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Hiroshi Motomura is an influential scholar and teacher of immigration and citizenship law. He is a co-author of two immigration-related casebooks: *Immigration and Citizenship: Process and Policy* (now in its sixth edition), and *Forced Migration: Law and Policy*, published in 2007. His book, *Americans in Waiting: The Lost Story of Immigration and Citizenship in the United States*, published in 2006 by Oxford University Press, won the Professional and Scholarly Publishing Award from the Association of American Publishers as the year's best book in Law and Legal Studies, and was chosen by the U.S. Department of State for its Suggested Reading List for Foreign Service Officers. In addition, Professor Motomura has published many significant articles and essays on immigration and citizenship. He has testified as an immigration expert in the U.S. Congress, has served as co-counsel or a volunteer consultant in several cases in the U.S. Supreme Court and the federal appeals courts, has been a member of the American Bar Association's Commission on Immigration and is a co-founder and current director of the Rocky Mountain Immigrant Advocacy Network (RMIAN). In the fall of 2008, he was appointed as an advisor to the Obama-Biden Transition Team's Working Group on Immigration Policy.

IMMIGRATION OUTSIDE THE LAW*

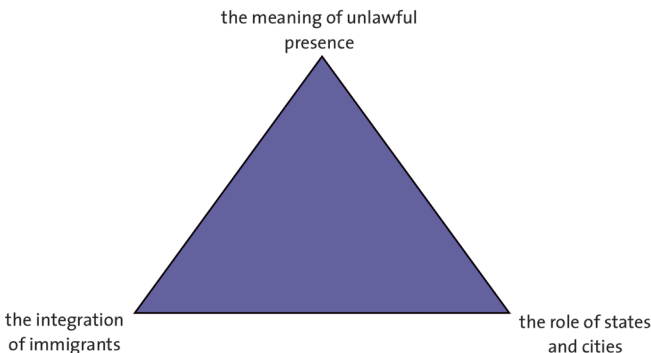
Hiroshi Motomura**

How do we think about immigration outside the law? Why are some disagreements so deep and some voices so vehement, while many reasonable minds remain ambivalent and uncertain? What will durable, politically viable solutions require? I offer answers to these questions by drawing a conceptual roadmap of this terrain. As a framework for constructive disagreement, accurate topography is the essential first step.

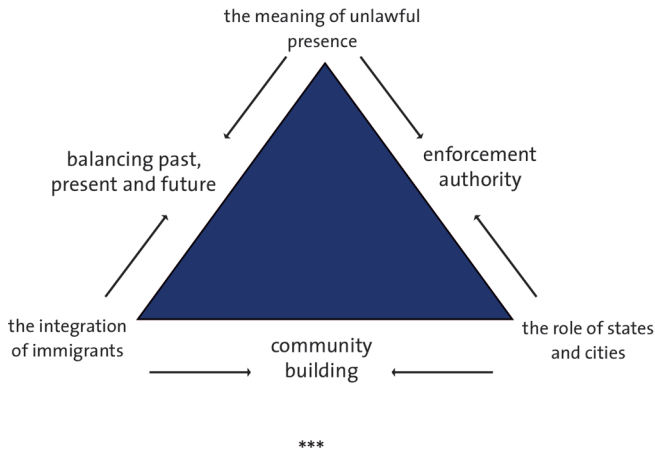
I. THREE THEMES IN *PLYLER*

I start with *Plyler v. Doe*,¹ a 1982 U.S. Supreme Court decision. In 1975, Texas allowed its public schools to bar any children not “legally admitted” to the United States.² Writing for a majority of five, Justice William Brennan reasoned that “the discrimination . . . can hardly be considered rational unless it furthers some substantial goal of the State.”³ The Texas statute served no such goal and therefore violated equal protection.⁴ A state may not rely on immigration status to bar a child from public elementary and secondary schools. Chief Justice Burger wrote a dissent, arguing that the unlawfully present are not a suspect class triggering strict scrutiny,⁵ and education is not a fundamental right.⁶ According to Burger, the Texas statute had a rational basis and was therefore constitutional, even if it was profoundly unwise.⁷

Why did *Plyler* strike down the statute? The answer lies in the majority’s approach to three themes. First, the children’s unlawful presence was not dispositive, since they might never be deported.⁸ The dissent objected that their illegal presence precluded any serious constitutional challenge.⁹ Second, the majority limited state authority to treat citizens and noncitizens differently.¹⁰ The dissent countered with deference to Texas’ objectives.¹¹ Third, the majority emphasized the link between education and the integration of immigrants.¹² The dissent dismissed such policy matters as inappropriate for judicial consideration.¹³ For the visually inclined, here is a diagram of the three themes that separated the majority from the dissent:



Constructive public debate about immigration outside the law requires not only analyzing the *Plyler* themes but also seeing how they combine to raise deeper questions. The meaning of unlawful presence and the role of states and cities jointly illuminate the question of enforcement authority. The role of states and cities and immigrant integration merge to elucidate the building of communities that include citizens and noncitizens. The meaning of unlawful presence and the integration of immigrants together clarify how to balance lessons from the past, present, and future. This diagram captures the contours that parts II, III, and IV will explore:



The dissent in *Plyler* emphasized that the Texas school children were illegal aliens.¹⁴ More starkly, some advocates start—and end—their arguments by pointing out that some noncitizens are illegals. *New York Times* editorial writer Lawrence Downes put it (ironically): “[W]hat part of ‘illegal’ don’t you understand?”¹⁵ But others counter by pointing to “undocumented” immigrants’ contributions to U.S. society and to their ties acquired with government acquiescence. The *Plyler* majority generally adopted the undocumented view, observing “there is no assurance that a child subject to deportation will ever be deported.”¹⁶ It noted that unlawful presence may be unclear because federal law offers many avenues to lawful status.¹⁷

II. ENFORCEMENT AUTHORITY

A. The Meaning of Unlawful Presence

The majority also observed that even those whose presence is clearly unlawful might not be deported.¹⁸ Indeed, heavily influenced by racial perceptions of Mexicans as subordinate, expendable, and nonassimilable workers,¹⁹ economically driven fluctuations led to a de facto policy of discretionary enforcement and partial tolerance of unlawful immigration that emerged in the early twentieth century and continues today.²⁰ Congress enacted employer sanctions in 1986,²¹ but employers can minimize their risk of liability with a cursory document check and paperwork.²² Some employers may prefer unauthorized workers with only limited workplace protections.²³

Starting in late 2006, worksite enforcement has surged upward,²⁴ but the U.S. economy still employs over seven million unauthorized workers.²⁵ It remains true today, as the *Plyler* majority said, that “the confluence of Government policies has

resulted in ‘the existence of a large number of employed illegal aliens . . . whose presence is tolerated, whose employment is perhaps even welcomed.’²⁶ In contrast to the dissent, the majority refused to have unlawful presence be determinative, especially when parents had made the crucial choices. Much debate today reflects these contrasting views of unlawful presence. But when considered with the role of states and cities, the meaning of unlawful presence has deeper implications for the more fundamental issue of immigration enforcement authority.

B. The Role of States and Cities

PLYLER SEEMED TO LEAVE LITTLE ROOM for subfederal responses to immigration outside the law,²⁷ but the Court’s holding was based on equal protection, not federal preemption.²⁸ This leaves open the question of federal v. subfederal authority in the context of preemption challenges to state and local law. In such cases, courts ask if the subfederal law regulates immigration or otherwise conflicts with federal law.²⁹ In turn, defining “conflict” requires returning to the meaning of unlawful presence.

An ordinance in Farmers Branch, Texas, required renters to have “evidence of citizenship or eligible immigration status.”³⁰ A federal district court invalidated the law as preempted because it relied on eligibility for federal housing subsidies.³¹ The court reasoned that not all noncitizens who are lawfully in the United States are eligible for housing subsidies, so the local law conflicted with federal law.³² Similar analysis appears in *Equal Access Education v. Merten*, which concerned whether Virginia could bar unlawful immigrants from public colleges and universities.³³ The district court reasoned that deviating from federal immigration standards leads to preemption, whereas using federal standards avoids preemption.³⁴ Likewise, a federal court of appeals upheld an Arizona law that required employers to use a federal database to check work authorization.³⁵

Contrast *Garrett v. City of Escondido*,³⁶ which involved a local penalty for landlords who rent to unauthorized immigrants.³⁷ Though the city ordinance adopted federal immigration standards, the district court held that it was preempted “as a burden or obstacle to federal law” *because* it would use a federal database to check unlawful presence.³⁸ Looking at enforcement in practice, the court found that having local and federal enforcement rely on the same database put them into competition for resources and thus into conflict.

If *City of Escondido* sought not to impede federal enforcement, then *Lozano v. City of Hazleton* reflected concern that a locality might assist federal enforcement *too much*.³⁹ A city ordinance barred hiring unlawful immigrants and required renters to prove lawful residence or citizenship.⁴⁰ It adopted federal immigration categories, but the district court found preemption because federal law struck a different “balance between finding and removing undocumented immigrants without accidentally removing immigrants and legal citizens, all without imposing too much of a burden on employers and workers.”⁴¹ Echoing the *Plyler* view of unlawful presence, the district court cautioned against assuming that “the federal government seeks the removal of all aliens who lack legal status.”⁴²

These cases show how subfederal immigration authority can only be defined in light of the meaning of unlawful presence. The resistance to an enforcement role for states and cities in *City of Escondido* and *City of Hazleton* reflects the view that unlawful presence is just the start of inquiry because enforcement in practice is not automatic but highly discretionary. In contrast, *City of Farmers Branch* and *Equal Access Education* endorse a larger subfederal role because finding unlawful presence under federal immigration law is the only inquiry that matters for triggering the further consequences specified by state or local law, such as denial of housing or employment.

As between these two views, the *Escondido-Hazleton* understanding of unlawful presence seems more consistent with de facto U.S. immigration policy. A noncitizen's removal reflects complex choices about systemic enforcement priorities, as well as intricate procedures with multiple opportunities for error. Law enforcement always involves discretion, but it seems unusually important in immigration enforcement. Immigration outside the law enjoys acceptance in many circles, and apprehension rates are extremely low. It is pivotal to ask *who* allocates resources, picks enforcement targets, and balances enforcement against competing concerns like inappropriate reliance on race or ethnicity. Because any decisions by state and local officials conflict with the federal balance of enforcement and tolerance, caution is appropriate before enlarging the group authorized to enforce federal immigration law directly or indirectly.

ONCE WE SEE HOW THE MEANING of unlawful presence and the role of states and cities combine to raise the more basic question of enforcement authority, it becomes apparent that the same deep complexity is inherent even when immigration decisionmaking is entirely federal. If unlawful presence is straightforward and dispositive, then federal judicial review of the government's immigration decisions can be narrow.⁴³ It will seem unjustifiably complex to broaden judicial inquiry, for example through class actions or review of stages in the removal process before it results in a final removal order. But judges should use a wider lens if we allow the exercise of discretion to be challenged, either because unlawful presence or its consequences are unclear, or because racial profiling or other selective enforcement may be at work.⁴⁴

C. Other
Enforcement
Issues

A related question is how firmly a decisionmaker today should be bound by a prior finding of unlawful presence. Under an amendment to the federal immigration statutes that took effect in 1997, a prior removal order may be reinstated without new proceedings against any noncitizen who later reenters the United States unlawfully.⁴⁵ A recent U.S. Supreme Court case construing this amendment shows how the conflicting meanings of unlawful presence lead to conflicting views of enforcement authority.

Humberto Fernandez-Vargas came unlawfully to the United States from Mexico in the 1970s. He was deported but reentered several times, the last time in 1982. The government tried to remove Fernandez-Vargas in 2003 by reinstating the pre-1997 deportation order, but he argued this was impermissibly retroactive. Rejecting this argument, the majority treated the earlier finding of unlawful

presence as the irrevocable basis for later consequences, including reinstatement of the prior removal order.⁴⁶ But the dissenters echoed the reluctance in *Plyler* to have everything turn on unlawful presence. For them, Fernandez-Vargas' twenty years undetected in the United States—where he started a family and a trucking business—were more significant than the earlier finding that he had been here illegally.⁴⁷ Equities generated by nonenforcement can outweigh unlawful presence.

Finally, private actors can magnify variations in the meaning of unlawful presence and broaden the range of enforcement discretion.⁴⁸ For example, federal law requires employers to verify identity and work authorization,⁴⁹ but they can comply with varying diligence. Most employers do what is required to avoid penalties, but others use the law to solidify their power over unauthorized workers, who have only limited work law protections.⁵⁰ As F. Ray Marshall, Secretary of Labor in the Carter Administration, once put it, immigrants who come outside the law work “scared and hard.”⁵¹ Like state and local officials, private actors may have incentives, motives, and priorities in tension with even-handed enforcement.

III. COMMUNITY BUILDING

Some states and cities limit cooperation with federal immigration officials. Such policies connect the role of states and cities with the integration of immigrants. These two *Plyler* themes join to inform the building of communities that include both citizens and noncitizens.

A. The Integration of Immigrants

THE PLYLER MAJORITY RELIED HEAVILY ON viewing unauthorized migrant children as future participants in American society, with education as the key. Quoting *Brown v. Board of Education*,⁵⁴ the majority explained: “[I]t is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education.”⁵⁵ And though the Court’s emphasis on education and integration was particularly apt for innocent children,⁵⁶ the decision’s deeper rationale protects unauthorized adult migrants, too. Fundamentally, the *Plyler* majority looked ahead to the integration of immigrants, whether unlawfully or lawfully here, as Americans in waiting.

Integration remains a hot topic today. Some urge legalization for unauthorized migrants,⁵⁷ but others counter that illegal aliens are intruders who are unworthy of any recognition through legalization or other forms of integration. And if there is legalization, should workers have a path to citizenship as a way of fostering integration into U.S. society? Some maintain that a path to citizenship is unnecessary because migrants maintain close ties to their countries of origin or even return in circular patterns. But others argue all guestworkers must have some sort of path to citizenship, lest barriers to equality lead to the permanent marginalization that *Plyler* rejected.

B. State, Cities and Belonging

PLYLER WAS A SUCCESSFUL EQUAL PROTECTION challenge to a state law that disadvantaged unauthorized migrants. But does it support equal protection claims outside of K-12 public education? A telling sign that the answer is “no” is the litigation strategy in *Equal Access Education v. Merten*⁵⁸ (discussed in Part II), where the plaintiffs relied mainly on preemption,⁵⁹ not equal protection,⁶⁰ to argue that

Virginia could not bar unauthorized students from public colleges and universities. As long as states and localities are not vulnerable to equal protection claims and can avoid preemption by relying on federal immigration law standards, they will have a large role in the integration of unauthorized migrants. By controlling access to higher education, for example, states and localities can relegate young adults who are unlawfully present to economic disadvantage and social marginalization.⁶¹

But other states and cities may want to integrate unauthorized migrants. Sanctuary and noncooperation policies are not just the skeptical or contrary flip side of subfederal enforcement authority. They also try to establish safe zones for integration through public and private initiatives.⁶² State and local support for business in immigrant enclaves can help create vehicles for economic sustainability and for mobility into the larger economy. Private actors can help integrate unauthorized migrants, as when banks attract unlawful immigrants as customers.⁶³

As an expression of state and local attitudes toward the integration of unauthorized migrants, identity documents are important because they provide access to vital spheres of the private sector, such as housing and car insurance.⁶⁴ Driver licenses were significant in this role until new federal requirements tied state licenses to citizenship or lawful immigration status,⁶⁵ and limited access to public and private activities. Instead, the few documents that have become available to unauthorized immigrants are general identification cards such as those now issued by San Francisco and New Haven, Connecticut, so that all residents, regardless of immigration status, can “become active participants in the community.”⁶⁶

In contrast, subfederal restrictions on employment, housing, and driver licenses broaden enforcement beyond its traditional core of apprehension and removal by denying unauthorized migrants access to the private spheres in which they might live. This sends the clear message that unauthorized migrants are not fully part of the community, even if their labor is vital. Some observers characterize certain local ordinances as expressions of hostility announcing that Latino immigrants are not part of “our” community.⁶⁷ If so viewed, the message of exclusion in state and local anti-immigrant laws brings to mind the history of subfederal immigration authority going back at least as far as Chinese exclusion, as well as the association of states’ rights with slavery, Jim Crow, and later with resistance to the civil rights movement. All are part of a deeper story of who belongs.⁶⁸

THE QUESTION WHETHER COMMUNITIES WILL EMBRACE or exclude unauthorized migrants makes clear that the role of states and cities is closely tied to the integration of immigrants. And as *Plyler* emphasized, the key to that integration is education. But our educational system affects citizens as well, shaping the communities into which immigrants integrate. With much attention paid to the effects of immigration on U.S. workers, it is strikingly underappreciated that such effects reflect not just immigration policy, but also what our educational system has done (or not done) for citizens. If the redistributive effects of immigration are felt unevenly,⁶⁹ community building must include measures that improve the educational system, especially for the American poor.⁷⁰

*C. Citizens,
Community and
Immigration
Outside the Law*

Under current immigration law, employers must pay a \$1,500 fee for each H-1B temporary worker,⁷¹ with the funds channeled to job training for U.S. workers and college scholarships for low income students.⁷² In broad perspective, this program does very little to transfer wealth from employers who benefit from immigrant workers to citizens who may be displaced. Indeed, it misses immigration outside the law altogether. But the concept can go beyond transfer payments to drive education investments generally. Here states and localities are crucial, for education is principally a subfederal responsibility.

The idea that responses to immigration outside the law should focus less on unauthorized migrants and more on ameliorating any adverse effects on citizens highlights several deeper dimensions of the link between the integration of immigrants and the role of states and cities. First, a local focus on individuals and families may make it easier to have real dialogue—or even to find common ground. Laws that seem reasonable in national or statewide abstraction may have devastating effects next door. Representative Bill McCollum, a sponsor of the 1996 Immigration Act,⁷³ soon thereafter introduced a private bill granting lawful status to a noncitizen who faced deportation under that very law.⁷⁴ Similarly, the negative consequences of anti-immigrant ordinances may prompt reversal more easily when decisionmaking is local.⁷⁵

Second, even if the integration of immigrants occurs in local communities, the conceptual framework of *national* citizenship informs how many U.S. citizens assess the effects of immigration outside the law on them and their communities. After Hurricane Katrina in 2005,⁷⁶ a largely unauthorized workforce hired in rebuilding New Orleans was sometimes seen as displacing African American workers and thus compromising their full rights of national belonging.⁷⁷ Other disadvantaged or underserved communities in the United States have similar perceptions. Other groups—notably the core Lou Dobbs audience—feel victimized by national and global trends that have reduced economic security and opportunities for the American working class. Addressing these concerns as a matter of national citizenship is part of building communities that also integrate immigrants.

As a corollary, it is a hollow achievement if immigrants integrate into communities by replicating social structures—such as oppressive gender hierarchies—that are fundamentally incompatible with the aspirations of national citizenship. Instead, the rights and responsibilities of national belonging should inform local integration. If national citizenship matters less, then these local communities may be shaped by religion, race, class, and other groupings that are not as cosmopolitan or democratic.

IV. BALANCING PAST, PRESENT AND FUTURE

The integration of immigrants is also closely connected to the first *Plyler* theme: the meaning of unlawful presence. They join to ask how we balance past, present, and future. According to one view of time, de facto U.S. government policy against the backdrop of international economic development patterns has produced a disposable, vulnerable, but deeply rooted unauthorized workforce. Relevant here is that concepts of race and ethnicity have historically

permeated immigration and citizenship in the United States. Asian exclusion and the treatment of Mexican immigrants as a disposable labor force show that the past has not been neutral, and some observers see justice in immigration through this historical lens. The argument follows that unlawful presence should be just a transitory status, and that it is essential to integrate unauthorized migrants, starting with legalization. But any such argument prompts objections that no such de facto policy has ever existed or does not exist now, or that in any event the past generates no moral or legal obligations to illegal aliens. Thus emerges the counterargument that future integration is illegitimate and unacceptable.

There are at least two ways to assess claims by unauthorized migrants based on the past. First, we might view these claims as a matter of immigration as a constructive contract⁷⁸ based on expectations that newcomers and their new country have of each other. Of course, terms of the immigration contract are up for debate. If the terms are in immigration statutes, unlawful presence is enough to breach the contract. But if the true contract is the invitation extended by de facto policy, then intensified enforcement upsets the legitimate expectations of unauthorized migrants. A second argument for claims based on the past is that the law should recognize the ties that unlawful migrants have acquired as productive members of U.S. society. I have called this view “immigration as affiliation.”⁷⁹ The response is that these ties are illegitimate and therefore cannot support any equality or membership claims.

This rhetorical duel often speaks in terms of the “rule of law,” but this phrase is quite malleable. Consider how legal doctrine can normalize immigration that started outside the law. We assume that the arrival of refugees and asylees, even if outside the law, is consistent with the rule of law because we perceive their claims to protection as valid.⁸⁰ This recognizes historical experience, especially the failure before and during World War II to protect Jews fleeing Nazi-occupied Europe.⁸¹ Much more recently, the Nicaraguan Adjustment and Central American Relief Act (NACARA) of 1997⁸² allowed some Guatemalans and Salvadorans to become permanent residents, as a way of recognizing that their access to asylum had been very limited, and that they had developed significant ties in the United States during a long period of nonenforcement. NACARA accomplished this without questioning the basic line between lawful and unlawful migrants.⁸³ Likewise, immigration law protects victims of domestic violence, trafficking, and other crimes, even if they lack lawful presence, by imagining them in a category apart from immigration outside the law.⁸⁴ If unauthorized migrants have justifiable expectations based on the past and present, it serves the rule of law to take those claims seriously. But if such expectations are unjustified, it serves the rule of law to enforce immigration law without indulging in undue complexity. Rule of law rhetoric can start productive discussion, but it is rarely a persuasive endpoint.

THE DEVELOPMENT, RELIEF, AND EDUCATION FOR Alien Minors (DREAM) Act further shows how balancing past, present, and future reflects the connection between unlawful presence and the integration of immigrants. Under a version that passed the U.S. Senate in 2006, students unlawfully in the United States could become lawful permanent residents if they first entered before the age of sixteen, were

*A. The DREAM Act
and Other Forms
of Legalization*

physically present for the five years before enactment, and earned a high school diploma or had been admitted to a U.S. college.⁸⁵

Opponents object that giving illegal students lawful status is an unacceptable amnesty that rewards lawbreakers. This emphasis on current illegality supports strict enforcement, including criminal prosecution,⁸⁶ to keep claims to future integration from ripening. DREAM Act supporters counter that in spite of these students' unlawful presence, it is essential to integrate them into American society. Moreover, the rule of law requires discretionary relief to achieve justice in individual cases—either because their ties should be recognized, or because de facto policy reflects the true immigration contract.

The role of discretionary relief in individual cases—which amounts to case-by-case legalization—shows how the rule of law debate reflects contrasting views of unlawful presence and integration. If the rule of law calls simply for enforcement because immigrants entered illegally, then discretionary relief should be limited because it is extraordinary and should remain so.⁸⁷ But if immigration law is not just a matter of enforcing the letter of the statute, limits on discretionary relief may be quite troubling, especially if long-term unlawful residents have a compelling claim to future integration.⁸⁸

The connection between unlawful presence and integration also explains the variety of rhetoric invoked to support legalization. Some argue that integration is a moral imperative because unlawful migrants came to America as an intended consequence of de facto policy. But others argue pragmatically that lawmakers should recognize that unauthorized migrants will remain and must be integrated, even if we think of them as lawbreakers. The *Plyler* majority's understanding of unlawful presence and integration blended pragmatic and moral arguments. Reasoning pragmatically, it called unauthorized migrants “productive and law-abiding” individuals with a “permanent attachment” and “unlikely to be displaced from our territory.”⁸⁹ But the core of *Plyler* was a moral argument based on the history of immigration policy. As I quoted earlier: “the confluence of Government policies has resulted in ‘the existence of a large number of employed illegal aliens . . . whose presence is tolerated, whose employment is perhaps even welcomed.’”⁹⁰ Though the majority emphasized the innocence of children,⁹¹ its view of unlawful presence applies to adults as well.

B. Birthright Citizenship

CURRENT LAW CONFERS CITIZENSHIP ON ANY child (except children of diplomats) born on U.S. soil regardless of the parents' immigration status.⁹² The objections to this rule parallel those against legalization, reflecting similar views of unlawful presence and the integration of immigrants. Combining an emphasis on illegality with opposition to future integration, it is arguably wrong for illegal parents to impose their children unilaterally on future American society through automatic citizenship.⁹³

Supporters of jus soli citizenship typically blend their understanding of unlawful presence with their support for immigrant integration. A moral argument might highlight the innocence of an unlawfully present child, relying on the ideas of

contract (through labor recruitment with government acquiescence) and affiliation (through ties developed by unauthorized migrants). A pragmatic argument might stress that these children will stay indefinitely.⁹⁴ Both moral and pragmatic arguments can emphasize the integration of immigrants through a path to citizenship and other ways to avoid second class status.

Any durable, politically viable responses to immigration outside the law must start with the themes in *Plyler*. Delving into *Plyler* shows that the issues are both global and local, requiring wise attention to three policy areas—international economic development, economic development inside the United States, and domestic educational policy.

V. LOOKING
AHEAD

First, the ambiguities of unlawful presence depend ultimately on international economic development. Emigration to the United States acts as an economic and political safety valve for sending countries, as a substitute for economic development there,⁹⁵ and as a source of essential remittances.⁹⁶ Moreover, emigration is often traceable to the international effects of U.S. economic policies. Flows of capital and goods create social networks that inevitably foster the flow of human beings.⁹⁷ To adapt what the Swiss writer Max Frisch wrote about European guestworkers, “we wanted products, but people came.”⁹⁸

Managing immigration outside the law requires robust economies in sending countries so that people have the choice to stay home. If, however, economic conditions produce flight, demographic and economic pressure will keep the meaning of unlawful presence deeply contested. This complexity, combined with the role of states and cities, fuels controversy about enforcement authority. The same complexity, when combined with the integration of immigrants, animates current debate about how to balance past, present, and future.

This focus on international economic development involves U.S.-Mexico relations more than any other bilateral tie, and thus raises the more fundamental question whether justice in immigration comes from applying universal principles to all sending countries. In 1965, Congress repealed a discriminatory admissions system that had strongly preferred European immigrants,⁹⁹ replacing it with the apparently equal treatment of immigrants regardless of origin.¹⁰⁰ But justice may be undermined by imposing on Mexican immigration the same numerical ceiling as applies to every other country worldwide. Country-specific, politically generated arrangements may seem to jeopardize the hard-won equality of post-1965 immigration law, but they are crucial if immigration policy is to respond to specific historical and economic relationships. So viewed, it is encouraging that country-specific arrangements, including generous admission terms for foreign nationals based on trade or investment treaties,¹⁰¹ are emerging with greater frequency.¹⁰²

Another reason for the ambiguity of unlawful presence is that the labor needs of the U.S. economy are greater than our lawful admissions scheme can meet. The corollary to easing emigration pressures in sending countries is modifying demand

for unauthorized workers here. Only by synchronizing immigration policy with economic development inside the United States can we abate the labor demands that now complicate the meaning of unlawful presence.

On the immigration policy side, one domestic goal should be more employment-based admissions in categories requiring less education and training. Some of these admissions could be temporary, but any temporary worker program should promote integration with a path to citizenship for immigrants who decide to stay in the United States after weighing incentives to go home. And even if we base admissions on economic needs, we still should treat immigrant workers as people with families and aspirations outside the workplace. Admitting their immediate family members is crucial if we are serious about integrating immigrants into U.S. society.¹⁰³

On the domestic economic development side, our decisionmaking will depend on international economic development patterns. If sending countries develop robust economies, then migration to the United States may diminish and become more circular,¹⁰⁴ and many jobs now done by unauthorized workers may go unfilled. As we invest in economic development in sending countries, we should match such efforts by realigning our labor force through restructuring, mechanization, outsourcing, and similar approaches.

Combining integration of immigrants with the role of states and cities points to another crucial area: domestic educational policy, which strongly influences not only how immigrants integrate, but also how immigration outside the law affects U.S. citizens. Without a greater commitment of resources and energy to ameliorating the cycles of poverty among the American poor, and to meeting the economic and educational challenges faced by the American middle class, immigration outside the law will remain an easy target for simple demagogues.

The dramatic increase over the past decade in the number of noncitizens who live and work in the United States without lawful status has led to broad chasms in debate that make the task of a national conversation especially daunting. The three *Plyler* themes—though justifiably prominent on the surface—are better understood as shedding light on the more fundamental issues of enforcement authority, community building, and balancing past, present, and future. Only through this broader and deeper understanding of immigration outside the law can we ever hope to forge a national consensus.

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¹ 457 U.S. 202 (1982).

² TEX. EDUC. CODE ANN. § 21.031 (Vernon Supp. 1981).

³ Parts of Brennan's analysis seemed to require only a "rational basis," but in the end he blended both rational basis and intermediate scrutiny. *See id.* at 218 n.16, 224.

⁴ *Id.* at 228–30.

⁵ *Id.* at 219 n.19.

⁶ *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 27–37 (1973); *see Plyler*, 457 U.S. at 221, 223.

⁷ 457 U.S. at 242–54 (Burger, C.J., dissenting).

⁸ *See id.* at 218–19.

⁹ *Id.* at 244–46 (Burger, C.J., dissenting).

¹⁰ *See id.* at 220, 225. The Court declined to address whether the Texas statute was preempted by federal law. *Id.* at 210 n.8.

¹¹ *Id.* at 245–46 (Burger, C.J., dissenting).

¹² *Id.* at 222–23 (quoting *Brown v. Board of Educ.*, 347 U.S. 483, 493 (1954)).

¹³ *Id.* at 252–53 (Burger, C.J., dissenting).

¹⁴ 457 U.S. at 246 (Burger, C.J., dissenting).

¹⁵ Lawrence Downes, Op-Ed., *What Part of 'Illegal' Don't You Understand?*, N.Y. TIMES, Oct. 28, 2007, at WK11.

¹⁶ *Id.* at 226.

¹⁷ Some, numbering 1 or 1.5 million, have temporary statuses that protect them from removal, *see, e.g.*, Immigration and Nationality Act [INA] § 244, 8 U.S.C. § 1254a. *See* DAVID A. MARTIN, *MIGRATION POLICY INST., TWILIGHT STATUSES: A CLOSER EXAMINATION OF THE UNAUTHORIZED POPULATION* 1 (2005). Others are eligible for discretionary relief, *see, e.g.*, INA § 240A(b).

¹⁸ 457 U.S. at 218–19.

¹⁹ See HIROSHI MOTOMURA, AMERICANS IN WAITING: THE LOST STORY OF IMMIGRATION AND CITIZENSHIP IN THE UNITED STATES 129–30 (2006); Kitty Calavita, *The Immigration Policy Debate: Critical Analysis and Future Options*, in MEXICAN MIGRATION TO THE UNITED STATES: ORIGINS, CONSEQUENCES, AND POLICY OPTIONS 151, 155–59 (Wayne Cornelius & Jorge Bustamante eds., 1989) [hereinafter Calavita, *Immigration Policy Debate*]; MAE M. NGAI, IMPOSSIBLE SUBJECTS: ILLEGAL ALIENS AND THE MAKING OF MODERN AMERICA 52–53 (2005).

²⁰ See Calavita, *Immigration Policy Debate*, *supra* note 19, at 155–59.

²¹ See INA § 274A, 8 U.S.C. § 1324a.

²² See Wayne A. Cornelius, *The U.S. Demand for Mexican Labor*, in CORNELIUS & BUSTAMANTE, *supra* note 19, at 25, 43–44; Kitty Calavita, *Employer Sanctions Violations: Toward a Dialectical Model of White-Collar Crime*, 24 L. & SOC'Y REV. 1041, 1046–55, 1057, 1060 (1990).

²³ See *Hoffman Plastic Compounds, Inc. v. NLRB*, 535 U.S. 137, 151–52 (2002); Linda S. Bosniak, *Exclusion and Membership: The Dual Identity of the Undocumented Worker Under United States Law*, 1988 WIS. L. REV. 955, 993–94.

²⁴ In fiscal year 2002, the federal government arrested 510 unauthorized workers and employers in workplace raids. Worksite arrests rose to 1,292 in 2005 and then leapt to 4,940 in 2007. U.S. Immigration and Customs Enforcement, *Frequently Asked Questions About Worksite Enforcement*, at <http://www.ice.gov/pi/news/factsheets/worksite.htm> (last updated Aug. 12, 2008).

²⁵ See JEFFREY S. PASSEL, PEW HISPANIC CTR., THE SIZE AND CHARACTERISTICS OF THE UNAUTHORIZED MIGRANT POPULATION IN THE U.S.: ESTIMATES BASED ON THE MARCH 2005 CURRENT POPULATION SURVEY 9–14 (2006). See generally T.A. ALEINIKOFF, DAVID A. MARTIN, HIROSHI MOTOMURA & MARYELLEN FULLERTON, IMMIGRATION AND CITIZENSHIP: PROCESS AND POLICY 1312–40 (6th ed. 2008).

²⁶ *Plyler v. Doe*, 457 U.S. 202, 219 n.18 (1982) (quoting *Doe v. Plyler*, 458 F. Supp. 569, 585 (E.D. Tex. 1978)).

²⁷ On the upsurge in subfederal activity, see NAT'L CONFERENCE OF STATE LEGISLATURES, OVERVIEW OF STATE LEGISLATION RELATED TO IMMIGRANTS AND IMMIGRATION, JANUARY–MARCH 2008, at 1, 8 (2008). See generally LISA M. SEGHELLI, STEPHEN R. VINA & KARMA ESTER, CONG. RESEARCH SERV., ENFORCING IMMIGRATION LAW: THE ROLE OF STATE AND LOCAL LAW ENFORCEMENT (2006); CRISTINA RODRÍGUEZ, MUZAFFAR CHISHTI & KIMBERLY NORTMAN, TESTING THE LIMITS: A FRAMEWORK FOR ASSESSING THE LEGALITY OF STATE AND LOCAL IMMIGRATION MEASURES 8–9, 23–24, 32–43, 47–52 (2007).

²⁸ *Plyler*, 457 U.S. at 225.

²⁹ *De Canas v. Bica*, 424 U.S. 351 (1976); *see also* *Toll v. Moreno*, 458 U.S. 1, 12–13 & n.18 (1982).

³⁰ *Villas at Parkside Partners v. City of Farmers Branch*, 496 F. Supp. 2d 757, 762 (N.D. Tex. 2007) (preliminary injunction); *see also* *Villas at Parkside Partners v. City of Farmers Branch*, No. 3:06-CV-2371-L, 2008 WL 2201980, at *1, *5 (N.D. Tex. May 28, 2008) (permanent injunction). As of January 2008, a new Farmers Branch ordinance requires tenants to have a “residential occupancy license” after the city building inspector checks with the federal government that the renter is “lawfully present” in the United States. *See* 2008 WL 2201978 at *5.

³¹ *Villas at Parkside Partners v. City of Farmers Branch*, No. 3:06-CV-2371-L, 2008 WL 2201980, at *9–*10 (N.D. Tex. May 28, 2008).

³² *City of Farmers Branch*, 496 F. Supp. 2d at 766–69; *see also* *City of Farmers Branch*, 2008 WL 2201980, at *10 (permanent injunction).

³³ 305 F. Supp. 2d 585, 591 (E.D. Va. 2004).

³⁴ *Id.* at 608. The court allowed the case to proceed to factfinding on this issue but never decided it, instead dismissing the preemption claim for lack of standing. *Equal Access Educ. v. Merten*, 325 F. Supp. 2d 655, 660–72 (E.D. Va. 2004).

³⁵ *See Chicanos Por La Causa, Inc. v. Napolitano*, 544 F.3d 976, 982–86 (9th Cir. 2008); *accord* *Gray v. City of Valley Park*, No. 4:07CV00881ERW, 2008 WL 294294, at *12–*19 (E.D. Mo. Jan. 31, 2008).

³⁶ 465 F. Supp. 2d 1043 (S.D. Cal. 2006).

³⁷ *Id.* at 1047–48.

³⁸ 465 F. Supp. 2d at 1057. The court blocked enforcement with a temporary restraining order. The city later consented to a permanent injunction and to paying \$90,000 in plaintiffs’ attorney fees. *Garrett v. City of Escondido*, No. 06CV2434JAH (NLS) (S.D. Cal. Dec. 15, 2006).

³⁹ 496 F. Supp. 2d 477 (M.D. Pa. 2007), appeal docketed, No. 07-3531 (3d Cir. Aug. 30, 2007).

⁴⁰ *Id.* at 484–85.

⁴¹ *Id.* at 527–33.

⁴² *Id.* at 530.

⁴³ *See generally* ALEINIKOFF, MARTIN, MOTOMURA & FULLERTON, IMMIGRATION AND CITIZENSHIP, *supra* note 25, at 1185–89; Hiroshi Motomura, *Judicial Review in Immigration Cases After AADC: Lessons From Civil Procedure*, 14 GEO. IMMIGR. L.J. 385 (2000).

⁴⁴ See, e.g., *McNary v. Haitian Refugee Ctr., Inc.*, 498 U.S. 479, 489–94 (1991).

⁴⁵ See INA § 241(a)(5), 8 U.S.C. § 1231(a)(5).

⁴⁶ *Fernandez-Vargas v. Gonzales*, 548 U.S. 30, 33, 42–44 (2006). For a similar divide, see *Morales-Izquierdo v. Gonzales*, 486 F.3d 484, 498 (9th Cir. 2007) (en banc).

⁴⁷ 548 U.S. at 51 (Stevens, J., dissenting).

⁴⁸ See generally Stephen Lee, *Private Immigration Screening in the Workplace*, 61 STAN. L. REV. 1103 (2009); Huyen Pham, *The Private Enforcement of Immigration Laws*, 96 GEO. L.J. 777, 781 (2008).

⁴⁹ See INA § 274A, 8 U.S.C. § 1324a(b)(1); see also *supra* Part II.A.

⁵⁰ E.g., *Hoffman Plastic Compounds, Inc. v. NLRB*, 535 U.S. 137, 149 (2002); see also *supra* note 23 and accompanying text.

⁵¹ F. Ray Marshall, *Economic Factors Influencing the International Migration of Workers*, in *VIEWS ACROSS THE BORDER* 163, 169 (Stanley R. Ross ed., 1978). See also JENNIFER GORDON, *SUBURBAN SWEATSHOPS: THE FIGHT FOR IMMIGRANT RIGHTS* 49–50 (2005); Lee, *supra* note 48, at 11–15.

⁵² One local sheriff explained entering into an agreement with the federal government for local enforcement by describing Mexicans: “‘Their values are a lot different—their morals—than what we have here,’ [the sheriff] said. ‘In Mexico, there’s nothing wrong with having sex with a 12-, 13-year-old girl . . . They do a lot of drinking down in Mexico.’” Kristen Collins, *Sheriffs Help Feds Deport Illegal Aliens*, NEWS & OBSERVER (Raleigh), Apr. 22, 2007, at 1A.

⁵³ See Rose Cuison Villazor, *What Is a “Sanctuary”?*, 61 SMU L. REV. 133, 151–54 (2008); Cristina M. Rodríguez, *The Significance of the Local in Immigration Regulation*, 106 MICH. L. REV. 567, 600–05 (2008).

⁵⁴ *Plyler*, 457 U.S. at 222–23. See also *id.* at 218–19; *id.* at 234 (Blackmun, J., concurring); *id.* at 239 (Powell, J., concurring); MOTOMURA, *AMERICANS IN WAITING*, *supra* note 19, at 160–61.

⁵⁵ *Plyler*, 457 U.S. at 223; see also *id.* at 221.

⁵⁶ See Linda S. Bosniak, *Membership, Equality, and the Difference That Alienage Makes*, 69 N.Y.U. L. REV. 1047, 1121–23 (1994).

⁵⁷ For an overview, see ALENIKOFF, MARTIN, MOTOMURA & FULLERTON, *IMMIGRATION AND CITIZENSHIP*, *supra* note 25, at 1347–50.

⁵⁸ 305 F. Supp. 2d 585, 591 (E.D. Va. 2004).

⁵⁹ *Id.* at 593–94.

⁶⁰ See *id.* at 598.

⁶¹ See Leisy Abrego, *Legitimacy, Social Identity, and the Mobilization of Law: The Effects of Assembly Bill 540 on Undocumented Students in California*, 33 LAW & SOC. INQUIRY 709, 723–29 (2008) (describing how unlawfully present students acquire a sense of social acceptance in spite of unlawful status when states and localities facilitate access to education).

⁶² See Noah Pickus & Peter Skerry, *Good Neighbors and Good Citizens: Beyond the Legal-Illegal Immigration Debate*, in DEBATING IMMIGRATION 95, 111–13 (Carol Swain ed., 2007); Rodríguez, *Significance of the Local*, *supra* note 53, at 581.

⁶³ See Azam Ahmed & Karoun Demirjian, *Credit Offered to Illegal Residents: Banks Target Workers Without Documents*, CHI. TRIB., Feb. 15, 2007, at 1.

⁶⁴ See Jane Caplan & John Torpey, *Introduction to DOCUMENTING INDIVIDUAL IDENTITY: THE DEVELOPMENT OF STATE PRACTICES IN THE MODERN WORLD* 1, 5 (Jane Caplan & John Torpey eds., 2001).

⁶⁵ REAL ID Act of 2005, Pub. L. No. 109-13, 119 Stat. 302, 311–12 (codified at 49 U.S.C.A. § 30301 (West 2008)); ALEINIKOFF, MARTIN, MOTOMURA & FULLERTON, *IMMIGRATION AND CITIZENSHIP*, *supra* note 25, at 1403–05.

⁶⁶ City of New Haven, *New Haven's Elm City Resident Cards—Fact Sheet*, available at http://www.cityofnewhaven.com/pdf_whatsnew/municipalidfactsheet.pdf; Jeff Holtz, *This Summer's Surprise Hit: An Elm City ID*, N.Y. TIMES, Sept. 16, 2007, at 6CT; Jesse McKinley, *ID Cards for Residents Pass a Vote in California*, N.Y. TIMES, Nov. 15, 2007, at A20.

⁶⁷ See Michael A. Olivas, *Immigration-Related State and Local Ordinances: Preemption, Prejudice, and the Proper Role for Enforcement*, 2007 U. CHI. LEGAL F. 27, 55.

⁶⁸ See MOTOMURA, *AMERICANS IN WAITING*, *supra* note 19, at 16–17, 23–24.

⁶⁹ NAT'L RES. COUNCIL, *THE NEW AMERICANS: ECONOMIC, DEMOGRAPHIC, AND FISCAL EFFECTS OF IMMIGRATION* 135–65 (James P. Smith & Barry Edmonston eds., 1997); Philip Martin & Elizabeth Midgley, *Immigration: Shaping and Reshaping America*, 61 POPULATION BULL. 1, 20 (2006).

⁷⁰ Cf. Howard F. Chang, *The Disadvantages of Immigration Restriction as a Policy to Improve Income Distribution*, 61 SMU L. REV. 23, 25 (2008) (arguing that tax policies and transfer programs protect least skilled native workers more efficiently than immigration restrictions do).

⁷¹ INA § 214(c)(9), 8 U.S.C. § 1184(c)(9). See generally ALEINIKOFF, MARTIN, MOTOMURA & FULLERTON, *IMMIGRATION AND CITIZENSHIP*, *supra* note 25, at 422–25.

⁷² See INA § 286(s), 8 U.S.C. § 1356(s). Colleges, universities, and nonprofit research institutions are exempt from the fee requirement.

⁷³ Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, 110 Stat. 3009-546 (codified in scattered sections of 8 U.S.C.).

⁷⁴ See H.R. 321, 106th Cong. (1st Sess. 1999); H.R. 4730, 105th Cong. (2d Sess. 1998); Anthony Lewis, *The Quality of Mercy*, N.Y. TIMES, Feb. 27, 1999, at A15.

⁷⁵ See Ken Belson & Jill P. Capuzzo, *Towns Rethink Laws Against Illegal Immigrants*, N.Y. TIMES, Sept. 26, 2007, at A1.

⁷⁶ See generally Kevin R. Johnson, *Hurricane Katrina: Lessons About Immigrants in the Administrative State*, 45 HOUS. L. REV. 11, 58-64 (2008).

⁷⁷ See Carol M. Swain, *The Congressional Black Caucus and the Impact of Immigration on African American Unemployment*, in DEBATING IMMIGRATION 175, 180-87 (Carol M. Swain ed., 2007); Jennifer Gordon & R.A. Lenhardt, *Citizenship Talk: Bridging the Gap Between Immigration and Race Perspectives*, 75 FORDHAM L. REV. 2493, 2513-14 (2007); Jennifer Gordon & R.A. Lenhardt, *Rethinking Work and Citizenship*, 55 UCLA L. REV. 1161, 1173-85 (2008).

⁷⁸ See MOTOMURA, AMERICANS IN WAITING, *supra* note 19, at 15-62 (explaining “immigration as contract”).

⁷⁹ See *id.* at 80-114.

⁸⁰ Convention Relating to the Status of Refugees, art. 33, July 28, 1951, 19 U.S.T. 6259, 189 U.N.T.S. 137; see also Protocol Relating to the Status of Refugees, Jan. 31, 1967, 19 U.S.T. 6223, 606 U.N.T.S. 267; see also DAVID A. MARTIN, T. ALEXANDER ALEINIKOFF, HIROSHI MOTOMURA & MARYELLEN FULLERTON, FORCED MIGRATION: LAW AND POLICY 4 (2007).

⁸¹ MARTIN, ALEINIKOFF, MOTOMURA & FULLERTON, FORCED MIGRATION, *supra* note 80, at 2-4.

⁸² Pub. L. No. 105-100, §§ 201-204, 111 Stat. 2193-201 (1997).

⁸³ See SUSAN BIBLER COUTIN, NATIONS OF EMIGRANTS: SHIFTING BOUNDARIES OF CITIZENSHIP IN EL SALVADOR AND THE UNITED STATES 63-66 (2007).

⁸⁴ See INA § 101(a)(51), 8 U.S.C. § 1101(a)(51); INA § 101(a)(15)(T)-(U), 8 U.S.C. § 1101(a)(15)(T) (U); ALEINIKOFF, MARTIN, MOTOMURA & FULLERTON, IMMIGRATION AND CITIZENSHIP, *supra* note 25, at 433-37.

⁸⁵ ALEINIKOFF, MARTIN, MOTOMURA & FULLERTON, IMMIGRATION AND CITIZENSHIP, *supra* note 25, at 1383.

⁸⁶ In the 1990s, Congress increased penalties for existing immigration-related crimes and added several new immigration-related crimes. See INA §§ 274(a), 274C(e)-(f), 8 U.S.C. §§ 1324(a), 1324c(e) (f) (harboring or preparing false documents); INA § 276, 8 U.S.C. § 1326; 18 U.S.C. § 1546(a) (document fraud). Immigration-related prosecutions have increased sharply, accounting in February 2008 for the majority

of new federal criminal cases. *See generally* Juliet Stumpf, *The Crimmigration Crisis: Immigrants, Crime, and Sovereign Power*, 56 AM. U. L. REV. 367, 379–92 (2006).

⁸⁷ In 1996, Congress limited access discretionary relief. *See, e.g.*, Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, 110 Stat. 3009-546; ALEINIKOFF, MARTIN, MOTOMURA & FULLERTON, IMMIGRATION AND CITIZENSHIP, *supra* note 25, at 789–812; MOTOMURA, AMERICANS IN WAITING, *supra* note 19, at 54–57, 98–99.

⁸⁸ *See Shortfalls of the 1996 Immigration Reform Legislation: Hearing Before the Subcomm. on Immigration, Citizenship, Refugees, Border Security and International Law of the H. Comm. on the Judiciary*, 110th Cong. 42 (2007) (statement of Hiroshi Motomura, Kenan Distinguished Professor of Law, University of North Carolina-Chapel Hill).

⁸⁹ *Plyler v. Doe*, 457 U.S. 202, 218 n.17 (1982).

⁹⁰ *Id.* at 219 n.18 (1982) (quoting *Doe v. Plyler*, 458 F. Supp. 569, 585 (E.D. Tex. 1978)).

⁹¹ 457 U.S. at 220, 226.

⁹² *See United States v. Wong Kim Ark*, 169 U.S. 649, 693 (1898). *See generally* ALEINIKOFF, MARTIN, MOTOMURA & FULLERTON, IMMIGRATION AND CITIZENSHIP, *supra* note 25, at 15–44; MOTOMURA, AMERICANS IN WAITING, *supra* note 19, at 72–73, 114.

⁹³ *See, e.g.*, PETER H. SCHUCK & ROGERS M. SMITH, CITIZENSHIP WITHOUT CONSENT: ILLEGAL ALIENS IN THE AMERICAN POLITY 94 (1985).

⁹⁴ *See, e.g.*, David A. Martin, *Membership and Consent: Abstract or Organic?*, 11 YALE J. INT'L L. 278, 282–84, 291–94 (1985).

⁹⁵ *See, e.g.*, Louis A. Perez, Jr., Op-Ed., *Consider the Context That Sparks Migration*, NEWS & OBSERVER (Raleigh), May 12, 2008, at 9A.

⁹⁶ *See, e.g.*, Julia Preston, *Fewer Latinos in U.S. Sending Money Home*, N.Y. TIMES, May 1, 2008, at A1; COUTIN, *supra* note 83, at 122–48; *id.* at 7, 11.

⁹⁷ *See* DOUGLAS S. MASSEY, JORGE DURAND & NOLAN J. MALONE, BEYOND SMOKE AND MIRRORS: MEXICAN IMMIGRATION IN AN ERA OF ECONOMIC INTEGRATION 118–21 (2003).

⁹⁸ Max Frisch actually wrote: “We wanted workers, but people came.” MAX FRISCH, *Überfremdung I*, in SCHWEIZ ALS HEIMAT? 219 (1990) (“Man hat Arbeitskräfte gerufen, und es kommen Menschen.”).

⁹⁹ *See* MOTOMURA, AMERICANS IN WAITING, *supra* note 19, at 126–32.

¹⁰⁰ *See id.* at 131–32.

¹⁰¹ See INA § 101(a)(15)(E), 8 U.S.C. § 1101(a)(15)(E).

¹⁰² See ALEINIKOFF, MARTIN, MOTOMURA & FULLERTON, IMMIGRATION AND CITIZENSHIP, *supra* note 25, at 431–32; U.S.-Chile Free Trade Agreement, U.S.-Chile, ch. 14, § 3, June 6, 2003, http://www.ustr.gov/assets/Trade_Agreements/Bilateral/Chile_FTA/Final_Texts/asset_upload_files535_3989.pdf; U.S.-Singapore Free Trade Agreement, U.S.-Sing., ch. 11, § 3, May 6, 2003, http://www.ustr.gov/assets/Trade_Agreements/Bilateral/Singapore_FTA/Final_Texts/asset_upload_file708_4036.pdf; North American Free Trade Agreement, U.S.-Can.-Mex., Annex 1603 § C, Dec. 17, 1992, 32 I.L.M. 605 (1993).

¹⁰³ See Hiroshi Motomura, *We Asked for Workers, But Families Came: Time, Law, and the Family in Immigration and Citizenship*, 14 VA. J. SOC. POL'Y & L. 103, 114–18 (2006).

¹⁰⁴ See Pam Belluck, *Healthy Korean Economy Draws Immigrants Home*, N.Y. TIMES, Aug. 22, 1995, at 1; Kevin Cullen, *Going Full Circle: Native Land's New Prosperity Has Many Reversing Their Exodus*, BOSTON GLOBE, Mar. 19, 2007, at A1 (Ireland); Kirk Semple, *A Land of Opportunity Lures Poles Back Home*, N.Y. TIMES, Sept. 21, 2008, at A37.