

**Abstract:**

This thesis compares the use of “racially laden”<sup>1</sup> images and language surrounding immigration in public discourse and political ads with the avoidance of race in the courts. In 2007 Yale Law Professor Heather Gerken published an article<sup>2</sup>, which creates a framework to explain how judges “talk about race without actually talking about race.” Using Gerken’s theory this thesis will explore immigration proceedings in an effort to understand the avoidance of race in recent judicial decisions. This section focuses on recent cases stemming from conservative state immigration policies. This will be tied into an examination of the role and types of judicial power in the United States. It will seek to answer the question: how and why do our political questions morph into seemingly different legal questions and do current judicial power theories capture this phenomenon?

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<sup>1</sup> Lieberman 7

<sup>2</sup> “Justice Kennedy and the Domains of Equal Protection”