## 1NC

### 1NC --- Kritik

#### Blackness exists as a metaaporia that interrogates the cyclical ways violence onto blackness is morphed and ultimately appropriated. The 1AC relies on a redemptive narrative of humanity that is fundamentally inaccessible for blacks. Their project is ultimately meant to hide and recreate moments of black death for the sake of redeeming Human life.

Wilderson 20 [Frank B. Wilderson, professor of Drama and African American studies at the University of California, Irvine, “Afropessimism”, page 13-17, JMH]

For most critical theorists writing after 1968, the word aporia is used to designate a contradiction in a text or theoretical undertaking. For example, Jacques Derrida suggests an aporia indicates “a point of undecidability, which locates the site at which the text most obviously undermines its own rhetorical structure, dismantles, or deconstructs itself.” But when I say that Black people embody a meta-aporia for political thought and action, the addition of the prefix meta- goes beyond what Derrida and the poststructuralists meant—it raises the level of abstraction and, in so doing, raises the stakes. In epistemology, a branch of philosophy concerned with the theory of knowledge, the prefix meta- is used to mean about (its own category). Metadata, for example, are data about data (who has produced them, when, what format the data are in, and so on). In linguistics, a grammar is considered as being expressed in a metalanguage, language operating on a higher level of abstraction to describe properties of the plain language (and not itself). Metadiscussion is a discussion about discussion (not any one particular topic of discussion but discussion itself). In computer science, a theoretical software engineer might be engaged in the pursuit of metaprogramming (i.e., writing programs that manipulate programs). **Afropessimism**, then, **is** less of a theory and more of **a metatheory: a critical project that, by deploying Blackness as a lens of interpretation, interrogates the unspoken, assumptive logic of Marxism, postcolonialism, psychoanalysis, and feminism through rigorous theoretical consideration of their properties and assumptive logic, such as their foundations, methods, form, and utility; and it does so, again, on a higher level of abstraction than the discourse and methods of the theories it interrogates.** Again, Afropessimism is, in the main, more of a metatheory than a theory. **It is pessimistic about the claims theories of liberation make when these theories try to explain Black suffering or when they analogize Black suffering with the suffering of other oppressed beings. It does this by unearthing and exposing the meta-aporias, strewn like land mines in what these theories of so-called universal liberation hold to be true.** If, as Afropessimism argues, Blacks are not Human subjects, but are instead structurally inert props, implements for the execution of White and non-Black fantasies and sadomasochistic pleasures, then this also means that, at a higher level of abstraction, the claims of universal humanity that the above theories all subscribe to are ~~hobbled~~ [constricted] by a meta-aporia: a contradiction that manifests whenever one looks seriously at the structure of Black suffering in comparison to the presumed universal structure of all sentient beings. Again, Black people embody a meta-aporia for political thought and action— Black people are the wrench in the works. Blacks do not function as political subjects; instead, our flesh and energies are instrumentalized for postcolonial, immigrant, feminist, LGBTQ, transgender, and workers’ agendas. These so-called **allies are never authorized by Black agendas predicated on Black ethical dilemmas. A Black radical agenda is terrifying to most people on the Left**—think Bernie Sanders—**because it emanates from a condition of suffering for which there is no imaginable strategy for redress—no narrative of social, political, or national redemption**. This crisis, no, this catastrophe, this realization that I am a sentient being who can’t use words like “being” or “person” to describe myself without the scare quotes and the threat of raised eyebrows from anyone within earshot, was crippling. I was convinced that if a story of Palestinian redemption could be told . . . its denouement would culminate in the return of the land, a spatial, cartographic redemption; and if a story of class redemption could be told . . . its denouement would culminate in the restoration of the working day so that one stopped working when surplus values were relegated to the dustbin of history, a temporal redemption; in other words, since postcolonial and working-class redemption were possible, then there must be a story to be told through which one could redeem the time and place of Black subjugation. I was wrong. **I had not dug deep enough to see that though Blacks suffer the time and space subjugation of cartographic deracination and the hydraulics of the capitalist working day, we also suffer as the hosts of Human parasites, though they themselves might be the hosts of parasitic capital and colonialism**. I had looked to theory (first as a creative writer, and only much later as a critical theorist) to help me find/create the story of Black liberation—Black political redemption. What I found instead was that **redemption, as a narrative mode, was a parasite that fed upon me for its coherence. Everything meaningful in my life had been housed under the umbrellas called “critical theory” and “radical politics.”** The parasites had been capital, colonialism, patriarchy, homophobia. And now it was clear that I had missed the boat. My parasites were Humans, all Humans—the haves as well as the have-nots. If critical theory and radical politics are to rid themselves of the parasitism that they heretofore have had in common with radical and progressive movements on the Left, that is, if we are to engage, rather than disavow, **the difference between Humans who suffer through an “economy of disposability” and Blacks who suffer by way of “social death,” then we must come to grips with how the redemption of the subaltern** (a narrative, for example, of Palestinian plenitude, loss, and restoration) **is made possible by the (re)instantiation of a regime of violence that bars Black people from the narrative of redemption**. This requires (a) an understanding of the difference between loss and absence, and (b) an understanding of how the narrative of subaltern loss stands on the rubble of Black absence. Sameer and I didn’t share a universal, postcolonial grammar of suffering. Sameer’s loss is tangible, land. The paradigm of his dispossession elaborates capitalism and the colony. When it is not tangible it is at least coherent, as in the loss of labor power. But how does one describe the loss that makes the world if all that can be said of loss is locked within the world? **How does one narrate the loss of loss? What is the “difference between . . . something to save . . . [and nothing] to lose”?** Sameer forced me to face the depth of my isolation in ways I had wanted to avoid; a deep pit from which neither postcolonial theory, nor Marxism, nor a gender politics of unflinching feminism could rescue me. Why is anti-Black violence not a form of racist hatred but the genome of Human renewal; a therapeutic balm that the Human race needs to know and heal itself? Why must the world reproduce this violence, this social death, so that social life can regenerate Humans and prevent them from suffering the catastrophe of psychic incoherence— absence? Why must the world find its nourishment in Black flesh?

#### The politics of “care”, whether institutional or individual, are coopted by the state not to reduce harm, but increase it---their moral calls for helping others only mask the articulation of blackness as a threat to the smooth functioning of a white supremacist government

Sharron, 19 - Kelly Christina Sharron, Doctorate in Philosophy from the University of Arizona, 2019(“THE CARING STATE: THE POLITICS OF CONTRADICTION IN FERGUSON, MISSOURI,” Proquest Dissertations Library, bam)

Introduction: The Politics of Care: Feminism, Feminist Theory, and the State

This dissertation emerged out of an ongoing interest in state power, particularly as it relates to the carceral state. The conversation and events that overwhelmed these topics, for me, have been police violence. The shooting of Michael Brown, an unarmed black teenager, by white officer Darren Wilson in Ferguson, Missouri became a national story, and framed what would become ongoing attention to police brutality. Moreover, the degree to which the police force and National Guard responded with military equipment, weapons, tanks, and riot gear sparked debate about what role police forces play in communities, if they have overstepped their authority, and the legitimacy of protest. While these are all important and worthy contributions, what seemed more troubling was the way that people readily accepted the solutions offered by the state. These solutions, and the rhetoric surrounding them, are what I have framed as “care.” They included things like community policing, accountability, and soft reforms like body cameras. As more unarmed people of color were killed by the police, it became immediately clear that the solutions offered were not enough to upend the problem, policing itself.

One of the most popular images to circulate after the Ferguson grand jury decision is one of a young black boy in an embrace with a white cop during a protest taking place in Portland, Oregon. This photo was shared over 400,000 times on Facebook, and marked a desire for reconciliation without meaningful change. The police officer appears to be comforting the boy, who is sobbing; it marks a tender moment between two differently affected groups, as though this could have been Wilson and Brown under different circumstances, if only they would have exhibited more care. In telling the story behind the photo, the pictured police Sgt. Bret Barnum approached the boy, Devonte Hart, who was holding a “free hugs” sign, “not as a police officer but just as a human being” (Grinberg 2014). Barnum continued, “it really solidified what all of us do this work for – this job for – to create good will” (Grinberg 2014). This isn’t the only “feel good” photo to circulate, there were other hugs, high fives, sharing food, etc. that all indicated this sense of peace and racial harmony. This sentimental moment between officer and person of color demonstrates a will and desire to care. These moments of sentimentality, as embodied in the state, are at the center of this dissertation. They foster the feeling that policing could be about good will, and that the state doesn’t necessarily intend to commit harm.

It is not just that the caring solutions and rhetoric offered by the state were ineffectual. These responses actually produce more harm. What on face appears to be contradictory aims and effects of state power, violence and care, are actually integral to each other. The reforms and sympathetic rhetoric offered by the state do not contribute to less policing, but rather extend policing. Rather than take on the serious critiques of policing, these reforms are offered as a way to harmoniously and surreptitiously continue and exacerbate the violent effects of policing. As it became clear in the years that followed, reforms failed to substantially affect police brutality, and in fact helped to short circuit some of the critiques about policing, all the while making the state appear kinder and gentler.

This dissertation investigates this range of political effects, from the violence and militarization to the use and popularization of care as a technique of re-legitimization and extension of state power. Brown’s death was not the first killing of an unarmed black person by a white officer to rise to public attention, but it did garner a particular resonance among activists, political officials, and the media. This dissertation takes stake in two particular moments: the death of Brown and the grand jury’s decision to not indict Wilson. These moments sparked larger questions about the function of the criminal justice system and who is afforded legal protections. The criticism of the grand jury decision and Ferguson policing practices culminated in a Department of Justice (DOJ) investigation that found racial injustices and disproportionately distributed revenueraising practices. In looking to care as a state technique, this dissertation examines media, state, and activist discourses surrounding the death of Brown, as well as the historical and political context of St. Louis. Using a cultural studies framework, I examine these discourses and archives asking: What are the particularities of Ferguson that catalyzed such a response? What is the context in which racist policing practices emerge? How does the political system admit injustice while also maintaining the fiction of colorblind democracy? This dissertation reveals the nuances and contradictions of state practice with respect to history, space, militarization, and justice. Finally, I consider the practices of social movements and the possibilities of incorporating care into more revolutionary frameworks amidst state-based care.

I situate my discussion of the shooting of Michael Brown in four fields of study: feminist theory, state theory, cultural studies, and political geography. I deploy feminist theory to understand how difference is made meaningful and contributes to disparate life outcomes; state theory to contextualize this iteration of statecraft with regard to care and violence; cultural studies to read and interpret language, discourse, and texts that are made meaningful through power; and political geography to discuss the impact of processes of spatialization and differentiation on policing practices. As I argue, in the contemporary U.S. landscape, state power relies on violence alongside inclusion, sympathy, and recourse. While Brown was shot in an act of violence, and the Grand Jury resulted in a legal violence, the subsequent responses of the Attorney General, President Obama, and the Department of Justice illustrate the ways in which the violence of the state is reoriented into rhetoric of justice, sympathy, and impending equality. Both violence and the more insidious operations of power are necessary to the functions of the state.

Brown’s death has a continued resonance in the ongoing attention to police violence, yet it was not the first, last, or most extraordinary. While Ferguson lies at the heart of this dissertation, I explore the political, social, and cultural milieu in which Ferguson is situated and articulated. Amidst a background of ongoing police militarization, dominant frameworks seek to maintain that blackness, as a constellation of ideas projected on and embodied in particular people, is the threat to American peace and justice rather than the extra-/illegal actions of the police. This dissertation seeks not only to unravel this claim, and demonstrate the racist ideologies that guide police action under even its most benevolent forms, but also to demonstrate the racist, gendered, sexualized, and classed underpinnings of the most idyllic of terms and aspirations from the state, and the ways in which these contradictions are actually critical to its function. The events in Ferguson exceed the geographic and political stakes of the event itself. Ferguson is instructive to the larger context of police and state power. Brown’s death is not an isolated instance, and protest and social movements do not respond to Brown alone. Rather, Brown’s death points to the larger milieu of racist policing practices—past, present, and future—taking place in Ferguson and across the United States over generations. Stuart Hall et. al's Policing the Crisis (1978; 2013) provides a framework and model to think about the significance of a singular event (in their case, the Handsworth mugging) and its relationship to the social milieu. Of their method, they say: Our concern was to use such a starting point – concrete events, practices, relationships and cultures – to approach the 'structural configurations that cannot be reduced to the interactions and practices through which they express themselves'... we sought to emulate the ethnographic imagination but also to move beyond the focus on the here and now of everyday 'interactions and practices' by locating them in the histories taking place behind all our backs (Hall et al. 1978; 2013, xi).

The text shuttles between the historical context, the Handsworth mugging, the symbol of the mugger, the state, the media, and the structuring logics of law and order. I follow the method put forth in Policing the Crisis to describe the events in Ferguson, but also their larger histories, contexts, representations, and effects. I also describe the expressions of care and their contextualization amidst violent rhetoric and effects.

Care

Sara Ahmed opens The Cultural Politics of Emotion (2015) with a question: “How does a nation come to be imagines as having a ‘soft touch’? How does this ‘having’ become a form of ‘being’, or a national attribute?” (Ahmed 2015, 1). Deeply personal, and personalized, attributes like emotions, feelings, and orientations, take on a national form, and are narrated as traits of the nation. Taking Ahmed’s description of national emotions as a starting point, I explore these questions throughout: How are emotions imagined to be part of collective bodies and institutions? What are the implications of imagining care as an institutional activity or affective orientation? What does it mean to make the police care?

In The Care of the Self (1986) Michel Foucault talks about care as pertaining to the body and the soul, as a means to cultivate and perfect oneself. Foucault describes the evolution of care:

It took the form of an attitude, a mode of behavior; it became instilled in ways of living; it evolved into procedures, practices, and formulas that people reflected on, developed, perfected, and taught. It thus came to constitute a social practice, giving rise to relationships between individuals, to exchanges and communications, and at times even to institutions. And it gave rise, finally, to a certain mode of knowledge and to the elaboration of a science” (Foucault 1986, 45).

Foucault describes a shift in care from the self to more general realms like medicine, knowledge, and institutions. Care is an orientation toward the self, as well as to objects. Foucault provides the scaffolding to think of care as extending beyond the self, or relations between people, and to thinking about the state and police as institutions of care, or as institutions involved in caring relations. In other words, the state has the capacity to care, to invoke care, for its citizens.

The meaning of care includes many dimensions including care for the self, care for others, and institutionalized care. Care most often describes a relational, ethical orientation, which eschews individualism in favor of communitarian ethics (See Engster 2005; Thomas 1993). These discussions and various viewpoints on care are related to the central terms discussed by Ahmed and Foucault, namely the integration of care into institutions and the projection of care, feelings, and emotions onto national bodies. I briefly consider care and caring, particularly as they have been developed in feminist ethics and theory, as feminine, ethical, interdependent, blurring public and private spheres, and finally when oriented to the state. While the meaning of care and its implications are often debated and discussed, care is generally portrayed as a panacea to political problems with very little consideration of what some potential pitfalls of care, or how care could be mobilized in malevolent ways.

#### The caring state is endemic to democratic politics---even if the aff is a “new framing” of care, it still falls back into the same tropes of American exceptionalism their evidence critiques---which means even if our evidence is older, it better accounts for their phenomenon across time

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As I was writing during the 2016 U.S. election, I considered the election to be part of the pageantry of the caring state. On the one hand there was the establishment Democratic party attempting to appease, and give lip service to more progressive liberals, all the while continuing what had been business as usual politics: large donors, the neoliberal doctrine, and the continuation of status quo power and privilege. On the other, there was what seemed to be a circus with a large field of candidates giving way to an explicitly sexist, racist, and billionaire populist. Democrats and Hillary Clinton seemed content to define themselves through distance from the more violent rhetoric of President Trump’s campaign. Instead of offering substantive change, Democrats presented the continuation of the status quo, nothing radical, nothing revolutionary, but not Trump. It seemed like the perfect moment to define the caring state, and as though Trump had presented its violent foil. The caring state upholds personal liberty, it praises the inclusion of difference, it wags its finger at the violent state apparatus, with a little wink behind everyone’s backs. Before the election, it seemed somewhat nauseating to continue to praise, and vote in favor of, the caring state, but at least it was better than the alternative (which of course is precisely the point – be gracious because it could be much worse).

This dissertation develops the caring state within the context of Brown’s death in Ferguson, Missouri, and the events of the next year that followed, roughly the time period of 2014-2015. It was a time defined by the Obama presidency, referenced many times throughout this dissertation, as marking the progress of the nation. President Obama, and other people of color in leadership was indicative of the ways the state had changed. It was the hallmark of care, the ability of leaders to empathize and understand the charges of racism, and to be able to frame that pain within the state rubric. This dissertation has been critical of inclusion, empathy, and care as state strategies and techniques to further violence. Much of the analysis in this dissertation is grounded in the rhetoric of President Obama and his appointees like Attorney General Eric Holder. The connection between caring and the state seemed to rely on what had now become Democratic party principles. President Trump and his supporters seemed to favor a much bolder, more violent will of the state that can’t neatly be captured by care. This violent rhetoric was obvious with regard to the U.S./Mexico border and the prison industrial complex, inciting rational fear, the effects of which have been made evident in the years since.

After the 2016 election, it seemed as if the caring state had given way, or returned, to the violent state. Instead of tolerance and inclusion, there was a return to hate speech, exclusion, and the shrinking sphere of legal protections. In the wake of Trump’s election and in the myriad of racist, homophobic, and transphobic people being appointed to new positions of leadership, the topic of state violence rose to prominence, not inflected through any particular moment, but as an overarching sense of doom. Movements formerly on the fringes of mainstream hate now have a President that speaks to and for them, and one who has the power to wield the American war machine. In this conclusion, I discuss the contemporary political moment, and ask if the caring state is indeed over. Returning to Ahmed’s original query about Britain, was the U.S. election also a reaction to being “soft?” Is the election of Donald Trump a reaction to care? Here I frame Trump’s rise to power as a transition from the pseudotolerant neoliberalism to the fascist impulses of populism. Rather than as a distinct break, these forms of governance exist on a continuum, a continuum that needs to be resisted at all levels, not just at either easily recognizable pole.

After November 8th, 2016, people were forced to grapple with the implications of the election. Two kinds of rhetoric emerged, either that President Trump represents a wholly new kind of leadership, the likes of which we’ve never seen, or a continuation and logical outcome of increased militarization, migration, and economic destitution, trends that arguably started in the wake of World War II. Both explanations seem insufficient to explain the current political landscape, a landscape that has willingly given a voice to the most vile of opinions. The 2016 election had many questioning if we had left neoliberalism and headed toward fascism. Neoliberalism operates by way of consent, albeit a manufactured consent based in economic privatization, unfettered wage gaps, and the collusion of state and capital. Fascism, by contrast, is meant to signify a nationalist, violent, concentrated form of authoritarian governance with a strong leader. The American check on these forms of power has consistently been articulated as representative democracy through voting, term limits, and Constitutional authority vested in the courts. As has always been clear, these checks are insufficient for marginalized populations, and do little to ward off either fascism or neoliberalism. There is nothing new or un-American about anti-Semitism, white supremacy, or heteropatriarchy, and to think there would be short sighted, however new the framing of “alt-right” may be. This is perhaps the greatest flaw in the American democratic experiment and the logic of American exceptionalism - there is nothing inherently moral or ethical about the will of the people.

Neoliberalism and fascism are not as distinct as their common definitions may suggest and both are possible under US democracy. Since the rise of neoliberalism, the transition from “difference” to “diversity” has resulted in the normalization of difference based on its proximity to whiteness, heterosexuality, and upward mobility. Difference has been evaluated based on its offerings to the generalization of the US as a benevolent nation. In other words, minorities are strategically deployed to serve the state’s interests, and those acts of benevolence are only a calculated use of care to mitigate violence. The question of diversity has played out in a puzzling way as people try to grapple with the phenomenon that two-time Obama voters were moved to endorse the racist working-class rhetoric of Trump. The fall of the “blue wall” and the power of angry, white voters in those states of industrial decay are articulated as a failure of the Clinton campaign to take seriously a Republican threat in those blue strongholds and the lack of economic messaging to those areas ravaged by globalization. Throughout his Presidency, Obama contended with increasing racial tensions, the attention paid to police brutality, targeted mass shootings, and the rise of BLM. In the face of white brutality, whiteness resurged and was perceived to be under attack. America, it seems, was growing too diverse, while forgetting the hard work of white Americans that had “made America great.” The very dynamics of care had propelled the electorate to more severe forms of violence

#### Slavery morphs and recodes itself in different ways- it relies on the sadism of liberal progress narratives to perfect itself and maintain “life”. Only the alternative can disrupt this project and render these promises incoherent.

Wilderson 20 [Frank B. Wilderson, professor of Drama and African American studies at the University of California, Irvine, “Afropessimism”, page 94-96, JMH]

Northup’s book implies, without stating directly, why this generalization of sadism—brutality as the constituent element of family bonding—cannot be understood as being triggered by transgressions. It is as ubiquitous as the air he breathes. “It was rarely a day passed without more whippings . . . It is the literal, unvarnished truth, that the crack of the lash and the shrieking of slaves, can be heard from dark till bedtime . . .” Patsey and Solomon, unlike Stella and me, were living in a place and time when civil society and the Human were neither ashamed nor embarrassed by this. A thousand miles upriver and one hundred twenty six years later, Josephine was shocked by this inheritance, but it didn’t take her long to recover, and to claim it. Though the structure of Stella’s “life” (or, better, **the paradigm of social death**, for the quotation marks are essential here) **cannot be reconciled with the** structure of Josephine’s life (or **the paradigm of social life**), there is a connection. But **this connection is parasitic and perverse—regardless of what the socially dead Black person (i.e., Stella and Patsey) or the socially alive Human (i.e., Josephine or Mary Epps) might say about their “relationship.”** It is parasitic because White and non-Black subjectivity cannot be imbued with the capacity for selfknowledge and intersubjective community without anti-Black violence; without, that is, the violence of social death. In other words, **White people and their junior partners need anti-Black violence to know they’re alive.\*** If Hattie McDaniel were to truly die, as Stella proclaimed, it would be tantamount to the death of a parasite’s host. This is what makes social death something more surreal than the end of breath. It is, in the words of David Marriott, a deathliness that saturates life, not an embalming; a resource for Human renewal. **It is perverse for many reasons: one of which is the fact that as civil society matures** (from 1853 to December 1979, when it all went south with Josephine)—and we move historically from the obvious technologies of chattel slavery to universal suffrage, the discourse of human rights, and the concept of universal access to civil society— the anti-Black violence necessary for the elaboration and maintenance of White (and non-Black) subjectivity gets repressed and becomes increasingly unavailable to conscious (as opposed to unconscious) speech. (“I judge people by the quality of their character,” as Dr. King said, “and not the color of their skin”; or the commonly spoken, “At the end of the day, we’re all Americans and we’re in this together”— and other such malarkey of the conscious mind.) But the pageantries of naked and submissive Black flesh, pageantries of bleeding backs and buttocks, whip marks, amputations, and faces closed by horse bits, provide evidence of the role sadism plays in the constitution of White subjectivity, and *12 Years a Slave* makes this visible on the screen, despite its repression in the narrative of both the film and civil society writ large. It is tempting and commonplace to reduce Mary and Edwin Epps’s sadism to individual psychopathology. Or one might think that Edwin Epps is one of a group of exceptionally sadistic people who lived in an exceptionally sadistic time and place. But the film, and to an even greater extent the autobiography, sees (rather than narrates) sadism—the sexual perversion in which gratification is obtained by inflicting physical or mental pain on a love object—not as the individual pathology of a handful of people, but as a generalized condition; generalized in that pleasure, as a constituent element of communal life, cannot be disentangled from anti-Black violence. Conventionally, **the object of sadism can**, tomorrow, **become the subject of sadism**. But the sadism that constitutes the spectacles of *12 Years a Slave*, and which constitutes early nineteenth century society, is not imbued with such reciprocity. The Slaves of social death cannot switch places and make Edwin Epps or his equally cruel wife the love objects of their collective sadism. If they did so in private (if Patsey beat Edwin or Mary in a private bedroom encounter, for example) **it is because such a reversal was occasioned and allowed—in other words, the master used his prerogative and power to play a different game, one in which he suffers because suffering fulfills his fantasy and because, unlike the Slave, his fantasies have “objective value.”** Such role reversals do not imbue the encounter with reciprocity. **The changes that begin to occur after the Civil War and up through the Civil Rights Movement, Black Power, and the American election of a Black president are merely changes in the weather. Despite the fact that the sadism is no longer played out in the open as it was in l840, nothing essential has changed.**

#### Only through embracement of disorder and incoherence via the alternative are we able create revolutionary politics that disrupt the generative mechanism of civil society.

Wilderson 20 [Frank B. Wilderson, professor of Drama and African American studies at the University of California, Irvine, “Afropessimism”, page 249-252, JMH]

Again, though this is a bond between Blacks and Whites (or, more precisely, between Black and non-Blacks), it is produced by a violent intrusion that does not cut both ways. Whereas the phobic bond is an injunction against Black psychic integration and Black filial and affilial relations, it is the lifeblood of White psychic integration and filial (which is to say, domestic) and affilial (or institutional) relations. For whoever says “rape” says Black; whoever says “prison” says Black; and whoever says “AIDS” says Black—the Negro is a phobogenic object: a past without a heritage, the map of gratuitous violence, and a program of complete disorder. If a social movement is to be neither social democratic nor Marxist, in terms of its structure of political desire, then it should grasp the invitation of social death embodied in Black beings. **If we are to be honest with ourselves, we must admit that the “~~Negro~~” “Black” has been inviting Whites, as well as civil society’s junior partners** (for example, Palestinians, Native Americans, Latinx) **to the dance of social death for hundreds of years, but few have wanted to learn the steps.** They have been, and remain today (even in the most anti-racist movements, like anti-colonial insurgency) invested elsewhere. Black liberation, as a prospect, makes radicalism more dangerous to the U.S. and the world. **This is not because it raises the specter of an alternative polity (such as socialism, or community control of existing resources), but because its condition of possibility and gesture of resistance function as a politics of refusal and a refusal to affirm, a program of complete disorder. One must embrace its disorder, its incoherence, and allow oneself to be elaborated by it, if indeed one’s politics are to be underwritten by a revolutionary desire.** What other lines of accountability are there when slaves are in the room? There is nothing foreign, frightening, or even unpracticed about the embrace of disorder and incoherence. The desire to be embraced, and elaborated, by disorder and incoherence is not anathema in and of itself. No one, for example, has ever been known to say, Gee whiz, if only my orgasms would end a little sooner, or maybe not come at all. Few so-called radicals desire to be embraced, and elaborated, by the disorder and incoherence of Blackness—and the state of political movements in the U.S. today is marked by this very Negrophobogenisis: Gee-whiz, if only Black rage could be more coherent, or maybe not come at all. Perhaps there is something more terrifying about the joy of Black than there is in the joy of sex (unless one is talking sex with a Negro). Perhaps coalitions today prefer to remain inorgasmic in the face of civil society—with hegemony as a handy prophylactic, just in case. If, **through this stasis or paralysis, they try to do the work of prison abolition, that work will fail, for it is always work from a position of coherence (such as the worker) on behalf of a position of incoherence of the Black: radical politics morphed into extensions of the master’s prerogative.** In this way, **social formations on the Left remain blind to the contradictions of coalitions between Humans and Slaves. They remain coalitions operating within the logic of civil society and function less as revolutionary promises than as crowding-out scenarios of Black antagonisms, simply feeding Black people’s frustration.** Whereas the positionality of the worker (whether a factory worker demanding a monetary wage, an immigrant, or a white woman demanding a social wage) gestures toward the reconfiguration of civil society, the positionality of the Black subject (whether a prison-slave or a prison-slave-in-waiting) gestures toward the disconfiguration of civil society. From the coherence of civil society, the Black subject beckons with the incoherence of civil war, a war that reclaims Blackness not as a positive value, but as a politically enabling site, to quote Fanon, of “absolute dereliction.” It is a “scandal” that rends civil society asunder. Civil war, then, becomes the unthought, but never forgotten, understudy of hegemony. It is a Black specter waiting in the wings, an endless antagonism that cannot be satisfied (via reform or reparation), but must nonetheless be pursued to the death. But lest we forget, this is not a question of volition. It is not as simple as waking up in the morning and deciding, in one’s conscious mind, to “do the right thing.” **For when we scale up from the terrain of the psyche to the terrain of armed struggle, we may be faced with a situation in which the eradication of the generative mechanism of Black suffering is something that is not in anyone’s interest.** Eradication of the generative mechanisms of Black suffering is not in the interest of Palestinians and Israelis, as my shocking encounter with my friend Sameer, on a placid hillside, suggests; because his anti-Black phobia mobilizes the fantasy of belonging that the Israeli state might otherwise strip him of. For him to secure his status as a relational being (if only in his unconscious), his unconscious must labor to maintain the Black as a genealogical isolate. “The shame and humiliation runs even deeper if the Israeli soldier was an Ethiopian Jew.” The Israelis are killing the Palestinians, literally; but psychic life, Human capacity for relations, is vouchsafed by a libidinal relay between them and their common labor to avoid ~~“niggerization”~~ [~~negroization~~] [racialization] (Fanon). **This relay is the generative mechanism that makes life life. It is also the generative mechanism of Black suffering and isolation. The end of this generative mechanism would mean the end of the world. We would find ourselves peering into the abyss.** This trajectory is too iconoclastic for working-class, post-colonial, and/or radical feminist conceptual frameworks. The Human need to be liberated in the world is not the same as the Black need to be liberated from the world; which is why even their most radical cognitive maps draw borders between the living and the dead. Finally**, if we push this analysis to the wall, it becomes clear that eradication of the generative mechanisms of Black suffering is also not in the interests of Black revolutionaries. For how can we disimbricate Black juridical and political desire from the Black psyche’s desire to destroy the Black imago, a desire that constitutes the psyche?** In short, bonding with Whites and non-Blacks over phobic reactions to the Black imago provides the Black psyche with the only semblance of psychic integration it is likely to have: the need to destroy a Black imago and love a White ideal. “In these circumstances, having a ‘white’ unconscious may be the only way to connect with—or even contain—the overwhelming and irreparable sense of loss. The intruding fantasy offers the medium to connect with the lost internal object, the ego, but there is also no ‘outside’ to this ‘real fantasy’ and the effects of intrusion are irreparable.” This raises the question, who is the speaking subject of Black insurgent testimony; who bears witness when the Black insurgent takes the stand? Who is writing this book?

### 1NC --- CP

#### The United States federal judiciary should issue a call for the views of the Solicitor General regarding repealing section 207 of the Pension Funding Equity Act.

#### The Office of the Solicitor General should find in favor of granting certiorari and appropriate legal change.

#### The CP solves the case by having the Supreme Court invite the legal view of the Solicitor General and then having the Office support legal modification---they’ll follow advice, but the process of letting it develop before prohibition builds SG independence.

Lepore ’10 [Stefanie; March 2010; Assistant General Counsel for Litigation at EQT Corporation, Former Adjunct Professor of Law at Duquesne University, JD from the George Washington University School of Law, BA in Politics and Philosophy from the University of Pittsburgh; Journal of Supreme Court History, “The Development of the Supreme Court Practice of Calling for the Views of the Solicitor General,” vol. 35]

I. Introduction

“When the Supreme Court invites you, that's the equivalent of a royal command. An invitation from the Supreme Court just can't be rejected.”1 The guest most frequently invited to the Supreme Court is the Solicitor General. Even before the practice of the Supreme Court calling for the views of the Solicitor General process developed, the Court occasionally invited the Solicitor General to participate as amicus in important cases by submitting a brief and/or participating in oral arguments before the Court.2 As then–Solicitor General Simon E. Sobeloff remarked to then–Attorney General Herbert Brownell in a 1954 letter about the landmark school desegregation cases, “The Supreme Court has expressly extended an invitation to the United States to participate in the reargument. While this by no means compels participation, such an invitation is not to be lightly declined.”3

The Solicitor General “has developed a unique relationship with the Supreme Court, one in which it serves as an adviser as well as an advocate.”4 The Solicitor General fulfills his role as the Court's adviser and advocate by responding to the Court's invitation to express the views of the United States in given petitions for certiorari.5 Here, the Solicitor General acts as a special type of amicus, because the Solicitor General is neither a party to the proceeding nor opining on behalf of one of the parties, but rather acting as a sort of “partner” to the Justices.6 When the Justices believe that, before they can grant or deny a petition for certiorari, they would like another opinion of the merits of a petition, they “call for the views of the Solicitor General,” known colloquially as CVSG.7 Because of the enormous amount of trust that the Court has in the Solicitor General's office, the Court values the Solicitor General's opinion as “provid[ing][the] best judgment with respect to the matter at issue.”8 However, this unique relationship of trust between the Court and the Solicitor General, such that the Solicitor General's opinion is treated as tantamount to the opinion of a tenth Justice,9 did not develop until the 1950s.

This paper will examine how the CVSG process developed. Part II will provide general background information, explaining the office of the Solicitor General, the Supreme Court practice of granting certiorari and the reasons for doing so, and the process by which the Supreme Court invites the Solicitor General to express the opinion of the United States. Part III will examine the environment that laid the groundwork for the CVSG process to emerge: the personal relationships that existed between individual Justices and attorneys in the Office of the Solicitor General and the political climate that instituted a political partnership between the Court and the Solicitor General. Finally, Part IV will argue that the CVSG process represents the culmination of the mutually beneficial relationship between the Court and the Solicitor General and then describe the first petitions for certiorari in which the Supreme Court exercised its option to CVSG.

II. Background Information

A. The Solicitor General

Congress created the Office of the Solicitor General with the Federal Judiciary Act of 1870.10 As an officer within the executive branch, the President appoints the Solicitor General, and the Solicitor General is then subordinate to both the President and the Attorney General.11 In appointing the Solicitor General, the President looks at the same criteria that affect the nomination of a Supreme Court Justice: well-respected, legal experience, and probably shares a similar legal philosophy of the President's administration.12 Because the Solicitor General is formally a member of the Department of Justice, his office is in that department's building.13 However, as a testament to the Solicitor General's dual roles as government lawyer and adviser to the Supreme Court, he also has permanent chambers in the Court.14

“Politics and law are at the intersection of the solicitor general's responsibilities.”15 The Solicitor General must be “learned in the law” and is entrusted with representing the interests of the United States, assisting the Attorney General, and “translating the policies of the government, the president, and the executive branch into litigation.”16 The Solicitor General decides which cases that the government lost in lower courts will be appealed to the Supreme Court, controls government litigation at the Supreme Court, advocates as amicus curiae in cases where the government is not a party, and advises the Supreme Court on petitions for certiorari.17 Although the Solicitor General experiences some political pressure from the President and the President's administration, the tradition of independence of the Solicitor General's office helps to ensure that the Solicitor General largely retains autonomy from political sways.18 Indeed, the Attorney General does not usually attempt to control the litigation strategy of the Solicitor General.19 Instead, the Solicitor General's agenda is structured by the Supreme Court's agenda: as the Supreme Court's power and docket changes, so does the role of the Solicitor General.20 Not only is the Solicitor General's agenda structured around the Supreme Court, but the Solicitor General helps to set that of the Court: a “principal chore of the Solicitor's office is to help the Supreme Court set its docket by screening petitions for certiorari.”21

B. Grant, Deny, or CVSG: The Certiorari Process

“A petition for certiorari is, stripping away the legal verbiage, a request to the Supreme Court to hear and decide a case that the petitioner has lost either in a federal court of appeals or in a state supreme court.”22 Parties can file petitions for certiorari throughout the year, and the petitions therefore generally accumulate at between 80 to 100 per week.23 When a petition for certiorari first arrives at the Court, it is sent to the “cert pool,” which was first created at the suggestion of Justice Powell in 1972.24 The “cert pool” consists of the law clerks of the participating Justices, who collectively pool their law clerks to divide the petitions for certiorari among themselves.25 The law clerks divide the thousands of petitions so that one of them reads every petition, assesses the worthiness of the petition for the Court's review, and writes an annotated certiorari memo “outlining the facts and contentions” of the petition.26 The law clerks circulate the annotated certiorari memos for each petition for certiorari to the participating Justices, who then review the memos and make a preliminary decision on how to vote on the petition.27 Before the Justices meet collectively to determine the fate of a petition for certiorari, the Chief Justice circulates a “discuss list”—a list of the petitions that he would like to discuss with the other Justices.28 The Associate Justices are also free to add petitions to the “discuss list,” and any petition for certiorari not discussed at a conference is denied certiorari without a vote.29 For much of the year, except during the Court's recess between July and the last week of September, the Justices vote on the petitions for certiorari in weekly conferences held in a room next to the Chief Justice's Chambers.30 These Conferences in which the Justices vote on petitions for certiorari are only attended by the Justices; “they are not open to the public or to other Court personnel.”31

When a petition for certiorari is on the discuss list at a weekly conference and therefore ready for the Justices' ultimate decision, the Justices have several voting options.32 Most obviously, they can vote to grant in full or deny in full certiorari.33 However, they have several options that fall between these two extremes. For instance, sometimes the Justices believe that more information is necessary before they can reach a full decision to grant or deny certiorari, and they will therefore CVSG.34 If several petitions for certiorari raise the same issue, the Court may accept all of them “to address that issue more fully than a single case would allow them to do.”35 The Court may also choose to narrow the granting of certiorari by choosing one issue raised in the petition or posing an issue sua sponte to the parties.36

After the Court has granted certiorari, either in full or in part, the Court then decides between giving the petition full consideration and giving it summary consideration.37 For petitions granted full consideration, the Court will hear oral arguments, receive briefing on the merits from the parties, and issue “a decision on the merits with a full opinion explaining the decision.”38 If, instead, the Court gives a petition summary consideration, the petition may take two routes.39 Usually, in summary consideration, the Court issues a “GVR,” which entails granting certiorari (G), vacating the lower court decision (V), and remanding the case to the lower court for reconsideration (R).40 In the remainder of summary consideration petitions, the Court issues a per curiam opinion—a short, unsigned opinion on the merits.41

When hearing and deciding cases on the merits, the Court operates by majority rule.42 However, when making certiorari decisions, the historical practice of the Court, called the “rule of four,”43 is to require four out of nine votes from the Justices.44 The Court has never been very forthcoming about why one petition is deemed worthy of certiorari and another not worthy. Instead, it advises that “certiorari will be granted only for compelling reasons.”45 Those compelling reasons, though “neither controlling nor fully measuring the Court's discretion,” are described in Rule 10 of the Rules of the Court.46 The criteria described in Rule 10 for evaluating a petition for certiorari are: (1) a conflict between two appellate courts, often called a circuit split; (2) a conflict between the court at issue and Supreme Court precedent; (3) importance of the issues in the petition; and (4) procedural posture of the case.47 Although these criteria for certiorari may seem somewhat imprecise and vague, it has long been certain that “[t]he Supreme Court is not, and never has been, primarily concerned with the correction of errors in lower court decisions.”48

C. The CVSG Process: Calling for the Views of the Solicitor General

“[T]he group of lawyers that has the greatest impact on the Court is the set of about two dozen who work for the Office of the Solicitor General in the Justice Department.”49 Indeed, when the Supreme Court calls for the views of the Solicitor General, the Solicitor General becomes “an important ally for the justices, who rely on the office's expertise to control their docket and help structure doctrinal development.”50 Essentially, the Supreme Court is requesting the Solicitor General's opinion on a petition for certiorari because the Justices believe that the petition is important and potentially worthy of certiorari but need more information, in the form of another legal opinion, before they can make a final decision.51 In the CVSG role, the Solicitor General puts aside any partisan advocacy concerns that the Office may otherwise have in order to “assist in the orderly development of the law and to insist that justice be done even where the immediate interests of the federal government may not appear to benefit.”52 The Solicitor General provides “a less partisan review of the law and a survey of existing precedent.”53 Traditionally, even where government interests would prefer otherwise, the Solicitor General does not hesitate to advise the Justices that the Court lacks jurisdiction over an issue raised in a petition or that the petition simply does not satisfy the Court's criteria for granting certiorari.54 There are a number of circumstances in which the Court will CVSG: where a federal interest is involved; where there is a new issue without established precedent; where there has been a change in the development of an issue; or where an evolving issue has become more complicated and attached to other issues.55 Former Solicitor General Kenneth Starr described the purposes of the CVSG process as follows:

The CVSG has a twofold purpose. First, it serves to guide the Court or assist the Court as to whether the case is important enough to merit review. Second, it serves to offer the position of the U.S. on the merits of the issue. With respect to the former …[i]t is a courtesy to the government. With respect to the latter—the position of the U.S.—there we followed the professional responsibility of assimilating the views of different parts of the Justice Department and the agencies and putting forth the best arguments.56

The high rate of correlation between the Solicitor General's certiorari recommendations and the Court's certiorari decisions is a testament to the Court's trust in the nonpartisan legal opinion of the Solicitor General.57 Indeed, the Terms from 2001 to 2006 saw a 100-percent correlation between the Solicitor General's recommendation that the Supreme Court grant certiorari and the Court's doing so.58 While the correlation is slightly less when the Solicitor General recommends that the Court should deny certiorari, the rate is still high enough to suggest more than simple coincidence.59

#### The net benefit is OSG: The Solicitor General is intervening in climate suits to control emissions but has limited bandwidth and influence.

Clark ’22 [Lesley; January 19; Reporter at E&E News/Politico, BA at the University of Massachusetts, Amherst, Former Washington and White House Correspondent at McClatchy; E&E News ClimateWire, “Biden Fails to Fulfill Pledge on Climate Lawsuits,” https://www.eenews.net/articles/biden-fails-to-fulfill-pledge-on-climate-lawsuits/]

A DOJ spokesperson said it had "taken a wide variety of actions that address the climate crisis and will continue to look for ways to do so, including opportunities" to participate in the cases. "While we can’t comment on the deliberative process, climate change and environmental justice remain among the department’s top priorities," spokesperson Wyn Hornbuckle said.

Biden’s pledge to get involved in the climate fight came as part of his environmental justice plan, which emphasized the need to reduce pollution in low-income neighborhoods and communities of color.

During her own presidential campaign, Vice President Kamala Harris called for oil companies to be “held accountable,” saying they are “causing harm and death in communities."

Climate lawyers had expected the Biden administration to stand in contrast to Trump’s DOJ, which filed a half-dozen "friend of the court" briefs in support of the oil industry’s arguments in a procedural battle that has stalled the climate liability lawsuits.

While state and local governments have filed the cases in state courts, industry attorneys have tried to get the challenges bumped to federal courts, where the companies may stand a better chance of winning. The Supreme Court last year allowed federal appeals courts to consider a broader set of arguments in favor of federal jurisdiction, further delaying the climate cases (Greenwire, May 24, 2021).

“The president pledged that they would ‘strategically support’ the cases, and they have failed to do that,” said Richard Wiles, president of the Center for Climate Integrity. “And that’s significant. The Department of Justice is an important voice on the legal landscape, and its absence is conspicuous.”

Wiles said the department under Biden has not submitted briefs “or offered any support” for any of the cases — most of which are currently entangled in disputes over whether the cases should be heard in state or federal court.

Wiles said it’s possible that DOJ lawyers don’t believe state courts are the proper venue but noted that federal appeals courts have mostly ruled in favor of keeping the lawsuits in front of state judges.

“You would think that the DOJ would not hesitate to concur with what the courts have said,” Wiles said. “But they’re not doing that.”

Taking on the oil industry

Wiles said the U.S. government has historically been reluctant to confront the oil and gas industry.

Biden’s political fortunes have been hurt by rising gas prices, and the president was forced to defend himself last fall against charges of hypocrisy for calling on the world’s largest oil producers to increase output, even as he called for the world to slash emissions and move beyond fossil fuels.

His administration last year opened up more than 80 million acres of the Gulf of Mexico for auction after a court ruling, despite a campaign pledge to ban new oil and natural gas leasing on public lands and waters (Greenwire, Nov. 17, 2021).

“In the broader context, this just continues a very sad trend of administration after administration failing to take on the industry in any meaningful way,” Wiles said.

Donald Kochan, a professor and deputy executive director of the Law & Economics Center at George Mason University’s Antonin Scalia Law School, suggested that the administration could be waiting for its proposed climate legislation to succeed — or fail — before it engages with the judicial branch.

If Biden is unable to land his ambitious climate spending package, its collapse could “add fuel” to the plaintiffs’ argument that legislative gridlock has made it impossible to achieve climate gains in Congress, Kochan said.

“It could give them the ammunition to say, ‘Once again, we tried to go the legislative route, and again it failed. The court is the last and only hope,’“ he said.

Yet Kochan said he believes intervention by the judicial branch would be a mistake.

“It’s not a legitimate argument to say that because the Legislature is not producing, that it’s a legitimate claim for expanding the constitutional powers of the courts,” he said. “The courts are limited and should stay in their own lane. Congress and the administrative agencies are the best suited to resolve complex issues of policy and science that require expert analysis.”

He added, “If the executive branch becomes a cheerleader for judicial encroachment into their own sphere of authority, then one of the primary constitutional checks breaks down.”

Climate challengers stay mum

Democratic state attorneys, who have used congressional hearings and letters to urge Garland and DOJ to intervene in the climate liability litigation, were largely silent on the Biden administration’s lack of action.

Minnesota Attorney General Keith Ellison, who wrote a March editorial calling Biden’s pledge to back the lawsuits a “vitally important part of the new administration’s broader effort to restore trust in government,” declined through a spokesperson to comment.

Ellison in June 2020 filed a lawsuit against Exxon; Koch Industries Inc.; and the American Petroleum Institute, an oil and gas trade group, accusing the industry of misleading Minnesotans about climate change.

He and five other Democratic state attorneys involved in the climate liability fight last year urged DOJ to disavow the amicus briefs that the Trump administration had filed on behalf of the fossil fuel industry in some of the cases (Climatewire, April 7, 2021).

A spokesperson for D.C. Attorney General Karl Racine, who led that missive, declined comment but pointed to the letter, which cited Biden’s campaign pledge and argued that intervention by Trump’s DOJ had undermined their efforts.

Sara Gross, chief of the Affirmative Litigation Division at the Baltimore City Law Department, said the city would “certainly welcome the administration’s support” in its efforts “to hold fossil fuel companies accountable for their deception about their products and climate change and the costs that their actions are imposing on our residents, workers and businesses.”

The 4th U.S. Circuit Court of Appeals will take a fresh look next week at Baltimore’s lawsuit against BP PLC for flooding and other climate-related damages.

‘Weaponize the DOJ’

Although the administration hasn’t intervened in the climate liability suits, Biden’s campaign promise has come up in at least one other case.

Energy Policy Advocates, a conservative research group, pointed to the pledge in a brief it filed last February in the U.S. Court of Appeals for the District of Columbia Circuit in defense of the Trump administration’s decision to leave ozone standards unchanged.

The group’s attorney — Christopher Horner, who in a Washington Times column called Biden’s pledge an effort to “weaponize the DOJ” — warned in the brief that if the states that had sued over the ozone standards were unsuccessful in challenging the government, they might try to pursue public nuisance litigation.

“Further troubling and adding to concerns … is that the new administration ran for office vowing to deploy its Department of Justice to assist the same plaintiffs in private litigation,” Horner wrote.

The American Petroleum Institute, the oil and natural gas industry trade group that has been named as a defendant in several of the climate liability lawsuits, criticized Biden for issuing the pledge when he released his environmental justice plan in July 2020.

Paul Afonso, API’s senior vice president and chief legal officer, said at the time that “rather than wasting taxpayer resources endlessly litigating,” the focus should be on industry innovation and emissions reduction.

While API did not directly address the administration’s role in the litigation, the group pointed to a statement from Afonso in which he said, “The record of the past two decades demonstrates that the industry has achieved its goal of providing affordable, reliable American energy to U.S. consumers while substantially reducing emissions and our environmental footprint. Any suggestion to the contrary is false.”

Karen Sokol, a law professor at Loyola University, said Biden’s DOJ likely has limited bandwidth as it prepares for what she called a “coming wave of anti-climate lawsuits” challenging the steps it has taken to address emissions. Opponents have sued over the administration’s pause on oil and gas leasing and are mounting challenges to Biden’s bid to raise the cost of carbon.

And Solicitor General Elizabeth Prelogar is getting ready to defend EPA’s ability to regulate greenhouse gases from power plants before the Supreme Court next month in a case that could have major implications for Biden’s climate agenda (Climatewire, Nov. 1, 2021).

But Sokol said she had expected the administration to at least counter the Trump DOJ argument that the climate liability cases should be heard in federal court.

“I know the DOJ has a lot on its plate, but that would seem to be something that is pretty easy for them,” she said. “This is not strategic support in terms of weighing in on the merits of these claims. This is just based on a federal/state jurisdictional matter, and the executive has something to say about that.”

#### Antitrust expansion forces the OSG to play partisan hardball, crashing the office’s overall effectiveness.

Cordray ’10 [Margaret and Richard Cordray; November 2010; Professor of Law at the Capital University Law School, JD from Boalt Hall School of Law, BCL from Oxford University, BA from University of the Pacific; Attorney General for the State of Ohio, BA from Michigan State University, MA from Oxford University, JD from University of Chicago Law School; Boston College Law Review, “The Solicitor General's Changing Role in Supreme Court Litigation,” vol. 51]

I. The Solicitor General

The Solicitor General, as the federal government's chief appellate lawyer, is the country's most influential litigator. 17 <<FOOTNOTE BEGINS>> 17 See 28 U.S.C. § 505 (2006). By statute, the Solicitor General is required to be "learned in the law." Id. The Solicitor General is also responsible for conducting all Supreme Court litigation, determining whether the government will pursue an appeal to any appellate court, and determining whether the government will file an amicus brief or intervene in any appellate litigation. 28 C.F.R. § 0.20(a)--(c) (2008). <<FOOTNOTE ENDS>> In recent years, the Solicitor General's involvement in the Supreme Court has changed in important ways, both at the certiorari and merits stages. 18 Before embarking on our discussion of these changes, we begin with a brief overview of the Solicitor General's office, describing its responsibilities, advantages, and extraordinary success in Supreme Court litigation.

A. Responsibilities

The Solicitor General is tasked with supervising all of the government's appellate litigation. 19 In performing this responsibility, the office focuses on two primary functions: coordinating the government's legal strategy across the various agencies and departments, and stepping in to represent the government in cases that have reached the Supreme Court level. 20

Consolidating all appellate litigation within the Solicitor General's office enables the federal government to coordinate and present a considered litigation strategy that looks beyond the immediate concerns of individual agencies to the longer-term interests of the federal government. 21 In a bureaucratic structure as vast as that of the United States, the specific litigation preferences of the individual agencies and departments often conflict with one another, or are inconsistent with the broader interests of the government as a whole. 22 The Solicitor General, however, is able to take a more comprehensive view, and thus pursue only those cases which present significant issues and are compatible with the government's larger goals. 23

Management of the government's overall litigation strategy is tightly interwoven with the Solicitor General's other primary focus--representing the United States in the Supreme Court. 24 Conducting all Supreme Court litigation involves a myriad of tasks, including selecting the cases on which to seek certiorari, writing briefs at the certiorari and merits stages, responding to the justices' requests for the Solicitor General's views on whether the Court should grant review in certain nongovernment cases, deciding whether to participate as amicus curiae, and presenting oral arguments. 25 Two of these tasks in particular--the selection of cases on which to seek certiorari and the decision of which cases to enter as amicus--are highly discretionary, and thus effectively enable the Solicitor General to set the government's legal agenda. 26

At the certiorari stage, the Solicitor General employs a rigorous screening process, petitioning for Supreme Court review in only a small fraction of the cases that the government loses below. 27 In determining which cases to pursue, the Solicitor General relies on the Supreme Court's own standards, which focus on the presence of a conflict between the lower courts and the importance of the issue. 28 The Court's standards, however, are highly amorphous, giving the justices virtually unfettered discretion and litigants limited guidance. 29

Nonetheless, former solicitors general have identified key factors that shape their decisions on whether and when to seek review. 30 First among these factors is the presence of a true conflict between the U.S. courts of appeals. 31 In addition, the Solicitor General looks for "important" cases, based on the degree to which the adverse ruling limits executive power, undermines enforcement of federal legislation, or restricts the federal government's power regarding the states or individuals. 32

Beyond these core factors, the Solicitor General considers whether the facts of a particular case present the issues and the government's position favorably, how the case will impact the long-term development of the law, whether the subject area will be of interest to the Court, and whether the government will win on the merits. 33 The Solicitor General also must prioritize, bringing only the most important cases to the Court. By carefully limiting the number of petitions filed, the Solicitor General's office not only safeguards its reputation with the Court, but also avoids ceding to the justices control over which cases from the federal government the Court will hear. 34 <<FOOTNOTE BEGINS>> 34 See SALOKAR, supra note 25, at 114-15 (noting that solicitors general must set priorities so as not to overburden the Court or undermine the Solicitor General's reputation with it); Lee, supra note 27, at 598-99 (opining that, if the Solicitor General did not sharply restrict the petitions for certiorari he files, he would enable the Court, rather than the administration, to decide which cases were comparatively most important); cf. Cohen & Spitzer, supra note 22, at 396, 421 (contending that the Solicitor General's screening processes are so selective that it changes the Supreme Court's "menu of cases," making unavailable to the Court cases it would like to hear); id. at 414 (estimating that the Solicitor General may be withholding twenty percent of the cases that the Supreme Court would like to review). <<FOOTNOTE ENDS>>

Political considerations also influence the Solicitor General's decision-making process. Although solicitors general frequently claim independence from politics, they are appointed by and serve at the pleasure of the President. 35 They are advocates for the policies and priorities of the administrations in which they serve, and ideology thus inevitably plays a role as they set the government's litigation agenda, select cases, and frame arguments. 36 <FOOTNOTE BEGINS>> 36 See Devins, supra note 21, at 318 (noting that in selecting cases, the "Solicitor General must also balance concerns far removed from the standard criteria for cert-worthiness, including policy objectives of the Department of Justice and the White House"); John O. McGinnis, Principle Versus Politics: The Solicitor General's Office in Constitutional and Bureaucratic Theory, 44 STAN. L. REV. 799, 802-08 (1992) (reviewing CHARLES FRIED, ORDER AND LAW: ARGUING THE REAGAN REVOLUTION--A FIRSTHAND ACCOUNT (1991)) (arguing that, under the Constitution, the Solicitor General's role is to advocate the President's positions); see also infra notes 183-213 and accompanying text (discussing the role of the Solicitor General). <FOOTNOTE ENDS>>

The role of ideology is perhaps most evident in the Solicitor General's decisions on whether to participate in a case as amicus curiae. 37 The Solicitor General has great leeway to enter cases in which the government is not a party; indeed, the Supreme Court's procedures facilitate, and even encourage, the Solicitor General's doing so. The Court's rules specifically exempt the Solicitor General from the standard requirement that a prospective amicus obtain the consent of the parties or the Court to file a brief. 38 And further, although the Court rarely grants an amicus's request to participate in oral argument, it routinely permits the Solicitor General to do so. 39

In addition, at the petition stage, the Supreme Court frequently invites the Solicitor General to provide views on whether the Court should grant certiorari (a privilege extended to no other litigant), 40 and then generally follows the Solicitor General's recommendation. 41 <<FOOTNOTE BEGINS>> 40 The Court periodically "calls for the views of the Solicitor General" on whether to review cases in which the United States is not a party. See Ruth Bader Ginsburg, Workways of the Supreme Court, 25 T. JEFFERSON L. REV. 517, 519 (2003) (opining that the Solicitor General "acts as a true friend of the Court" in this regard); Office of the Solicitor General Workload Report Compilation, 1984 Term Through 2008 Term 4-13 (Jul. 6, 2009) [hereinafter OSG Workload Reports] (unpublished data compilation) (on file with authors) (providing data on invitations received in each of the 1986-2008 Terms--ranging from a high of forty-three in the early 1990s to a low of eleven in the late 1990s--and the total number of amicus briefs filed at the petition stage). Most cases in which the Court takes this step are civil cases involving complex statutory or regulatory schemes. See David C. Thompson & Melanie F. Wachtell, An Empirical Analysis of Supreme Court Certiorari Petition Procedures: The Call for Response and the Call for the Views of the Solicitor General, 16 GEO. MASON L. REV. 237, 245, 280-81 (2009) (providing data on the Court's practices and examples of its inviting the Solicitor General's views in regulatory areas "involving complex regulatory regimes," including antitrust, intellectual property, and ERISA). The Solicitor General invariably files a brief in response to the Court's invitation both at the petition stage and, if the case is granted, at the merits stage. See SALOKAR, supra note 25, at 142-45 (discussing the Court's practice of inviting the Solicitor General to provide views on cases at the certiorari stage). The Court may also invite the Solicitor General to participate at the merits stage, but does so rarely. See EUGENE GRESSMAN ET AL., SUPREME COURT PRACTICE 738 (9th ed. 2007). <FOOTNOTE ENDS>> At this stage, the Solicitor General's office typically comes in as amicus only in response to such an invitation, although it occasionally participates as amicus without invitation. 42

At the merits stage, however, the Solicitor General exercises much greater discretion over whether to enter cases in which the government is not a party, and it is here that the office can "play partisan hardball." 43 Although most cases the Solicitor General enters involve legal issues that directly affect federal interests, 44 the office can, and periodically does, participate in cases raising issues of social policy independent of any direct federal interest. 45 <<FOOTNOTE BEGINS>> 44 See Lee, supra note 27, at 599 (providing examples of cases directly implicating federal interests, including Title VII cases, antitrust cases, securities cases, voting cases, and criminal cases); Cooper, supra note 38, at 686-90 (showing that, during the mid-1930s, mid-1950s, and mid-1980s, the Solicitor General filed the vast majority of the office's amicus briefs in cases involving either (1) the interpretation of federal codes or (2) a state issue that might affect a complementary federal issue (under, for example, the Fourth or Fifth Amendments to the Constitution)). <<FOOTNOTE ENDS>> In determining whether to participate as amicus, the Solicitor General considers whether presentation of the federal government's views will be valuable to the Court, whether there are significant federal law enforcement interests at stake, and whether the case presents issues that are critical to the administration's political agenda. 46 <<FOOTNOTE BEGINS>> 46 See CAPLAN, supra note 27, at 197 (describing the standards that former Solicitor General Archibald Cox employed in deciding whether to enter a case as amicus: the case had to present an important question of constitutional law, which would affect a large number of people, and would have an impact on the government's more direct interests, in the sense that the government would be directly affected by the outcome); Lee, supra note 27, at 599-600 (opining that "in every single case the Court would be better off if it had the benefit of [the Solicitor General's] views," but that the Solicitor General must carefully limit the number of cases entered, so as not to risk undermining the Solicitor General's special status with the Court); Steven Puro, The United States as Amicus Curiae, in COURTS, LAW, AND JUDICIAL PROCESSES 220, 221 (S. Sidney Ulmer ed., 1981) (quoting Robert Stern, former Acting Solicitor General, on the key question in deciding whether to participate as amicus: "'Is this case valuable in presenting the United States' arguments to the Court?'"). <<FOOTNOTE ENDS>> The significance of this last consideration is reflected in the pattern of amicus filings under different administrations: solicitors general in Democratic administrations have submitted substantially more amicus briefs in civil rights cases (and have primarily advocated pro-rights positions), whereas solicitors general in Republican administrations have submitted substantially more amicus briefs in criminal cases (and have generally advocated tighter restrictions on defendants' rights). 47

B. Success Rate

When the Solicitor General decides to pursue a case, the office enjoys remarkable success. This success begins with the petition stage and continues through the merits stage, whether the United States is participating as a party or as an amicus. 48

At the petition stage, the Court grants approximately 70% of the Solicitor General's petitions for certiorari, an astonishing number compared to the approximately 3% that the Court grants at the request of other litigants. 49 When the Solicitor General is participating as amicus at the petition stage--almost always at the Court's invitation 50 --the Court follows the Solicitor General's recommendation to grant or deny in well over 75% of the cases 51

At the merits stage, the Solicitor General's winning percentage is also extraordinarily high. Studies of various time periods show that when the Solicitor General represents the United States as petitioner, the Solicitor General wins 70-80% of the time (as opposed to other petitioners, who win approximately 60% of the time). 52 Even more impressive, as respondent the Solicitor General wins 50-60% of the time (as opposed to other respondents, who win approximately 40% of the time). 53 Overall, the Solicitor General's winning percentage is 60-70% (as opposed to the 50% win rate for all litigants). 54

When participating as amicus on the merits, the Solicitor General is even more successful than as a party. Overall, when the Solicitor General steps in as amicus, the office wins 70-80% of the cases, regardless of which side it supports. 55 And the Solicitor General's presence as amicus has a powerful effect on outcome: a petitioner's likelihood of winning increases approximately 17% when the Solicitor General comes in on its side and decreases approximately 26% when the Solicitor General supports the respondent. 56

C. Inherent Advantages

The Solicitor General's success is attributable to a variety of factors. Perhaps foremost is the expertise that the Solicitor General brings to each case. 57 The Solicitor General has a small staff of highly credentialed attorneys who specialize in Supreme Court advocacy. 58 These attorneys are experienced in crafting petitions for certiorari, writing briefs on the merits, and presenting oral argument, all of which demand different and specific skills. 59 In addition, the attorneys focus exclusively on the Supreme Court, so they are intimately familiar with the views and concerns of each justice, the nuances of precedent, and the most effective way to present argument. 60

With this expertise, the Solicitor General has built a reputation for excellence which has led the Court to rely on the Solicitor General to winnow out cases that do not merit the Court's attention, to present the Court with trustworthy arguments, and to provide the Court with valuable information about the practical ramifications of different decisions. 61 The Solicitor General carefully guards this special standing with the Court, "lest the reservoir of credibility which is the source of this special advantage be diminished." 62 <<FOOTNOTE BEGINS>> 62 Lee, supra note 27, at 597 (arguing that the Solicitor General must use the office's adversarial advantages "with discretion, with discrimination, and with sensitivity"); see also Strauss, supra note 61, at 172 (noting that the "Office's reputation with the Justices, and the Court's image of the Office, are very important both to the Office's ability to do its job for the Executive Branch and to the functioning of the government in general"); infra notes 263-266, 286-291 and accompanying text (discussing the debate over how political the Solicitor General can be without endangering the office's elevated status with the Court). <<FOOTNOTE ENDS>>

#### Climate suits are key to mitigation globally---extinction.

Oppenheimer ’22 [Michael, Noah Diffenbaugh, Christopher Field, Stephen Pacala, Daniel Schrag, and Susan Solomon; January 24; Albert G. Milbank Professor of Geosciences and International Affairs at Princeton University, Heinz Award Winner and Fellow of the American Association for the Advancement of Science; Amicus Brief in West Virginia, et al., Petitioners, v. Environmental Protection Agency, et al., Respondents, “Brief of Climate Scientists Michael Oppenheimer, Noah Diffenbaugh, Christopher Field, Stephen Pacala, Daniel Schrag, and Susan Solomon as Amici Curiae in Support of Respondents,” http://www.supremecourt.gov/DocketPDF/20/20-1530/211180/20220124150915825\_20-1530%20et%20al.%20-%20bsac%20ClimateScientists.pdf]

The question presented in this case is of great importance to amici because it has the potential to curtail the United States’ ability to combat climate change at the federal level at a critical time. It is extremely likely that humanity’s greenhouse gas emissions have already fundamentally altered the Earth’s atmosphere, raising global surface temperature levels by about 2 degrees Fahrenheit since the late 19th century. While Americans have already felt, and will continue to feel, the impacts of climate change, regulatory action by EPA can still mitigate future danger—assuming EPA retains broad authority to act.

SUMMARY OF ARGUMENT

A decade ago, this Court recognized that EPA had found “‘compelling’ evidence” that humanity’s greenhouse gas (e.g., carbon dioxide) emissions have changed the Earth’s climate. See American Elec. Power Co. v. Connecticut, 564 U.S. 410, 417 (2011). At the time, the “dangers of greenhouse gas emissions” were projected to include “heat-related deaths; coastal inundation and erosion”; “more frequent and intense hurricanes, floods, and other ‘extreme weather events’”; and “drought due to reductions in mountain snowpack and shifting precipitation patterns.” Id.

The perilous future identified in American Electric has begun to emerge. Since that ruling, the scientific community has only grown more certain that humanity’s actions have rapidly increased the Earth’s temperature. It is now “unequivocal that human influence has warmed the atmosphere, ocean, and land.” Intergovernmental Panel on Climate Change, Sixth Assessment Report, Headline Statements at 1 (Aug. 2021) (“IPCC Sixth Assessment”).3 And there is “[e]xtensive evidence[] … that human activities, especially emissions of greenhouse gases, are the dominant cause” of global warming since the 1950s. See U.S. Global Change Research Program, Climate Science Special Report: Fourth National Climate Assessment, Volume I at 10 (2017) (“Fourth National Climate Assessment, Vol. I”).4 Global surface temperature has already risen about 2 degrees Fahrenheit when compared to the late 19th century.5 It is not too late to limit further warming and if greenhouse gas emissions can be significantly reduced, additional warming may amount to less than 2 degrees (i.e., a total warming of less than 4 degrees since the late 19th century). In the absence of sustained efforts to reduce greenhouse gas emissions, however, the total increase in temperature could surpass 10 degrees—leading to physical and ecological impacts that would be irreversible for thousands of years, if ever.

To put those numbers into perspective, the current 2 degree increase in temperature already has had notable effects across the country. Summer heatwaves and other periods of unusually warm weather have become more frequent and more intense, leading to balmy Decembers on the Atlantic Seaboard and temperatures in the Pacific Northwest during the summer of 2021 that were hot enough to melt power cables and buckle roads. Climate change has increased total rainfall and extreme flooding from storms like Hurricane Harvey, causing losses of human life and destroying billions of dollars of property in Texas and Louisiana. And rising temperatures have set the stage for a prolonged drought in the American west, increasing devastation from wildfires in environments as different as Montana forestland and the suburbs of Boulder, Colorado. If the world remains on a path of high and rising greenhouse gas emissions, and the global temperature increases by 10 degrees or more, the impact on the American way of life is expected to be far worse. Absent large expenditures on measures to defend the coast, children born this year could see portions of coastal cities like New Orleans, Miami, and Annapolis disappear under a rising ocean. Such large increases in temperature, and accompanying increases in frequency or intensity of extreme weather events and drought could also have severe impacts on the United States’ food security, economy, and national defense. These impacts would continue or accelerate already existing trends, but a dramatic increase in temperature raises the possibility of black swan events that have severe consequences but are difficult to predict—for example, destabilization of parts of the Antarctic or Greenland ice sheets leading to rates of sea level rise several times current estimates.

These projections are not a counsel of despair. It is still possible to mitigate the human and economic costs of climate change—as particularly relevant here, if greenhouse gas emissions from existing power plants and other sources can be reduced. But such mitigation will require significant coordination at the federal level. And this Court has recognized that EPA is the nation’s “primary regulator of greenhouse gas emissions,” the entity with “the scientific, economic, and technological resources [necessary to] cop[e] with issues of this order.” American Elec. Power, 564 U.S. at 428. Because the D.C. Circuit’s ruling below recognizes EPA’s obligation to develop the rules necessary to reduce greenhouse emissions, we respectfully submit that the decision should be affirmed.

ARGUMENT

I. IT IS UNEQUIVOCAL THAT HUMAN ACTIVITY IS THE CAUSE OF UNPRECEDENTED GLOBAL WARMING

A. The Greenhouse Effect Controls The Earth’s Temperature, Which Has Been Rising At An Unprecedented Rate

The basic physics of the greenhouse effect are wellestablished. The Earth’s atmosphere contains not just nitrogen and the oxygen we breathe, but also greenhouse gases like water vapor, carbon dioxide, methane, and nitrous oxide. Fourth National Climate Assessment, Vol. I at 74-80. As this Court has summarized, “greenhouse gases are so named because they ‘trap … heat that would otherwise escape from the [Earth’s] atmosphere.’” American Elec. Power Co., Inc. v. Connecticut, 564 U.S. 410, 416 (2011). The resulting “‘greenhouse effect … helps keep the Earth warm enough for life.’” Id.

Indeed, much of the difference in surface temperature between the Earth, Venus (whose surface is hot enough to melt lead), and icy Mars can be explained by their respective greenhouse gas levels. See Climate Change, Part I: H. Comm. Hearing Before the Subcomm. on Environment at 3 (Apr. 9, 2019) (Testimony of Dr. Michael Oppenheimer) (“Oppenheimer 2019 Testimony”). 6 Without greenhouse gases, for example, the Earth’s average surface temperature would sink as lowas 0 degrees. NASA Earth Observatory, Effects of Changing the Carbon Cycle (June 16, 2011).7 It is similarly well-established that the Earth is warming at an unprecedented rate. See IPCC Sixth Assessment, Summary for Policymakers at 88; see also Fourth National Climate Assessment, Vol. I at 10 (“This period is now the warmest in the history of modern civilization.”). It can be stated with high confidence that the Earth’s surface temperature has risen more quickly since 1970 than it has in any other 50-year period since the days of Julius Caesar. Id. As a result, “the six warmest years on record have all occurred since 2012,” including 2021. See National Oceanic & Atmospheric Admin., U.S. saw its 4th-warmest year on record, fueled by a record-warm December (Jan. 10, 2022).9 For Maine and New Hampshire, 2021 was “their second warmest year on record” and one of the five warmest for 19 other “states across the Northeast, Great Lakes, Plains, and West.” Id.

We can state with high confidence that as temperatures have risen, the concentrations in the Earth’s atmosphere of the greenhouse gases (carbon dioxide, methane, and nitrous oxide) have also increased and now are higher than they have been in hundreds of thousands of years. IPCC Sixth Assessment, Summary for Policymakers at 8. Carbon dioxide alone makes up a higher percentage of the atmosphere than it has in millions of years. Id. As the National Oceanic and Atmospheric Administration charts below demonstrate, the concentration of carbon dioxide in the atmosphere has skyrocketed in the last sixty years—as is apparent by comparison with the prior 800,000 years.10

B. The Only Convincing Explanation For The Rapid Rise In Global Temperature Is That Human Activity Has Altered The Makeup Of The Earth’s Atmosphere

The observation of both a rapidly heating Earth and the skyrocketing levels of carbon dioxide in the modern era is not coincidental. Rather, the evidence is now “unequivocal that human influence has warmed the atmosphere, ocean, and land” and that “[w]idespread and rapid changes in the atmosphere, ocean, … and biosphere have occurred.” IPCC Sixth Assessment, Summary for Policymakers at 4. Indeed, “[g]reenhouse gas emissions from human activities are the only factors that can account for the observed warming over the last century; there are no credible alternative human or natural explanations.” U.S. Global Change Research Program, Impacts, Risks, and Adaptation in the United States: Fourth National Climate Assessment, Volume II at 39-40 (2018) (“Fourth National Climate Assessment, Vol. II”)11; see also, e.g., Mann et al., Record Temperature Streak Bears Anthropogenic Footprint, 44 Geophys. Res. Lett. 7936, 7936 (2017) (“th[e] sequence of record-breaking temperatures [between 2014-2016] had a negligible (<.003%) likelihood of occurrence in the absence of … warming” caused by human activity).

Specifically, the average surface temperatures both globally and in the United States have increased by about 2 degrees since the late 19th century, with the majority of that increase occurring in the last 35 years. See Lindsey & Dahlman, Climate Change: Global Temperature (updated Aug. 12, 2021);12 EPA, Climate Change Indicators: U.S. and Global Temperature (figs. 1-2) (updated Apr. 2021);13 Fourth National Climate Assessment, Vol. I at 14. With “significant reductions in the emissions of greenhouse gases,” it may be possible to limit that rise to less than 4 degrees. Fourth National Climate Assessment, Vol. I at 35. Without such reductions, the average global temperature increase could reach anywhere from 4 to 10 degrees by late in this century, depending on actual emissions. IPCC Sixth Assessment, Summary for Policymakers at 14.

Another demonstration of the connection between the rise in greenhouse gas concentrations in the atmosphere and global warming is a set of new observations from robotic thermometers (called “floats”) across the world’s oceans that are measuring heat absorption by the ocean at a global scale with unprecedented precision. See Destin, National Oceanic & Atmospheric Admin., The Argo Revolution (updated July 9, 2021).14 These floats show that the deep ocean is slowly warming across the globe, and such warming is a predictable consequence of rising atmospheric greenhouse gas levels. Johnson & Lyman, Warming trends increasingly dominate global ocean, 10 Nature Climate Change 757, 757, 760 (2020); Lyman et al., Robust warming of the global upper ocean, 465 Nature 334, 334, 336 (2010); IPCC, Special Report on the Ocean and Cryosphere in a Changing Climate, Summary for Policymakers at 7, 9 (2019) (“IPCC Ocean and Cryosphere”).15 Indeed, such sustained warming of the deep ocean cannot be explained by any process other than the rise of greenhouse gases.

As one of us has summarized, “the broad outlines of [this] problem bearing high risk for humans and society” have been clear for over thirty years, “even if many important details remained to be fleshed out.” Oppenheimer 2019 Testimony at 3. By the late 1980s, it was known that (1) “atmospheric carbon dioxide … was increasing and the only plausible explanation was fossil fuel combustion along with a lesser contribution from deforestation,” (2) “climate models projected a significant warming due to the increasing greenhouse effect,” and (3) “it was … understood that the warming could bring Earth to temperatures not experienced in several million years by the end of the 21st century.” Id. at 5. These findings led the United Nations—and later the United States, under the leadership of President George H.W. Bush—to create organizations dedicated to the study of climate change. Id. at 5-6 (discussing the founding of the Intergovernmental Panel on Climate Change); see also U.S. Global Change Research Program, Legal Mandate.16

Since its inception, the IPCC has released six full assessments of the basic science of climate change, the most recent of which is cited throughout this brief. Each report has provided increasingly strong evidence that human activity is responsible for the changes in the global climate:

* The Second Assessment, published in 1996, concluded that “The balance of evidence suggests a discernable human influence on global climate.” Oppenheimer 2019 Testimony at 6 (quoting IPCC, Second Assessment: Climate Change 1995 (1996) at 2217).
* The Third Assessment, published in 2001, found that “There is new and stronger evidence that most of the warming observed over the last 50 years is attributable to human activities.” Id. (quoting IPCC, Third Assessment: Climate Change 2001 at 5 (first published 2001)18).
* The Fourth Assessment, published in 2007, “strengthened this finding further: ‘Most of the observed increase in global average temperatures since the mid-20th century is very likely due to the observed increase in [human] greenhouse gas concentrations.’” Id. (quoting IPCC, Fourth Assessment: Climate Change 2007, Summary for Policymakers at 5 (first published 2007)19).
* The Fifth Assessment, published in 2013, stated that “‘[i]t is extremely likely that more than half of the observed increase in global average surface temperature from 1951 to 2010 was caused by [humanity’s] increase in greenhouse gas concentrations and other’ human activity.” Id. (quoting IPCC, Fifth Assessment: Climate Change 2014, Summary for Policymakers at 5 (first published 2013)20).
* And, as noted, the Sixth Assessment— published in August 2021—concluded that the evidence “unequivocal[ly]” shows that human activity has led to climate change. See supra p. 4.

The U.S. Global Change Research Program’s reports— which are jointly authored by thirteen federal agencies pursuant to the Global Change Research Act of 1990— have followed a similar trajectory as the IPCC’s.

* The first National Assessment, published in 2000, acknowledged that “[h]umans are asserting a major and growing influence on some of the key factors that govern climate” and that “[t]he intensity and pattern of temperature changes within the atmosphere implicates human activities as a cause.” See U.S. Global Change Research Program, Climate Change Impacts On The United States, Report Overview at 12-13.21
* The second National Assessment, published in 2009, stated that “[t]he global warming observed over the past 50 years is due primarily to human- induced emissions of heat-trapping gases.” See U.S. Global Change Research Program, Climate Change Impacts in the United States at 9 (emphasis added).22
* The third National Assessment, published in 2014, found that “observations unequivocally show that … the warming of the past 50 years is primarily due to human-induced emissions of heat-trapping gases.” U.S. Global ChangeResearch Program, Climate Change Impact in the United States at 5 (emphasis added).23
* And, as noted, the fourth National Assessment, first published in 2017, noted that there is “no convincing alternative explanation” for the global increase in temperature beyond human activity. Fourth National Climate Assessment, Vol. I at 10; supra pp. 4-5.

In sum, after decades of study, both the global and American scientific communities have arrived at the same, unequivocal conclusion: Human activity—in particular, the emission of greenhouse gases—has increased the Earth’s temperature. See, e.g., Fourth National Climate Assessment, Vol. II at 36 (“[T]he evidence of human-caused climate change is overwhelming and continues to strengthen.”).

II. CLIMATE CHANGE ALREADY AFFECTS EVERY AMERICAN AND—WITHOUT ACTION—ITS IMPACT ON DAILY LIFE IS EXPECTED TO GROW IN DRAMATIC AND NOT FULLY PREDICTABLE WAYS

1. Climate Change Has Already Had Notable Effects Across The Country

There is “a direct connection” between the 2 degree global temperature rise that has already taken place and “the resulting changes that affect Americans’ lives, communities, and livelihoods, now, and in the future.” Fourth National Climate Assessment, Vol. II at 36; see also id. at 55 (changes caused by warming “increasingly threaten the health and well-being of the American people”). Between 2015 and April 2018 alone, for example, “the United States … experienced 44 billiondollar weather and climate disasters …, incurring costs of nearly $400 billion.” Id. at 66-68. Indeed, warmer temperatures in the United States have already been associated with a number of interrelated long-term climate trends, short-term weather events, and resulting impacts, such as (1) extreme heat and heatwaves, (2) rising sea levels, and accompanying coastal flooding, (3) increases in the frequency and intensity of storms producing heavy precipitation, including hurricanes and typhoons, (4) more intense and longer droughts, (5) wildfires, and (6) habitat degradation increasing risk of local extinctions and biodiversity loss.

a. Extreme Heat and Heatwaves: Temperatures across the United States have “increased rapidly” since the 1970s and in recent years, “twice as many hightemperature records have been set as low-temperature records.” Fourth National Climate Assessment, Vol. I at 186, 190-192; see also supra p. 8. Heatwaves (i.e., “6- day periods with a maximum temperature above the 90th percentile”) have similarly increased in most places in the country. Fourth National Climate Assessment, Vol. I at 191. By the federal government’s estimate, the frequency has increased from 2 heatwaves per year in the 1960s to 6 per year in the 2010s. See EPA, Climate Change Indicators: Heat Waves (updated Apr. 2021).24 This is no coincidence, as historical warming has made the hottest days of the year both more likely and hotter between 1961 and 2010. Diffenbaugh et al., Quantifying the influence of global warming on unprecedented extreme climate events, 114 Proceedings Nat’l Academy Sci. U.S.A. (“PNAS”) 4881,4882 (2017).25 To take one recent example, an early study suggests that last summer’s heatwave in the Pacific Northwest—where temperatures rose 40 degrees above average, hot enough to melt power cables and make asphalt buckle—was “virtually impossible without human-induced climate change.” See Philip et al., Rapid attribution analysis of the extraordinary heatwave on the Pacific Coast of the US and Canada June 2021, World Weather Attribution (July 7, 2021);26 see also Januta, Pacific Northwest heat wave ‘virtually impossible’ without climate change-research, Reuters (July 8, 2021);27 see also Fischels, PHOTOS: The Record- Breaking Heat Wave That’s Scorching The Pacific Northwest, NPR (June 29, 2021).28

The increasing temperature is especially troubling because “[e]xtreme heat is the leading cause of climaterelated death in the” United States. See Climate Change Science: Hearing Before the H. Comm. on Science, Space, and Technology at 14 (Mar. 12, 2021) (Testimony of Dr. Michael Oppenheimer) (“Oppenheimer 2021 Testimony”).29 In particular, “[h]igh temperatures in the summer are linked directly to an increased risk of illness and death, particularly among older adults, pregnant women, and children.” Fourth National Climate Assessment, Vol. II at 55. From 1991 to 2018, 37% of heat-related summer deaths worldwide were attributable to human-caused climate change. Vicedo- Cabrera et al., The burden of heat-related mortality attributable to recent human-induced climate change, 11 Nature Climate Change 492, 492 (2021); see also Schwartz, More Than a Third of Heat Deaths Are Tied to Climate Change, Study Says, N.Y. Times (May 31, 2021).30

b. Sea Levels And Flooding: It can be stated with high confidence that global sea levels have risen faster since 1900 than over any prior century in 3000 years. See IPCC Sixth Assessment, Summary for Policymakers at 8. Rising sea levels are directly linked to climate change. Most of the heat trapped by greenhouse gases has been absorbed by the oceans, which have reacted to this heat as most liquids do—by expanding and taking up greater volume. Id. at 11; Oppenheimer 2021 Testimony at 5-6. At the same time, the ice sheets located around the Earth’s poles and mountain glaciers alike have begun to melt at an increasing rate—that meltwater eventually ends up in the ocean. See IPCC Sixth Assessment, Summary for Policymakers at 11; Oppenheimer 2021 Testimony at 5-6.

Ocean levels rose 2.5 times faster between 2006- 2015 (about 14 inches per century) than they did between 1901 and 1990 (about 6 inches per century). IPCC Ocean and Cryosphere, Summary for Policymakers at 10; Oppenheimer 2021 Testimony at 6. Rising sea levels have increased coastal flooding at high tide as much as “5- to 10-fold” over the norm in the 1960s in cities like Miami, Wilmington, North Carolina, and Charleston, South Carolina. Fourth National Climate Assessment, Vol. II at 99, 757. Similarly, areas of Norfolk, Virginia are now 4 times more likely to flood than they were in the 1960s. Id. at 758. And between 1932 and 2016, Louisiana lost 2006 square miles of land due in part to high rates of sea level rise. Id. at 775. That is the equivalent of one football field-sized piece of land disappearing every 34 to 100 minutes. Id.

c. Storms and Hurricanes: Heavy rain and snow storms across most of the United States “have increased in both intensity and frequency since 1901.” Fourth National Climate Assessment, Vol. II at 152. This result is consistent with higher temperatures leading to “higher levels of water vapor in the atmosphere, which in turn lead to more frequent and intense precipitation extremes.” Id. at 88. Storm-caused flooding inflicts billions of dollars in damage annually in the United States, and research suggests that intensifying storms have been responsible for about a third of those costs in recent years. Davenport & Diffenbaugh et al., Contribution of historical precipitation change to US flood damages, 118 PNAS 1, 3 (2021).31 For example, the exceptionally heavy precipitation and flooding events that occurred in the mid-Atlantic states including Pennsylvania, New Jersey, Maryland, and Washington, D.C. in 2018 were made 1.1 to 2.3 times more likely by human-caused climate change. Winter et al., Anthropogenic Impacts on the Exceptional Precipitation of 2018 in the Mid-Atlantic United States, 101 Bull. Am. Meteorological Soc’y 5, 5 (2020).32

Notably, the increase in intense rainstorms has combined with sea level rise to make hurricane season in the Atlantic Ocean more dangerous. Fourth National Climate Assessment, Vol. I at 27. While climate change may not necessarily increase the total number of hurricanes, hurricanes’ precipitation totals are expected to rise. Unusually high precipitation totals have been observed and directly linked to climate change in some recent hurricanes. For example, one study estimated that as much as 38% of the total rainfall from Hurricane Harvey—a storm that made landfall in Texas and Louisiana in 2017—was caused by “humaninduced climate change”; another study estimated that human activity made “the event itself three times more likely.” Fourth National Climate Assessment, Vol. II at 95. And higher sea levels in combination with storm surge have further increased the risk of coastal flooding. Trenberth et al., Hurricane Harvey Links to Ocean Heat Content and Climate Change Adaption, 6 Earth’s Future 730, 741-742 (2018) (using Hurricane Harvey to demonstrate how human-induced climate change causes higher sea temperature, intensifies storms, and increases flooding rains);33 Lin et al., Hurricane Sandy’s flood frequency increasing from year 1800 to 2100, 113 PNAS 12071, 12071-12073 (2016) (the frequency of Hurricane Sandy-like extreme flood events has increased significantly over the past two centuries due to the compound effects of sea level rise and storm surge).34

The results were catastrophic. The 2017 Atlantic hurricane season, for example, caused more than 250 deaths and $250 billion in damage. Fourth National Climate Assessment, Vol. II at 66. Hurricane Harvey’s rainfall in Houston was about 30 inches and higher amounts fell at some locations nearby, with its total rainfall “likely exceed[ing] that of any known historical storm in the continental United States.” Id. at 66, 95- 96. It killed 68 people and inflicted $125 billion in damage, National Oceanic & Atmospheric Admin., Service Assessment: August-September 2017 Hurricane Harvey iv (June 2018);35 it also “knocked out power to 300,000 customers in Texas,” including hospitals and water treatment facilities, Fourth National Climate Assessment, Vol. II at 643.

d. Droughts: Rising global temperatures can “play a critical role in increasing the rate of drought onset, overall drought intensity, and drought impact through altered water availability and demand,” Fourth National Climate Assessment, Vol. II at 399; and it can be said with medium confidence that “human-induced climate change” has made droughts worse by increasing the rate at which water evaporates into the atmosphere, IPCC Sixth Assessment, Summary for Policymakers at 8; see also id. at 24 (as temperatures increase in the future, “the level of confidence in and the magnitude of the change in droughts … increase”).

Drought conditions in recent years have caused billions of dollars in damage in the western half of the United States. Fourth National Climate Assessment, Vol. II at 67. For example, the Northern Great Plains region—which encompasses states like Idaho and North Dakota—endured a severe drought in 2017 that damaged wheat crops and forced ranchers to sell off their cattle because they were unable to feed them. Id. Even today, Lake Powell—the nation’s second-largest reservoir, which supplies drinking water to 40 million people in states like Utah and Arizona—is at just 27% of capacity. See Maffly, Feds tighten Colorado River flow at Glen Canyon Dam as ever-shrinking Lake Powell nears critical level, Salt Lake Tribune (Jan. 7, 2022);36 Meiners, Scientists see silver lining in fed’s latest efforts to avoid ‘dead pool’ at Lake Powell, St. George Spectrum & Daily News (updated Jan. 12, 2022).37

e. Wildfires: Climate change can also play a role in wildfires, as higher temperatures dry out vegetation and make forests more likely to burn. Fourth National Climate Assessment, Vol. I at 243. Extreme wildfires are increasing in the western United States and human-caused warming has contributed to at least two-thirds of that increase. Zhuang et al., Quantifying contributions of natural variability and anthropogenic forcings on increased fire weather risk over the western United States, 118 PNAS 1, 7 (2021);38 see also Diffenbaugh & Field, et al., Atmospheric variability contributes to increasing wildfire weather but not as much as global warming, 118 PNAS 1, 1 (2021) (Commentary).39 Specifically, “[h]uman-caused climate change is estimated to have doubled the area of forest burned in the western United States from 1984 to 2015.” Fourth National Climate Assessment, Vol. II at 521. During the summer of 2015 alone, “over 10.1 million acres—an area larger than the entire state of Maryland—burned across the United States.” Id. at 67-68. The scope of the wildfires in that year was unprecedented since recordkeeping began in 1960, burning over 5 million acres in Alaska and 1 million in Montana. Id. In both 2017 and 2020, more than 10 million acres across the United States were burned each year. Congressional Res. Serv., Wildfire Statistics (updated Oct. 4, 2021).40

As a more recent example, just last month, the suburbs of Boulder County, Colorado were hit by the most destructive wildfire in state history—one that damaged or destroyed roughly 1,000 homes, see NASA Earth Observatory, Colorado Faces Winter Urban Firestorm (Dec. 30, 2021).41 The six months prior to the fire were the warmest on record in the region, which was experiencing extremely dry conditions. Swain, The Deadly Dynamics of Colorado’s Marshall Fire, Outside (Jan. 11, 2022).42 Although climate change did not start the fire, in the words of one local researcher, it “led to a perfectly built stack of fuels in the fireplace, ready and waiting to be burned.” Freedman, Climate scientists grapple with wildfire disaster in their backyard, Axios (Jan. 3, 2022);43 see also Chuck, How climate change primed Colorado for a rare December wildfire, NBC News (updated Jan. 2, 2022).44

f. Loss of Biodiversity: Increases in temperature affect not just the land and seas, but the creatures that inhabit them. A hotter world “aid[s] the spread of invasive species” to new locations, while forcing other species to “shift[] their ranges … and [make] changes in the timing of important biological events.” Fourth National Climate Assessment, Vol. II at 53. For example, tree-killing bark beetles have been able to dramatically expand their ranges in both the eastern and western United States. Id. at 250, 649, 1115. And in the Mississippi River Basin—the home of over 300 fish species, as well as waterfowl, turkey, moose, and alligator—more frequent hot days and milder winters have begun to disrupt the wildlife’s mating and migration patterns. See National Wildlife Federation, A Hunter’s & Angler’s Guide to Climate Change: Challenges, Opportunities & Solutions 8-9 (Oct. 2021).45

In some cases, climate change has thinned species’ populations and contributed to local extinction. See Wiens, Climate-Related Local Extinctions are Already Widespread Among Plant and Animal Species, 14 PLOS Biology 1, 1 (2016) (“[C]limate-related local extinctions have already occurred in … 47% of the 976 species surveyed” and “will presumably become much more prevalent as global warming increases”);46 Panetta et al., Climate Warming Drives Local Extinction: Evidence from Observation and Experimentation, 4 Sci. Adv. 1, 1 (2018) (finding that “local warming is driving local extinction”).47 The Midwest, for instance, may soon lose iconic trees like the paper birch and the black ash. Fourth National Climate Assessment, Vol. II at 873, 886.

The loss of biodiversity is not limited to the land. Oceans are getting warmer, see supra pp. 11-12, 18, and “[i]t is virtually certain that human-caused [carbondioxide] emissions are the main driver” of ocean acidification, IPCC Sixth Assessment, Summary for Policymakers at 5. Acidification has caused a marked decrease in carbonate ions—the building blocks of coral and sea shells, Fourth National Climate Assessment, Vol. II at 357. The United States’ major coral reefs are thus both dying (from the increased water temperatures, among other contributors to decline) and unable to rebuild (due to acidification). Id. at 359, 368. If no action is taken to reduce greenhouse gas emissions, the percentage of live coral in Hawaii will decline from 38% in 2010 to 11% in 2050; in southern Florida, live coral will vanish almost entirely. See EPA, Multi-Modal Framework for Quantitative Sectoral Impacts Analysis: A Technical Report for the Fourth National Climate Assessment 171-172 (May 2017).48 Further north, the shellfish that live in the Gulf of Maine are also vulnerable to warming and ocean acidification, reducing the ability of Mainers to catch or raise shellfish like lobsters, scallops, blue crabs, and oysters. Fourth National Climate Assessment, Vol. II at 687. And on the other side of the country, salmon populations have been declining for decades and even facing extinction as a result of a warming climate. Crozier et al., Climate change threatens Chinook salmon throughout their life cycle, 4 Comms. Biology 1, 3, 5 (2021).49

2. Absent Action, More Severe Consequences Are Expected

Under any realistic emissions scenario, global surface temperature will continue to increase until at least 2050. IPCC Sixth Assessment, Summary for Policymakers at 14. If greenhouse gas emissions can be significantly reduced, additional warming may be limited to less than 2 degrees, or a total warming of less than 4 degrees since the late 19 century. Id. In the absence of sustained efforts to reduce greenhouse-gas emissions, the total increase in temperature could surpass 10 degrees. Id.

With “every additional increment[al]” change in temperature, “changes in extremes continue to become larger,” meaning “increases in the frequency and intensity of hot extremes, … heavy precipitation, … agricultural and ecological droughts; an increase in the proportion of intense tropical cyclones; and reductions in Arctic sea ice, snow cover and permafrost.” IPCC Sixth Assessment, Summary for Policymakers at 15. Failing to reduce greenhouse gas emissions will “impose substantial damages on the U.S. economy, human health, and the environment.” Fourth National Climate Assessment, Vol. II at 1347. It will also lead to physical and ecological impacts that would be irreversible for thousands of years—if ever. IPCC Sixth Assessment, Summary for Policymakers at 21 (noting that changes to ocean temperature and acidification—as well as to permafrost at the Earth’s poles—“are irreversible for centuries to millennia”).

Because listing all potential harms that could occur in the next thirty to eighty years as a result of climate change would require hundreds of pages, see, e.g.,Fourth National Climate Assessment, Vol. II at 72- 1308, we have included representative examples below.

a. Coastal Cities And Landmarks Flooded: Under even a low emissions scenario, oceans will rise approximately 7-13 inches by midcentury and approximately 11-23 inches in eighty years. Oppenheimer 2021 Testimony at 7; Oppenheimer, et al., Sea Level Rise and Implications for Low-Lying Islands, Coasts, and Communities 321, 327, in IPCC Special Report on the Ocean and Cryosphere in a Changing Climate.50 To put that amount of sea level rise in practical terms, by 2050, water levels during storms and very high tides that were only seen once a century are expected every year in places like Savannah, Jacksonville, Miami, and San Diego. Oppenheimer 2021 Testimony at 9. The Northeast also faces flooding, particularly in the historic districts of cities like Annapolis, Maryland and Newport, Rhode Island, as well as portions of Washington D.C. near the tidal basin. See Fourth National Climate Assessment, Vol. II at 695-696 (noting that the “historic districts” in coastal cities and towns—like Annapolis and Newport, Rhode Island—already “face the threat of rising sea levels”). Without reductions in greenhouse gas emissions, ocean levels would go even higher, as much as approximately 9-16 inches by midcentury and approximately 24-43 inches by 2100. Oppenheimer 2021 Testimony at 7; Oppenheimer, Sea Level Rise and Implications for Low-Lying Islands, Coasts, and Communities 327.

b. Food Security At Risk: In numerous parts of the world, “[c]limate change has already affected food security due to warming, changing precipitation patterns, and greater frequency of some extreme events.” IPCC, Climate Change and Land, Summary for Policymakers at 10 (2020).51 In the United States, “increases are expected in the incidence of drought and elevated growing- season temperatures,” which will decrease the “[a]verage yields of many commodity crops (for example, corn, soybean, [and] rice”) and “specialty crops” like fruits and vegetables. Fourth National Climate Assessment, Vol. II at 399-400; see also Gray, Global Climate Change Impact on Crops Expected Within 10 Years, NASA Study Finds, NASA (Nov. 2, 2021) (under a high emissions scenario, corn yields are projected to decline 24% by 2030).52

The Midwest’s agricultural sector will be hit particularly hard and is “projected to be the largest contributing factor to declines in the productivity of U.S. agriculture.” Fourth National Climate Assessment, Vol. II at 875. Indeed, “[p]rojected changes in precipitation, coupled with rising extreme temperatures before mid-century, will reduce Midwest agricultural productivity to levels of the 1980s” (assuming no major technological advances). Id. at 873.

c. Heat-Related Health Issues Spread: Rising heat will pose an increasing threat to human health. For example, if no action is taken to reduce greenhouse gas emissions, “almost three-quarters of the world’s population” will be exposed to deadly levels of heat and humidity for at least 20 days a year by 2100. Mora et al., Global risk of deadly heat, 7 Nature Climate Change 501, 505 (2017).

In North America, climate change is projected to shift the “geographic range and distribution of diseasecarrying insects and pests,” meaning that “more people” “could [be] expos[ed] … to ticks that carry Lyme disease and mosquitos that transmit viruses such as West Nile, … dengue, and Zika.” Fourth National Climate Assessment, Vol. II at 57, 545. Incidences of West Nile in particular “are projected to more than double by 2050[,]” “resulting in $1 billion per year in hospitalization costs and premature deaths under a higher [emissions] scenario.” Id. at 552. Moreover, “[i]ncreasing water temperatures associated with climate change are projected” to increase the number of “harmful algae and coastal pathogens” in fresh water. Id. at 545. In the Great Lakes, for example, “[i]ncreased water temperatures and nutrient inputs contribute to algal blooms, including harmful cyanobacterial algae that are toxic to people, pets and many native species.” Id. at 895.

d. Damage to National Economy: If greenhouse gas emissions are not reduced, the United States is projected to lose more than two billion labor hours a year by 2090 due to increasing temperatures, “costing an estimated $160 billion in lost wages.” Fourth Climate Assessment, Vol. II at 50. Other harms wrought by climate change, including to coastal property, air quality, roads, and inland flooding, are expected to lead to over $200 billion in additional damage on an annual basis. Id. at 1358. For consumers, energy and water costs may skyrocket—particularly in the southern United States—as the demand for air conditioning increases and the competition for water between individuals, farmers, and power plants continues to grow. See, e.g., id. at 777-778.

e. National Security At Risk: Rising temperatures and intensifying storms due to climate change also implicate the United States’ national security. The Department of Defense has recognized for well over a decade that “[g]lobal climate change will have wide ranging implications for U.S. national security interests.” See U.S. Department of Defense, The National Security Implications of Climate-Related Risks and a Changing Climate 2-3 (May 2015);53 see also U.S. Department of Defense, Climate Risk Analysis 4 (Oct. 2021) (“Climate change touches most of what th[e] Department does, and this threat will continue to have worsening implications for U.S. national security.”).54 For example, national security is directly “impacted by damage to U.S. military assets such as roads, runways, and waterfront infrastructure from extreme weather and climate-related events.” Fourth National Climate Assessment, Vol. II at 59. More broadly, “changes in climate increase risks … by affecting factors that can exacerbate conflict and displacement outside of U.S. borders, such as food and water insecurity and commodity price shocks.” Id. Indeed, “in worst-case scenarios[,] climate-change related impacts could … contribute to mass migration events or political crises, civil unrest, shifts in the regional balance of power, or even state failure.” U.S. Department of Defense, Climate Risk Analysis at 8.

f. Some of the Most Extreme Outcomes Are Unpredictable: It can be stated with high confidence that the probability of (currently) “low-likelihood, highimpact outcomes increases with higher global warming levels.” IPCC Sixth Assessment, Summary for Policy-makers at 27; accord Fourth National Climate Assessment, Vol. II at 66 (similar). For instance, “[h]uman influence has likely increased the chance of” multiple climate-change-related impacts occurring at the same time, like “concurrent heatwaves and droughts,” IPCC Sixth Assessment, Summary for Policymakers at 9 (emphasis omitted), or “extreme rainfall combined with coastal flooding,” Fourth National Climate Assessment, Vol. II at 44-45. The “physical and socioeconomic impacts” of such “compound extreme events can be greater than the sum of the parts.” Id. at 91. In the heatwave/drought example, demand for water would go up as supply goes down; in the extreme rainfall/coastal flooding example, ground that is already water-logged from the rain might absorb far less flood waters than normal.

Higher temperatures—and their accompanying effects— also increase the likelihood of “large-scale shifts in the climate system” (i.e., “tipping points”). Fourth National Climate Assessment, Vol. II at 66; see also IPCC Sixth Assessment, Summary for Policymakers at 27 (“with higher global warming levels,” “[a]brupt responses and tipping points of the climate system … cannot be ruled out”). For example, it can be projected with high confidence that—over the next eighty years—water from increased rainfall and melting ice will weaken the Atlantic ocean currents that move warm water north and cold water south. IPCC Sixth Assessment, Summary for Policymakers at 27; see also Fourth National Climate Assessment, Vol. I at 418. While it can be said with medium confidence that the currents will not collapse during this century, “[i]f such a collapse were to occur, it would very likely cause abrupt shifts in regional weather patterns and water cycles”—e.g., shifting rain events further south andaway from Europe, IPCC Sixth Assessment, Summary for Policymakers at 27 (emphasis omitted)—and could cause sea levels in the northeastern United States to rise as much as 1.6 feet, Fourth National Climate Assessment, Vol. I at 418. As another example, warming temperatures in the Arctic could release substantial amounts of carbon dioxide and methane trapped in the permafrost and the ocean floor, “driv[ing] continued warming even if human-caused emissions stopped altogether.” Id. at 418-419.

III. The United States Still Has the Opportunity to Help Mitigate the Effects of Climate Change

While we cannot avoid all negative effects from climate change, it is not too late to limit the harm. Indeed, “[m]any climate change impacts and associated economic damages in the United States can be substantially reduced over the course of the 21st century” through reducing greenhouse gas emissions. U.S. Fourth National Assessment, Vol. II at 1347. Practically speaking, this means that “[d]ecisions made today determine risk exposure for current and future generations” and “the severity of future impacts will depend largely on actions taken to reduce greenhouse gas emissions and to adapt to the changes that will occur.” Id. at 34.

As the nation with the second-highest emissions of carbon dioxide from fossil fuel combustion in the world (and higher than the largest emitter, China, on a per capita basis), Global Carbon Project, Global Carbon Budget at 19-20 (Nov. 4, 2021),55 the policies that the United States sets into place can make a substantial difference in the conditions that future generations will face. See IPCC Sixth Assessment, Summary for Policymakers at 27-29 (noting “with high confidence … that there is a near-linear relationship” between carbon dioxide emissions and global warming). Substantially reducing emissions could “avoid[] thousands to tens of thousands of deaths per year from extreme temperatures,” and “hundreds to thousands of deaths per year from poor air quality.” Fourth National Assessment, Vol. II at 1359. And if global warming can be limited to less than a total of 4 degrees, the ultimate economic costs of climate change this century could be less than 1/4 of what they would be under a high emissions scenario. Fourth National Assessment, Vol. II at 1360. This Court should exercise caution before unduly limiting EPA’s ability to enact rules that help protect the future for today’s and tomorrow’s children.

### 1NC --- Residents Advantage

#### Whiteness is an existential threat— (let’s just do the impact debate here)

Preston, 17—Cass School of Education and Communities, University of East London (John, “Rethinking Existential Threats and Education,” Competence Based Education and Training (CBET) and the End of Human Learning pp 61-93, dml)

After Marxism, the second existential threat is one of negation and elimination of the subject and here I shall consider conceptions of this from CRT and black existentialism.

Various contemporary educational theories consider the equity and social justice implications of different forms of education with regard to race. The work of Sleeter and Grant (2007) makes the ethical and pragmatic case for multicultural social justice as a key value of education. This has been followed in contemporary work that attempts to consider the various dimensions of social justice. For example, Bhopal and Shain (2014), consider the twin axis of recognition and redistribution as goals of education. Other work examines the role of social distancing from the ‘Other’ by white students as a dynamic process in which Black, Asian and Minority Ethnic (BAME) and working-class students are disadvantaged. In many ways denial of social justice in terms of lack of resources, recognition or access to social space can be considered to be a form of dehumanisation. However, whilst work on social justice and education might consider the lack of humanity in these systems of oppression (applying concepts such as ‘bare life’, Lewis 2006; or ‘othering’ Lebowitz 2016) they do not consider directly existential threats. Threats to humanity on the basis of difference may arise from totalitarianism as much as through war and threats to the environment. The various genocides which have taken place throughout human history have often had a racial, or ethnic, cleansing purpose to them. They have been eugenic threats that are based upon spurious ideas of genetic and moral superiority. Writers on race from Fanon to Du Bois have considered that the threat posed to racial groups may be existential and that there is a short step from psychic, to real extermination. The negation of individuals through economic, social and psychological processes allows for their physical extermination. Du Bois (2014) deals explicitly with existential threat in his short story ‘The Comet’ where humanity is almost wiped out by a threat from space, leaving only a small number of people to carry on. As one of the survivors of the comet is an African American, this leads Du Bois to consider the state of race relations in the USA. The implication of the story is that the existential threat of the comet (which allows the African American character to live in a world entirely free of racial prejudice) allows release from the existential threat of eugenic attitudes. Building on Du Bois, in other work (Preston 2012), I have considered the ways in which preparation for threats, including existential threats such as pandemics and nuclear war, has been in many ways eugenic in that it prioritises the survival of some more than others based upon criteria which include race and ethnicity (Preston 2012). Preparing for disasters and emergencies often prioritises the interests of white people above those of other ethnic minorities. One reason for this is tacit intentionality which means that policymakers and practitioners do not consider human diversity in considering how people may respond to disaster. Policy is often biased as policymakers expect that people will be ‘like me’ which (at least in the UK and USA) means they will often be white, middle-class, educated, English-speaking men. In planning for threats, there will be various ways in which such biases are included. For example, they may not consider publishing advice in a number of languages, the resources necessary to survive a disaster, the mobility of people and the attitudes of emergency responders. This is unwitting prejudice in that by not considering diversity they are actually making it less likely for BAME people to survive, or protect themselves against, the disaster.

Although these biases may lead to a gradient in terms of survival by different groups in a disaster, they do not appear to relate to existential threat. However, existential threat can be interpreted in a different way in perspectives from critical whiteness studies and CRT.

In critical whiteness studies, whiteness is taken to be not a racial identity, but rather a system of power and oppression (Leonardo 2009). Whiteness was created as an identity not simply as a mode of social classification but as a way of exploiting and controlling others. There are obviously periods in history where this was objectively the case. During slavery in the USA, for example, whiteness was used as a means to distinguish between those people who had the right to own property (whites) and those who could not (Africans), Moreover, whiteness was the obverse of property in that only Africans could ‘be’ assets or property. Enslaved Africans were therefore treated as property and did not have access to the basic rights which would constitute humanity in American society (such as access to education, the right to own property, the right to decide who they should have relationships with). There are obviously parallels between this experience and holocaust when Jewish people (and other individuals) were dehumanised by the Nazis and denied access to basic resources. During imperialism there was also a period whereby other races were categorised to be less worthy than white people and this provided the justification for colonial control, exploitation and often extermination.

Advocates of whiteness studies go further than this and consider that whiteness is not merely a past system of oppression, but a continuing system of white supremacy (Leonardo 2009). The economy and society is comprised in such a way that white people will usually benefit, and BAME people will usually not. This is not only an economic and social system but also a psychological system whereby existence as a full human depends upon one’s racial categorisation. This idea has its roots in the work of Fanon (1986) who wrote that black identity was shaped by the white gaze, but also contemporary writers also consider the notion of whiteness as ‘death’, a categorisation that is rooted in past oppression and extermination, whose remnants exist to this day. This perspective on race and existence leads us to consider what is meant by life, and whether we are not currently living to our full potential (as Marxists would also propose) when existential threat is actually amongst us. For Marxists this would be the expansion of the ‘social universe’ of capitalism that flows between and through us, ‘capitalising humanity’. For critical whiteness studies, this existential threat would be one of whiteness and the negation of existence for a racially classified group of people.

In order to make this idea of constant existential threat more tangible (although the term is not used) critical race theorists use what are known as ‘counter-stories’ to consider how racial dynamics might develop in the future, or to highlight inequalities in the present (Delgado 1996). Derrick Bell (1992) who is considered to be the founder of CRT, uses a much cited counter-story ‘The Space Traders’ to consider the ways in which black people’s lives are classed as being not equal to those of whites in the USA. In ‘The Space Traders’ a race of aliens offer the USA a trade: all of America’s black citizens in return for unlimited, environmentally friendly, energy and technology. After some debate, the American people vote on the proposal and decide to give up all of America’s black citizens to the space traders in return for the futuristic technical goods. Of course, Bell is proposing an analogy between slavery in the past and the present situation of black people in the USA, and perhaps even suggesting that such a thing might happen again. On another level, though, there is also the idea that the existence of black people in America is categorised at a different level of metaphysical worth to that of white people. That life could be traded so cheaply, even plausibly (in the thought experiment) makes us pause for thought in terms of how we classify existential threat.

Although the relationship between CRT and black existentialism may not always seem obvious we can see that there is a nihilistic streak in the work of Bell (1992) with regard to the prospects for survival. In addition, the drawing on the work of Fanon by authors who use CRT as part of their work which shows the perpetual violence encountered by people of colour in education as well as the enduring influence of Du Bois on CRT (Delgado and Stefancic 2001) shows the close connection between the two theories. What links CRT and black existentialism is a basic concern with existence and the meaning of human life under constant threat that can be thought to underpin any concern with social justice. From CRT and black existentialism, we therefore see that existential threat is one of negation through economic, social and political systems and there are degrees of graduation between these forms of existential threats and actual genocide or extermination. The links between these points and CBET might be considered as obtuse but, as we shall see in the next chapter, systems of education can play a role in forms of negation. Obviously, there are social justice implications in the way in which people are treated in terms of race and ethnicity in education. The ‘triaging’ by race and ethnicity of access to education courses, the ways in which certain groups are rationed access to educational routes and the fragility of links between education and the labour market for BAME groups are all part of marginalisation, in which vocational education plays a large part. As part of this process, and probably not coincidentally, these groups are also more likely to find themselves in vocational, CBET courses. However, social justice is not the whole story, and there is a more profound form of equality associated with the right to existence. It is this that CBET threatens through the reduction of the subject to a digital organism as I will show in the next chapter.

#### Pandemics won’t cause human extinction

Sebastian **Farquhar 17**. Director at Oxford's Global Priorities Project, Owen Cotton-Barratt, a Lecturer in Mathematics at St Hugh’s College, Oxford, John Halstead, Stefan Schubert, Haydn Belfield, Andrew Snyder-Beattie, 01-23-17, "Existential Risk Diplomacy and Governance", GLOBAL PRIORITIES PROJECT 2017, https://www.fhi.ox.ac.uk/wp-content/uploads/Existential-Risks-2017-01-23.pdf

1.1.3 Engineered pandemics For most of human history, natural pandemics have posed the greatest risk of mass global fatalities.37 However, there are some reasons to believe that natural pandemics are very unlikely to cause human extinction. Analysis of the International Union for Conservation of Nature (IUCN) red list database has shown that of the 833 recorded plant and animal species extinctions known to have occurred since 1500, less than 4% (31 species) were ascribed to infectious disease.38 None of the mammals and amphibians on this list were globally dispersed, and other factors aside from infectious disease also contributed to their extinction. It therefore seems that our own species, which is very numerous, globally dispersed, and capable of a rational response to problems, is very unlikely to be killed off by a natural pandemic. One underlying explanation for this is that highly lethal pathogens can kill their hosts before they have a chance to spread, so there is a selective pressure for pathogens not to be highly lethal. Therefore, pathogens are likely to co-evolve with their hosts rather than kill all possible hosts.39

### 1NC --- Specialties Advantage

#### No ag impact

Steven **Pinker 11**, Prof @ Harvard, Steven Pinker: Resource Scarcity Doesn’t Cause Wars, <http://www.globalwarming.org/2011/11/28/steven-pinker-resource-scarcity-doesnt-cause-wars/>

Once again it seems to me that the appropriate response is “maybe, but maybe not.” Though climate change can cause plenty of misery… it will not necessarily lead to armed conflict. The political scientists who track war and peace, such as Halvard Buhaug, Idean Salehyan, Ole Theisen, and Nils Gleditsch, are skeptical of the popular idea that people fight wars over scarce resources. Hunger and resource shortages are tragically common in sub-Saharan countries such as Malawi, Zambia, and Tanzania, but wars involving them are not. Hurricanes, floods, droughts, and tsunamis (such as the disastrous one in the Indian Ocean in 2004) do not generally lead to conflict. The American dust bowl in the 1930s, to take another example, caused plenty of deprivation but no civil war. And while temperatures have been rising steadily in Africa during the past fifteen years, civil wars and war deaths have been falling. Pressures on access to land and water can certainly cause local skirmishes, but a genuine war requires that hostile forces be organized and armed, and that depends more on the influence of bad governments, closed economies, and militant ideologies than on the sheer availability of land and water. Certainly any connection to terrorism is in the imagination of the terror warriors: terrorists tend to be underemployed lower-middle-class men, not subsistence farmers. As for genocide, the Sudanese government finds it convenient to blame violence in Darfur on desertification, distracting the world from its own role in tolerating or encouraging the ethnic cleansing. In a regression analysis on armed conflicts from 1980 to 1992, Theisen found that conflict was more likely if a country was poor, populous, politically unstable, and abundant in oil, but not if it had suffered from droughts, water shortages, or mild land degradation. (Severe land degradation did have a small effect.) Reviewing analyses that examined a large number (N) of countries rather than cherry-picking one or toe, he concluded, “Those who foresee doom, because of the relationship between resource scarcity and violent internal conflict, have very little support from the large-N literature.”

#### No competitiveness impact – other countries solve AND resilience.

**Grabel 18** Ilene Grabel, International Finance Professor at the University of Denver. This book won the 2019 International Political Economy Section Best Book Award from the International Studies Association. [When Things Don't Fall Apart: Global Financial Governance and Developmental Finance in an Age of Productive Incoherence, The MIT Press, Print]//BPS

Discontinuities, Productive Incoherence, and the Global Crisis The years leading up to the global crisis, and the crisis itself, precipitated significant and sustained change in the conditions facing EMDEs. Most important among these are an emerging attitude of intellectual uncertainty, pragmatism, and empiricism in the economics profession; a new landscape within which the BWIs operate, where they must negotiate to achieve and sustain influence that now seems precarious, and where they confront demands for governance reforms from increasingly assertive former clients, and potential and actual competition from and cooperation with EMDE institutions; the lack of recovery in Europe, and the fragility of the recovery in the United States; the serious and deepening financial fragilities and slowdowns in growth in EMDEs; and the tarnished image of the Anglo- American financial model. The discontinuities that have emerged in the financial governance landscape can only be understood in the context of these unique circumstances.13 The global crisis spurred expansion in the membership and scope of existing transnational financial governance networks. The Leaders' G-20 replaced the Leaders' G-8 in 2008, and the mandate and membership of the Financial Stability Forum (FSF) was broadened (and the body was renamed the Financial Stability Board, or FSB). It is true that these net¬works have proven to be unimaginative, timid, and impotent, even if they are more inclusive than their predecessors (Helleiner 2014b; Blyth 2013a; Payne 2010; Vestergaard and Wade 2012b).14 Nonetheless, these groups should not be dismissed prematurely, since their future is not fore¬ordained. Indeed, they may emerge over time as forums in which EMDE policymakers are able to promote serious dialogue, build relationships and coalitions, learn from one another, and refine their capacities to maneuver on the international stage and within multilateral institutions (Woods and Martinez-Diaz 2009). Both the continuity and discontinuity views of the G-20 and FSB (and financial governance more generally) are represented in Helleiner's work. The Status Quo Crisis (Helleiner 2014b) sustains the continuity view. Hel¬leiner argues there that the central roles of the U.S. Federal Reserve and the U.S. dollar have not just been unchallenged but have actually been strength¬ened by the crisis. In this account, formation of the G-20 and the FSB (and other initiatives) has not altered the global financial governance architec¬ture to any appreciable degree. Helleiner's book nevertheless concludes with brief speculation about the potential for transformation over the medium term. In other work, both prior to and following his 2014 book, Helleiner speculates that the pressures unleashed by the crisis could ultimately result in more decentralized and fragmented international financial governance. Not least, he and Pagliari argue that current trends in financial regulation point in the direction of "cooperative regulatory decentralization" (see Helleiner 2009; Helleiner and Pagliari 2011). More recently and less equivocally, Hel¬leiner (2016b) argues that policymakers are in fact "stumbling incremen¬tally" toward such a regime—one that involves both increased multilateral cooperation and deepening decentralization—and that the G-20 and the FSB have begun to make more meaningful commitments. The global crisis has had more immediate and significant effects on the IMF. These effects have been complex and uneven (Grabel 2011). On the one hand, the crisis has restored the IMF's relevance, coffers, and central role as first responder to financial distress, just when long-standing critics might have hoped for new institutional arrangements to manage crises that would have displaced or demoted the Fund. In important respects, IMF assistance to countries in distress has followed its well-rehearsed script: many condi- tionality programs continue to stress contractionary macroeconomic policy adjustments, privatization, and liberalization (Gabor 2010; Kentikelenis, Stubbs, and King 2016; Nelson 2014a; Weisbrot 2015). Moreover, EMDEs have secured only very modest commitments for increases in their IMF voting shares. Today the United States and Europe continue to exercise dispropor¬tionate influence at the institution (Lesage et al. 2013). The other side of the ledger is not blank, however. Today there are prom¬ising signs that the neoliberal ideas and prescriptions of important economists and departments at the Fund are being challenged by the global crisis in ways that most observers did not anticipate. In response, IMF economists are learning to live with significant departures from the old script. Most notable in this regard, Fund leadership, research staff, and staff working with countries in distress have moved further and more consistently in the direction of normalizing the use of controls over capital inflows, and even on outflows (Grabel 2011; 2015b; 2017; Chwieroth 2015; 2014; Gal¬lagher 2014; Moschella 2014). There is also evidence of change—uneven and inconsistent though it may be—concerning the IMF's approach to fis¬cal policy during the crisis (Ban 2015; Grabel 2011). Fund economists have developed conditionality programs that, while still harsh, display greater flexibility than was the norm during previous crises. While the Fund con¬tinues to advocate fiscal retrenchment, it also now routinely emphasizes the need for "pro-poor spending" to protect the most vulnerable during crises. The IMF's crisis response strategy is marked by ad hoc measures that reflect important ambiguities within the institution. Strikingly absent here is the unyielding attachment to a global strategy of neoliberalism that marked its interventions over the past several decades. The IMF's geography of influence during the global crisis has been trans¬formed substantially as well. Some of its former clients have emerged as important lenders. At the same time, the institution's client base has largely shifted to the European periphery, and in Europe the IMF appears to be the weakest leg of the European "Troika." Indeed, there is substantial evi¬dence of tension between the IMF and European authorities over important matters such as debt sustainability in Greece—which became particularly evident during the summer of 2015, when a third assistance package for the country was being negotiated—and the most severe forms of austerity in peripheral European economies.15 In a different vein, but in keeping with the idea of discontinuities at the IMF, in 2015 China achieved a long-sought goal of having the IMF include its currency in the SDR. In addition, though the formal voice of EMDEs at the IMF has increased only trivially, the crisis has opened channels for several of these countries, particularly China, to increase their informal influence. Moreover, we find increasing inconsis¬tency between the rhetoric coming from the institution, its research, and its actual practice. As we will see, the rhetoric-research-practice gap reflects something more than public relations imperatives. The gap reveals increas¬ing contestation and even confusion within the Fund. Of equal if not greater importance, productive incoherence is also evi¬denced in the emergence of a far more heterogeneous financial governance architecture. As noted, the East Asian crisis renewed interest in the creation of alternative institutions of financial governance. The drive toward institutional innovation was given far greater force during the global crisis, while the resources necessary to sustain such experiments only became avail-able to rapidly growing EMDEs following the Asian crisis. New innovations have now emerged at the transregional, regional, subregional, bilateral, and national levels. Today we encounter a range of new and expanded reserve pooling arrangements and development and infrastructure banks. Existing institutions evolved in significant ways during the global crisis and have continued to do so (as we will see in the discussion of the Chiang Mai Initiative Multilateralisation, the Arab Monetary Fund, the Development Bank of Latin America, the China Development Bank, and Brazil's National Eco¬nomic and Social Development Bank). At the same time, new arrangements have arisen to rectify perceived failings in the global financial architecture, particularly the shortage of infrastructure financing. The new arrangements are exemplified in twin BRICS initiatives, the New Development Bank and the Contingent Reserve Arrangement, and also in the Eurasian Fund for Stabilization and Development and in the China-led Asian Infrastructure Investment Bank and the One Belt, One Road Initiative/Silk Road Fund. These and other innovations are emblematic of developments and aspi¬rations across EMDEs. The new willingness and ability to undertake innovation in financial governance may turn out to be one of the most important legacies associated with the global crisis, especially when compared with prior crises. The new arrangements do not coalesce around a singular, grand global architecture that might replace the BWIs. Instead, we are observing productive incoherence in the expansion of disparate and, in some cases, overlap¬ping and interconnected institutions that complement the BWIs. Taken together, they are "thickening" and diversifying the financial landscape in EMDEs and introducing the possibility of a transition to a more complex, decentralized, multitiered, pluripolar global financial and monetary system (Armijo and Roberts 2014; Chin 2010; Grabel 2013a; 2013b; Huotari and Hanemann 2014; Mittelman 2013; Riggirozzi and Tussie 2012). The expan¬sion of these initiatives is widening policy space for development. They also generate opportunities for experience-based learning and the creation of new partnerships and coalitions, and in turn enable EMDE "forum shop-ping." In sum, the initiatives are substantially complicating the terrain on which the BWIs operate. We might also understand these institutions, how¬ever small in scale, in terms of their potential to increase robustness and even what Nassim Taleb (2012) terms "anti-fragility" of the global financial governance architecture. This would involve a collection of institutions that enjoy some degree of autonomy from each other, where crises are less likely to generate contagion across countries, and where each crisis might allow for learning that induces new innovations that are better able to prevent and limit the scope of future crises. What I call the productive redun¬dancy that is a feature of the emerging financial governance landscape is central to the achievement of these goals.

#### The presumption that markets can be post-racial as a matter of inclusion is an attempt to efface history and rescue race from blackness, located as absent relationality or agency.

Dumas 13 (Michael J., Assistant Professor at the University of California, Berkeley in the Graduate School of Education and the African American Studies Department, “’Waiting for Superman’ to save black people: racial representation and the official antiracism of neoliberal school reform,” Discourse: Studies in the Cultural Politics of Education, 34:4, 2013)//glen

The rise of neoliberalism in the 1980s and 1990s shifted the relationship between governmentality and race; while in earlier periods, the state positioned itself as the leader in advancing antiracism, under neoliberal multiculturalism , it is neoliberal economic policies and ideological formations that are seen to resolve the problem of racism. The market, in this hegemonic frame, knows neither race nor racism, and is therefore regarded as best suited to facilitate racial equality. Neoliberal multiculturalism promises to usher in the post-racial period, by nurturing a new global citizenship centered around economic participation. ‘ In short ’ , Melamed contends, ‘neoliberal multiculturalism has portrayed an ethic of multiculturalism to be the spirit of neoliberalism ’ (p. 42). In doing so, neoliberal multiculturalism abandons any explicit mention of race. While liberal multiculturalism employed discourses of equity, diversity and freedom, ‘ now open societies and economic freedoms ... and consumerist diversity signify multicultural rights for individuals and for corporations ’ (p. 43; italics in original). Neoliberal multiculturalism is still attentive to racial difference and recognizes inequitable outcomes, but explains these differences as essentially not about race or (in) justice, but individual and group choices. As Melamed explains: Neoliberal-multicultural racialization has made this disparity appear fair by ascribing racialized privilege to neoliberalism ’ s beneficiaries and racialized stigma to its dispossessed. In particular, it has valued its beneficiaries as multicultural, reasonable, law-abiding, and good global citizens and devalued the dispossessed as monocultural, backward, weak, and irrational – unfit for global citizenship because they lack the proper neoliberal subjectivity. ( 2009 , p. 44) In contrast to black stigmatization under liberal multiculturalism, here the focus is on the distance between black subjects and the market. Through the neoliberal-multicultural lens, we can still feel sympathy to the extent that these subjects are perceived as being prevented from participating in the market. However, if they reject opportunities to participate in the market, no matter how rigged that system may be, then our sympathies can be justifiably withheld. Any argument that the economic sphere is already regulated by racial privilege will fall on deaf ears, as the market is already presumed to be multicultural and racially ethical (i.e. post -racial) on its face. I want to suggest that, even in a neoliberal-multicultural period, we can still identify elements of racial liberalism and liberal multiculturalism. History is never erased or transcended; dimensions of the previous periods are evident in our national-racial imagination and in the racial representations that inform and are informed by that imagination. Waiting for Superman as a cultural and political product Near the beginning of Waiting for Superman (Guggenheim, 2010 ), Harlem Children ’ s Zone founder and so-called education ‘ reformer ’ , Geoffrey Canada, recalls his childhood disappointment in learning that Superman is not real. ‘ Even in the depth of the ghetto ’ ,he explains to the off-camera interviewer, ‘ you thought, he ’ s coming. I just don ’ t know when, because he always shows up and he saves all the good people ’ . As he speaks, images of a young Canada fade to black, interspersed with images of George Reeves as the hero in tights in the 1950s TV series, Adventures of Superman : I asked my mom, do you think Superman is – she said, Superman is not real ... and I said, what do you mean, he ’ s not real? And she thought I was crying because it ’ s like, Santa Claus is not real, and I was crying because there was no one coming with enough power to save us. In inspiring the title of the controversial documentary, Canada presents an image of a poor urban black community without a sense of hope, innocent but helpless in the face of social, economic and spatial marginalization. A people in need of a savior, the young black boy reckons, would do well to appeal for help to the ultimate all-American (white) superhero. Here, his city neighborhood becomes constructed as an uninhabitable jungle (Leonardo & Hunter, 2007 ). Unlike in some rightist interpretations, the black residents of Canada ’ s ghetto are not to blame for their condition, but instead are victims of something unnamed, a tragic historical accident. Blameless, they earn our sympathies; however, they clearly do not have enough agencies to help themselves. Or as Canada suggests, poor African Americans are so far gone, their salvation may require someone with superhuman powers. The producers of Waiting for Superman use Canada ’ s childhood memory to frame the film ’ s heartbreaking, liberal racial narrative, in which racial inequities are bemoaned without any acknowledgment of racism, (good) people of color eschew collectivist racial politics, and black subjects in particular are quick to point out their own personal moral and emotional failures as the cause of their own low educational aspirations and attainment. Waiting for Superman is significant as a cultural and political product, because it has been largely embraced by corporate education reformers like wealthy philanthropists Bill Gates and Eli Broad, and because of its harsh critique of teacher unions and uncritical praise for private educational-entrepreneurial ventures like KIPP and Teach for America. Although the film generated a massive critical response from academics and progressive education advocates (see, for example, http://www.notwaitingforsuperman.org ), it enjoyed a generally sympathetic and often enthusiastic response everywhere else, from glowing newspaper and magazine stories, to favorable coverage by influential media personalities like Oprah Winfrey and Katie Couric. Waiting for Superman is also important, because it is perhaps the most influential popular-discursive effort to advance a new managerialism in education reform. Manage- rialism, as Michael Apple ( 2006 ) explains is led by an emerging group of middle-class professionals committed to using business models of profit, competition and efficiency to ‘ reform ’ education (and other public institutions and functions). This entails privatizing some schools, and financially and politically undermining remaining public institutions, which are then forced to compete with these marketized schools. Ultimately, then, the argument can be made that private entities can more effectively deliver services that have previously been understood as public, as part of our collective responsibility for the public good. Managerialism is ‘ an ideal project ’ , Apple contends, ‘ merging the language of empowerment, rational choice, efficient organization, and new roles for managers all at the same time ’ (p. 25). Waiting for Superman is, in effect, a managerialist manifesto for education in the United States. What we learn in examining racial representations in the film is exactly how mangerialism aims to win for the rightist project a certain innocence vis à vis racism, and more, a sense that racial progress depends on adopting conservative ideology and reform policies. The story arc of Waiting for Superman , its primary suspense, centers on a competitive public lottery system in which children and their families vie for a severely limited number of student spots in highly-regarded charter schools. It is The Hunger Games in reverse; here, those not selected are presumed to be the unfortunate ones, condemned to suffering and abuse, while the masses watch. And like that blockbuster motion picture, Waiting for Superman is a cultural product, not simply a documentation of truth, or policy, or everyday life. The filmmakers construct a dramatic plot, with messages embedded in the images and also made explicit in the text. We meet the families, hear them share their struggles and dreams, and explain what they believe accounts for their own educational and/or social marginality. The filmmakers intend to evoke enough sympathy that as the film comes to its dramatic final scenes, we are emotionally invested in the outcome, anxious to discover if the students will be offered admission, as the number of still available seats becomes smaller and smaller. In most cases, the families experience crushing disappointment, which allows opportunities for wrenching close-ups of terrified eyes, tear-stained cheeks, and hands still clenching strips of paper with losing numbers. To a great degree, the filmmakers need, perhaps the audience too needs, or at least desires, to see suffering. Not only does it help the filmmakers make their argument about the state of public education, but it is also better theater, more compelling entertainment. Ultimately, our own humanity is affirmed, because we care so much about these strangers on the screen. In one particularly moving scene, we see a Latina mother, Maria, touring a Harlem charter school where she hopes her first-grade son, Francisco, will win a spot, to escape his low-resourced school in the South Bronx. Maria is clearly impressed with the resources of the charter school, and looks longingly at the warm, inviting classrooms. ‘ I don ’ t care if we have to wake up at 5 o ’ clock in the morning in order to get there at 7:45 ’ , she says, almost plaintively. ‘ That ’ s what we will do ’ . But, as the New York Times later reported (Otterman, 2010 ), when this scene was filmed, Maria already knew that Francisco would not get to attend this school. The scene was staged after the lottery, in order to ‘ see her reaction to the school, and her genuine emotion ’ , according to director Davis Guggenheim. For him, the scene was ‘ real ’ because the pain and longing in her eyes revealed her excitement about the possibility of having her son attend the charter school, although it might also be argued that they exploited her pain for their own purposes. It is certainly not uncommon for documentary filmmakers to re-enact and re-order scenes; my point here is to underscore that Waiting for Superman is produced , and produced in ways which evoke not only specific emotions, but produce and reproduce certain cultural discourses and ideological formations. As a racial cultural product, the film provides images of racialized bodies and differences that seem natural largely because they draw upon the familiar or the popular, that which we already accept about race, and more specifically here, blackness. As Herman Gray ( 2005 ) explains, ‘ the movement of black images and representation is never free of cultural and social traces of the condition of their production, circulation, and use ’ (p. 21). Hence, what I want to highlight in my analysis of the film is the ways in which black social actors take their (expected) place within the broader ideological conditions of official antiracisms – speaking, gazing and even moving on screen in support of that grander narrative. As I have hinted, if not said explicitly thus far, neoliberal multiculturalism, in conjunction with managerialism, brings an inherent effort to move beyond the black- white racial paradigm. This is more than an acknowledgment of a fuller plane of racial diversity, but an ideological position in which ‘ black ’ is understood as anachronistic, passé and a threat to national progress. Jared Sexton ( 2008 ) is worth quoting at length: Modernizing the nation – at least the segment of the nation with the potential to be ‘ more than black ’ or simply to move ‘ beyond black ’– and liberating it from the deadening weight of the past requires that the signature of its persistence ... be effaced. In this light, multiracialism can be read ... as an element of the ascendant ideology of colorblindness, but it is not thereby identical to it. Its target is not race per se, since multiracialism is still very much a politics of racial identity ... but rather the categorical sprawl of blackness in particular and the insatiable political demand it presents to a nominally postemancipation society. ( 2008 ,p.6) Neoliberal multiculturalism, or what Sexton calls multiracialism, seeks to rescue racial identity from blackness, which is seen as largely responsible for giving race its offensive and oppositional signification. The neoliberal-multicultural cultural product, then, finds effective ways to situate blackness and black bodies as absent of rationality or agency, and black racial politics an ineffective explanation of, or solution to persistent racial inequity. I am not suggesting that there is a direct line between racial representation and racial intent. That is, my aim is not to provide evidence that the film is racist, or that the filmmakers were motivated by racism. Rather, my argument is that the film was produced, and enters a field of already existing cultural productions, in which race and blackness have already been and continue to be imagined discursively, and in which black bodies are situated materially, disproportionately among the poorest and least regarded. What becomes important and potentially destructive about Waiting for Superman is the extent to which its representations reproduce and reify antiblack imaginations, ideologies and sentiments, even as the filmmakers claim to have offered a cultural product – an officially antiracist cultural product – that advocates for poor black people and other marginalized racial groups.

## Block

### Kritik

#### 2 -- Repetition Compulsion -- the addendum of “extinction outweighs” to “black lives are affected too” is the Slave State’s advertisement that pornotropes black flesh a fungible tool for its existential project -- that ritual reputation is inseparable from the episteme of slavery and ensures complacency -- turns case.

**Warren ’18** [Calvin; 2018; Associate African American Studies at Emory University; *Ontological Terror; Blackness, Nihilism, and Emancipation*, “THE INVENTION OF THE NEGRO AND THE NECESSITY OF BLACK BEING,” p. 45-48]

In this schematic, the body is a metaphor for instrumentality or abject use value. Spillers suggests that this body “is reduced to a thing, to being for the captor.” With the death of African existence (the flesh) an oppres- sive mode of existence is imposed on the Negro. This existence is unlike human being. The human being’s mode of existence is to be for itself, and this being for itself is the structure of care between Dasein and Being. Black ~~being~~ is invented, however, precisely to secure the human’s mode of existence. Reading Spillers’s metaphysical schema through Heidegger’s, we could suggest that the black body or this “thing, being for the captor,” is invented to serve as the premier tool or equipment for human being’s existential project (and I would argue that this equipment is not equivalent in form to the human, even if the structure of tool-being, as Graham Harman would call it, provides a general explanatory frame).37 In other words, the mode of existence for black being is what Heidegger would call “availableness.” Availableness is “the way of being of those entities which are defined by their use in the whole.”38 To exist as “a thing, being for the captor” is to inhabit a mode of existence dominated by internecine use and function. Black being, then, is invented not just to serve the needs of economic interest and cupidity, but also to fulfill the ontological needs of the human. This thing is something like Heidegger’s equipment—an object that when used with such regularity becomes almost invisible, or trans- parent, to the user (blackness is often unthought because the world uses it with such regularity; antiblackness is the systemization of both the use of blackness and the forgetting/concealment of black being). Utility eclipses the thing itself. We must, then, understand antiblackness as a global, 46 Chapter One systemic dealing with black bodies, as available equipment. Heidegger considers dealings the way the Being of entities, or equipment, is revealed phenomenologically through the use of this equipment. Antiblack dealings with black bodies do not expose the essential unfolding, or essence, of the equipment; rather, the purpose of antiblack dealings is to systemically obliterate the flesh, and to impose nothing onto that obliterated space—care and value are obsolete in this encounter.39 Therefore, equipment structure is predicated on the premier use of blacks within the network of equipment. In other words, black use cuts across every equip- mental assignment, making it the ultimate equipment. Why does black equipment cut across all assignments, and why is it the tool Dasein relies on to commence its existential journey? We might say the answer to these difficult questions is that the essence of black equipment is nothing— being is not there. If Heidegger assumes that equipment will reveal its being through its usage, then he did not anticipate the invention of the Negro— equipment in human form, embodied nothingness. Using black equipment reveals existence but not being (existence as non-being for Greek philosophers, according to Heidegger in Introduction to Metaphysics). This puzzle is what black philosophy must investigate, must think through, to understand the continuity of antiblackness.

Spillers describes black being is a “living laboratory,” and we can conceptualize this laboratory as the source of availableness for modernity. A living laboratory is a collection of instruments for carrying out ontological experimentation, or the construction of the human self. Black beings constitute this irresistible source of availableness for the world. Saidiya Hartman meditates on the ontological utility of black being for the human when she states:

The relation between pleasure and the possession of slave property, in both the figurative and literal senses, can be explained in part by the fungibility of the slave—that is, the joy made possible by virtue of the replaceability and interchangeability endemic to the commodity—and by the extensive capacities of property—that is, the augmentation of the master subject through his embodiment in external objects and persons. Put differently, the fungability of the commodity makes the captive body an abstract and empty vessel vulnerable to the projection of others’ feelings, ideas, desires, and values; and, as property, the dispossessed body of the enslaved is the surrogate for the master’s body since it guarantees his disembodied universality and acts as the sign of his power and dominion.

40 Instruments, tools, and equipment are interchangeable/replaceable; this is starkly different from human being, whose existential journey in the world renders it incalculable and unique. When I suggest that black being is pure function or utility, I mean precisely the way this being is used as a site of projection for the human’s desires, fantasies, and onto- logical narcissism. The body that Spillers presents is a necessary invention because it is through the human’s engagement with instruments (tools and equipment) that the human comes to understand the self. To be for the human is to serve as the empty vessel for the human’s reflection on the world and self. In short, what I am suggesting is that black being is invented as an instrument to serve the needs of the human’s ontological project. This use, or function, exceeds involuntary labor and economic interest. It is this particular antiblack use that philosophical discourse has neglected. The Negro, as invention, is the dirty secret of ontometaphysics.

If we follow Heidegger’s understanding of the human being as Dasein (being there) and thrown into the world, then black being emerges as a different entity: the Negro is precisely the permanence of not being there [Nicht Da Sein], an absence from ontology, an existence that is not just gone away (as if it has the potential to return to being there) but an exis- tence that is barred from ever arriving as an ontological entity, since it is stripped of the flesh.41 To assert that black being is not of the world is to suggest, then, that black being lives not just outside of itself, but outside of any structure of meaning that makes such existence valuable. Black being is situated in a spatiotemporality for which we lack a grammar to capture fully. Spillers’s body, then, is the symbolic and material signifi- cation of absence from Being. To be black and nothing is not to serve as an aperture of Being for the Negro; rather, it is to constitute something inassimilable and radically other, straddling nothing and infinity. The Negro is the execration of Being for the human; it is with the Negro that the terror of ontology, its emptiness, is projected and materialized. This is the Negro’s function.

Inventing the Negro is essential to an ontometaphysical order that wants to eradicate and obliterate such ontological terror (the terror of 48 Chapter One the nothing); and since ontometaphysics is obsessed with schematization and control, it needs the Negro to bear this unbearable burden, the execration of Being. To return to our proper metaphysical question “How is it going with black being?,” we can say that neither progressive legislation nor political movements have been able to transform black being into human being, from fleshless bodies to recognized ontologies. Spillers also seems to preempt the question when she states, “Even though the captive flesh/body has been ‘liberated,’ and no one need pretend that even the quotation marks do not matter . . . it is as if neither time nor history, nor historiography and its topics, show movement, as [the flesh] is ‘murdered’ over and over again by the passions of a bloodless and anonymous archaism, showing itself in endless disguise.”42 This onticide, the death of the flesh/African existence, continues impervious to legal, historical, and political change. This is to say that the problem of black being, as both a form of ontological terror for the human and a site of vicious strategies of obliteration, remains. To ask the (un)asked question “How is it going with black being?” is to inquire about the resolution of the problem of black and nothing, ontometaphysically, as it imposes itself onto the Negro. The answer to the Negro Question, then, is that the ritualistic and repetitive murder of the flesh, the primordial relation, is absolutely necessary and indispensable in an antiblack world. And as long as the world exists, this murder must continue.

#### Libidinal economy is true

Chico et al 11 (A Primer on "Libidinal Economy" in Relation to Black Folks. Cosmic Hoboes: An Afropessimist Meditation (No)Space. <https://cosmichoboes.blogspot.com/2011/08/primer-on-libidinal-economy-in-relation.html>)

People who are interested in struggle need to understand the "libidinal economy." Coalition politicos like Al Sharpton like to tell us to put the unique experiences of black folks in the backseat to the interests of poor folks more generally. Such politicians expect us to submerge our interests as black people on the assumption that if poor people in general benefit from a political concession, poor black people will share equally in such benefits. Such politicos will continue to ignore the repeated evidence that a lot of nonblack people hate black people, even if doing so costs them money. If someone tells you that the problems black folks face are really just the problems that poor people face, they are telling you to ignore the libidinal economy. They are telling you that the political economy of capitalism is more important than the libidinal economy of antiblack racism. What is "libidinal economy"? In Red, White, and Black: Cinema and the Structure of U.S. Antagonisms (2010, Duke University Press), black political theorist Frank Wilderson highlights the distinction between political economy and libidinal economy (p. 9): Jared Sexton describes libidinal economy as “the economy, or distribution and arrangement, of desire and identification (their condensation and displacement), and the complex relationship between sexuality and the unconscious.” Needless to say, libidinal economy functions variously across scales and is as “objective” as political economy. Importantly, it is linked not only to forms of attraction, affection and alliance, but also to aggression, destruction, and the violence of lethal consumption. He emphasizes that it is “the whole structure of psychic and emotional life,” something more than, but inclusive of or traversed by, what Gramsci and other marxists call a “structure of feeling”; it is “a dispensation of energies, concerns, points of attention, anxieties, pleasures, appetites, revulsions, and phobias capable of both great mobility and tenacious fixation.” What does all this mean? Let's interpret this elaborate definition and get to how it thinks of "economy." When we think of economy, we usually think of something having to do with money. Wilderson uses the term political economy to refer to economy in the ways that we usually think of it: the ways people exchange materials and decide on how things are valued. Economy doesn't just mean the economy in the sense of the stock market or banks, but also any means of determining whether something is worth doing or possessing based on how much capital and labor power it yields. In struggle, we see over and over that money talks and bullshit walks. Economy has to do with what they value moves people to act. Economies are therefore very important to political action. But can there be an economy that exchanges something other than money or capital? Yes. To understand "economy" as Wilderson and Sexton use it, we have to think of economy in a more general way as things of all kinds that we can trade or save. You can accumulate not only cash or material items, but also fears and desires. Certain people accumulate more fear (the black athlete) and desire (the blonde cheerleader) than others. The term libidinal economy refers to the systems of exchange and valuation for fantasies, desires, fears, aversions, and enjoyment. Economy is about exchange and accumulation. Everyone feels fear and aggression, but where is it directed? The libidinal is about both people's desires, fantasies, and pleasures AND their phobias, fears, and violent consumptions. A libidinal economy has to do with which groups a subject is attracted to, which groups it is willing to form alliances with, and which people it is willing to provide affection to. Where can we see this libidinal economy? How can we illustrate this distinction? The libido is the collection of things like phobias and desires that are unconscious and invisible but that have a visible effect on the world, including the money economy. Some examples: We see libidinal economies at work any time there is a response by state that is out of all proportion to the material effects of any practice they are regulating. The USA incarcerates three million people, despite the fact that doing so has an adverse impact on US financial security. Hence the libidinal economy of the fear of black and brown people (who together comprise the overwhelming majority of inmates) trumps the political economy of the cost-benefit analysis of maintaining prisons. Let's take another example of the powder - versus crack-cocaine distinction, in which the same drug is punished differently at the federal level. Because the two drugs are chemically identical, there shouldn't be any distinction between how their use and sale is punished. In 2010, the law made it so that these two drugs were punished the same, although the Obama administration isn't in any hurry to make the abolition of this distinction retroactive so that the mostly black and brown people who are locked up because of it will get released. But the legal abolition of this distinction is not essential for us to look at. What is essential is why that distinction was made in the first place. Wilderson's work suggests that, for civil society, black people pose a threat that has nothing to do with the chemical content or the social and cultural effects of crack. Simply by being associated with black people, crack is seen as 100 times more threatening than is powder cocaine. The financial and social costs of locking all those black and brown people up and the financial and social costs of allowing all those white people to go free and continue to sell does not really matter to civil society. What the powder- versus crack-cocaine distinction shows is the desire to contain the threat that blackness symbolizes. This is the mark of libidinal economy. Cops, soldiers, firemen are considered sexually desirable because they become the heroes of civil society. The Oscar Grant shooting. Amadou Diallo was a victim of a extreme kind of violence because of the phobias that converged on his body. What is the exchange? Civil society has an anxiety about crime, and crime is always attached to black in urban areas. Police don't have to get a monetary award, but they get the gratitude of civil society. How does this play out in ways that don't have to do strictly with money? The desire for them may not show up in the amount of money they make. Cops get rewarded for their aggression. When the cop slammed dude into the glass at BART. Prison guards, thought of as having the toughest beat on the planet. They get rewarded for being the last line of defense against George Jackson. Oscar Grant was an accumulation of aggression and phobias. Why are the black people in Prince George's County, Maryland, segregated from white people in their same socioeconomic bracket with the same kinds of high-value real estate, and the same kinds of political-economic values? Living around white people has a value that cannot be explained in strictly monetary terms. AFDC benefited mostly white single mothers, and enjoyed a long history of support from 1936-the 1960s. It initially excluded black people. By the 1960s, when black people started getting it, attitudes changed toward it, making it seem like it was undeserved and a drain on national prosperity, and by 1984, when Ronald Reagan referred to "welfare queens in Cadillacs," it was clear that AFDC was "a black thing." In actual statistical terms, it was still used mostly by white women. But once it became associated with poor black women, it was seen as in need of drastic, radical reforms. But is this "libidinal economy" really that important? Frank Wilderson is using the distinction between a money economy and an economy of desire over and over again throughout this book. Wilderson talks about this by talking about the difference between word and deed. This is not the hypocrisy of the system. It IS the logic of the system. So Europeans tried to resolve the lack of labor power by passing laws that reduced homeless white people to the status of slaves. In the end, however, they never really enforced these laws. Wilderson quotes David Eltis, an economic historian, who says that the costs of settling the "new world" would have been significantly reduced if Europeans has simply enslaved other Europeans. But, Wilderson points out, "what Whites would have gained in economic value, they would have lost in symbolic value; and it is the [symbolic value] which structures the libidinal economy of civil society." In other words, the symbolic costs of Europeans enslaving other Europeans would have been too great. Instead, they went to Africa for their slaves, even though the financial cost of doing so was much, much greater. The radical left doesn't make this distinction. Cornel West and Tavis Smiley say they want to organize a new Poor People's Campaign, but they won't be able to explain why this is a failed project from the start. This is because they won't think about the aspects of coalition building that have nothing to do with money or the lack of money. In the late 1970s and early 1980s, the so-called "Reagan Democrats" were poor and working-class white people, many of them in unions, who voted overwhelmingly for Reagan against their own economic interest. The white left mistakenly thinks about the Reagan Democrats as people who were duped. They view them as an example of what Marx called "false consciousness" and they see it as their duty to inform the white poor and working class of why they should vote left. But there were all kinds of signs that white poor and working-class folks simply hated black people and didn't want to live anywhere that there was a large community of black people, even if those black people are of the same or higher socioeconomic status. The Reagan Democrats were excited by Reagan's antiblack rhetoric of law and order, a rhetoric that was in response against the activities of the Black Liberation Army, Weather Underground, Black Panthers, and Black Guerilla Family. Marxists think a person is in a state of false consciousness if her political or social interests go another way than her material or financial interests. If you adopt this view, then you probably think that the Reagan Democrats just need to be educated correctly about what they have in common with the black poor and working class. You have to think that their hatred of black people is somehow "false" simply because it runs counter to their financial interests. But this would be to ignore their interest in maintaining white supremacy and antiblack racism. One of the things white men would lose would be access to black bodies for sexual pleasure and amusement. These examples are not just isolated cases of false consciousness, ignorance, media manipulation, or some mystical thing called "prejudice." They are all of those things, but they are also something much, much greater that any student of struggle needs to be aware of. These examples reveal the contours of an economy of desires that is not primarily concerned with money. It's not that the political economy isn't also antiblack. In fact, both economies are antiblack.

#### We straight turn Gordon

Kelley, 15—Gary B. Nash Professor of American History at UCLA (Robin D.G., “Beyond Black Lives Matter,” Kalfou, Vol. 2, Iss. 2, (Fall 2015): 330-337, dml)

This implicit appeal to acknowledge us-to recognize our humanity, our dignity, and our right to live-is understandable in a world where the statesanctioned killing and caging of Black bodies is routine. But as George Lipsitz observed, such appeals are embedded in a humanist logic that emphasizes "interiority" and feeling, thereby elevating "the cultivation of sympathy over the creation of social justice."7 That is to say, our feelings of empathy in any representation of suffering are designed to be understood and individually felt rather than transformed into collective praxis. This is partly why concepts like reparations are so antithetical to modern liberalism. Given the trauma produced by an endless video loop of Black people dying at the hands of police officers who are almost never indicted, let alone prosecuted and convicted, collective healing and the cultivation of sympathy are to be expected. On one hand, this makes the movement's counterslogan, "All Lives Matter," all the more offensive and painful. "All Lives Matter" is heard and felt as a belittling or decentering of anti-Black racism. It trades on postracial myths of equivalency in suffering. On the other hand, sometimes we react to "All Lives Matter" with such hostility that it stands in as an unambiguous expression of anti-Black racism. Can we salvage these words? Don't we want to build a world in which every life is valuable, cherished, and sustained? Are we not seeking a world that recognizes multiple sites of dispossession and recognizes that state violence inside US borders is inseparable from US militarism around the world? The fact that we are compelled to a defensive position is a consequence of focusing on proving our value rather than critiquing the system that devalues all of us and destroys the world in the process.

The veracity of our humanity was never the issue-then or now. The problem lies with Western civilization's very construction of the human. As Sylvia Wynter, Cedric Robinson, Aimé Césaire and others have been saying for decades, the "Negro" was an invention, a fiction-like that of the Indian, the Oriental, the "Mexican," etc. Or in Frantz Fanon's oft-quoted line from The Wretched of the Earth: "It is the colonist who fabricated and continues to fabricate the colonized subject."8 Indeed, the entire structure of global white supremacy depends on such inventions, like the fictions of the Arab as non- or anti-Western and the "Immigrant" as essentially Latino/a, or the notion that indigenous people (in North America at least) are all dead. This is why we have such a hard time acknowledging that most so-called immigrants from Mexico and Central America are, in fact, indigenous.

The very foundations of Western civilization were built on such fabrications and enacted through violence. Once they crumble, so goes Western civilization's conceit as well as the massive philosophical smokescreen that enables (racial) capitalism-the greatest, most destructive, most violent crime wave in history-to masquerade as the engine of progress, a pure expression of freedom and liberty, the only path to human emancipation. The modern world that invented the Negro, the Oriental, the Indian, and the Savage as a means of inventing European Man was built on the theft of humans, theft of land and water, indiscriminate murder, violation of customary rights, moral economy, enclosure of the commons, destruction of the planet-outright lawlessness, justified by supposed rationality or what Weber might call instrumental rationality. To leave it at Black Lives Matter unintentionally conceals the crime. After all, these were the very processes that birthed the liberal humanism to which BLM activists seem to appeal.

In his book Forgeries of Memory and Meaning, Cedric Robinson further elaborates on the systems of racial maintenance and myth making, the "racial regimes" responsible for the inventions of the Negro (the Indian, the Oriental) and their relation to capital. What exactly are racial regimes? In Robinson's words, they "are constructed social systems in which race is proposed as a justification for the relations of power." The power is real and formidable but surprisingly unstable. For Robinson, "the covering conceit of a racial regime is a makeshift patchwork masquerading as memory and the immutable. Nevertheless, racial regimes do possess history, that is, discernible origins and mechanisms of assembly. But racial regimes are unrelentingly hostile to their exhibition."9 In other words, to say that anti-Blackness is foundational to Western civilization is not to say that it is fixed or permanent. On the contrary, it is incredibly fragile and must be constantly remade; it is epiphenomenal to the production of Blackness-which is an essential component of modern racial regimes, but not its totality. In the last century alone, racial regimes have been remade, reconfigured, destabilized, and consolidated many times, employing new technologies to circulate old racial fabulations and new fictions in the process of capitalist expansion.

Proving one's humanity will not uproot racial regimes, for the very evidence of our humanity is their raison d'etre. Our exploitation is evidence of our value, but it requires enormous intellectual, juridical, and psychic resources to conceal our humanity. Slavery was not just social death, but was based on a cost-benefit analysis that assumed the disposability of Black lives. The system of extracting surplus emerged within a logic of racial hierarchy and racial subjugation that dragged Africans, Asians, and Europeans proletarianized by enclosure to the lands of the Americas, Oceania, parts of South Asia and Africa, and the Eastern Mediterranean-where indigenous people were dispossessed, enslaved, or exploited by other means. Enclosure is yet another example of theft and violence masking as "law, order, security": backed by the rule of law, the state employs violence to discipline, to reclassify, to criminalize, and to destroy sovereignty and create disorder. Enclosure is part of this process of war-a war on the commons, which ultimately turns some of the expropriated people into a proletariat (including European industrial, maritime, and landless rural labor, as well as prostitutes and beggars), turns a portion into settlers, and sends a portion to the workhouse. Some are merely casualties whose flesh mingles with the earth and whose bodies-sometimes hanging from a tree or broken on the wheel-serve to terrorize those who resist the new discipline.10

While the value of Black labor may have ebbed and flowed with the changing character of the global economy, there has never been a moment in US history when our humanity mattered, when Black people could enjoy full privileges and protections of citizenship. But the same can be said of most of the planet-at least until the mid-twentieth century, although I would venture to say this is still the case. What Black resistance calls into question is the inhumanity of the system, the inhumanity of those who subjugate in the name of civilization; it insists that the survival of humanity (and this is not the humanity defined by the Enlightenment) depends on the complete destruction of racial capitalism, patriarchy, and regimes of normativity.

As I wrote in the aftermath of the George Zimmerman verdict, unless we come to terms with this history, we will continue to believe that the system just needs to be tweaked, or the right-wing fringe defeated, or our humanity acknowledged.11 We will miss the routine character of state violence; its origins in the very formation of colonialism, slavery, and capitalism; and the ways in which routine violence has become a central component of US policies, including drone warfare and targeted killing. We cannot change the situation simply by finding the right legal strategy, the best policies, or recognition.

#### AND You should flip traditional procedures of impact calculus and compare impacts from the perspective of the wretched of the earth. This means consciously refusing to evaluate impacts at the existential or universal level, or artificially inflating our impacts in your calculus to be equivalent to theirs.

Colebrook, 21—Edwin Erle Sparks Professor of English at Pennsylvania State University (Claire, “Can Theory End the World?,” symploke, Volume 29, Numbers 1-2, 2021, pp. 521-534, dml)

Finally, playing the game of theory sustains the world. How to end the world, and open another game, and not do so in the grand style? It amounts to this: I live and am constituted through this world of theory and yet know it is neither just nor capable of generating justice from its own resources. Too many chances have been given, and still the barbarism. Decades of theory and still, here we are in an age of accelerated mass extinctions and exacerbated micro and macro aggressions. It is all too easy for me, from within the privileged space of theory, to say it’s not worth saving; but it is perhaps a worse violence to pretend that this world must be saved. Given that being who one is requires holding on to one’s world, it would be best for theory to accept that its world is ending, and that it cannot and should not be saved. It can no longer be a question of saving the world for theory, or saving theory for the sake of the world. What is left is something like a minimal theory: other than the project of saving the world what remains is the decency of ending the world of theory well. Do “we” hang on to the world we have, keep going as long as we can, and eke out some end days? I think there are some ways in which theory has the resources for the end of the world, but only if it recognizes how much of it is bankrupt and complicit—how much it has been saving itself and its world—and how much other worlds offer.

Conclusion

The truth of the relative. Rather than think of exiting theory to find THE truth of some other world, it is possible to draw from theory to think the truth of worlds. This would not be the relativism of truth but the truth of the relative. What might it be like to look at “the world” from a point of view in which it has no value? Such a project would be counter-apocalyptic. Rather than pre-emptively mourning the world we have now, such that the very possibility of its non-being elicits a desire to save the world at all costs, one might imagine looking at “the world” from the point of view of those for whom it has no value. This is not as metaphysically audacious as it sounds; it happens all the time. There is certainly a world in which theory does not matter, in which the type of thinking and questioning one finds in theory does not matter. This end of the world is theory somehow rendering itself parochial, and perhaps approaching modes of theory in which what “we” do as theory seems oddly mythic, which of course it is. I think the path towards this county-theory or para-theory or hyper-theory is multiple: by thinking of those for whom this world does not matter—the wretched of the earth—by thinking of the capacity within this world to imagine another “we” or another “us,” and then perhaps also imagining that this world that has saved itself at all costs in order to become the world takes up a minor role in the worlds of the cosmos.

#### 2 – The ability to engage in “extinction” discourse is not only shrouded in a privilege of whiteness to imagine a demise subjects know will never come but becomes a justification to genocide minority populations and brush off the systematic issues at the root of real extinction threats.

Mitchell 17 (Audra, Senior Lecturer (Associate Professor) in International Relations at the University of York (2010-15, UK) and a postdoctoral fellow at the University of St. Andrews , “Decolonizing against extinction part II: Extinction is not a metaphor – it is literally genocide”, 9/27/2017, <https://worldlyir.wordpress.com/category/colonisation-and-settler-colonialism/>, Accessed: 7/1/18, JY) recut-azi

Extinction has become an emblem of Western, and white-dominated, fears about ‘the end of the(ir) world’. This scientific term is saturated with emotional potency, stretched and contorted to embody almost any nightmare, from climate change to asteroid strikes. In academic and public contexts alike, it is regularly interchanged with other terms and concepts – for instance, ‘species death’, global warming or ecological collapse. Diffused into sublime scales – mass extinctions measured in millions of (Gregorian calendar) years, a planet totalized by the threat of nuclear destruction – ‘extinction’ has become an empty superlative, one that that gestures to an abstract form of unthinkability. It teases Western subjects with images of generalized demise that might, if it gets bad enough, even threaten us, or the figure of ‘humanity’ that we enshrine as a universal. This figure of ‘humanity’, derived from Western European enlightenment ideals, emphasizes individual, autonomous actors who are fully integrated into the global market system; who are responsible citizens of nation-states; who conform to Western ideas of health and well-being; who partake of ‘culture’; who participate in democratic state-based politics; who refrain from physical violence; and who manage their ‘resources’ responsibly (Mitchell 2014).

Oddly, exposure to the fear of extinction contributes to the formation and bolstering of contemporary Western subjects. Contemplating the sublime destruction of ‘humanity’ offers the thrill of abjection: the perverse pleasure derived from exposure to something by which one is revolted. Claire Colebrook detects this thrill-seeking impulse in the profusion of Western blockbuster films and TV shows that imagine and envision the destruction of earth, or at least of ‘humanity’. It also throbs through a flurry of recent best-selling books – both fiction and speculative non-fiction (see Oreskes and Conway 2014; Newitz 2013; Weisman 2008). In a forthcoming intervention, Noah Theriault and I (2018) argue that these imaginaries are a form of porn that normalizes the profound violences driving extinction, while cocooning its viewers in the secure space of the voyeur. Certainly, there are many Western scientists, conservationists and policy-makers who are genuinely committed to stopping the extinction of others, perhaps out of fear for their own futures. Yet extinction is not quite real for Western, and especially white, subjects; it is a fantasy of negation that evokes thrill, melancholy, anger and existential purpose. It is a metaphor that expresses the destructive desires of these beings, and the negativity against which we define our subjectivity.

But extinction is not a metaphor: it is a very real expression of violence that systematically destroys particular beings, worlds, life forms and the relations that enable them to flourish. These are real, unique beings, worlds and relations – as well as somebody’s family, Ancestors, siblings, future generations – who are violently destroyed. Extinction can only be used unironically as a metaphor by people who have never been threatened with it, told it is their inevitable fate, or lost their relatives and Ancestors to it – and who assume that they probably never will.

This argument is directly inspired by the call to arms issued in 2012 by Eve Tuck and Wayne K. Yang and more recently by Cutcha Risling-Baldy. The first, seminal piece demonstrates how settler cultures use the violence of metaphorical abstraction to excuse themselves from the real work of decolonization: ensuring that land and power is in Indigenous hands. Risling-Baldy’s brilliant follow-up extends this logic to explain how First People like Coyote have been reduced to metaphors through settler appropriation. In both cases, engagement with Indigenous peoples and their relations masks moves to innocence: acts that make it appear as if settlers are engaging in decolonization, while in fact we are consolidating the power structures that privilege us.

In this series, want to show how Western, and white-dominated, discourses on ‘extinction’ appear to address the systematic destruction of peoples and other beings while enacting moves to innocence that mask their culpability and perpetuate structures of violence. As I argued in Part I of this series, extinction is an expression of colonial violence. As such, it needs to be addressed through direct decolonization, including the dismantling of settler colonial structures of violence, and the resurgence of Indigenous worlds. Following Tuck, Yang and Risling-Baldy’s lead, I want to show how and why the violences that drive extinction have come to be invisible within mainstream discourses. Salient amongst these is the practice of genocide against Indigenous peoples other than humans.

…it is literally genocide.

What Western science calls ‘extinction’ is not an unfortunate, unintended consequence of desirable ‘human’ activities. It is an embodiment of particular patterns of structural violence that disproportionately affect specific racialized groups. In some cases, ‘extinction’ is directly, deliberately and systematically inflicted in order to create space for aggressors, including settler states. For this reason, it has rightly been framed as an aspect or tool of colonial genocides against Indigenous human peoples. Indeed, many theorists have shown that the ‘extirpation’ of life forms (their total removal from a particular place) is an instrument for enacting genocide upon Indigenous humans (see Mazis 2008; Laduke 1999; Stannard 1994). Specifically, the removal of key sources of food, clothing and other basic materials makes survival on the land impossible for the people targeted.

### CP

#### Only extinction risk.

Miller-McDonald ’19 [Samuel; January 4; M.A. in Environmental Management from Yale University, B.A. in Human Ecology from College of the Atlantic; The Trouble, “Deathly Salvation,” <https://www.the-trouble.com/content/2019/1/4/deathly-salvation>]

A devastating fact of climate collapse is that there may be a silver lining to the mushroom cloud. First, it should be noted that a nuclear exchange does not inevitably result in apocalyptic loss of life. Nuclear winter—the idea that firestorms would make the earth uninhabitable—is based on shaky science. There’s no reliable model that can determine how many megatons would decimate agriculture or make humans extinct. Nations have already detonated 2,476 nuclear devices.

An exchange that shuts down the global economy but stops short of human extinction may be the only blade realistically likely to cut the carbon knot we’re trapped within. It would decimate existing infrastructures, providing an opportunity to build new energy infrastructure and intervene in the current investments and subsidies keeping fossil fuels alive.

In the near term, emissions would almost certainly rise as militaries are some of the world’s [largest emitters](https://www.nytimes.com/interactive/2017/06/01/climate/us-biggest-carbon-polluter-in-history-will-it-walk-away-from-the-paris-climate-deal.html). Given what we know of human history, though, conflict may be the only way to build the mass social cohesion necessary for undertaking the kind of huge, collective action needed for global sequestration and energy transition. Like the 20th century’s world wars, a nuclear exchange could serve as an economic leveler. It could provide justification for nationalizing energy industries with the interest of shuttering fossil fuel plants and transitioning to renewables and, uh, nuclear energy. It could shock us into reimagining a less suicidal civilization, one that dethrones the death-cult zealots who are currently in power. And it may toss particulates into the atmosphere sufficient to block out some of the solar heat helping to drive global warming. Or it may have the opposite effects. Who knows?

What we do know is that humans can survive and recover from war, probably even a nuclear one. Humans cannot recover from runaway climate change. Nuclear war is not an inevitable extinction event; six degrees of warming is.

#### There’s tons of literature.

Vladeck ’19 [Stephen; November 2019; A. Dalton Cross Professor in Law at the University of Texas School of Law; Harvard Law Review, “The Solicitor General and The Shadow Docket,” vol. 133]

There is a veritable mountain of scholarship and popular commentary on the Solicitor General's role and relationship with the Supreme Court. 13 [FOOTNOTE] 13 See, e.g., CAPLAN, supra note 6; SALOKAR, supra note 3; Michael A. Bailey et al., Signals from the Tenth Justice: The Political Role of the Solicitor General in Supreme Court Decision Making, 49 AM. J. POL. SCI. 72, 82-83 (2005); Neal Devins, Unitariness and Independence: Solicitor General Control over Independent Agency Litigation, 82 CALIF. L. REV. 255, 280-320 (1994); Timothy R. Johnson, The Supreme Court, the Solicitor General, and the Separation of Powers, 31 AM. POL. RES. 426, 444-46 (2003); Stephen S. Meinhold & Steven A. Shull, Policy Congruence Between the President and the Solicitor General, 51 POL. RES. Q. 527, 535 (1998); Richard L. Pacelle, Jr., Amicus Curiae or Amicus Praesidentis? Reexamining the Role of the Solicitor General in Filing Amici, 89 JUDICATURE 317, 317-18 (2006); Jeffrey A. Segal, Supreme Court Support for the Solicitor General: The Effect of Presidential Appointments, 43 W. POL. Q. 137, 147-50 (1990). [END FOOTNOTE] But virtually none of it has addressed this last phenomenon, even as more attention is being paid to the Court's "shadow docket," that is, the significant volume of orders and summary decisions that the Court issues without full briefing and oral argument. 14This Essay aims to fill that gap.

#### It’s quick.

Pacelle ’15 [Richard; 2015; Professor and Department Head in Political Science at the University of Tennessee, PhD in Political Science from Ohio State University, BA from the University of Connecticut; The Supreme Court in a Separation of Powers System: The Nation's Balance Wheel, p. 202]

The bottom line, as the literature and in Table 6.1.1 in Appendix 6 show, is that the SG has the greatest success among litigants and great influence over Supreme Court decision making. The SG and the Court provide an unmatched example of synchronicity over a period of time. The signals that pass back and forth between the Court and the OSG are relayed quickly and apparently understood (Black and Owens 2012). The SG expanded its amicus activities in the wake of the Brown decision. In an information- poor or information- rich environment, the SG stands out as reliable and trustworthy. The Court needs information on the legal implications of a case. The SG can assist the justices in understanding the nature of the issues and available alternatives and in framing legal questions. Few clerks have mastered the issues before the Court. Indeed, many are only five years out of college. The solicitor general’s office has more resources and experience than the clerks. In particular, the deputies who specialize in particular issues frequently bring more expertise and knowledge to that area than most justices (Pacelle 2003).

#### The process is deliberately rapid.

Thompson ‘9 [David and Melanie Wachtell; Winter 2009; JD from Stanford Law School, BA from Yale University; Project Manager for the Special Report on Regulatory Reform at the Congressional Oversight Panel, JD from Stanford Law School, AB from Princeton University; George Mason Law Review, “An Empirical Analysis of Supreme Court Certiorari Petition Procedures: The Call for Response and The Call for the Views of the Solicitor General,” vol. 16]

The SG, sometimes called the "tenth justice," 241 is one of the most powerful information-gathering tools the Supreme Court can use when deciding whether to grant or deny a petition for a writ of certiorari. However, the Supreme Court limits its usage of the CVSG process to a handful of cases each year, perhaps mindful of the burden a call imposes on another branch of government. The Court is most likely to turn to the SG when dealing with complex statutory regimes, such as ERISA or intellectual property law. For a litigant, seeing the Court call for the views of the SG in a particular case is a sign that the likelihood of certiorari being granted is quite high; the Court granted briefing on the merits in 34% of cases in which it called for the views of the SG, a 36-time increase above the overall grant rate. This grant rate increased in the later years of this study, roughly corresponding to the tenure of Solicitor General Olson. The Court follows the recommendation of the SG to grant or deny a case roughly 80% of the time. The data suggest that the SG is very conscious of the internal deadlines of the Court and attempts to file briefs in order to help the Court process cases in a timely fashion.

#### 2 – The court has total influence---Congress AND agencies will implicitly mold their behavior.

Sitaraman ’18 [Ganesh; September 2018; Co-founder and Director of Policy for the Great Democracy Initiative, Professor of Law at Vanderbilt University; The Great Democracy Initiative, “Taking Antitrust Away from the Courts,” <https://greatdemocracyinitiative.org/wp-content/uploads/2018/09/Taking-Antitrust-Away-from-the-Courts-Report-092018-3.pdf>]

The second failure was the structure of government agencies. Compared to how most of the rest of government works, antitrust is exceptional. Normally, Congress passes laws commanding agencies to act to regulate – the EPA regulates clean air and water, the National Highway Transportation Safety Administration regulates safety in cars and trucks, the Consumer Products Safety Commission regulates children’s toys. These agencies are staffed with experts in the field, they hire scientists and commission studies, and they are designed to receive input from industry and the general public. Agencies are empowered to use their considerable expertise to make regulations setting standards or regulating specific practices. Courts are able to review the agency’s regulations, and they generally give deference to the substance of the regulation as long as it is within the agency’s discretion and so long as the agency has used its expertise to come to a reasoned decision. If a court strikes down an agency’s regulation for failing to consider an aspect of the problem or acting outside their statutory authority, the agency has a chance to correct its failure.

Antitrust doesn’t work this way. At first, Congress passed the Sherman Antitrust Act in order to make monopolization and monopolists’ practices illegal. The law was written with extremely broad language, and the Supreme Court narrowed the law, declaring that only unreasonable market practices were covered by the statute. In response, Congress passed new antitrust laws, created an antitrust agency (the FTC), and empowered the FTC to interpret its charter and make rules. But in practice, a timid FTC has failed to take up its congressionally authorized role and has largely abandoned the project of making regulations to interpret and enforce the antitrust laws it administers.13 This has left the Supreme Court to define the substance of antitrust law. This is a serious problem. Agencies have considerable expertise and are politically accountable to Congress and the President. In contrast, the Court is made up of unelected, unaccountable judges who have no expertise in business realities or any specific sector of the economy. Worse still, the FTC now defers so completely to the Supreme Court’s policymaking choices that it has narrowed its own statutory authorities to align with judicially-invented policies. Judicial lawmaking in this arena also ties back to the ideology problem. Normally, the courts provide a check on regulatory agencies, which utilize their expertise and have a transparent process for making regulations. In antitrust, because the courts have no expertise, they rely on the parties in the case and academics to teach them about markets and competition through an ad-hoc process of allowing amicus briefs during litigation.14 A skewed set of intellectual inputs, and limited public participation, leads to judicial lawmaking that is disconnected from the reality of the economy.

#### They control every aspect of antitrust law.

Popofsky ’14 [Mark and Douglas Hallward-Driemeier; Summer 2014; veterans of the Antitrust Division’s Appellate Section and the Office of the Solicitor General and lead the Antitrust and Appellate/Supreme Court Practices at Ropes & Gray LLP; Antitrust, “Antitrust and the Roberts Court,” vol. 28]

Although the Supreme Court’s overall caseload has shrunk under Chief Justice Roberts, 1 the Court’s antitrust docket strikingly has tripled. Since 2005, when Chief Justice Roberts succeeded William Rehnquist, the Court has taken 14 antitrust cases, compared to just five decided by the Rehnquist Court between 1993 and 2003. 2 The Supreme Court’s renewed interest in antitrust law is welcome. Numerous important issues in the antitrust field remain unsettled. The common-law nature of American antitrust law, moreover, benefits from greater Supreme Court guidance.

Some view competition law in general, and antitrust law in particular, as chiefly a form of administrative regulation— a field governed by rules and decisions formulated by the antitrust enforcement agencies. 3 Competition law, it is sometimes decried, merely involves predicting the positions regulators will take. The structure of competition law enforcement overseas—typically an agency model with limited judicial review—and the prominence of agency-driven merger enforcement domestically reinforce this perception.

But the depiction of U.S. antitrust law as primarily a matter of administrative regulation is fundamentally wrong. The structure of American antitrust enforcement is at its essence a judicial enforcement (or “law enforcement”) model. Private attorneys general bring the vast majority of antitrust cases. 4 Likewise, the Department of Justice must bring suit in federal court in order to vindicate its views of antitrust law. Even the Federal Trade Commission, which can proceed administratively, ultimately is subject to judicial review.

Just as in other areas of the law, the federal courts have the last word on the meaning of our antitrust laws. 5 The Court has interpreted the Sherman and Clayton Acts as creating a species of common law, the meaning of which can evolve with changing conditions, which gives the federal courts a critical role in fashioning our competition laws. As Professor Areeda put it, Congress “invest[ed] the federal courts with a jurisdiction to create and develop an ‘antitrust law’ in the manner of the common law courts.”6 Tellingly, even in merger control, where the view of antitrust as administrative regulation has the most purchase, federal courts can and do render important decisions that shape the field and determine outcomes.

Viewed from this perspective, the Supreme Court’s recent rediscovery of antitrust reaffirms the vital importance of the federal courts in the dynamic process of common-law development that characterizes our antitrust laws. 7 In this piece, we explore three themes emerging from this reengagement: the Roberts Court’s (1) raising the bar to class actions, a development that transcends antitrust; (2) resistance to specialized rules in favor of broad standards, a development that reinforces the importance of evolution of antitrust law in the lower courts; and (3) protection of price competition, which marks the continuation of a longstanding theme.