# BFI Supreme Court CP

## 1NC

#### The Supreme Court of the United States should rule that caps on H1-B visas are unconstitutional

### Solvency

#### Federal courts have jurisdiction over visa questions

Tatyana E Delgado, JD candidate, 2009, Leaving the doctrine of consular absolutism behind, James E. Faust Law Library, Hein Online, pp59-60

Federal Question Jurisdiction May Provide for Judicial Review In London, the court stated that it lacked jurisdiction to review the decision of a consular officer.30 Assuming that the court was referring to subject matter jurisdiction, under today's statutory framework, courts may have jurisdiction over the matter under 28 U.S.C. § 1331 (general federal question jurisdiction statute).3 1 In Hermina Sague v. United States, 32 a USC and her husband, a French citizen, filed a 42 U.S.C. § 1981 (Equal Rights under the Law) claim against the U.S. after the French citizen's application for a visa was denied by a consular officer. The United States District Court for the District of Puerto Rico held that it lacked jurisdiction to hear the claim based on prior court decisions that barred non-citizens from seeking judicial review, such as the London decision." The court also focused on the consulate officer's exclusive authority to grant or deny visas and the absence of a statute providing the court with the authority to engage in judicial review. 35 However, 28 U.S.C. § 1331 may now provide courts with jurisdiction to hear such claims. Hermina Sague was decided in 1976 and since then, Congress has amended 28 U.S.C. § 1331 to abolish the amount in controversy requirement with regard to claims made against the government. 36 Thus, courts arguably may exercise jurisdiction under 28 U.S.C. § 1331."

#### Courts may rule on counselor office decisions and visa questions-the state dept. opinion is only advisory

Tatyana E Delgado, JD candidate, 2009, Leaving the doctrine of consular absolutism behind, James E. Faust Law Library, Hein Online, p.60

In Abourezk v. Reagan,38 various USCs, including members of Congress, university professors, journalists, and religious leaders, invited the Interior Minister of Nicaragua, Tomas Borge, to the U.S. The government of Nicaragua sought a non-immigrant visa from the U.S. embassy in Managua. After the consular officer sought an opinion from the State Department, Borge was denied a visa on the basis that his presence would be threatening to public welfare (a ground of inadmissibility).3 9 The USCs claimed that the State Department's decision to exclude Borge went beyond its statutory authority and abridged their First Amendment rights. The court reviewed the decision made by the State Department, based on a finding that it had subject matter jurisdiction under both 28 U.S.C. § 1331 and INA § 279. Furthermore, the court found that the APA afforded standing to the individuals pursuing the claim. 40 Although Abourezk can arguably be construed as a case that was limited to the judicial review of a State Department official's decision, as opposed to a consular officer's decision, it is reasonable to suggest that Abourezk indicated that courts may review consular officers' decisions. In Abourezk, the court stated that the State Department's advice regarding whether an individual may be inadmissible based on the 'threat to public welfare' ground was binding. However, when it made reference to the specific facts of the Borge case, the court referred to the State Department's opinion as "advisory." Thus, it is unclear whether the court deemed the State Department's opinion to be binding or advisory.4 1 If the State Department's opinion was merely advisory, then Abourezk provides support for the notion that courts may review consular officeirs' decisions. In other words, if the consular officer was the ultimate decision-maker, then the court's willingness to proceed with the merits of the case indicates that visa denials by consular officers. may be subject to review

#### The Administrative Procedure Act allows for judicial review of visas and other immigration policy

Tatyana E Delgado, JD candidate, 2009, Leaving the doctrine of consular absolutism behind, James E. Faust Law Library, Hein Online, p.62

The APA established a presumption that agency actions are reviewable by the courts,4 8 unless "statutes preclude judicial review; or agency action is committed to agency discretion by law." 4 9 Although there is no statute specifically prescribing judicial review, the APA presumption favors review by the courts. The first exception does not apply because there is no statute explicitly precluding judicial review of consular decisions.o While INA § 104(a) arguably precludes the Secretary of State from engaging in the enforcement of the duties of consular officers with respect to visa issuances or denials, it does not preclude any other individual from reviewing the decisions of consular officers, such as the Attorney General.5' The second exception aims to preclude judicial review under circumstances wherein the action was "committed to agency discretion."5 2 The U.S. Supreme Court has interpreted this exception to mean that "the statute is drawn so that a court would have no meaningful standard against which to judge the agency's exercise of discretion."53 The INA provides consular officers with meaningful standards that judges could consider when engaging in review. 54 Therefore, because neither one of the APA exceptions to the presumption of judicial review apply, the APA may provide for judicial review

#### H1-B restriction unconstitutional-First Amendment and Article III

Tatyana E Delgado, JD candidate, 2009, Leaving the doctrine of consular absolutism behind, James E. Faust Law Library, Hein Online, p.63-65

In American Academy, the American Academy of Religion, American Association of University Professors, the PEN American Center, and Tariq Ramadan ("Ramadan"), sued the Secretary of the DHS and the DOS. The plaintiffs claimed that by excluding Ramadan from the U.S., the DHS and DOS violated their First Amendment rights to "have Ramadan share his views with the organizations and with the public."6 Ramadan, a Muslim scholar and Swiss citizen, planned to serve as a professor at the University of Notre Dame. In May 2004, the University of Notre Dame sought an H-1B visa for Ramadan and the visa was granted. Shortly before the day that Ramadan was scheduled to travel to the U.S., the U.S. Embassy in Bern announced that his visa had been revoked, but did not provide a reason. 6 5 Ramadan later filed two additional applications for non-immigrant visas.66 In June 2006, the United States District Court for the Southern District of New York ordered that defendants render a decision regarding the visa application. The defendants subsequently refused to grant Ramadan a visa based on their belief that "he had provided material support to a terrorist organization."6 7 In December 2007, the United States District Court for the Southern District of New York held that it could exercise jurisdiction over the plaintiffs' First Amendment claims based on the powers granted to the court in Article III of the U.S. Constitution.68 The court also held that the "exclusion of Professor Ramadan is facially legitimate and bona fide." 6 9 In July 2009, the United States Court of Appeals for the Second Circuit also stated that the district court could exercise jurisdiction, based on 28 U.S.C. § 1331 and Mandel.70 Yet, the Second Circuit vacated and remanded the lower court's decision. It ordered the lower court to determine whether the consular officer had informed Ramadan of the allegation that he had provided support to an organization with links to terrorism and whether Ramadan was given the opportunity to prove that he lacked knowledge of the organization's ties. In American Academy, the Second Circuit confirmed that when USCs pursue First Amendment claims related to visa denials by consular officers, the courts may review the decisions of the consular officers. The Second Circuit referred to Mandel and held .that the court's jurisdiction was not limited to the review of decisions made by the Attorney General. In American Academy, the court stated that, Since the First Amendment requires at least some judicial review of the discretionary decision of the Attorney General to waive admissibility,

### Net benefit SCOTUS decisions have no influence on midterm voters

#### Supreme court insulated from politics-general good will

Stephen Jessee and Neil Malhotra, professors, 21 May 2013, Public (Mis)Perceptions of Supreme Court Ideology: A Method for Directly Comparing Citizens and Justices, Public Opinion Quarterly, Volume 77, Issue 2, 1 January 2013, Pages 619–634 https://academic-oup-com.ezproxy.lib.utah.edu/poq/article/77/2/619/1872512

Although the Supreme Court is structurally insulated from public pressures, given that its members are not popularly elected and serve lifetime appointments, scholars of judicial politics have argued that the Court relies on citizens to believe that its decisions and role in U.S. government are legitimate (Epstein and Knight 1998; McGuire and Stimson 2004; Casillas, Enns, and Wohlfarth 2011). Researchers have diverged in their views of the ease with which the Supreme Court is able to garner and maintain support among the public. An extensive research agenda (e.g., Caldeira and Gibson 1992; Gibson, Caldeira, and Spence 2003) has argued that the public generally views the Supreme Court as legitimate even if it disagrees with particular decisions the Court makes. This goodwill stems from the powerful symbols the Court possesses that exemplify justice, formalism, and legitimacy (Gibson et al. 2010; Woodson, Lodge, and Gibson 2011).1

#### Apolitical positive regard for court decisions via the theory of principled legality

Vanessa A. Baird and Amy Gangl, professors, 2006, “Shattering the Myth of Legality: The Impact of the Media’s Framing of Supreme Court Procedures on Perceptions of Fairness” p.607 https://onlinelibrary-wiley-com.ezproxy.lib.utah.edu/doi/epdf/10.1111/j.1467-9221.2006.00518.x

Some scholars have argued that “the fictive idea of principled legality”(Brisbin, 1996) is a crucial source of the Court’s institutional legitimacy (Fiscus,1991). The evidence presented here substantiates the principal role that perceptions of a Court guided predominantly by legal considerations play with respect to positive public regard toward the Court. The results suggest that the Court has an advantage over Congress with respect to how it is portrayed in the media and understood by the public. Perhaps if more media coverage focused on the constitutional procedures that guide and direct the lawmaking process—in the manner that reporting of the Court tends to focus on how legal precedent shapes rulings—Congress would be less vulnerable to the common albeit mistaken attack that its politics consistently violate the nature and spirit of the constitution (Hibbing &Theiss-Morse, 1995). The prevalence of the myth of legality and its support in public discourse does seem to give the Court an advantage over Congress in this way.

#### Courts are considered separate from conventional American politics among the public

Christopher Smith, professor, 1993, “Courts, politics, and the judicial process” Chicago Ill. : Nelson-Hall Publishers, p.1

What images come to mind when Americans hear the words "government" and "politics"? Politicians making campaign speeches ... Legislators debating controversial public policies ... The president being followed by reporters, microphones, and television cameras. It is unlikely, however, that many people immediately visualize black-robed judges presiding over solemn, ornate courtrooms. Yet, the judicial system constitutes one of the three branches of government. In the United States Constitution, after Article I describes the structure and powers of the legislative branch and Article II describes the president's authority, Article III establishes the Supreme Court and describes the jurisdiction of the judicial branch. Although the courts are a component of government, generally accepted beliefs about the proper role and behavior of judicial actors differ from expectations about the actions and motivations of officials in the other branches of government. For example, when legal commentators speak about "the independence of the judiciary from the political branches [of government],"' they are clearly identifying the courts as different from the other branches. Unlike the judicial branch, the legislative and executive branches are recognized as "political" in nature! Justice Felix Frankfurter echoed this theme when he warned that the judicial system should be kept separate from political issues and institutions: "It is hostile to a democratic system to involve the judiciary in the politics of the people."' When Americans discuss the court system, they convey the image of a governmental branch which, by its very nature, is distinctively different from other components of government. Courts are unique among government institutions because of their association in the public mind with law rather than politics.

## Extensions

#### Courts have legitimacy on this issue-First Amendment claims

Tatyana E Delgado, JD candidate, 2009, Leaving the doctrine of consular absolutism behind, James E. Faust Law Library, Hein Online, p.62

Kleindienst v. Mandel56 provides insight on courts' ability to review visa denials by executive branch officials in instances where USCs have asserted First Amendment claims. In Mandel, Mandel and several USCs, including university professors, alleged that the Attorney General (AG) and the Secretary of State violated their First and Fifth Amendment rights. Mandel, a Belgian citizen, sought a non-immigrant visa from the consulate in Brussels because he had been invited to speak at an event in the U.S. A consulate officer informed Mandel that he was inadmissible under INA § 212(a)(28), which makes non-citizens who support communism inadmissible. The Attorney General (AG) had the power to grant a waiver, which he had done for Mandel on previous occasions. On this occasion, the AG denied Mandel the waiver and thus, his visa was denied. The plaintiffs claimed that, under the First Amendment, they had a right to "receive information and ideas."59 Thus, the court focused on the USCs' rights "to have the alien enter and to hear him explain and seek to defend his views" and agreed to hear the case.6 In Mandel, the U.S. Supreme Court engaged in judicial review (although quite limited) by considering whether the AG's decision to deny the waiver was "facially legitimate and bona fide." The Court found that the AG's decision was facially legitimate and bona fide because the AG established that Mandel's abuse of the conditions of his previously granted visas gave the AG reason to deny the waiver on this occasion.6 1 Some have argued that Mandel solely stands for the proposition that courts may engage in the review of the AG's decisions to deny waivers to visa applicants.6 2 However, in American Academy of Religion v. Napolitano, the United States Court of Appeals for the Second Circuit stated that Mandel also stands for the proposition that courts may review consular officers' decisions to deny visas to applicants.6 3

#### Courts key to changing hearts and mind of public-leads to consistent enforcement

Hoekstra, V. J.. professor, 2003, Public Reaction to Supreme Court Decisions. Cambridge: Cambridge University Press. http://web.a.ebscohost.com.ezproxy.lib.utah.edu/ehost/ebookviewer/ebook/bmxlYmtfXzEyMDU3NV9fQU41?sid=89fe0ceb-1955-4cb9-9faf-4253918fe83c@sessionmgr4007&vid=0&format=EB&lpid=lp\_87&rid=0

If the Court can indeed influence public opinion, it can have a huge impact on the course of public policy. The ability to change public opinion on issues can, over time, lead to sweeping changes in the kinds of policies elected officials choose to pursue. At the very least, increased support for the Court’s position would improve the incentives for local officials to enforce the Court’s decision (Johnson and Canon1998).

#### Public support for the court does not change based on the content of the decision (insulated from politics)

Hoekstra, V. J.. professor, 2003, Public Reaction to Supreme Court Decisions. Cambridge: Cambridge University Press. http://web.a.ebscohost.com.ezproxy.lib.utah.edu/ehost/ebookviewer/ebook/bmxlYmtfXzEyMDU3NV9fQU41?sid=89fe0ceb-1955-4cb9-9faf-4253918fe83c@sessionmgr4007&vid=0&format=EB&lpid=lp\_87&rid=0

Most accounts of public support for the Supreme Court refer to the Court’s legitimacy as an institution of government. Much of the recent research focuses on two particular concepts: diffuse and specific support. Diffuse support for the Court refers to relatively enduring attitudes about the role of the Court in our constitutional scheme of government. Specific support, on the other hand, refers more to evaluations of the Court’s actions (Caldeira1986; Caldeira and Gibson1992; see also Jaros and Roper1980; Murphy and Tanenhaus1968a,1968b,1972,1981). To many, these sources of support should be distinct; and, the prevailing consensus is that they are, especially among members of the mass public (Caldeira and Gibson1992). Scholars who are interested in questions about specific and diffuse support typically are interested in different questions from the ones posed in this project. Often, the aim of that research isto understand the sources of diffuse support for the institution, and thus they wish to remove the influence of support for specific decisions from measures of diffuse support. But, the bottom line is that most of this research suggests that agreement with specific Court decisions does not typically factor into overall support for the institution.

#### Courts shape public opinion-have unique ability to persuade

Hoekstra, V. J.. professor, 2003, Public Reaction to Supreme Court Decisions. Cambridge: Cambridge University Press. http://web.a.ebscohost.com.ezproxy.lib.utah.edu/ehost/ebookviewer/ebook/bmxlYmtfXzEyMDU3NV9fQU41?sid=89fe0ceb-1955-4cb9-9faf-4253918fe83c@sessionmgr4007&vid=0&format=EB&lpid=lp\_87&rid=0

What happens when people learn about a Court decision? Does it affect how they feel about the issue? Chapter4 showed there was only slight evidence that the Court can shape public opinion on the issues. In two of the four studies there was some evidence of opinion change in the direction of the Court’s decision. However, it was difficult to explain this change. Unlike what the persuasion research would expect, shifts in opinion, whether positive or negative, were not related to support for the Court. Normally, support for the Court – or any other source of a 152Public Reaction to Supreme Court Decisions message – should positively affect how people feel about the issue. Those who have a great deal of confidence in the Court should be more likely to be persuaded than those with less confidence. This is also what some experimental studies have shown (Mondak1990,1992,1994; Hoekstra1995). This was not the case, however While the results for the persuasive appeal of the Court were less than overwhelming, there was some evidence to suggest that the frequency with which people pay attention to politics and the media, thereby increasing their exposure to information about the Court’s decisions, increased the Court’s ability to persuade. This finding was limited to two of the four studies, however. In some respects these findings are consistent with previous research that shows very little aggregate opinion shifts (Marshall1988,1989). On the other hand, there is some recent research suggesting Court decisions have the potential to polarize opinion (Franklin andKosaki1989; Johnson and Martin1998). However, that research was limited to highly controversial issues such as abortion and the death penalty. Not too surprisingly then, there was no evidence of polarization following these four cases. These cases simply were not as charged as issues such as abortion and capital punishment.

#### SCOTUS has authority on immigration-vagueness

Nina Totenberg and Domenico Montanaro, April 17, 2018, reporters, “Trump Tweets On Supreme Court Immigration Decision,” NPR https://www.npr.org/2018/04/17/603160263/supreme-court-strikes-down-part-of-immigration-law

President Trump is already tweeting his displeasure about a Supreme Court decision that makes it more difficult to deport a small number of lawful permanent residents convicted of crimes. In a 5-to-4 decision Tuesday, the court overturned the deportation of a 25-year legal U.S. resident from the Philippines who was convicted of two burglaries. James Dimaya came to the U.S. at age 13 as a legal permanent resident. More than two decades later — after he was convicted of two home burglaries in California and sentenced to a total of four years in prison — the government sought his deportation under a "violent crime" immigration law, though neither of Dimaya's crimes involved violence. The statute defines a violent crime as one involving force or the "substantial risk" of force. The Supreme Court, however, said that language is so vague that it invites arbitrary and discriminatory enforcement. Writing for the court majority, Justice Elena Kagan said the ruling is compelled by the court's decision in a similar case, Johnson v. United States — a decision written by the late conservative Justice Antonin Scalia in 2015, a year before his death. Pointing to that decision and others like it, Kagan quoted Scalia from a dissent on the subject of following these precedents: "Insanity is doing the same thing over and over again, but expecting different results." "We abandoned that lunatic practice" the last time the court ruled on this issue, Kagan said, adding that there is "no reason to start it again." Trump appointee Neil Gorsuch, Scalia's successor, cast the fifth and decisive vote, along with four liberal justices. In a lengthy concurring opinion, he said the "Constitution looks unkindly on any law so vague that reasonable people cannot understand its terms and judges do not know where to begin in applying it." The dissenters were Chief Justice John Roberts and Justices Anthony Kennedy, Clarence Thomas and Samuel Alito. Roberts and Thomas wrote dissenting opinions for a total of 47 pages.

#### Current H1-B visa cap was reached five days after implementation

Leigh N. Ganchan, author and immigration researcher for lexology, April 10 2018, “FY 2019 H-1B Visa Cap: USCIS Reaches Annual Cap in 5 Days,” https://www.lexology.com/library/detail.aspx?g=060bb20d-f8b4-4756-ba9e-c56bd72c39f9

According to a recent U.S. Citizenship and Immigration Services (USCIS) announcement, “USCIS has reached the congressionally-mandated 65,000 H-1B visa cap for fiscal year 2019.” The fiscal year (FY) 2019) H-1B cap filing season launched on Monday, April 2, 2017 (since April 1, 2018 was a Sunday). On Friday, April 6, 2018, USCIS announced that it had already met both the 65,000 cap and the 20,000 U.S. advanced degree "master’s cap." USCIS will reject and return filing fees for all unselected cap-subject petitions. USCIS will follow regulatory procedures providing for the random selection of approximately 15–20 percent more petitions than the regular cap number of 65,000 and approximately 5–10 percent more petitions than the advanced degree cap number of 20,000. The agency will use a computer-generated random selection process (or “lottery”) to select a sufficient number of H-1B petitions to satisfy the limits. The remaining petitions will be repackaged and returned to the petitioner. Since premium processing is not available for this year’s cap season, all cap cases that have been selected will only receive a paper receipt notice via regular mail. The USCIS receipt generation process will be ongoing and may continue into June. In prior years, adjudications did not begin until around May 16 after the main lottery selections had been completed. Employers may continue to file H-1B petitions in a variety of cases. According to the announcement, “USCIS will continue to accept and process petitions filed to: Extend the amount of time a current H-1B worker may remain in the United States; Change the terms of employment for current H-1B workers; Allow current H-1B workers to change employers; and Allow current H-1B workers to work concurrently in a second H-1B position

#### Overturning precedent key on issues of social justice

Douglas **NeJaime**, associate Professor of Law, Loyola Law School, Los Angeles (Loyola Marymount University), 2011, SURVEY OF BOOKS RELATED TO THE LAW: BOOK REVIEW: CONSTITUTIONAL CHANGE, COURTS, AND SOCIAL MOVEMENTS 20**13** Michigan Law Review Association http://www-lexisnexis-com.ezproxy.lib.utah.edu/hottopics/lnacademic/?verb=sr&csi=7346&sr=TITLE(CONSTITUTIONAL+CHANGE%2C+COURTS%2C+AND+SOCIAL+MOVEMENTS)%2BAND%2BDATE%2BIS%2B2013

Cases that we now look at with collective regret and shame become equally significant. Part of our constitutional narrative requires disclaiming certain decisions - Dred Scott v. Sandford, n15 Plessy v. Ferguson, n16 and more recently, Bowers v. Hardwick n17 - as "wrong the day [they were] decided" (p. 185). Those decisions, we claim, were never true to the spirit of the Constitution. n18 In between, there are cases that have simply become "outmoded" - correct the day they were decided but no longer appropriate given contemporary circumstances (p. 185). For some, Balkin argues, Lochner v. New York n19 has shifted from "wrong the day it was decided" to simply "outmoded" (pp. 185, 199-200). All three categories of cases [\*883] are crucial to the story of constitutional redemption and attest to the vital role that courts - and their rulings - play in the process of social change.

## Internal Net-Benefit Social Movements

#### Courts good-legitimizes and empowers social movements

 Douglas **NeJaime**, associate Professor of Law, Loyola Law School, Los Angeles (Loyola Marymount University), 2011, SURVEY OF BOOKS RELATED TO THE LAW: BOOK REVIEW: CONSTITUTIONAL CHANGE, COURTS, AND SOCIAL MOVEMENTS 20**13** Michigan Law Review Association http://www-lexisnexis-com.ezproxy.lib.utah.edu/hottopics/lnacademic/?verb=sr&csi=7346&sr=TITLE(CONSTITUTIONAL+CHANGE%2C+COURTS%2C+AND+SOCIAL+MOVEMENTS)%2BAND%2BDATE%2BIS%2B2013

Even though Balkin focuses extensively on the impact of extrajudicial forces on constitutional construction (pp. 97-98), courts still play a significant role in the contest over constitutional meaning. As an initial matter, the claimsmaking process itself renders courts important venues in the process of constitutional and social change. In courts, constitutional meanings can be asserted and defended. Courts, therefore, offer opportunities for extrajudicial actors to articulate and hone a variety of constitutional visions. Once courts intervene in favor of a social movement, Balkin's account stresses their responsiveness to broader cultural and political changes. He argues that "when social movement contestation succeeds in delegitimating a practice sufficiently, it also usually succeeds in getting courts to ratify that conclusion through their interpretations of the Constitution" (p. 70). Courts eventually validate meanings that have become reasonable through [\*882] the course of continued debate and persuasion (p. 70). The new constitutional meaning becomes authoritative not because a court decided so independently, but because social movements have persuaded political forces, opinion leaders, the public, and judges that a new position is reasonable and, in fact, correct. In this way, constitutional change is a bottom-up process in which courts are not leading, but instead are responding to external changes (p. 246). This is not to say that courts simply reflect what is happening in other locations. Rather, courts "are independent actors that mutually influence other actors in the political system." n11 Even though broader political changes affect what courts do, courts can and do stake out positions that depart from the views of the dominant political party and from public opinion. n12 Court decisions also "reshape the terrain of political combat and social movement activism," creating new opportunities for advocates both in and out of court. n13 Ultimately, while courts respond to new constitutional meanings asserted by social movement actors, they also shape those meanings going forward and influence the direction of political contestation. Although Balkin deemphasizes adjudication as the central moment in constitutional change, he nonetheless identifies judicial decisions as crucial points in the ongoing process of constitutional redemption. Important decisions become part of a narrative in which social movement actors, among others, use such decisions to explain legitimate social change, repudiate past injustices, and justify calls for further development. Social movements may seize on canonical cases to articulate demands in the present day. Loving v. Virginia, n14 for instance, serves as a rallying cry for the marriage equality campaign

#### Social movement for immigration reform growing now

MASSOUD HAYOUNJUN, July 27 2018, INSIDE THE OCCUPY ICE MOVEMENT SWEEPING THE NATION, Pacific Standard, https://psmag.com/social-justice/inside-the-occupy-ice-movement-sweeping-the-nation

Rights advocates across the nation plan to take to the streets Saturday to protest the Trump administration's treatment of immigrant families, taking aim specifically at the crisis at America's borders and the Supreme Court's decision to uphold President Donald Trump's Muslim ban despite ample evidence of racial bias. After the rallies, many will go home, but organizers anticipate that some will stay on the streets indefinitely, bolstering growing encampments outside Immigration and Customs Enforcement offices as part of a burgeoning call to Occupy ICE. "Right now, what we're asking is for people to please consider joining us," says Xavier Alejandro Cerrilla, an organizer with the LA Against ICE advocacy group. Last week, following a vigil to commemorate those deported by Immigration Services and Customs, Cerrilla and his colleagues decided to pitch tents outside ICE offices in downtown Los Angeles. "That transitioned into an encampment following the efforts of Portland and New York City," Cerrilla says. Encampments are popping up at ICE offices across the country. Immigrant rights advocates camping outside ICE offices in Portland have blocked entrances there for over a week, effectively halting operations.

#### Movements to abolish ICE key-human rights violations

 Matt **Smith** **and** Aura **Bogado**, investigative journalists, June 20, 20**18** “Immigrant children forcibly injected with drugs, lawsuit claims,” Reveal: The center for investigative reporting https://www.revealnews.org/blog/immigrant-children-forcibly-injected-with-drugs-lawsuit-claims/

President Donald Trump’s zero tolerance policy stands to create a zombie army of children forcibly injected with medications that make them dizzy, listless, obese and even incapacitated, according to legal filings that show immigrant children in U.S. custody subdued with powerful psychiatric drugs. Children held at Shiloh Treatment Center, a government contractor south of Houston that houses immigrant minors, have described being held down and injected, according to the federal court filings. The lawsuit alleges that children were told they would not be released or see their parents unless they took medication and that they only were receiving vitamins. Parents and the children themselves told attorneys the drugs rendered them unable to walk, afraid of people and wanting to sleep constantly, according to affidavits filed April 23 in U.S. District Court in California. One mother said her child fell repeatedly, hitting her head, and ended up in a wheelchair. A child described trying to open a window and being hurled against a door by a Shiloh supervisor, who then choked her until she fainted. “The supervisor told me I was going to get a medication injection to calm me down,” the girl said. “Two staff grabbed me, and the doctor gave me the injection despite my objection and left me there on the bed.” Another child recounted being made to take pills in the morning, at noon and night. The child said “the staff told me that some of the pills are vitamins because they think I need to gain weight. The vitamins changed about two times, and each time I feel different.” Shiloh is among 71 companies that receive funds from the federal government to house and supervise immigrant children deemed unaccompanied minors. These are the places set up to receive the more than 2,000 children separated from their parents in the past six weeks under the new Trump administration policy as they leave temporary way stations at the border.

## 2AC

#### Courts don’t shield the president

Bruce Miroff, Professor of Political Science at State University of New York at Albany, 2000, The Presidency and the Political System, Ed. Michael Nelson, p. 304.

Spectacle has also been fostered by the president’s rise to primacy in the American political system. A political order originally centered on institutions has given way, especially in the public mind, to a political order that centers on the person of the president. Theodore Lowi wrote, Since the president has become the embodiment of government, it seems perfectly normal for millions upon millions of Americans to concentrate their hopes and fears directly and personally upon him” personal president’ that Lowi described is the object of popular expectations: these expectations, Stephen Wayne and Thomas Cronin have shown, are both excessive and contradictory.

#### No solvency – lawyer bias, lack of implementation powers, and public ignorance

Gerald N. Rosenberg, University of Chicago political science and law professor, N.d, “Can courts generate social change?” epstein.law.northwestern.edu/research/supctLawRosenberg.doc

Before uncritically accepting this view of the Court as correct, there are at least three reasons to be skeptical. First, it is almost entirely lawyers who make this argument. Although lawyers may be no less self-critical than other professionals, they may be no more self-critical either. That is, they may have deep-seated psychological reasons for believing in the importance of the institutions in which they work. This may lead to overvaluing the contribution of the courts to furthering the interests of the relatively disadvantaged. Second, there is an older view of the role of courts which sees them as much more constrained. Under this view, courts are the least able of any of the branches of government to produce change because they lack all of the necessary tools to do so. They are the “least dangerous branch” because they lack budgetary or coercive power. That courts are uniquely dependent on the executive branch is a view that was most forcefully argued over two hundred years ago by Alexander Hamilton in Federalist 78. Hamilton wrote: the judiciary “has no influence over either the sword or the purse; no direction either of the strength or of the wealth of the society, and can take no active resolution whatever. It may truly be said to have neither FORCE nor WILL but merely judgment of and must ultimately depend upon the aid of the executive arm even for the efficacy of its judgments.” As President Jackson reportedly commented in response to Worcester v. Georgia, a decision with which he disagreed, “[Chief Justice] John Marshall has made his decision, now let him enforce it.” This view suggests that Court decisions furthering the interests of the relatively disadvantaged will only be implemented when the other branches are willing to do so. The third reason for skepticism about the role of courts as producers of progressive change comes from several decades of public opinion research. If courts are dependent on public and elite support for their decisions to be implemented, as Hamilton suggests, this requires both public knowledge of Court decisions and a public willingness to act based on them. Proponents of an activist, progressive Court assume this. According to one defender of the claim, “without the dramatic intervention of so dignified an institution as a court, which puts its own prestige and authority on the line, most middle-class Americans would not be informed about such grievances.” However, decades of public opinion research paint a mixed picture, at best. In general, only about 40% of the American public report having read or heard something contemporary about the Court....In 1973, 20% of respondents to a Harris poll identified the Court as a branch of Congress, as did 12% of respondents with college degrees. In a culture in which personality is important, the public, too, is quite ignorant of the Justices’ identity. In a 1989 Washington Post poll, for example, 71% of 1,005 respondents could not name any Justice while only 2% could correctly name all nine. Somewhat humorously, while 9% named the distinguished Chief Justice of the United States (Rehnquist), a whopping 54%, six times as many respondents, correctly identified the somewhat less distinguished “judge of the television show ‘The People’s Court’” (Judge Wapner). The Supreme Court is not in the forefront of the consciousness of most Americans.

#### The counterplan violates separation of powers

Ramon Carrion, Attorney at Law, USA Immigration Guide, 2004

The Constitution of the United States, the organic document that established the unique political existence of this nation, is almost silent on the entire question of immigration. There is only a fleeting mention of this subject in that document. It does not contain a political or philosophical articulation of a policy or system of immigration. In very concise language, the Constitution simply authorizes the U.S. Congress to make the laws concerning immigration. There is no statement of policy or principle manifested in the Constitution concerning the subject of immigration.

#### Separation of powers is vital to the economy and solving climate migration

Morton Halperin et al, Senior Vice President of the Center for American Progress and Director of the Open Society Policy Center, 2005, The Democracy Advantage, p. 12

What explains the consistently superior development outcomes of democ­racies? We outline the conceptual underpinnings of democracy’s superior developmental performance in Chapter 2. The reasons are many and var­ied, but boil down to three core characteristics of representative govern­ment: shared power, openness, and adaptability. Although holding free elections is what commonly defines democracy, what makes it work is the way it disperses power. Consequently, in contrast to most autocratic governments, a broader range of interests are considered on a more regular basis. This increases the likelihood that the priorities of the general public will be weighed. Indeed, the argument that authoritarian governments can ignore special interest groups and therefore make deci­sions that are for the overall good of the society is based on a series of highly dubious assumptions. One is that the unelected leaders in these systems ac­tually have the interest of the public at heart. The behavior of Fidel Castro in Cuba, Kim Jung-Il in North Korea, Alexander Lukashenko in Belarus, and Hassan Ahmad al-Bashir in Sudan, to say nothing of former Iraqi dic­tator, Saddam Hussein, would strongly suggest otherwise. Another assumption is that authoritarian governments don’t have to satisfy their own special-interest constituencies. In fact, most authoritarian systems are built on the foundations of extensive patronage networks upon which they rely to stay in power. Although typically shielded from public view, these networks have enormous impacts on economic opportunity and development. The separation of powers inherent in a democracy acts as a constant reminder to the public that the central government’s powers are limited. Thus, it encourages the expansion—and the independence—of the private sector. This, in turn, fosters a climate of innovation and entre­preneurship, the engines of economic growth. The multiplicity of influences on the decision-making process in democracies also leads to more moderate and nuanced policies. This mod­erating influence contributes to one of the most distinctive qualities of democratic development—its steadiness. The ups and downs of economic growth in low-income countries are smaller in democracies. Rather than experiencing alternating bouts of boom and bust, economies in democra­cies are more likely to undergo a stable pattern of moderate gains and small declines. For poor democracies, that quality of steadiness is exceedingly important, for it means that they are more able than countries run by dic­tators to avoid economic and humanitarian catastrophes. For broad seg­ments of their populations, this is the difference between life and death. Consider this remarkable statistic: 95 percent of the worst economic performances over the past 40 years were overseen by nondemocratic gov­ernments. Similarly, virtually all contemporary refugee crises have been wrought by autocratic governments. Although shared decision-making is frequently slower, this process is more likely to weigh risks, thereby avoid­ing calamitous policies. When something is going wrong, leaders hear about it and are forced to take action.

#### Perm creates better policy decision making-court oversight

Michael Heise, Professor of Law, Case Western Reserve University. A.B., Stanford University; J.D., University of Chicago; Ph.D., Northwestern University, 2000, http://www-lexisnexis-com.ezproxy.lib.utah.edu/hottopics/lnacademic/?verb=sr&csi=156180&sr=TITLE(EDUCATION+AND+THE+CONSTITUTION+SHAPING+EACH+OTHER+AND+THE+NEXTCENTURY+Preliminary+Thoughts+on+the+Virtues+of+Passive+Dialogue)%2BAND%2BDATE%2BIS%2B200 SYMPOSIUM: EDUCATION AND THE CONSTITUTION: SHAPING EACH OTHER AND THE NEXTCENTURY: Preliminary Thoughts on the Virtues of Passive Dialogue, Akron Law Review, http://www-lexisnexis-com.ezproxy.lib.utah.edu/hottopics/lnacademic/?verb=sr&csi=156180&sr=TITLE(EDUCATION+AND+THE+CONSTITUTION+SHAPING+EACH+OTHER+AND+THE+NEXTCENTURY+Preliminary+Thoughts+on+the+Virtues+of+Passive+Dialogue)%2BAND%2BDATE%2BIS%2B2000

Debates over the judiciary's appropriate role in the public constitutional dialogue have captured scholarly attention for decades. Many credit Professor Alexander Bickel's classic work, The Least Dangerous Branch, n2 for framing much of the modern discussion about the Court's proper role in the broader public constitutional dialogue. n3 Professor Cass Sunstein's more recent call for decisional minimalism n4 contributes to a conversation invigorated by Bickel. n5 Notably, both Bickel and Sunstein advance theoretical rationales for judicial modesty and reticence, although they approach the issue from different vantage points and they articulate different arguments. [\*74] However, both Bickel and Sunstein agree that a modest or minimalist approach enhances democratic rule and public discourse by allowing more room for the other political branches to function. This restrained vision of the Court's role in the public constitutional dialogue has lately come under attack n6 and recent court decisions suggest it enjoys mixed doctrinal support. Professor Katyal's recent contribution to this debate argues for something quite different. Unlike Bickel and Sunstein, Katyal calls for courts to engage actively in the larger public constitutional dialogue principally by dispensing non-binding advice to political branches through a variety of mechanisms. n8 Through advice-giving, Katyal maintains, the Court "enters into a conversation with the political branches and embraces its partnership." n9 According to Katyal, such active judicial dialogic participation will generate enhanced democratic decision-making and popular accountability

#### Perm shields the link to the politics scenario

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Active judicial participation in the school finance area might indirectly exacerbate one problem that it seeks to solve. One problem that arises in the school finance context involves legislative inertia. The question is how courts should approach and respond to instances of legislative inertia, assuming that such a condition is easily recognizable. By seeking to address an issue by actively and directly [\*106] engaging lawmakers, courts may ultimately "solve" one inertia problem, but they will do so in a manner that will fuel additional inertia problems in the future. Specifically, active judicial participation often provides political "cover" for lawmakers eager to avoid tough -- and possibly divisive -- political questions that sometimes occupy the center of the political process. Once lawmakers see that judges are willing to inject themselves into political debates, some lawmakers might be induced to become more, rather than less, complacent. Moreover, once the judiciary becomes engaged with a political problem, it becomes part of that problem. To the extent that such problems might not go away anytime soon or, for that matter, worsen, the judiciary's institutional credibility could become an issue.