# 1NC

## Competitiveness CP

#### The United States federal government should substantially increase funding for science, technology, engineering, and mathematics programs in schools within the United States.

#### STEM education is key to US competitiveness and technological leadership

NSF, 18

(National Science Foundation, The National Science Foundation (NSF) is an independent federal agency that supports fundamental research and education across all fields of science and engineering, quoting Victor McCrary, NSB member and vice president for Research and Economic Development at Morgan State University, "NSB releases policy companion statement on U.S. need for STEM-capable workforce", Feb 1 2018 <https://www.nsf.gov/news/news_summ.jsp?cntn_id=244391> NL)

Today, the National Science Board (NSB, Board) released its policy companion statement to [Science and Engineering Indicators 2018](https://www.nsf.gov/statistics/2018/nsb20181/), “Our nation’s future competitiveness relies on building a STEM-capable U.S. workforce.” The [statement](https://www.nsf.gov/nsb/sei/companion-brief/NSB-2018-7.pdf) underscores the Board’s view that growing the nation’s science, technology, engineering, and mathematics (STEM) workforce is critical for our economy and global competitiveness. It offers recommendations for strengthening a diverse STEM-capable U.S. workforce inclusive of all levels of education. “STEM knowledge and skills are vital for our nation’s businesses to compete in today’s world, and for bringing better jobs and greater prosperity to every region of our country,” said Victor McCrary, NSB member and vice president for Research and Economic Development at Morgan State University. “Businesses large and small across the U.S. need adaptable, STEM-capable workers at every education level and from all demographic groups in order to be competitive. Creating a strong, diverse STEM-ready workforce is essential to economic and social prosperity and we all have a role to play in this critical effort.” According to the National Survey of College Graduates, the number of U.S. jobs that require substantial expertise in STEM has increased nearly 34 percent over the past decade. While the number of Americans with a four-year degree in science and engineering (S&E) grew by 53 percent between 2000 and 2014; in China, this number increased by 360 percent. U.S leadership in global S&E is being challenged. The NSB’s statement reflects the Board’s strong conviction that a diverse STEM-capable U.S. workforce that leverages the talents of all segments of our population is more important than ever. It notes that we now live in a global economy where knowledge reigns, and so we must do all we can to ensure that our people can succeed and contribute to the well-being of our country. The new policy companion statement addresses the need to grow a STEM-capable U.S. workforce that leverages the talents of people at all education levels and in all sectors. It not only includes traditional scientists and engineers performing research in university, government, or industry labs, but also “skilled technical workers” who can install, repair, debug, and build, but do not have a four-year degree. This skilled technical workforce includes a large, diverse group of workers that are crucial components of almost every sector of the U.S. economy, from “blue collar” occupations--such as installation, maintenance, and repair--to healthcare and computer jobs. In the early 1990s, the National Science Foundation (NSF) created the [Advanced Technological Education](https://www.nsf.gov/funding/pgm_summ.jsp?pims_id=5464) program (ATE) targeted at strengthening the skilled technical workforce. To date, the program has awarded more than $950 million to 492 distinct institutions, with more than 65 percent of the awards going to two-year degree granting institutions. In 2016, recognizing the need to enhance U.S. leadership in science and engineering discovery, NSF launched the Inclusion across the Nation of Communities of Learners of Underrepresented Discoverers in Engineering and Science ([INCLUDES](https://www.nsf.gov/news/special_reports/nsfincludes/index.jsp)) program. INCLUDES aims to expand the composition of the STEM-capable workforce by developing scalable ways to grow it by building new and strengthening existing partnerships. This is a comprehensive initiative that seeks and develops STEM talent from all sectors and groups in our society. The Board’s statement points out that STEM is not just for elite institutions or for researchers with advanced degrees--it’s for all Americans. Building the U.S. workforce of the future requires that all segments of our population have access to affordable, high-quality education and training opportunities beginning as early as kindergarten and lasting well beyond graduation. Sustaining this workforce will require cooperation and commitment from local, state, and federal governments, education institutions at all levels, non-governmental organizations, and businesses large and small.

## Heg CP

#### The United States federal government should:

#### Lift sequestration requirements on the military

#### Fully fund the United States military as necessary

#### That’s both necessary and sufficient to resolve US hegemony, and it avoids politics

Schake, 17

(Kori, Deputy Director-General of the International Institute for Strategic Studies. She teaches in War Studies at King’s College, "America's Military: Overcommitted and Underfunded", June 26 https://www.theatlantic.com/international/archive/2017/06/breaking-down-trumps-defense-budget/531099/ NL)

I confess up front to being a budget hawk. I basically believe that as long as the Pentagon is still buying two manned fighter planes after the unmanned revolution, there is more than enough money going to the Defense Department—because if money were really tight, one or both of those programs would be cancelled, and the military services would be undercutting each other's budgets to increase the funding available for their priorities. As long as adaptation to obvious next-generation platforms (like unmanned aerial fighters) remains this slow and the services placidly accept their budget shares, the topline is adequate. But even I am now nervous about the widening gap between America’s military obligations and the resourcing we are committing. What’s worsening the situation is that the Trump administration is both expanding requirements and contracting spending. Since taking office, President Trump and his defense secretary have approved an increase in both forces and operational tempo in the fight against ISIS in Iraq and Syria; committed to an enduring presence in Iraq after the defeat of ISIS; are considering an imminent increase of at least 4,000 troops to Afghanistan as part of the advise and assist mission to Afghan National Security Forces; are reviewing an Afghan war strategy that could make weightier demands of long duration to that country; have increased the military assets assigned to deter and if necessary engage North Korea; are providing greater intelligence and special-operations support to allied operations in Yemen; and are pushing back assertively on Iranian naval activity. Those are non-trivial expansions of demand to place on an already over-stretched force. Chief of Staff of the Army, General Mark Milley, [assesses](http://dailysignal.com/2017/06/12/with-army-stretched-too-thin-military-buildup-should-begin-right-now) current requirements at 540,000 active-duty soldiers, which appears to be the Army’s favorite round number: It was also what the Army believed it needed in the mid-1990s, and what the Army believed it needed mid-term of the Obama administration. So it’s likely an institutionally comfortable number rather than a rigorously derived one. Still, the 540,000 number cannot reasonably meet the very different demands of those three time frames. Planners at the end of the Cold War envisioned a strategic environment that entailed Russia integrating into the West, did not imagine the emergence of global terrorist threats, and under-emphasized the rise of an aggressive China as America’s peer. The early-2000s assessments were based on a Russia reset, the tide of wars receding, and China as a responsible stakeholder; none of those three planning parameters hold. Even without factoring in the president’s policies, objectively the international environment is increasing demands. The president’s budget allots only a 3-percent increase in the coming fiscal year DOD spending. When out-year projections are taken into account, the Trump budget will add only $463-billion increase through 2027. Despite political grandstanding about the “historic” size of the increase and a pledge to rebuild America’s armed forces, that is a very modest bump, probably inadequate even to rebuild current readiness shortfalls. Moreover, the Trump budget would drastically reduce the congressionally-approved slush fund called Overseas Contingency Operations. The OCO funds are off-budget, so are unconstrained by the Budget Control Act ceilings, and currently funnel an additional $64 billion to Defense. Despite Defense Secretary James Mattis [testifying](https://www.defense.gov/News/Article/Article/1211661/mattis-asks-congress-for-stable-budgets-end-to-sequestration/) that preserving OCO funding was one of his top five budget priorities, the president’s budget would reduce the funding to only $12 billion by the end of the five-year Future Years Defense Program. To make matters worse, the president has offered up a budget there is no reasonable possibility the Congress will enact, because it both exceeds BCA caps by $52 billion and pays for the modest increase in defense spending by violating the mandated dollar for dollar balance between domestic and defense spending. The former chair of the House Appropriations Committee, Republican Hal Rodgers, [called](https://www.bloomberg.com/politics/articles/2017-06-15/republicans-warn-defense-increase-can-t-come-at-domestic-expense) it “politically impossible.” Mattis [testified](http://www.reuters.com/article/us-usa-defense-budget-idUSKBN1941Z6?il=0) that his own budget fails to fund $33 billion in needed spending. One bleak interpretation of the White House’s intention is that the administration is seeking to make it safe for Republicans to vote in favor of budgets that increase deficit spending. Under this theory, in order to get increases in defense, conservatives would swallow their concern about the debt and agree to increases in domestic spending. In short, the administration would be betting on budget hawks abjuring their principles. They would also be setting DOD up to be the villain as the only government activity whose spending is increasing, and that at the cost of other national priorities. There is, of course, no reason Congress needs to pay any attention to the president’s budget submission. It can, and should, increase defense spending because the objective circumstances of protecting the country now require it. The president’s budget provides no blueprint for Congress to do so, but it’s easy to see what a bipartisan plan might look like: an agreed topline of a 3-5 percent increase in federal spending, split proportionately (if not exactly equally) between defense and domestic needs, and funded by modest adjustments to entitlement programs. Congress has the ability to better advance America’s national security in several dimensions by increasing defense spending, putting national finances on sounder footing, and moving ahead in a bipartisan way to solve our national problems.

## India CP

#### The United States federal government should:

#### Negotiate a bilateral investment treaty with the Republic of India

#### Support the Republic of India’s efforts to join the Asia-Pacific Economic Cooperation forum

#### Promote the sale of US military and defensive technology to the Republic of India

#### The CP solves the Indian relations advantage by facilitating a better inter-governmental relationship

Moore, 18

(Evan, senior policy analyst at the Foreign Policy Initiative, quoting James Carafano of the Heritage Foundation and Ashley Tellis of the Carnegie Endowment, "Strengthen the U.S.–India Relationship", Feb 1 <https://www.nationalreview.com/2018/02/india-united-states-relations-trade-military-strategy-alliance/> NL)

As he begins his second year in office, President Trump has an opportunity both to expand the American economy and to advance relations with a vital U.S. global partner. The Bush and the Obama administrations prioritized America’s outreach to India and negotiated key agreements in trade and nuclear and military cooperation. Now, the challenge is to build on this important bipartisan achievement to create an even closer U.S.–India relationship. Closer economic ties. Trade has transformed U.S.–India relations. “Bilateral trade has more than doubled in the last decade from $45 billion in 2006 to more than $114 billion in 2016,” as the State Department’s Alice Wells recently told Congress. In 2014, President Obama and Prime Minister Narendra Modi pledged to increase U.S.–India trade fivefold, and in the past two years, U.S. foreign direct investment in India has grown 500 percent. However, U.S.–India trade remains far short of its full potential. The president promised in his State of the Union address Tuesday that “we will work to fix bad trade deals and negotiate new ones.” If he is serious, the president should negotiate a bilateral investment treaty to further promote U.S.–India trade. For comparison: Joshua Meltzer and Harsha Singh of the Brookings Institution note that trade between America and South Korea is [twice as large](https://www.brookings.edu/blog/up-front/2017/06/22/growing-the-u-s-india-economic-relationship-the-only-way-forward/) as that between America and India, even though South Korea’s economy is 40 percent smaller than India’s. Another vital step for the administration is to support India’s effort to join the Asia-Pacific Economic Cooperation forum (APEC). India has sought to join APEC for more than 20 years, and in 2010 the organization lifted a moratorium on new members. Despite this, Washington has not seized the opportunity to support New Delhi. “India in APEC would help offset the now overwhelming influence of the Chinese economy,” [writes Alyssa Ayres](https://www.forbes.com/sites/alyssaayres/2017/11/10/want-a-free-and-open-indo-pacific-get-india-into-apec/) of the Council on Foreign Relations, “while also embedding India in a forum that would nudge it toward further economic reform.” For his part, Prime Minister Modi took office in 2014 promising ambitious economic reforms. He quickly unveiled his “Make in India” initiative to boost the country’s manufacturing sector from 17 percent of the country’s GDP to 25 percent over the next decade. Recently, India introduced a [goods and services tax](http://www.aei.org/publication/a-reform-win-for-modi/) to replacing existing state and local levies in favor of a common national tax. Overall, however, Modi’s policies have fallen fall short of his promises. As the 2019 Indian election approaches, he should not shy away from pursuing dramatic structural reforms. Derek Scissors of the American Enterprise Institute [recommends](http://www.aei.org/publication/putting-india-to-work/) allowing Indian manufacturers to hire more people, privatizing banks, improving market access, and permitting full private ownership of land. Indeed, while India is expected to become the world’s fifth-largest economy this year, there is still much New Delhi can do to promote economic growth. As Wells noted, India still has “significant tariff and non-tariff barriers, subsidies, localization policies, restrictions on investment, and intellectual property concerns that limit market access and impede U.S. exporters and businesses from entering the Indian market.” The Commerce Department reports that India has levied an array of tariffs on U.S. goods such as medical equipment, automobiles and motorcycles, rubber, alcoholic beverages, and textiles. What makes this particularly frustrating is that “India has considerable flexibility to change tariff rates at any time,” leaving U.S. exporters with tremendous uncertainty. If U.S.–India trade is to meet its full potential, then the relationship needs to be rooted in policies that are free and fair. Increasing military cooperation. Just as trade is bringing the United States and India together economically, China’s military actions are bringing them together strategically. Sales of U.S. military equipment to India have gone from zero to $15 billion in ten years. Already, the United States sells India transport and maritime patrol aircraft, anti-ship missiles, and helicopters. But, with the [declaration](https://obamawhitehouse.archives.gov/the-press-office/2016/06/07/joint-statement-united-states-and-india-enduring-global-partners-21st) of India as a “major defense partner” in 2016, the administration can offer even more systems for sale, such as drone and fighter aircraft and aircraft-carrier technologies. Just as trade is bringing the United States and India together economically, China’s military actions are bringing them together strategically. Last fall, Secretary of State [Rex Tillerson detailed](https://www.state.gov/secretary/remarks/2017/10/274913.htm) the administration’s “vision of a free and open Indo-Pacific, supported and protected by two strong pillars of democracy — the United States and India.” But to achieve that aim, Washington and New Delhi must further enhance their defense cooperation. The end goal of this cooperation, says James Carafano of the Heritage Foundation, is to craft a unique strategic relationship, “one that delivers the benefits of allied status without the formal architecture that goes with it.” Finally, as China’s military power grows, U.S. allies in the Pacific are increasing their security cooperation with the United States and each other. The Trump administration should help further incorporate India into this emerging quadrilateral relationship between themselves, Japan, and Australia. Washington, Ashley Tellis of the Carnegie Endowment says, should “actively encourage consultations, exercises, liaison relationships, and even defense procurement among any combination of partners within this ‘Quad.’” By working together to defend their common interests, the Quad can advance a shared vision of an Indo-Pacific that is free from coercion and intimidation. Conclusion. In 2000, Indian prime minister Atal Bihari Vajpayee declared that his country and the United States are “natural allies.” But, as President Trump said when unveiling his national-security strategy: “Success is not a forgone conclusion. It must be earned.” Trump and Modi should take the difficult steps now to fulfill their predecessors’ visions of a close U.S.–Indian economic and military relationship.

## Indo-Pak CP

#### The Republic of India should join the One Belt and One Road Initiative.

#### That would strengthen economic ties between India and Pakistan and prevent conflict.

Maqsood, 18

(Asia, degree of M. Phil in Defence and Strategic Studies from Quaid-i-Azam University Islamabad. She has done Masters in International Relations from the same Institute, "OBOR can stop the next Indo-Pak war", May 24 2018 <https://dailytimes.com.pk/243794/obor-can-stop-the-next-indo-pak-war/> NL)

One Belt and One Road initiative would lessen the probabilities of a nuclear war between India and Pakistan by providing Pakistan with a competence to monitor India’s naval activities in the Indian Ocean. Pakistan plays a significant role in China’s Maritime Silk Route as part of China’s Belt and Road initiative (BRI). The China-Pakistan Economic Corridor (CPEC) is a vital development project within China’s Belt Road Initiative (BRI) and serves as the crucial link between the maritime ‘road’ and land based ‘belt’ aspects of the BRI. India perceives China’s Maritime Silk route passing through South Asia as a direct threat to its core strategic interest in the Indian Ocean as it wants to maintain Indian primacy in the Indian Ocean (IO) and Indian Ocean Littoral States. Indian leaders have strong aspirations to be a blue water navy or the dominant naval power in the Indian Ocean since its inception in 1947. Indian Researcher Anit Mukherjee determines the Indian Ocean strategy in three categories. One is to establish closer ties with the US and its allies, second is to strengthen its links with Indian Ocean Littoral states and last is to build up its own military power (including the induction of nuclear capable submarines into the Indian Ocean). Indian Ocean Region (IOR) is the coastal area (consists of islands and states) lying in contact with the IO. It has become a renewed focal point of global economy, having substantial avenues for economic activities of Asia, US, and Europe. Therefore, all stakeholders are obliged to ensure the security of the Indian Ocean in order to avoid any miscalculation or misperception among all stake holders. Moreover, China is expected to be the world’s largest oil importing country and India is expected to be the largest coal importing country by 2020; therefore, there is an inevitable need for their cooperative efforts to ensure security. On the other hand, the enlargement of the People’s Liberation Army Navy (PLAN) in the IOR is primarily due to the large economic incentives. China has transported 173.9 million tons of oil from the Middle East to China, and 52.4 million tons from Africa to China in 2016. Besides, China has established its first overseas military base in Djibouti which is considered by India as part of China’s “String of Pearls” strategy and would engulf India. If India is developing its military (three wings: army, navy, air force) to maximize its power, likewise it may avoid feeding its fears related to China’s port development assistance in the IOR as China is pursuing its own national economic and strategic interests. India perceives that these ports can disrupt the refuelling of India’s tankers, warships because of the presence of People’s Liberation Army Navy in the IOR. The contemporary world is globalised and interdependent where states have to cooperate with each other in each walk of life. Therefore, India’s rhetoric regarding China’s development projects may prove unjustified in the future. Here the question arises that why is India one of the biggest trade partners of China if it feels that it would be engulfed by China? By the same token, India has presuppositions that the development of Gwadar Port in Pakistan’s Balochistan Province under China — Pakistan’s joint development project, China — Pakistan Economic Corridor (CPEC) will pave the way for the formation of Chinese naval base in Gwadar. Fuelling fears against China, India has launched a nuclear capable Submarine in the Indian Ocean. This nuclearisation of Indian Ocean has serious security implications for Pakistan. Thus, Pakistan needs a strategic partner currently (in the form of China) in order to monitor India’s naval activities in the Indian Ocean. China can monitor the naval activities of both the US and India on the Indian Ocean. The new generation of nuclear submarines may increase the risk of a devastating war between the two longstanding enemies Some of the recent events such as India-China military standoff at Doklam from16 June 2017 — 28 August 2017 and India-Pakistan’s blame game on the unprovoked firing on the Line of Control region in 2017 and in the beginning of 2018that left hundreds of people dead and injured, are the destabilising incidents in the South Asian region. In the backdrop of these insecurities, Pakistan has to maximise its defence. Most recently, an embryonic formation of an alternative route against China’s B&R initiative by a quad of Australia, India, Japan and the US in order to contain China’s global influence may exacerbate some tensions at global level. India being part of this quad may pursue its strategic objective against China’s B & R initiative. India here has certain doubts about Chinese aims to deploy Gwadar in the medium to long term as a dual use port, allowing the PLA key access into the Indian Ocean as well as bolstering Pakistan’s ability to deter any Indian advantage in the naval realm. The Pakistani port of Gwadar, built, financed and operated by China is located at the union of the Gulf of Oman and the Arabian Sea, providing China access to a key location in the Indian Ocean. In between all these states, Pakistan being an important part of China’s Belt and Road initiative can maximize it maritime security fittingly. Pakistan navy is likely to buy eight more diesel-electric attack submarines from China in near future. These are scheduled for delivery in 2028 to maximize Pakistan’s maritime security as a defensive measure. It may direct a response to India’s August 2016 deployment of its first nuclear submarine, the Arihant. A second, even more advanced Indian nuclear submarine, the Arighat, began sea trials last November, and four more boats are scheduled to join the fleet by 2025. That will give India a ‘nuclear triad,’ which means the country will have the ability to deliver a nuclear strike by land-based missiles, by warplanes, and by submarines. The submarine is the key component. It’s considered the most “survivable” in the event of a devastating first strike by an enemy, and thus able to deliver a retaliatory second strike. Lastly, Both China and Pakistan will be able to monitor India’s naval activities in the Indian Ocean so that India’s attempt to get an advantage in the IO can be counterbalanced. If, supposedly, that advantage will go unnoticed, there would be more chance of the nuclearisation When it comes to India and Pakistan, by contrast, the new generation of nuclear submarines may increase the risk of a devastating war between the two longstanding enemies.

## NGO CP

#### The United States federal government should substantially increase reconstruction aid to Iraq and support UN efforts.

#### CP solves the water crisis and broader instability within Iraq.

RT 18 (Citing multiple UN officials, 1-10-2018, "Underwhelming US aid to Iraq: ‘If you broke it & failed to fix it, find somebody else to do it’," RT International, <https://www.rt.com/news/415510-us-broke-iraq-isis-fix/>, MSCOTT)

The US should contribute to international efforts to rebuild Iraq rather than focus on direct aid, considering Washington’s initial responsibility for “breaking” the country, global affairs expert Jonathan Steele told RT.

Earlier this week, the US announced it would double the sum of reconstruction aid to the Iraqi government in 2018 to $150 million, but this is just a fraction of what is needed. Steele, a veteran British journalist and author, said that was not enough and that an international effort would be required to rebuild the Middle Eastern country.

“There is always an argument that if you broke it, you have responsibility to fix it. And clearly the Americans broke Iraq by the initial invasion in 2003. But there is also another course of argument, which is if you broke it and have made a mess of rebuilding it, then get somebody else to do the rebuilding. So it would be better if there was an international consortium that was helping out and the UN took the lead in all the reconstruction programs,” Steele said.

“The UN of course doesn’t have very much money and it too is relying very much on US funding and [US President Donald] Trump has cut back some of the funding because of other issues like the Palestinian question. So we really need more help to the UN from some of the rich countries of the world in addition to the US, like Japan, the Gulf Arab states, China, Russia – they should all be helping put more money behind the UN.”

While the foreign money would help, Baghdad should pull its weight too, both financially and morally, Steele believes.

“It is their own country. It’s also their own fault that [Islamic State/IS, formerly ISIS] came into the country in a big way and destroyed cities like Mosul, took over Tikrit, Fallujah and Ramadi. The Iraqi government does have oil revenues, so they should be putting money in as well, not just the US. But the US should certainly put in more,” he said.

Steele added Baghdad should be careful to prevent a comeback of insurgents capitalizing on problems of alienated groups in Iraq. After all, the Sunni jihadist group saw little resistance from the Sunni population in northern Iraq, which “felt neglected and alienated and even under a sort of occupation by Shia administrators from Baghdad.”

“[IS] has been driven out, but unless those problems are solved, they can make a comeback, so it is important that the Iraqi Army is strong to resist them in a better way than they did three years ago, when ISIS first turned up in Mosul and the Iraqi Army just laid down their weapons and fled,” he said.

“It’s important to strengthen Iraqi Army, but not just by giving them more machinery and weaponry, but by getting more Sunnis into the army so that it isn’t perceived anymore as a Shia force and therefore subjected to all kinds of sectarian suspicions.”

Steele added that a fair distribution of the aid money would be just as crucial to avoid the kind of alienation he was talking about. “It’s really important that the money goes into the Sunni communities and that new political programs are developed to make the Sunnis see Baghdad as their ally and not their enemy,” he explained.

## Canada CP – Blood Quantum

#### Text: The United States should propose to the government of Canada the abolition of the use of the blood quantum as a part of the free passage statute under the Jay treaty.

#### The counterplan solves and proves the necessity for cooperative effort on behalf of both nations.

Nickels, 01 (Bryan Nickels, Notes & Comments Editor for the Boston College International and Comparative Law Review., “NATIVE AMERICAN FREE PASSAGE RIGHTS UNDER THE 1794 JAY TREATY: SURVIVAL UNDER UNITED STATES STATUTORY LAW AND CANADIAN COMMON LAW,” Boston College Journals, <https://www.bc.edu/content/dam/files/schools/law/lawreviews/journals/bciclr/24_2/04_FMS.htm>, accessed on 6/27/18, AB)

The ultimate fate of the Jay Treaty, the Treaty of Ghent, and related legislation seems to be of some dispute, and both U.S. and Canadian courts are unsure how to treat it. Although the U.S. survival of the Jay Treaty and the Treaty of Ghent have been thrown into serious doubt by the Supreme Court’s holding in Albro, the fact remains that Congress has codified the Jay Treaty provision into U.S. immigration law as Section 289 of the INA, and the statute has remained virtually unchanged, despite crisis-level periods such as the Termination Era of the 1950s. However, the Canadian system never codified the Jay Treaty free movement provision, leaving Canadian courts struggling over the last fifty years with the vague, unmanageable “aboriginal rights” standard at common law. Such a standard has resulted in an excessively restrictive “nexus” test, especially in the last ten years, requiring the presentation and “trying” of anthropological and cultural data. The [\*PG338]restrictive Canadian treatment, balanced against the liberal American treatment, potentially exposes interested individuals (members of native groups attempting to cross the U.S-Canadian border) to wild disparities in the law. Movement into the U.S. is highly deferential, and Indians enjoy great respect for prehistoric rights; however, movement into Canada essentially places the Indian individual on the same level as any other entering alien, despite his group’s occupation of the same borderlands for thousands of years preceding Great Britain’s establishment of the Canadian territories. In fact, despite the various legal conflicts and questions that have arisen around the language, Congress has done virtually nothing to restrict or narrow 8 U.S.C. sec. 1359, leaving courts to broadly interpret the statute; similarly, some of the broadest interpretations of Section 289 can be found within the related federal regulations.203 Where some courts promptly dispense with the Jay Treaty (and the Treaty of Ghent) on the question of free passage of goods, other courts hedge the language in the Jay Treaty and subsequent law as merely stating a “natural law” sort of concept for free passage of individuals, a right enjoyed by Indians that preceded European arrival to the New World. It is curious that such a right survives to this day on both the U.S. and Canadian sides of the border. This is especially true given the difficulties each nation has experienced in dealing both with immigration and Indian law. In the U.S. alone, these areas of law have undergone dramatic changes in policy in the approximately 200 years of independence. Immigration and Indian legislation in the United States is especially notable for periods of blatant racism, but through all of this, the policy of free movement of Canadian Indians has survived. The fact that 2% of the Canadian populous is eligible for LPR benefits, without ever having to fill out a U.S. immigration form, is tribute to the expansiveness and curiosity of the American statutory enactment of the Jay Treaty. However, given the restrictiveness of the Canadian common law treatment of the Jay Treaty free passage right, it is clear that U.S. and Canadian laws will have to be rectified. If tribal sovereignty is to mean anything, it must at least mean that members of the sovereign are empowered to travel within and through their traditional lands with[\*PG339]out interference from other sovereigns. The realignment of U.S. and Canadian treatment of the Indian free passage right needs to occur in order to preserve a right not only guaranteed in the post-Revolutionary War Jay Treaty, but also a right, by the Canadian courts’ own admission, that is older than European occupation of North America.

#### Both nations have an obligation to cooperate over indigenous immigration

MARQUES 11 (NICOLE TERESE CAPTON MARQUES, J.D. Candidate December 2011, University of San Diego School of Law; B.A. Comparative Literature, Princeton University., “COMMENT: Divided We Stand: The Haudenosaunee, Their Passport and Legal Implications of Their Recognition in Canada and the United States,” 13 San Diego Int'l L.J. 383, accessed on 6/25/18, AB)

The rules governing the relationship between Native tribes and the American and Canadian governments have their roots in international law. 125 As such, it is appropriate now to look to the current obligations of the U.S. and Canada under international treaties and other human rights instruments. In 1945, both countries ratified the U.N. Charter. 126 In doing so, each became a member state of the U.N. and bound themselves to promote the organization's principles. The principle purposes of the U.N. are articulated in Article 1 of the U.N. Charter. Under that article, the "purposes of the United Nations" include "developing friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples" 127 and "achieving international cooperation in solving international problems of an economic, social, cultural, or humanitarian character." 128 Further, Article 55 of the U.N. Charter provides that each member state is to promote "universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as [\*406] to race, sex, language, or religion." 129 These articles have particular resonance for the situation faced by the Haudenosaunee in that it could at least be defined as a problem of "cultural" character. 130 Therefore, the U.S. and Canada have an obligation to work together to reach an amicable solution.

## Parole CP

#### Text: The Executive branch of the United States should indefinitely grant parole and issue employment authorization documents to [insert plan VISA]

#### Executive parole solves the case. Net benefit - it is distinct from “legal immigration” and avoids political ramifications.

Endelman and Mehta ‘9 (Gary - J.D., University of Houston, Board Certified in Immigration and Nationality Law. Cyrus D. - graduate of Cambridge University and Columbia Law School, Managing Member of Cyrus D. Mehta & Associates, Chair of the Committee on Immigration and Nationality Law for the NYC Bar, Adjunct Associate Professor of Law, “The Path Less Taken: Is There An Alternative To Waiting For Comprehensive Immigration Reform?” 2009, http://www.ilw.com/articles/2009,0225-endelman.shtm)

The use of parole by the Executive acting sua sponte in such an expansive and aggressive fashion is hardly unique in post-World War II American history. The rescue of Hungarian refugees after the abortive 1956 uprising or the Vietnamese refugees at various points of that conflict come readily to mind. While these were dramatic examples of international crises, the immigration situation in America today, though more mundane, is no less of a humanitarian emergency with human costs that are every bit as high and damage to the national interest no less long lasting. Even those who are in removal proceedings or have already been ordered removed, and are beneficiaries of approved petitions, also need not wait until eternity for Congress to come to the rescue. The government has always had the ability to institute Deferred Action, which is a discretionary act not to prosecute or to deport a particular alien.16 This safety valve will fix our broken system of future flows by allowing those who could not qualify for any other visa option to have new hope and unimagined choices. There are those who argue that only Congress can make immigration policy in this fundamental way and this reservation is both serious and worthy of deep respect. Yet, we have a dysfunctional Congress that is or appears to be incapable or unwilling to reach consensus on immigration. Do we as a society simply throw up our hands and do nothing, allowing a bad situation to become worse or do we use this challenge as an opportunity to create something better through temporary and targeted executive action that Congress can either overturn or accept at a later date? There are several examples of administrative action to create new immigration policy in the face of Congressional inaction in recent years. In the STEM OPT regulation, the USCIS openly admitted that granting an additional 17 months of employment authorization was a regulatory response to an inadequate H1B quota. When they limited the validity of a labor certification of 180 days, the US Department of Labor did so on their own without the fig leaf of legislative authorization.17 Remember when the AAO handed down the decision in New York State Department of Transportation,18 thus effectively repealing the national interest waiver statute for several years until the relaxation came?19 Finally, under the Cuban Adjustment Act of 1996, even if the Cuban national entered without inspection, the former INS Commissioner Doris Meissner clarified that the Service could use its authority under the humanitarian and significant public benefit criteria in Section 212(d)(5) to parole Cubans who had entered without inspection under the fiction that the individual would surrender to the government, which in turn would release or parole him or her, and thus render them eligible for adjustment of status under the CAA.20 Did Congress tell them they could do that? All of these actions, and many others not singled out, had profound effect but depended solely upon the imaginative exercise of executive authority yet consonant with a proper respect for separation of powers. So we can do so here. Those who do not think so ignore at their own peril and ours the fundamental distinction between making policy, which only Congress can do, and implementing tactical adjustments, which the Executive is uniquely suited to do. This is why only Congress can create a legal status while the Attorney General can authorize a period of stay. This is why only Congress can enlarge the EB quota but the Executive can allow adjustment applications without a quota expansion so long as final approval is not forthcoming. This is why only Congress sets visa limits while the Executive can grant parole. This is why only Congress sets work visa law but the Executive can issue EADs. To suggest that Congress must act in both a long and short term context is to ignore the historic and legitimate differences between the two branches of government. If Congress wants to overturn such executive action, it can do so. Likewise, if it supports the President, it can stay its hand. Either way, Congress is expressing its will, whether through positive action in the form of legislation or negative action in the form of silent acquiescence. Both action and its absence are authentic manifestations of congressional intent and expressions of congressional authority. In reality, we all know that there are 40 votes in the Senate to uphold such regulatory initiative. Congress will be more than content to allow the President to take the lead and solve what it has manifestly been powerless to solve- how to regulate both past and future migration flows; how to solve the growing unskilled worker backlog; how to ameliorate the gratuitous cruelty of the 3/10 year bars; how to reduce the size of the undocumented population who may already working here and contributing to the exchequer and how to satisfy the hungry manpower needs of employers once the dark cloud of recession lifts without creating a single new immigrant visa. When has so much come from so little? We do not say that CIR can be cast aside for there are many people who will never be the beneficiary of an I-140 or I-130. Ours is a far more modest proposal. We seek only to broaden the debate and widen the national conversation. Now is the time for what Franklin Roosevelt rightly called "persistent, bold experimentation." We must not wait for Congress to act. However important CIR remains, it is not the only way.

## EB Reallocation CP

#### Plan text: The United States federal government should maintain the cap of 140,000 EB visas and allocate 5.2 percent for EB-1 immigrants, 10.2 percent for EB-2 immigrants, and 35.2 percent each skilled and unskilled workers in the current EB-3 category. The government should also waive labor certifications for unskilled workers.

#### The CP avoids harmful brain drain, meets U.S. economic interests and makes immigration law consistent with antidiscrimination principles

Scalzo, 11 --- J.D. from The George Washington University Law School May 2011 (April 2011, Kayleigh, The George Washington Law Review, “Note: American Idol: The Domestic and International Implications of Preferencing the Highly Educated and Highly Skilled in U.S. Immigration Law,” 79 Geo. Wash. L. Rev. 926, Lexis-Nexis Scholastic, JMP)

C. Undemocratic, "Un-American" Value Judgment

Restricting EB-3 immigration while favoring EB-1 immigration is not only a devaluation of the working-and middle-class immigrant populations, but it is also at odds with the fundamentals of U.S. law - at least as it pertains to U.S. citizens. By packaging the visa groups this way, Congress has relegated nonelite immigrants to a visa category fraught with obstacles. By contrast, an elite multinational executive or internationally acclaimed movie star is bestowed with a golden ticket as an EB-1. n104 It is difficult to imagine other areas of U.S. law that explicitly differentiate the treatment of persons on the basis of celebrity status, skill level, and education in any way comparable to the INA. n105

Historically, immigration laws have been uniquely situated vis-a-vis domestic constitutional and antidiscrimination protections. The federal government regulates immigration based on a number of enumerated and implied constitutional powers, n106 and Congress's authority to regulate immigrant admissions is subject to extremely minimal judicial intervention. n107 Antidiscrimination laws do not apply equally to U.S. citizens and aliens; instead, the government may invoke authority inherent in sovereignty to prevent certain groups from entering the country. n108 This contrasts distinctly with domestic civil rights [\*944] regimes and the special protections of U.S. citizen minority groups within the country. n109

U.S. immigration policy also has a tradition of excluding the poor and working classes, largely by means of laws providing for the inadmissibility and deportability of aliens likely to become public charges. n110 In other words, the reputation of the United States as a haven for poor, underprivileged immigrants is a false, yet well-maintained, historical image. n111 The increasing skill and education levels of legal immigrants contrasts with the unskilled, poor profile of undocumented immigrants to suggest that immigration policy is actually about controllingW U.S. demography rather than securing the nation's borders. n112 Because affluence and professional achievements facilitate immigration under current U.S. policy, "class biases are endemic to the modern immigration laws." n113 At the time the 1990 INA amendments were made, policy was driven by a concern that "because most of the world was poor, we must limit immigration or risk being overrun." n114

Despite these constitutional and historical hurdles, in 1994, a group of aspiring EB-3 immigrants attempted to challenge the reallocation of EB visas under the 1990 INA, including the restrictive annual [\*945] quota of 10,000 unskilled immigrants. n115 The United States District Court for the Southern District of New York found no violation of plaintiffs' Fifth Amendment substantive due process rights because of the rational relationship of the reallocations to Congress's "goal of reducing the waiting period for skilled workers." n116 The court's choice of language only reinforces the confusion amongst policy, public understanding, and law in this area: skilled workers, part of the EB-3 category, are disfavored by statute. Admittedly, they have a slight leg-up over unskilled workers (namely, evading the 10,000 per annum cap), but the functional effect of the INA in no way accelerates or facilitates their immigration. Rather, Congress's goal in EB immigration policy was to ease provisions for those with extraordinary abilities, high-level professors and researchers, and multinational managers and executives - not skilled workers. n117

III. Proposal: Transforming EB Immigration from an Audition to an Application

The current system of EB visa allocations contributes to brain drain, underserves U.S. economic interests, and prolongs a historical exemption of immigration law from antidiscrimination regimes. In light of this situation, a larger proportion of permanent immigrant visas should be allocated for skilled and unskilled workers, and the labor certification requirement should be waived for unskilled workers. This Note does not, however, advocate a higher overall number of EB visas.

A. Proposed Visa Allocations by Percentage

As a first step toward reform, it is appropriate to focus on the proportional allotment of visas instead of the overall number, because concerns regarding immigration generally stem from the "composition" of incoming immigrant groups rather than their quantity. n118 The allocation of EB visas should more closely resemble the natural spectrum of human abilities: only a small number (logically) comprises "that small percentage who have risen to the very top of [their] field of endeavor," in contrast to the 28.6% of visas that EB-1s now receive. n119 [\*946] Thus, the bulk of EB visas should be reserved for skilled and unskilled labor, the group into which most immigrants likely fall.

Admittedly, any quantification of or numerical limitation on immigrant categories is, to some degree, arbitrary, but the following numbers provide an example of a more appropriate distribution. Amongst the 140,000 EB visas per annum currently available, EB-1 immigrants - those with extraordinary abilities, high-level researchers and professors, and multinational executives and managers - should receive 5.2%, or 7280, of the visas. EB-2s, those with exceptional abilities and members of professions with advanced degrees, should receive 10.2%, or 14,280, of the visas. Skilled workers, a subset of the current EB-3 category, should receive 35.2%, or 49,280, of the visas; and unskilled workers, another subset of the current EB-3 category, should receive 35.2%, or 49,280, of the visas. n120 These percentages and numbers add up to the same proportion of worldwide immigrant visas currently allocated to EB-1, EB-2, and EB-3 categories. Consequently, the change would be limited to an internal rearrangement and would preserve the current taxonomy and nomenclature. n121

This redesigned allocation retains statutory privileges for the highly skilled and highly educated who seek to immigrate. However, reducing the number of visas reserved for EB-1 and EB-2 immigrants would reduce brain drain, n122 would better match the overall immigration [\*947] flow with the domestic economic needs outlined above, and would create an EB-immigrant spectrum more closely resembling a natural bell curve than a combination of the Academy Awards and the Nobel Prize ceremonies. Furthermore, under these revised allocations, the same total number of EB immigrants would be legally admitted as under the current regime; the only difference would be the internal makeup of the group. In other words, there would be no net change to the number of arrivals per year. Thus, this rearrangement would present minimal risk even if one believes that immigrants deprive U.S. workers of employment opportunities - a position that may be validly defended.

#### CP effectively reforms visa allocations and avoids brain drain

Scalzo, 11 --- J.D. from The George Washington University Law School May 2011 (April 2011, Kayleigh, The George Washington Law Review, “Note: American Idol: The Domestic and International Implications of Preferencing the Highly Educated and Highly Skilled in U.S. Immigration Law,” 79 Geo. Wash. L. Rev. 926, Lexis-Nexis Scholastic, JMP)

This Note identifies two main flaws with EB visa allocations: insufficient immigration opportunities for skilled and unskilled EB immigrants ("EB-3s") n14 and a labor certification process so stringent and [\*929] unrealistic that it invites fraud. n15 This situation is problematic for a number of reasons: it occasions "brain drain" n16 and undermines U.S. foreign policy; it runs contrary to the economic interests of both aspiring immigrants and the U.S. workforce; and its valorization of - and preference for - the highly educated, wealthy, and well-situated is at odds with the fundamentals of American law.

This Note argues that, as a first step toward immigration reform, the percentage of EB visas allocated to skilled and unskilled workers should be increased relative to other EB categories, and the labor certification requirement should be waived for unskilled workers. It does not, however, advocate a higher overall number of EB immigrants.

Nevertheless, it is well established that increasing the number of people admitted to the United States under an employment visa requires an act of Congress.

# 2NC

## Competitiveness CP

### Overview

#### The CP solves the aff by maintaining US competitiveness with other nations – that’s NSF 18. By bettering domestic education, we’re able to improve our own nation’s highly skilled workforce and catch up with other nations that are rapidly growing in technology.

### Extensions

#### STEM’s the ONLY way to maintain US competitiveness-- not only does the CP solve better, but the aff is insufficient.

Tucker, 17

(Dr. Conrad Tucker is currently serving as a science and policy fellow in the Foresight, Strategy, and Risks Initiative at the Atlantic Council’s Scowcroft Center for Strategy and Security. Dr. Tucker holds a joint appointment as associate professor in engineering design and industrial and manufacturing engineering at the Pennsylvania State University. He is also affiliate faculty in computer science and engineering. Dr. Tucker is the director of the Design Analysis Technology Advancement ([D.A.T.A](http://www.engr.psu.edu/datalab/)) Laboratory. His research focuses on the design and optimization of complex systems through the acquisition, integration, and mining of large scale, disparate data. Three characteristics of engineered systems that Dr. Tucker's research group explores are: i) the ability to sense an environment, ii) the ability to characterize relevant system attributes, and iii) the ability to learn and predict future states that aid decision makers. Through Dr. Tucker’s research, the concept of large scale social media networks serving as low cost, scalable sensor systems is a departure from traditional perceptions of social media networks as merely being platforms for disseminating content and connecting individuals. Dr. Tucker’s research group has utilized social media platforms to quantify cyber security threats, train machine learning algorithms, and model and predict user interactions and behavior. Dr. Tucker has served as principal investigator (PI)/Co-PI on several National Science Foundation (NSF) funded grants and is currently serving as PI and site director of an NSF Industry/University Cooperative Research Center (I/UCRC) at Penn State. Dr. Tucker is part of the inaugural class of the Gates Millennium Scholars (GMS) program. In February 2016, Dr. Tucker was invited by National Academy of Engineering (NAE) President Dr. Dan Mote, to serve as a member of the Advisory Committee for the NAE Frontiers of Engineering Education. Dr. Tucker is the recipient of the American Society of the Engineering Education’s (ASEE) Summer Faculty Fellowship Program (SFFP) award and conducted research at the Air Force Institute of Technology at the Wright Patterson Air Force Base during Summer 2014 and Summer 2015. "Keeping a Global Competitive Advantage with STEM Education", october 9 [www.atlanticcouncil.org/blogs/futuresource/keeping-a-global-competitive-advantage-with-stem-education](http://www.atlanticcouncil.org/blogs/futuresource/keeping-a-global-competitive-advantage-with-stem-education) NL)

Science, technology, engineering, and mathematics (STEM) workers [play](http://www.esa.doc.gov/sites/default/files/stemfinalyjuly14_1.pdf) an integral role in maintaining or advancing a nation’s economic and societal competitiveness. A recent report of the eight most valuable startup companies in the US further [emphasizes](http://www.businessinsider.com/most-valuable-us-startups-2016-12) the impact of STEM disciplines in the creation of new industries and domains. The success of a majority of these startups heavily relies on STEM skillsets that include software/app development, data analytics and machine learning expertise, and the seamless integration of technologies that enhance user experiences. While the demand for STEM degrees continues to increase, the time needed to attain a higher education degree [remains](https://nces.ed.gov/fastfacts/display.asp?id=569) relatively constant and typically exceeds fifty-two months, well beyond the projected forty-eight months that students prefer. Several questions emerge from these findings: Is the rate of attaining a STEM degree or skillset keeping up with the evolving needs of society? Will advancements in automation and artificial intelligence reduce the demand for STEM workers? What policies should be considered to increase a nation’s competitiveness, in the age of artificial intelligence and automation? Is the rate of attaining a STEM degree or skillset keeping up with the evolving needs of society? There has been a significant [decline](https://nsf.gov/attachments/117803/public/Xc--Linking_Evidence--Fairweather.pdf) in the number of students choosing to major in STEM degrees, both at the undergraduate and graduate levels. While the reasons for this decline are multifaceted, the potential societal implications are significant, especially in the digital age where value-creation is not only based on the functional capabilities of a new technology, but also the integration of that technology with other existing infrastructure. Let us take for example a ride hailing app. From a user’s perspective, the interface is straightforward: users demands a ride from point A to point B, they get out their mobile device, open the app, enter their destination, and a vehicle is there to pick them up in minutes. However, the technological components needed to achieve this seemingly straightforward series of steps are enormous and include: the design of the chipsets used in the mobile device, the precision of the global positioning system (GPS) used to locate the user, the maintenance of the wireless network used to transmit data back and forth between the driver and the user, and most importantly, the seamless integration of these technologies that make all of this possible. As new companies are created and existing companies evolve, there will be an increased need for workers with skillsets that add value to these domains. Therefore, the decline of students majoring in STEM, at a time when there is an increased demand for STEM skillsets is of great concern.

#### This is historically true

NSB, 10

(National Science Board, chaired by Steven C. Beering, President Emeritus, Purdue University, West Lafayette, Indiana, “Preparing the Next Generation of STEM Innovators: Identifying and Developing Our Nation’s Human Capital,” 5/5/10, https://www.nsf.gov/nsb/publications/2010/nsb1033.pdf)

In 1957, under the shadow cast by the Soviet Union’s successful launch of Sputnik, the United States embarked on a coordinated, decade-long effort to recruit and educate the “best and brightest” who subsequently would form a new generation of leaders and innovators in science and engineering (S&E). This endeavor ushered in a new era of unprecedented scientific and technological advancement in the Nation, leading to the creation of new industries and job opportunities, improvements in national security, and enhancements in our quality of life. At the root of this progress was a nationwide focus on excellence in science, technology, engineering, and mathematics (STEM) education and talent development, along with a substantial investment in research and development (R&D). By the 1970s, however, this national sense of urgency and commitment to excellence in STEM education had lapsed into complacency. In 1983, the landmark report, A Nation at Risk, noted that “the ideal of academic excellence as the primary goal of schooling seems to be fading across the board in American education.”3 In 2005, nearly a quarter century after A Nation at Risk, the alarm once again was sounded over the looming challenge to U.S. pre-eminence in science and technology (S&T) in the National Academies’ seminal report, Rising Above the Gathering Storm. 4 This report posited that in the 21st century, educated, talented, motivated people and their ideas are paramount to creating the innovations that will sustain America’s prosperity.5 Finally, in 2009, the Administration’s Strategy for American Innovation argued for investing in the building blocks of innovation, promoting competitive markets, and catalyzing breakthroughs for our Nation’s priorities.

A critical facet of America’s historical advantage in S&T innovation has been the ability to attract, develop, and retain talented individuals from abroad. Indeed, over the past few decades, many STEM fields in the United States have become increasingly dependent on foreign-born talent. However, global competition for STEM talent is growing as many countries increase their R&D capacity and improve their own STEM education systems. In light of this, it remains essential that the Nation not only continue to attract STEM talent from abroad, but also renew and redouble its efforts to identify and develop domestic human capital as well.

The Board’s 2-year examination of this issue made clear one fundamental reality: the U.S. education system too frequently fails to identify and develop our most talented and motivated students who will become the next generation of innovators. Whether this group of students has access to appropriate resources seems to be an accident of birth—whether they are a part of a supportive and knowledgeable family or are residing in a community that has programs and opportunities available to them. There are students in every demographic and in every school district in the United States with enormous potential to become our future STEM leaders and to define the leading edge of scientific discovery and technological innovation. Some of our Nation’s most talented students—perhaps through sheer individual will, good fortune, and circumstance—rise through the educational system and become leading contributors to the scientific workforce. Regrettably, far too many of our most able students are neither discovered nor developed, particularly those who have not had adequate access to educational resources, have not been inspired to pursue STEM, or who have faced numerous other barriers to achievement. The possibility of reaching one’s potential should not be met with ambivalence, left to chance, or limited to those with financial means. Rather, the opportunity for excellence is a fundamental American value and should be afforded to all.

### AT Perm do Both

#### Perm links to DA because increasing immigration would

#### [BASE] Plan anger Trump’s base – links to the base DA impacts – whereas the CP would do the opposite, encouraging domestic development makes Trump’s base more content – our net benefit

#### [BRAIN DRAIN] Links to brain drain impacts because immigrants flock to the U.S. were the plan instated – whereas just passing the CP doesn’t result in brain drain because we’re domestic

#### [NATIVISM] Perm links to nativism because increasing immigrants links to white nativist backlash and weaponry usage, whereas just the CP keeps the white nativists calm

### AT STEM majors change fields

#### Nowhere in their evidence does it specifically talk about native vs foreign stem majors – if *all* STEM majors frequently change fields, then this flows neg because it applies to the plan as well.

## Heg CP

### Overview

#### Currently, the US is falling behind in its military, whereas foreign powers like China and Russia grow rapidly – that’s Schake 17. By providing better funding for US military, we’re able to maintain heg and solve for the same impacts the aff does. We solve better than the aff because we avoid bringing in immigrants – we avoid political ramifications (Base DA), as well as brain drain.

### Extensions

#### China is advancing over the US-- only the CP can solve hegemony.

Evans, 18

(Gareth, PhD, writer for Army Technology, "Is the US military machine losing its innovation edge to China?', March 29 <https://www.army-technology.com/features/us-military-machine-losing-innovation-edge-china/> NL)

Innovation has been central to the US war machine since the end of WWII, and, by implication, to the success of the rules-based system that has governed international relations over the same period too. American advances in nuclear weapons technology in the 1950s made possible the ‘first offset strategy’ nullifying the Soviet superiority in conventional numbers, and when Moscow narrowed the gap, heavy ‘second offset’ investment in emerging stealth and smart weapons technologies ensured the US lead remained through the 80s and 90s. But what of the decades since? US Secretary of Defense James Mattis, warned in his speech at John Hopkins School of Advanced International Studies on 19th January, “our competitive edge has eroded in every domain of warfare, air, land, sea, space and cyberspace, and it is continuing to erode.” There is a growing consensus that the once-unassailable US technological advantage is fast fading, and might even soon be ceded to one of its rivals, probably China, in the course of renewed competition between ‘Great Powers’, the like of which the world has not seen for over half a century. On the face of it, it is hard to see why. The US has certainly not become any less innovative or technologically capable than either Russia or China; current Defense News data shows that the United States is home to no fewer than 15 of the world’s top 25 defence contractors, and according to Forbes, exactly the same holds true for technology companies too. The talent is evidently there – but this is a game as much about focus as capability, and US attention has been distracted. An era of distraction: the demands of asymmetric warfare In fairness, the Twin Towers was hardly an event to be simply ignored, but in launching its ‘War on Terror’, Washington suddenly and dramatically shifted focus onto a very different kind of adversary and the new and immediate demands of asymmetric warfare and counter-insurgency. “In launching its ‘War on Terror’, Washington shifted focus onto a very different kind of adversary.” At the same time ‘second offset’ technologies were proliferating around the world, resources that would otherwise have been allocated towards developing and cementing ‘third offset’ weapons, and capabilities to maintain military dominance, were instead expended in Iraq and Afghanistan. While the US focused on dismantling the terrorists’ networks, training camps and safe-havens, China steadily ramped up its defence investment and innovation, developing its own systems and technologies to equip its military for the 21stCentury, and potentially challenge American hegemony in the Pacific. The irony is that, in many ways, the success of what Eisenhower dubbed the ‘military-industrial complex’, a success that first helped the US to global pre-eminence in the first place, has also brought about its current predicament. Could the model that seemed so right for so long, now be quite wrong? Consolidated dream teams and suffering competition “We cannot expect success fighting tomorrow’s conflicts with yesterday’s weapons or equipment,” Mattis told his audience at John Hopkins, and yet in essence that is often what the Department of Defense (DOD) does when it comes to technological innovation. The DOD development blueprint was well-honed for the era in which it was devised, but it is now increasingly beginning to look as if it has become outmoded. Big defence spending throughout the Cold War, followed by the huge consolidation of the US defence sector when both came to an end has left a legacy approach based on rigid requirements, and contracts aimed at the same small number of specialist contractors. In addition, the costs of the programmes are often so high that ‘dream teams’ of prime defence contractors, who should in theory be rivals, band together to bid for Pentagon projects. There are two big consequences. Firstly, having spent so much on their development and procurement, the resulting systems are almost invariably forced to remain in service for many years, albeit modified and upgraded, irrespective of changing needs and technological advances. Secondly, and ultimately more importantly, competition inevitably suffers, and without the need to compete, there is little incentive to take a risk and innovate. As Eisenhower put it in the same 1961 farewell speech that first introduced the term ‘military-industrial complex’ to the common lexicon, “a government contract becomes virtually a substitute for intellectual curiosity.” The economic paradox of the innovation deficit Economic factors play a major role too. While the US has the world’s largest defence expenditure in dollar terms, paradoxically many point to a lack of DOD spending as one of the key reasons for the nation’s growing innovation deficit. An important budgetary trend lies hidden in the high absolute numbers. Since 2009, the US defence spend has fallen from 4.6% of GDP to just 3.3% today, and although the latest figures from the Stockholm International Peace Research Institute show that this decline has now been reversed, the fact remains that GDP expenditure on R&D is less than half what it was thirty years ago. “Since 2009, the US defence spend has fallen from 4.6% of GDP to just 3.3% today.” For small-to-medium companies in the mid- and lower-tiers of the sector, that generates something of a crisis of commercial confidence when it comes to investing heavily in developing precisely the kinds of technologies that the Pentagon needs for the future. The same is certainly not true in China, where innovation in the industry is booming, creating the ideal conditions to incubate a talent pool for the future that is as competitive as it is inventive. It is hard to imagine that the two things are not related. However, it would be far too simplistic to suggest that it is simply all about government investment. If technology is to remain at the heart of the oft-quoted US ‘overmatch’, the DOD also needs to address changing marketplace realities and accept that with the huge expansion of global tech firms, defence contracts are now significantly less influential than they once were. Putting it bluntly, the Pentagon no longer has the deepest pockets in town. In the 2015 study ‘National Security Technology Accelerator: A Plan for Civil-Military Industry Innovation’ from New York University, the authors observed that “the emergence of international commercial and consumer high-tech markets over the past two decades has substantially displaced DOD as the centre of gravity for global R&D activity.” It is for these markets that many of the cutting-edge technologies that the US military may one day come to depend on are being developed, not the traditional defence contract route. Reshaping relationships: Forging new commercial partnerships That does not automatically make for a tale of doom and gloom. The DOD has a long history of working successfully with the private sector, and some of today’s most profoundly important technologies, including the internet and GPS navigation, arose directly as a result, while many others have been significantly boosted by defence funded projects. Nevertheless, as Adam Jay Harrison, the National Security Technology Accelerator director, has pointed out, too many technology businesses – even some that have previously enjoyed DOD support – are now “turning their backs” on the Pentagon. The challenge is to re-forge and reshape the relationship between commercial technology companies and the military to make it fit for this century, not the last. “One path to more fully align civilian technology opportunities with the Defense enterprise is for DOD to radically rethink its approach to acquisition and industry engagement in a manner that is more consistent with commercial market norms,” the New York University study concludes. If it does not, then the risk of the US losing its long-standing innovative edge becomes very real indeed – and China is waiting.

### AT CP doesn’t solve leadership (Larison 18)

#### In 5-point font, their Larison card says that the US is incredibly secure and should not worry about foreign powers because it’s already the best – if the judge evals this card at all and evaluates the arg that the cp doesn’t solve leadership, the aff loses their military leadership advantage because America is *already* the best in the military in the squo. Though this may apply to the CP, the aff loses ALL their offense on the military adv.

## India CP

### Overview

#### The CP solves the aff – by allowing India to expand its military and economy, we facilitate a better relationship between the US and India. Furthermore, we prevent India from starting wars – India currently feels that it’s being neglected by the US, but the CP solves this – that’s Moore 18.

### Extensions

#### The CP’s economic and military expansion is the only way to solve the advantage

Burns, 14

(Nicholas Burns, Professor of the Practice of Diplomacy and International Politics at the Harvard Kennedy School of Government and former U.S. Undersecretary of State for Political Affairs What Washington Can Do to Revive Relations With New Delhi, Foreign Affairs, 00157120, Sep/Oct2014, Vol. 93, Issue 5)

In the century ahead, U.S. strategic interests will align more closely with India's than they will with those of any other continental power in Asia. The United States and India both seek to spread democracy, expand trade and investment, counter terrorism, and, above all, keep the region peaceful by balancing China's growing military power. As Washington expands its presence in Asia as part of the so-called pivot, New Delhi will be a critical partner. In the Asia-Pacific region, especially, India joins Australia, Japan, South Korea, and others in a U.S.-led coalition of democratic allies. And as the most powerful state in South Asia, India will exert a positive influence on a troubled Afghanistan, as well as on Bangladesh, Nepal, and Sri Lanka. The Obama administration should therefore use its remaining two years to make India a greater priority, especially since the country has not yet figured prominently in the rebalancing of U.S. attention and resources to Asia. In President Barack Obama's first term, many Indians complain, the United States devoted less attention to India than to its rivals China and Pakistan, pursuing economic links with the former and counterterrorism ties with the latter. That appearance of neglect, however fair or unfair, has rankled Indian officials and eroded some of their trust in Washington. With the election of a new government in New Delhi, the Obama administration has a chance to repair the relationship. In May, Indians voted into office Narendra Modi, a Hindu nationalist from the western state of Gujarat who has signaled that he wants to build a more ambitious partnership with the United States. That will happen only if Obama pushes India to the top of his foreign policy agenda and Modi implements a series of reforms to enable stronger economic and political ties between the two governments. The leaders are scheduled to hold their first meeting in Washington this September, and before they do, both should begin thinking about rebuilding the U.S.-Indian relationship in five key ways: by expanding bilateral trade, strengthening military cooperation, collaborating to combat threats to homeland security, stabilizing a post-American Afghanistan, and, especially, finding greater common ground on transnational challenges such as climate change. It is an ambitious agenda, but pursuing it would put India where it belongs: at the center of U.S. strategy in the region. FALLING OUT Many Indian officials look back on the presidency of George W. Bush as a special moment in U.S.-Indian relations. From his first days in office, Bush made India a priority, arguing that its flourishing market economy, entrepreneurial drive, democratic system, and growing young population were crucial to U.S. aims in the region. He saw that the two countries, far from being strategic rivals, shared many of the same views on how power should be balanced in the twenty-first century. He believed that the United States had a clear interest in supporting India's rise as a global power. The results of his emphasis were dramatic. The volume of trade in goods and services between the United States and India has more than tripled since 2004. Also since then, the two governments have dramatically strengthened their military ties and launched new cooperative projects on space, science and technology, education, and democratic governance. Bush also engineered one of the most important initiatives in the history of the U.S.-Indian relationship: the civil nuclear agreement, which for the first time permitted U.S. firms to invest in India's civil nuclear power sector. (I served as the lead American negotiator for the deal.) This agreement helped end India's nuclear isolation, allowing New Delhi to trade in civil nuclear technology even though it is not a party to the Nuclear Nonproliferation Treaty. In return, India opened up its civil nuclear industry for the first time to sustained international inspection. The agreement's real import, though, lay in its message to the Indian people: the United States took their country seriously and wanted to leave behind the previous decades of cool relations. More broadly, it was a signal of U.S. support for India's emerging global role. When Obama took office, he followed Bush's lead. After all, Bush's India policy had enjoyed rare and strong support from Democrats -- including then U.S. Senators Joseph Biden, Hillary Clinton, and Obama himself -- throughout his second term. In 2009, Obama hosted then Indian Prime Minister Manmohan Singh and his wife as the administration's first official state visitors. During his own successful state visit to New Delhi in 2010, Obama became the first U.S. president to endorse India's bid to become a permanent member of the UN Security Council. Yet despite this promising start, Obama's India policy never hit full stride. Although Clinton, as secretary of state, collaborated with New Delhi on development and women's issues, the administration was understandably preoccupied with the more urgent short-term crises it had inherited on taking office: the global financial meltdown, the wars in Afghanistan and Iraq, and the threat of a nuclear Iran. It was a classic Washington story of near-term crises crowding out long-term ambitions. As Obama's first term ended, India slid down Washington's priority list, and Indian officials complained privately about what they saw as a lack of attention from their American counterparts. To be fair to Obama, however, the Indian government played an even greater role in the relationship's decline. In 2010, the Indian Parliament passed an ill-advised nuclear liability law that placed excessive responsibility on suppliers for accidents at nuclear power plants. The legislation, which gained support after the 25th anniversary of a horrific chemical spill at an American-owned plant in Bhopal, shattered investor confidence. By deterring U.S. and other firms from entering the Indian market, the law made implementation of the civil nuclear agreement impossible, undermining what should have been the centerpiece of the two countries' relationship. Washington and New Delhi haven't managed to resolve the impasse. The relationship suffered further when Indian economic growth slowed markedly in 2012 and 2013, depressing foreign investment, as the government, led by the Indian National Congress, was rocked by corruption allegations and failed to implement promised reforms in retail, insurance, energy, and infrastructure. New Delhi unwisely imposed discriminatory taxes on foreign investors and enacted protectionist measures that impeded trade. A series of bitterly fought U.S.-Indian trade disputes took center stage, overshadowing the political and military ties that had been the glue of the growing partnership and preventing the two countries from being able to strike any major new economic agreements. Then came two severe diplomatic tempests. Over the course of 2013, as Modi emerged as a front-runner in the upcoming election, the Indian press revived the story of Washington's earlier decision to bar Modi from entering the United States on the grounds that he had failed to suppress deadly anti-Muslim riots in 2002, when he was chief minister of Gujarat. Bush administration officials, including me, believed this to be the right decision at the time, but many Modi supporters charged that the visa ban was yet another example of American disregard for Indian dignity. Then, in December 2013, U.S. federal agents arrested Devyani Khobragade, India's deputy consul general in New York, for lying on her housekeeper's visa application, infuriating the Indian press and public. It was a perfect but avoidable storm. The United States should have handled the visa issue at the core of the dispute in private to avoid inflaming India's bruised ego, and the Indian government, which made matters worse by downgrading security at the U.S. embassy in New Delhi and refusing to renew teachers' visas at the American Embassy School, should have reacted more calmly. Instead, both governments fanned the flames, and anti-American furor dominated the news in India for weeks. By early 2014, the collapse in confidence was all too visible, and this is what Obama and Modi must begin working to repair when they meet. At the same time, U.S. Secretary of State John Kerry, Secretary of Defense Chuck Hagel, and Secretary of the Treasury Jack Lew must act, in effect, as project managers, steering the relationship past the inevitable obstacles, just as then Secretary of State Condoleezza Rice did so capably in Bush's second term. Top-down government leadership is essential to motivate the vast U.S. bureaucracy to put India back at the center of Washington's attention. Obama, meanwhile, will find a willing partner in Modi. Remarkably, the prime minister has exhibited no public signs of resentment over the visa issue and, in a show of good faith, decided in May that he would visit Washington instead of insisting that Obama first visit New Delhi. Modi has already demonstrated himself to be an unusually strong Indian leader, who will use his executive authority in a more hands-on fashion than did

#### Economic changes solve

Burns, 14

(Nicholas Burns, Professor of the Practice of Diplomacy and International Politics at the Harvard Kennedy School of Government and former U.S. Undersecretary of State for Political Affairs What Washington Can Do to Revive Relations With New Delhi, Foreign Affairs, 00157120, Sep/Oct2014, Vol. 93, Issue 5)

IT'S THE ECONOMY, STUPID

Obama should focus first on Modi's main priority: reviving the Indian economy. Modi's Bharatiya Janata Party won a landslide victory in the spring in large part because voters had grown frustrated by India's slow growth, crumbling infrastructure, and pervasive government corruption. Through Modi's landslide win, the Indian people sent a compelling message about the need for dramatic economic reform, and Modi promised to deliver.

But in the past two years, U.S.-Indian trade disputes have hampered economic cooperation. The United States has made legitimate complaints about Indian protectionism, and the two governments have filed World Trade Organization cases against each other involving such goods as solar panels, steel, and agricultural products. Invoking safety concerns, the U.S. Food and Drug Administration has also banned imports from more than a dozen Indian plants, mostly in the pharmaceutical industry.

The United States and India have long antagonized each other in global trade talks. Their fight over agricultural protectionism ultimately caused the Doha Round of international trade negotiations to collapse in 2008. Since then, the two countries have been unable to bridge their ideological divide. The estrangement is so great that India has been excluded from one of Obama's most ambitious trade initiatives in Asia: the Trans-Pacific Partnership. Washington and New Delhi must now prevent the inevitable trade disputes from overwhelming the political and military cooperation that binds the two countries together.

Obama and Modi will have no choice but to rebuild their economic ties brick by brick. When they meet in Washington, they should focus first on setting a 2015 deadline for completing the two countries' bilateral investment treaty, which the United States and India have been negotiating for more than a decade. Obama should also encourage Modi to undertake the necessary trade and financial liberalization that would help India gain acceptance into the Asia-Pacific Economic Cooperation forum, a regional trade group that has denied New Delhi membership for over two decades because the member states consider Indian trade policies to be too protectionist. Support from the United States could help Modi distance his new government from the statist policies of his predecessors.

To encourage Modi to further boost confidence in India's economy, Obama should counsel Modi to enact clearer regulations governing taxation and foreign investment. The two leaders could also announce a high-priority effort to resurrect the moribund civil nuclear deal. Modi would need to exercise his considerable political muscle to push a revision of the law through a reluctant Indian Parliament, but doing so would address a major American complaint: that after the Bush administration's Herculean effort to lift nuclear sanctions on India, New Delhi never reciprocated by actually implementing the agreement and opening up its market to U.S. firms.

### AT Econ & military ties don’t solve (Weitz 17)

#### Their own ev, “India will likely remain a constrained security partner of the US due to historical and geographical distances” – there is NOTHING the aff can do to prevent this – judge, if you evaluate their evidence, it also applies against them because they do nothing to solve these deficits they bring up.

### AT Military in status quo – immigration key

#### Trade growth is slow right now – the CP allows it to boost and grow fast enough to make a large difference. Immigration is net bad because of the DAs, and we avoid them – that’s our net benefit.

## Indo-Pak CP

### Overview

#### The CP solves the Indo-Pak conflict through the One Belt One Road initiative, and in addition, we provide the means for nations to check and restrain each other should further expansion into the Indian Ocean occur – that’s Masqwood 18.

### Extensions

#### The CP solves Indo-Pak conflict-- it gets China on-board with constraining Pakistan

Ahrari, 17

(Ehsan Ahrari is specialist in Great Power relations and the strategic affairs of the world of Islam. He has taught at America’s premier senior military educational institutions. His latest book, The Islamic Challenge and the United States: Global Security in an Age of Uncertainty, was published by McGill-Queens University Press in February 2017 "India Should Join China's One Belt One Road", June 30 <https://www.realclearworld.com/articles/2017/06/30/india_should_join_chinas_one_belt_one_road_112423.html> NL)

The Indian media is fully backing Prime Minister Narendra Modi’s anti-China line, publishing a barrage of essays bashing Beijing’s economic thrust across Eurasia, the One Belt One Road plan. The principle driving force of the media campaign is the traditional China-India rivalry, and its collective pitch is that OBOR is aimed at promoting an imperial Chinese dominance in East Asia, South Asia, and elsewhere. Of course, East Asia is China’s old stomping ground and, as a rising power, it is natural that Beijing would expand its sphere of influence. A more rational response for India in East Asia is to try and outbid China diplomatically and economically by creating small alliances of its own and by offering economic assistance through its own longstanding Look East strategy. Look East, however, has a problem: While it has long looked good on paper, the strategy has never been followed consistently or vigorously by successive Indian prime ministers. Pursuing mega-strategies has never been India’s wont, and in any case the country until recently has lacked the deep funds needed to throw money at Southeast Asian countries who have been sympathetic to India’s aspirations and who would have been happy recipients of its economic assistance. Under Modi things changed. He brought to office a strong desire to couch China-India ties as essentially competitive. But India’s political culture is not so quick to absorb changes of that magnitude. Indian bureaucracies are full of personnel who are deeply mired in the [Nehruvian notion of vacuous moralism](http://www.ehsanahrari.com/2011/10/21/indias-unending-quest-for-a-mythical-hero/), which was deeply committed to non-alignment and never paid much attention to the Great Power politics of the 1950s and 1960s. This created a lot of hoopla during the Cold War years, but that hoopla no longer finds an audience, even within Third World countries in the 21st century. While emphasizing the competitive nature of Indo-Chinese strategic ties, Modi also has made sure that his country continues to take advantage of China’s own interests in cultivating its economic ties with India. This is a nuanced policy from the side of both Beijing and New Delhi. As much as Sino-Indian strategic competition remained hot for the past several decades, neither New Delhi nor Beijing wanted to jeopardize their bilateral economic trade. Consequently, bilateral trade "[surged from](https://www.chinabusinessreview.com/china-and-india-greater-economic-integration/) under $3 billion in 2000 to nearly $52 billion in 2008)…. Even conservative estimates suggest that, by 2020, China-India trade could surpass last year’s US-China total of $409.2 billion and more than half of total projected US-China trade in 2020." As China continues to travel toward its goal of becoming the second superpower, it sees India as a challenger that should not be ignored for at least two reasons. First, India has managed to develop close strategic ties with the United States through the purchase of military weapons, the planning of joint military exercises, and the transfer of technology. India also aspires to become a member of the Nuclear Supply Group, after which it would likely become a serious competitor of China in the area of nuclear weapons development. That is one reason why China continues to veto India’s entry into that group, even while it leaves all doors of mutual economic cooperation wide open. China’s greatest success in gaining the upper hand over India is in its multifaceted strategic ties with Pakistan. The emergence of a nuclear Pakistan, in which China’s transfer of nuclear knowledge and blueprints of actual nuclear weapons designs played a major role, tied down India’s own nuclear preparedness on two different fronts: China and Pakistan. What bothers India the most is the fact that the China-Pakistan Economic Corridor has not only given Pakistan the promise of emergence as a major economic actor, but that the corridor passes through the disputed territory of Kashmir on the Pakistan border. It is reported that [China tried to appease India](http://www.thehindu.com/news/international/india-unlikely-to-participate-in-chinas-belt-and-road-forum/article18445908.ece) by offering to change the name of the corridor through Pakistan; however, it dropped that suggestion after Pakistan protested. India’s major objection to the inclusion of the disputed territory was one explicit reason why it decided to boycott the OBOR summit. India’s neighbors are sold on President Xi’s sales pitch for OBOR, which he called the “[project of the century](https://www.nytimes.com/2017/05/14/world/asia/xi-jinping-one-belt-one-road-china.html),” and these states are poised to join it. Since poverty is the dominant issue throughout South Asia, China’s promise that this program will tackle poverty makes a lot of sense to India’s neighbors. India says that promise is mere hype. But as Western-oriented globalization continues to hurt their economies through high unemployment and rising inflation, most poverty-stricken countries of the Third World have started to envision OBOR as a source of economic assistance and financial relief. Another Indian criticism depicts OBOR as imperialistic in nature. As one of the main leaders of the non-aligned movement of the Cold War years, India still presumes itself to be a rightful actor to question China’s motives regarding its role as the rising economic power of the 21st Century. However, as another rising economic power of Asia, and an actor that emulates China’s policies of seeking alliances and offering economic assistance to several countries, India is open to like criticism from Beijing. And China never fails to remind the world that, as a former victim of imperialistic policies and occupation by the West and Japan, it has remained firmly opposed to such policies. The global hubs of economic activities -- places such as New York, London, and Berlin -- are likely to have new additions including Beijing and Shanghai. India, meanwhile, has not been able to find an equally promising way to counter OBOR. So, it is left with flimsy excuses (flimsy in the sense that they find no global supportive audience) like [criticizing that strategy because it involves the disputed territory of Kashmir that is under Pakistani administration](http://timesofindia.indiatimes.com/india/indias-objections-to-obor-a-show-for-domestic-politics/articleshow/58697301.cms). In all likelihood, through OBOR, the Chinese view of the hierarchy of nations and the pecking order of nation-states is likely to change. Despite all of the criticisms of its potential complications and its chances for failure, and India’s related suspicion of China’s ulterior motives, OBOR carries with it the enormous economic power of China and an equally powerful resolve by its leadership to make it a success. Even the United States and Japan realize that and are likely to remain involved in it without joining it, for now. India might be well-advised to revise its own refusal to join. Given this reality, the best option for India is to join OBOR and to add a new dimension to its competition with China, rather than to find inane reasons to criticize it and to boycott the initiative.

## NGO CP

### Overview

#### Extend RT 18 – currently, the US has but marginal efforts in helping with Iraq’s reconstruction – the CP solves by allowing the US to increase its reconstruction aid.

## Canada CP – Blood Quantum

### Overview

#### The CP solves the aff – when US and Canada work together, they can solve the problem the aff describes – that’s Nickels 01. Furthermore, both nations have an obligation to solve this problem *together* – extend Marques. Not only does the CP solve better, but the aff is insufficient – Marques describes how there absolutely needs to be international cooperation on this because simply one country passing a policy will never work – that’s our net benefit.

### AT Perm Do Both

#### The CP is mutually exclusive with the plan – simultaneously working *with* Canada to resolve these issues AND passing a policy to encourage Native Americans to travel back to the US is counterproductive – they can’t occur at the same time.

## Parole CP

### Solvency

#### CP solves better because-

#### a) It’s more flexible, the affirmative cannot change the eligibility requirements for their specific visas. However the executive parole can be modified at time of renewal to overcome any potential solvency deficits

#### b) It’s more efficient – executive orders can be signed directly by the president which avoid congressional debates and infighting.

#### **Executive fiat solves the aff – it informally exempts the immigrants from the restriction and functionally grants them the same benefits. It’s distinct from the legislative action of the plan and avoids politics.**

Endelman and Mehta ‘09 (Gary is the senior editor of the national conference handbook published by the American Immigration Lawyers Association American and Mehta is an American Immigration Lawyer, “The Path Less Taken: Is There An Alternative To Waiting For Comprehensive Immigration Reform?” Immigration Daily, <http://www.ilw.com/articles/2009,0225-endelman.shtm>)

Dinesh Shenoy made a huge first step but it was only a first step. Is action by Congress the only, or even the best, way to break the priority date stranglehold on US immigration policy? The authors do not think so. Amendment of INA Section 245 is unlikely since action by Congress, even in the best of times, takes time. When Congress finds such time, legalization and other priority items (like recapture of unused visas) will absorb it. Beyond this, is it necessary to relax the rules on adjustment of status? What do potential immigrants really want for themselves and their spouses? The ability to work in the United States on a long-term basis and travel back home for vacation and/or family emergency. Can they only do that as adjustment applicants? Is there another way? The authors think there is. While INA Section 245 conditions adjustment of status on having a current priority date and meeting various conditions,9 there would be prohibition anywhere that would bar USCIS from allowing the beneficiary of an approved I-140 or I-130 petition to apply for an employment authorization document (EAD) and advance parole. No action by Congress would be required; executive fiat suffices. For those who want some comfort in finding a statutory basis, the government could rely on its parole authority under INA Section 212(d)(5) to grant such interim benefits either for "urgent humanitarian reasons" or "significant public benefit.10 There is nothing in 8 CFR Section 212.5 that would prohibit the DHS from granting parole for this reason on the grounds that the continued presence of I-140 or I-130 beneficiaries provide a significant public benefit. Since such parole is not a legal admission,11 there is no separation of powers argument since the Executive is not trying to change existing grounds of admission or create any new ones. Moreover, Congress appears to have provided the government with broad authority to provide work authorization to just about any non-citizen.12 It is undeniably true that more EAD and Parole benefits will be of limited value to retrogressed non-citizens from India and China who are already in the US in the employment-based second and third preferences. After all, most have an H-1B and can extend under Section 106(a) or Section 104(c) of AC 21, but as noted previously, some may still not be able to take advantage of AC 21. The EAD in itself will not have a portability benefit. The foreign national will still need to intend to work for the sponsoring employer even if he/she is using the EAD for open market employment. This reservation, valid as it undoubtedly is, focuses only on those already here. It speaks solely to past migration flows not to future ones. For future flows, this will supplement the H-1B by giving employers of foreign nationals another option. No longer will the constant controversy over the H-1B quota discredit all employment-based immigration in the eyes of its critics and, most importantly, in the court of public opinion. No longer will this one dispute suck all the oxygen out of our national immigration debate. Beyond that, it is manifestly not true to argue that all of our immigration needs can be solved with more H1B numbers. This will not work for those who are not H1B material. It will not work for those with essential skills but find themselves in the "Other Worker" backlog under INA Section 203(b)(3)(iii) with no hope of getting the green card any time soon. It will not eliminate the need to legalize the undocumented. If anything, allowing non-citizens with approved I-140/ I-130 petitions to receive EADs and Parole will serve to reduce the size of the permanently undocumented in America many of whom do not leave for fear they will be unable to return. The Executive would not be granting the undocumented legal status for that is what only Congress can do. But, like adjustment of status itself, the Executive certainly can create a period of stay that permits the undocumented to remain here. While those out of status or who entered without inspection should not receive employment authorization on a retroactive basis, there is no reason in law or logic why the Executive cannot grant parole on a nunc pro tunc basis.13 Leaving aside the troubling question of whether such a policy change would not reward conduct that violates the law, the retroactive EAD would only cure the unauthorized employment problem but not the overstay or unlawful presence problem. The 3/10 year bar14 is not triggered by a violation of status resulting from unauthorized employment but an overstay past the I-94 validity. For this reason, a retroactive EAD would do nothing to ameliorate the crushing harshness of the 3/10 year bar, though it might restore eligibility in some situations to adjust by avoiding the unauthorized employment preclusion of INA 245(c).15 What would cure the prior unlawful presence would be a retroactive granting of parole. Look at the definition of "unlawful presence" in INA 212 (a)(9)(B)(ii). It speaks of being "present in the United States after the expiration of the period of stay authorized by the Attorney General or is present in the United States without being admitted or paroled." So, if you are present in the USA on parole, you are not accumulating any unlawful presence. You can grant retroactive parole without overriding the will of Congress. There is no separation of powers problem. By its very nature, parole is discretionary and, as such, can be issued nunc pro tunc for good cause shown. Being the Beneficiary of an approved I- 140 or I- 130 could be deemed by regulation to constitute such good cause. The use of parole by the Executive acting sua sponte in such an expansive and aggressive fashion is hardly unique in post-World War II American history. The rescue of Hungarian refugees after the abortive 1956 uprising or the Vietnamese refugees at various points of that conflict come readily to mind. While these were dramatic examples of international crises, the immigration situation in America today, though more mundane, is no less of a humanitarian emergency with human costs that are every bit as high and damage to the national interest no less long lasting. Even those who are in removal proceedings or have already been ordered removed, and are beneficiaries of approved petitions, also need not wait until eternity for Congress to come to the rescue. The government has always had the ability to institute Deferred Action, which is a discretionary act not to prosecute or to deport a particular alien.16 This safety valve will fix our broken system of future flows by allowing those who could not qualify for any other visa option to have new hope and unimagined choices.

### Net Benefit - Base

#### The president can shift the blame to the agencies.

David Schoenbrod ‘93, professor of law at New York Law School and expert on the delegation of executive powers, federal regulation, injunctions, air pollution, and institutional reform litigation (quals from http://www.cato.org/people/schoenbrod.html), Power Without Responsibility, 1993, p. 95-96.)

The president, who of course influences the design of legislation through recommendations and vetoes, has different incentives from legislators. When legislators shift blame or credit to an agency, they shift it to presidential appointees. The incentives for legislators to delegate might appear to be disincentives for the president. However, three factors work to attract the president to delegation. First, statutes often are structured so that the disappointed expectations of would-be beneficiaries and the costs to others are perceived after the next presidential election. For instance, the 1970 Clean Air Act was structured so that the EPA administrator would deal with states’ failures to adopt plans only after the 1972 election. Second, presidents must take personal responsibility for laws embodied in statutes that they sign, but they can shift some of the blame for agency laws to the agency. Shifting blame is easy when an indepen­dent agency has made the law, because the leaders of such agencies do not serve at the president’s pleasure. Presidents also often avoid substantial political losses they might sustain for the unpopular actions of appointees who do serve at the president’s pleasure by taking no posi­tion on what the agency has done or even by expressing some disagreement. Indeed, even incumbent presidents try to “run against the government.” President George Bush tried to distance himself from agency laws promulgated during his [or her] administration by declaring a ninety-day moratorium on new agency laws before the 1992 elections.49 Third, delegation enhances the president’s ability to use his [or her] staff to do casework. It thereby allows the president as well as legislators to particularize constituents’ perceptions of costs and benefits.

#### The CP won’t be publicized or politicized.

Shah ’17 (Bijal is Associate Professor, Arizona State University, Sandra Day O’Connor College of Law, " The Attorney General’s Disruptive Immigration Power," Iowa Law Review, 2017, <https://ilr.law.uiowa.edu/online/volume-102/the-attorney-generals-disruptive-immigration-power/>) jg

The Attorney General’s unique role as bureaucrat and adjudicator, in addition to political appointee, results in the opportunity to exercise power in a manner more obscured to the public and thus less constrained by legislative and political forces. For instance, given that the Attorney General is a political appointee, but not an elected official like the President, she may be both influenced by political considerations but relatively unconstrained by the potential loss of public support. Indeed, while the authors note that congressional defunding and political pushback have deteriorated the power of the executive to reform immigration, they do not consider the extent to which, in contrast, Congress and the public may remain unaware of or unresponsive to the Attorney General’s actions. Also, because the Attorney General is a bureaucratic figure with both political and technocratic interests, she may be motivated by reasons of efficiency and resource conservation, or by resistance to institutional change, in addition to, or instead of, the political incentives that drive the President.

#### Delegation gives the president a political shield.

David Schoenbrod ‘93, professor of law at New York Law School and expert on the delegation of executive powers, federal regulation, injunctions, air pollution, and institutional reform litigation (quals from http://www.cato.org/people/schoenbrod.html), Power Without Responsibility, 1993, p. 105-106)

Even if, instead, the president had to sign off on every agency law, the resulting presidential accountability would be worth less than congressional accountability. The Framers included the requirement that bills be presented to the president not out of any sense that the president was more accountable than Congress, but rather because the president was less accountable to particular interest groups and so more inclined to protect liberty.27 A president has less reason than a member of Congress to worry that a position taken on a particular law will affect reelection prospects. The president’s responsibility for mak­ing law would, after all, be diluted by the electorate’s concern about activities in other areas such as national defense, foreign affairs, law enforcement, and so on. In any event, voters who disagree with some controversial agency laws are likely to agree with others, and are likely to both agree and disagree with the laws that would be promulgated under the president’s next electoral opponent. Since voters must en­dorse presidential positions wholesale, it is unlikely that the president will feel much political tension over any one agency law. Of course, voters must also choose positions wholesale when they elect members of Congress, but in any legislative district there are likely to be a limited number of issues of particular local interest. A position taken by an incumbent on any one such issue could cause 5 percent of the voters to choose the challenger, thereby producing a 10-percent swing. That possibility would force many incumbents to pay careful attention to constituents’ concerns when voting for a law. Given the difficulty of holding the president accountable for the laws that bureaucrats adopt, it is no wonder that we tend to think of countries where only the chief of state is elected as undemocratic. In sum, accountability through the president matters less than accountability through Congress and, whatever the potential worth of presidential accountability might be, delegation diminishes its value.

### Net Benefit - Politics

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### Net Benefit – Nativism

#### The CP won’t be publicized or politicized – won’t trigger white nativist backlash

Shah ’17 (Bijal is Associate Professor, Arizona State University, Sandra Day O’Connor College of Law, " The Attorney General’s Disruptive Immigration Power," Iowa Law Review, 2017, <https://ilr.law.uiowa.edu/online/volume-102/the-attorney-generals-disruptive-immigration-power/>) jg

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### S – High Tech / STEM

#### Parole can be used to allow people to work legally in the US – especially those of high talent and their families – makes the permanent residents here more productive and is less controversial

Endelman and Mehta ’13(Gary Endelman, PhD in U.S. History and is Board Certified in Immigration and Nationality Law. Cyrus D. Mehta is a graduate of Cambridge University and Columbia Law School, is the Managing Member of Cyrus D. Mehta & Associates, PLLC in New York City., “Parole in Place: the Secret Sauce for Administrative Reform,” Foster LLP, November 17, 2013, [https://www.fosterglobal.com/parole-in-place-the-secret-sauce-for-administrative-immigration-reform/)-DG](https://fas.org/sgp/crs/homesec/R43782.pdf)-DG)

The extension of PIP to the families of current or former military service men and women is a proper recognition of their contribution to the nation and an attempt to benefit those who have given so much to the rest of us. While such logic is compelling, why not expand its application to other instances where aliens have served and strengthened the national interest or performed work in the national interest? How about granting PIP to families of, outstanding researchers striving to unlock the mysteries of science and technology, those with exceptional or extraordinary ability, and key employees of US companies doing important jobs for which qualified Americans cannot be found? And there is also a compelling interest in ensuring family unification so that US citizens or permanent residents may feel less stressed and can go on to have productive lives that will in turn help the nation. All such people do us proud by making our cause their own and the need of their loved ones to come in from the shadows is real and present. Indeed, the non-military use of PIP was advocated by top USCIS officials several years ago in a memo to USCIS Director Mayorkas, a memo leaked by its critics who wished successfully to kill it. In the face of inaction on the part of the GOP controlled House to enact immigration reform, granting PIP to all immediate relatives of US citizens would allow them to adjust in the US rather than travel abroad and risk the 3 and 10 year bars of inadmissibility. Such administrative relief would be far less controversial than granting deferred action since immediate relatives of US citizens are anyway eligible for permanent residence. The only difference is that they could apply for their green cards in the US without needing to travel overseas and apply for waivers of the 3 and 10 year bars. The concept of PIP can be extended to other categories, such as beneficiaries of preference petitions, which the authors have explained in The Tyranny of Priority Dates. However, they need to have demonstrated lawful status as a condition for being able to adjust status under INA section 245(c)(2) and the memo currently states that “[p]arole does not erase any periods of unlawful status.” There is no reason why this policy cannot be reversed. The grant of PIP, especially to someone who arrived in the past without admission or parole, can retroactively give that person lawful status too, thus rendering him or her eligible to adjust status through the I-130 petition as a preference beneficiary. The only place in INA section 245 where the applicant is required to have maintained lawful nonimmigrant status is under INA section 245(c)(7), which is limited to employment-based immigrants. Family-based immigrants are not so subject. What about INA section 245(c)(2)’s insistence on “lawful immigration status” at the snapshot moment of I-485 submission? Even this would not be a problem. For purposes of section 245(c) of the Act, current regulations already define “lawful immigration status” to include “parole status which has not expired, been revoked, or terminated.” 8 C.F.R. section 245.1(d)(v).

### S – Employment

#### The executive can allow aliens to work in the US legally indefinitely using EADs

Manuel and Garcia ’14 (Michael Garcia and Kate Manuel are Legislative Attorneys, “Executive Discretion as to Immigration: Legal Overview ,” Congressional Research Service, November 10, 2014, https://fas.org/sgp/crs/homesec/R43782.pdf)-DG

Another example of discretionary authority to grant benefits or relief conferred by statute involves employment authorization documents (EADs) permitting aliens to legally work in the United States. In general, the INA provides that only specified categories of aliens are eligible to obtain employment in the United States, and INA §274A bars the hiring or continued employment of “unauthorized aliens.”34 The definition of unauthorized alien found in INA §274A describes an unauthorized alien, in part, as an alien who is not “authorized to be ... employed ... by the Attorney General [currently, the Secretary of Homeland Security].”35 This language has generally been construed as giving immigration officials broad discretion to grant EADs to aliens, including those without lawful immigration status.36 There are no express conditions contained in the INA regarding when the Secretary of Homeland Security may grant work authorization,37 and the executive branch has promulgated regulations that provide for the issuance of EADs to aliens who have been granted various and often temporary forms of relief from removal, including deferred action and deferred enforced departure.38 Work authorization regulations promulgated by immigration agencies have played an important role in the Obama Administration’s DACA initiative. Because DHS regulations had already provided for the issuance of EADs to aliens granted deferred action when such aliens establish “an economic necessity for employment,”39 DACA beneficiaries were effectively made eligible for EADs as a corollary of receiving deferred action. Further, because many states had laws providing for the issuance of driver’s licenses to aliens whose presence in the United States is “authorized” under federal law, and accepted EADs as proof that an alien’s presence was so authorized, DACA beneficiaries generally also became eligible to obtain driver’s licenses in the states where they were residing.40

#### **The executive can issue an EAD and advance parole to allow immigrants to work while waiting for their green card.**

Anderson ’14 (Stuart is the executive director at NFAP., “EXECUTIVE ACTION AND LEGAL IMMIGRATION” National Foundation for American Policy, September 2014, http://nfap.com/wp-content/uploads/2014/09/NFAP-Policy-Brief.Executive-Action.Sept-2014.pdf)

One approach would be to allow anyone with an approved I-140 petition (for employment-based immigration) to be issued an employment authorization document (EAD) and advance parole (to travel outside the country and re-enter the United States). If necessary to address possible objections, one could require individuals to continue working with their original sponsor for a period of time after the approval. The goal would be to increase labor mobility but to do so without jeopardizing an individual’s pending employment-based green card. Attorneys note it would likely be necessary for the Department of Homeland Security to alter its regulations to ensure that an immigrant petition continues to be valid even if the foreign national changes jobs or moves to a new employer. There is also a role for the Department of Labor to ensure the underlying labor certification and I-140 petition remain valid even if a foreign national moves to a different geographic location. Issuing an employment authorization document and advance parole would allow employment-based immigrants to change positions within their companies, to move to another employer, or even to start a business. It could also enable them to travel freely and for their spouse to obtain work authorization. As noted earlier, an estimated 500,000 skilled foreign nationals and/or their relatives are waiting for employment-based green cards. Those waiting in backlogs are at a disadvantage compared to many other people in the country. Because of the long waits many are reluctant to change jobs or be promoted if it would mean needing to re-start the employment- based immigration process and begin a new wait time. No one would receive an employment-based green card more quickly but it would give such individuals greater mobility and a higher quality of life while waiting. It would at least put such individuals on par with those who entered the country unlawfully and were granted work authorization.15 Employment-based immigrants would have needed to gain approval from the U.S. Department of Labor (for labor certification) and U.S. Citizenship and Immigration Services for the I-140 petition.

### S – Rights

#### Lack of procedure benefits immigrants – ensures rights are protected.

Shah ’17 (Bijal is Associate Professor, Arizona State University, Sandra Day O’Connor College of Law, " The Attorney General’s Disruptive Immigration Power," Iowa Law Review, 2017, <https://ilr.law.uiowa.edu/online/volume-102/the-attorney-generals-disruptive-immigration-power/>) jg

In response to a general argument for additional process, Gonzales and Glen suggest not only that the Attorney General is not required to adhere to procedure in adjudication, but also that a lack of procedure not only benefits the Attorney General, but also noncitizens. To further the first claim, the authors note that the BIA previously did not have high-quality procedures and has since shored up its adjudication processes over time, thereby placing emphasis on the hierarchical nature of the relationship between the BIA and the Attorney General in order to suggest that the Attorney General should be able to diverge from the procedural framework maintained by the BIA in its adjudication. However, the authors do not specify why the Attorney General should be held to different norms of administrative adjudication than her subordinates, given that the norms of due process are more concerned with the quality of administrative adjudication and less so with the identity of the agency adjudicator (as long as she is unbiased). In order to argue that a lack of procedure may benefit noncitizen claimants, the authors reference an instance in which the Attorney General remanded a BIA decision to deny immigration benefits to a married, binational same-sex couple after the White House and Justice Department declined to defend the Defense of Marriage Act (“DOMA”) before the federal courts. However, this example is one of the minority of instances in which the Attorney General has acted in the interests of a noncitizen during her exercise of the referral and review mechanism. For this reason, it does not serve the authors’ claim well, given that due process considerations are less crucial where the government is working on behalf of the individual (as the authors themselves acknowledge), as opposed to situations where the government’s interests are hostile to those of the individual. From time to time, Attorneys General have incorporated additional process into their exercise of the referral and review mechanism. The authors note one instance in which briefing was requested, and one in which it was, while not requested, at least accepted. In addition, in a recent self-certification of an immigration matter, the Attorney General set up a briefing schedule for both of the relevant parties and requested briefs from “interested amici” as well. Finally, those respondents whose cases the Attorney General remands back to the BIA may have more access to sustained due process than those whose cases result in the Attorney General herself rendering a final decision on the merits. However, although each of these examples of safeguards have improved an instance in which the referral and review tool has been employed, they are nonetheless admittedly anomalous.

### S – Refugees

#### **History is on our side – the executive legitimately granted parole in Cuba, Haiti, Vietnam, Hungary, and more.**

Columbia Law School Human Rights Clinic 10 (“MEMORANDUM IN SUPPORT OF A UNITED STATES POLICY GENEROUSLY GRANTING HUMANITARIAN PAROLE FOR HAITIAN VICTIMS OF THE EARTHQUAKE OF JANUARY 12, 2010” February 25, http://www.law.columbia.edu/sites/default/files/legacy/files/humanitarian\_parole\_memo\_to\_uscis\_final.pdf)

The Executive’s discretion regarding parole status has been interpreted by courts to be very broad and entitled to a strong presumption of legitimacy.15 However, the statutes and regulations governing the factors relevant to the parole determination do not authorize the consideration of race or national origin by those officials making the determination.16 There is a strong tradition of Executive reliance upon this discretionary power to extend parole to victims of tragedy and repression at various points throughout the nation’s history. In 1956, the Eisenhower administration invoked the parole power to temporarily admit 15,000 Hungarians fleeing communist persecution.17 The power was instrumental in the United States’ response to the Cuban refugee crisis of the 1960s and permitted the President to respond appropriately to refugee influxes from Vietnam, Haiti and Cuba in the 1970s. The Refugee Act of 1980 altered the parole authority by establishing the requirement that parole status be given to refugees only if there are “compelling reasons in the public inter requiring that the determination be made “with respect to that particular alien.”18 Nonetheless, the government relied on the parole authority to respond effectively to the arrival of more than 150,000 Cubans during the Mariel boatlifts and a large influx of individuals fleeing Haiti in 1980. While the new restrictions established by the Refugee Act of 1980 were to take effect sixty days following the Act’s enactment on March 17, 1980, they were sufficiently flexible as to allow the President to extend parole status to those migrants who arrived before October 10 of that year.19 For 30 years prior to 1981, the United States had a policy of general parole for undocumented aliens arriving in the United States seeking admission.20 It was not until that year that the policy was changed to require detention without parole of any aliens arriving in the United States who could not present a prima facie case for admission.21 Since that time, the United States Citizenship and Immigration Services (USCIS) has interpreted the parole authority as being sufficiently flexible to grant the USCIS authority to establish the new Cuban Family Reunification Parole Program (CFRP).22 Under the U.S.-Cuba Migration Accords, the United States seeks to provide 20,000 travel documents annually to Cubans seeking to emigrate.23 However, statutory restrictions on the number of family-based immigrant visas and constraints placed on the Cuban Lottery Program by the Cuban government have severely hampered such efforts.24 As a result, USCIS has relied upon the executive parole authority to establish the CFRP as a means of achieving its annual goal of 20,000 legal migrants from Cubans to the United States.25 The USCIS thus has the legal authority to establish a parole program for Haitian victims of the January 12 earthquake. The U.S. government has granted parole status to victims of tragedies and persecution since the 1950s and continues to use such power to grant temporary status to migrants from other countries in the region, such as Cuba. Parole status is discretionary and may be justified in cases of severe medical conditions and family reunification, both of which are critical issues for many Haitians in the wake of the January 12 earthquake.

#### Extending parole to refugees has been effective in the past.

**Abraham et al ’10** (Columbia Law School Human Rights Clinic, Institute for Justice and Democracy in Haiti, Center for Constitutional Rights, Center for Human Rights and International Justice Post-Deportation Human Rights Project at Boston College, Center for International Human Rights Law & Advocacy at Sturm College of Law, The Latin American and Caribbean Community Center, Massachusetts Law Reform Institute, Public Counsel, University of Maryland School of Law Immigration Clinic, University of Minnesota Law School Human Rights Litigation and International Advocacy Clinic, The Walter Leitner International Human Rights Clinic at Fordham Law School, The World Organization for Human Rights USA, Ira Kurzban, David Abraham (\*University of Miami School of Law), Raquel Aldana (\*University of the Pacific McGeorge School of Law, Inter-American Program), Deborah Anker (\*Harvard Law School, Harvard Immigration and Refugee Clinical Program), Sabrineh Ardalan (\*Harvard Law School, Harvard Immigration and Refugee Clinical Program), Sandra Babcock (\*Northwestern University Law School, Center for International Human Rights), Joseph Baldelomar (\*Nova Southeastern University, Shepard Broad Law Center), Lenni B. 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There is a strong tradition of Executive reliance upon this discretionary power to extend parole to victims of tragedy and repression at various points throughout the nation’s history. In 1956, the Eisenhower administration invoked the parole power to temporarily admit 15,000 Hungarians fleeing communist persecution.17 The power was instrumental in the United States’ response to the Cuban refugee crisis of the 1960s and permitted the President to respond appropriately to refugee influxes from Vietnam, Haiti and Cuba in the 1970s.

#### The executive can legally ensure displaced aliens can stay in the US even if they do not qualify for refugee status

Manuel and Garcia ’14 (Michael Garcia and Kate Manuel are Legislative Attorneys, “Executive Discretion as to Immigration: Legal Overview ,” Congressional Research Service, November 10, 2014, https://fas.org/sgp/crs/homesec/R43782.pdf)-DG

Temporary protected status (TPS) is a type of relief from removal that Congress has authorized the executive branch to grant to aliens who presently cannot be safely returned to their home countries. Section 244 of the INA imposes a number of conditions upon who may be granted TPS. Specifically, aliens must: be from a foreign state that the Department of Homeland Security (DHS) has designated due to an ongoing armed conflict; an earthquake, flood, drought, epidemic, or other environmental disaster; or other “extraordinary and temporary conditions” that prevent aliens’ safe return;24 • have been “continuously physically present” in the United States since the effective date of their home country’s most recent TPS designation;25 • have “continuously resided” in the United States since whatever date the executive may designate (generally a date that is earlier than the TPS designation date);26 • be generally admissible as an immigrant and not ineligible for TPS (e.g., have not been convicted of specified offenses);27 • register during the period prescribed for registration by the executive branch; and • pay any registration fee required by the executive branch.28 In addition, Congress has provided that TPS is generally to be withdrawn if the alien proves to have been ineligible for such status; has not remained “continuously physically present” since the date he or she was first granted TPS; or fails “without good cause” to register annually.29 Despite these conditions, a grant of TPS can afford significant relief to individual aliens because aliens with TPS are provided identifying documentation and work authorization by the executive branch, and they cannot be removed while they have TPS.30 TPS can also be a powerful tool for the Executive in crafting immigration policy. For example, TPS could be employed to enable aliens who are from countries where large numbers of persons have been displaced—and who are unlikely to qualify as refugees31—to remain in the United States.32 Further, while TPS is “temporary,” in practice, aliens from designated countries are often able to legally remain and work in the United States for years, potentially prompting further migration from the country.33

### S – Family Immigration

#### In the case of family immigration status parole was successful in preventing deportation and there was congressional follow-on.

**Cox and Rodríguez ’15** (Adam B. - the Robert A. Kindler Professor of Law, NYU School of Law. Cristina M. - the Leighton Homer Surbeck Professor of Law, Yale Law School. “The President and Immigration Law Redux.” The Yale Law Journal. Vol 125. August 6, 2015. https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=2635638) -JN

This sort of creative unilateralism, which we identified in our 2009 article, has arisen in many other instances. A vivid example is the once obscure but now frequently invoked “family fairness” policies adopted by Presidents Reagan and George H.W. Bush after Congress enacted a large-scale legalization program in 1986. The legalization program, part of the Immigration Reform and Control Act (IRCA), provided a path to legal status for millions of unauthorized migrants, but it did not extend to many of the spouses and children of those immigrants. Despite this, President Reagan’s Immigration and Naturalization Service (INS) in 1987 elected to defer the removal of many of these family members 35—a deferral President Bush continued, and then expanded in 1990 when legislation to legalize their status stalled in Congress.36 Later that year, Congress enacted a statutory legalization for the group.37 These deferrals of removal can be cast in two very different lights. First, we might see them as nothing more than a form of transitional relief. On this account, Presidents Reagan and George H.W. Bush operated within a statutorily created legalization framework, but in the course of implementation identified inequities (and perhaps oversights) in the design of IRCA’s original program. They used their discretion to ameliorate those inequities—to prevent the removal of family members who eventually would be eligible for immigration status through their newly legalized spouses or parents. Once debate began in Congress over new legalization legislation that would reach family members left out of the initial legislation, thus obviating the need for those family members to petition through the ordinary immigration process, the actions of the Presidents truly became transitional amelioration pending congressional action. 38 If the statutory legalization scheme would soon encompass those family members, it would make little sense—as a matter of resource allocation or justice—to deport large numbers of them during the period of legal transition.39 Far from being oppositional, the President’s actions could be seen to exemplify cooperation between the Executive and Congress in the implementation of a large new initiative.

#### There is sufficient ambiguity for the executive to interpret family units for quotas and not individuals

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There is no regulation in 8 Code of Federal Regulations (C.F.R.) instructing what section 203(d) is supposed to be doing. Even the Department of State’s regulation at 22 C.F.R. 42.32 only parrots section 203(d) and states that children and spouses are “entitled to the derivative status corresponding to the classification and priority date of the principal.” 22 C.F.R. 42.32 does not provide further amplification on the scope and purpose of section 203(d). We acknowledge that section 203(d) derivatives are wholly within the preference system and bound by its limitations. They are not independent of numerical limits, only from direct limitations. It is the principal alien through whom they derive their claim who is counted and who has been counted. Hence, if no EB or FB numbers were available to the principal alien, the derivatives would not be able to immigrate either. If they were exempt altogether, this would not matter. There is a difference between not being counted at all, which we do not argue, and being counted as an integral family unit as opposed to individuals, which we do assert. We seek not an exemption from numerical limits but a different way of counting such limits. If the Executive Branch wanted to reinterpret section 203(d), there is sufficient ambiguity in the provision for it do so without the need for Congress to sanction it. A government agency’s interpretation of an ambiguous statute is entitled to deference under Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837 (1984)—often abbreviated as “Chevron deference”. When a statute is ambiguous in this way, the Supreme Court has made clear in National Cable & Telecommunications Assn. v. Brand X Internet Services, 545 U.S. 967 (2005), the agency may reconsider its interpretation even after the courts have approved of it. Brand X can be used as a force for good. For instance, in Sciallaba v. Osorio: Does the Dark Cloud Have A Silver Lining, Cyrus Mehta and David Isaacson propose that notwithstanding the Supreme Court’s recent decision concerning section 203(h)(3) of the INA, where the Court agreed with the Board of Immigration Appeal’s (BIA) more restrictive interpretation of this Child Status Protection Act provision in Matter of Wang, 25 I&N Dec. 28 (BIA 2009), the BIA has the power to reverse Matter of Wang under Brand X. Matter of Wang held that not all children who are unable to protect their age under the Child Status Protection Act can claim the earlier priority date under which their parent immigration to the United States. As the plurality opinion in Sciallaba v. Osorio explained in its conclusion: This is the kind of case Chevron was built for. Whatever Congress might have meant in enacting §1153(h)(3), it failed to speak clearly. Confronted with a self-contradictory, ambiguous provision in a complex statutory scheme, the Board chose a textually reasonable construction consonant with its view of the purposes and policies underlying immigration law. Were we to overturn the Board in that circumstance, we would assume as our own the responsible and expert agency’s role. We decline that path, and defer to the Board. Kagan slip op. at 33. Thus, when a provision is ambiguous such as section 203(d), the government agency may reasonably interpret the provision in a reasonable manner. In our prior article relating to not counting relatives, Why We Can’t Wait: How President Obama Can Erase Immigrant Visa Backlogs With A Stroke Of A Pen, http://www.ilw.com/articles/2012,0201-endelman.shtm, we discussed that there are admittedly some statutory provisions which might be read as pointing against an interpretation to not count family members. Most notably, it has also been pointed to us that INA section 202(b) permits a spouse or child to “cross charge” to the foreign state of either of the parents or the spouse to avoid family separation, and this may suggest that derivatives must be individually counted for purposes of the per country cap. Still, this too can be interpreted differently under Chevronand Brand X, namely, that the entire family be counted as single unit to the other spouse or parent’s country. Of course, the statutory provision which militates in favor of such an interpretation is most notably the text of INA §203(d) itself. If this happened, the EB and FB preferences could instantly become “current.” The backlogs would disappear. The USCIS might even have to build a new Service Center!

### S – DREAM

#### Parole can solve all backlogs – DREAMer included

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While the authors have proposed the use of parole and EAD benefits to those who are beneficiaries of approved immigrant petitions and are on the path to permanent residency, but for the crushing backlogs in the employment and family quotas, parole and EAD can also be potentially granted to other non-citizens such as DREAM children or those who have paid taxes and are otherwise admissible. The Executive’s use of parole, sua sponte, in such an expansive and aggressive fashion is hardly unique in post-World War II American history. The rescue of Hungarian refugees after the abortive 1956 uprising or the Vietnamese refugees at various points of that conflict comes readily to mind. While these were dramatic examples of international crises, the immigration situation in America today, though more mundane, is no less of a humanitarian emergency with human costs that are every bit as high and damage to the national interest no less long lasting. Even those who are in removal proceedings or have already been ordered removed, and are beneficiaries of approved petitions, will need not wait an eternity for Congress to come to the rescue.

## Answers

### AT Perm do Both

#### Group the perms, they link to the net-benefit – it can’t shield

#### a. They happen simultaneously, which means the CP can’t smooth the way for the plan. Any other interpretation is a time-frame perm and a voting issue because the aff could always delay the plan to avoid linking to any counterplan’s net benefit

#### b. They still have to have a congressional debate – that’s much more contentious than using executive discretion

#### Doing both is impossible – broad parole is only possible because Congressional inaction. The plan changes the scope of interpretative ability of the executive.

Manuel and Garcia ’14 (Michael Garcia and Kate Manuel are Legislative Attorneys, “Executive Discretion as to Immigration: Legal Overview ,” Congressional Research Service, November 10, 2014, https://fas.org/sgp/crs/homesec/R43782.pdf)-DG

This debate ultimately reflects the respective roles that Congress and the executive branch play in the nation’s constitutional system of government. Article I of the Constitution expressly grants the power to legislate to Congress, and Congress has exercised this power as to immigration, in part, by enacting the INA.7 The INA provides a comprehensive set of rules governing the admission of foreign nationals into the United States and the conditions of such aliens’ continued presence in the country, including their eligibility to obtain employment or public benefits, adjust immigration status, and become U.S. citizens. In addition, the INA establishes various mechanisms for enforcing these rules, including by prescribing the removal of aliens found to have entered the United States without permission, or to have violated the terms governing their authorized admission into the country.8 It also established criminal penalties for certain immigration violations. On the other hand, the INA expressly or impliedly confers some discretionary authority on the executive branch in matters of immigration enforcement. For example, the INA authorizes immigration officials to grant certain types of benefits or relief to qualifying aliens who lack lawful immigration status. Moreover, the INA permits immigration officials to waive certain statutory restrictions that might otherwise render an alien ineligible to receive particular immigration benefits. The exercise of these discretionary authorities may enable some unlawfully present aliens to remain in the United States—through asylum, temporary protected status, cancellation of removal, or some other means—rather than being removed. In other cases, however, aliens who have entered or have stayed in the United States in violation of INA requirements may be permitted to remain in the country and, in some cases, legalize their status, not as the result of the exercise of expressly delegated authority, but as a result of the executive branch’s independent discretion in enforcing the law. Article II of the Constitution specifically tasks the Executive to “take Care that the Laws be faithfully executed,” and the executive branch has historically been seen as having some discretion (commonly known as prosecutorial or enforcement discretion) in determining when, against whom, how, and even whether to prosecute apparent violations of the law. For example, immigration officials may opt to give a lower priority to the removal of certain categories of unlawfully present aliens because the removal of other categories (e.g., those convicted of serious crimes) has been deemed a higher priority in light of resource constraints and other considerations.16 Congressional enactments could, however, be seen as limiting the executive’s discretion not to take particular actions (e.g., by mandating that certain aliens be detained pending removal proceedings).17 The express adoption of an executive policy that is “in effect an abdication of ... statutory duty” could also be found to be impermissible,18 but it might be difficult for a court to assess the degree of nonenforcement that would entail an “abdication.” The executive branch’s discretion to interpret applicable statutes when Congress has not spoken to the precise question at issue may also afford immigration officials some flexibility in determining how INA requirements apply to a particular alien or category of aliens.19 This discretion may be relevant in determining how particular statutory grants of discretionary authority are to be applied (e.g., what constitutes “exceptional and extremely unusual hardship” for purposes of cancellation of removal, or “extreme hardship” for purposes of certain waivers of inadmissibility).20 It can also play a role in determining whether and how particular statutes are seen to circumscribe the Executive’s enforcement discretion. That is, where a statute is silent or ambiguous as to the circumstances of its enforcement in particular cases, the Executive may have some discretion in determining its application.

### AT Perm do the CP

#### The perm is severance – The CP doesn’t include Congress and doesn’t remove a restriction, it just stops enforcing it. Severance is a voting issues because it makes debate impossible.

#### “Legal immigration” excludes executive parole – the literature distinguishes the two strategies.

Harrington ‘18 (Ben - Legislative Attorney, “An Overview of Discretionary Reprieves from Removal: Deferred Action, DACA, TPS, and Others,” Congressional Research Service, April 10, 2018, https://fas.org/sgp/crs/homesec/R45158.pdf)-JN

When understood as a general concept rather than a formal legal term, however, “lawful immigration status” usefully describes the bundle of statutorily defined privileges and protections that come with the major statuses set forth in the INA (LPR, asylee, refugee, and nonimmigrant status).89 To say that unlawfully present aliens who receive discretionary reprieves do not have lawful immigration status means, generally speaking, that they lack most such privileges and protections or possess them only as a matter of executive grace.90 For example, aliens who receive discretionary reprieves generally cannot work legally unless DHS, in its discretion, authorizes them to do so (unlike LPRs, refugees, asylees, and some nonimmigrants);91 they have no statutorily established prospects of remaining permanently in the United States (unlike LPRs, asylees, and refugees);92 they are generally subject to removal by virtue of their presence within the United States alone (unlike all aliens with LPR, refugee, asylee, and unexpired nonimmigrant status);93 they have no legal basis to facilitate the admission of immediate relatives into the United States (unlike LPRs, refugees and asylees in some circumstances, and some nonimmigrants);94 they face considerable restrictions on eligibility for federal public benefits (particularly as compared with LPRs, refugees, and asylees);95 and, unless DHS decides to grant them advance parole, they generally cannot travel abroad with any legal basis to request re-entry to the United States (unlike all aliens with one of the four major statuses, except some nonimmigrants).96 Strictly speaking, it is not correct to say that discretionary reprieves bestow no statutorily defined protections: TPS recipients have a statutory defense against removal, and recipients of most discretionary reprieves garner some advantages grounded in statute by virtue of DHS’s authorization of their presence.97 Generally speaking, however, the legal situation of aliens granted discretionary reprieves from removal ranks so low along the spectrum of immigration categories as to not be considered “lawful immigration status” in common parlance (even though most reprieves vitiate unlawful presence).98 In summary, recipients of discretionary reprieves obtain a temporary assurance against removal that varies in reliability by reprieve type. Such aliens, in most cases, are not unlawfully present in the United States during the term of the reprieve. Such aliens do not, however, possess “lawful immigration status,” in the narrow sense that they remain technically removable under the INA’s inadmissibility or deportability provisions and in the more general sense that they do not enjoy most of the statutorily fixed protections that come with LPR, refugee, asylee, and nonimmigrant status.

### AT Court Rollback

#### Executive action, granting broad parole, is constitutional.

Wittes ‘14(Benjamin, Senior Fellow in Governance Studies at the Brookings Institution, where he is the Research Director in Public Law, and Co-Director of the Harvard Law School – Brookings Project on Law and Security, “Executive Power and Immigration Reform”, Lawfare, 11/17/14, [https://www.lawfareblog.com/executive-power-and-immigration-reform Accessed 6/22/18](https://www.lawfareblog.com/executive-power-and-immigration-reform%20Accessed%206/22/18))

The current flap about President **Obama's plan to proceed without Congress on immigration** matters isn't really about national security law. But it is about the law of presidential power and thus of inherent interest to readers of this site. Over the past few weeks, I've been struck in reading the many news stories about the brewing confrontation by the fact that none of the stories addresses what seems to me the central question at the heart of the developing standoff between the President and Congress: How much discretion does Obama have under the Immigration and Naturalization Act to decline, as a matter of policy, to deport millions of people? Republicans are tossing around all sorts of rhetoric about Obama's decision to proceed unilaterally. John Boehner has floated the idea of litigating the matter. Some Republicans have described such an "amnesty" as a constitutional crisis. Some have even talked about impeachment. All of that assumes, of course, that the coming action is illegal, that the statute itself doesn't give Obama authority to decide to stay his hand with respect to lots of deportations. Yet I have seen **no news story or legal analysis that contains an actual argument to that effect.** We do not yet know exactly what President Obama intends to do, so we cannot hold the details of his coming executive action up against the statute. But if we are to believe news reports, he plans to create some kind of program under which undocumented aliens who meet certain criteria---family members in the United States, no criminal record, etc.---can come forward and receive what amounts to a quasi-legal status under which authorities will not pursue removal actions against them. Obama himself has sown doubt about this own authority to effectuate this policy outcome without congressional involvement---stating in the past that he would love to do it, but did not think he had the legal authority. But at least as I read the relevant provisions of the Immigration and Naturalization Act, the statute actually gives him wide discretion to decline to deport non-criminal aliens who are legally deportable. Specifically, it contains no directive requiring the administration to pursue garden variety deportation cases. In fact, it has very little to say at all---except with respect to aliens who have committed crimes---about what happens if the President just doesn't feel like deporting people. That silence seems to me to convey the authority not to act, both in the case of an individual whose circumstances authorities find compelling and also in the case of five million people whose circumstances authorities find compelling or whose status authorities choose for policy reasons to regularize. Let's go through the statute. The key legal requirement appears in 8 U.S.C. § 1227(a): "Any alien . . . in and admitted to the United States shall, upon the order of the Attorney General, be removed if the alien is within one or more of the following classes of deportable aliens." What follows is a long list of legal bases for deportation, but for present purposes, what matters is the language of this general command. It appears, on first glance, to be mandatory. The alien, after all, shall be removed. But look again. The mandatory language only applies "upon the order of the Attorney General." And the statute makes no demand that the attorney general issue such an order merely because an alien falls into one of the categories of deportability. The statute, in other words, requires that an alien be removed if he is within a deportable class and if the attorney general orders him removed. As a practical matter, the attorney general does not decide these things himself. There's a whole immigration adjudication system to decide these cases for him (subject to his ultimate review). And the statute lays out a whole framework for immigration adjudications, all based on the assumption that the government wants to deport a given individual. Thus, 8 U.S.C. § 1229, begins by requiring that the alien receive written notice of the case against him or her. And 8 U.S.C. § 1229a lays out all sorts of details surrounding the conduct of the proceedings that follow. But what do these provisions---the first of which is entitled "Initiation of removal proceedings"---say about the obligation of authorities to, well, initiate removal proceedings? Exactly nothing. They simply assume that the immigration authorities want the person in question removed from the country. Nothing in either provision requires that authorities do, in fact, want him or her removed or start a case against him or her. And nothing that I can see forbids the president from directing that his underlings stay their hands in initiating removal proceedings, either in individual cases or in whole classes of cases. In the immigration context, Congress certainly knows how to remove discretion from the attorney general. In 8 U.S.C. § 1226(c), for example, the legislature bluntly directs that "The Attorney General shall take into custody any alien" who has committed certain classes of crimes pending deportation.a A provision that follows mandates the detention of suspected alien terrorists. And 8 U.S.C. § 1231 directs that "when an alien is ordered removed, the Attorney General shall remove the alien from the United States within a period of 90 days." During that time, authorities "shall detain the alien. Under no circumstance during the removal period shall [they] release an alien who has been found inadmissible . . . or . . . deportable." So one has to assume that the silence as to any sort of requirement that the government initiate deportation proceedings against non-criminal aliens is not an accident. It is a grant of discretion of sorts. To be sure, it was probably a grant of discretion predicated on the assumption that presidents would want to remove deportable aliens from the country. The idea that a president would build a whole programmatic policy edifice out of the discretion that resides in this silence surely never crossed anyone's mind. That said, I can't see any legal impediment to President Obama's anticipated course of action. I am no immigration law expert, so that fact may not mean all that much. If some reader out there who has studied the statute has a theory as to why the President lacks discretion to decline to initiate five million removal actions, I'd love to hear it. In the meantime, my gut is that whatever the policy merits of what the President has in mind, he seems to have broad authority to do something pretty dramatic.

#### Significant immigration policies have come from the executive branch – courts will still defer.

Hanson 16(Gordon, the acting dean and Pacific Economic Cooperation chair in International Economic Relations at the University of California, San Diego, “Executive Power Can Still Affect Immigration Enforcement”, New York Times, 11/12/16, [https://www.nytimes.com/roomfordebate/2016/09/12/is-any-immigration-reform-possible-in-this-political-climate/executive-power-can-still-affect-immigration-enforcement Accessed 6/22/18](https://www.nytimes.com/roomfordebate/2016/09/12/is-any-immigration-reform-possible-in-this-political-climate/executive-power-can-still-affect-immigration-enforcement%20Accessed%206/22/18))

In June when the Supreme Court failed to allow President Obama’s executive orders on immigration to stand, it seemed like a fatal blow to his ability to reform immigration enforcement. Dig a bit deeper, however, and one sees that the **powers of the executive branch to shape immigration policy are very much alive.** The government can be more aggressive or ease up, depending on the demands for labor, and the demands for a crackdown. The Supreme Court prevented Obama from allowing undocumented immigrants — in this case those who have American-born children — to work legally in the United States. Because the president was seeking the authority to change the legal status of an entire class of individuals — something that Congress is supposed to control — it is unsurprising that the courts objected. Yet, there are many cases in which presidents have unilaterally changed immigration policy. Consider one lesser known measure. Until around 2010, the vast majority of those apprehended trying to cross the U.S.-Mexico border without authorization were subject to “voluntary removal,” the much-maligned practice also known as catch-and-release under which the person apprehended is transported out of the United States with no further legal repercussion. The Border Patrol has since phased out this practice and largely replaced it with “expedited removal,” which involves a formal writ of deportation that impedes a person from obtaining a legal entry visa for five years or more. This change in tactic might seem like a bit of bureaucratic arcana but it has had real impact on the lives of migrants and on migration patterns. Previously, many would-be migrants who had applied for a green card would enter the United States illegally to live and work while they waited out the half decade or more it takes to clear the queue for a permanent residence visa. For these individuals, being an undocumented immigrant was just one part of the migration life cycle. By raising the legal stakes of being apprehended, the switch from voluntary to expedited removal has made prospective legal immigrants wary about entering the country through any means other than legal channels. There are **many further actions a future president could take without congressional authorization** that would directly or indirectly raise barriers to immigration. These include conducting more surprise raids of farms and factories where undocumented migrants are known to work, more aggressively pursuing fines on employers found to have hired undocumented immigrants, engineering longer delays in obtaining a green card, and the list goes on. Each of these actions would have the end result of reducing the number of immigrants in the United States.

#### Courts have upheld parole power in immigration.

**Abraham et al ’10** (Columbia Law School Human Rights Clinic, Institute for Justice and Democracy in Haiti, Center for Constitutional Rights, Center for Human Rights and International Justice Post-Deportation Human Rights Project at Boston College, Center for International Human Rights Law & Advocacy at Sturm College of Law, The Latin American and Caribbean Community Center, Massachusetts Law Reform Institute, Public Counsel, University of Maryland School of Law Immigration Clinic, University of Minnesota Law School Human Rights Litigation and International Advocacy Clinic, The Walter Leitner International Human Rights Clinic at Fordham Law School, The World Organization for Human Rights USA, Ira Kurzban, David Abraham (\*University of Miami School of Law), Raquel Aldana (\*University of the Pacific McGeorge School of Law, Inter-American Program), Deborah Anker (\*Harvard Law School, Harvard Immigration and Refugee Clinical Program), Sabrineh Ardalan (\*Harvard Law School, Harvard Immigration and Refugee Clinical Program), Sandra Babcock (\*Northwestern University Law School, Center for International Human Rights), Joseph Baldelomar (\*Nova Southeastern University, Shepard Broad Law Center), Lenni B. 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Hurwitz (\*University of Virginia School of Law, International Human Rights Clinic and Human Rights Program), Meetali Jain (\*Washington College of the Law, International Human Rights Law Clinic), Paula C. Johnson (\*Syracuse University College of Law), Sital Kalantry (\*Cornell Law School), Daniel Kanstroom (\*Boston College Law School, Human Rights Program), Nancy Kelly (\*Harvard Law School, Immigration and Refugee Clinic at Greater Boston Legal Services), Dan Kowalski (\*Bender’s Immigration Bulletin), Eunice Lee (\*Harvard Law School, Harvard Immigration and Refugee Clinical Program), Hope Lewis (\*Northeastern University School of Law), Bert Lockwood (\*University of Cincinnati College of Law, Urban Morgan Institute for Human Rights), Hope Metcalf (\*Yale Law School, Allard K. Lowenstein International Human Rights Clinic), Joel A. Mintz (\*Nova Southeastern University, Shepard Broad Law Center), Lori A. 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The Executive’s discretion regarding parole status has been interpreted by courts to be very broad and entitled to a strong presumption of legitimacy.15 However, the statutes and regulations governing the factors relevant to the parole determination do not authorize the consideration of race or national origin by those officials making the determination.16 There is a strong tradition of Executive reliance upon this discretionary power to extend parole to victims of tragedy and repression at various points throughout the nation’s history. In 1956, the Eisenhower administration invoked the parole power to temporarily admit 15,000 Hungarians fleeing communist persecution.17 The power was instrumental in the United States’ response to the Cuban refugee crisis of the 1960s and permitted the President to respond appropriately to refugee influxes from Vietnam, Haiti and Cuba in the 1970s.

#### Forget what you learned in school kids – the executive can interpret the INA and the courts will defer.

Manuel and Garcia ’14 (Michael Garcia and Kate Manuel are Legislative Attorneys, “Executive Discretion as to Immigration: Legal Overview ,” Congressional Research Service, November 10, 2014, https://fas.org/sgp/crs/homesec/R43782.pdf)

Another type of discretion that the executive branch may exercise as to immigration law involves the interpretation and application of statutes. As the Supreme Court articulated in its 1984 decision in Chevron U.S.A. v. Natural Resources Defense Council, when “Congress has directly spoken to the issue, ... that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress.”110 However, where a statute is “silent or ambiguous with respect to a specific issue,” courts will generally defer to an agency interpretation that is based on a “permissible construction of the statute,”111 on the grounds that the executive branch must fill any “gaps” implicitly or explicitly left by Congress in the course of administering congressional programs.112 The degree of deference afforded to particular executive branch interpretations can vary depending upon the facts and circumstances of the case, including whether the interpretation is a “formal” one adopted through notice-and-comment rulemaking or case-by-case adjudication.113 There are a number of places where the INA is silent or ambiguous on particular issues, and the executive branch has—expressly or practically—adopted an interpretation that significantly affects the implementation of immigration law. As some commentators have suggested,114 these executive branch interpretations could potentially be changed to expand (or restrict) aliens’ ability to enter or remain in the United States without the enactment of additional legislation.

### AT Presidential Powers Bad

#### No unique link – parole is an already a delegated power and it’s been used extensively in the past.

#### The executive branch has the legal authority in immigration policies

Stock 15(Margaret, nationally known expert on immigration and national security laws, has testified regularly before Congressional committees on immigration, Harvard Law School (J.D., with honors, 1992), “Immigration and the Separation of Powers”, The Federalist Society, 9/14/15, <https://fedsoc.org/commentary/blog-posts/immigration-and-the-separation-of-powers> Accessed 6/22/18)

One of the key controversies dividing Americans today is immigration. What do our Founding documents say about immigration policy? How do they allocate the power over immigration between the three branches of government? The Declaration of Independence speaks directly on immigration. In fact, one of the Founders’ grievances against King George was that he was limiting immigration, by trying “to prevent the population of these States; for that purpose obstructing the Laws for Naturalization of Foreigners; refusing to pass others to encourage their migrations hither . . .” But when the Constitution became the law of the land more than a decade after the signing of the Declaration, immigration was a lesser issue. The Constitution only mentions immigration once, stating that Congress has no power to limit the migration of slaves until 1808—it is silent about limiting any other migration, although it gives Congress the power to create a uniform rule of naturalization. In the decades after the ratification of the Constitution, the Supreme Court took a leading role in determining how the immigration power would be allocated between the three branches of Government. In the end, the **Court gave “plenary power**”—**absolute power—over immigration to Congress and the Executive**, in a judicially-created doctrine known as the “plenary power” doctrine. Although this concept is found nowhere in the Constitution, the Supreme Court said Congress had the power to make immigration laws that were discriminatory and otherwise unfair. In later years, the Court has also allowed Congress to delegate its immigration authority to the Executive Branch. **Congress has now given away much of its plenary power over immigration to the Executive** in sweeping grants of power—more sweeping grants than in any other area of the law. For example, Congress has delegated the power to the Executive Branch to determine whether the United States is at war such that military members can be naturalized; to determine whether foreigners should be granted temporary protected status; to determine whether a person is allowed to work in the United States; to grant a person permission to be in the U.S. when the person does not qualify for a visa; and to decide whether a person’s deportation should be deferred. As a result of two judicially-created developments—the plenary power doctrine, and the doctrine that Congress may delegate its power to the President—**the Executive Branch today enjoys expansive power over immigration**. Many people recently became upset when the Executive Branch exercised these powers delegated to it by Congress—but until Congress amends or repeals these broad grants of authority to the Executive, the President is on firm legal ground. President Barack Obama has come under fire for using the authority granted to him by Congress and ratified by the Supreme Court’s plenary power doctrine. He has faced a firestorm of criticism from both sides of the political aisle. His use of his authority harkens back to an earlier Democratic President—Franklin Delano Roosevelt, who was President of the United States when the Supreme Court abandoned the non-delegation doctrine in favor of allowing Congress to cede its powers to the President. Since FDR’s time, the balance of power in areas such as foreign affairs, national security, and immigration has tilted strongly towards the Executive Branch—with explicit and implicit authority from Congress and the gloss of history only strengthening the Executive’s power. Like FDR, President Obama has used his executive authority in controversial ways. His “national security” rationale for holding Central American refugees in detention camps has drawn comparisons to FDR’s often-criticized detention of Japanese residents during World War II. President Obama has also been criticized for deferring the deportations of young people who have graduated from U.S. high schools. And finally, he has been sued for attempting to give temporary work permits to the parents of U.S. citizen children so that those parents can work to support their families, rather than relying on public handouts. In the end, the Court-created doctrines that have allowed his predecessors to exercise these same powers are likely to ratify his actions, however controversial and seemingly unconstitutional they may seem to the casual observer. When it comes to immigration law and policy, the Founding documents no longer control America’s destiny—rather, the ever-evolving doctrines of the United States Supreme Court, and the dysfunction of Congress, have left the **immigration power firmly in Executive hands.**

#### No Tyranny – 4 checks on presidential power

Goldstein ‘99 (Joel K., Prof. Of Law, St. Louis Univ., The Presidency and the Rule of Law: Some Preliminary Explorations, 43 St. Louis L.J. 791, Summer)

Would these concessions to executive interpretive autonomy leave us naked before a Chief Executive prone to self-aggrandizement? Do we jeopardize the Rule of Law once we allow the President this leeway to apply the Constitution as he, not the Court, sees it? I think not. Protection would come from several sources. First, Presidents like other officials, could be expected to consider respectfully the constitutional arguments of judges and legislators. The people who hold public office and staff those two institutions are neither fools nor traitors; generally their conclusions will be reasonable and persuasive. Even when the President disagrees he [or she]will need to decide whether the benefits of acting on his [or her] different interpretation justify the costs of defiance. Departure from legislative and judicial interpretations, though possible, would require some articulated rationales which would, of course, be subject to discussion, analysis and scrutiny. Second, customs of presidential interpretive humility could be expected to develop. Many of the restraints on the judiciary - justiciability doctrines, immunities, Article I bodies - were created or endorsed by courts. Similar patterns of presidPresidents ential deference should be encouraged. n342 [\*848] For instance, might proceed cautiously in areas where no other institution is likely to review their interpretation. It may be appropriate to expect Presidents to articulate a strong constitutional rationale in such cases. A third set of democratic restraints - public opinion and elections - would provide incentive for measured presidential conduct. A President will think at least twice about taking a constitutional position at odds with the Court or Congress if it will cause him to be pilloried by the New York Times or on Larry King Live, will cost him dearly on his [or her] approval ratings, or will jeopardize his [or her] legislative program. Finally legislative controls would check the President. Congress could use its control of the purse and legislative hearings in response to presidential interpretations. Impeachment and removal would be available to redress any presidential actions deemed to constitute "high crimes and misdemeanors."

#### The alternative is worse – Congressional committees are unchecked

David Epstein and Sharyn O’Halloran ‘99, Dep. of political Science Stanford and Dep. of Pol. Science Standford Columbia. Hoover Institute. January 1999 “The Non-Delegation Doctrine and the Separation of Powers : a Political Approach” Cardozo Law Review p. lexis)

Third, delegation is not only a convenient means to allocate work across the branches, but it is also a necessary counterbalance to the concentration of power in the hands of committees. In an era where public policy becomes ever more complex the only way for Congress to make all important policy decisions internally would be to concentrate significant amounts of authority in the hands of powerful committee and subcommittee leaders, once again surrendering policy to a narrow subset of its members. From the standpoint of floor voters this is little better than complete abdication to executive branch agencies. As it now works the system of delegation allows legislators to play off committees against agencies, dividing the labor across the branches to that no one set of actors dominates. Given this perspective a resuscitated non-delegation doctrine would not only be unnecessary but also would threaten the very individual liberties that it purports to protect

### AT Can’t go Over Cap

#### Parole can increase over the cap

Travieso-Diaz ’98 (Matias F., Esq.- J.D., 1976 Columbia University; Ph.D. 1971 Ohio State University- 1998, ARTICLE; Immigration Challenges and Opportunities in a Post-Transition Cuba, Berkeley Journal of International Law, 16 Berkeley J. Int'l L. 234, lexisnexis

To implement the changes, Attorney General Janet Reno employed her emergency powers to raise the number of Cubans admitted each year beyond the legal ceiling. Immigration law permits the Attorney General to grant parole in cases of emergency or in the public interest. In the past, the Attorney General limited the use of this parole power to situations in which an individual needed the services or protection of the United States, such as a cancer victim needing a bone marrow transplant. Reno, however, expanded the use of this parole power.

### AT Saps Resources

#### Parole doesn’t need to be done on a case-by-case basis – Obama’s order for relatives of the military proves.

Cox and Rodríguez ’15 (Adam B. - the Robert A. Kindler Professor of Law, NYU School of Law. Cristina M. - the Leighton Homer Surbeck Professor of Law, Yale Law School. “The President and Immigration Law Redux.” The Yale Law Journal. Vol 125. August 6, 2015. https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=2635638) -JN

Whether either of these claims has merit is beside the point for our purposes. Instead, what matters is that the President utilized his delegated authority to serve a decidedly executive agenda. The creation of the refugee selection process in 1980 and TPS authority in 1990 may have diminished the need for sweeping and categorical use of the parole power, as well as the political and legal flexibility of the President to rely on parole as he had in the past. But these effects have been more modest than one might suppose, and parole remains an important alternative route of admission for those who may not qualify for refugee status.32 The authority also continues to serve as a basis for innovation. Most recently, the Obama Administration has invoked parole in place—itself an innovation on the parole power33—to provide relief for a large group of unauthorized immigrants already in the United States—relatives of members of the military. Though the application for and granting of parole continues to be framed as case-by-case, the memorandum announcing parole in place for military families clearly reflects an intent to provide relief to a favored category of unauthorized immigrants.34

### AT States Backlash

#### State action usually complements executive amnesty.

Gulasekaram and Ramakrishnan ‘16 (Pratheepan - Associate Professor of Law, Santa Clara University (J.D., Stanford Law School), S. Karthick - Professor and Associate Dean, School of Public Policy, University of California, Riverside (Ph.D., Princeton University), “THE PRESIDENT AND IMMIGRATION FEDERALISM,” Florida Law Review, Vol. 68, Iss. 1, Art. 3, 2016. https://scholarship.law.ufl.edu/flr/vol68/iss1/3/)-JN

C. States as Potentially Fertile Ground for Expanding Presidential Power While states may find limited ways to successfully resist presidential action on immigration, the more powerful trend appears to be the way in which the President can use states to help entrench his policy vision on immigration, thereby gaining a stronger position vis-à-vis Congress. Relatedly, these state and local policies can constrain the policy choices politically available to a future group of federal legislators. This was certainly true in the case of DACA, as actions by the Executive prompted most states to reexamine and modify their policies on driver’s licenses, the overwhelming majority of which previously required proof of legal presence in the United States.374 Moreover, beyond licenses, other important state and local areas for immigrant integration, such as local identification cards, state tuition policies, public welfare provision, and even health care, have all witnessed accelerated momentum after DACA.375 This Article does not claim that the Obama Administration intended these state-level policy changes when it implemented DACA. Indeed, there is no mention of state driver’s licenses in any of the federal government’s documents outlining the contours of DACA or its effects on potential beneficiaries or state and local jurisdictions.376 At the same time, the administrative creation of a large class of persons who now are temporarily lawfully present despite their unlawful status virtually necessitated some state-level response.377 With a group of a few hundred thousand DACA recipients openly attending schools and seeking employment, and needing transportation to take advantage of both,378 DACA helped ease the policy climate for states desirous of accounting for all residents, regardless of immigration status. This process—an exogenous shock (this one prompted by the President’s decision on DACA) provoking a rash of changes in state policies on driver’s licenses—comports very closely with what Professors Frank Baumgartner and Bryan Jones have called a “punctuated equilibrium,” in which an exogenous development upends a status quo of policy inertia, which subsequently catalyzes processes that propel toward rapid change.379 The President’s action on DACA is exogenous because the Administration was not seeking to change state policy on driver’s licenses when it announced its policy in June 2012.380 Additionally, the policy reverberations from the 2012 executive action continue. As DACA recipients renew their status and continue to establish deep ties to their communities through education, work, and family ties, they appear more and more as a permanently non-deportable group. Thus, by regularizing, without legalizing, hundreds of thousands of previously unauthorized immigrants, the President’s action catalyzed states and localities into dealing with the everyday needs of these residents and their families. Thinking more broadly from the perspective of presidential power in a federalism framework, states and localities provide potentially fertile grounds for the Executive Branch to entrench its policy vision, especially in jurisdictions led by officials of the same party as the President.381 Unlike Congress, state legislatures cannot provide lawful status to recipients of deferred action. However, their ability to legislate complementary policies on issues such as driver’s licenses, in-state tuition, public assistance, and professional licensing help enable and entrench the President’s policy. It is enabling because without this type of state action, recipients of deferred action and EADs would still find it difficult to attend schools or transport themselves to work.382 Much like the state migratory commissions created in the wake of the Bracero Program, states and localities function as important places where welcoming policies can—and in some instances, can only—be instantiated.383 And, similar to past instances, presidential predilections toward immigrants are likely to be more generous and expansive than congressional attitudes.384

#### States act as reinforcement for executive policy – they create pressure for Congressional follow on and ensure no rollback.

Gulasekaram and Ramakrishnan ‘16 (Pratheepan - Associate Professor of Law, Santa Clara University (J.D., Stanford Law School), S. Karthick - Professor and Associate Dean, School of Public Policy, University of California, Riverside (Ph.D., Princeton University), “THE PRESIDENT AND IMMIGRATION FEDERALISM,” Florida Law Review, Vol. 68, Iss. 1, Art. 3, 2016. https://scholarship.law.ufl.edu/flr/vol68/iss1/3/)-JN

Further, state and local action is entrenching because as these policies become a part of the public policy of several states, future congressional measures on immigration will have to address and likely accommodate them. DACA and DAPA, as temporary forms of administrative relief from prosecution, apply only to a selected class385 and will not last beyond the renewal periods granted at the whim of subsequent presidential administrations. In contrast, state laws passed in the wake of DACA inure to a class of undocumented beneficiaries beyond the groups identified by the executive order. Further, they are state legislative enactments that will last until they are democratically rescinded at the state level or expressly preempted by federal legislation, even if a future administration rescinds DACA and DAPA. Therefore, they are highly likely to remain a part of state statutory schemes well beyond DACA and DAPA’s time horizon, providing more “permanent” forms of legal protection and benefit. Importantly, these state laws also imbue enforcement relief with additional democratic legitimacy, since that relief has the backing of several state legislative bodies even if it does not have the backing of Congress. This dynamic of state and local officials seeking to provide more popular backing to executive action has also been evident in recent actions by large-city mayors. In the wake of the President’s second largescale deferred action program, more than twenty mayors (mostly, if not exclusively, from the Democratic Party) formed the Cities United for Immigration Action collective386 and met in New York City to discuss the implementation of inclusive, immigrant-friendly policies consistent with the President’s actions.387 Not only do these mayors represent a “coalition of the willing” in support of executive action, consisting of forty-eight jurisdictions and more than 25 million residents,388 they also mark the building of a policy network that has the potential to outlast the Obama Presidency. As Professor Judith Resnick notes, these types of translocal governmental organizations can cross territorial lines to help shape and spread policies.389 In this way—and often with the help of policy entrepreneurs—federalism takes on a horizontal dimension,390 in addition to its vertical component and its separation of powers possibilities. This horizontal dimension from state to state and city to city can, and likely will, create feedback loops and inform the scope and substance of any future federal legislation.391 Congress will be constrained to either accommodating these integrationist impulses at the state and local levels or attempting to override them at the cost of disregarding the political will of several dispersed jurisdictions.392 To extend the metaphor of the President seeking to entrench his policy vision, complementary state policies on immigration can help deepen the roots of executive action on immigration, making it far more difficult for Congress to eradicate or significantly alter such policies with subsequent legislation. Surely, this kind of “rooting” can also happen through other means, such as the mobilization of public opinion among policy beneficiaries393 and supportive actions by nonprofits.394 However, state complementary action can be stronger and more enduring than popular mobilization because the former is institutionalized through state legislation and policy implementation, while the latter must rely on private actors overcoming problems of collective action among potential beneficiaries. Also, state complementary action on presidential action is likely stronger than supportive actions by nonprofits, which do not have the same benefits of democratic legitimacy and accountability, the ability to raise revenues in a diffuse and predictable manner, the coercive force of law, or the ability to operate throughout a state rather than only in areas where immigrants are numerous.

### AT Normal Means

#### Parole is not normal means

Murphy ‘8 (Sarah E. Murphy is a Border Immigration Lawyer, “Parole Into the United States” 2008, http://www.borderimmigrationlawyer.com/parole-into-the-us/)-DG

Pursuant to Section 212(d)(5)(A) of the Immigration and Nationality Act (“INA”), the Secretary of the Department of Homeland Security (“DHS”) may, in her discretion, parole any alien applying for admission into the U.S. Such parole shall be issued on a case-by-case basis for urgent humanitarian reasons, which is why it is sometimes referred to as “humanitarian parole.” In the immigration context, the term “parole” has a very specific meaning. A person who has been “paroled” has not been “admitted” to the U.S., nor have they made an “admission” under the immigration law. This is true despite the fact that the individual (“parolee”) is permitted physical entry into the U.S. following inspection by an immigration officer. A parolee is not “admitted” because most often s/he is inadmissible to the U.S. A grant of parole under INA § 212(d)(5)(A) provides for a one-time entry for a specific purpose. There are no travel rights pursuant to a grant of humanitarian parole (as distinguished from advance parole, which allows applicants for permanent residence to travel abroad while their applications are pending), which means that an inadmissible non-citizen can make only one entry pursuant to their grant of parole. If s/he departs the U.S. following that parole entry, s/he must obtain another grant of parole to re-enter (or else obtain the proper waiver, etc.). The parole of inadmissible non-citizens is a privilege, not a right. It is not a power that is exercised often, and is reserved for only those truly deserving cases. As set forth by statute, parole applications are to be granted on a case-by-case basis for “urgent humanitarian reasons or significant public benefit.” INA § 212(d)(5)(A).

#### Even USCIS, ICE, and CBP agree in this memorandum – parole is rare, not normal means

USCIS ‘8 (United States Citizenship and Immigration Services, “Parole Authority Memorandum Agreement” 9-10-2008, https://www.ice.gov/doclib/foia/reports/parole-authority-moa-9-08.pdf)-DG

Section 212(d)(s)(A) of the Immigration and Nationality Act (INA, or the Act) authorizes the Secretary of the Department of Homeland Security (DHS)2 "in his discretion (to) parole into the United States temporarily under such conditions as he may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit any alien applying for admission into the United States,.. ." Parole is an extraordinary measure, sparingly used only in urgent or emergency circumstances, by which the Secretary may permit an inadmissible alien temporarily to enter or remain in the United States. Parole is not to be used to circumvent normal visa processes and timelines.

### AT Congress Rollback

#### Congress will not rollback executive parole

Cox and Rodríguez ’15 (Adam B. - the Robert A. Kindler Professor of Law, NYU School of Law. Cristina M. - the Leighton Homer Surbeck Professor of Law, Yale Law School. “The President and Immigration Law Redux.” The Yale Law Journal. Vol 125. August 6, 2015. https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=2635638) -JN

In theory, of course, Congress could constrain de facto delegation by complementing its substantive statutory enactments with detailed enforcement instructions or prohibitions. In practice, Congress has rarely done this—in immigration law or any other regulatory arena. Occasionally Congress blandly obligates DHS to do something like “prioritize the identification and removal of aliens convicted of a crime by the severity of that crime,”141 or to fund a particular number of beds for immigrant detention (34,000, to be exact).142 But loose language of prioritization does little to constrain the Executive’s authority,143 and even numerical prescriptions like the bed-space mandate only scratch the surface of the decisions the Executive must make when enforcing immigration law. Negative injunctions issued by Congress have the potential to be more powerful; prohibiting DHS from granting any immigrant deferred action, for example, would more seriously constrain the President’s power to structure the immigrant screening system. But these sorts of prohibitions are also rare. In this world, it will generally be futile to search for “congressional priorities” that legally constrain executive branch decisions about which immigrants, from within the vast pool of eleven million unlawfully here, may be deprioritized for deportation (not to mention congressional views as to how such deprioritization ought to be structured). And given the absence of such priorities, efforts to invoke them ultimately only obscure the reality that executive branch officials are making important value judgments about our immigrant-screening system

## EB Reallocation CP

### Overview

#### By simply reallocating EB visas instead of increasing the cap, we avoid brain drain because we aren’t letting a large number of new immigrants into the country – extend Scalzo 11. Yet we solve because we allow more skilled workers to fill the gap in the US – that’s Scalzo again.

### AT Perm do Both

#### It’s physically impossible to both increase the cap and keep it the same, reallocating it – the CP is mutually exclusive with the aff.

### Net Benefit – Brain Drain Bad

#### Brain drain triggered by focus on highly skilled immigration takes valuable resources from other countries and undermines global development and democracy promotion – CP doesn’t do this

Scalzo, 11 --- J.D. from The George Washington University Law School May 2011 (April 2011, Kayleigh, The George Washington Law Review, “Note: American Idol: The Domestic and International Implications of Preferencing the Highly Educated and Highly Skilled in U.S. Immigration Law,” 79 Geo. Wash. L. Rev. 926, Lexis-Nexis Scholastic, JMP)

The judiciary has recognized that Congress's goal in allocating EB visas was to "increase the influx into the United States of highly skilled professionals to fill jobs for which American personnel are scarce." n56 However, the standard for qualifying as a highly skilled EB-1 immigrant - as well as for qualifying as a mere "exceptional" EB-2 immigrant - is staggeringly high in light of the fact that these two categories consume over half of all EB visas. Although the difference between "extraordinary," "exceptional," and "skilled" may seem trivial in any other context, these labels have a profound effect on aspiring immigrants. n57 The highly meritocratic system of visa allocations must be reexamined in light of this situation.

II. Negative Effects of a Hyper-Meritocratic EB Immigration Regime

The hyper-meritocracy of the current EB immigration regime is problematic for three main reasons: its furtherance of global brain drain, its failure to optimize U.S. economic interests, and the undemocratic and "un-American" value judgment that underlies it.

A. Global Brain Drain

The phenomenon of international brain drain is based on two premises: there are few highly educated people in developing nations, [\*936] and those highly educated people are extremely likely to emigrate. n58 It is defined as a "significant loss of the highly educated population" resulting in negative economic effects in the sending country. n59 These negative effects are often twofold, including a loss of human capital as well as a loss of the government's return on its investment in its citizenry. n60 For example, a developing country may invest significant amounts of money in educating and providing healthcare to its youths on the understanding that they will mature into informed, healthy, and productive members of the national society. n61 That understanding collateralizes the investment. n62 Whenever a highly skilled, highly educated citizen emigrates, the country enters a loss on its ledger.

Although it is understandable that the best and brightest of a developing nation emigrate for a better life and additional opportunities, this strips the sending nation (perhaps more aptly described as the deprived nation) of valuable resources necessary for continuing development. In this regard, African countries have been acutely affected, and widespread emigration from the continent "threatens Africa with yet another net loss of quality human resources" similar to the effect of the slave trade. n63 One scholar estimates that twenty to fifty percent of the "top African brains and skilled personnel" have left the continent and fail to retain significant professional ties with their homelands. n64 The 2005 World Migration Report, compiled by the International Organization for Migration, called attention to the loss of human resources from the continent, a trend which one scholar predicts will culminate in Africa's transformation into an "intellectually barren ghetto." n65

By contrast, developed countries benefit greatly from this continual injection of brains and talent, and they even compete with each other over immigrant candidates. n66 As Professor Ayelet Shachar, of [\*937] the law faculty at the University of Toronto, explains, "industrial countries are trying to outbid one another ... to attract highly skilled migrants to their domestic industries in order to gain (or retain) a relative advantage over their international competitors in the knowledge-based global economy." n67 From this perspective, encouraging highly skilled immigration becomes yet another strategy in the broad reach of a developed country's economy. n68 Reflecting upon this conceptualization of the immigrant as human capital, Professor Kunal M. Parker, of Cleveland-Marshall College of Law, aptly concludes that receiving countries measure the value of an aspiring immigrant based on her profile as "homo oeconomicus." n69 Thus, brain drain is the inevitable symptom of a widespread "reimagination of legal immigration in terms of productivity, skill, resources, and self-sufficiency." n70

The United States is the most popular destination country for skilled immigrants, n71 and it is easy to imagine why. The nation boasts expansive opportunities for the well-educated and highly skilled, and its immigration policies reward such a showing of talent. Admittedly, arguments appealing to international concerns often do not fare well in shaping U.S. laws. n72 U.S. immigration law is, without illusion, designed with the goal of furthering U.S. interests. n73 Critics of U.S. immigration policy have often urged an even stronger preferencing of [\*938] elite immigrants rather than tempering the meritocracy. n74 This position is understandable and in no sense irrational from either a legal or policy perspective; after all, the United States was arguably founded on the ideas that social mobility was possible and that hard work and high achievement would be rewarded. n75

Brain drain is detrimental, however, even with purely domestic goals in mind: it directly undercuts U.S. foreign policy regarding global development and democracy promotion and also subverts border control policy aimed at reducing unauthorized entries. The United States Agency for International Development ("USAID") states its "twofold purpose" as "furthering America's foreign policy interests in expanding democracy and free markets while improving the lives of the citizens of the developing world." n76 It is the main U.S. governmental agency charged with promoting economic and democracy development around the globe. n77 USAID is not unaware of the benefits and detriments of brain drain. In a presentation to USAID on the relationship between migration and development, the Migration Policy Institute emphasized the "potential [domestic] benefits of a 'brain export' industry," while at the same time acknowledging that efforts to repatriate such highly skilled immigrants - and thus mitigate the negative effects in sending countries - have generally failed. n78

[\*939] Although remittances by highly skilled and highly educated migrants may contribute to economic development in sending countries, it is harder to assert that these remittances similarly contribute to democracy promotion, which has become a prominent focus of USAID policy since 2002. n79 Democracy, especially in contrast to other forms of governance, requires a certain financial stability and economic security in governmental entities; the populace relies on the state to provide healthcare, educate the nation's youth, and, at least to some extent, redistribute wealth. n80 Democratic governments must also exercise self-determination over their economic policies, a significant feat in the current international political economy. n81 The infrastructure and bureaucratic capabilities necessary to accomplish these stepping stones to democracy rely on an educated, informed citizenry, which must fill the roles of leaders and constituencies. Promoting "brain export" hardly seems consistent with promoting democracy, and, therefore, the United States impairs its own global policy goals with its domestic immigration law. n82

Border control policy is also underserved by an EB immigration system that engenders brain drain. Immigration is often motivated by a lack of employment and economic opportunity in the home country, n83 and the current allocation of EB-3 visas serves only a fraction of aspiring EB-3 immigrants. n84 Although the intent behind these statutory restrictions is likely to recalibrate the nature of the immigrant [\*940] flow, n85 the result is a near trainwreck of supply and demand curves. Rather than abandoning all intention of emigrating and remaining in their home countries, immigrants who would otherwise be EB-3s are more likely to violate border policies and pursue U.S. employment opportunities outside of the law. n86

EB immigration law largely attempts to restrict entry to all but the most elite, but the policy carries significant negative externalities. By extracting the highly educated and highly skilled from nations around the globe, it stifles international development. Thus, populations remain relatively unskilled and opportunities in sending countries remain limited. These unskilled, aspiring immigrants develop the logical desire to immigrate to the United States and, undaunted by tight restrictions on their visa category, arrive without authorization. Border control policy is compromised, and U.S. immigration law erodes its own domestic and international goals. n87

### Net Benefit – Agenda Politics

#### Expanding the cap requires congress and will be politically contentious – we avoid

Feere, 15 --- Legal Policy Analyst at the Center for Immigration Studies (1/27/15, Jon, “Could Obama Increase Immigration By Not Counting Family Against Visa Caps?” <https://cis.org/Report/Could-Obama-Increase-Immigration-Not-Counting-Family-Against-Visa-Caps>, accessed on 6/9/18, JMP)

Congress Expands Cap, Not the President

A main goal of the Obama administration is to increase legal immigration. Congress has increased the number of employment visas issued and lawmakers could do so again if they wanted. The employment visa's history over the past half-century clearly illustrates that such changes come from Congress, however, rather than from executive decrees.

When Congress authored the 1965 immigration act, it established a visa preference system that specified some visas for employment-based immigration. By 1970, about 34,000 immigrants entered under occupational preferences for workers, their spouses, and children.16 This congressional authority over the appropriate number of employment visas continued in the years that followed.

In 1976, Congress amended the INA to increase the total number of annual visas allocated specifically to employment-based immigrants and their family members from 34,000 to 58,000.17

In the 1990 Immigration Act, Congress raised the annual number of employment-based visas from 58,000 to 140,000.18

Never once did a president assume that he had the power to raise these visa caps unilaterally. Certainly, presidents played a role in encouraging Congress to raise the caps, and President Obama could do the same if he prefers to increase the number of immigrants entering the United States on employment-based visas. Of course, President Obama likely concludes that it would be difficult to persuade Congress to do such a thing amid the high unemployment the United States is currently experiencing.