# 1NC

### 1NC

#### A --- Interpretation --- restrictions are direct governmental limitations on production

Annamaria Viterbo 12 , Assistant Professor in International Law at the University of Torino, PhD in International Economic Law from Bocconi University and Jean Monnet Fellow at the European University Institute, 2012, International Economic Law and Monetary Measures: Limitations to States' Sovereignty and Dispute, p. 166

In order to distinguish an exchange restriction from a trade measure, the Fund chose not to give relevance to the purposes or the effects of the measure and to adopt, instead, a technical criterion that focuses on the method followed to design said measure.

An interpretation that considered the economic effects and purposes of the measures (taking into account the fact that the measure was introduced for balance of payments reasons or to preserve foreign currency reserves) would have inevitably extended the Fund's jurisdiction to trade restrictions, blurring the boundaries between the IMF and the GATT. The result of such a choice would have been that a quantitative restriction on imports imposed for balance of payments reasons would have fallen within the competence of the Fund.

After lengthy discussions, in 1960 the IMF Executive Board adopted Decision No. 1034-(60/27).46 This Decision clarified that the distinctive feature of a restriction on payments and transfers for current international transactions is "whether it involves a direct governmental limitation on the availability or use of exchange as such\*.47 This is a limitation imposed directly on the use of currency in itself, for all purposes.

#### “On” means in contact with and links “restrictions” only to energy production

Arthur Butler Graham 16, “Brief for Appellants – Wilson v. Dorflinger & Sons”, Court of Appeals, State of New York, Reg. 108, Fol. 387, 1916, p. 11-12

The Standard Dictionary defines the word “on” as follows:¶ “In or into such a position with reference to something, as a vehicle, a table, or a stage, as to be in contact with and supported by it; in a position, state, or condition of adherence; as, he go on before the wagon had fully stopped.”¶ In Webster’s International Dictionary, we find as follows:¶ “on—The General signification of “on” is situation, motivation, motion, or condition with respect to contact or support beneath as (1) at or in contact with, the surface or upper part of a thing, and supported by it; placed or lying in contact with the surface; as, the book lies on the table, which stands on the floor of a house on an island.”¶ It is submitted that an elevator is not operated on streets or on highways, as a car, truck or wagon is operated, and that by the use of the word “on” the Legislature intended to include only those appliances therein enumerated, namely, cars, trucks, and wagons. An elevator is not operated on anything, but is operated in or inside a shaft, and is controlled by guides, which deprive the operator of the power to change the course of the lift from right to left. Clearly the Legislature intended to include in Group 41, only those cars, trucks and wagons whose direction and guidance are controlled by the operator, in whatever direction he may deem advisable.

#### Energy production refers to the extraction, conversion, and distribution of energy

Koplow 4 Doug Koplow is the founder of Earth Track in Cambridge, MA. He has worked on natural resource subsidy issues for 20 years, primarily in the energy sector "Subsidies to Energy Industries" Encyclopedia of Energy Vol 5 2004www.earthtrack.net/files/Energy%20Encyclopedia,%20wv.pdf

3.2 Production

Energy production includes all stages from the point of resource location through distribution to the final consumers. Specific items examined here include resource extraction, resource conversion (including electricity), the various distribution links to bring the energy resource to the point of final use, and accident risks.

#### B --- Violation --- CFIUS doesn’t restrict --- it regulates which companies can produce energy

Douglas William Nigh 98, associate professor of international business at the University of South Carolina, and Douglas P. Woodward, associate professor of economics at the University of South Carolina, Foreign Ownership and the Consequences of Direct Investment in the United States: Beyond Us and Them, 1998, p. 144

How did the U.S. government respond to the influx of FDI that dates from the 1970s? The answer is “favorably,” with only nominal institutional constraints on investment flows. At the federal level, the institution directly responsible for addressing issues relating to FDIUS is the Committee on Foreign Investment in the United States (CFIUS). Created by President Gerald Ford as an oversight body in 1975, CFIUS monitors and regulates FDIUS from the standpoint of protecting national security. It is an interagency body composed of officials from the Departments of State, Commerce, Defense, and Justice, the Office of the United States Trade Representative, the Office of Management and Budget, and the Council of Economic Advisers; it is usually chaired by a Treasury official.

#### C --- Vote neg ---

#### 1 --- Ground --- they avoid links to core disads which are based on increases in energy production --- the US companies are already producing energy --- they just allow foreign firms to acquire those US companies

#### 2 --- Unlimits—allows for affs that repeal a environmental or corporate regulations that have no effect on the amount of energy produced, kills neg ground

#### 3 --- Precision --- restriction is narrower than regulation

US District Court 9—Judge Thomas E. Johnson, US District Court for the Southern District of West Virginia, http://law.justia.com/cases/federal/district-courts/west-virginia/wvsdce/5:2009cv00152/61171/33

9 The fourth prong of the Central Hudson test refers to "regulation" of speech. 447 U.S. at 567. "Regulation" could be construed broadly as applying [\*\*29] a system of laws, including penalties, affecting a particular manner of commercial speech. However, in subsequent cases, the Supreme Court has employed the narrower word, "restriction," in place of "regulation." See, e.g., Bd. of Trs. v. Fox, 492 U.S. 469, 476, 109 S. Ct. 3028, 106 L. Ed. 2d 388 (1989) ("[G]overnment restrictions upon commercial speech may be no more broad or no more expansive than 'necessary' to serve its substantial interests").

### Short 1NC---Renewable Incentives

#### The plan locks in a neoliberal approach to energy and social relations---renewables incentives create an unsustainable market model that causes social and ecological crisis

Tim Di Muzio 12, Postdoctoral Research Fellow at the Centre of Excellence in Global Governance Research, University of Helsinki, 2012, “The crisis of petro-market civilization: the past as prologue?,” in Global Crises and the Crisis of Global Leadership, ed. Gill, p. 83-85

Current trends, then, are patently unsustainable. However, the scale of the social transformation needed to move towards a post-carbon pattern of social reproduction is enormous, and demands nothing less than bold global, national and local community participation and leadership. I would like to suggest here that, although civil society organizations and policy-makers recognize the severity of the task, the solutions currently being proposed are issued from neoliberal governmental discourses that may exacerbate the looming crisis of social reproduction. Neoliberal governmentality is a method and strategy of rule that prioritizes the anarchy of private enterprise, economic growth, market mechanisms and individual responsibility over long-term democratic public planning for sustainable forms of social reproduction. A recent study has suggested how entrenched and widespread neoliberal policies are, while others have elaborated on and refined Michel Foucault’s initial investigation of neoliberal governmentality (Burchell, Gordon and Miller 1991; Saad-Filho and Johnston 2005). My own purpose here is not to assess these interventions but, rather, to offer a brief conceptualization of neoliberal governmentality and then to show how this mode of rule approaches some of the challenges mentioned above. The politico-strategic rationality that animates neoliberal mentalities of rule starts from the notion that human beings are individual rational actors who pursue their interests by making cost–benefit calculations. For neoliberals, it is impossible for public policymakers to know the individual interests of each person, let alone the sum total of these interests. This leads neoliberals to argue that complex societies should be coordinated by price signals in the market, since these are the most effective and efficient conveyors of information. Moreover, as markets are the primary conveyors of information and allocators of goods and services, they should not be limited by spatial or political boundaries, since this would distort information and constrain human possibilities.

In this rendition of human purpose, there can be no shared, collective or planned vision for a political community to achieve other than preparing for market competition. For neoliberals, to do so would be anathema, because it would imply that some individual or group is imposing its own will on everyone else. However, this starting point is not grounded in an empirically verifiable human nature or ontology for neoliberals; it is a norm or state to be achieved by actively creating the productive constraints that will provide the guidelines and rules for shaping human behaviour, so that it increasingly resembles the behaviour of an imagined Homo economicus abstracted from natural limits. In other words, neoliberals are not against planning, as they want to arrange liberty artificially so that individuals can compete to pursue their own ends; however, they are against particular forms of planning that would have individuals directed towards some specific end not of their choosing. What this means is that the utopian goal of neoliberal governmentality is a political community of entrepreneurial firms and individuals that should largely govern themselves according to their interests, defined as financial or material gain. In doing so, these activities are presumed to generate economic growth. However, this politico-strategic rationality is not just directed at creating the conditions of existence for calculating individuals. The government itself is supposed to be subjected to the same market criteria or imperatives. Policies are to be assessed and audited based on their ability to foster private enterprise. Government programmes are to be evaluated for their costs and what they return to the political community, and against the possibility that market forces would be better allocators of publicly provided goods and services.

For this reason, some of the main tactics and techniques employed by neoliberal governors include commodification, privatization, deregulation, ‘responsibilizing’ individuals and creating incentives for firms. What this means in the context of the looming crisis of social reproduction is that market mechanisms and the consumer and investment choices of individuals and firms will be responsible for meeting the challenges of a post-carbon world order (Bernstein 2002; Conca 2000; Levy and Newell 2002; Mansfield 2004). For example, in place of a coordinated government programme designed to prepare populations for the end of a highly energy-intensive consumerist lifestyle and drastically reducing greenhouse gas emissions, individual responsibility is promoted. These include attempts at reducing personal consumption, conserving energy, recycling waste, buying green organic products, retrofitting houses for energy efficiency, promoting the use of reusable shopping bags, green reskilling and encouraging home gardening, just to mention a few initiatives.

At the level of the firm, incentives are currently directed at promoting a corporate-led green capitalism while at the same time continuing to promote the discovery and extraction of fossil fuels for energy use. Policies to encourage green capitalism include mandating greater fuel efficiency and hybrid cars, funding the research and development of carbon-sequestration and green technologies to control pollution and liberalizing energy markets and making them more competitive. A look at some leading energy policies from the United States and the European Union shows that they also include incentives for firms to exploit renewable energy opportunities in solar, wind, biomass, geothermal, hydroelectric and tidal power, with some claims that renewables should make up a certain percentage of the total primary mix by a given date (White House 2010). For instance, on this last point, the European Union’s energy policy aims to have 20 per cent of its primary energy come from renewable sources by 2020 (European Commission 2010). Another leading policy response to global warming has been the promotion of cap and trade systems that allow corporations to pollute up to a point and thereafter purchase permits for additional pollution (Bond 2008).

In other words, neoliberals undoubtedly recognize that a form of social reproduction reliant on fossil fuels and ecological degradation poses significant challenges. The question is this: are neoliberal policies that privilege individual responsibility, private enterprise and market mechanisms capable of preparing world society for a post-carbon-dependent social order within a timeframe that avoids serious crises?

#### Extinction---tech and reforms fail

Richard A. Smith 7, Research Associate at the Institute for Policy Research & Development, UK; PhD in History from UCLA, June 2007, “The Eco-suicidal Economics of Adam Smith,” Capitalism Nature Socialism, Vol. 18, No. 2, p. 22-43

In the midst of the record-breaking heat wave in the summer of 2003, George Monbiot, the renowned columnist for the London Guardian, penned a short but eloquent essay entitled "Sleepwalking to Extinction." Monbiot wrote:

We live in a dreamworld. With a small, rational part of our brain, we recognize that our existence is . . . destroying the conditions for human life on earth. Were we governed by reason, we would be on the barricades today, dragging the drivers of Range Rovers and Nissan Patrols out of their seats, occupying and shutting down the coal-burning power stations, bursting in upon the Blairs' retreat from reality in Barbados and demanding a reversal of economic life as dramatic as the one we bore when we went to war with Hitler.1

But despite the frightening trends and increasingly desperate pleas from the world's scientists, the world's corporate and political leadership show no sign of abandoning denial and adopting "reason" nor scrapping business-as-usual to mobilize against catastrophe. The ritual has now become depressingly familiar and predictable: After each new "shocking" report on melting icecaps, the slowing Gulf Stream in the North Atlantic, or eco-devastation in Africa or China, "concerned" politicians call for "immediate action" and "drastic steps" to curb emissions but then do nothing of substance. Successive post-Kyoto talks begin with urgent pleas from devastated Third World peasants and expert scientists, then collapse in disagreement. At every turn, the priority of growth and profits overrides every ringing alarm, and society carries on in its "sleepwalk to extinction." In the latest rehearsal of this charade, the United Nations talks on climate change in Nairobi in November 2006 collapsed with no firm targets adopted and every issue of any seriousness postponed yet again. Then-UN secretary-General, Kofi Annan, decried the assembled ministers as "frighteningly timid," "lacking in leadership" and said they displayed "a failure of political will." One Greenpeace observer remarked that "the glaciers in Greenland are moving faster than the negotiators."2

The Nairobi session came just after Britain's Treasury secretary and former World Bank chief economist, Sir Nicholas Stern, sounded the latest alarm with his own blistering report laying down a challenge to Britain, the U.S., and developing nations like China and India that the planet faces imminent catastrophe unless urgent measures are taken to reduce greenhouse gas emissions immediately. Stern's warning went beyond restating an apocalyptic vision of hundreds of millions fleeing floods and drought; it struck at the heart of the corporate resistance to environmental measures by demonstrating that the cost of inaction could result in the permanent loss of perhaps 20 percent of global output, while the cost of preventive action right now is as little as 1 to 2 percent of global gross national product (GNP). By illustrating the huge economic cost that inaction will impose on the industrialized economies, Stern's report should have knocked the last leg out from under the "environment versus economy" argument. Reiterating the conclusions of the UN Intergovernmental Panel on Climate Change (IPCC) scientists, Stern warned that just to stabilize CO2 and other greenhouse gases in the atmosphere at between 450 and 500 parts per million, we will have to cut global emissions by 25 percent and wealthy country emissions by 60 percent by 2050. Presenting the findings in London, Prime Minister Tony Blair said the consequences of inaction were "literally disastrous" and warned:

This disaster is not set to happen in some science fiction future many years ahead in our lifetime. We can't wait the five years it took to negotiate Kyoto-we simply don't have the time . . . Without radical measures to reduce carbon dioxide emissions in the next ten to fifteen years, there is compelling evidence to suggest that we might lose the chance to control temperature rises."3

The Stern report came just as the International Energy Agency announced that China, which is commissioning a new coal-fired power plant every five days, will surpass the United States in 2009-nearly a decade ahead of previous predictions-as the world's biggest emitter of carbon dioxide.4 Largely because of China's growth, the Global Carbon Project reported in the November 13, 2006 issue of Nature that "Global carbon emissions are now growing by 3.2 percent a year... That's four times higher than the average annual growth of 0.8 percent from 1990-1999 . . . We are not on any of the stabilization paths." Professor Bill McGuire, director of the Benfield Hazard Research Center in London, said: "This is more very bad news. We need a 60 to 70 percent cut in emissions, but instead, emission levels are spiraling out of control. The sum total of our meager efforts to cut emissions amounts to less than zero."5

The Necessity of Hypocrisy

So what sort of "radical measures to reduce carbon dioxide emissions in the next ten to fifteen years" do Blair and Stern propose to stop this onrushing catastrophe? None. After all their rhetoric about impending disaster, the best they could do was call for more "carbon pricing," "more research into new technologies," and "robust international agreements." They specifically rejected mandatory limits on emissions as "too inflexible" and-most crucially-have nothing whatsoever to say about the implications of inexorable growth.

On the face of it, this was a completely inadequate response to the crisis, and Blair was immediately chastised by his own party for resisting binding targets.6 After all, carbon pricing schemes, notably in the EU, have already proved to be a colossal failure since economic growth has just barreled through the Kyoto carbon "limits." And what possible technical breakthroughs could cut global CO2 emissions by 60 percent, particularly in the ten-to-fifteen-year timeframe Blair says we must act in order to save ourselves, when China is adding a new coal-fired power plant every week and coal-fired plants are still being built in the United States.7 Nearly everywhere, we see that despite the increased energy efficiency and installation of pollution controls in cars or power plants, without limits to growth these gains are outstripped by ever-increasing production. So instead of CO2 emissions falling, globally emissions are actually accelerating.8 And CO2 emissions are only one-and perhaps not the even the worst-of the oncoming ecological catastrophes we face. Around the world, forests are also vanishing, clean water is disappearing, coral reefs are dying off, species after species is being driven to extinction, resource after resource is being exhausted; everywhere the natural world is being systematically plundered and sacrificed to the god of relentless growth, profits and consumption.9

The Inconvenient Truth Al Gore Does Not Want to Face

Blair's contradictions are entirely predictable, rational, and necessary from the standpoint of his capitalist perspective, because the problems he faces are systemic, built into the logic of capitalist economics, and thus unsolvable within the framework of capitalism. The solution to the threat of global warming is obvious: The only way to cut emissions by 60 to 70 percent in the next ten to fifteen years-barring some as yet unknown technical miracle-is by drastically cutting production, output and consumption, particularly in the advanced industrial economies. Al Gore says we face an "inconvenient truth": consume less, conserve more-or die. The problem is the admonition to consume less has to translate into the reality of consuming less-less oil, electricity, steel, aluminum, wood, paper, plastic, fabric, beef, fish, and so on. That, in turn, can only mean producing fewer cars, airplanes, kitchen remodels, fashions, resort vacations, TVs and TV shows, hamburgers and Starbucks Frappuccinos-i.e., converting less of nature into consumable commodities to give a break to the fish, forests, oceans, atmosphere, and all the other natural resources exploited to support the capitalist consumer lifestyle. This is the really inconvenient truth that no investor, labor union, government, mainstream environmental organization, nor anyone of us-including Al Gore-wants to face.10 But this is the truth we have to face if we want to survive.

Despite the difficulty such a massive challenge poses, it does not mean that people have to starve. On the contrary, if we do not make these cuts and restructure the global economy, not only will millions soon die from starvation, floods, drought and other catastrophes, but the capitalist engine of ecodestruction will drive humanity to the brink of collapse, if not extinction.

The problem is, given the requirements of capitalist reproduction, particularly the need to meet shareholder demands for growing profits, no corporation can cut production and stay in business. Furthermore, any broad effort to slow production and consumption would only bring on market collapse and economic depression. So, as long as Blair, Stern, Al Gore, and the rest of the corporate and political elite are committed to maintaining and perpetuating global capitalism as their first and foremost priority, they have no choice but to subordinate the environment to growth and consumption, override their own environmental targets, turn themselves into hypocrites, and doom the future of humanity. To imagine, as they do, that technical innovations, carbon taxes, "green shopping" and the like will allow production and consumption to spiral endlessly upward and consume evermore resources while pollution and emissions spiral downward is to live in a delusional dreamworld of faith-based economics that has no empirical basis.11

Through most of human history up to around the 17th century, humanity suffered from class structures that put brakes on productivity growth, institutionalized underproduction as a regular feature of economic life, and so brought on periodic famines and demographic collapse. But since the advent of the capitalist mode of production, humanity has both benefited-but also increasingly suffered-from the opposite problem: crises and consequences of overproduction, which have typically taken the form of economic crashes and depression. Today, this engine of relentless technological revolution and productivity growth has built an economy of such power, capacity and scale that it is systematically destroying the very ecological basis of human life.

The Smithian Operating System

To understand why the free market can't solve our global environmental crisis, the place to start is with an examination of the logic and contradictions of capitalist economics-the economics of Adam Smith. Needless to say, Smith can't be held responsible for the problems and consequences of capitalist development. But Smith's economic theory is a metonym - the language of capitalism, its intellectual "operating system." For it was Smith, the original and foremost theorist of capitalism, who first discovered and elaborated the organizing principle of capitalist economic life, which he famously termed the "invisible hand." Smith found it remarkable that in what he called "commercial society" (what we today call capitalism), no one looks out for the "general welfare" of society as such. Yet somehow, the provision of the necessities of life-e.g., enough food, clothes, housing, and transportation-so that society can carry on from day-to-day and year-to-year seems to more or less unconsciously get taken care of. In some of the most famous phrases in all of economic literature Smith asserted:

In almost every other race of animals each individual, when it grows up to maturity, is entirely independent, and in its natural state has occasion for the assistance of no other living creature. But man has almost constant occasion for the help of his brethren, and it is in vain for him to expect it from their benevolence only. He will be more likely to prevail if he can interest their self-love in his favour, and shew them that it is for their own advantage to do for him what he requires of them. Whoever offers to another a bargain of any kind, proposes to do this. Give me that which I want, and you shall have this which you want . . . and it is in this manner that we obtain from one another the far greater part of those good offices which we stand in need of. It is not from the benevolence of the butcher, the brewer, or the baker, that we expect our dinner, but from their regard to their own interest. We address ourselves, not to their humanity but to their self-love, and never talk to them of our own necessities but of their advantages . . . (Smith, Wealth of Nations, Book 1, Chapter 1, p. 14.)12

And again that:

Every individual . . . neither intends to promote the public interest, nor knows how much he is promoting it . . . He intends only his own gain, and he is in this, as in many other cases, led by an invisible hand to promote an end which was no part of his intention. Nor is it always the worse for the society that it was no part of it. By pursuing his own interest he frequently promotes that of the society more effectually than when he really intends to promote it. (Smith, Wealth of Nations, Book IV, Chapter II, p. 423.)13

Smith's insight, one of the most powerful and elegant concepts in the history of capitalist economics, grasps the essence of the market system-namely, production for exchange, specialized division of labor, and mutual dependence of all producers/commodity sellers/consumers upon one another through the market. This is what distinguishes the market system from all previous economic systems, such as communal tribal society, slavery, and feudalism-all of which were, in one way or another, systems based overwhelmingly on direct production for use rather than for exchange.

For example, in pre-capitalist economic systems like medieval agrarian Europe, farm production was planned and largely for direct use. The basic unit of rural production was the peasant family with its farm, rudimentary tools and livestock. Peasant farmers not only grew their own food but often made their own clothes, fabricated most of their own tools, and built their own houses. Peasants produced mostly for subsistence and, where they were enserfed, to pay rents to feudal landlords, tithes to the church, and sometimes additional obligations to the state. Beyond this, those who could produce and retain some surplus over subsistence, rent, and tithe obligations sold it in local town markets to procure the few necessities they could not produce for themselves on the farm or in the lord's demesne shops, such as metal for plows or tools. In the villages, patriarchal family households organized the day-to-day operations of farm life, determining which crops to grow and when, and assigning a division of labor within the family. They planned this production based on their foreknowledge of what their family unit needed to carry on from year-to-year-how much and what kinds of crops and animals to raise, and how much labor to devote to farming, husbandry, and building upkeep. More often than not, because village agricultural regimes required village-wide cooperation to regulate seasonal plantings, field rotations, harvest, and commons management, peasant farmers collectively planned and regulated their seasonal work rhythms in cooperation with their neighbors according to the custom and village bylaws in tightknit village communities. Throughout Europe, most rural agrarian output was directly consumed on the farm, in the hamlets and villages. The feudal aristocracy consumed the surpluses directly and marketed some of their surpluses in urban markets to purchase luxury goods and military equipment. In short, rural Europe, at least up to the 15th century, was in a sense a "planned" economy-or more precisely, consisted of masses of miniature planned village economies.14

By Adam Smith's day in the late 18th century, rural peasant village self-sufficiency with its limited division of labor had largely given way to generalized production for market throughout England and parts of Western Europe. In this new "commercial" economy, Smith observed there is no general economic "plan." No one plans production for the self-sufficient family anymore. Production is now specialized and geared for the whole society-and it is to society that one must turn to satisfy one's own needs. No one knows how much wheat or wool, how many shoes, coats, ships, or wagons society needs, or when they are needed. No one consciously divides up and assigns society's labor to the various tasks of producing all that society requires over any given period of time.15 And yet out of the unconscious "mindlessness" of this system, a spontaneous order emerges. Society seems to be "guided by an invisible hand" to produce more or less of these goods so that we can carry on from day-to-day to ensure social reproduction.

By the developing 18th-century capitalist economy of Adam Smith's era, most producers no longer possessed their own means of subsistence, or at least full subsistence. Masses of peasant farmers had been cleared off the land and proletarianized by centuries of enclosure movements. Peasant subsistence farms, with all their variety of produce, had been replaced with wheat farms or sheep folds. The hand loom weaver, village blacksmith and most small-scale hand manufacturers were giving way to large-scale factory production with a specialized division of labor and, increasingly in the late 18th century, mechanization. Without full access to the means of subsistence, everyone in capitalist society must specialize to produce a commodity for market or sell their labor power to work for an employer who does possess the means of production.16 So to win one's own bread in the capitalist organization of production, virtually everyone, including the capitalists, must continuously sell their specialized commodity on the market in order to continuously purchase their own means of subsistence and the means of production to re-enter production.17 In this way, all commodity producers/sellers are dependent upon the labor of others.18

How do these specialist commodity producers/sellers know in advance how much of their particular commodity-wheat, cloth, bricks, horseshoes, board feet of lumber, barrels, etc.-society "needs" in any given year or how much they will sell? They don't. Typically they estimate from what they sold the previous year, and hope to sell their product for at least as low a price as others offering the same commodity. Thus, society's "need" for any particular commodity is determined after the fact by the price at which it sells, what Smith called "effectual demand." If demand and prices are high for some particular commodity, Smith says producers will "employ more labor and stock in preparing and bringing it to market." If demand falls, producers will "withdraw a part of their labor or stock from this employment" and redeploy those resources in some other line of production.19 So if the market is glutted with wheat, but wool is in short supply and prices are high, some farmers will turn to raising sheep. If demand is low for ships but high for houses, some carpenters will switch from building ships to building houses. And so on, until the supply and demand come roughly into balance, what economists today call "equilibrium."20 That's the beauty and efficiency of the market system, as mainstream economists never tire of telling us.

Engine of Development: Production for Exchange and its Imperatives

This mutual dependence of each and every person through the market entrains a number of powerful implications. Foremost among these are the implications that flow from competition in the marketplace. Commodity sellers don't have the freedom to charge what they wish, because they must be able to sell at prices close to the competition if they are to compete. The specific strategies and methods producers must adopt to survive against the competition shape the overall pattern of economic development of capitalism as a system and also distinguish it from every other economic system: Producers must strive to cut the cost of inputs, which means seeking out ever-cheaper sources of raw materials and labor. Producers must continuously increase the efficiency of their units of production by innovating, bringing in more advanced labor-saving machinery to boost productivity, and substituting newer and cheaper raw materials inputs. So unlike the ruling classes of pre-capitalist economies, capitalists are not free to consume their surpluses in conspicuous consumption but must reinvest much of their profits back into productivity-enhancing technologies and skills to develop the forces of production. Competition compels producers to strive to grow by maximizing sales, expanding existing markets, seeking out and creating new markets and commodities-or see them developed by the competition, and thus see their stock value fall as the penalty for complacency. As eloquent as Adam Smith was, no one captured the broader developmental implications of capitalist economics better than Karl Marx. In some of the most prescient phrases in all of economic literature, Marx wrote in his Communist Manifesto:

The bourgeoisie cannot exist without constantly revolutionizing the instruments of production, and thereby the relations of production, and with them the whole relations of society ... Constant revolutionizing of production, uninterrupted disturbance of all social conditions, everlasting uncertainty and agitation distinguish the bourgeois epoch from all earlier ones. All fixed, fast-frozen relations, with their train of ancient and venerable prejudices and opinions, are swept away, all new-formed ones become antiquated before they can ossify. All that is solid melts into air, all that is holy is profaned . . . The bourgeoisie, during its rule of scarce one hundred years, has created more massive and more colossal productive forces than have all preceding generations together. Subjection of Nature's forces to man, machinery, application of chemistry to industry and agriculture, steam-navigation, railways, electric telegraphs, clearing of whole continents for cultivation, canalization of rivers, whole populations conjured out of the ground - what earlier century had even a presentiment that such productive forces slumbered in the lap of social labor?21

By comparison, pre-capitalist modes of production contained no such engine of development or drive to "constantly revolutionize" the instruments and relations of production. Technological advance under slavery and feudalism was agonizingly slow, and economic stagnation was the norm. When productivity growth could not keep pace with population growth, economic collapse and famine followed. Even the Stalinist bureaucratic mode of production in Russia and China contained no such built-in drive to development. Post-revolutionary Russia and China rapidly developed and industrialized to a considerable extent, but the bureaucratic system was not powered by any self-active motor. Development depended entirely on the conscious actions and direction of central planners, but for the same reason, it was also severely limited and handicapped by the bureaucracy's inability to push development beyond certain limits. In particular, these bureaucrats lacked the weapons of unemployment and bankruptcy to discipline producers, force productivity increases, or generate innovation and development.22 Without competition to force producers to innovate and become more efficient, top-down bureaucratically driven development was no match for the dynamic growth of global capitalism.

This engine of development has brought the most prodigious development of the forces of production of any mode of production in history, lifting the living standards of billions of people the world over. So it was no surprise that since the spectacular collapse of communism and the global triumph of capitalism in the 1990s, Smithian economics has been crowned with a sacred halo, unquestioned and self-evident to the churched.23 Today, Smith's theory, rebranded for today's market under the neoclassical and neoliberal labels, is entrenched in every economics department from Berkeley to Beijing.

Engine of Planetary Eco-collapse: The Collective Irrationality of Individualist Economics

In his 1996 book The Future of Capitalism, Lester Thurow lucidly captured the socially suicidal aggregate impact of individualistic economic decision-making:

Nowhere is capitalism's time horizon problem more acute than in the area of global environmentalism .. . What should a capitalistic society do about long-run environmental problems such as global warming or ozone depletion? . .. Using capitalist decision rules, the answer to what should be done today to prevent such problems is very clear-do nothing. However large the negative effects fifty to one hundred years from now might be, their current discounted net present value is zero. If the current value of the future negative consequences are zero, then nothing should be spent today to prevent those distant problems from emerging. But if the negative effects are very large fifty to one hundred years from now, by then it will be too late to do anything to make the situation any better, since anything done at that time could only improve the situation another fifty to one hundred years into the future. So being good capitalists, those who live in the future, no matter how bad their problems are, will also decide to do nothing. Eventually a generation will arrive which cannot survive in the earth's altered environment, but by then it will be too late for them to do anything to prevent their own extinction. Each generation makes good capitalist decisions, yet the net effect is collective social suicide.24

Lester Thurow, virtually alone among mainstream economists as near as I can tell, has recognized this potentially fatal contradiction of capitalism-even though he is no anti-capitalist and wrote the book from which this excerpt is drawn in the hopes of finding a future for capitalism. Until very recently, the standard economics textbooks ignored the problem of the environment altogether. Even today, the standard Economics 101 textbooks of Baro, Mankiv and other mainstream economists contain almost no mention of environment or ecology.25 This reflects the increasingly rightward drift of the discipline since the 1970s.

The American economics profession has long since abandoned the practice of critical scientific thought and seriously considering dissenting views. Today, an almost totalitarian "neoliberal" religious dogma rules the discipline. Keynesianism, social democracy, and Marxism are dismissed as hopelessly antiquated. Ecological economics is considered suspect. And the prudent graduate student is well advised to steer clear of all such interests if he or she wants to find a job.26 As Francis Fukuyama put it some years back, history has reached its penultimate apogee in free market capitalism and liberal democracy. The science of economics, Fukuyama pronounced, was "settled" with Adam Smith's accomplishment. The future would bring no more than "endless technical adjustments;" thus no further theoretical thought is required."27

#### Transition to renewables is inevitable, but its form is up for grabs---the 1AC moves toward neoliberal marketization---instead vote neg to build a renewable system based on non-market commons---they’re mutually exclusive

Massimo De Angelis 9, Professor of Political Economy and Development at the University of East London; and Kolya Abramsky, former visiting fellow at the Institute of Advanced Studies in Science, Technology and Society, in Graz, Austria, Winter 2008/9, “Introduction: Energy Crisis (Among Others) Is In The Air,” The Commoner, Issue 13, <http://www.commoner.org.uk/N13/00-Introduction.pdf>

And, then, last but not least, there is the issue of the globally expanding renewable energy sector. The form in which sector is expanding is, seemingly, paradoxical. On the one hand it has until now developed very slowly and in comparatively few places in the world. On the other hand, resources scarcity, climate change, surplus finance capital and militarized conflicts in oil-rich areas of the world all constitute a material push towards a massive global expansion of the sector. The emergency provoked by “peak oil, and especially climate change, are ushering in a new scenario. The end of the “fossil fuel era” can be postponed, but it cannot be avoided. In all probability it cannot even be postponed much longer. This means that a transition away from oil is no longer an ideological choice, but is a necessity which is increasingly being imposed by material constraints. However, the sector’s expansion is rapidly taking a form that had not been predicted. Already demand for renewable energy infrastructure far outstrips supply. The renewable energy sector seems set to become a new global growth sector. However, the sector’s expansion is taking a different form that the one envisaged by its original self identified “green” promoters: instead of decentralised energy sources empowering communities, we have more centralised mega projects; instead of renewable energy and social justice being synergetic objectives, the capitalist form of renewable energy is increasingly depending on different forms of enclosures.

This is because, instead of seeking to understand the global capitalist relations that shape (and are shaped by) the energy sectors commodity chains of production and exchange for the world-market, the dominant tendency within the renewable energy sector is to focus on a combination of technical solutions and national/international policy mechanisms. A common approach is to promote a “take off” of renewable energy, based on the world-wide dissemination of “national best-practices”, especially the German and Danish. This approach to “best practice” technology transfer occurs within the context of an unquestioned world-market. Some of these “best practice” approaches have indeed been “very good” as they show a path of community empowerment, autonomy and energy sovereignty. In particular, the grassroots, farmers led wind energy cooperatives that have been at the root of the Danish renewable energy sector stand out, as described in the article by Jane Kruse and Preben Maegaard. Yet, this “take off” approach, which has been key in shaping policies, both at the national and international level, is eerily reminiscent of earlier (flawed) debates surrounding “industrialization take off.”

While some kind of transition to post-petrol energy sources is virtually inevitable, the form it will take is far from a technical inevitability. Rather, any transition will be the result of an uncertain and lengthy process of collective struggle, as will its qualitative aspects. This is discussed by the TRAPESE Collective. As “climate change” becomes the next global buzz word, and as the expansion of the renewable energy sector accelerates and spreads to different areas of the world, so a complex process of world-wide struggle is also intensifying. It is no longer a question of whether a transition will occur, but rather what form it will take. Which technologies will a transition include and on whose terms and priorities? Who will pay the costs and who will reap the benefits? Who can harness the necessary global flows of capital, raw materials, knowledge and labor? And, above all, will the process be chaotic, reinforcing already existing hierarchies, or will it or will it be part of wider process of world-wide emancipatory social change based in the construction of new social relations?

In particular, the dependency of urban areas on rural ones for the supply of energy is an increasing point of conflict with renewable energy resources. Whereas fossil fuels and nuclear energy resources are located in a small number of locations throughout the world, renewable energy resources are broadly spread throughout much of the world, giving these areas increased strategic importance. Therefore renewable energies represent a new threat for rural communities (especially Indigenous and Afro-descendent), making them increasingly vulnerable to loss of control over their territories, including displacement. Such territorial conflicts (frequently violent) are already occurring on a large scale with agro-fuels as discussed by Mónica Vargas Collazos who offers a global overviews of these issues. Tatiana Roa Avendaño and Jessica Toloza describe how palm oil production for the world-market in the Colombian Black Communities is intertwined with enclosure and displacement from collective ancestral lands by paramilitary violence, and the resistance that this is giving rise to. To a lesser extent, similar conflicts are emerging in relation to wind energy. Sergio Oceransky documents how in Oaxaca, peasant and indigenous communities are having their land and cultural heritage jeopardized by industrial windpark development which is taking place within the framework of another regional free trade agreement, the Plan Puebla Panama. These are the unavoidable consequences of satisfying the energy requirements of urban based industrialization and a political and economic system which prioritizes profit in the world-market over the satisfaction of the social needs of the world’s population. Such conflicts are likely to get much worse in the near future unless appropriate steps are taken.

However, a transition to renewable energy resources also offers rural communities an opportunity to assume greater control over their territories, resources and lives. The collective and democratic harnessing of renewable energies can contribute substantially to communities’ ability to create new and autonomous relations of production, exchange and livelihood that are substantially more egalitarian, decentralized, diverse and ecologically sensitive than currently existing social relations. For this reason, it is very important that the communities living in rural regions rich in renewable energy resources have access to the necessary tools in order to be able to collectively decide on the use of the resources in their territories. As Jane Kruse describes, it is also vital that community owned renewable energies are able to defend themselves against predatory investors in the long run. It is also crucial that urban communities are able to understand the relation between their high levels of energy consumption and rural dispossession in order to be able to collectively develop solutions to these problems on the basis of collaboration and cooperation between rural communities in order to satisfy peoples’ basic needs rather than through a conflictive process which pits rural and urban inhabitants against one another.

Four

We believe that these contributions point to the fact that, in order to get to the roots of the problems, struggles in the North and South have to develop a collective global process to take decisions concerning energy. In addition to the crucial question as to which energy sources are the most suitable, there is also the question of the way in which it is used, in what quantities, and for which purposes. If we make these decisions through capitalist markets, we end up stressed out overworked and murdered, divided and pitted one against another, while the planet goes to hell. If we make these decisions through the capitalist state, we end up repressed, silenced and manipulated into believing the sacrifices that are required from us to deal with this “emergency” and “crisis” are worth the suffering, since it will be the final crisis, and there will never be another “crisis” again, while in fact it will merely open up a new cycle of more of the same.

Within the wider struggle for common control over means of reproduction and production (something which we see as central in emancipatory struggles for long term social, political and economic change) we believe that struggles for some form or other of decommodified common control of energy resources, infrastructures and technologies are becoming increasingly central. The same can be said about their actual production. This is hardly surprising, given that, in addition to being a highly profitable commodity, energy is also one of the key means to sustain human life. Struggles over ownership of energy resources, infrastructures and technologies have been intense in the past, and it is very likely that they will become intense once again in the coming years. In many parts of the world, this is already happening, especially within the oil sector.

### 1NC

#### The United States Congress should substantially reduce national security restrictions on the production of wind power.

### 1NC

#### Obama’s pushing comprehensive immigration reform --- it will pass, but PC’s key

Global and Mail 3-29, “A lonely GOP voice for immigration reform,” <http://www.theglobeandmail.com/news/world/a-lonely-gop-voice-for-immigration-reform/article10585603/>

The first test is already here. On Monday, at a swearing-in ceremony for 28 new citizens, President Barack Obama turned up the heat, saying “the time has come” for lawmakers to fix the country’s immigration system “once and for all.” In early April, the Senate is expected to take up a bipartisan proposal for wide-ranging immigration reform. On the to-do list: measures to increase border security; more visas for skilled workers; a guest-worker program; and a path to citizenship for millions of illegal immigrants.¶ The road ahead is difficult. But advocates note that for the first time in decades, there are strong motivations for both parties to strike a deal**.** Mr. Obama wants a major legislative accomplishment in an area where Democrats have promised change but failed to achieve it. Republicans, meanwhile, are scrambling to repair their battered standing with Hispanic voters.

#### Only the CP causes backlash empirically ---no supporters

Downs 10 Erica S. Downs is a Fellow at the John L. Thornton China Center at the Brookings Institution. “Who’s Afraid of China’s Oil Companies?” Brookings, http://www.brookings.edu/~/media/research/files/papers/2010/7/china%20oil%20downs/07\_china\_oil\_downs

Who’s afraid of China’s national oil companies? **Quite a few people,** if the reaction to the unsolicited offer made by China National Offshore Oil Corporation Ltd. (CNOOC Ltd.) for Unocal is any guide. The furor that erupted **inside the Beltway** in response to CNOOC Ltd.’s bid to break up the merger between Unocal and Chevron **highlighted** the **anxiety** thatmany **U.S. policymakers**, pundits, and oil companies **harbor about** the growing global footprint of **China’s** national oil companies (**NOCs)**. The objections raised by opponents of CNOOC Ltd.’s attempted acquisition are rooted in popular perceptions of the Chinese NOCs’ international expansion. The conventional wisdom views the NOCs as arms of the Chinese government that are aggressively snapping up exploration and production assets around the world to enhance China’s energy security at the expense of that of other consumers. Moreover, it contends that the state ﬁnancial support that Beijing provides to China’s NOCs to achieve this noncommercial objective **violates the rules** of the game for international mergers and acquisitions because it is not available to Western, publicly traded ﬁrms. Consequently, the Chinese government and oil companies are turning the global competition for oil into a game that major international oil companies (IOC) like Chevron cannot even compete in, let alone win.

#### CIR boosts high-skilled immigration

Higgins 2/6 John is a writer for E-Commerce Times. “Immigration Reform Could Open the Door for IT Talent,” 2013, http://www.ecommercetimes.com/story/77241.html

A divided Congress may actually unite when it comes to certain immigration reform efforts, and that includes one aspect of importance to the IT industry: paving the way for more highly skilled tech workers to come to the U.S. Proposed legislation could impact the way H-1B visas and green cards are handed out, but the issue may be tied to comprehensive immigration reforms.¶ The new Congress is now tackling a flurry of general proposals for comprehensive immigration reform, but only one specific, narrowly focused piece of legislation has already been introduced in the Senate: a plan to vastly increase the number of non-citizens who can pursue jobs and education in the U.S. technology sector.¶ The bill, titled the "Immigration Innovation Act of 2013," quickly drew support from the IT community.¶ "High-skilled immigration is a critical component in the broad effort to reform the U.S. immigration system, and this legislation effectively establishes a must-do list to enable U.S. companies to attract and retain the best innovators from around the world," said Ken Wasch, president of the Software and Information Industry Association (SIIA).¶ "Our companies strongly support efforts to improve the U.S. research ecosystem, including efforts to permit foreign Ph. D. and Masters graduates from U.S. universities in science, technology, engineering, and mathematics (STEM) to remain in the United States," said Grant Seiffert, president of the Telecommunications Industry Association (TIA), in a letter to the Senate sponsors of the bill. "In addition, we support your efforts to increase the allotment of H-1B visas and to improve STEM education efforts in the United States."¶ Visa Reform and High-Tech Funding¶ The bill, also referred to as "I-Squared," focuses on three areas related to high tech talent: the expansion of "employment based non-immigrant" permits, known as H-1B visas; increased access to temporary residence "green cards" for high-skilled workers, and the utilization of fees from the issuance of visas and green cards to promote American worker retraining and education in STEM-related activities.¶ A closer look at the bill's sections:¶ H-1B Visas: The H-1B program allows U.S. employers to temporarily employ foreign workers in specialty occupations for an initial period of three years, extendable to six years. The Immigration Innovation Act would increase the limit for such visas from 65,000 to 115,000. If the pace of applications exceeds the cap within certain specified periods, the allotment will automatically be increased with an eventual hard cap of 300,000. The bill would facilitate the mobility of skilled foreign workers by removing current impediments and costs related to changing employers. It would also authorize employment for dependent spouses of H-1B visa holders.¶ Green cards: The bill would increase the number of available employment-based green cards by reaching back to include green card allotments that went unused in prior years and exempting certain categories of applicants, such as STEM advanced degree holders, from counting against the annual cap. The act provides green card eligibility to "persons with extraordinary ability," and "outstanding professors and researchers," as well as to dependents of employment-based immigrant visa recipients. Current country of origin allocation limits would be eliminated.¶ STEM funding: The fees payable to the U.S. government for H-1B and green cards would be increased. Fees vary for the H-1B documents, but the bill sets the basic fee at $2,500 per employee for firms with more than 25 workers. Green card fees would be raised to $1,000 per employee. According to an Intel analysis, the bill raises the current fee structure by 40 percent. Portions of the federal fee revenue would be channeled to a grant program to promote STEM education and worker retraining to be administered by state governments. The revenue could amount to $300 million per year, according to Sen. Amy Klobuchar (D-Minn), a co-sponsor of the bill.¶ President Obama touched on the high tech employment issue in his second inauguration speech.¶ "Right now, there are brilliant students from all over the world sitting in classrooms at our top universities. They're earning degrees in the fields of the future, like engineering and computer science. But once they finish school, once they earn that diploma, there's a good chance they'll have to leave our country. Think about that," he said. "If you're a foreign student who wants to pursue a career in science or technology, or a foreign entrepreneur who wants to start a business with the backing of American investors, we should help you do that here."¶ Costs and Benefits for Tech Sector¶ Support for the bill by the IT community underscores the need for skilled talent, as well as the readiness of firms to absorb the cost of visa/green card fees and associated legal charges.¶ The fees could be considered a cost of doing business, or they could be viewed as an investment.¶ "We view it as both. The fees are not insignificant and so they give reassurance to some that H-1Bs will not be used to provide a 'cheap labor' alternative to U.S. workers," David LeDuc, senior director of public policy at SIIA, told the E-Commerce Times The fees and processing costs are already so high that it usually costs companies significantly more to hire H-1Bs than U.S. workers."¶ The fees and charges for obtaining skilled workers must also be balanced against the cost for businesses of operating without essential talent.¶ "When considering H-1B fees, we think it's most important to remember that the current annual limit on the number of H-1B visas, along with the per-country restrictions, mean that companies simply can't hire the workers they need or that hiring is delayed. This imposes significant costs and inefficiencies on business operations, and it's part of why the whole system needs reform," Danielle Coffey, general counsel and vice-president of public policy at TIA, told the E-Commerce Times.¶ Congressional Hurdles and Outlook¶ How the bill fares in Congress may depend on how an overall comprehensive package of immigration reforms is handled.¶ "The Immigration Innovation Act could stand on its own, but in the current political situation **it is unlikely that immigration issues will be handled piecemeal**," Bob Sakaniwa, associate director of advocacy at the American Immigration Lawyers Association, told the E-Commerce Times. "The better prospect is that it will be included within a comprehensive package and its fate will be tied to what Congress does on the overall immigration reform effort."¶ The history of congressional immigration debates also indicates that the IT issue should be part of a comprehensive reform effort, LeDuc added. "As much as we might like, or it might seem practical to enact various reform initiatives independently, that's not a political reality at this time."¶ The momentum now exists for comprehensive immigration reform, and issues related to highly skilled workers have already made their way into bipartisan legislative language.

#### That triggers a massive Indian brain drain---tubes their economy---circulation fails---it also means India doesn’t invest in their higher education---turns the case by cutting off talent

Hindustan Times 8 BRAIN DRAIN: A MAJOR THREAT TO INDIAN ECONOMY August 9, 2008 lexis

Moreover, according to AnnLee Saxenian, dean of the School of Information, University of California, today's highly skilled migrants circulate between the US and India, creating technology businesses and spreading prosperity along the way. If this is the case, it is important to figure how to bring the prosperity back to India. **The brain drain increases the scarcity of** highly needed **skilled labourers** in India and consequently **reduces long-run** economic growth **and income**. In addition, if highly educated workers continue to migrate to richer countries, public funds spent on higher education in order to promote growth may be to a large extent inefficiently applied and better spent on sound and widespread basic education to foster domestic economic development. Just like capital flight from poor economies to the rich ones, the migration of trained manpower, human capital flight, is enormously expensive. When a trained engineer migrates to the US, it is totally indistinguishable from a gift of US$ 100,000 from India to the US. Over the years, the total implicit subsidy from India to the US could be estimated to be of the order of hundred billion dollars.

#### Indian economic downturn causes war with Pakistan

Mamoon ’10 - Researcher @ Institute of Social Studies, The Hague

The conflict mitigating effects of trade in the India-Pakistan case, Dawood Mamoon, S. Mansoob Murshed, 7 March 2010

http://www.springerlink.com/content/4736rl34w118q532/fulltext.pdf

However, if India is able to export or import more, this would at least put a check on any rise in the severity of conflict and hostilities would adjust to some average level. Any decline in Indian trade will enhance hostilities. The current low levels of bilateral trade between Pakistan and India is conflict enhancing, so more trade with increased exports by both sides to each other should be encouraged. More access to Pakistani markets on the Indian side may not lead to conflict mitigation if Pakistan is not able to also export more to India. A rise in education expenditure puts a check on hostilities, as seen in Graph 1e. Graph 1f is the standard representation of India-Pakistan conflict, and not only best fits historical trends but also explain the rationale behind recent India- Pakistan peace initiatives with decreasing hostilities when not only India but Pakistan also has had economic growth rates as high as 7% per annum. The forecasts suggest that conflict will rise, even if there is a significant increase in combined democracy scores, if growth rates plummet. Both Pakistan and India have seen many such years, when hostilities between both countries rose significantly when at least one of the countries is performing poorly, but were channeling more resources on the military as a proportion of their GDPs.

The forecasts favour the economic version over the democratic version of the liberal peace. Thus one may look at current peace talks between both countries with optimism as both are performing well on the economic front and channeling fewer resources on the military as a proportion of national income, while at the same time having a divergent set of political institutions, though recently Pakistan has edged towards greater democracy with elections in February 2008.

#### India-Pakistan war causes nuclear winter and extinction

Toon Et.al. ’07 – Professor in the Department of Atmospheric and Oceanic Sciences, Laboratory for Atmospheric and Space Physics, University of Colorado, “Nuclear War: Consequences of Regional-Scale Nuclear Conflicts”, Science 2 March 2007, vol. 315 no. 5816, pp. 1224-1225

Nuclear arsenals containing 50 or more weapons of low yield [15 kilotons (kt), equivalent to the Hiroshima bomb] are relatively easy to build (1, 6). India and Pakistan, the smallest nuclear powers, probably have such arsenals, although no nuclear state has ever disclosed its inventory of warheads (7). Modern weapons are compact and lightweight and are readily transported (by car, truck, missile, plane, or boat) (8). The basic concepts of weapons design can be found on of the Internet. The only serious obstacle to constructing a bomb is the limited availability of purified fissionable fuels.

There are many political, economic, and social factors that could trigger a regional scale nuclear conflict, plus many scenarios for the conduct of the ensuing war. We assumed (4) that the densest population centers in each country—usually in megacities—are attacked. We did not evaluate specific military targets and related casualties. We considered a nuclear exchange involving 100 weapons of 15-kt yield each, that is, ~0.3% of the total number of existing weapons (4). India and Pakistan, for instance, have previously tested nuclear weapons and are now thought to have between 109 and 172 weapons of unknown yield (9).

Fatalities were estimated by means of a standard population database for a number of countries that might be targeted in a regional conflict (see figure, above). For instance, such an exchange between India and Pakistan (10) could produce about 21 million fatalities—about half as many as occurred globally during World War II. The direct effects of thermal radiation and nuclear blasts, as well as gamma-ray and neutron radiation within the first few minutes of the blast, would cause most casualties. Extensive damage to infrastructure, contamination by long-lived radionuclides, and psychological trauma would likely result in the indefinite abandonment of large areas leading to severe economic and social repercussions.

Fires ignited by nuclear bursts would release copious amounts of light-absorbing smoke into the upper atmosphere. If 100 small nuclear weapons were detonated within cities, they could generate 1 to 5 million tons of carbonaceous smoke particles (4), darkening the sky and affecting the atmosphere more than major volcanic eruptions like Mt. Pinatubo (1991) or Tambora (1815) (5). Carbonaceous smoke particles are transported by winds throughout the atmosphere but also induce circulations in response to solar heating. Simulations (5) predict that such radiative dynamical interactions would loft and stabilize the smoke aerosol, which would allow it to persist in the middle and upper atmosphere for a decade. Smoke emissions of 100 low yield urban explosions in a regional nuclear conflict would generate substantial global scale climate anomalies, although not as large as in previous “nuclear winter” scenarios for a full-scale war (11, 12). However, indirect effects on surface land temperatures, precipitation rates, and growing season lengths (see figure, page 1225) would be likely to degrade agricultural productivity to an extent that historically has led to famines in Africa, India, and Japan after the 1783–1784 Laki eruption (13) or in the northeastern United States and Europe after the Tambora eruption of 1815 (5). Climatic anomalies could persist for a decade or more because of smoke stabilization, far longer than in previous nuclear winter calculations or after volcanic eruptions.

Studies of the consequences of full-scale nuclear war show that indirect effects of the war could cause more casualties than direct ones, perhaps eliminating the majority of the world’s population (11, 12). Indirect effects such as damage to transportation, energy, medical, political, and social infrastructure could be limited to the combatant nations in a regional war. However, climate anomalies would threaten the world outside the combat zone. The predicted smoke emissions and fatalities per kiloton of explosive yield are roughly 100 times those expected from estimates for full-scale nuclear attacks with high-yield weapons (4).

### 1NC Streamlining CP (vs APA)

#### The United States Supreme Court should rule that rules issued by the Department of Justice commonly known as “streamlining” for adjudication by the Board of Immigration Appeals are unconstitutional because they are an arbitrary and capricious abuse of agency discretion under the Administrative Procedure Act and because their issuance violated the Publication-and-Comment requirement of the Administrative Procedure Act.

#### Solves the case – streamlining spills over to undermine judicial review of all agency action and destroys the credibility of administrative law

Rana 9 – Shruti Rana, Assistant Professor, University of Maryland School of Law, 2009, “"STREAMLINING" THE RULE OF LAW: HOW THE DEPARTMENT OF JUSTICE IS UNDERMINING JUDICIAL REVIEW OF AGENCY ACTION,” University of Illinois Law Review, 2009 U. Ill. L. Rev. 829, p. lexis

The Department of Justice (DOJ, or the Department) has recently come under fire for its efforts to elevate executive power to a realm "above the law." n2 Much attention has been focused on the DOJ's attempts to render executive power free from congressional oversight. n3 Little attention, however, has been paid to the Department's attempts to dismantle another critical institutional check in our system of separation of powers - judicial review.

[\*832] In its role as an administrative agency, the DOJ is responsible for the "fair and impartial administration of justice" in the nation's immigration courts. n4 Through its recent efforts to insulate its immigration decisions from public and federal court scrutiny, the DOJ is transforming agency discretion into a form of absolute executive authority free from the traditional restraint of judicial review. This has led to a breakdown in the rule of law in the agency's system of immigration adjudication, and, on a broader level, is threatening the principle of judicial review in the federal courts.

In 2002, citing national security concerns in the wake of September 11, and the need to combat the burgeoning backlog of cases at the agency's Board of Immigration Appeals (Board), the Attorney General announced sweeping "streamlining" reforms to immigration procedures at the agency. n5 At the time, most deportation cases were adjudicated by immigration judges, whose decisions could be appealed to the Board. The Board generally heard appeals from immigration judges' decisions in three-member panels, which issued written decisions and opinions. n6 The Board's decisions became the final agency actions that could be appealed directly to federal circuit courts. n7 The streamlining rules controversially, and dramatically, altered this system of review.

Under the most controversial and drastic of the new streamlining procedures - the "affirmance without opinion" procedure - individual Board members were given the power to affirm immigration judges' decisions without issuing any Board opinion or explanation. n8 Indeed, the affirmance without opinion rules explicitly prohibited Board members from providing any explanation or reasoning for their decisions. n9 The Attorney General went so far as to authorize individual Board members to dispose of cases through the affirmance without opinion procedure even if there were errors in the immigration judge's decision below, and even if the Board member did not agree with the reasoning of the decision below. n10 The streamlining rules expressly specified that an affirmance without opinion by a Board member only affirmed the results, not [\*833] necessarily the reasoning, of the immigration judge's decision. n11 The "results" that were affirmed were almost invariably deportation orders, as decisions ordering deportation constituted the vast majority of the immigration judge decisions appealed to the Board. n12 Moreover, whatever the Board member's reasons for affirmance may have been, and even if the immigration judge's decision contained errors, the immigration judge's decision was now designated as the final agency decision sent to the federal courts on appeal. n13

In contrast, in order to overturn an immigration judge's decision and grant an immigrant relief from deportation, Board members were required to write a reasoned opinion. n14 Yet a Board member who wished to overturn an immigration judge's decision would have to expend increasingly limited time and resources to do so. n15 At the time he announced the new streamlining rules, the Attorney General also imposed strict deadlines on the Board, requiring each Board member to review and decide nearly 4,000 appeals a year. n16

Taken together, these changes meant that many cases could be decided by single Board members instead of three-member panels, that these Board decisions could be rendered without any opinion or explanation, and that to comply with the numerical deadlines, Board members could spend no more than a few minutes on each case. n17

The results of streamlining were swift: within seven months, affirmances without opinions constituted the majority of the Board's decisions, and Board decisions ruling in favor of immigrants dropped dramatically. n18 The effect on the federal courts was immediate and immense, as [\*834] immigrants increasingly turned to the federal courts for relief. n19 By 2006, immigration appeals made up nearly a fifth of the total federal appellate caseload and approximately 90 percent of the administrative appeals in the federal courts. n20 As immigration appeals flooded their courts, federal courts in every circuit began issuing scathing critiques of the quality of the agency's decision making and its lack of adherence to basic principles of the rule of law. In particular, the courts singled out the agency's repeated failures to provide reasoned explanations - or indeed any explanations - for its decisions, in violation of the basic principles of administrative law; and at the other extreme, courts chastised the agency for basing its decisions on bias, speculations, or other non-legal grounds. n21 [\*835] The courts also began criticizing the agency for repeatedly violating its streamlining rules, finding that in many cases the Board had improperly streamlined and affirmed without opinion error-filled decisions by immigration judges. n22

#### Streamlining regulations are arbitrary and capricious and were issued in violation of Notice and Comment

NILC 2 – National Immigration Law Center, November 22, 2002, “LAWSUIT CHALLENGES BIA RESTRUCTURING REGULATIONS,” Immigrants’ Rights Update, Vol. 16, No. 7

Two organizations concerned about preserving immigrants' rights have filed a lawsuit to challenge the final rule issued by Attorney General John Ashcroft to reduce the size of the Board of Immigration Appeals and streamline its work. The lawsuit, filed in federal district court in the District of Columbia, is based on the Administrative Procedure Act (APA). The plaintiffs contend that in issuing its final rule to implement the changes, the Dept. of Justice failed to properly consider public comments. The suit further contends that the agency acted arbitrarily and capriciously in establishing a rule that dramatically changes the structure and procedures of the BIA.

The DOJ issued a proposed rule to reduce and restructure the BIA on Feb. 19, 2002. The agency proposed to reduce the BIA from 23 to 11 members, with the reduction to be complete at the end of a six-month transitional period following the final rule's effective date. The agency also proposed to change significantly the procedure for filing and pursuing appeals, eliminate the BIA's jurisdiction to review factual findings de novo, and limit appellate review in most cases to review by only a single BIA member.Despite providing only a 30-day period for public comment, the proposed rule elicited detailed comments from more than 68 organizations. The comments mostly expressed serious concerns with and objections to the proposal. Nonetheless, on Aug. 26, 2002, the DOJ issued a final rule which, in most respects, adopted verbatim the language of the proposed rule (for further background on the proposed rule and the final rule, see "Attorney General Proposes Major Changes at BIA," Immigrants' Rights Update, Feb. 28, 2002, p. 1, and "Attorney General Issues Final Rule to Reform BIA, Immigrants' Rights Update, Sept. 10, 2002, p.1).

The plaintiffs contend that in issuing the final rule, the DOJ failed to respond reasonably to significant comments and adverse evidence, departed without explanation from its own past practices, and failed to provide reasoned and consistent explanations for important aspects of the rule. The plaintiffs also contend that a series of memoranda issued by the acting chair of the BIA prior to the adoption of the final rule constituted an evasion of the APA's notice-and-comment requirements. The memoranda expanded the categories of cases subject to "summary affirmance" under the 1999 "streamlining regulations."

### 1NC

#### DOE will limit LNG exports now because of concerns about domestic supply and demand---the plan resolves those concerns and triggers exports

Charles Ebinger et al 12, a senior fellow and director of the Energy Security Initiative at the Brookings Institution; Kevin Massy, Assistant Director of the Energy Security Initiative at Brookings; and Govinda Avasarala, Senior Research Assistant in the Energy Security Initiative at Brookings, May 2012, “Liquid Markets: Assessing the Case for U.S. Exports of Liquefied Natural Gas,” http://www.brookings.edu/~/media/research/files/reports/2012/5/02%20lng%20exports%20ebinger/0502\_lng\_exports\_ebinger.pdf

From the perspective of the U.S. federal government, the issue of implications is viewed in terms of “public interest.” Under existing legislation, exports of natural gas to countries with a free trade agreement (FTA) with the United States are, by law, deemed to be in the public interest and authorization is required to be given without modification or delay. Projects looking for authorization to export LNG to countries without an FTA, which account for roughly 96 percent of current global LNG demand, are required to be approved by the Secretary of Energy unless, after public hearing, the Department of Energy finds that such exports are not in the public interest.80 Although the legal definition of “public interest” is not explicitly given in existing legislation, according to public statements by officials from the Department of Energy, “public interest” includes:

• Adequate domestic natural gas supply; • Domestic demand for natural gas proposed for export; • Economic impacts of exports (on GDP, consumers, and industry); • U.S. energy security; • Job creation; • U.S. balance of trade; • International considerations; • Environmental considerations; • Consistency with DoE’s policy of promoting market competition through free negotiation of trade81

The first two of these criteria were addressed in Part I. The remainder focus on the various domestic and international implications of U.S. LNG exports.

Domestic Implications

The domestic implications of U.S. LNG exports include their impact on natural gas prices, natural gas price volatility, jobs and competitiveness, and on overall energy security.

Price of domestic natural Gas

The domestic price impact of natural gas exports will be a significant factor in determining whether or not the United States should export LNG. While it is generally acknowledged that a domestic price increase will result from largescale LNG exports, the size of the price increase is the subject of debate, with a number of studies suggesting a range of possible outcomes. The important considerations when analyzing the results and conclusions of the various existing studies are the assumptions and models that are used when making price forecasts. Below are the results and methodologies of five major pricing studies done by the EIA and three consultancies: Deloitte, ICF International, and Navigant Consulting, which published two studies.

2012 Energy information Administration study In January 2012, the EIA published a study entitled “Effect of Increased Natural Gas Exports on Domestic Energy Markets.”82 The study, conducted at the request of the Office of Fossil Energy of the Department of Energy, analyzed four different export scenarios across four different resource base or economic assumptions to project price responses to LNG exports. In addition to a “baseline” scenario, where no LNG is exported, the EIA model considered four different export scenarios: • A low export/slow growth scenario, where 6 bcf/day of LNG is exported, phased in at a rate of 1 bcf/day per year; • A low export/rapid growth scenario, where 6 bcf/day of LNG is exported, phased in at a rate of 3 bcf/day per year; • A high export/slow growth scenario, where 12 bcf/day of LNG is exported, phased in at a rate of 1 bcf/day per year; • A high export/rapid growth scenario, where 12 bcf/day of LNG is exported, phased in at a rate of 3 bcf/day per year. Given the uncertainty over the actual size of the shale gas resource base and the future growth of the U.S. economy, each of these scenarios (both “baseline” and export) were applied to four alternate background cases: • A reference case, based on the EIA’s 2011 Annual Energy Outlook; • A low-shale estimated ultimate recovery (EUR) case, in which shale gas production from new, undrilled wells is 50 percent below the reference case scenario; • A high-shale EUR case, in which shale gas production from new, undrilled wells is 50 percent higher than the reference case; • A high economic growth case, in which U.S. GDP grows at 3.2 percent as opposed to the 2.7 percent assumed in the reference case. Given the range of assumptions, the range of results was unsurprisingly wide. The results range from a 9.6 percent increase (from $3.56 to $3.90/ mcf) in domestic natural gas prices in 2025 due to exports (in the case of high shale gas recovery, low export volumes and a slow rate of export growth) to a 32.5 percent increase (in the case of low shale gas recovery, high export volumes and a high rate of export growth). The percentage premium for domestic natural gas prices in 2025 for each scenario relative to the baseline scenario price estimate is detailed in table 3. In addition to the price premium for exporting natural gas that exists in each case, the EIA study projected a short-term spike in natural gas prices as a result of LNG exports. As figure 7 below illustrates, in 2015, the first year that LNG exports occur, domestic natural gas prices rise rapidly until total export capacity is reached. In the “lowrapid” scenario prices peak in 2016, after the 6 bcf/day of export capacity is built over 2 years; in the “high-slow” scenario, natural gas prices peak in 2026, after the 12 bcf/day of export capacity is built over 12 years. The immediate jump in price becomes more pronounced in the scenarios where LNG export capacity increases quickly. In the “low-rapid” scenario, the price of natural gas peaks at nearly 18 percent above the baseline case; in the “high-rapid” scenario, natural gas prices peak at 36 percent above the baseline case. This price impact is exacerbated in the Low Shale EUR and High Macroeconomic Growth cases, as LNG exports further tighten domestic natural gas markets. In the most extreme example, the high-rapid scenario for exports in a Low Shale EUR case, the price for natural gas peaks at more than 50 percent than the baseline case.83 There are two factors that should be considered when interpreting the results of this price impact study. The first is the assumption regarding the rate at which LNG could be exported. The results of EIA’s analysis represent an extreme scenario for LNG exports. In the existing LNG market, it is particularly unlikely that either the “low-rapid” or the “high-rapid” scenarios would materialize. The former assumption stipulates that the United States would export 6 bcf/day of LNG by 2016. Given that, at the time of writing, only one facility has been approved to export 2.2 bcf/day to nonFTA countries starting in 2015, it is unlikely that another three plants would be approved and built in such a short time frame.84 The latter scenario, that the United States would be exporting 12 bcf/ day of LNG by 2018, suggests that in the next several years, the United States would grow from exporting negligible volumes of LNG to having roughly one-third of the global LNG export capacity. Not only would this supply growth outpace growth in global LNG demand, but this capacity addition would also have to compete with roughly 11 bcf/day of Australian-origin LNG that is expected to hit the market around the same time.85 The second issue is the model’s assumptions for incremental investment in natural gas production as a result of increased export capacity. The spike in price depicted in figure 7 occurs because investment from gas producers lags additional demand. In the model, producers respond to, rather than anticipate, additional demand. For this reason, prices peak once the export capacity is filled, before steadily decreasing. In reality, the expectation of future demand would likely induce gas producers to invest in additional production before incremental demand occurs. As a result, the increase in prices would likely begin earlier and peak at a lower level than suggested by the model. deloitte study An earlier study released in November 2011 from the Deloitte Center for Energy Solutions highlighted the producer-response in its model. In addition to finding that LNG exports would produce a smaller increase in gas prices than the EIA report suggests, the Deloitte study points out that “producers can develop more reserves in anticipation of demand growth, such as LNG exports. There will be ample notice and time in advance of the exports to make supplies available.”86 Using a dynamic model, in which production increased in anticipation of new demand, the Deloitte study found that 6 bcf/day of exports of LNG would result in, on average, a 1.7 percent increase (from $7.09 to $7.21/MMBtu) in the price of natural gas between 2016 and 2035. Further, the Deloitte study noted that there would be regional variations to the increase in natural gas prices resulting from LNG exports. As most of the proposed liquefaction terminals are expected to be on the Gulf Coast, the price of Henry Hub gas, which is the key benchmark for natural gas from the Gulf Coast, will increase by $0.22/ MMBtu by 2035 as a result of U.S. LNG exports. This is more than double the price increase projected in regions further away from the LNG export terminals. In New York and Illinois, natural gas prices are projected to increase by less than $0.10/MMBtu. This is particularly important in the Northeast, which historically experiences some of the highest natural gas prices in the country, but will benefit from the development and consumption of natural gas from the nearby Marcellus shale play. other studies Three other studies of note have analyzed the price impacts of U.S. LNG exports. In August 2010, Navigant Consulting found that 2 bcf/day of LNG exports would cause a price increase of between 7 and 7.9 percent from 2015 to 2035 relative to a scenario with no gas exports. ICF International found in August 2011 that 6 bcf/day of exports would result in an 11 percent ($0.64/MMBtu) increase in natural gas prices over the same period.87 More recently, Navigant released another study that analyzed the impact of two separate export scenarios. The first scenario modeled the impact of 3.6 bcf/day of LNG exports from three terminals in North America: Sabine Pass in Louisiana, Kitimat in British Columbia, and Coos Bay in Oregon. The second scenario modeled the impact of 6.6 bcf/day of LNG exports from the three aforementioned export projects and 2 bcf/day of added exports from the Gulf Coast and 1 bcf/day from Maryland.88 This Navigant study found that 6.6 bcf/day of LNG exports would result in a 6 percent ($0.35/MMBtu) increase in natural gas prices from 2015 to 2035. As with the EIA and Deloitte studies, the results of both Navigant and ICF’s studies must be analyzed in the context of their respective methodologies and assumptions. Navigant’s first study uses a more static supply model, which, unlike dynamic supply models, does not fully take account of the effect that higher prices have on spurring additional production. As a result, it takes a conservative estimate of supply growth potential. The report acknowledges that the price outcomes modeled in its analysis “establish the upper range of impacts that exports […] might have on natural gas prices.”89 This study also did not factor in the reemergence of the industrial sector as a major consumer of natural gas following the shale gas “revolution.” The study assumes that natural gas consumption by the industrial sector will decline by 0.3% per year to 2035. By contrast, the EIA model assumes that industrial sector demand will increase by roughly 1% per year over the same period.90 The ICF study factors in various levels of production response from an increase in price. Under its 6 bcf/day export scenario, the price impact ranges from a $0.52/ MMBtu increase in a more responsive drilling activity scenario to a $0.75/MMBtu increase in a less responsive drilling activity scenario. which study is right? Given that these studies forecast natural gas prices two decades into the future, it is difficult to determine which study is most accurate. (table 4 shows a comparison of the price impact forecasts of the various models.) However, policymakers would benefit from having a better understanding of the results that are generated from each report. This includes choosing the most relevant results from each report. For instance, following the release of the EIA study, many commentators were quick to highlight that natural gas prices could increase by more than 50 percent as a result of LNG exports. However, this ignored the assumptions behind this number: it was based on the price of natural gas in one year under the most extreme assumptions of exports and domestic resource base. A more comprehensive analysis should include an assessment of the average price impact from 2015 to 2035. When distinguishing between the various studies, policymakers should identify which assumptions most resemble the existing natural gas market and its likely direction, and which models are most reflective of the complex nature of domestic and global natural gas trade. Assuming realistic volumes of natural gas exports as well as a reasonable supply response by natural gas producers are important considerations. It is important to note that the supply curves in the various studies reflect different interpretations of the economics of marginal production. The Power sector and industrial sector Part I indicated that the power-generation and industrial sectors would account for most of the demand for newly available natural gas resources. As shown above, LNG exports are likely to increase domestic prices of natural gas, suggesting negative consequences for these two competing sectors. In their analyses, both Deloitte and EIA found that the majority—63 percent, according to both studies—of the exported natural gas will come from new production as opposed to displaced consumption from other sectors. By contrast, between 17 and 38 percent of supply of natural gas for export would be met by reduced demand, as higher prices pushes some domestic consumers to use less gas.

In the power generation and industrial sectors, the price impacts of LNG exports are likely to have modest impacts. In the power sector, natural gas has historically been used as a back up to coal and nuclear base-load generation. For such gas used at the margin, the increase in electricity prices as a result of LNG exports would be limited by its competitiveness relative to other fuels: as soon as it becomes more expensive than the alternative for back up generation, power producers will substitute away from gas.91 According to ICF International, a $0.64/MMBtu increase in the price of natural gas would result in an electricity price increase of between $1.66 and $4.97/megawatt-hour (MWh), depending on how often gas is used as the marginal fuel for electricity. Deloitte estimates that the price increase of electricity would not be more than $1.65/MWh. 92 EIA estimates that electricity price impacts will be marginal as well (between $1.40/MWh and $2.90/MWh) except in the “highrapid” export scenario.93 The EIA Annual Energy Outlook 2011 estimates that, without exporting LNG, the average price of electricity (across all fuels) in 2035 will be $92/MWh.94

In the longer term, natural gas is itself likely to be used for more base-load generation. The rapid increase in shale gas production, coupled with the retirements of as much as 50 gigawatts (GW) of coal-fired electricity due to plant age or inability to adhere to possibly forthcoming EPA regulations is likely to increase the demand for natural gas in the power sector. According to some analysts, the near-term demand caused by the retirements of the oldest and least efficient coal-fired power plants could result in an additional natural gas demand of 2 bcf/day.95 Given the lack of environmentally and economically viable alternatives, a moderate increase in gas prices is unlikely to result in a large move away from natural gas, although increased costs will be transferred to customers. Natural gas consumption in the power sector has been considered economic at prices much higher than those resulting from LNG exports in even the highest price-impact projections. Even prior to the shale gas “revolution,” when natural gas prices were high, natural gas demand was increasing in the power sector. The EIA Annual Energy Outlook 2005— published in a year when average well head prices were over $7/MMBTU—projected that natural gas demand in the electricity sector would increase by 70 percent between 2003 and 2015.96

Unlike the power sector, which continued to build natural-gas fired generation during a period of increasing gas prices, the industrial sector was negatively affected by growing natural gas import dependence, high gas prices, and gas price volatility. Between 2000 and 2005, the price of natural gas increased by 99 percent and LNG imports more than doubled.97 By 2005, the ratio of the price of oil to the price of natural gas was approximately 6:1, just below the 7:1 oil-to-gas price ratio at which U.S. petrochemical and plastics producers are globally competitive.98 That same year Alan Greenspan, then-Chairman of the Federal Reserve, noted that because of natural gas price increases “the North American gas-using industry [was] in a weakened competitive position.”99 Since then the price of natural gas has collapsed. In 2011, the oil-to-natural gas price ratio was more than 24:1. In 2012 it has been even higher. The decline in natural gas prices has galvanized the industrial sector. A joint study by PwC and the National Association for Manufacturers, an industry trade group, found that the development of shale gas could save manufacturers as much as $11.6 billion per year in feedstock costs through 2025.100 New investments in petrochemical and plastics producing facilities are occurring throughout the East and Southeast, largely predicated on the availability of inexpensive natural gas. Opponents of LNG exports contend that such investments would be deterred in the future as a result of increases in the price of natural gas. However, the evidence suggests that the competitive advantage of U.S. industrial producers relative to its competitors in Western Europe and Asia is not likely to be affected significantly by the projected increase in natural gas prices resulting from LNG exports. As European and many Asian petrochemical producers use oil-based products such as naphtha and fuel oil as feedstock, U.S. companies are more likely to enjoy a significant cost advantage over their overseas competitors. Even a one-third decline in the estimated price of crude oil in 2035 would result in an oil-to-gas ratio of 14:1.101 There is also the potential for increased exports to help industrial consumers. Ethane, a liquid byproduct of natural gas production at several U.S. gas plays, is the primary feedstock of ethylene, a petrochemical product used to create a wide variety of products. According to a study by the American Chemistry Council, an industry trade body, a 25 percent increase in ethane production would yield a $32.8 billion increase in U.S. chemical production. By providing another market for cheap dry gas, LNG exports will encourage additional production of natural gas liquids (NGL) that are produced in association with dry gas. According to the EIA, ethane production increased by nearly 30 percent between 2009 and 2011 as natural gas production from shale started to grow substantially. Ethane production is now at an alltime high, with more than one million barrels per day of ethane being produced.102 Increased gas production for exports results in increased production of such natural gas liquids, in which case exports can be seen as providing a benefit to the petrochemical industry.

natural gas price volatility

A major concern among domestic end users of natural gas is the possibility of an increase in natural gas price volatility resulting from an increase in U.S. LNG exports. As figure 8 demonstrates, the price volatility experienced during the 2000s was the highest the domestic gas market has experienced in the past three decades.

The volatility of the natural gas market in the 2000s was largely caused by a tight supply-demand balance. Natural gas demand increased substantially as the U.S. economy grew and natural gas was viewed as environmentally preferable to coal for power generation. This increase in demand coincided with a reduction in domestic supply and an increased reliance on imports. The recent surge in U.S. natural gas production has resulted in less market volatility since 2010. According to EIA, the standard deviation of the price of natural gas (a general statistical indicator of volatility) between 2010 and 2011 was one-third what it was during the 2000s.103 Potential exports of U.S. LNG concerns some domestic consumers for two principal reasons: greater volatility in domestic natural gas prices; and exposure of domestic natural gas prices to higher international prices resulting in a convergence between low U.S. prices and high international prices.

There is an insufficient amount of data and quantitative research on the relationship between domestic natural gas price volatility and LNG exports. However, certain characteristics of the LNG market are likely to limit volatility. LNG is bound by technical constraints: it must be liquefied and then transported on dedicated tankers before arriving at terminals where a regasification facility must be installed. Liquefaction facilities have capacity limits to how much gas they can turn into LNG. If they are operating at or close-to full capacity, such facilities will have a relatively constant demand for natural gas, therefore an international price or supply shock would have little impact on domestic gas prices. Moreover, unlike oil trading, in which an exporter—theoretically—sells each marginal barrel of production to the highest bidder in the global market, the capacity limit on LNG production and export means that LNG exporters have an infrastructure-limited demand for natural gas leaving the rest of the natural gas for domestic consumption. As most LNG infrastructure facilities are built on a project finance basis and underpinned by long-term contracts, this demand can be anticipated by the market years in advance, reducing the likelihood of volatility. The macroeconomy and jobs The macroeconomic and job implications of LNG exports depend on two principal factors: the gains from trade from exploiting pricing differentials and inefficiencies of the global market; and the employment implications of those gains, higher domestic natural gas prices, and greater domestic natural gas production. The Department of Energy has commissioned a study on both the macroeconomic and employment implications of U.S. LNG exports, which will be released later this year. This study will provide a qualitative assessment of the implications of LNG exports to the U.S. economy and employment. LNG exports are likely to be a net benefit to the U.S. economy, although probably not a significant contributor in terms of total U.S. GDP. Exports of U.S. natural gas will take advantage of the benefits of the existing producer’s surplus resulting from the pricing differentials between the natural gas markets in the United States, Europe, and Asia. Contractual terms will determine how this surplus is shared between U.S. sellers and foreign buyers.104 The benefit of this trade will likely outweigh the cost to domestic consumers of the increase in the price of natural gas as most of the natural gas demanded by exports will come from new natural gas production as opposed to displacing existing production from domestic consumers. On the other hand, LNG exports from the United States are likely to put marginal upward pressure on the relative value of the U.S. dollar. In March 2012, Citigroup released a report on North American hydrocarbon production that included a model of the macroeconomic impact of U.S. oil and gas exports. The Citi analysis found that oil and gas exports would cause a nearly two percent decline in the current account deficit by 2020, but that the exchange rate implications would be modest. By 2020, the U.S. dollar would appreciate by between 1.6 and 5.4 percent.105 The implications of LNG exports on job creation are similarly difficult to quantify. Other than temporary construction jobs created by the need to build liquefaction capacity, pipelines, and other ancillary infrastructure, the operation of the liquefaction facility will likely provide little permanent employment benefit. As outlined in the section on price impacts above, as much of the gas for export will come from new production, rather than the displacement of consumption in other sectors, the negative economic, and therefore jobrelated, effects on those sectors is likely to be limited. Beyond the labor required for additional gas production to satisfy LNG exports, the net impact of LNG exports is likely to be minimal. Further upstream, the job potential may be greater. By increasing domestic natural gas production, employment from additional oil and gas producers will increase, as will the demand for manufacturers of equipment for oil and gas production, gathering, and transportation. domestic energy security

Aside from the price impact of potential U.S. LNG exports, a major concern among opponents is that such exports would diminish U.S. “energy security”; that exports would deny the United States of a strategically important resource. The extent to which such concerns are valid depends on several factors, including the size of the domestic resource base, and the liquidity and functionality of global trade. As Part I of this report notes, geological evidence suggests that the volumes of LNG export under consideration would not materially affect the availability of natural gas for the domestic market. Twenty years of LNG exports at the rate of 6 bcf/day, phased in over the course of 6 years, would increase demand by approximately 38 tcf. As presented in Part I, four existing estimates of total technically recoverable shale gas resources range from 687 tcf to 1,842 tcf; therefore, exporting 6 bcf/day of LNG over the course of twenty years would consume between 2 and 5.5 percent of total shale gas resources. While the estimates for shale gas reserves are uncertain, in a scenario where reserves are perceived to be lower than expected, domestic natural gas prices would increase and exports would almost immediately become uneconomic. In the long-term, it is possible that U.S. prices and international prices will converge to the point at which they settle at similar levels. In that case, the United States would have more than adequate import capacity (through bi-directional import/export facilities) to import gas when economic.

A further gas-related consideration with regard to energy security is the effects of increased production of associated natural gas with the increasing volumes of U.S. unconventional oil. As the primary energy-security concern for the United States related to oil, the application of fracking and horizontal drilling in oil production is reducing U.S. oil import dependence, while simultaneously producing substantial volumes of natural gas, which, given the relative economics of oil and gas, is effectively delivered at zero (or, in the case of producers who have to invest in equipment to manage flaring and venting, negative) cost. To the extent that associated gas from unconventional oil production is used for LNG export, it can be seen as a consequence of—rather than a threat to—increased U.S. energy security. international implications The international implications of LNG exports from the United States can be divided into pricing, geopolitics, and environment. international Pricing As discussed in Part I, the global LNG market is informally separated into three markets: North America, the Atlantic Basin (mostly Europe), and the Pacific Basin (including Japan, South Korea, Taiwan, China, and India). These markets are separated because of important technical differences that impact the pricing structure for LNG in each market. The North American natural gas market is competitive and prices are traded in a transparent and open market. The Atlantic Basin is dominated by European LNG consumers such as the United Kingdom, Spain, France, and Italy, and is a hybrid of a competitive U.K. market that was liberalized in the mid-1990s and a Continental European market that is dominated by oil-linked, take-or-pay contracts. In recent years, the U.K. hub, the National Balancing Point (NBP), has traded at a premium to the U.S. hub, the Henry Hub. The Pacific Basin is a more rigid market that depends heavily on oilindexed contracts that are more expensive than those used in the Atlantic Basin. While they have no central trading hub, the Pacific Basin consumers such as Japan and South Korea (which is implementing its recently-signed free-trade agreement with the United States) currently import LNG based on a pricing formula known informally as the Japan Crude Cocktail, the average price of custom-cleared oil imports into Tokyo. Many Pacific Basin contracts have a built-in price floor and price ceiling depending on the price of oil.106 Without exporting any natural gas, the U.S. shale gas “revolution” has already had a positive impact on the liquidity of global LNG markets. Many LNG cargoes that were previously destined for gas-thirsty U.S. markets were diverted and served spot demand in both the Atlantic and Pacific Basins. The increased availability of LNG cargoes has helped create a looser LNG market for other consumers (see figure 9). This in turn has helped apply downward pressure to the terms of oillinked contracts resulting in the renegotiation of some contracts, particularly in Europe. Increased availability of LNG cargoes also accelerated a recent trend of increasing reliance of consumers on spot LNG markets. In 2010 short-term and spot contracts represented 19 percent of the total LNG market, up from only a fraction one decade earlier.107 In this case, increasing demand for spot cargoes indicates that consumers are taking advantage of spot prices that are lower than oilindexed rates. LNG exports will help to sustain market liquidity in what looks to be an increasingly tight LNG market beyond 2015 (see figure 10). Should LNG exports from the United States continue to be permitted, they will add to roughly 10 bcf/day of LNG that is expected to emerge from Australia between 2015 and 2020. Nevertheless, given the projected growth in demand for natural gas in China and India and assuming that some of Japan’s nuclear capacity remains offline, demand for natural gas will outpace the incremental supply. This makes U.S. LNG even more valuable on the international market. Although it will be important to global LNG markets, it is unlikely that the emergence of the United States as an exporter of LNG will change the existing pricing structure overnight. Not only is the market still largely dependent on long-term contracts, the overwhelming majority of new liquefaction capacity emerging in the next decade (largely from Australia) has already been contracted for at oil-indexed rates.108 The incremental LNG volumes supplied by the United States at floating Henry Hub rates will be small in comparison. But while U.S. LNG will not have a transformational impact, by establishing an alternate lower price for LNG derived through a different market mechanism, U.S. exports may be central in catalyzing future changes in LNG contract structure. As previously mentioned, this impact is already being felt in Europe. A number of German utilities have either renegotiated contracts or are seeking arbitration with natural gas suppliers in Norway and Russia. The Atlantic Basin will be a more immediate beneficiary of U.S. LNG exports than the Pacific Basin as many European contracts allow for periodic revisions to the oil-price linkage.109 In the Pacific Basin this contractual arrangement is not as common and most consumers are tied to their respective oil-linkage formulae for the duration of the contract.110 Despite the increasing demand following the Fukushima nuclear accident, however, Japanese LNG consumers are actively pursuing new arrangements for LNG contracts.111 There are other limits to the extent of the impact that U.S. LNG will have on global markets. It is unlikely that many of the LNG export facilities under consideration will reach final investment decision. Instead, it is more probable that U.S. natural gas prices will have rebounded sufficiently to the point that exports are not commercially viable beyond a certain threshold. (figure 11 illustrates the estimated costs of delivering LNG to Japan in 2020.) This threshold, expected by many experts to be roughly 6 bcf/day by 2025, is modest in comparison to the roughly 11 bcf/day of Australian LNG export projects that have reached final investment decision and are expected to be online by 2020. Also, the impact of U.S. LNG exports could be limited by a number of external factors that will have a larger bearing on the future of global LNG prices. For instance, a decision by the Japanese government to phase-out nuclear power would significantly tighten global LNG markets and probably displace any benefit provided by U.S. LNG exports. Conversely, successful and rapid development of China’s shale gas reserves would limit the demand of one of the world’s fastest-growing natural gas consumers. However, to the extent that U.S. LNG exports can help bring about a more globalized pricing structure, they will have economic and geopolitical consequences. Geopolitics A large increase in U.S. LNG exports would have the potential to increase U.S. foreign policy interests in both the Atlantic and Pacific basins. Unlike oil, natural gas has traditionally been an infrastructure-constrained business, giving geographical proximity and political relations between producers and consumers a high level of importance. Issues of “pipeline politics” have been most directly visible in Europe, which relies on Russia for around a third of its gas. Previous disputes between Moscow and Ukraine over pricing have led to major gas shortages in several E.U. countries in the winters (when demand is highest) of both 2006 and 2009. Further disagreements between Moscow and Kiev over the terms of the existing bilateral gas deal have the potential to escalate again, with negative consequences for E.U. consumers. The risk of high reliance on Russian gas has been a principal driver of European energy policy in recent decades. Among central and eastern European states, particularly those formerly aligned with the Soviet Union such as Poland, Hungary, and the Czech Republic, the issue of reliance on imports of Russian gas is a primary energy security concern and has inspired energy policies aimed at diversification of fuel sources for power generation. From the U.S. perspective such Russian influence in the affairs of these democratic nations is an impediment to efforts at political and economic reform. The market power of Gazprom, Russia’s state-owned gas monopoly, is evident in these countries. Although they are closer to Russia than other consumers of Russian gas in Western Europe, many countries in Eastern and Central Europe pay higher contract prices for their imports, as they are more reliant on Russian gas as a proportion of their energy mixes. In the larger economies of Western Europe, which consume most of Russia’s exports, there are efforts to diversify their supply of natural gas. The E.U. has formally acknowledged the need to put in place mechanisms to increase supply diversity. These include market liberalization approaches such as rules mandating third-party access to pipeline infrastructure (from which Gazprom is demanding exemption), and commitments to complete a single market for electricity and gas by 2014, and to ensure that no member country is isolated from electricity and gas grids by 2015.112 Despite these formal efforts, there are several factors retarding the E.U.’s push for a unified effort to reduce dependence on Russian gas. National interest has been given a higher priority than collective, coordinated E.U. energy policy: the gas cutoffs in 2006 and 2009 probably contributed to the acceptance of the Nord Stream project, which carries gas from Russia into Germany. Germany’s decision to phase out its fleet of nuclear reactors by 2022 will result in far higher reliance on natural gas for the E.U.’s biggest economy. The environmental imperative to reduce carbon emissions—codified in the E.U.’s goal of essentially decarbonizing its power sector by the middle of century—mean that natural gas is being viewed by many as the short-to medium fuel of choice in power generation. Finally, the prospects for European countries to replicate the unconventional gas “revolution” that has resulted in a glut of natural gas in the United States look uncertain. Several countries, including France and the U.K., have encountered stiff public opposition to the techniques used in unconventional gas production, while those countries, such as Poland and Hungary, that have moved ahead with unconventional-gas exploration have generally seen disappointing early results. Collectively, these factors suggest that the prospects for reduced European reliance on Russian gas appear dim. The one factor that has been working to the advantage of advocates of greater European gas diversity has been the increased liquidity of the global LNG market, discussed above. Russia’s dominant position in the European gas market is being eroded by the increased availability of LNG. Qatar’s massive expansion in LNG production in 2008, coupled with the rise in unconventional gas production in the United States as well as a drop in global energy demand due to the global recession, produced a global LNG glut that saw many cargoes intended for the U.S. market diverted into Europe. As mentioned previously, with an abundant source of alternative supply, some European consumers, mainly Gazprom’s closest partners, were able to renegotiate their oil-linked, takeor-pay contracts with Gazprom. As figure 10 illustrates, however, in the wake of the Fukushima natural disaster and nuclear accident in Japan and a return to growth in most industrialized economies, the LNG market is projected to tighten considerably in the short-term, potentially returning market power to Russia. However, there is a second, structural change to the global gas market that may have more lasting effects to Russia’s market power in the European gas market. LNG is one of the fastest growing segments of the energy sector. The growth of the LNG market, both through long-term contract and spot-market sales, is likely to put increasing pressure on incumbent pipeline gas suppliers. A significant addition of U.S. LNG exports will accelerate this trend. In addition to adding to the size of the market, U.S. LNG contracts are likely to be determined on a “floating” basis, with sales terms tied to the price of a U.S. benchmark such as Henry Hub, eroding the power of providers of long-term oil linked contract suppliers such as Russia. While U.S. LNG will not be a direct tool of U.S. foreign policy—the destination of U.S. LNG will be determined according to the terms of individual contracts, the spot-price-determined demand, and the LNG traders that purchase such contracts—the addition of a large, market-based producer will indirectly serve to increase gas supply diversity in Europe, thereby providing European consumers with increased flexibility and market power. Increased LNG exports will provide similar assistance to strategic U.S. allies in the Pacific Basin. By adding supply volumes to the global LNG market, the U.S. will help Japan, Korea, India, and other import-dependent countries in South and East Asia to meet their energy needs. The desire on the part of Pacific Basin countries for the U.S. to become a gas supplier to the region has been underlined by the efforts of the Japanese government, which has attempted to secure a free-trade agreement waiver from the United States to allow exports. As with oil price-linked Russian gas contracts in Eu-rope, U.S. LNG exports linked to a floating Henry Hub benchmark, have the potential to weaken the market power of incumbent LNG providers to Asia, increasing the negotiating power of consumers and decreasing the price. As U.S. foreign policy undergoes a “pivot to Asia,” the ability of the U.S. to provide a degree of increased energy security and pricing relief to LNG importers in the region will be an important economic and strategic asset. Beyond the basin-specific considerations of U.S. LNG exports, they would provide a source of predictable natural gas supply that is relatively free from unexpected production or shipping disruption. With Qatar representing roughly one-third of the global LNG market, a blockade or military intervention in the Strait of Hormuz or a direct attack on Qatar’s liquefaction facilities by Iran would inflict chaos on world energy markets. While the United States government will be unable to physically divert LNG cargoes to specific markets or strategic allies that are most affected (gas allocation will be made by the market players), additional volumes of LNG on the world market will benefit all consumers. international Environmental implications Proposed LNG exports from the United States have encountered domestic opposition on environmental grounds. As outlined in Part I, natural gas production causes greenhouse gas emissions in the upstream production process through leakages, venting, and flaring. The greenhouse gas footprint of shale gas production has been the subject of vigorous debate, with some studies suggesting that methane from the production process leads to shale gas having a higher global warming impact than that of other hydrocarbons including coal. While the methodology underlying such studies has been widely criticized, there is no doubt that leakage and venting of natural gas is a serious negative environmental consequence of natural gas production and transportation: EPA has estimated that worldwide leakages and venting volumes were 3,353.5 bcf in 2010.113 By contrast, some advocates of U.S. exports of LNG maintain that they have the potential to bring global environmental benefits if they are used to displace more carbon-intensive fuels. According to the IEA, natural gas in general has the potential to reduce carbon dioxide emissions by 740 million tonnes in 2035, nearly half of which could be achieved by the displacement of coal in China’s power-generation portfolio. Natural gas—in the form of LNG—also has the potential to displace more carbon-intensive fuels in other major energy users, including across the EU and in Japan, which is being forced to burn more coal and oil-based fuels to make up for the nuclear generation capacity lost in the wake of the Fukushima disaster. In addition to its relatively lower carbon-dioxide footprint, natural gas produces lower emissions of pollutants such as sulfur dioxide nitrogen oxide and other particulates than coal and oil. Natural gas—both in the form of LNG and compressed natural gas—is also being viewed as a potential replacement for oil in the vehicle transportation fleet, with large carbon dioxide abatement potential.114 However, as discussed in Part I, even the United States with its low gas prices is unlikely to see any significant move toward natural gas vehicles in the absence of government policies; the prospects for such vehicles entering the European or Asian markets, where gas is several times as expensive, are remote. On the other hand, additional volumes of natural gas in the global power generation fleet may also have longer-term detrimental consequences for carbon emissions. According to the IEA, by backing out nuclear and renewable energy generation, natural gas could add 320Mt of carbon dioxide by 2035.115 Whether U.S. LNG exports contribute to reduced carbon dioxide emissions through the displacement of coal fired power generation or to the crowding out of renewable and nuclear energy in the global energy mix is something of a moot point. According to the IEA, global power generation is projected to exceed 27,000 terawatt hours per year by 2020.116 Even assuming U.S. exports of 6 bcf/day (on the upper end of the range of expectations), zero losses due to transportation, regasification, and transmission, and a high natural gas power plant efficiency level of 60 percent, such volumes would account for just over one percent of total global power generation.117 Therefore, although the domestic environmental impacts associated with shale gas extraction may, pending the outcome of further study, prove to be a cause for concern with respect to greenhouse gas emissions, the potential for U.S. LNG exports to make a meaningful impact on global emissions through changes to the global power generation mix is negligible. Part III: Conclusions and Recommendations

This paper has attempted to answer two questions: Are U.S. LNG exports feasible? If so, what are the implications of U.S. LNG exports? For exports to be feasible, several demand and supply-related conditions need to be met. On the supply side, adequate resources must be available and their production must be sustainable over the long-term. The regulatory and policy environment will need to accommodate natural gas production to ensure that the resources are developed. The capacity and infrastructure required to enable exports must also be in place. This includes the adequacy of the pipeline and storage network, the availability of shipping capacity, and the availability of equipment for production and qualified engineers.

On the demand side, LNG exports will compete with two main other domestic end uses for natural gas: the power-generation sector, and the industrial and petrochemical sector. According to most projections, the U.S. electricity sector will see an increased demand for natural gas as it seeks to comply with policies and regulations aimed at reducing carbon-dioxide emissions and pollutants from the power-generation fleet. Cheaper natural gas in the industrial sector has the potential to lower the cost of petrochemical production and to improve the competitiveness of a range of refining and manufacturing operations. Advocates of natural gas usage in the transportation fleet – particularly in heavy-duty vehicles (HDVs) – see it as a way to decrease the country’s dependence on oil, although absent major policy support, this sector is unlikely to represent a significant source of gas demand.

For increased U.S. LNG exports to be feasible, they will also need to be competitive with supplies from other sources. The major demand centers that would import U.S. LNG would be Pacific Basin consumers (Japan, South Korea, and Taiwan, and increasingly China and India), and Atlantic Basin consumers, mostly in Europe. The supply and demand balance in the Atlantic and Pacific Basins and, therefore the feasibility for natural gas exports from the United States, depend heavily on the uncertain outlook for international unconventional natural gas production. Recent assessments in countries such as China, India, Ukraine, and Poland indicate that each country has significant domestic shale gas reserves. If these reserves are developed effectively—which is likely to be difficult in the short-term due to a lack of infrastructure, physical capacity, and human capacity—many of these countries would dramatically decrease their import dependence, with negative implications for existing and newcomer LNG exporters.

Detailed analysis of the foregoing factors suggests that the exportation of liquefied natural gas from the United States is logistically feasible. Based on current knowledge, the domestic U.S. natural gas resource base is large enough to accommodate the potential increased demand for natural gas from the electricity sector, the industrial sector, the residential and commercial sectors, the transportation sector, and exporters of LNG. Other obstacles to production, including infrastructure, investment, environmental concerns, and human capacity, are likely to be surmountable. Moreover, the current and projected supply and demand fundamentals of the international LNG market are conducive to competitive U.S.-sourced LNG.

While LNG exports may be practically feasible, they will be subject to approval by policy makers if they are to happen. In making a determination on the advisability of exports, the federal government will focus on the likely implications of LNG exports: i.e. whether LNG exports are in the “public interest.” The extent of the domestic implications is largely dependent upon the price impact of exports on domestic natural gas prices. While it is clear that domestic natural gas prices will increase if natural gas is exported, most existing analyses indicate that the implications of this price increase are likely to be modest. Natural gas producers will likely anticipate future demand from LNG exports and will increase production accordingly, limiting price spikes. The impact on the domestic industrial sector is likely to be marginal: to the extent that LNG exports raise domestic gas prices above the level at which they would have been in the absence of such exports, they will negatively affect the competitiveness of U.S. industry relative to international competitors. However, the competitiveness of natural-gas intensive U.S. companies relative to their counterparts is likely to remain strong, given the large differential between projected U.S. gas prices and oil prices, which are the basis for industrial feedstock by competitor countries. Further, LNG exports are likely to stimulate domestic gas production, potentially resulting in greater production of natural gas liquids such as ethane, a valuable feedstock for industrial consumers. LNG exports are also unlikely to result in an increase in price volatility. The volume of LNG exports is capped by the capacity limitations of liquefaction terminals. If liquefaction terminals are running at close to full

capacity, an increase in international demand will do little to affect domestic demand for —and therefore domestic prices of —natural gas.

#### U.S. LNG exports send a signal of energy competition with Russia---destroys energy coop key to broader relations

Richard Weitz 13, senior fellow and director of the Center for Political-Military Affairs at Hudson Institute, 1/29/13, “Global Insights: Oil Sector a Challenge for Russia, Opportunity for U.S.,” <http://www.worldpoliticsreview.com/articles/12672/global-insights-oil-sector-a-challenge-for-russia-opportunity-for-u-s>

In the view of Russians interviewed by the authors, this paucity of cooperation results from perceived impediments erected by the U.S. government. Similarly, Russian officials see the shale gas revolution as a conspiracy on the part of the United States to undermine Russia’s role in energy markets.

Absent forward momentum, the Russia-U.S. energy relationship might even deteriorate. The United States could soon become a major energy exporter again, which would lead to direct energy sales competition between Russia and the United States for the first time in history. One major opportunity for enhanced partnership, as opposed to competition, is the deal reached last August between Exxon Mobil and Rosneft. The project has only recently begun the preliminary seismic surveys, technical assessments and environmental studies that would allow any substantial drilling to start.

Bringing the project to fruition, and augmenting it with near-term cooperation on tight oil and other energy projects, is important for both sides. Concrete Russia-U.S. energy collaboration could help dispel mutual misconceptions and perhaps spur U.S. and Russian economic cooperation in other areas. That in turn could help to increase the number of stakeholders in both countries that share an interest in maintaining good relations. These kinds of private-sector ties, as much as political will in Washington and Moscow, will contribute to the health of bilateral ties moving forward.

#### Extinction

Graham Allison 11, Director of the Belfer Center for Science and International Affairs at Harvard’s Kennedy School of Government, 10/30/11, “10 reasons why Russia still matters,” http://dyn.politico.com/printstory.cfm?uuid=161EF282-72F9-4D48-8B9C-C5B3396CA0E6

That central point is that Russia matters a great deal to a U.S. government seeking to defend and advance its national interests. Prime Minister Vladimir Putin’s decision to return next year as president makes it all the more critical for Washington to manage its relationship with Russia through coherent, realistic policies. No one denies that Russia is a dangerous, difficult, often disappointing state to do business with. We should not overlook its many human rights and legal failures. Nonetheless, Russia is a player whose choices affect our vital interests in nuclear security and energy. It is key to supplying 100,000 U.S. troops fighting in Afghanistan and preventing Iran from acquiring nuclear weapons. Ten realities require U.S. policymakers to advance our nation’s interests by engaging and working with Moscow. First, Russia remains the only nation that can erase the United States from the map in 30 minutes. As every president since John F. Kennedy has recognized, Russia’s cooperation is critical to averting nuclear war. Second, Russia is our most consequential partner in preventing nuclear terrorism. Through a combination of more than $11 billion in U.S. aid, provided through the Nunn-Lugar [CTR] Cooperative Threat Reduction program, and impressive Russian professionalism, two decades after the collapse of the “evil empire,” not one nuclear weapon has been found loose. Third, Russia plays an essential role in preventing the proliferation of nuclear weapons and missile-delivery systems. As Washington seeks to stop Iran’s drive toward nuclear weapons, Russian choices to sell or withhold sensitive technologies are the difference between failure and the possibility of success. Fourth, Russian support in sharing intelligence and cooperating in operations remains essential to the U.S. war to destroy Al Qaeda and combat other transnational terrorist groups. Fifth, Russia provides a vital supply line to 100,000 U.S. troops fighting in Afghanistan. As U.S. relations with Pakistan have deteriorated, the Russian lifeline has grown ever more important and now accounts for half all daily deliveries. Sixth, Russia is the world’s largest oil producer and second largest gas producer. Over the past decade, Russia has added more oil and gas exports to world energy markets than any other nation. Most major energy transport routes from Eurasia start in Russia or cross its nine time zones. As citizens of a country that imports two of every three of the 20 million barrels of oil that fuel U.S. cars daily, Americans feel Russia’s impact at our gas pumps. Seventh, Moscow is an important player in today’s international system. It is no accident that Russia is one of the five veto-wielding, permanent members of the U.N. Security Council, as well as a member of the G-8 and G-20. A Moscow more closely aligned with U.S. goals would be significant in the balance of power to shape an environment in which China can emerge as a global power without overturning the existing order. Eighth, Russia is the largest country on Earth by land area, abutting China on the East, Poland in the West and the United States across the Arctic. This territory provides transit corridors for supplies to global markets whose stability is vital to the U.S. economy. Ninth, Russia’s brainpower is reflected in the fact that it has won more Nobel Prizes for science than all of Asia, places first in most math competitions and dominates the world chess masters list. The only way U.S. astronauts can now travel to and from the International Space Station is to hitch a ride on Russian rockets. The co-founder of the most advanced digital company in the world, Google, is Russian-born Sergei Brin. Tenth, Russia’s potential as a spoiler is difficult to exaggerate. Consider what a Russian president intent on frustrating U.S. international objectives could do — from stopping the supply flow to Afghanistan to selling S-300 air defense missiles to Tehran to joining China in preventing U.N. Security Council resolutions.

## Advantage 1---Investment

### FDI---Wind CFIUS Doesn’t Spill Over

#### Ralls doesn’t spill over---won’t undermine overall Chinese investment

Thilo Hanemann 12, Research Director at the Rhodium Group, an economic research firm based in New York, and Daniel Rosen, China Practice Leader at Rhodium and a visiting fellow at the Peterson Institute for International Economics, 10/5/12, “Guest Post: Ralls vs. CFIUS: What Are the Implications for Chinese Investment?,” http://blogs.cfr.org/renewing-america/2012/10/05/ralls-vs-cfius-what-are-the-implications-for-chinese-investment/

Last week President Obama issued an Executive Order requiring Chinese-controlled Ralls Corporation to abandon a wind farm project near a military base in Oregon and divest all related assets. This is only the second time a U.S. President has formally blocked a foreign acquisition, and the first since 1990. Ralls presents an interesting case, but there are a lot of misperceptions about the motivations for the decision to block the deal, and about the implications.

First, this was not a political move by the President to position himself as tough on China, as suggested by some. The timeline of the review through the Committee on Foreign Investment in the United States (CFIUS) and the Presidential decision is set by law and the fact that the President was forced to make a decision resulted from Ralls’ refusal to walk away from the investment after the negative CFIUS decision, as firms commonly would. Having made news, the deal could well enter the campaign now, given Ralls’ decision to try suing the President and CFIUS, but no one in Washington set out to make this a political game.

Second, and most importantly, the decision does not signal a more restrictive U.S. policy towards Chinese investment. Rather it demonstrates continuity with regard to espionage concerns related to geographic proximity of assets to defense installations. Several previous Chinese investments have been stalled for the exact same reason (see Northwest Nonferrous-Firstgold, TCIC-Emcore, Far East Golden Resources -Nevada Gold). Chinese firms have not had trouble acquiring and equipping U.S. wind farms more distant from such sensitive areas – see Goldwind’s Shady Oaks Project in Illinois or Sany’s other wind farm in Texas, for example. Neither is this a case of retaliation by the U.S. government to punish Sany for its protectionist stance toward the attempted takeover of Xugong by Carlyle in 2006. The United States continues to be open to Chinese investment while screening for a narrow set of national security concerns.

### 1NC --- CFIUS Politicization Inevitable

#### Alternate causalities swamp the case --- a handful of other industries will still politicize the CFIUS national security standard

Susan W. Liebeler 93, a former chairman of the U.S. International Trade Commission, is a partner in the law firm of Irell & Manella. William H. Lash III is an assistant professor at St. Louis University School of Law, Exon-Florio: Harbinger of Economic Nationalism? Regulation, Vol. 16, No. 1, Winter 1993, www.cato.org/pubs/regulation/regv16n1/reg16n1d.html

Many members of Congress have pressured CFIUS to use Exon-Florio more widely for reasons having nothing to do with national security. Sen. Exon suggested that CFIUS could block an acquisition by Tokuyama Soda because of Tokuyama's role in a soda ash cartel. House majority leader Richard A. Gephardt has suggested that Exon-Florio can be used to protect ``American competitiveness,'' whatever that means. Investment in South Africa was raised as a reason for stopping BTR's bid for Norton. Citing a disturbing pattern of labor policies in South Africa, Rep. Ronald V. Dellums warned President Bush that allowing BTR to expand its U.S. operations would risk ``a potential backlash from African countries with whom the United States has vital political and economic interests.''¶ The problem is that Exon-Florio is a potential tool for a future administration to use in implementing a policy of economic nationalism. The statute and implemention regulations neither define national security nor provide a list of industries exempt from Exon-Florio scrutiny. National security can be stretched fairly thin. In the past clothespin, peanut, pottery, shoe, pen, paper, and pencil manufacturers have tried to justify government protection by invoking national security. Under another administration national security could be interpreted to encompass economic security. Changes in the political philosophy of future administrations could certainly result in a change in the makeup of CFIUS and the way Exon-Florio is administered.

#### They only affect wind investment --- acquisitions in any other sector would still prompt Congressional calls for protectionism

### 1NC --- Chinese FDI High

#### FDI into China vastly out-performed the global average in 2012---zero chance of collapse

John Ross 12-24, columnist for China.org, 12/24/12, “Why FDI into China outperformed the world,” http://www.china.org.cn/opinion/2012-12/24/content\_27500147.htm

World foreign direct investment (FDI) fell significantly in 2012. Global data is unavailable for the second half of the year, but United Nations Conference on Trade and Development statistics show FDI fell by 8 percent in the first half to $668 billion. Many countries suffered severe declines - FDI into the US fell by 39 percent and into India by 43 percent.

China outperformed the global average but nevertheless did not escape the fall - inward FDI declining by 3 percent compared to a year earlier. The trend continued into the second half of the year with a 3.6 percent fall for January to November.

Such trends occasionally generate lurid headlines regarding China such as "FDI continues losing streak." But scare stories about "collapsing" FDI into China invariably turn out to be false. It is therefore worth analyzing the structural reasons why FDI into China will continue to be strong.

Spurious claims regarding a serious decline in FDI into China generally ignore the global context. Naturally China cannot cut itself off from the global economic situation. If world FDI is falling or rising then, other things being equal, it will fall or rise in China. China outperforms global trends but it cannot completely escape them - as the data for 2012 shows.

In the first half of 2012 FDI into China, $59 billion, was larger than into the US. FDI into the US was $57 billion. China is unlikely to retain first place, as the fall of FDI into the US was particularly severe in the first half of 2012, and as at market exchange rates the US economy is approximately twice as big as China's. But inflows into China are larger than into the US in proportion to the size of their economies.

The reason FDI into China remains stronger than world trends is clear. Multinational companies for decades have been used to China being the world's most rapidly growing major economy in percentage terms. The new factor is that the absolute increase in the size of China's market in dollars each year is now larger than the US.

### FDI (Into China)---AT: All Internal Links

#### Chinese FDI in the US is at record highs --- and the trend will continue

Steinbock, 13 - Dr. Dan Steinbock focuses on issues of international business and international relations, especially the post-crisis debt problems in the leading advanced economies (G-7) and the growth pains of the large emerging economies (BRICs and beyond). He is Research Director of International Business at the India, China and America Institute (USA) and Visiting Fellow at Shanghai Institutes for International Studies (China) where he concentrates on the G-20 economies.(Dan, "Foreign Investment Relocates in China and Asia" EconoMonitor, 2/27, <http://www.economonitor.com/blog/2013/02/foreign-investment-relocates-in-china-and-asia/>

As foreign investment is refocusing within China, Chinese foreign investment is refocusing worldwide, shifting from emerging Asia into the developed markets, including the United States and the Eurozone. **In 2012, China’s FDI into the United States enjoyed a record year.** Chinese firms completed U.S. deals worth $6.5 billion, a 12 percent increase from the previous record of $5.8 billion in 2010.

In the past, Chinese multinationals invested in resource industries mainly in developing economies. Today, they find the oil and gas extraction as the most attractive sectors in the United States. Other Chinese multinationals are buying into advanced manufacturing operations, which allow them to upgrade their productivity. Still others are investing in slower-growing but stable industries, including hospitality, utilities, and real estate. In the absence of sudden disruption, the growth story is likely to continue in 2013.

In the U.S. and the Eurozone, the accelerating Chinese FDI reflects a shift from the past one-way investment relationship **to a genuine, two-way partnership**. In turn, this long-anticipated structural story is driven by new FDI growth service engines in Chinese coastal megacities and FDI manufacturing operations in Chinese inland and west, as well as across Southeast Asia.

### FDI---Solvency

#### The aff’s self-defeating---increasing overall Chinese investment in other areas just causes increased CFIUS exclusions

Robert O’Brien 12, PhD candidate in International Relations at the University of Oxford, 10/2/12, “Chinese Company to Sue President Obama Over Oregon Wind Farms Decision,” http://contextchina.com/2012/10/chinese-company-to-sue-president-obama-over-oregon-wind-farms-decision/

The Ralls case, though, presents several important takeaways. First, as contextChina’s own Benjamin Shobert noted in a piece published yesterday, the case highlights the fundamental tension between local governments that are attempting to attract Chinese investment and the federal government, which is charged with making decisions regarding the national security implications of such investments. This tension is only likely to increase as China ramps up its investments into the U.S. Second, the case may demonstrate a renewed resolve on the part of Chinese companies in dealing with CFIUS. It is both the first time that a Chinese company has forced presidential action after CFIUS objections – all previous cases ended when the PRC firm in question voluntarily abandoned their project – and the first time anyone has sued a U.S. president over this type of ruling. One instance doesn’t equate to a trend, but it should sound warning bells for CFIUS as it reviews other cases of Chinese investment in America.

### AT: China Economy

#### China econ’s resilient---government control checks

Katsenelson 9 – Vitaliy N., director of research at [Investment Management Associates](http://bit.ly/L4eoG) in Denver, Colo., and the author of [Active Value Investing: Making Money in Range-Bound Markets](http://bit.ly/L4eoG), 7/23/09, “The China Bubble's Coming -- But Not the One You Think”, Foreign Policy, http://www.foreignpolicy.com/articles/2009/07/23/the\_china\_bubbles\_coming\_but\_not\_the\_one\_you\_think

Despite everything, the Chinese economy has shown incredible resilience recently. Although its biggest customers -- the United States and Europe -- are struggling (to say the least) and its exports are down more than 20 percent, China is still spitting out economic growth numbers as if there weren't a worry in the world. The most recent estimate put annual growth at nearly 8 percent. Is the Chinese economy operating in a different economic reality?  Will it continue to grow, no matter what the global economy is doing?  The answer to both questions is no. China's fortunes over the past decade are reminiscent of Lucent Technologies in the 1990s. Lucent sold computer equipment to dot-coms. At first, its growth was natural, the result of selling goods to traditional, cash-generating companies. After opportunities with cash-generating customers dried out, it moved to start-ups -- and its growth became slightly artificial. These dot-coms were able to buy Lucent's equipment only by raising money through private equity and equity markets, since their business models didn't factor in the necessity of cash-flow generation. Funds to buy Lucent's equipment quickly dried up, and its growth should have decelerated or declined. Instead, Lucent offered its own financing to dot-coms by borrowing and lending money on the cheap to finance the purchase of its own equipment. This worked well enough, until it came time to pay back the loans. The United States, of course, isn't a dot-com. But a great portion of its growth came from borrowing Chinese money to buy Chinese goods, which means that Chinese growth was dependent on that very same borrowing. Now the United States and the rest of the world is retrenching, corporations are slashing their spending, and consumers are closing their pocket books. This means that the consumption of Chinese goods is on the decline. And this is where the dot-com analogy breaks down. Unlike Lucent, China has nuclear weapons. It can print money at will and can simply order its banks to lend. It is a communist command economy, after all. Lucent is now a $2 stock. China won't go down that easily. The Chinese central bank has a significant advantage over the U.S. Federal Reserve. Chairman Ben Bernanke and his cohort may print a lot of money (and they did), but there's almost nothing they can do to speed the velocity of money. They simply cannot force banks to lend without nationalizing them (and only the government-sponsored enterprises have been nationalized). They also cannot force corporations and consumers to spend. Since China isn't a democracy, it doesn't suffer these problems. China's communist government owns a large part of the money-creation and money-spending apparatus. Money supply therefore shot up 28.5 percent in June. Since it controls the banks, it can force them to lend, which it has also done. Finally, China can force government-owned corporate entities to borrow and spend, and spend quickly itself. This isn't some slow-moving, touchy-feely democracy. If the Chinese government decides to build a highway, it simply draws a straight line on the map. Any obstacle -- like a hospital, a school, or a Politburo member's house -- can become a casualty of the greater good. (Okay -- maybe not the Politburo member's house). Although China can't control consumer spending, the consumer is a comparatively small part of its economy. Plus, currency control diminishes the consumer's buying power. All of this makes the United States' TARP plans look like child's play. If China wants to stimulate the economy, it does so -- and fast. That's why the country is producing such robust economic numbers.

### AT: China Trade War

#### China trade wars never escalate despite the threats and rhetoric in their ev---we’ll negotiate

Ding Dou 11, is associate professor in School of International Studies at Peking University, September 23, 2011, “Tire Trade Truncheon Looks More Threatening for the Future,” online: http://www.chinausfocus.com/finance-economy/tire-trade-truncheon-looks-more-threatening-for-the-future/

Trade battles are no surprise to China. As a rising and already mighty economic power in a short span of time, it has become accustomed to various trade disputes with other countries around the globe. As the Chinese Commerce Ministry claimed, China suffered the most anti-dumping lawsuits in 16 consecutive years up to 2010, and the most anti-subsidy lawsuits in five consecutive years. In its long-term struggle to deal with these trade disputes, Chinese government adopted a bilateral negotiation approach rather than letting complaints or appeals be dealt with by the multi-national WTO or other watchdogs. In tandem with its bilateral negotiations, China sometimes threatened retaliatory action against imports from the complainant. One outstanding example was the trade war between Japan and China in early 2001 when Japan took safeguard measures against three Chinese agricultural imports. As a tit-for-tat retaliation, China declared punitive tariffs on three Japanese industrial imports. Through a raft of subsequent discussion, both sides reached a rapprochement at the end of that year and cancelled punitive tariffs against each other. Eventually, this belligerant trade friction lasting for three hundred days was quelled, as if it never occurred at all.

### AT: China War

#### No US-Sino war

Rosecrance et al 10 (Richard, Political Science Professor @ Cal and Senior Fellow @ Harvard’s Belfer Center and Former Director @ Burkle Center of IR @ UCLA, and Jia Qingguo, PhD Cornell, Professor and Associate Dean of School of International Studies @ Peking University, “Delicately Poised: Are China and the US Heading for Conflict?” Global Asia 4.4, <http://www.globalasia.org/l.php?c=e251>)

Will China and the US Go to War? If one accepts the previous analysis, the answer is “no,” or at least not likely. Why? First, despite its revolutionary past, China has gradually accepted the US-led world order and become a status quo power. It has joined most of the important inter-governmental international organizations. It has subscribed to most of the important international laws and regimes. It has not only accepted the current world order, it has become a strong supporter and defender of it. China has repeatedly argued that the authority of the United Nations and international law should be respected in the handling of international security crises. China has become an ardent advocate of multilateralism in managing international problems. And China has repeatedly defended the principle of free trade in the global effort to fight the current economic crisis, despite efforts by some countries, including the US, to resort to protectionism. To be sure, there are some aspects of the US world order that China does not like and wants to reform. However, it wishes to improve that world order rather than to destroy it. Second, China has clearly rejected the option of territorial expansion. It argues that territorial expansion is both immoral and counterproductive: immoral because it is imperialistic and counterproductive because it does not advance one’s interests. China’s behavior shows that instead of trying to expand its territories, it has been trying to settle its border disputes through negotiation. Through persistent efforts, China has concluded quite a number of border agreements in recent years. As a result, most of its land borders are now clearly drawn and marked under agreements with its neighbors. In addition, China is engaging in negotiations to resolve its remaining border disputes and making arrangements for peaceful settlement of disputed islands and territorial waters. Finally, even on the question of Taiwan, which China believes is an indisputable part of its territory, it has adopted a policy of peaceful reunification. A country that handles territorial issues in such a manner is by no means expansionist. Third, China has relied on trade and investment for national welfare and prestige, instead of military conquest. And like the US, Japan and Germany, China has been very successful in this regard. In fact, so successful that it really sees no other option than to continue on this path to prosperity. Finally, after years of reforms, China increasingly finds itself sharing certain basic values with the US, such as a commitment to the free market, rule of law, human rights and democracy. Of course, there are still significant differences in terms of how China understands and practices these values. However, at a conceptual level, Beijing agrees that these are good values that it should strive to realize in practice. A Different World It is also important to note that certain changes in international relations since the end of World War II have made the peaceful rise of a great power more likely. To begin with, the emergence of nuclear weapons has drastically reduced the usefulness of war as a way to settle great power rivalry. By now, all great powers either have nuclear weapons or are under a nuclear umbrella. If the objective of great power rivalry is to enhance one’s interests or prestige, the sheer destructiveness of nuclear weapons means that these goals can no longer be achieved through military confrontation. Under these circumstances, countries have to find other ways to accommodate each other — something that China and the US have been doing and are likely to continue to do. Also, globalization has made it easier for great powers to increase their national welfare and prestige through international trade and investment rather than territorial expansion. In conducting its foreign relations, the US relied more on trade and investment than territorial expansion during its rise, while Japan and Germany relied almost exclusively on international trade and investment. China, too, has found that its interests are best served by adopting the same approach. Finally, the development of relative pacifism in the industrialized world, and indeed throughout the world since World War II, has discouraged any country from engaging in territorial expansion. There is less and less popular support for using force to address even legitimate concerns on the part of nation states. Against this background, efforts to engage in territorial expansion are likely to rally international resistance and condemnation. Given all this, is the rise of China likely to lead to territorial expansion and war with the US? The answer is no.

## Advantage 2---Administrative Procedures

### 1NC No Spillover

#### The aff doesn’t set a precedent – the court will limit the plan to maintain the status quo, even if they can’t overrule it. Nothing the aff does changes the mindset of the justices and Roberts is a pro at undermining precedent.

William D. Araiza, Law Prof @ Brooklyn, Summer 2012, “PLAYING WELL WITH OTHERS-BUT STILL WINNING,” 46 Ga. L. Rev. 1059, ln

How can a judge undermine precedent while still following it? This Essay considers the methods by which Supreme Court Justices may weaken precedent without explicitly overruling cases by strategically adopting an approach to stare decisis that is less explicitly aggressive than their colleagues'. Adding to the literature of "stealth overruling," this Essay considers examples of such methods from Chief Justice Roberts's first five years on the Supreme Court. These examples indicate that Chief Justice Roberts knows how to engage in stealth overruling and, more broadly, how to use his colleagues' preferences to maintain a formal commitment to judicial humility while achieving jurisprudential change. As such, they reveal important insights about how Justices can operate strategically to achieve their preferences within both the opportunities and the confines inherent in a multi-judge court. After five years, many have accused the Roberts Court of aggressively attacking precedent. No less a figure than Justice O'Connor, whose retirement marked the effective start of that Court, has expressed concern about the Roberts Court's willingness to overrule prior decisions. n1 Then-Judge Roberts's famous confirmation hearing analogy of judging to umpiring n2 and his professed respect for stare decisis n3 make for a dramatic narrative in which a nominee piously describes a humble role for judges but then, once safely confirmed, sets out with a wrecking ball. The charge may have merit, but a short essay is not the vehicle to make that determination. Simply pointing to a few high-profile [\*1061] overrulings, as critics sometimes do, proves little. n4 Rather, an in-depth examination of the issue requires considering the situations where the overruling dog did not bark-that is, where the Court could have overruled a prior case but declined to do so. n5 Such an investigation also calls for both historical perspective and nuance. n6 Reaching interesting conclusions about the Roberts Court's treatment of stare decisis requires that we identify a baseline of how previous Courts have treated that principle. If impressionistic conclusions based on a few dramatic examples are enough to consider the charge proven, then the Rehnquist n7 and Warren n8 Courts are presumably guilty also. Moreover, not all overrulings are created equal. Determining the extent of the Roberts Court's alleged disregard of precedent also requires considering the importance of the precedents the Court has in fact rejected. Consider Justice White's dissent in INS v. Chadha. n9 White characterized the majority's rejection of the legislative veto as effectively striking down hundreds of statutes and eliminating a then-major feature of the modern administrative state. n10 Chadha was not a case where the Court overruled precedent. Justice White's complaint about the far-reaching nature of the Court's decision, however, reminds us that identifying judicial aggressiveness, whatever its form, requires [\*1062] more than simply adding up the number of cases where the Court has acted aggressively. n11 This Essay considers the Roberts Court and stare decisis from a different angle. It examines several methods by which Chief Justice Roberts arguably has used the multi-judge nature of the Supreme Court to his advantage in undermining precedent without explicitly calling for its overruling. n12 These examples do not prove that the Court as a whole, or the Chief Justice in particular, is bent on undoing the work of prior Courts. Instead, they illustrate the ways in which a Justice can work within the formal confines of precedent to achieve fundamentally different results, either in the short or long term. n13 The methods described below depend in part on the distinction between the result a court reaches in a case and the reasoning it employs. The nature of the Supreme Court as a multi-judge court makes this distinction possible: often times, the Court may agree on a result but split sharply on its reasoning. n14 This opens up room for a creative Justice to undermine precedent, even as the Justice expresses reasons that appear moderate-in particular, more moderate than those who are more inclined to overrule explicitly. In so doing, the Justice may create the conditions for the ultimate rejection of that precedent, even while publicly counseling restraint-indeed, even while voting to uphold that [\*1063] precedent. n15 In short, this Essay considers methods by which Justices can play well with others-both those that came before (via respect for stare decisis) and current colleagues (by strategically positioning themselves among them)-and still achieve their ultimate goal. n16 This Essay situates itself at the intersection of two ongoing debates about judicial behavior. The first examines the concept of stealth overruling-the practice of limiting or even eviscerating a precedent while ostensibly remaining faithful to it. n17 This phenomenon has become a major topic of scholarly discussion during the last five years, n18 as scholars have identified and analyzed examples of the Roberts Court engaging in such conduct-conduct generally thought to have resulted from the replacement of a sometimes centrist Justice O'Connor with a more reliably conservative Justice Alito. n19 The examples in this Essay illustrate instances where the Court or a plurality thereof arguably has engaged in such conduct. n20 The lessons one can draw from these examples will help shape an understanding of the stealth overruling phenomenon, and the extent to which the Roberts Court performs it. Second, this Essay engages the debate about the implications of the Supreme Court's character as a collegial body. Scholars long have acknowledged that critiques of the Court must account for its collegial nature rather than simply treating it as a purposive [\*1064] individual. n21 This Essay contributes to that debate by considering how Chief Justice Roberts may in certain cases strategically use his colleagues' calls for more explicit overruling of precedent as a tool in maintaining his and the Court's reputation as faithful to stare decisis while nevertheless pushing the law away from precedents.

#### Particularly true in context of ADA

Niki R. Ford, JD Akron, MS Taxation Akron, Fall 2012, “Easy on the MAYO Please: Why Judicial Deference Should Not Be Extended to Regulations that Violate the Administrative Procedure Act,” 50 Duq. L. Rev. 799, ln

**Note: In the context of this article, Mayo and Home Concrete are SCOTUS cases, not condiments and building materials ☺**

In order to find that APA-violative regulations fail at Chevron step two, the Court must first determine that Chevron in fact provides the appropriate standard of review. n331 Chevron review should be utilized when reviewing Home Concrete-esque regulations-i.e., those regulations which violate the APA yet carry legal force-quite simply, because the doctrinal prerequisites of Chevron are present even if Treasury has not abided by the APA when promulgating its regulation. The use of Chevron deference is required where: (1) an agency has issued a regulation pursuant to Congressional authority, and (2) that regulation carries the force of law. n332 Treasury regulations issued pursuant to I.R.C. $ S 7805(a) [\*846] invariably meet these requirements. n333 Neither jurisprudential nor normative support any longer exists for an argument that $ S 7805(a) regulations should be analyzed using any other standard of review than Chevron. Even when a Treasury regulation has been issued without notice-and-comment, it still carries the force of law. n336 Procedural defects do not give taxpayers an excuse from complying with tax regulations when they file their returns. If taxpayers fail to comply with a regulation-even a procedurally defective one-they can be subject to penalties and legal sanctions. n337 Moreover, very few procedurally defective Treasury regulations are challenged and invalidated under the APA. n338 Thus, the Court is considering a regulation that carries the force of law and must be analyzed under Chevron. On a simplistic level, therefore, the holding of Mayo would seem to apply to the Court's decision in Home Concrete. Mayo held that Treasury regulations are entitled to no less deference than any other administrative regulations, and whether the regulations were promulgated via I.R.C. $ S 7805(a) or otherwise, Chevron pro [\*847] vides the appropriate standard of review. n339 Thus, under this chain of logic and precedent, one could argue that Treasury Regulation $ S 301.6501(e)-1 is entitled to Chevron deference. However, this surface-level analysis misses the link between Chevron review and Chevron deference-merely finding that Chevron is the appropriate standard only means that a regulation is entitled to mandatory deference if it meets the two-part test. This is where the Home Concrete regulation diverges from the Mayo regulation. From a stare decisis perspective, the regulations considered and afforded deference in Mayo Foundation are fundamentally dissimilar from the regulations at play in Home Concrete; thus, Mayo's pro-deference holding does not constitute binding precedent for the Home Concrete Court. n340 The regulations in Mayo were promulgated in compliance with the APA and were not interim-final rules aimed at influencing pending litigation. n341 The regulations in Home Concrete, of course, are precisely the opposite. n342 Although Mayo unequivocally held that $ S 7805(a) Treasury regulations are afforded Chevron deference pursuant to Mead, the Mayo Court clearly considered that the regulations were promulgated through notice-and-comment procedures-this fact was mentioned more than once in the opinion. n343 Inherent in the Chevron doctrine, though often overlooked in practice, is the fact that an agency's fulfillment of Chevron step one does not automatically lead to a judgment in favor of the agency on the deference question. The overwhelming number of courts confronted with a Chevron question, who found that a regu [\*848] lation passed step one, have validated the regulation. n344 These results could be interpreted to mean that challengers must win the Chevron step one battle or concede defeat, and some commentators have reasoned as such. n345 However, where an agency has clearly acted unreasonably or arbitrarily in promulgating a regulation, courts have the discretion to refuse to defer to that regulation. n346 This leads to the second critical aspect of the Court's suggested decision in Home Concrete-that APA-violative Treasury regulations fail Chevron step two. Because of the discretion it affords to reviewing courts, step two of Chevron is where the judiciary can strike an appropriate balance between proper agency deference and blind agency faithfulness. As much as the issue may have been debated in the early to mid-twentieth century, it is now axiomatic that administrative [\*849] agencies are the proper and foremost interpreters of the statutes they are called to administer. n347 However, never has Congress demanded that the judiciary follow every whim of the administrative state. When an administrative agency has abused its discretion-as broad as that discretion may be-it is proper for the courts to abate the agency's power. n348

### SQ Solves APA – Sackett v EPA

#### Supreme court just reigned in agency violations of the APA – Sackett v EPA is a massive check on agency overreach

Edward Morrissey, 3-22-2012, “EPA Gets Epic Smackdown from Supreme Court,” Fiscal Times, http://www.thefiscaltimes.com/Columns/2012/03/22/EPA-Gets-Epic-Smackdown-From-Supreme-Court.aspx#page1

When Mike and Chantell Sackett bought land in Idaho zoned for residential construction and acquired the necessary permits for building a home, they believed their dream of owning a custom-made house would become a reality. Instead, the EPA sent the Sacketts into a five-year nightmare of regulatory war over the supposed status of their lot as a wetland, and demanded that the Sacketts entirely undo their work on the land to comply with the Clean Water Act. The Sacketts tried to appeal but were threatened with fines of up to $37,500 per day, and when they tried to go to court to appeal that, they discovered that the EPA had to allow them to go to court. The Sacketts sued in federal court, and yesterday finally prevailed in a unanimous Supreme Court decision that has far-reaching implications for the EPA and overreaching government intrusion. The EPA tried its best to keep the federal courts out of the dispute and the Sacketts in limbo, in part by claiming that the agency had not committed a “final agency action,” which would allow the Sacketts to file suit under the Administrative Procedure Act (APA), the aegis under which the case proceeded to the Supreme Court. The EPA argued that, at some undefined point in time, they might reconsider their demand to the Sacketts for compliance, even though the Sacketts risked double fines (up to $70,000per day) for not reversing their work on the land. Justice Antonin Scalia scoffed at the argument in the decision writing that “the mere possibility that an agency might reconsider in light of “informal discussion” and invited contentions of inaccuracy does not suffice to make an otherwise final agency action nonfinal.” Nor did Scalia and the other members of the court buy the notion that a compliance order was just “a step in the deliberative process … rather than a coercive sanction that itself must be subject to judicial review,” as the Obama administration argued. Scalia points out that sanctions signal that deliberation has come to an end. Besides, Scalia wrote for the unanimous majority, the Sacketts had tried to get a hearing with the EPA, which the agency rejected – hardly a sign that deliberation over the issue had much of a chance of continuing. These arguments represent the arrogance of a bureaucracy that has little interest in oversight, and less in intellectual honesty. The idea that a compliance order and its accompanying stratospheric fines don’t equal a final result only makes sense from the perspective of those giving the order. It doesn’t take much common sense to see that a couple trying to build a home on land that didn’t even appear in the EPA’s inventory of wetlands could hardly afford to run up $70,000 in fines each day they didn’t act on a compliance order. Clearly, the EPA and the Obama administration offered a loophole that would have allowed the EPA and other government agencies to levy compliance orders without any oversight at all, had the Supreme Court accepted their arguments. That would have created a situation where defendants in these agency actions not only had to prove their innocence rather than the agency prove their guilt – it would have also left defendants with no opportunity at all to prove their innocence. In fact, that’s exactly what the EPA and the Obama administration did argue, saying that the Clean Water Act showed Congress’ intent to streamline enforcement of pollution laws, and that making compliance orders subject to judicial review would make the EPA less likely to use them. “That may be true,” Scalia writes, “but it will be true for all agency actions subjected to judicial review. The APA’s presumption of judicial review is a repudiation of the principle that efficiency of regulation conquers all.” The Supreme Court’s unanimous ruling in favor of judicial review will have a big impact on the EPA, and other government agencies as well. The agency used their interpretation of the APA and its enabling laws (like the Clean Water Act and the Clean Air Act) to stymie appeals on its orders and force immediate compliance. At the same time, the massively large fines are imposed to keep property owners from fighting the EPA’s orders. Now that the Supreme Court has struck down the EPA’s dodge on finality, every compliance order can be challenged in court, forcing the EPA and other agencies to meet at least some evidentiary standard above Because We Say So. The unanimity of this decision may seem surprising to some, given the partisan nature in which we look at the Supreme Court. However, the government argument on Sackett boiled down to the principle that courts had no role in deciding whether the EPA properly enforced Congressional laws like the Clean Water Act – at least until the EPA gave people permission to go to court. While none of the opinions specifically mention the issue of separation of powers, the Supreme Court’s justices couldn’t have appreciated the notion that the legislative and executive branches could combine to keep courts from reviewing actions that carried immediate and significant consequences. Regardless of the motivation, Sackett stands the current agency-law model on its head for property owners. While the Supreme Court declined to consider Sackett under the Due Process Clause of the Fifth Amendment, as Ilya Somin pointed out in disappointment, the court did find that property owners have the right to substantial due process when government agencies act in a confiscatory manner, at least through the APA. The decision represents a refreshing change in direction for the American government, and a start toward new respect for property rights in the US. That can only help bolster our economic strength, and pull the reins in at least a little on the regulatory leviathan that can transform the dream of building a home into a legal nightmare.

### SQ Solves APA – General

#### Administrative law has already been broadened – their author

Richard Stewart, Law Prof @ NYU, 2005, “U.S. Administrative Law: A Model for Global Administrative Law?” http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1362&context=lcp

In recent decades, U.S. administrative law has assumed a broader scope and function through the development of an interest-representation model of administrative law. It has developed new and more inclusive procedural require-ments and has promoted transparency in administrative decisionmaking, including rulemaking. It has expanded the right to participate in agency decisionmaking procedures and the scope of judicial review to include a broad range of affected social and economic interests beyond those regulated. The scope of judicial review has been expanded to include, in addition, substantial review of agencies’ exercise of policy discretion. Here administrative law has assumed the affirmative task of ensuring that regulatory agencies exercise their policymaking discretion in a manner that is informed and responsive to the wide range of social and economic interests and values affected by their decisions, including the beneficiaries of regulatory programs as well as those subject to regulatory controls and sanctions.42 The functions of administrative law go beyond the core of ensuring legal accountability to the broader goal of promoting responsiveness and securing accountability to social interests and values.

### AT: Great Power War

#### Rising powers will be cooperative and integrated into the liberal international order

**Ikenberry 11** – (May/June issue of Foreign Affairs, G. John, PhD, Albert G. Milbank Professor of Politics and International Affairs at Princeton University in the Department of Politics and the Woodrow Wilson School of Public and International Affairs, “The Future of the Liberal World Order,” http://www.foreignaffairs.com/

articles/67730/g-john-ikenberry/the-future-of-the-liberal-world-order?page=show)

For all these reasons, many observers have concluded that world politics is experiencing not just a changing of the guard but also a transition in the ideas and principles that underlie the global order. The journalist Gideon Rachman, for example, says that a cluster of liberal internationalist ideas -- such as faith in democratization, confidence in free markets, and the acceptability of U.S. military power -- are all being called into question. According to this worldview, the future of international order will be shaped above all by China, which will use its growing power and wealth to push world politics in an illiberal direction. Pointing out that China and other non-Western states have weathered the recent financial crisis better than their Western counterparts, pessimists argue that an authoritarian capitalist alternative to Western neoliberal ideas has already emerged. According to the scholar Stefan Halper, emerging-market states "are learning to combine market economics with traditional autocratic or semiautocratic politics in a process that signals an intellectual rejection of the Western economic model." Today's international order is not really American or Western--even if it initially appeared that way. But this panicked narrative misses a deeper reality: although the United States' position in the global system is changing, the liberal international order is alive and well. The struggle over international order today is not about fundamental principles. China and other emerging great powers do not want to contest the basic rules and principles of the liberal international order; they wish to gain more authority and leadership within it. Indeed, today's power transition represents not the defeat of the liberal order but its ultimate ascendance. Brazil, China, and India have all become more prosperous and capable by operating inside the existing international order -- benefiting from its rules, practices, and institutions, including the World Trade Organization (WTO) and the newly organized G-20. Their economic success and growing influence are tied to the liberal internationalist organization of world politics, and they have deep interests in preserving that system. In the meantime, alternatives to an open and rule-based order have yet to crystallize. Even though the last decade has brought remarkable upheavals in the global system -- the emergence of new powers, bitter disputes among Western allies over the United States' unipolar ambitions, and a global financial crisis and recession -- the liberal international order has no competitors. On the contrary, the rise of non-Western powers and the growth of economic and security interdependence are creating new constituencies for it. To be sure, as wealth and power become less concentrated in the United States' hands, the country will be less able to shape world politics. But the underlying foundations of the liberal international order will survive and thrive. Indeed, now may be the best time for the United States and its democratic partners to update the liberal order for a new era, ensuring that it continues to provide the benefits of security and prosperity that it has provided since the middle of the twentieth century.

### AT: Institutions

### AT: Environment

#### No impact to the environment and no solvency

Holly Doremus 2k Professor of Law at UC Davis, "The Rhetoric and Reality of Nature Protection: Toward a New Discourse," Winter 2000 Washington & Lee Law Review 57 Wash & Lee L. Rev. 11, lexis

Reluctant to concede such losses, tellers of the ecological horror story highlight how close a catastrophe might be, and how little we know about what actions might trigger one. But the apocalyptic vision is **less credible today than it seemed in the 1970s.** Although it is clear that the earth is experiencing a mass wave of extinctions, n213 the **complete elimination of life on earth seems unlikely.** n214 **Life is remarkably robust**. **Nor is human extinction probable** any time soon. Homo sapiens is **adaptable to nearly any environment**. Even if the world of the future includes far fewer species, it likely will hold people. n215 One response to this credibility problem tones the story down a bit, arguing not that humans will go extinct but that ecological disruption will bring economies, and consequently civilizations, to their knees. n216 But this too may be **overstating the case**. Most ecosystem functions are **performed by multiple species**. This **functional redundancy** means that **a high proportion of species can be lost without precipitating a collapse**. n217 Another response drops the horrific ending and returns to a more measured discourse of the many material benefits nature provides humanity. Even these more plausible tales, though, suffer from an important limitation. They call for nature protection only at a high level of generality. For example, human-induced increases in atmospheric carbon dioxide levels may cause rapid changes in global temperatures in the near future, with drastic consequences for sea levels, weather patterns, and ecosystem services. n218 Similarly, the loss of large numbers of species undoubtedly reduces the genetic library from which we might in the future draw useful resources. n219 But it is difficult to translate these insights into convincing arguments against any one of the small local decisions that contribute to the problems of global warming or biodiversity loss. n220 It is easy to argue that **the** material **impact of any individual decision to increase** carbon **emissions slightly or to destroy a small amount of habitat will be small.** It is difficult to identify the specific straw that will break the camel's back. Furthermore, **no unilateral action at the local or even national level can solve these global problems**. Local decisionmakers may feel paralyzed by the scope of the problems, or may conclude that any sacrifices they might make will go unrewarded if others do not restrain their actions. In sum, at the local level at which most decisions affecting nature are made, the material discourse provides little reason to save nature. Short of the ultimate catastrophe, the material benefits of destructive decisions frequently will exceed their identifiable material costs. n221

### AT: Ocean Biodiversity

#### Climate change proves Oceans and marine bioD are resilient – alarmist predictions empirically denied

Taylor 10 [James M. Taylor is a senior fellow of The Heartland Institute and managing editor of Environment & Climate News., “Ocean Acidification Scare Pushed at Copenhagen,” Feb 10 http://www.heartland.org/publications/environment%20climate/article/26815/Ocean\_Acidification\_Scare\_Pushed\_at\_Copenhagen.html]

With global temperatures continuing their decade-long decline and United Nations-sponsored global warming talks falling apart in Copenhagen, alarmists at the U.N. talks spent considerable time claiming carbon dioxide emissions will cause catastrophic ocean acidification, regardless of whether temperatures rise. The latest scientific data, however, show no such catastrophe is likely to occur. Food Supply Risk Claimed The United Kingdom’s environment secretary, Hilary Benn, initiated the Copenhagen ocean scare with a high-profile speech and numerous media interviews claiming ocean acidification threatens the world’s food supply. “The fact is our seas absorb CO2. They absorb about a quarter of the total that we produce, but it is making our seas more acidic,” said Benn in his speech. “If this continues as a problem, then it can affect the one billion people who depend on fish as their principle source of protein, and we have to feed another 2½ to 3 billion people over the next 40 to 50 years.” Benn’s claim of oceans becoming “more acidic” is misleading, however. Water with a pH of 7.0 is considered neutral. pH values lower than 7.0 are considered acidic, while those higher than 7.0 are considered alkaline. The world’s oceans have a pH of 8.1, making them alkaline, not acidic. Increasing carbon dioxide concentrations would make the oceans less alkaline but not acidic. Since human industrial activity first began emitting carbon dioxide into the atmosphere a little more than 200 years ago, the pH of the oceans has fallen merely 0.1, from 8.2 to 8.1. Following Benn’s December 14 speech and public relations efforts, most of the world’s major media outlets produced stories claiming ocean acidification is threatening the world’s marine life. An Associated Press headline, for example, went so far as to call ocean acidification the “evil twin” of climate change. Studies Show CO2 Benefits Numerous recent scientific studies show higher carbon dioxide levels in the world’s oceans have the same beneficial effect on marine life as higher levels of atmospheric carbon dioxide have on terrestrial plant life. In a 2005 study published in the Journal of Geophysical Research, scientists examined trends in chlorophyll concentrations, critical building blocks in the oceanic food chain. The French and American scientists reported “an overall increase of the world ocean average chlorophyll concentration by about 22 percent” during the prior two decades of increasing carbon dioxide concentrations. In a 2006 study published in Global Change Biology, scientists observed higher CO2 levels are correlated with better growth conditions for oceanic life. The highest CO2 concentrations produced “higher growth rates and biomass yields” than the lower CO2 conditions. Higher CO2 levels may well fuel “subsequent primary production, phytoplankton blooms, and sustaining oceanic food-webs,” the study concluded. Ocean Life ‘Surprisingly Resilient’ In a 2008 study published in Biogeosciences, scientists subjected marine organisms to varying concentrations of CO2, including abrupt changes of CO2 concentration. The ecosystems were “surprisingly resilient” to changes in atmospheric CO2, and “the ecosystem composition, bacterial and phytoplankton abundances and productivity, grazing rates and total grazer abundance and reproduction were not significantly affected by CO2-induced effects.” In a 2009 study published in Proceedings of the National Academy of Sciences, scientists reported, “Sea star growth and feeding rates increased with water temperature from 5ºC to 21ºC. A doubling of current [CO2] also increased growth rates both with and without a concurrent temperature increase from 12ºC to 15ºC.” Another False CO2 Scare “Far too many predictions of CO2-induced catastrophes are treated by alarmists as sure to occur, when real-world observations show these doomsday scenarios to be highly unlikely or even virtual impossibilities,” said Craig Idso, Ph.D., author of the 2009 book CO2, Global Warming and Coral Reefs. “The phenomenon of CO2-induced ocean acidification appears to be no different.

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#### Substantial restrictions on alternative fuels must affect 30%

Federal Register 95 [Federal Register Volume 60, Number 153 (Wednesday, August 9, 1995)], DEPARTMENT OF ENERGY Office of Energy Efficiency and Renewable Energy. www.gpo.gov/fdsys/pkg/FR-1995-08-09/html/95-19688.htm

One option DOE is considering is whether to define ``substantial portion'' to mean that at least 30 percent of the annual gross revenue of a covered person is derived from the sale of alternative fuels. This percentage of gross revenue appears to be an appropriate gross revenue threshold for two reasons. First, available information shows that major U.S. energy producing companies historically derive at least 30 percent of their annual gross revenue from the sale of alternative fuels.\1\ Major energy producers are typically consolidated or integrated companies that are involved in oil and gas exploration, oil and gas production or importing, petroleum refining and marketing, transportation of products, other energy operations (coal, nuclear and other energy) and nonenergy businesses (primarily chemicals). Second, this definition would exclude from the class of covered persons subject to the vehicle acquisition requirements those refiners who produce alternative fuels only as an incidental by-product of the refining process. Refiners are typically involved only in petroleum refining and marketing operations.

\1\ Sources used were: Energy Information Administration's Performance Profiles of Major Energy Producers, 1993 (DOE/EIA-0206); Moody's 1994 Industrial Manual; 1995 U.S.A. Oil Industry Directory; and Standard & Poor's 1994 Register--Corporations.

DOE also believes this gross revenue percentage comports with the terms of section 501(a)(2) of the Act, 42 U.S.C. 13251(a)(2). If the term ``substantial portion'' were defined to include a percentage of gross revenue derived from alternative fuels that was higher than 30 percent, the distinction in the Act between ``substantial portion'' which applies to covered petroleum producers and importers (section 501(a)(2)(C)) and ``principal business'' which applies to other alternative fuel providers (section 501(a)(2) (A) and (B)) would be rendered meaningless. As noted in the preamble to the notice of proposed rulemaking, alternative fuels constitute an entity's ``principal business'' if the entity derives a plurality of its gross revenue from sales of alternative fuels, and a plurality may be less than 50 percent. 60 FR 10978. Therefore, DOE believes that 30 percent of gross revenue from alternative fuels may constitute a reasonable basis for the definition of ``substantial portion.''

This possible interpretation of ``substantial portion'' also appears to be consistent with the underlying intent of Congress with regard to petroleum-related entities. That intent was to apply the alternative fueled vehicle acquisition requirements only to major energy producers and importers.\2\

#### Financial incentives require the disbursement of public funds directly linked to encouraging energy production

Webb, 93 – lecturer in the Faculty of Law at the University of Ottawa (Kernaghan, “Thumbs, Fingers, and Pushing on String: Legal Accountability in the Use of Federal Financial Incentives”, 31 Alta. L. Rev. 501 (1993) Hein Online) – **italics in the original**

In this paper, "financial incentives" are taken to mean disbursements 18 of public funds or contingent commitments to individuals and organizations, intended to encourage, support or induce certain behaviours in accordance with express public policy objectives. They take the form of grants, contributions, repayable contributions, loans, loan guarantees and insurance, subsidies, procurement contracts and tax expenditures.19 Needless to say, the ability of government to achieve desired behaviour may vary with the type of incentive in use: up-front disbursements of funds (such as with contributions and procurement contracts) may put government in a better position to dictate the terms upon which assistance is provided than contingent disbursements such as loan guarantees and insurance. In some cases, the incentive aspects of the funding come from the conditions attached to use of the monies.20 In others, the mere existence of a program providing financial assistance for a particular activity (eg. low interest loans for a nuclear power plant, or a pulp mill) may be taken as government approval of that activity, and in that sense, an incentive to encourage that type of activity has been created.21 Given the wide variety of incentive types, it will not be possible in a paper of this length to provide anything more than a cursory discussion of some of the main incentives used.22 And, needless to say, the comments made herein concerning accountability apply to differing degrees depending upon the type of incentive under consideration.¶ By limiting the definition of financial incentives to initiatives where *public funds are either* disbursed or contingently committed, a **large number** of regulatory programs with incentive *effects* which exist, but in which no money is forthcoming,23 are excluded from direct examination in this paper. Such programs might be referred to as *indirect* incentives. Through elimination of indirect incentives from the scope of discussion, thedefinition of the incentive instrument becomes both more manageable and more particular. Nevertheless, it is possible that much of the approach taken here may be usefully applied to these types of indirect incentives as well.24 Also excluded from discussion here are social assistance programs such as welfare and *ad hoc* industry bailout initiatives because such programs are not designed primarily to *encourage* behaviours in furtherance of specific public policy objectives. In effect, these programs are assistance, but they are not incentives.

## CP

### Streamlining CP Solves – Administrative Law

#### In particular---the CP preserves the fundamental basis of administrative law

Rana 9 – Shruti Rana, Assistant Professor, University of Maryland School of Law, 2009, “"STREAMLINING" THE RULE OF LAW: HOW THE DEPARTMENT OF JUSTICE IS UNDERMINING JUDICIAL REVIEW OF AGENCY ACTION,” University of Illinois Law Review, 2009 U. Ill. L. Rev. 829, p. lexis

As streamlined cases began to percolate up to the federal courts, the DOJ prevailed in the first constitutional and administrative law challenges to streamlining. n151 These developments have further diminished the procedural safeguards available to immigrants and increased the discretionary power of the Attorney General, "creating opportunities for discretionary executive action highly threatening to aliens' constitutional rights." n152 As discussed below, however, a key element in the federal courts' decisions rejecting the initial challenges to streamlining was the [\*857] continued availability of judicial review in the federal courts, which the courts felt would mitigate deficiencies in the administrative system.

First, the federal courts found that the affirmance without opinion procedure did not deprive aliens of a constitutional right to due process because, in essence, an "alien has no constitutional right to any administrative appeal at all." n153 Significantly, the availability of federal court review was critical to their reasoning - the courts found that due process rights were satisfied by the immigration system as a whole, since an opportunity for agency review, combined with the availability of federal appellate review, sufficiently protected any rights to appeal that aliens did have. n154 The courts also adhered to a presumption of administrative regularity, declining to overturn the streamlining regulations on due process grounds absent specific evidence that the Board was systemically flouting the streamlining rules and failing to actually substantively review appeals. n155

Petitioners also raised administrative law challenges to the streamlining provisions, claiming that the streamlining provisions violated the "fundamental rule of administrative law" that an administrative agency must provide a reasoned basis for its action under SEC v. Chenery Corp. n156 These arguments too were rejected by the courts, based on the presumed availability and utility of judicial review. The courts noted that the "terse [Board] summary affirmances authorized by the streamlining regulations do not themselves satisfy" Chenery's requirements. n157 Again looking at the appellate process as a whole, however, the courts found Chenery's requirements met. They found that meaningful review of deportation was not precluded by the "brevity of the [Board]'s summary affirmance decision" because the federal court would "continue to have the [immigration judge's] decision and the record upon which it was based available for [judicial] review." n158

Thus, the federal courts' willingness to uphold the streamlining reforms against constitutional and administrative challenges was based at least in part on the assumption that judicial review would continue to be both available and effective in the federal courts. And, indeed, judicial review has brought to light and corrected some of the agency's most [\*858] egregious excesses; for example, federal court decisions which singled out the worst offenders among the immigration judges resulted in the firing of at least one of these judges. n159 But the one remaining live challenge to the streamlining reforms has revealed both that the agency has not always followed its streamlining regulations, and that the streamlining regulations can impair or block judicial review.

## FDI Adv

### High Into China

#### Companies always claim that FDI will collapse as a tactic to influence policy---it’s never true

John Ross 12-24, columnist for China.org, 12/24/12, “Why FDI into China outperformed the world,” http://www.china.org.cn/opinion/2012-12/24/content\_27500147.htm

Given these clear trends why do media "scares" regarding FDI into China periodically appear from companies? Bluntly an important reason is simply that foreign investors are naturally looking for the best possible deal and claims that foreign investment will collapse is a tactic in order to try to extract concessions.

I had direct experience of this tactic in another context. During the time I ran London's economic policy, meetings with bankers habitually included their explanation that unless their taxes were reduced they would leave London. I understood it was their bargaining tactic. Taxes were not reduced, and during an eight year period London pulled ahead of even New York in rankings and media coverage as the world's number one financial center and city. Similarly for China, in the first half of 2012 frequent complaints appeared in the press from companies claiming that China's climate for FDI was severely deteriorating - just at the moment when data show China was the world's number 1 FDI destination!

As always, what people do is more important than what they say. The data show the huge inflow of FDI into China. The strong growth of China's economy and its rising technological level clearly explain that trend. Because China's economy will continue to grow strongly it will remain one of the world's top FDI targets.

### High Into China---2NC

#### FDI in China high—will continue through 2013

Bloomberg 3/18--China Foreign Investment Rebounds as Confidence Reutrns, 2013, [www.bloomberg.com/news/2013-03-19/china-s-foreign-investment-gains-for-first-time-in-nine-months.html](http://www.bloomberg.com/news/2013-03-19/china-s-foreign-investment-gains-for-first-time-in-nine-months.html)

China’s foreign direct investment rose for the first time in nine months in February, a sign confidence in the world’s second-biggest economy is improving amid optimism growth will keep rebounding.

Inbound investment gained 6.3 percent from a year earlier to $8.21 billion, the Ministry of Commerce said in a statement today in Beijing. Non-financial outbound investment in the first two months of the year surged 147 percent to $18.4 billion, exceeding inbound spending of $17.5 billion.

Newly appointed Premier Li Keqiang’s pledge to spread the wealth from the nation’s economic expansion and increase the number of middle-income citizens may support government efforts to rely more on domestic demand for expansion. Li vowed to open the economy to more market forces and strip power from the government to achieve 7.5 percent annual growth through 2020.

“China’s attractiveness remain for foreign investors, from its relatively-developed infrastructure to stable macroeconomic growth,” said Sun Junwei, a Beijing-based economist with HSBC Holdings Plc. “As the global economy recovers, China may continue to see a steady inflow of investments this year, helping the overall China recovery story.”

### AT: China Economy

#### No CCP lashout

Gilley 5 (Bruce, Professor of International Affairs @ New School University and Former Contributing Editor @ the Far Eastern Economic Review, “China’s Democratic Future,”)

More ominous as a piece of "last ditchism" would be an attack on Taiwan. U.S. officials and many overseas democrats believe that there is a significant chance of an attack on Taiwan if the CCP is embattled at home. Indeed, China's strategic journals make frequent reference to this contingency: "The need for military preparations against Taiwan is all the more pressing in light of China's growing social tensions and unstable factors which some people, including the U.S. might take advantage of under the flag of 'humanism' to paralyze the Chinese government," one wrote. Such a move would allow the government to impose martial law on the country as part of war preparations, making the crushing of protest easier. It would also offer the possibility, if successful, of CCP survival through enhanced nationalist legitimacy. Yet the risks, even to a dying regime, may be too high. An unprovoked attack on Taiwan would almost certainly bring the U.S. and its allies to the island's rescue. Those forces would not stop at Taiwan but might march on Beijing and oust the CCP, or attempt to do so through stiff sanctions, calling it a threat to regional and world peace. Such an attack might also face the opposition of the peoples of Fujian, who would be expected to provide logistical support and possibly bear the worst burdens of war. They, like much of coastal China, look to Taiwan for investment and culture and have a close affinity with the island. As a result, there are doubts about whether such a plan could be put into action. A failed war would prompt a Taiwan declaration of independence and a further backlash against the CCP at home, just as the May Fourth students of 1919 berated the Republican government for weakness in the face of foreign powers. Failed wars brought down authoritarian regimes in Greece and Portugal in 1974 and in Argentina in 1983. Even if CCP leaders wanted war, it is unlikely that the PLA would oblige. Top officers would see the disastrous implications of attacking Taiwan. Military caution would also guard against the even wilder scenario of the use ofnuclear weapons against Japan or the U. S. At the height of the Tiananmen protests it appears there was consideration given to the use of nuclear weapons in case the battle to suppress the protestors drew in outside Countries .41 But even then, the threats did not appear to gain even minimal support. In an atmosphere in which the military is thinking about its future, the resort to nuclear confrontation would not make sense.

### AT: China Trade War

#### China will back down at the last minute to avoid a trade war

**Arab Times 10** (15 October 2010, Retaliation In Reserve But China Seeks To Avoid Trade War With US, http://www.arabtimesonline.com/NewsDetails/tabid/96/smid/414/ArticleID/160765/t/Retaliation-in-reserve-but-China-seeks-to-avoid-trade-war-with-US/Default.aspx)

**Expect harsh words but no concrete retaliation** from Beijing if the United States labels China a currency manipulator in a report due later on Friday. **China is focused on trying to defuse tensions with the U**nited **S**tates by yielding some ground in a mini-burst of yuan appreciation and hopes that these efforts will still pay off, even if Washington brands it a manipulator. But should the United States ratchet up the pressure yet further by passing into law a bill that could penalise China, Beijing will not be so docile, Chinese analysts say.¶ “China is telling the United States that it is willing to help to resolve the problems. Things have not gotten out of hand yet and both sides still have some room to manoeuvre,” said Zhao Xijun, an economist at Renmin University in Beijing. President Barack Obama’s administration faces a deadline on Friday to decide whether to formally label China as a currency manipulator. A desire to look tough on “unfair” trade practices ahead of US congressional elections on Nov. 2, in which Obama’s fellow Democrats are battling to retain control of Congress, could tempt the administration to cite China for the first time in 16 years.¶ The Chinese commerce ministry made its feelings clear on Friday, warning the United States not to make a scapegoat of the yuan. Rhetoric aside, though, Beijing knows that the currency manipulator designation carries no specific consequences, apart from forcing Obama to seek consultations with China.¶ A different calculus would apply if the Senate approved a bill already passed by the House of Representatives that would allow the United States to slap duties on countries with undervalued currencies.¶ “It will be a very serious issue if the US legislation is approved by the Senate and signed by the president,” said Li Wei, a researcher under the commerce ministry.¶ For starters, China would challenge the US law at the World Trade Organisation — a case that some trade experts think China would be able to win.¶ Analysts say Beijing is also bracing for the law by considering possible retaliation, from imposing curbs on US businesses in China to the so-called nuclear option of dumping its holdings of US Treasuries.¶ Jump¶ But **Beijing is not going to jump the gun. It is first taking what it sees as pre-emptive steps to keep US anger from boiling over** — and to keep the legislation from becoming law.

## APA Advantage

#### The court will functionally nullify the aff’s precedent without overruling it – even when future cases are almost identical

Michael J. Gerhardt, Assoc. prof @ William and Wary, Nov. 1991, ‘The Role Of Precedent,’ 60 Geo. Wash. L. Rev. 68, p ln

Sometimes, however, the Court can destroy a precedent without overruling it by distinguishing precedents in ways that practically nullify them, thereby obscuring the differences between distinctions and implicit overrulings. 169 The Court's decisions on proportionality of punishment present such a quandary. In 1980, Rummel v. Estelle 170 held by a 5-4 vote that Texas' statutory requirement of mandatory life sentence for a defendant convicted of three felonies, consisting in that case of fraudulent practices cumulatively depriving people of property totaling less than two hundred dollars, did not violate the Eighth Amendment's prohibition against cruel and unusual punishment. But this holding cast doubt on the validity of the Court's prior practice of applying, beyond the death penalty context, the standard that the Eighth Amendment prohibited imposition of a sentence that is grossly disproportionate to the severity of the crime. 171 Subsequently, the Court by a 5-4 vote in Solem v. Helm 172 struck [\*109] down a punishment scheme almost identical to Rummel, except that Solem involved a mandatory life sentence without the possibility of parole. Justice Blackmun was the swing vote in Solem, but he did not write an opinion. Rather, Justice Powell's opinion for the Court in Solem was virtually identical to his Rummel dissent, prompting the dissenters in Solem to claim that Rummel was being overruled sub silentio. 173 In Harmelin v. Michigan, 174 the Court recently tried to resolve the confusion Rummel and Solem had generated. The five-member majority upheld Michigan's imposition of a mandatory life sentence without parole for drug possession but split over how to deal with Solem. While Chief Justice Rehnquist and Justice Scalia argued that Solem should be overruled because it embodied an unworkable standard and was inconsistent with prior decisions and original intent, 175 Justice Kennedy in a separate concurrence (joined by Justices Souter and O'Connor) refused the entreaty to overrule Solem and instead tried to reconcile Solem and Harmelin on the ground that the Eighth Amendment "forbids only extreme sentences that are *'grossly* disproportionate to the crime.'" 176

### Ext – No Spillover – Administrative Law

#### Administrative law is compartmentalized---no spillover

Heyman 94 – Michael G. Heyman, Professor of Law at the John Marshall Law School, Fall 1994, “Judicial Review of Discretionary Immigration Decisionmaking,” San Diego Law Review, 31 San Diego L. Rev. 861, p. lexis

Justice Breyer is right. Moreover, his observations reveal a fundamental, though often unnoticed, fact about administrative law. Because of the enormous variety of administrative agencies and because of the extraordinary diversity of their subject areas and kinds of institutional actions, it is simply silly to talk about an administrative law. And, if that is true, it is fanciful to believe that the Supreme Court can create any single standard to guide review courts. Professor Elliott captures this nicely in speaking of the "dis-integration" of administrative law. n37 Although it is comforting to think of an administrative law (though resisting the notion of its unitary quality can lead to untidiness), common reality principles dictate the recognition of the diffuseness of administrative law. Although the various areas of administrative law share many characteristics, it is more apt and more useful to candidly recognize that the overarching concept of a unitary administrative law appeals more to sentiment than reality. Instead, as Elliott suggests, "the center of gravity has shifted away from the broad, overarching generalizations of the administrative law of the 1960's toward more particularistic statutory and policy objectives." n38

### Ext – No Court Modeling – Administrative Law

#### Agreement among states on domestic administrative norms doesn’t cause the development of global administrative rules for institutions---disagreement is inevitable

Kingsbury et al 5 – Benedict Kingsbury, the Murry and Ida Becker Professor of Law and Director of the Institute for International Law and Justice at New York University, et al., Summer/Fall 2005, “The Emergence of Global Administrative Law,” Law and Contemporary Problems, 68 Law & Contemp. Prob. 15, p. lexis

Even if agreement were reached on identifying the formal sources of global administrative law, in terms of either traditional international law or a revived ius gentium approach, it is unlikely that a definitive and detailed body of rules and principles governing global administration could presently be formulated, even in relation to formal intergovernmental arrangements. Written intergovernmental instruments concerning such norms are scattered and relatively sparse, the practices of global administrative bodies are fragmented, and formal domestic norms vary considerably even if some convergence is occurring. Hybrid and private global regulatory arrangements are not directly subject to many of these rules and principles, and the status of the emerging administrative legal principles and practices in relation to such hybrid and private systems is largely undetermined. Moreover, under a ius gentium approach, disagreement is inevitable about whose practices to count and whose not to count for the emergence of a rule, and as to how much consistent practice might be necessary to generate a strong pull for adhesion. Should the adoption (or non-adoption) of accountability mechanisms in an international institution count more toward (or against) a new norm than adoption (or non-adoption) in an informal inter-governmental network or in a hybrid institution with private participation? Such questions of methodology require considerable future work.

# 1NR

## Politics

### O/V

### China

#### China is retaining massive amounts of talent---visa restrictions are keeping scientists in China and ensuring that students return---the plan reverses that

Peter N. Spotts 2009, Staff Writer for The Christian Science Monitor / May 1, 2009, For China, a reverse brain drain in science?, http://www.csmonitor.com/Innovation/Tech/2009/0501/for-china-a-reverse-brain-drain-in-science

China has hung a “Help Wanted” sign for scientists and engineers, dangling big-bucks salaries and sparkling new labs to lure expatriates back from the United States. Not long ago, the government aimed such efforts at snagging freshly minted PhDs or entry-level teachers and researchers at US universities. Now they’re going after full professors – folks with a research track record and a proven ability to run a lab. And they’re offering relocation allowances of $146,000 plus salaries reportedly as high as $250,000 a year to do it. China’s effort is the latest wrinkle in what some experts see as a decade-long loss for the US of foreign nationals – mainly from Asia – who are taking their strong, US-honed science and technology skills and heading home. The concern: At a time when science and technology are becoming ever more fundamental to economic progress, the US is losing many of its best and brightest. “The US government is asleep at the wheel here,” says Vivek Wadhwa, an adjunct professor at Duke University’s Pratt School of Engineering and a senior research associate at Harvard Law School. And it’s not clear the US is able to fill the vacuum – at least for now – as these people leave. American students seem to prefer careers in business, law, or medicine rather than in science, math, or engineering. Reliable statistics on the number of experienced foreign scientists and engineers going back home are scant. But a look at changes in the proportion of foreign students staying back in the US after earning their PhDs is revealing. The percentage of those who were still in the US two years after receiving their doctorates slipped from 71 percent between 2001 and 2003 to 66 percent in 2005, according to a study by Michael Finn at the Oak Ridge Institute for Science and Education in Oak Ridge, Tenn. The larger trends indicate that, “[W]hile foreign doctorate recipients stayed in increasing numbers during the 1980s and 1990s, this no longer seems to be the case,” Mr. Finn noted. Data on more-experienced scientists and engineers remain anecdotal. A physicist at the Oak Ridge National Laboratory says that some of his physicist friends are moving back, including a senior professor at a major US university who’d been in the US some 20 years. In the short term, if China can draw 1,000 ethnic Chinese professors from the US, “that’s a big number,” notes the physicist, who says he’s received calls from the Chinese government and asked not to be named. Several factors are driving the purported exodus – not least of which are prospects back home. India and China have posted electrifying economic growth rates in the past decade. Growth has slowed with the current global economic crisis, but still remains at enviable levels. Established professionals returning home are drawn by what they see as better career opportunities, a better quality of life, and the chance of being closer to family, according to a recently published survey by Mr. Wadhwa and his colleagues from Harvard and the Massachusetts Institute of Technology. One significant draw is the prospect of bringing up children in what are seen as better school systems back home, says David Heenan, a visiting professor at Georgetown University. Many parents “see a dumbing down of public education in the US, along with tattoos and pants below the hips,” he says. When they leave, they often take their kids with them – kids who are brighter than their parents, Mr. Heenan says. He notes that over the past 10 years, 60 to 65 percent of the top high school science research awards – what he dubs “junior Nobel prizes” – were children of first-generation immigrants or foreigners carrying H-1B worker visas. The impulse to return home is to be expected as economies overseas evolve. But some experts say they are concerned that with its current visa policies, the US is hurting itself. One key need, Wadhwa says, is to boost the number of H-1B visas made available and cut processing times. For all the angst, the Oak Ridge Institute’s Finn points out that as long as the sheer number of foreign students earning advanced degrees here continues to increase at a brisk pace, the US can still benefit from their intellectual horsepower. And the US is still top of the heap in scientific clout, says James Hosek, who tracks global science and engineering trends at the RAND Corporation in Santa Monica, Calif. US scientists still publish twice as many of the most influential research papers as their European counterparts, and four times as many as a group of countries he calls the Asian 10, which includes China and India.

### AT: Perm Doesn’t Shield

#### Obama empirically shifts blame to the court

Lubbock Avalanche-Journal, 4-16-2012, “Obama Scapegoats Others,” http://lubbockonline.com/interact/blog-post/may/2012-04-16/obama-scapegoats-others#.UVD0bBzFXzw

Rather than behaving like a leader and taking full responsibility for his own actions, President Barack Obama blames others. If the problem has been created by Radical Islam, Democrats, or other Socialists, Obama deflects the blame to others. For every problem, and for everything he wants to Socialize, Barack Obama picks a scapegoat, isolates them, and places all blame on them for the problem. Obama’s approach is to create hatred between groups of people, to divide, and to conquer. President George W. Bush has been Obama’s primary target. Obama blamed President Bush for liberating Iraq from Saddam Hussein, for the luxurious prison accommodations for terrorists at Guantanamo Bay, and for the housing bubble enabled by the Democrats and created by incompetent and corrupt management at Fannie Mae and Freddie Mac. Obama blames Jews and other rich persons for not paying enough taxes as the reason for the trillions of dollars of debt the Obama Administration has created. Obama does not take any blame for wasting taxpayer money on his $1 trillion Stimulus Plan, also known as The American Recovery and Reinvestment Act of 2009. Obama did not accept any blame for the billions of dollars of bad investments our Federal Government made in Solyndra and other failing Green Energy Companies. Obama instead blamed bankers and the rich people on Wall Street. Health care costs were not the fault of government, according to Obama. He blamed insurance companies and massively cut payments to physicians and hospitals. ObamaCare is simply massive amounts of additional government health care bureaucracy that is despised by a majority of the American people, most of who realize it is unconstitutional. After the Supreme Court heard the case against ObamaCare, Obama singled out the Supreme Court Justices and told them that they must support ObamaCare or the failure of health care would be their fault.

#### Even if his hands are tied---even for lower courts

Jonah Goldberg, 5-15-2009, “Photos or No Photos, It's Hard to Picture Obama Winning Over U.S. Enemies,” National Review, ln

But I'm taking a wait-and-see approach. Obama himself admits that he's merely hoping to delay the release of the photos. Meanwhile, Andrew McCarthy, a fellow at the National Review Institute and terrorism expert, makes a compelling case that Obama is trying to vote "present" once again. After all, if Obama truly wanted to block the release of these photos in order to protect American troops, he could issue an executive order taking them beyond the reach of the courts and the Freedom of Information Act. Instead, Obama's heading back to the courtroom to relitigate the matter. This way, if the courts reaffirm that the photos must be released, Obama can say, "My hands are tied." Even the Associated Press sees Obama's maneuver as a way to "pass the buck to the courts." We'll see what happens.

#### Emprically proven

Andrew C. McCarthy, 5-12-2009, “Poison Photo-Drop,” National Review, ln

The administration claims its hands are tied because of a ruling last September by the Second Circuit Court of Appeals in New York. That is untrue. The Second Circuit decision rejected the Defense Department's argument that disclosure was foreclosed by an exemption from the Freedom of Information Act (FOIA) for "law enforcement records" that "could reasonably be expected to endanger the life or physical safety of any individual." The three-judge panel reasoned that while the term "any individual" could be broadly construed, it should not cover a class of millions of people, such as all the members of our armed forces who might be jeopardized. To do so, the panel said, would nullify what it took to be the higher purpose of FOIA: to let Americans "know what their government is up to." This conclusion was far from indisputable. The country, after all, is currently involved in a defensive war authorized by Congress -- an imperative one might have thought took precedence over other legislative goals, such as those of the Freedom of Information Act. Given the stakes, the Bush administration sought a rehearing in the case before the full Second Circuit. By the time the court denied that application on March 12, however, the Obama administration had taken over. With Attorney General Eric Holder now at the helm, the Justice Department decided not to appeal the ruling to the Supreme Court. As a Pentagon spokesman told Stars and Stripes, "A decision was made by the Justice Department, in collaboration with us, that we should comply with the lower court's ruling." Obviously, that was a bad call. An administration that made its top priority the protection of our armed forces and the American people would have taken this case as far as it could -- which would very likely have pushed a final ruling well into next year. This administration's failure to do so underscores its anti-war predisposition -- as well as the deeply conflicted posture of the Holder Justice Department, many of whose top officials (including the attorney general himself) come from firms that have spent the last several years representing America's enemies in court. But contrary to what the administration would have Americans believe, the Second Circuit ruling is not the end of the story. FOIA also contains an exemption from disclosure for matters that are "specifically authorized under criteria established by an executive order to be kept secret in the interest of national defense or foreign policy." That exemption was not at issue in the Second Circuit case. Thus, if President Obama wanted to keep these photos from being exploited by America's enemies, all he would need to do is issue an executive order sealing them, based on a finding (which could be drawn from public statements he has already made) that their release would imperil the national defense -- as well as frustrate ongoing American foreign-policy efforts in Pakistan, Afghanistan, Iraq, the Palestinian territories, and elsewhere in the Muslim Middle East. Some will say that the president won't do that because he does not want to anger the anti-war Left, a significant part of his base. In truth, the president is the anti-war Left. He won't issue an executive order of this kind because he wants the photos revealed. It is important to understand that disclosure here is not an inevitable outcome. It is a choice. It doesn't have to happen unless Obama wants it to happen. The same can be said of the Democratic Congress. The Second Circuit ruling that Holder chose not to appeal did not say the Constitution mandated public dissemination of photos that will imperil Americans. It said FOIA required it. FOIA is just a statute. Congress writes the statutes and it can amend the statutes. Democrats control both houses, as well as the White House. If they wanted to bar disclosure of the photos, they could do that tomorrow. And with the overwhelming support they'd get from Republicans, they could do it with veto-proof margins. But legislative override would likely be irrelevant: Obama wouldn't dare veto a non-disclosure bill -- he wants disclosure, but only if he can snooker people into believing it wasn't his choice.

#### Courts shields politics

Mr. Ting et al 2009, Krikorian has headed the Center for Immigration Studies since 1995 AND Peter Nunez is a former United States Attorney, a former Assistant Secretary of the Treasury for Enforcement and is now both a lecturer in the Department of Political Science and International Relations at the University of San Diego and Chairman of the Board of Directors of at the Center for Immigration Studies AND Jon Freere is legal policy analyst at the Center for Immigration Studies, AND Professor Ting has been a fellow of the Center and Professor of Law at the Temple University Beasley School of Law in Philadelphia, “Panel: Should Judges Set Immigration Policy?” June 2009 http://www.cis.org/Transcript/PlenaryPowerPanel

The discussion also assumes that the political branches, the Congress and the executive, actually want to retain plenary powers over immigration. Again, it’s not entirely clear that they do. You know, from the point of view of Congress, it might be a good thing to let this hot potato be resolved by the judges rather than a member of Congress who – as a member once told me that there is a popular notion out there that people run for Congress so that they can vote on the tough issues of the day and have input on the tough issues of the day. And this former member suggested that’s actually not the case, that people **don’t really want to vote on the tough issues** of the day. They’d much rather vote on non-controversial stuff like naming post offices and Future Farmers of America Week and things like that rather than the **tough issues** which are going to force them to make a decision and alienate some of their constituents. And, you know, just to wrap up I’d note that Jon, near the end of his paper, says if the political branches want to reassert their authority in the regulation of immigration, they will have to take the initiative by drafting focused legislation and vigorously enforcing existing immigration laws. That’s a big if, all right? If they want to do that, that’s what they’ve got to do. And at the end Jon says, “Congress must make sure that immigration laws are clear and decisive as to the issue of authority, and the executive branch must vigorously defend its regulation and enforcement of those laws. Such sentiment must be regularly expressed by the political leadership within the first two branches of government in order to put a halt to judicial branch encroachment over immigration policy.” Again, it’s not entirely clear to me that the political branches want to halt judicial encroachment over immigration policy. So those are important contextual issues that lie behind what Jon is presenting to us.

### AT: No Internal Link

#### India econ stabilizing now---US has visas caps which means no more people from India can come to the US, but immigration opens the floodgates

#### US is losing the global race for talent --- CIR’s key

Orrenius 11 Pia is an Economist and Research Officer @ the Federal Reserve Bank of Dallas. “Immigration Reform and U.S. Economic Performance,” March 14, http://www.cfr.org/immigration/immigration-reform-us-economic-performance/p24358

The U.S. immigration system, meanwhile, has not kept up. Piecemeal fixes have turned current law into a web of outmoded, contradictory, and inefficient quotas, rules, and regulations. For example, the number of high-skilled immigrant workers admitted on temporary visas has doubled since 1996, but the number of employment-based permanent residence visas or green cards has remained the same. As a result, there are over one million high-skilled immigrants waiting for employment-based green cards in a queue that will take more than a decade to clear.¶ Of the 1.1 million green cards issued in a typical year, the United States awards 85 percent to family and humanitarian immigrants and only 15 percent to employment-based, highly skilled immigrants. Of these 15 percent, half go to the workers' spouses and children. Among OECD (Organization for Economic Co-operation and Development) nations, no other nation puts such a low priority on work-based immigration.¶ It's not known how many high-skilled immigrants are attracted by our economy and society only to be turned away by the broken immigration system, but the United States risks falling behind in the global race for talent if immigration laws are not reformed.

#### No Indian Brain drain---they’re luring workers back

Parag Khanna 8, The Indian Diaspora; The worldwide rise of Bollystan, Esquire, 10-1-08,

All of this may have happened by chance: the combination of American openness to industrious immigrants, Indians' preference for social integration, globalization and outsourcing to a nerdy English-speaking country, and America's search for new strategic allies to keep China in check. However it came to be, Indians continue to migrate and maneuver with ever more sophistication and savvy, creating win-win situations for themselves and their hosts. Yet the battle for global talent that is the main feature of international business today will play itself out on the diasporic plane more than ever. China and India are waking up to the loss of their best minds and are lobbying to turn the brain drain into a brain exchange, with India luring back several thousand Indian-American professionals a year into tidy gated communities outside Bangalore. India is also fumbling toward some form of dual citizenship, providing tax incentives and other carrots to bring in more diaspora dollars.

### AT: PC Not Key

#### Obama’s pressuring Congress to approve CIR --- key priority

Morgan Whitaker 3-25, MSNBC, “Obama calls on Congress to stop avoiding immigration issue,” http://tv.msnbc.com/2013/03/25/obama-calls-on-congress-to-stop-avoiding-immigration-issue/

President Obama intensified his call for Congress to take action on immigration reform during remarks at a naturalization ceremony at the White House Monday.¶ Obama, speaking after 28 men and women immigrants swore their oath of allegiance to the United States, pressured Congress to continue bipartisan talks and resume debate on immigration reform in April. ”If we want to keep attracting the best and the brightest then we need to do a better job of welcoming them,” he said.¶ “We’ve known for years that our immigration system is broken… and after avoiding the problem for years, the time has come to fix it for once and for all,” he said. “The time has come for comprehensive immigration reform.”¶ He said he expects his colleagues on Capitol Hill to “work up the political courage” and begin debate on a bill next month.¶ The president, who has made immigration reform a priority for his second term, acknowledged that it will take work.”We are making progress, but we’ve got to finish the job.” He outlined his own priorities, including a “responsible pathway to earned citizenship,” an issue that has been one of the most contentious in the past. Some Republicans, though, have voiced support for such a pathway, including most recently Kentucky Senator Rand Paul, who voiced his support this past week.¶ But it appears that details surrounding the new guest worker program have slowed negotiations between the so-called “gang of eight.” According to recent reports, those eight U.S. Senators cannot come to an agreement over how to pay guest workers under a new proposed category that would allow some low-skilled immigrant workers to remain in the country legally. Labor and business groups are at odds over whether these workers deserve American worker wages, or could be paid less.¶ This issue could keep Congress from making the president’s April deadline, according to the Los Angeles Times, which reported that Senate Judiciary Committee Chairman Patrick Leahy said the two-week recess will prevent the bipartisan coalition from finishing a bill until closer to May.¶ The president plans to keep up the pressure, mobilizing his new grassroots group, Organizing for America, to put increased attention on the issue this week with an aggressive online campaign highlighting the personal stories of immigrants. As The New York Times first reported, OFA has collected 7,000 stories from supporters, including stories of illegal immigration, that they plan to distribute over social media this week.

Obama’s spe

### AT: UQ O/W

#### From a blog---says that immigration is in the long-term interests of the Republicans, that might be true, but they will disagree on things like border security, visas, etc… that will threaten the WHOLE BILL---obama PC is key to force a compromise---otherwise there’s no bill---that’s Globe & Mail

#### PC’s key to immigration reform

Alvaro Huerta 3-15, a UCLA visiting scholar at the Chicano Studies Research Center, “We need real immigration reform,” Bradenton Herald, 3-15-13, <http://www.bradenton.com/2013/03/15/4437160/we-need-real-immigration-reform.html#storylink=cpy>

The time has arrived for President Obama and Congress to take immediate action on comprehensive, humane immigration reform.¶ By immigration reform, I am not talking about militarizing our borders, empowering employers to behave as immigration enforcement officials and imposing fines and back taxes on aspiring citizens. Instead, I am talking about allowing labor to cross our borders as transnational capital does, preventing employers from exploiting immigrant laborers and lowering application costs for future citizens.¶ Too often, when Democratic and Republican leaders speak about comprehensive immigration reform, their message mainly centers on enforcement-dominated policies. For instance, while Obama spoke eloquently about immigrants in his second inaugural address, his administration has deported more immigrants than that of his predecessor, President Bush, during the same time period.¶ As the Obama administration continues to separate hardworking immigrants from their families and friends, I find it hard to believe the president when he says, "Our journey is not complete until we find a better way to welcome the striving, hopeful immigrants who still see America as a land of opportunity."¶ I don't find the deportation of more than 1.6 million undocumented immigrants during Obama's first term in office as "welcoming."¶ Moreover, given that Republican leaders remain hostile and pay only lip service to Latinos and immigrants in this country, it's incumbent on Obama and Democratic leaders to invest the necessary political capital for the benefit of the estimated 11 undocumented immigrants in this country.

#### Capital is key to comprehensive bill.

Anniston Star, 3-27 [Editorial Board, "On the offensive: Obama is wise to start anew the push for immigration reform," 3-27-13, annistonstar.com/view/full\_story/22088295/article-On-the-offensive--Obama-is-wise-to-start-anew-the-push-for-immigration-reform?instance=opinion\_lead, accessed 3-28-13]

The point: President Obama didn’t fulfill his promise of securing sweeping immigration-reform policies during his first term. Now in his second, Obama is beginning a new campaign to urge legislators — particularly Republicans — to find a bipartisan compromise that (a.) **isn’t watered down** and (b.) is effective. It’s a lot to ask. Nevertheless, Obama is wise to go on this offensive. The need, as always, is great. An Associated Press report this week points out that the president is working behind the scenes in order to **keep Republicans at the** negotiating **table** between now and Congress’ April 8 return from spring break. The key is the Senate working group, the Gang of Eight, that is putting together a bipartisan plan the White House has yet to see. “We’ll reserve

#### Political capital is still key---Obama’s leading negotiations with the GOP

AFP 2/19 “Obama courts key Republicans on immigration reform,” 2013, Factiva

US President Barack Obama on Tuesday called key Senate Republicans, with whom he is at odds on other many top issues, to discuss the prospects for bipartisan immigration reform.¶ Obama placed the calls following complaints he had not done enough to reach across the political aisle on the key issue, and after the leak of partial White House immigration plans angered Republican players in the debate.¶ The White House said that Obama had spoken to Republican Senators Lindsey Graham, John McCain and Marco Rubio, to discuss a "shared commitment to bipartisan, commonsense immigration reform."¶ "The President reiterated that he remains supportive of the effort underway in Congress, and that he hopes that they can produce a bill as soon as possible that reflects shared core principles on reform."¶ "He thanked the senators for their leadership, and made clear that he and his staff look forward to continuing to work together with their teams to achieve needed reform."¶ Obama's aides said he also wanted to speak to Republican Senator Jeff Flake, of Arizona, but was unable to reach him because he was traveling.¶ Cuban-American Rubio, a rising star of the Republican Party, is emerging as a key player in the immigration debate, and he warned that leaked versions of White House plans obtained by USA Today would be "dead on arrival."¶ Eight senators -- four of Obama's Democratic allies and four Republicans -- unveiled a joint plan last month aiming to provide a route to legal status for illegal immigrants living on US soil.¶ Under the White House fallback plan, illegal immigrants would have to wait eight years until applying for legal permanent residency, and, in practice, at least 13 years before they could apply for US citizenship.¶ Advocates of immigration reform say that time period is too long -- while conservative opponents still rail against "amnesty" for illegal immigrants, reflecting the toxicity of much of the immigration reform debate.¶ Obama had been sharply at odds with Graham and McCain for their role in delaying the confirmation of his pick for defense secretary Chuck Hagel.¶ His call to Rubio, who is traveling in the Middle East, came after the Florida senator's office had said that no one in his office had met White House officials to discuss immigration.¶ The White House had maintained that its staffers had met congressional officials working on immigration reform.¶ Obama's move may be seen as an effort to prevent partisan wrangling from derailing hopes of immigration reform, as it did under the presidency of his predecessor George W. Bush.¶ Immigration reform may be Obama's best chance for a genuine legacy-boosting success in his second term.¶ Senior Republicans, meanwhile, are wary of entering another election hampered by the mistrust of Hispanic voters, a growing slice of the electorate for whom immigration reform is a key issue.¶ A key sticking point in the debate is the Republican demand that the process of offering legal status to illegals should only start once the US southern border with Mexico has been certified as secure.¶ Obama has so far declined to make that linkage.

## \*\*\*Remittances Bad --- African Terrorism

### Remittances Bad---African Terrorism---1NC [1/2]

#### Remittances fuel African terrorism and instability---that also collapses their economies

Juliet U. Elu 11 Department of Economics, Morehouse College, AND Gregory N. Price Department of Economics, Morehouse College “Do REMITTANCES FINANCE TERRORISM IN SUB-SAHARAN AFRICA?” Feb 23 http://ssrn.com/abstract=1768140

Remittances have been recognized as an important determinant of economic growth for Sub-Saharan African economies as they can finance other determinants that constitute drivers of growth. To the extent that remittances finance terrorism, they can also inhibit economic growth as terrorism can constrain important drivers of growth such as investment and consumption expenditures. In this paper, we appeal to a theory of ratio-nal terrorism and consider whether remittances to Sub-Saharan Africa finance terrorism. We estimate the parameters of a static and dynamic terrorism incident supply function with maximum likelihood and Generalized Estimating Equation count data estimators for Sub-Saharan Africa between 1970 and 2006. Our parameter estimates suggest that for Sub-Saharan Africa, remittances are a source of finance for terrorism. We find that approximately one terrorism incident is financed in Sub-Saharan Africa for remittance inflows that range between approximately one quarter of a million dollars and one million dollars.

In November 2001, approximately one month after the terrorist attacks on the World Trade Center and Pentagon in the USA, the largest Somali remittance transfer company, Al-Barakaat, was shut down by the US Treasury Department because of its alleged links with terrorist organizations such as al-Qaeda (Deans, Lonnqvist and Sen, 2006). Such an intervention was motivated by the possibility that informal remittance inflows to Sub-Saharan Africa were part of the global financial infrastructure that enables the financing of terrorism. Indeed, Sub-Saharan African countries had committed to monitoring and policing money laundering through remittance inflows as part of a comprehensive counter-terrorism policy prior to the September 11, 2001 terrorist attacks. The Organization of African Unity—a consortium that includes 53 Sub-Saharan African countries—established a counter-terrorism policy framework under the 1999 Algiers Convention on the Prevention and Combating of Terrorism (Atta-Asamoah, 2008), of which tougher money-laundering provisions were added in 2002 (Sturman; 2002).

#### Causes nuclear terrorism

THOMAS DEMPSEY 6 is the Director of African Studies in the Department of National Security and Strategy at the U.S. Army War College, COUNTERTERRORISM IN AFRICAN FAILED STATES:CHALLENGES AND POTENTIAL SOLUTIONS, April 06 Strategic Studies Institute, lexis

Failed states—states in which government authority has collapsed, violence has become endemic, and functional governance has ceased—have emerged in the period since the end of the Cold War as one of the most difficult challenges confronting the international community, especially in the region of Sub-Saharan Africa. Transnational terrorist groups use the chaos of failed states to shield themselves from effective counterterrorism efforts by the international community. The potential nexus of failed state-based terrorism and terrorists’ access to Weapons of Mass Destruction (WMD), especially nuclear WMD, escalates the risk that such groups pose to the United States and to its allies in the Global War on Terror.

#### Extinction

Dennis Ray Morgan 9, Hankuk University of Foreign Studies, Yongin Campus - South Korea, Futures, Volume 41, Issue 10, December 2009, Pages 683-693

Years later, in 1982, at the height of the Cold War, Jonathon Schell, in a very stark and horrific portrait, depicted sweeping, bleak global scenarios of total nuclear destruction. Schell’s work, The Fate of the Earth [8] represents one of the gravest warnings to humankind ever given. The possibility of complete annihilation of humankind is not out of the question as long as these death bombs exist as symbols of national power. As Schell relates, the power of destruction is now not just thousands of times as that of Hiroshima and Nagasaki; now it stands at more than one and a half million times as powerful, more than fifty times enough to wipe out all of human civilization and much of the rest of life along with it [8]. In Crucial Questions about the Future, Allen Tough cites that Schell’s monumental work, which ‘‘eradicated the ignorance and denial in many of us,’’ was confirmed by ‘‘subsequent scientific work on nuclear winter and other possible effects: humans really could be completely devastated. Our human species really could become extinct.’’ [9]. Tough estimated the chance of human self-destruction due to nuclear war as one in ten. He comments that few daredevils or high rollers would take such a risk with so much at stake, and yet ‘‘human civilization is remarkably casual about its high risk of dying out completely if it continues on its present path for another 40 years’’ [9]. What a precarious foundation of power the world rests upon. The basis of much of the military power in the developed world is nuclear. It is the reigning symbol of global power, the basis, – albeit, unspoken or else barely whispered – by which powerful countries subtly assert aggressive intentions and ambitions for hegemony, though masked by ‘‘diplomacy’’ and ‘‘negotiations,’’ and yet this basis is not as stable as most believe it to be. In a remarkable website on nuclear war, Carol Moore asks the question ‘‘Is Nuclear War Inevitable??’’ [10].4 In Section 1, Moore points out what most terrorists obviously already know about the nuclear tensions between powerful countries. No doubt, they’ve figured out that the best way to escalate these tensions into nuclear war is to set off a nuclear exchange. As Moore points out, all that militant terrorists would have to do is get their hands on one small nuclear bomb and explode it on either Moscow or Israel. Because of the Russian ‘‘dead hand’’ system, ‘‘where regional nuclear commanders would be given full powers should Moscow be destroyed,’’ it is likely that any attack would be blamed on the United States’’ [10]. Israeli leaders and Zionist supporters have, likewise, stated for years that if Israel were to suffer a nuclear attack, whether from terrorists or a nation state, it would retaliate with the suicidal ‘‘Samson option’’

### Remittances Bad---African Terrorism---1NC [2/2]

against all major Muslim cities in the Middle East. Furthermore, the Israeli Samson option would also include attacks on Russia and even ‘‘anti-Semitic’’ European cities [10]. In that case, of course, Russia would retaliate, and the U.S. would then retaliate against Russia. China would probably be involved as well, as thousands, if not tens of thousands, of nuclear warheads, many of them much more powerful than those used at Hiroshima and Nagasaki, would rain upon most of the major cities in the Northern Hemisphere. Afterwards, for years to come, massive radioactive clouds would drift throughout the Earth in the nuclear fallout, bringing death or else radiation disease that would be genetically transmitted to future generations in a nuclear winter that could last as long as a 100 years, taking a savage toll upon the environment and fragile ecosphere as well. And what many people fail to realize is what a precarious, hair-trigger basis the nuclear web rests on. Any accident, mistaken communication, false signal or ‘‘lone wolf’ act of sabotage or treason could, in a matter of a few minutes, unleash the use of nuclear weapons, and once a weapon is used, then the likelihood of a rapid escalation of nuclear attacks is quite high while the likelihood of a limited nuclear war is actually less probable since each country would act under the ‘‘use them or lose them’’ strategy and psychology; restraint by one power would be interpreted as a weakness by the other, which could be exploited as a window of opportunity to ‘‘win’’ the war. In otherwords, once Pandora’s Box is opened, it will spread quickly, as it will be the signal for permission for anyone to use them. Moore compares swift nuclear escalation to a room full of people embarrassed to cough. Once one does, however, ‘‘everyone else feels free to do so. The bottom line is that as long as large nation states use internal and external war to keep their disparate factions glued together and to satisfy elites’ needs for power and plunder, these nations will attempt to obtain, keep, and inevitably use nuclear weapons. And as long as large nations oppress groups who seek selfdetermination, some of those groups will look for any means to fight their oppressors’’ [10]. In other words, as long as war and aggression are backed up by the implicit threat of nuclear arms, it is only a matter of time before the escalation of violent conflict leads to the actual use of nuclear weapons, and once even just one is used, it is very likely thatmany, if not all, will be used, leading to horrific scenarios of global death and the destruction of much of human civilization while condemning a mutant human remnant, if there is such a remnant, to a life of unimaginable misery and suffering in a nuclear winter.