support of undocumented immigrant communities. Note that the first three of these signs reformulate the identity of the three figures running, forcing a reconsideration of the identity of the man, woman, and child in the frame, unlike in the anti-immigrant images, which take that identity for granted and leave it fixed.

One sign retains the yellow background, the heading CAUTION and the three figures of man, woman and child running towards the left, but adds robes and halos to each of the figures and removes the flying pigtails from the child, suggesting the child is gendered male.⁴² The mother and child are barefoot; the father wears on his visible foot a sandal. This is a rendering of Joseph, Mary and the baby Jesus, seeking sanctuary. Here, the viewer of the sign is told that anonymous “illegal immigrants” in flight may in fact be the Holy Family seeking refuge.



Fig. 5. Jerise, No Room at the Inn, <https://www.etsy.com/shop/jerise>, by permission.

42. See Figure 5.

The next image places New England 17th century Pilgrim clothing on the running man and woman, and adds the text “Illegal Immigrants” under the figures to underline what these figures should be understood to be.⁴³ The depiction positions Pilgrims as “illegal immigrants,” suggesting that the valorized “founding fathers” entered the territory that became the United States without permission, so that the Pilgrims and today’s undocumented immigrant might share a similar moral or legal stature. This consideration might reduce the moral or legal status of the Pilgrims, or elevate that of today’s undocumented immigrant. The image also questions the legitimacy of the United States as a nation-state formation, suggesting the early settlers did not receive permission from already existing sovereign nations to enter their territory. Such a lack of legitimacy has been masked by the casting of this state as a nation of immigrants rather than as a settler colonial state.⁴⁴ That the girl in the image wears contemporary clothing, unlike her parents, suggests that the Pilgrims spawned an unjustly founded political community which endures to this day: both the movement of communities and the reproduction of communities are essential to settler colonialism.⁴⁵ In contrast to the previous sign, which asks the viewer to think about why immigrants might flee, this sign provokes the viewer to consider how territorial borders are constructed and patrolled, including through nation-state founding.



43. See Figure 6.

44. Leti Volpp, *The Indigenous as Alien*, 5 U.C. IRVINE L. REV. 239, 320 (2015).

45. LORENZO VERACINI, *SETTLER COLONIALISM: A THEORETICAL OVERVIEW* at p. vii (Palgrave Macmillan ed., 2010).

Fig. 6. Klee Benally, *Caution: Illegal Pilgrims—Indigenous Action Media*, by permission.

The third image garbs all three figures in graduation caps and gowns, each holding a diploma.⁴⁶ The young child is remade as a slightly smaller peer; all three are no longer desperately fleeing but move at a more upright angle through space. This image recasts the three figures as Dreamers, named after the federal DREAM Act, which would create conditional residency for young immigrants who arrived in the United States as children. The DREAM Act, which has yet to pass, would convert this conditional residency to permanent residence upon two years of college or university, graduation from college or university, or two years of military service without a dishonorable discharge.⁴⁷



Fig. 7. Kevork Djansezian, *Immigration Activists Demonstrate in Los Angeles*, Getty Images.

In the language of advocates or politicians, these young people are here “through no fault of their own” (which arguably implicitly blames their parents), and they are depicted as possessing exemplary human capital, as reflected in the image’s graduation attire. They are thus positioned as the “cream” of undocumented immigrants. This is a narrative of hierarchy of value among undocumented immigrants, resisted by many undocumented youth, some of whom have rejected the term Dreamer in favor of the more general category “undocumented” for this very

46. See Figure 7.

47. Press Release, American Immigration Council, *The DREAM Act: Creating Opportunities for Immigrant Students and Supporting the U.S. Economy* (July 13, 2010) (available at americanimmigrationcouncil.org/research/dream-act).

reason.⁴⁸ Because of the Supreme Court case *Plyler v. Doe*,⁴⁹ allowing undocumented children (as “innocent children” otherwise facing life as a “subclass of illiterates”)⁵⁰ to attend public elementary and secondary school, these individuals are assimilated into an American identity as children.⁵¹ They often face a subsequent shock of “learning to be illegal,” in Roberto Gonzalez’s words, when they apply for a driver’s license or for financial aid for college.⁵² At the very moment when they are transitioning to adulthood, a stage of life when one in theory gains greater autonomy, they are transitioning to an identity where this autonomy is thwarted.

The image of Dreamers, not fleeing to the left, but moving with greater self-control to the right side of the sign at the moment of graduation, diplomas in hand, is directionally a mirror-image of the Caltrans sign. It suggests that the undocumented immigrant of the original traffic sign is a Dreamer—that perhaps the young girl being yanked by her mother to safety in California in the 90s has now grown up to graduate from college; or perhaps that all undocumented immigrants are Dreamers, imagining a better future. The image, particularly with its heading of “CAUTION” may also be read to signal that Dreamers are not a quiescent population but an emerging political force: watch out!

The last image is a more ambiguous sign in terms of authorial intent: at first glance, it is unclear if the sign’s intent was to support or undermine undocumented immigrants.⁵³ This is a photo of a protest against H.R. 4437, the Border Protection, Anti-terrorism and Illegal Immigration Control Act of 2005, which would have, among other changes, criminalized unlawful presence.⁵⁴ Unlawful presence refers to being present in the United States after having entered without inspection, or remaining present after permission to enter has expired (in other words, overstaying a visa). Unlawful presence is currently a civil, not criminal offense: being caught renders a noncitizen deportable, but not subject to criminal penalties.⁵⁵ H.R. 4437 was the spur to the mega marches by immigrants in 2006, involving millions of protestors, considered by some observers to be the most significant event of U.S. political activism since the 1960s.⁵⁶

48. Leti Volpp, *Civility and the Undocumented Alien*, in *CIVILITY, LEGALITY, AND JUSTICE IN AMERICA* 69, 91 (Austin Sarat, ed. 2014).

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

50. *Id.* at 230.

51. Volpp, *supra* note 48, at 89.

52. Roberto Gonzalez, *Learning to Be Illegal: Undocumented Youth and Shifting Legal Contexts in the Transition to Adulthood*, 76 *AM. SOCIOLOGICAL REV.* 602, 608 (2011).

53. *See* Figure 8.

54. Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005, H.R. 4437, 109th Cong. (2005).

55. The only immigration offenses which are criminal offenses are illegal entry, illegal reentry, manufacture of false documents, and immigrant smuggling.

56. Irene Bloemraad, Kim Voss & Taeku Lee, *The Protests of 2006: What Were They, How Do We Understand Them, Where Do We Go?*, in *RALLYING FOR IMMIGRANT RIGHTS: THE FIGHT FOR INCLUSION IN 21ST CENTURY AMERICA* (Kim Voss & Irene Bloemraad eds., 2011).



Fig. 8. Bob Morris, *The Right Way*, licensed under CC BY 2.0.

One of these marches is depicted here; very interestingly, the image appears in an appeal to allow immigrants to migrate legally (to become legal residents through an officially sanctioned regularization program, or through an “amnesty”) rather than illegally. The handmade sign depicts the original three figures running with the caption “The Wrong Way” above the same three figures walking at a measured pace with the caption “The Right Way.” Two facets of this sign make it ambiguous. First, it does not reformulate the image of the three figures (e.g. as the Holy Family, Dreamers, Pilgrims), so that, as with the anti-immigrant signs, it appears to be referencing “illegal immigrants.” Second, the sign relies upon a concept frequently invoked by opponents of illegal immigration: that there is a “right way” to enter the United States, which is to opt for legal immigration routes (and to go to the back of the line of those waiting for approval of lawful admission). This sign can be juxtaposed with Figure 3, which also references a before and after a legalization program, or amnesty. Both signs represent a “Before” that appears similar but starkly diverge as to what “After” would look like—an uncontrolled mass influx versus an orderly, calm movement. This orderly, calm movement suggests, in the posture of the figures, the self-possessed ideal of the upright citizen, in contrast to those whose bodies are pressed through the forces that spurred their desperate flight.⁵⁷ The juxtaposition also suggests the iconic picture of evolutionary progression from the ape to the upright human, correlating lawfulness with full humanity.⁵⁸

Note that, regardless of whether any of these seven signs project a favorable or negative vision of undocumented immigration, they all are very much about “illegal

57. Sander Gilman, “Stand Up Straight:” *Notes Toward a History of Posture*, 35 J. MED. HUMANITIES 57 (2014). Thank you to Beth Piatote for suggesting the idea of the upright citizen.

58. Thank you to Josh Williams for suggesting the idea of the March of Progress, from ape to man.

immigration”—that is their clear reference. A photo of the original traffic sign hangs in the Smithsonian Institution’s National Museum of American History, “one floor down from the original 1813 Star Spangled Banner, the flag that inspired the national anthem.”⁵⁹ According to curator Peter Liebhold, “It transcends its local history . . . Its importance is as a metaphor for undocumented immigration into the United States.”⁶⁰

II. REFUGEES WELCOME

I discovered that this sign had migrated transnationally, when examining media images of Germany in August 2015, which accompanied the stunning decision of Chancellor Angela Merkel to take in refugees in what some media termed the “worst refugee crisis” since World War Two. I note here the preference of many not to use the term “crisis” to describe this mass movement of people. Some argue that we ought to be wary in that states use the term “crisis” to expand sovereign claims and powers.⁶¹ Others suggest that we are merely seeing an intensification of what was already occurring but was previously restricted to certain sites which were invisible to larger publics.⁶² Still others assert that, while this is clearly a period of momentous transformations in and around Europe, the term “migration crisis” facilitates the impression that Europe is confronting a crisis that originates elsewhere.⁶³ This positions Europe as a victim of the incapacity of others to adequately govern themselves, and as a kind of innocent bystander not implicated in the causes of conflicts that have led to this mass movement.⁶⁴

In examining online the moving initial reaction of many—from the creation of Flüchtlinge Willkommen, a kind of Airbnb linking up refugees with housing, to the greeting of refugees arriving in train stations with applause, food, toys, and clothes, I was shocked to see the image of the silhouette of a man, woman, and female child holding hands while running—the original image of the Caltrans sign— on banners welcoming refugees in football stadiums in Germany.⁶⁵ The silhouetted figures appeared identical, but instead of “CAUTION” the banners featured text stating “REFUGEES WELCOME.”

59. Roy Cook, *John Hood: Dine’ Artist, USMC Combat Veteran’s Art is in Smithsonian*, AMERICAN INDIAN SOURCE, www.americanindiansource.com/hoodart.html.

60. *Id.*

61. Alison Mountz & Nancy Hiemstra, *Chaos and Crisis: Dissecting the Spatiotemporal Logics of Contemporary Migration and State Practices* 104 ANNALS OF THE ASS’N OF AM. GEOGRAPHERS 382 (2013).

62. Heath Cabot, *Crisis and Continuity: A Critical Look at the ‘European Refugee Crisis.’* ALLEGRA LAB (Nov. 10, 2015), allegralaboratory.net/crisis-and-continuity-a-critical-look-at-the-european-refugee-crisis.

63. Nicholas De Genova et al., *Europe/Crisis: New Keywords of “the Crisis” in and of “Europe,”* NEW FUTURES ONLINE, NEARFUTURESONLINE.ORG/EUROPECRISIS-NEW-KEYWORDS-OF-CRISIS-IN-AND-OF-EUROPE-PART-4/.

64. *Id.*

65. See Figure 9. I have tried to trace when the image first appeared with the slogan “Refugees Welcome.” According to Google Images, the earliest appearance of image plus text dates to 2007, when one can find the image appearing on t-shirts for sale by antifascist groups in Europe.



Fig. 9. Wolfgang Zink. “Refugees welcome”—Fans und Verein engagieren sich gemeinsam bei der Betreuung von Flüchtlingen, Fürth, Germany, Aug. 28, 2015, by permission.

That month Germany stated that all Syrian asylum seekers would be welcome to remain. By early September, 2015, Chancellor Merkel announced the country would take in over 800,000 refugees (the number of refugees Germany ultimately admitted in 2015 topped 1.1 million).⁶⁶ On September 10, 2015, in contrast, President Obama announced that the United States would take in “at least 10,000” Syrian refugees in the following year.⁶⁷ That goal was finally met in August, 2016.⁶⁸ In total, in the five years since the war in Syria began in 2011, 18,000 Syrian refugees, of the more than four million who have fled their country, have been resettled in the United States. One could note that the population of Germany is 81 million, meaning that Germany took in over one percent of its population as refugees; the population of the United States is 321 million.⁶⁹

Germany appeared at that point, from what an American observer could discern, mostly in a state of euphoric welcome and banners with Refugees Welcome were a frequent sight.

66. Cynthia Kroet, *Germany: 1.1 Million Refugee Arrivals in 2015*, Politico (Jan. 6, 2016), <https://www.politico.eu/article/germany-1-1-million-refugee-arrivals-in-2015/>.

67. Gardiner Harris, David E. Sanger and David M. Herszenhorn, *Obama Increases Number of Syrian Refugees for U.S. Resettlement to 10,000*, N.Y. TIMES (Sept. 10, 2015), <https://www.nytimes.com/2015/09/11/world/middleeast/obama-directs-administration-to-accept-10000-syrian-refugees.html>.

68. Haeyoun Park & Rudy Omri, *U.S. Reaches Goal of Admitting 10,000 Syrian Refugees: Here's Where They Went*, N.Y. TIMES (Aug. 31, 2016), nytimes.com/interactive/2016/08/30/us/syrian-refugees-in-the-united-states.html.

69. One should also note here that more than two million were resettled in Turkey, more than one million in Lebanon, where Syrians make up roughly a third of the total population, more than half a million in Jordan, and several hundreds of thousands in Iraq and Egypt. De Genova et al., *supra* note 62.



Fig. 10. *Refugees Welcome, Regensburg, Germany, in front of the Dom*, Shutterstock

The conjoining of the image with “REFUGEES WELCOME” and, in smaller font, “BRING YOUR FAMILIES” also frequently appeared, sometimes with two female and two male figures together flanking two children, perhaps to circumvent the implicit heteronormativity of the initial Caltrans sign.⁷⁰ In this version of the image, the leading figures are female, pulling a female and male child, followed by the two men, in the reverse gender order of the Caltrans sign with the father leading the family unit. We could note here the vision of the nuclear, heterosexual family as the ideal unit of refugee welcome, against the concern that most of those entering Europe were single young men; here we have a gender-balanced large family grouping being welcomed.⁷¹ Or perhaps the additional female and male figures are German supporters assisting those who are fleeing; the new female figure wears pants and has hair whose stiffness suggests pulled-back dreads; the new male figure sports a hipster “man bun.”

The warm German response to the refugee crisis has been colloquially known as *Willkommenskultur*, or “welcome culture,” reflecting the sign “Refugees Welcome.”⁷² The response stands in stark contrast to that of the United States.

70. See Figure 10.

71. For a discussion of the family as political subject in immigration debates in the United States, see AMALIA PALLARES, *FAMILY ACTIVISM: IMMIGRANT STRUGGLE AND THE POLITICS OF NONCITIZENSHIP* (Rutgers Univ. Press, 2015).

72. *Merkel für robuste Willkommenskultur*, DEUTSCHE WELLE (Jan. 30, 2016),

I found a transnational migration of the sign in its welcoming German signification back to the United States, suggesting that the visual image has refracted back across the Atlantic in a form of critique of the United States' unwelcoming response to refugees. This is visible in two signs, the first accompanying an article about a rally supporting the welcome of refugees September 11, 2015 in Idaho. The image depicts the silhouette of the running family in red with the words "REFUGEES WELCOME" appearing against a white silhouette of a map of the continental United States, suggesting that refugees are or should be granted safe haven by the United States, and should be welcomed throughout its territory.⁷³



Fig. 11. Jay Kelly, *Refugees Welcome*, https://www.etsy.com/listing/243422412/long-sleeve-refugees-welcome-screen?ref=shop_home_active_62, by permission.

The second image, not pictured here, was of a banner at a rally for solidarity with Syrian refugees held in Union Square in New York City on September 12, 2015. It depicted the running family, bracketed by the curving text "REFUGEES WELCOME" in black against a red background.

I take the sudden appearance of these two signs in September, 2015 to suggest the image of the running family along with the text, "Refugees Welcome," to be specifically associated in the United States with the Syrian refugee crisis. Recall, President Obama had announced on September 10, 2015 his plan to admit 10,000 Syrian refugees. Heath Cabot has argued that in Europe the figure of the Syrian refugee has been rendered the "real refugee"—the life worthy of protecting, and the death worthy of grieving. This is shaped by international politics (fleeing ISIS), shaped by class (Syrian refugees are often lauded for their education level), shaped by race

dw.com/de/merkel-f%C3%BCr-robuste-willkommenskultur/a-19013494.

73. See Figure 11, depicting same image as appeared in *Refugee Welcome Rally at ID Statehouse Saturday*, <http://www.publicnewsservice.org/2015-09-11/peace/refugee-welcome-rally-at-id-statehouse-saturday/a48065-1>,

(Syrians are framed as whiter than, for example, Afghans or Iraqis) and shaped by vulnerability and victimhood.⁷⁴ We must think here of the tremendous impact on public consciousness of the photo of the child Alan Kurdi who drowned in the Mediterranean on September 2, 2015.

Despite the outcry following the spectacle of Alan Kurdi's body, after the November 13, 2015 Paris attacks, the governors of thirty-one U.S. states said they would not accept Syrian refugees.⁷⁵ The attempt of governors in Texas and Indiana (Indiana's then-governor was Mike Pence, now Vice President of the United States) to refuse these refugees was rejected by U.S. courts.⁷⁶ On the federal level, the U.S. House of Representatives passed legislation in December, 2015 to slow the (already glacially paced) entry of Syrian refugees into the United States, but this bill did not make it through the Senate, which was more preoccupied with tightening the visa waiver program after the San Bernardino attacks on December 2, 2015.⁷⁷ Following these attacks then presidential candidate Donald Trump called for a ban on all Muslims seeking to enter the United States (he did later clarify that this might not include Muslims seeking to attend sporting events or U.S. citizens).⁷⁸ After Omar Mateen murdered forty-nine people in a gay club in Orlando, Florida on June 12, 2016, President Trump rearticulated his Muslim ban as a suspension of immigration from areas of the world where there is a proven history of terrorism; this plan then transmuted to one calling for "extreme vetting."⁷⁹ These statements constituted the precursor to his Executive Orders of January 27, 2017 and March 6, 2017, both titled "Protecting the Nation from Foreign Terrorist Entry," and his subsequent Presidential Proclamation of September 24, 2017, creating a travel ban on Muslims, a ban subject to extensive litigation in the courts.⁸⁰

74. Cabot, *supra* note 62.

75. Matt Vespa, *31 States: North Dakota Joins Majority Of Governors Refusing To Relocate Syrian Refugees, Cites Security Concerns*, TOWNHALL (Nov. 18, 2015), townhall.com/tipsheet/mattvespa/2015/11/18/31-states-north-dakota-joins-majority-of-governors-refusing-to-relocate-syrian-refugees-cites-security-concerns-n2082522.

76. Rick Callahan, *Appeals Court Upholds Order Against Pence on Syrian refugees*, ASSOC. PRESS (Oct. 3, 2016), bigstory.ap.org/article/5cfc1919af1049718a1a7266c674236e/appeals-court-upholds-order-against-pence-syrian-refugees.

77. The Visa Waiver Program is the product of a reciprocal arrangement the United States has with thirty-eight other countries and allows citizens of participating countries to travel as tourists for ninety days or less without obtaining a visa. The Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015, signed into law on December 18, 2015, established new eligibility requirements for travel under the visa waiver program: dual citizens of Iran, Iraq, Sudan or Syria, or those who have traveled to or been present in Iran, Iraq, Sudan or Syria on or after March 2011, with limited exceptions, are no longer able to travel or be admitted to the United States under the visa waiver program. U.S. DEP'T OF HOMELAND SEC. CUSTOMS & BORDER PROT., VISA WAIVER PROGRAM UPDATE 2017: "WHAT ARE THE UPDATES TO THE VISA WAIVER PROGRAM BASED ON THE VWP IMPROVEMENT AND TERRORIST TRAVEL PREVENTION ACT OF 2015?" (2017).

78. See David Sherfinski, *Now for the Fine Print: Trump Reveals Exceptions to Muslim Ban*, WASH. TIMES (Dec. 8, 2015), www.washingtontimes.com/news/2015/dec/8/donald-trump-exceptions-muslim-ban-sporting-events/; Caitlin Cruz, *Trump Camp Contradicts Itself On Whether Muslim Ban Covers US Citizens*, TPM.COM (Dec. 8, 2015), talkingpointsmemo.com/dc/does-trumps-muslim-ban-include-citizens/.

79. Dan Roberts, *Trump Proposes "Extreme Vetting" for Immigrants Who May Support ISIS*, GUARDIAN (Aug. 16, 2016), www.theguardian.com/us-news/2016/aug/15/donald-trump-immigration-test-isis-islamic-state-foreign-policy.

80. Leti Volpp, *Passports in the Time of Trump*, 25 SYMPLOKE 155 (2017).

Meanwhile, in Germany, two events in 2015 flipped Refugees Welcome to Refugees Unwelcome: the Paris attacks on November 13, 2015, and the Silvesternacht (New Year's Eve) attacks in Cologne which led to hundreds of women filing complaints of sexual assault.⁸¹ The facts remain murky, but reporting indicates that some of the persons tied to the New Year's Eve assaults were asylum seekers. Most persons involved are believed to have been, in the German term, people "with a migration background," but not recent refugees, rather long term residents primarily from North Africa, some with outstanding deportation orders, who were already known to engage in petty theft and drug dealing.⁸²

The response to these attacks conflated the refugee with the rapist. What follows are two banners from demonstrations organized by the group *Patriotische Europäer gegen die Islamisierung des Abendlandes* (PEGIDA), a far-right organization founded in 2014 which has been expanding rapidly.⁸³ Both banners reformulate the image of the running immigrants in ways which underline that, in the German context, the family members in flight are envisioned as refugees to be welcomed, unlike in the U.S. context, where they are usually presumed to be "illegal immigrants" spurring caution. The text in the PEGIDA banners plays upon the phrase "Refugees Welcome," and both banners alter the figures, suggesting a desire to counter the presumption of a sympathetic response to the original image of the family in flight, as well as an attempt to inform the viewer as to the true identity of the refugee. The PEGIDA images reformulate the three persons unified in common flight, breaking the family unit into figures engaged in antagonistic pursuit.

The first banner, displayed at a demonstration in Leipzig in January, 2016, rescripts the running immigrants, man, woman, and child as three men silhouetted in red, each holding what appears to be a knife in an outstretched arm, chasing a solo woman. The third man is wearing a robe and has a long beard, suggesting he is Muslim. The woman is silhouetted in black and clad in a dress or skirt which ends mid-thigh. Her hair flies vertically behind her; her posture and limbs echo those of the girl child in the original sign, suggesting her vulnerability and desperation. She appears as if she is about to topple and be captured by the three men, who run at a faster pace. The figures are bracketed by large text stating "RAPEFUGEES NOT WELCOME," with "RAPE" and "NOT" in red, correlating with the men's bodies, and with small text reading "!Stay Away!" under the men's bodies.⁸⁴ The family of refugees welcomed in the original sign has been transformed into three predatory male figures who are running, not in flight, but in pursuit, seeking to reach a presumptively German woman they would violate. The banner uses English in its word play, seeking an English-speaking, international audience, while aiming at non-German speaking refugees.

81. The German government announced after the Cologne attacks the plan to restrict asylum, including making family reunification more difficult, and to make deportation of immigrants who have committed crimes easier.

82. Derek Scally, *Cologne in Shock After New Year's Eve Sexual Assaults*, IRISH TIMES (Jan. 7, 2016), www.irishtimes.com/news/world/europe/cologne-in-shock-after-new-year-s-eve-sexual-assaults-1.2487310.

83. Maximilian Popp & Andreas Wassermann, *Where Did Germany's Islamophobes Come From?*, SPIEGEL Online (Jan. 12, 2015), www.spiegel.de/international/germany/origins-of-german-anti-muslim-group-pegida-a-1012522.html.

84. See Figure 12.



Fig. 12. Tobias Schwarz, *Protestors from the PEGIDA Movement March During a Rally in Leipzig, Jan. 11, 2016*, TOBIAS SCHWARZ/AFP/Getty Image.

There are obviously many ways in which the events in Cologne track already existing concerns about gender and Islam that have long been part of a vision of rapacious Muslim men, and suffering and submissive Muslim women.⁸⁵ Here, the victim is not a Muslim woman but a non-Muslim German woman.

In the second banner, exhibited at a PEGIDA rally in February, 2016 in Dresden, the fleeing family is transformed into a running man and woman who are fleeing an armored knight on a horse. The plume from the back of the knight's helmet flies in the air in an echo of the pigtailed of the small girl in the original image; his lance almost reaches the pair.⁸⁶ The banner is black, with all figures and text in yellow. Bracketing the figures is large text stating "ISLAMISTS NOT WELCOME"; underneath the knight and running pair are small words stating "Stay Back or We'll Kick You Back." Both the running woman and man are carrying weapons which appear to be rifles; the woman wears a robe and a headcovering, perhaps a burka, and the man has a long beard, signaling that the pair being chased are Muslim. The woman is refigured as an equal partner in terrorist threat, expelled along with her male partner by the Christian knight upon his horse in a neo-Crusade.

85. Leti Volpp, *Saving Muslim Women*, PUBLIC BOOKS, Aug. 1, 2015, <http://www.publicbooks.org/saving-muslim-women/>.

86. See Figure 13.



Fig. 13 Tobias Schwarz, *Supporters of the PEGIDA Movement Wave a Flag, Dresden, Feb.6 2016*, TOBIAS SCHWARZ/AFP/Getty Image.

Here the burka appears as a symbol not of a submissive woman but as a convenient cover for terrorist weaponry and threat. The refugees no longer welcomed have been subsumed by the identity “Islamist.” The iconography suggests that refugees do not only constitute a threat as male rapists of German women; both female and male refugees also pose a threat to Germany as Islamist terrorists.

The New York Times covered the attack in Cologne with an article titled “Cologne Attacks Highlight Clash Among Cultures”⁸⁷ There are many problems created by framing gendered violence as “cultural”; perhaps in recognition of this, the online edition of The New York Times article used a different title: “As Germany Welcomes Migrants, Sexual Attacks in Cologne Point to a New Reality.”⁸⁸ What is troubling with the tendency to explain gendered violence as cultural is that culture is a terrain on which racism can acceptably be articulated. Culture is selectively blamed for incidents of troubling behavior, which are narrated differently based upon the identity of the actor.⁸⁹ When immigrants are involved in some form of gendered violence, the act is typically ascribed to a group-based cultural difference. When the perpetrator is a member of the majority community, the actor is instead usually described as an individual deviant, often one facing psychological pressures. This inconsistency in reaction leads to broader narratives suggesting that immigrant culture

87. Alison Smale, *As Germany Welcomes Migrants, Sexual Attacks in Cologne Point to a New Reality*, N.Y. TIMES (Jan. 14, 2016), www.nytimes.com/2016/01/15/world/europe/as-germany-welcomes-migrantssexual-attacks-in-cologne-point-to-a-new-reality.html.

88. *Id.* The shift in title is recognized at the foot of the article, with the following: “A version of this article appears in print on January 15, 2016, on Page A1 of the New York edition with the headline: Cologne Attacks Highlight Clash Among Cultures.” *Id.*

89. Leti Volpp, *Blaming Culture for Bad Behavior*, 12 YALE J. OF L. & HUMANITIES 89, 90 (2000).

is primitive, barbaric, and less progressive or evolved than majority culture. But this kind of selective blaming of culture leaves majority culture off the hook. As the magazine *Der Spiegel* pointed out, every year during Oktoberfest there are sexual assaults, including rapes. And nearly sixty percent of German women said in a study that they had been sexually harassed; as *Der Spiegel* noted, it is impossible that such a staggering number of women were only harassed by men from North Africa.⁹⁰

III. REFUGEES WELCOME?

Reflecting on all of this, it is perhaps not surprising that the image of running immigrants has been differently understood and deployed in the United States and Germany, in the United States primarily as an iconic image of illegal immigration, in Germany as the refugee, who had been welcomed and now is feared by some as a rapist and terrorist. It is more difficult to enter Europe without inspection and work than the United States, given national identity cards and a universal fingerprint database in Europe, so an asylum application is one of the few ways to enter a European country.⁹¹ There is thus an analogy between the U.S. “illegal immigrant” and the European refugee, particularly when the would-be refugee is an unsuccessful asylum seeker who does not leave. The illegal immigrant and the failed asylum seeker form similar populations of irregular migration which cause nation-states concern.

At the same time, these are populations that are racialized differently from the vantage point of the United States. The “illegal immigrant” in the United States remains presumptively in the eyes of the public a border crosser from Mexico. This is so, even while the majority of persons who are undocumented in the United States are now recognized to be visa overstayers, not border crossers.⁹² The “refugee,” in contrast, is presumptively not Mexican, nor attempting to enter the United States from Mexico, but instead, is conventionally imagined as someone who enters the United States from overseas.

To be legally recognized as a refugee, rather than merely an “economic migrant,” requires meeting a particular legal definition.⁹³ The specificity of the refugee definition and the narrowness with which it has been interpreted means that the colloquial understanding as to who counts as a refugee and who deserves protection is far broader than who is actually legally recognized as such. One could note here the

90. *How New Year's Eve in Cologne Has Changed Germany*, SPIEGEL ONLINE (Jan. 8, 2016), www.spiegel.de/international/germany/cologne-attacks-trigger-raw-debate-on-immigration-in-germany-a-1071175.html. The sixty percent figure is from a 2004 study. A 2017 poll of 2,000 German women found forty-three percent reporting sexual harassment. See *Half of Women in Germany Victim of Sexual Harassment, Survey*, Deutsche Welle online, Oct. 28, 2017, <http://www.dw.com/en/half-of-women-in-germany-victim-of-sexual-harassment-survey/a-41149234>.

91. Martin Schain, *The Challenge of Illegal Immigration in Europe*, E-INT'L RELATIONS (2013) (available at www.e-ir.info/2013/12/14/the-challenge-of-illegal-immigration-in-europe/).

92. Robert Warren & Donald Kerwin, *The 2,000 Mile Wall in Search of a Purpose: Since 2007 Visa Overstayers Have Outnumbered Undocumented Border Crossers by Half a Million*, 5 J. MIGRATION AND HUMAN SEC. 124 (2017); see also NGAI, *supra* note 29 (how the “illegal alien” became synonymous with “Mexican”).

93. The definition of refugee in the Immigration and Nationality Act tracks the international definition from the 1951 Refugee Convention: a refugee is a person outside their country of nationality who is unable or unwilling to return to and avail him or herself of the protection of that country, because of persecution or a well founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. 8 U.S.C. § 1101(a)(42) (2018).

title of Figure 1: the photographer of the Caltrans sign labeled the photo “Caution: Economic Refugees.” Because refugee status is supposed to be granted to those fleeing political persecution, and not to those merely fleeing poverty, the concept of “economic refugees” poses a challenge to the current refugee framework. The photo title critiques this framework, which strictly limits who is recognized as a refugee to the definition of the 1951 Convention Relating to the Status of Refugees.⁹⁴ Whether one is seeking to enter the United States as a refugee from overseas, or to be granted asylum from on shore, one must meet this legal definition.⁹⁵

The United States has two refugee programs—the overseas program, for which President Obama had allocated 110,000 visas for 2017, cut to 50,000 via executive order by his successor, and an on-shore program for people who show up at the border and request asylum, either immediately, or shortly after entry.⁹⁶ The Executive Office for Immigration Review reports that the United States admits between 30,000 to 45,000 persons asylum through the on-shore program per year.⁹⁷ This United States on-shore program is comparable to the European “refugee crisis.” The United States has not been subject to over 1 million Mediterranean Sea arrivals because of its geographical location. But this does not mean that the United States has no on-shore refugees.

The movement of the Caltrans sign and its significance in representing undocumented immigrants in the United States, and refugees in Germany, helps to highlight how refugees from Central America seeking safe haven in the United States are denied and obscured in the current moment. Central American refugees disappear behind the apparition of the “illegal immigrant” and behind the image of the, in the eyes of some, presumptively deserving, and in the eyes of others, presumptively threatening, overseas refugee. I am thinking here of women and children from Honduras, Guatemala, El Salvador, and Mexico who have sought to enter the United States since 2013 and have been treated as what are called “surge cases.” They have been subjected to anomalous procedures in the name of deterring others from making the same journey. They have been put on a so-called “rocket docket,” limiting meaningful due process and access to competent counsel through expediting their cases; imprisoned in a massive detention facility constructed and operated by the Corrections Corporation of America, costing taxpayers over \$800,000 a day to operate,⁹⁸ and subjected to raids and deportations with a refusal to recognize that, according to the United Nations High Commissioner for Refugees, as many as 82% should be recognized as refugees.⁹⁹ There have been multiple reports of individuals, including children, being killed within days or weeks of their deportation from the

94. U.N. Charter art. 33.

95. DAVID A. MARTIN ET AL., *FORCED MIGRATION: LAW AND POLICY* (West Acad. 2013).

96. I say shortly because there is the “one-year rule” which requires the claiming of asylum within one year of entry into the United States.

97. U.S. DEP’T OF JUST. EXEC. OFF. FOR IMMIGR. REV. FY 2014 STATISTICS YEARBOOK (2015) (available at www.justice.gov/eoir/pages/attachments/2015/03/16/fy14syb.pdf).

98. Letter from Senator Patrick Leahy et al. to President Barack Obama (Jan. 21, 2016) (on file with author).

99. Letter from American Immigration Lawyers Association, et al. to President Barack Obama (Dec. 31, 2015) (available at http://www.aila.org/advo-media/aila-correspondence/2015/sign-on-letter-opposing-dhs-nationwide-raids?utm_source=aila.org&utm_medium=InfoNet%20Search).

United States.¹⁰⁰ El Salvador and Guatemala have the highest child murder rates in the world; Honduras and El Salvador rank first and third for female homicides globally.¹⁰¹

The illegal immigrant and the refugee are imagined to be distinct classes of immigrants. Refugees and illegal immigrants are conceptualized as different categories, so that one cannot encompass the other, even while someone who is undocumented can be legally recognized as a refugee, and even while the failed asylum seeker can turn into an undocumented immigrant. These are, in other words, mutable statuses which can be made and unmade by shifts in legal recognition. Yet our notions of these categories are fixed to visions of different populations, because these categories are racialized. The refugee and illegal immigrant are not only conceptualized as separate groups of immigrants; they are also often pitted against one another. One example of this practice would be Arizona, which ranks among the most welcoming of states in terms of refugee resettlement, yet passed the Save Our State initiative, S.B. 1070. In the words of Jason DeParle, “Here in Arizona, illegal immigrants get the boot. But refugees get the welcome mat. Even as officials rage at what they have called the ‘invasion’ of illegal immigrants, mostly Mexicans, Arizona has welcomed thousands of legal immigrants from such grief-torn lands as Somalia, Myanmar and Iraq, and is known for treating them unusually well.”¹⁰²

It is notoriously difficult for applicants from Mexico to be recognized as refugees in the United States.¹⁰³ Perhaps this is shaped by the concern about floodgates from a bordering nation-state. It is also shaped by the racialization of the “illegal alien” as Mexican, the perception of many Americans that all Latinx people are Mexican, and the belief that Mexicans come to the United States to engage in physical and menial labor. The undocumented immigrant is a subject “*made* for arduous labor, a subject whose very existence is understood in terms of his or her willingness to engage in toilsome practices that allow for the maintenance of life itself.”¹⁰⁴ The identity of the Latinx immigrant, then, becomes the person who is in the United States to work, subsuming identity as a political being, whether engaged in public protest,¹⁰⁵ or seeking refuge for political persecution. The racialization of the “illegal alien” thus makes it more difficult for women and children from Central America or Mexico to be perceived as really refugees.

Differences in who is seen as really a refugee is also shaped by territoriality. The overseas refugee program identifies refugees before bringing them to the United States, so that they are presumptively legitimate and deserving and are recognizably refugees upon arrival. In contrast, the on-shore program contains a mix of successful and unsuccessful applicants for asylum status. Those who self-identify as potential refugees only upon arrival or shortly thereafter are often suspected of fraud, whereas those whose first contact with the United States is as an already recognized refugee

100. Letter from Senator Patrick Leahy et al. to President Barack Obama, *supra* note 98.

101. *Id.*

102. Jason DeParle, *Arizona is a Haven for Refugees*, N.Y. TIMES (Oct. 8, 2010), www.nytimes.com/2010/10/09/us/09refugees.html.

103. J. Anna Cabot, *Problems Faced by Mexican Asylum Seekers in the United States* 2 J. MIGRATION & HUMAN SEC. 361, 363 (2014).

104. CRISTINA BELTRAN, *THE TROUBLE WITH UNITY: LATINO POLITICS AND THE CREATION OF IDENTITY* 135 (Oxford Univ. Press 2010)(considering Hannah Arendt’s concept of *animal laborans* in the context of contemporary depictions of the undocumented).

105. *Id.* at 140–44.

have already gone through this screening overseas. For security reasons, nation-states obviously prefer refugees who have been pre-screened before they arrive on shore; David Cameron's refusal to accept refugees who had arrived in Europe, only taking refugees directly from camps in and near Syria needs to be viewed in this light (although, responding to pressure from a former Kindertransport refugee who heads the U.K.'s Jewish Refugee Organization, Cameron announced in May 2016 that the U.K. would resettle some unaccompanied children who had arrived in Europe).¹⁰⁶ We also see the formation in March, 2016 of the EU-Turkey refugee deal, whereby for every Syrian refugee who arrived "on shore" in Greece and who is then deported from Greece to Turkey, a Syrian from Turkey will be flown to Europe to be resettled. This exchange is based upon the premise that Turkey is a safe third country under the Dublin Regulation, meaning that its asylum protections are analogous to those of Europe. This agreement is in exchange for a multibillion Euro aid package and visa free travel by Turkish citizens to Schengen countries.¹⁰⁷ Visible here is a hierarchy of desirability constructed through the actions of these states, placing overseas refugees ahead of asylum seekers.

The refugee raises many questions about rights. Famously emerging from Hannah Arendt's *The Origins of Totalitarianism* to describe the stateless person or the refugee is the notion that "citizenship is the right to have rights."¹⁰⁸ The refugee needs a new political community since her political community does not recognize her membership, eviscerating her ability to effectuate her rights. The refugee, in a world that is sliced into sovereign territorial nation-states, is placed outside the identity of being a bearer of rights;¹⁰⁹ rights-bearing is a corollary of membership in a nation-state.

Or we might rephrase: rights-bearing is a corollary not of membership, but of territorial presence in a nation-state. States may grant some protections to non-members yet will bound that obligation as only adhering to those within their jurisdiction. Given the Westphalian system, and law's "boundedness to place,"¹¹⁰ the only legal claim a refugee might make to rights is a territorial one: the refugee has to be able to reach a nation-state in order to file a claim to be recognized. This is why people drown in the Mediterranean, trying to reach European territory, and why nation-states attempt to prevent refugees from reaching their borders, with border externalization in the form of push backs or interdiction, excision of territory, off shore processing, and off shore detention such as Australia's use of Papua New Guinea and the island of Nauru, where refugees have set themselves on fire in protest.¹¹¹ Article

106. David Cameron: *UK to Resettle Child Refugees from Europe*, BBC NEWS, May 4, 2016, www.bbc.com/news/uk-36200366.

107. Kondylia Gogu, *The EU-Turkey Deal: Europe's Year of Shame*, AMNESTY INT'L (Mar. 20, 2017), www.amnesty.org/en/latest/news/2017/03/the-eu-turkey-deal-europes-year-of-shame/.

108. HANNAH ARENDT, *THE ORIGINS OF TOTALITARIANISM* 296 (Harcourt, Brace & Jovanovich eds., 3rd ed. 1973).

109. Brad Evans & Zygmunt Bauman, *The Refugee Crisis is Humanity's Crisis*, N.Y. TIMES (May 2, 2016), www.nytimes.com/2016/05/02/opinion/the-refugee-crisis-is-humanitys-crisis.html.

110. Nanda Oudejans, *The Right to Have Rights as the Right to Have Asylum*, 43 NETH. J. LEGAL PHILOSOPHY 7, 12 (2014) (available at http://tijdschriften.boomjuridisch.nl/tijdschrift/rechtsfilosofieentheorie/2014/1/NJLP_2213-0713_2014_043_001_002).

111. Michelle Innis, *2nd Refugee in a Week Sets Herself Afire on Nauru*, N.Y. TIMES, May 2, 2016, www.nytimes.com/2016/05/03/world/australia/nauru-somali-refugee-hodan.html. This distinction is also visible in what was, until January, 2017, the U.S. policy known as "wet foot, dry foot," allowing Cubans

33 of the Refugee Convention prohibits any contracting state from expelling or returning a refugee to territories where her life or freedom would be threatened, in what is called non-refoulement, or non-return.¹¹² But if a person is not actually physically present within the territory of a state, she cannot then be “expelled” or “returned.” With this logic, the U.S. Supreme Court in 1993 held it acceptable to forcibly repatriate Haitian refugees intercepted at sea in the decision *Sale v. Haitian Centers Council, Inc.*¹¹³ We see thus a tension: sovereign states are the form of political organization tasked with conferring rights. At the same time, sovereign states view such obligations through the lens of what they identify as the nation-state’s own interests. Despite the notion that universal human rights are both timeless and placeless, rights are realized through states, which seek to protect their own borders, rendering the question of rights a spatial one.

It is also the case that the legal claim any person might make for rights recognition by the United States is typically a territorial one, not just because of the Refugee Convention, but because of the U.S. Constitution, which recognizes territorially present persons as the relevant category of humanity entitled to due process and equal protection. Territorially present persons, regardless of their citizenship, are in fact entitled to a myriad of rights under the U.S. constitutional scheme.¹¹⁴ Thus, territorial personhood, and not citizenship, may instantiate the right to have rights—or, at least, some rights.¹¹⁵

At the same time, the right of noncitizens to contest their treatment under immigration law is quite constrained. Because of the development of what is called the plenary power doctrine, which determined that immigration, as implicating foreign affairs and international relations, is a matter for the political branches of government to regulate, the courts can play only a limited role in protecting the rights of a noncitizen facing immigration removal. And whether the court can do anything will depend on whether the noncitizen is considered to be inside the territory of the United States or outside—she will face difficulty in asserting her constitutional rights if she is considered outside.¹¹⁶

who reached U.S. territory (“dry foot”) without a visa to gain permanent residency, whereas those who were caught before reaching the shore (“wet foot”) would be returned.

112. U.N. Charter art. 33.

113. *Sale v. Haitian Centers Council, Inc.*, 509 U.S. 155 (1993).

114. The rights noncitizens can enjoy in the United States is governed by the legacy of the 1886 Supreme Court case, *Yick Wo v. Hopkins*, in which the Court held that all persons within the territorial jurisdiction of the United States—including noncitizens—were “persons,” for the purposes of protection under the Fourteenth Amendment. This has meant that, in many realms, aliens are entitled to be treated like any other person, regardless of their citizenship status. Thus noncitizens, irrespective of their status as legal or undocumented, enjoy the protections of the Fourth (against unreasonable searches and seizures), Fifth (against self incrimination and double jeopardy), Sixth (the right to counsel in criminal proceedings) and Eighth Amendments (against cruel and unusual punishment). They enjoy expressive and many associational rights. They have the right to make contracts, own property, marry, worship freely, and attend public elementary and secondary school, and are accorded protection under most protective labor and employment legislation. LINDA BOSNIAK, *THE CITIZEN AND THE ALIEN: DILEMMAS OF CONTEMPORARY MEMBERSHIP* 54–56 (Princeton Univ. Press 2008).

115. *Id.* at 117.

116. We might note how the Supreme Court, in 2004, articulated that prisoners held at Guantanamo Bay could petition federal courts for writs of habeas corpus in the case *Rasul v. Bush*, because Guantanamo is “in every practical respect a U.S. territory.” *Rasul v. Bush*, 542 U.S. 466, 487 (2004). In other words, territorial presence appears key. Also, important to note here is the fact that sometimes legal fictions permit those who are not physically located on U.S. territory to be treated as if they are. One example

From this vantage point, of such constrained claims to rights, rights can seem a kind of Holy Grail. Consider the position of the migrant standing physically outside a political community who is definitionally a non-member of that community. Or consider the perspective of the migrant who is territorially present and perceived as, at best, a marginal member of a political community. From either orientation, rights might seem to be the paradigmatic way to articulate a claim to belonging.

Nonetheless, many criticisms of the limitations of rights claims have been cast. The Legal Realists of the 1920s and 30s and the Critical Legal Studies movement of the 1970s and 80s have pointed out that rights are indeterminate—they are only given meaning through context. Rights also help make the coercive force of law and the political power of elites appear legitimate and natural: the adjudication of rights appears as a neutral and technical process, so rights discourse renders political resistance unlikely. Rights make people appear to be equal before the law, disguising material inequalities. Rights-based strategies tend to be individualistic, limiting social solidarity. Rights claims limit demands to what is legally cognizable and thereby direct attention away from more transformative or political claims. Rights claims reinforce, rather than challenge, the state. Rights claims also reinforce the subordinate status of the injured. Yet, despite all of these criticisms, the response of Critical Race Theory scholars to the critique of rights remains important. This response would be: rights are still useful; they constitute a language that law recognizes; they symbolically confer visibility, respect, and agency; they form a means of resistance to the political status quo, enlisting the state’s coercive power against itself.¹¹⁷ Putting both critique and defense together, perhaps the best articulation of the stance towards rights is Wendy Brown’s, paraphrasing Gayatri Spivak’s description of liberalism, as “that which we cannot not want.”¹¹⁸

It is important here to note the political activity of noncitizens, particularly that, in recent years, of undocumented immigrants. This activity has been described as acts of citizenship by those with no formal citizenship status, acts which are not the product of citizenship but could be understood to produce citizenship. One could look here to the mega marches of 2006,¹¹⁹ and the remarkable political activity of undocumented immigrants, both in the pursuit of legal status and in opposition to inhumane immigration enforcement.¹²⁰ This activity can also be conceptualized as the claiming of rights, rights which are not formally recognized, but are “emergent.”¹²¹ This kind of claiming can be understood as “taking rights” by people “with no

is the exception created for lawful permanent residents who depart the United States for a brief period of time: under certain circumstances they are assimilated to the constitutional status of those who are still inside the United States so as to continue to receive constitutional protections. Leti Volpp, *Imaginations of Space in Immigration Law*, 9 L. CULTURE & HUMAN. 465 (2012). Failure to recognize how the “entry fiction” applies to lawful permanent residents was one of the many missteps of Trump’s first executive order creating a Muslim ban.

117. See generally Daria Roithmayr, *Left Over Rights*, 22 CARDOZO L. REV. 1113 (2001).

118. Wendy Brown, *Suffering the Paradoxes of Rights*, in LEFT LEGALISM/LEFT CRITIQUE 421 (Duke Univ. Press 2002).

119. CRISTINA BELTRÁN, *THE TROUBLE WITH UNITY: LATINO POLITICS AND THE CREATION OF IDENTITY* (Oxford Univ. Press 2010).

120. Kathryn Abrams, *Contentious Citizenship: Undocumented Activism in the NotI More Deportation Campaign*, 26 LA RAZA LJ 46 (2016).

121. Kathryn Abrams, *Performative Citizenship in the Civil Rights and Immigrant Rights Movements*, in A NATION OF WIDENING OPPORTUNITIES: THE CIVIL RIGHTS ACT AT 50 at p. 1, 16 (Ellen Katz and Samuel Bagenstos eds., 2015).

standing” who nonetheless may, by “staging nonexistent rights” “help new rights, powers, and visions come into being.”¹²²

EPILOGUE

Let me end with two images created by the street artist Banksy. The first, called Kite-2, was seen in Los Angeles in February 2011.¹²³ Here, the man is holding a string attached to a kite. The three figures and the kite are silhouetted in black; the sign has been reshaped into a yellow equilateral rhombus, echoing the diamond shape of the kite. The yellow backdrop no longer evokes a traffic sign but suggests instead the glow of a sunset on a beautiful day. This is a transformation of the sign to one of hope; the trio is running not from desperation, but to keep the kite aloft. The kite suggests an alternative reality where the family runs, not for survival, but for pleasure. The kite is in flight, not the man, woman and child.

This is the first iteration of the sign without any text. Removing the words means the viewer is no longer directed to view the image with a particular instruction in mind; the image is deliberately open to interpretation. The kite the man holds flies outside the borders of the sign, suggesting an openness here as well. We could take this as an implicit critique of the policing of closed borders, including nation-state borders, which produce the suffering that led to the Caltrans sign. The yellow diamond could be its own kite, suggesting the family now soars aloft in its own space of dreams and imagination. That the string held up by the man is so straight and short offers the image of a stick supporting a banner or a flag – perhaps, in fact, a sign of protest.¹²⁴



Fig. 14. Brett Landrum, *The Kite*, by permission.

122. BONNIE HONIG, *DEMOCRACY AND THE FOREIGNER* 99, 101 (Princeton Univ. Press 2001).

123. *See* Figure 14.

124. Thank you to Cristina Martinez for suggesting this idea.

That this image was called Kite-2 raises the question as to what is Kite-1. Kite-1, painted on a wall in New Orleans after Hurricane Katrina, depicts the silhouette of an African American boy, who stands and flies a kite which is actually a refrigerator, magically aloft.¹²⁵



Fig. 15. Flickr: Banksy.Fridge.Kite, licensed under CC BY 2.0.

One viewer found this “an unexpectedly whimsical slant on our memories of the reeking refrigerators that lined the streets after the 2005 flood.”¹²⁶ The image also suggests the intense winds of Hurricane Katrina, so powerful they could propel a heavy object into the sky. But the image also provokes more disturbing connections. The child holds a refrigerator, which should be heavy with food, via a string as it pulls away in the sky—the presumably empty fridge suggests a hungry child. The image also reminds the viewer of the racialized framing of hungry residents who engaged in the same conduct of finding sustenance during the disaster: whites were described by the media as “survivors” looking for food; blacks were described as “looters.”¹²⁷

The massive but light and levitating object evokes a world turned upside down, a wealthy country unable to protect its people. Banksy’s image is thus also reminiscent of the controversy as to whether to label African American citizens of New Orleans abandoned by their government as “refugees.” Affluent whites who engaged in self-help by driving themselves away from the impending disaster were

125. See Figure 15.

126. Doug MacCash, *Banksy Fifth Anniversary Tour Recalls 2008 New Orleans Visit*, Nola.org (Aug. 29, 2013), www.nola.com/arts/index.ssf/2013/08/fifth_anniversary_tour_recalls.html.

127. Adeline Masquelier, *Why Katrina’s Victims Aren’t Refugees: Musings on a “Dirty” Word*, 108 AM. ANTHROPOLOGIST 735, 740 (2006).

called “evacuees”; those too poor to leave were denoted “refugees.”¹²⁸ Although American exceptionalism suggests that the United States is a “nation of refuge”¹²⁹ rather than a source of persecution, the experience of Katrina demonstrated how de jure citizens may be treated as disposable, akin to internally displaced persons. Although formal status citizens, they had a citizenship which guaranteed them no rights, given the intertwining of racism and the replacement of state guarantees by the role of markets.¹³⁰

Putting Kite-1 and Kite-2 together, Banksy can be understood to be asking us to think about flight¹³¹—the flight of the kite, as well as the flight of the refugee, who shares with the fugitive the word origin of the Latin *fugere*, to flee. In considering the transnational movement of the Caltrans sign, its multiple meanings, and the idea of human flight, we must also remember the resonance between the word “flee” and the German word “fliegen” —to fly.

128. *Id.* at 739.

129. YEN LE ESPIRITU, *BODY COUNTS: THE VIETNAM WAR AND MILITARIZED REFUGEES* 2 (U.C. Press 2014).

130. MARGARET R. SOMERS, *GENEALOGIES OF CITIZENSHIP: MARKETS, STATELESSNESS AND THE RIGHT TO HAVE RIGHTS* (Cambridge Univ. Press 2008).

131. Thank you to Elisa Tamarkin for suggesting this idea of flight.