# 1NC---DRR---Round 4

## OFF

### 1NC---CP

#### The 50 States of the United States should clarify that Hoffman Plastics vs NLRB is limited to backpay and does not extend to other employment or labor laws, including collective bargaining rights.

#### State courts solve

Kuehne 22 [Tobias Kuehne, JD and PhD from Yale University, “Immigration and Employment Federalism: State Courts and Workers' Compensation for Unauthorized Workers," Berkeley Journal of Employment and Labor Law, vol. 43, no. 2, 2022, pp. 415-454, HeinOnline via MSU libraries]

INTRODUCTION

The intersection of immigration law and labor law has generated deep disagreements over legal categories and normative commitments. Those disagreements were on full display in the Supreme Court's five-to-four split in Hoffman Plastic Compounds, Inc. v. NLRB, decided in 2002.' Hoffman asked whether Jose Castro, an undocumented worker who had been unlawfully laid off for unionizing activity, was entitled to reinstatement and backpay under the National Labor Relations Act (NLRA). The five-Justice majority opinion penned by Chief Justice Rehnquist said no, explaining that precedent had established a presumption that the NLRA did not protect conduct that violated other statutes-especially when that violation is criminal.2 Here, Castro violated the Immigration Reform and Control Act (IRCA) by presenting a false birth certificate and Social Security number at the hiring stage.3 The Hoffman majority thus bristled at the idea of "award[ing] backpay to an illegal alien for years of work not performed, for wages that could not lawfully have been earned, and for a job obtained in the first instance by a criminal fraud."4 IRCA's policies thus trumped the NLRA's. The four dissenting Justices, in an opinion authored by Justice Breyer, proceeded from a very different presumption. In their view, the majority's "decisional background" that precluded NLRA remedies when a worker had acted criminally did not exist.5 Instead, their reading of IRCA's text, its purpose, and Supreme Court precedent required that IRCA accommodate the NLRA such that unauthorized workers would receive the same NLRA remedies as authorized ones.6

Labor law scholars and activists have severely criticized Hoffman for its adverse impacts on undocumented workers. Some have argued that it gave employers additional leeway to exploit their workers.7 Others have focused on the social hierarchies and exclusion Hoffman codified.' Yet others have discussed the incentives that Hoffman created in stifling the litigation of employment disputes involving possibly undocumented workers.9 In short, scholars have criticized Hoffman's adverse impact both on undocumented workers as a subgroup and on all workers seeking to organize under the protection of the NLRA.

Yet, none of these scholars has investigated the deeper conundrum at the heart of Hoffman regarding the use of labor law as an enforcement tool for immigration policy. Stripping immigrant workers of rights and remedies runs counter to labor law's principle of collective protection, creating deep disagreements over whether labor statutes should cover undocumented workers.'0 Much of this debate centers around the inherent tensions between enforcement of the NLRA and federal immigration policy. However, this Article argues that state law has been overlooked as an arena in this conflict, one in which courts have articulated a robust commitment to protecting undocumented workers. Indeed, state courts do not protect undocumented workers merely because doing so serves the interest of American workers as a whole. Rather, state courts have developed conceptual and normative commitments to the dignity of undocumented workers for their own sake.

This Article proceeds in four Parts. Part I lays out the necessary background. That Part first discusses the history of the NLRA's problematic definitions of "employee" and "unfair labor practices," and the fact-intensive evaluation of each. A half-century later, IRCA further complicated the picture when it sought to discourage the influx of unauthorized workers into the labor market. In the process, IRCA created tensions between national immigration and federal labor policy that were left unresolved. Hoffman stumbled into this tension when it confronted a seemingly narrow legal question: Are undocumented workers who were laid off in violation of the NLRA entitled to backpay for work not performed due to the illegal firing? Under this narrow inquiry lurked a deeper question of principle: Should workers who were never authorized to enter the labor market be compensated for work they did not perform after they suffered an injury for which authorized workers would be compensated? IRCA's circuitous history does not provide the key to resolving this disagreement. Indeed, IRCA's disparate underlying policies lent plausibility to both the majority and the dissent. The majority leaned on IRCA's goal to make the labor market less attractive to undocumented immigrants by strengthening border enforcement and penalizing employers for knowingly employing unauthorized workers. The dissent, in turn, based its reasoning on IRCA's grant of a one-time amnesty to millions of unlawfully present immigrants, which served to prevent the creation of a vulnerable, exploited underclass. But both opinions couched their arguments in terms of economic incentives and allocations of burdens. They did not, as this Article argues, work out the deeper commitments that come with each position. Indeed, the conflicting underlying commitments in Hoffman point to a much deeper conceptual and normative dilemma.

Part II presents this Article's principal contribution by tackling Hoffman's underlying dilemma head on. On a conceptual level, the dilemma running through Hoffman is establishing what is required for membership in the U.S. labor market. One side treats an unlawful entry as dispositive for denying membership and its accompanying benefits. The other side treats the unauthorized worker's presence in, and contribution to, the labor market as dispositive for granting membership and its benefits. The dilemma between these two positions becomes clear when taking them to their logical conclusions. On the one hand, the majority's legal formalism of insisting that an unlawful entry taints a worker's continued presence in the labor market rings hollow when applied to workers who have contributed to the labor market (and their community at large) for years or even decades, yet are denied benefits upon injury at work. At some point, it seems, membership must be earnable, in that contribution to the community must outweigh unlawful entry. On the other hand, if, as the dissent insists, physical presence in the labor market from the moment of entry suffices, the category of membership seems to become meaningless.

On the normative level, the dilemma is one of deservingness. Does denying benefits to unauthorized workers render them second-class? On the other hand, does granting them benefits demote the worth of those who are lawfully present in the labor market? In other words, does the initial unlawful entry into the labor market taint the employment relationship so thoroughly as to preclude benefits? This Article ultimately argues that taking a side in the Hoffman debate implies deep, unaddressed, and fundamentally opposed commitments along both the conceptual and the normative dimension.

Part III widens the frame to discuss a similar phenomenon on the state level. Much like backpay for NLRA violations, workers' compensation laws compensate workers for work not performed after they have suffered an injury. After Hoffman, state courts were confronted with the question of whether Hoffman's reasoning applied to workers' comp as well, and would thus preempt workers' comp benefits for undocumented workers. But state courts not only largely rejected this argument-they generally found workers' comp schemes to overwhelmingly favor undocumented workers. Reading representative cases from over two dozen jurisdictions, this Article shows that workers' comp schemes near-unanimously come out on one side of the dilemma: they fear perverse incentives for unscrupulous employers, they treat undocumented workers as productive members of the community, and they refuse to brand the undocumented worker as a criminal or otherwise blameworthy when it comes to recovering workers' compensation benefits. To be sure, workers' comp covers physical injuries, while backpay for NLRA violations covers legal injuries. But this distinction is not material to this Article's argument. The analysis here focuses on the impediments to performing work that law treats as compensable for citizens and documented workers, asking whether those impediments are similarly compensable for undocumented workers, and interrogating the conceptual and normative justifications for why that is or is not the case. In the end, layoffs in violation of the NLRA and worksite injuries each represent a break in a worker's earning potential due to forces beyond their control. It is therefore appropriate to ask why the law compensates documented workers in both scenarios, yet undocumented workers in just one.

Part IV briefly provides some corroborating evidence of this phenomenon in the state law context of recovering lost wages for work actually performed. This Article shows that states can provide a check against federal policies that undermine labor statutes and marginalize the undocumented worker. After identifying the dilemma at the heart of Hoffman and examining its conceptual and normative dimensions, this Article observes that, in the context of workers' comp, state courts have consistently come out differently than the Hoffman majority. Importantly, state law has embraced and defended dignitarian view of the undocumented worker that is not merely instrumental to protecting American workers as a whole, but recognizes undocumented workers for their own sake.

### 1NC---T

#### CBR is only the extent to which entering and completing negotiations is discretionary---Excludes scope, terms (recognition, security), methods (strikes), or remedies like backpay

Dippel & Sauers 22 [Christian Dippel, University of California, Los Angeles, CCPR, and NBER; and Zachary **Sauers**, University of California, Los Angeles; “Does Increased Union Power Cause Pension Under-Funding in the Public Sector?” Working Paper, 3-12-2022, https://drive.google.com/file/d/1-Aon3GrEKSNtEJ8F95MO7zmFbCL88c8\_/view]

Appendix B.1 NBER Public Sector Collective Bargaining Law Data Set

The first category of legal measures is contract negotiation provisions (Online Appendix Table 1), which includes collective bargaining rights (Freeman-Valletta numerical coding scheme and Reuben condensed coding scheme) and scope of bargaining. Collective bargaining rights defines the extent to which public sector employers are allowed to negotiate with employee unions. For some groups and states, collective bargaining is outright prohibited, while in most states and for most groups, collective bargaining is allowed and employers have an obligation to negotiate in good faith with union representatives. With the Freeman-Valletta methodology, this measure is finely divided up among six levels. Reuben condenses this scale down to three levels, as detailed in Online Appendix Table 1. The other legal measure regarding contract negotiation provisions is the scope of bargaining. This variable details the extent to which employers and union members are allowed to negotiate on compensation.

The second legal category is union recognition provisions (Online Appendix Table 2), which includes representation and election and term of recognition. Representation and election details how union employees are represented in employment negotiations and how unions are formed. In some states, union leaders are exclusive representatives of employees, while in others this relationship is not exclusive. This variable also captures the extent to which the procedure for forming a public sector union is specified in the laws. Clearly-defined procedures are conducive to union formation. Specified election procedures typically include provisions for the following: initial peti- tion for union certification (percentage necessary for acceptance), posted notices, timing of election, place of election, restrictions on who can vote, employer or employee organization noninterference, and runoff elections procedures. Term of recognition further details union formation by capturing the minimum period of time that a union is guaranteed to represent the employees before another union election can be called.

The third legal category is union security provisions (Online Appendix Table 3), which includes agency shop, union members’ dues checkoff, union shop, and “Right-to-Work” law. The variables in this category capture the amount of power unions have in dues collection, union membership obligations, and employer hiring practices. Agency shop details the extent to which state law allows agreements between unions and employers requiring employees who do not join the union to pay union dues and fees. Union members dues’ checkoff details whether union dues and fees can be regular deductions from paychecks rather than separate payments to the union by employees. Union shop regards agreements between unions and employers allowing employers to hire non-union members, but requiring these new employees to join the union within a certain amount of time. Finally, “Right-to-Work” law measures the presence of a state law prohibiting union shop and agency shop agreements.

The fourth legal category is impasse procedures (Online Appendix Table 4), which includes mediation availability, fact-finding availability, arbitration availability, arbitration scope, and arbitration type. The variables in this category pertain to the procedures in place to resolve negotiation impasses. When collective bargaining negotiations break down, there is a typical route for resolution, but how far down this route the law allows or requires differs by state and occupational group. The first step after an impasse is reached is mediation where a third-party mediator is hired to assist in reaching a compromise. If mediation fails, a third-party fact-finder can be hired to analyze the facts of the impasse and construct a recommendation for a compromise agreement. If fact-finding does not result in a solution, the process may enter arbitration where a third-party agent similar to a fact-finder is hired and makes a recommendation, but this recommendation is binding. Arbitration scope and arbitration type detail the types of recommendations that the arbitrator issues.

The fifth legal category details laws pertaining to public sector employee strikes (Online Appendix Table 5) and includes strike policy (Freeman-Valletta coding scheme and Reuben condensed coding scheme). For most states and groups, laws are in place that prohibit public sector employees from striking; however, the extent of the penalties for strikes varies by state and group. In some instances, public sector employee strikes are permitted.

Online Appendix Table 1 through Online Appendix Table 5 also illustrate the coverage of previous datasets on this information. As we detail further in section 3, we reference two ad- ditional publications to aid in extending the NBER PSCBLD. The first is an extension of three Freeman-Valletta legal variables (collective bargaining rights, “Right-to-Work” law, and strike pol- icy) through 1996 by Kim Reuben. 28 She also generates two new legal measures by condensing the coding scheme for collective bargaining rights and strike policy.

Sanes et al. (2014) provide another resource to aid in our extension by providing a cross-sectional snapshot of the legal environment in 2014. Their report, reviewing legal rights and limitations in the public sector, is easily mapped to the Freeman-Valletta and Reuben categorical coding schemes for all fifty states and the five main public sector occupational groups. The variables covered in their report are collective bargaining rights, scope of bargaining, and strike policy. The exact data availability for each legal measure from previous sources is detailed in the third column of Online Appendix Table 1 through Online Appendix Table 5 along with the source (FV is Freeman-Valletta, R is Reuben, and SS is Sanes-Schmitt).

A table of legal legislation

AI-generated content may be incorrect.

#### Topical affs must expand the list of workers whom employers have a duty to bargain with – Vote neg – Enforcement only affs extend the status quo – explode the topic and disad uniqueness

### 1NC---DA

#### SCOTUS will prohibit Cook’s removal now – preserves a critical firewall for Fed indepdence that prevents economic shocks

Horsley 25 [Scott Horsley is NPR's Chief Economics Correspondent. 10-1-2025 https://www.npr.org/2025/10/01/nx-s1-5556920/trump-fed-governor-fire-lisa-cook]

Supreme Court says Federal Reserve Governor Lisa Cook can stay — for now

The Supreme Court has temporarily blocked President Trump's attempt to fire Federal Reserve Governor Lisa Cook, maintaining a critical firewall for now around the central bank's ability to make decisions without political interference from the White House.

That means Cook can stay in her job at least until the high court hears oral arguments in the case in January.

The decision shows that the conservative court is willing to at least consider some limits on the president's power, even as it has allowed Trump to exercise considerable authority over other nominally independent government agencies.

Critics had warned that allowing Trump to fire Cook would have trampled on decades of research showing central banks function best when they're allowed to operate without meddling from politicians.

"The Court's decision rightly allows Governor Cook to continue in her role on the Federal Reserve Board, and we look forward to further proceedings consistent with the Court's order," Cook's attorneys, Abbe Lowell and Norm Eisen, said in a statement.

Trump's efforts to influence the Fed

For months, Trump has been urging the Fed to adopt sharply lower interest rates in hopes that it would help boost economic growth while also reducing the government's own borrowing costs. That's precisely the sort of short-term pressure that the central bank is designed to be insulated from.

"Less independent central banks around the world have at times prioritized such small, short-run gains, resulting in substantial long-term harm and inferior economic performance overall," wrote a group of former Treasury Secretaries, Fed governors and prominent economists in a friend of the court brief. "Central bank independence is the solution that Congress and the President have chosen, effectively tying their hands, like Ulysses as he passed the sirens, to protect against the risk that monetary policy will be mishandled."

Frustrated that the Fed hasn't cut interest rates more aggressively, Trump moved to install more of his own hand-picked governors on the Fed's governing board. He got an early opening in August when governor Adriana Kugler stepped down, five months before her term ended. Trump replaced Kugler with White House economist Stephen Miran, who has echoed the president's call for much lower interest rates.

The push to oust Cook came after Bill Pulte, a Trump ally who serves as the head of the Federal Housing Finance Agency, accused the Fed governor of making false statements on a mortgage application. Cook has denied any wrongdoing.

The Supreme Court has allowed Trump to remove officials from other agencies such as the Federal Trade Commission and the National Labor Relations Board, despite a longstanding precedent to prevent such meddling. But justices put the Federal Reserve in a special category.

#### The plan forces the Court to horse-trade labor rights for other conservative priorities

Doerfler & Moyn 21 [Ryan D. Doerfler, Professor of Law, University of Chicago Law School; and Samuel Moyn, Henry R. Luce Professor of Jurisprudence, Yale Law School; Professor of History, Yale University, “Democratizing the Supreme Court,” California Law Review, 2021, Vol. 109, No. 5 (2021), pp. 1703-1772, JSTOR]

At first blush, partisan balance requirements operate the same way, ensuring at most a limited partisan skew and more ideologically moderate outcomes.161 Some, however, advocate partisan balance on the theory that such an arrangement would necessitate ideological compromise, which, these advocates insist, would take the form of less sweeping judicial holdings.162 Such judicial minimalism163 would, in turn, leave more space for Congress to act. While attractive in theory, this minimalist prediction fits poorly with recent historical practice. The narrowly divided Roberts Court, for example, has opted for horse trading rather than incrementalism in some of the most politically significant cases.164 And even in areas like abortion where the Court has taken a more incrementalist approach, the ultimate effect looks to be a more significant shift in constitutional law than would result from more dramatic rulings followed by predictable backlash.16

<<TEXT CONDENSED, NONE OMITTED>>

C. Rights The most common objection to disempowering reforms to the Supreme Court focuses on the need for it to protect important rights, especially minority rights against hostile majorities. For many, rights protection is the leading criterion for assessing not just judicial reform, but the basic purposes of a judiciary in the first place.166 We need not review the gargantuan literature on the plausibility of the familiar claim that democracies empower judiciaries precisely to protect rights. As Justice Robert Jackson immortally put it, the goal is “to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts.”167 But a few targeted responses to that conventional wisdom from the perspective of Supreme Court reform are indispensable. We will argue that (1) disempowering reforms open the possibility of much superior rights protection precisely because the progressive legislative agenda withdraws unjustifiable protection for the powerful and allows for or improves upon rights protection for both majorities and minorities alike; (2) disempowering reforms leave a range of plausible judicial mechanisms for rights protection in necessary cases; and (3) even to the extent that disempowering reforms imaginably threaten rights, it is not clear that personnel reforms have better credentials for ensuring their protection. (1) The progressive frame disputes that majority rule endemically conflicts with rights protection. On the contrary, the historical record clearly demonstrates that legislatures serve as the chief historical source of rights, while judicially enforced rights protections can easily devolve into technologies of minority rule.168 If true, as a general matter it is quite possible that disempowering leads to superior rights protection, not worse. On the one hand, it subjects to majority rule the powerful and wealthy minorities claiming and getting the protection of the courts.169 On the other, progressive reform through the political branches of government can potentially lead to superior legislative protection of the rights of majorities from those powerful and wealthy minorities, as well as superior legislative protection of the rights of vulnerable or weak minorities. The American (and, even more, global) progressive default was long, not the absence of rights as a political goal, but “legislated rights.”170 The privilege of the judiciary led to the Lochner era. No doubt, if that case is anticanonical in American memory, it is so precisely as a form of illicit rights protection and was cast aside to achieve better rights protection through legislative means. As Roosevelt accurately explained, “the Bill of Rights was put into the Constitution not only to protect minorities against intolerance of majorities, but to protect majorities against the enthronement of minorities.”171 This sometimes requires putting courts in their place in order to privilege legislatures pursuing rights for all and balancing the claims of majorities and minorities alike. In this spirit, the legislature can be seen as the first and most important defender and propagator of rights, and majority rule the default source of legitimacy for assessing the scope of rights and resolving conflicts among rights and between rights and other priorities. Roosevelt’s “Second Bill of Rights” envisioned a suite of economic and social entitlements of modern citizenship, but not one that judicial authority would enforce and whose scope remained to be determined in light of other interests and values.172 And though they did not enact it, Americans have remained within a legislated rights frame in propounding civil rights acts that effectively did more than any judicial decision to confront exclusions based on race, gender, or disability.173

<<PARAGRAPHS RESUME>>

Consider again from this perspective the current baseline of rights protection in American constitutional law and what the Green New Deal would do in supplementing it. As noted above, illicit forms of rights protection associated with the Lochner era and our own neo-Lochnerian one foil prospective reform absent Supreme Court renovation.174 Americans can boast strong judicial protection of core forms of speech, along with other protections of religion. These decisions have their defenders even when used to limit the scope of other constitutional rights or even allow the Supreme Court to expand statutory antidiscrimination protections to sexual orientation, in expectation that those requesting religious accommodations and exemption will be provided them.175 By the same token, however, Americans do not have other basic rights under the U.S. Constitution, whether rights to basic provision (of food, housing, sanitation, or water, all familiar in other national settings and international law).176 In the case of health care, not only do Americans not have a right to it, but the Constitution’s established judicial power weakened the initial attempt to take some steps towards it under the star-crossed Affordable Care Act (ACA).177 State constitutions often protect the right to education, but the Supreme Court explicitly rejected it.178 More generally, even with respect to the rights for which constitutional law provides robust protection, they are not class sensitive, and not only are material insufficiencies not understood as rights violations under judicially elaborated frameworks, material inequality is not either.179 A right to work, or labor rights to organize and strike, have never been significant features of America’s constitutional law.

By contrast, while not everything an H.R. 1 democratizing statute, Green New Deal law, or other progressive legislative reform should be conceived as the elaboration or substantiation of a right, much of it is easy to understand that way. Many of their key planks—access to the polls and other voting entitlements, job guarantees vindicating the right to work, high-quality food, health care, housing, or water correlating with well-known rights, promises for high-quality education not only at the primary but secondary level—fit.180 Even its “green” part can be seen as rights protective. The more general rhetoric of facing down inequality after decades of its expansion bears not only on basic rights, but also can be conceived to involve rights beyond sufficient provision to an entitlement to rough equality in life chances. Ronald Dworkin has epitomized a stereotypical view of judicial authority that was absolutely required for rights to be invoked as principled “trumps” against aggregating legislatures.181 This picture entirely missed whether legislatures might be fora of principle equal or even superior to defending extant rights commitments and propagating new ones. (Dworkin did acknowledge that “fit” with American traditions forbade any very expansive understanding of our constitutional rights.)182 Shifting away from recent Dworkinian assumptions is especially pertinent when it comes to so-called positive rights, none of which are protected under the U.S. Constitution and few of which have ever been sought— even at the zenith of liberal power on the Supreme Court—through judicial interpretation. As Dworkin’s assumptions more or less accurately reflect, Americans boast a small number of rights that they protect in absolutist ways through judicial intervention. Other countries proceed differently by propounding a much wider variety of rights, which their legal systems protectless robustly through proportionality balancing against other interests and distributed institutional control over rights.183

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It is, of course, true that judge-led interpretation of the Constitution’s rights applied most of them to the states in the middle of the twentieth century, and in doing so revolutionized protections in criminal procedure. It also extended individual rights not mentioned in the constitutional text across the century—in the phase since the 1960s, mostly under the Due Process Clause’s promise of liberty, freed from the constitutional protection of freedom of contract as a right. In this vein, the Court protected rights like freedom from compulsory sterilization,184 and to choose to abort a pregnancy or marry a spouse of a different race185 or the same sex.186 And the Equal Protection Clause banned formal apartheid, and especially formal segregation of races in schools.187 These results account for the familiar anxiety that Supreme Court disempowerment would threaten rights protection. And no one should pretend that a legislated rights regime would match the set of entitlements achieved through judicial interpretation precisely. Even if a legislated regime provides for many rights on its own, or more of them, it may miss others. But it is pivotal to any genuine comparison that it is not a matter of exclusive principled defense of rights in judiciaries on one side against unprincipled majoritarian action on the other. Instead, it is a comparison of some schedule of rights and some modicum of protection on both sides of the line. Minimally, rights concerns do not cut against legislative empowerment per se. And more maximally, progressives assume that rights protection may well be available in superior form through political branches as agents of national transformation. However, judicial empowerment to achieve the current spotty and weak protection of rights generally serves debatable ends, and primarily protects the rights of powerful and wealthy interests. Not only can legislatures protect rights for majorities and minorities, but judiciaries can convert rights protection into illicit minority rule. Indeed, if existing entitlements for the needy are weak and for the powerful are strong, judicial empowerment can at least as plausibly be construed as a project of rights violation as of protection and disempowering as instrumental for the sake of rights themselves. Sometimes progressives may rely on accounts of the comparative institutional bias of judiciaries (relative to legislatures) towards views of elites188 and outcomes favoring them.189 Sometimes they may even—as in Karl Marx’s early writings190 and in the critical legal studies movement191—claim that individual rights are especially susceptible to the production of those same outcomes. And those suggestions deserve careful scrutiny. But even if neither kind of account is persuasive, disempowering reform can be construed as a project of rights expansion and vindication, beyond the narrow list and weak protection of Supreme Court doctrine, currently and even historically. One should question whether the Supreme Court’s unimpressive baseline protection of the rights of vulnerable minorities, even as it has come to systematically favor neoliberal outcomes in First Amendment jurisprudence and beats back at legislative protection in areas like affirmative action or voting rights, suffices to justify its empowerment as guardian of basic entitlements. When we consider the likely obstacle the Court would pose to rights expansion as a progressive agenda, the answer to that question is not hard. Disempowering reforms would count as a far greater victory for rights than an empowered victory could ever deliver. (2) Furthermore, while the functional effect of disempowering reforms like jurisdiction stripping and supermajority rules on the Supreme Court reduces the significance of judicial review, it is not a matter of either-or. Functional disempowerment of the Supreme Court leaves a series of stopping points short of full negation of judicial review through some institutional reform, which only a persistent but tiny minority of followers of Thomas Jefferson in American life supports.192 Indeed, many proponents of weakening judiciaries have offered stopping points to manage judicial rights protection. If they have generally failed— leaving too many protections for the undeserving and too few for those in need— it by no means obviates a new compromise leaving some crucial judicial rights protection intact. James Bradley Thayer’s proposal merely to subject majority legislation to rationality rule left room for policing irrational results.193 More boldly, the original move in the 1930s, first defended in the fourth footnote of the Carolene Products opinion194 and canonically justified by John Hart Ely,195 was to “bifurcated review.” This framework subjected economic legislation to rationality review after the abandonment of the old substantive due process while protecting some schedule of rights and some kinds of minorities. Where personnel reforms do not react to the general failures of past compromises either to deal with underenforcement of rights or “juristocratic” excesses, disempowering reforms hardly abandon the possibility of a more successful one. Relative democratization hardly means total disempowerment of judiciaries to protect rights. The same verdict applies to Ely’s defense of judicial review to remedy participatory exclusions and failures. While there is no reason on its recent track record to believe that the Supreme Court will pursue his vision,196 attractive in theory but dead in practice for several decades, nothing forbids a disempowered judiciary from doing so. If properly calibrated, jurisdiction stripping statutes, for example, could insulate precisely the attempted expansion of legislative rights from judicial limitation in the name of various provisions of the Constitution weaponized by the right (notably, the Free Exercise and Free Speech Clauses), while leaving judges power to protect other rights from unsuspected majoritarian excess. Similarly, supermajority rules have a distinctive capacity compared to personnel reforms for counteracting the reality that controversial minoritarian tyranny today very much works through the Supreme Court, while leaving room for justices to intervene in the case of genuine majoritarian tyranny when enough justice agree it is real, rather than a smokescreen for illicit capture. Finally, unlike personnel reforms, disempowering reforms do not rely on judicial self-restraint as a mechanism to ensure democratic choice. Thayer’s proposal relied on judicial self-restraint, and Carolene followed suit insofar as it ultimately consecrated a purely judicial determination as to when to cross the line from rationality review to heightened forms of scrutiny. The result was, arguably, a Supreme Court in which both sides of a partisan split exercised judicial authority selectively and opportunistically. Judges allowed democratic will-formation, blocking it contingently (sometimes for better, regularly for worse) based on their own evolving doctrines of intervention. What all of these reforms shared was a rejection of Thayerian deference de facto, and an expansion of judicial authority uncontemplated and undesired in the middle of the twentieth century.197 “A lesson that some will take from today’s decision,” one conservative justice remarked bitterly at the end of the day, “is that preaching about the proper method of interpreting the Constitution or the virtues of judicial self-restraint and humility cannot compete with the temptation to achieve what is viewed as a noble end by any practicable means.”198 If he was right, however, it was because judicial self-restraint failed to ensure conservative (not just liberal) self-policing. Even with personnel reforms, any bench will face the temptation to overstep, whereas disempowering reforms specifically deprive them of the temptation. Disempowering reforms limit the Court’s power to act or abstain from acting in the first place. (3) Finally, even to the extent disempowering reforms hypothetically threaten rights, personnel reforms do not plausibly provide superior protection. Generally, the goal of relegitimation of the Supreme Court—the rationale for many proposed reforms today, as discussed above—is orthogonal to rights protection. There is no reason to believe a court with comparable powers as now, but with improved legitimacy, would improve rights protection. To make out a case that it would, one would have to correlate legitimation with rights protection, and it seems churlish to suggest credibly doing so. As we suggested above, most approaches to legitimacy define it in terms of partisan neutrality rather than rights protection. To be sure, there are some accounts of normative legitimacy of apex judiciaries that may be less about nonpartisan neutrality than most, and may even put rights protection at the very heart of what a normatively justified Supreme Court would do.199 The trouble is that none of the personnel reforms credibly advance that form of legitimacy. It is, alas, unclear that any reforms of the Supreme Court we can imagine would do so—thus it cannot be an argument against disempowering reforms that they fail to do so. Of course, personnel reforms might plausibly stave off the threat posed by the current conservative majority on the Supreme Court in the short term— though evidence suggests that the most extreme fears of the majority’s consequences for abortion and other rights have proved premature. Our point is that, even conceding the possibility of threats to rights, relegitimation is hardly well-designed to achieve this end exclusively and narrowly. On the contrary, given recent baselines before the need to “save” the Supreme Court became apparent, relegitimation involves far greater risk for confirming the endemic judicial underenforcement of rights of the vulnerable and weak, and potentially even overenforcement of those of the powerful and wealthy. And if the suggestion is that personnel reforms achieve short-term democratic legitimacy by updating the bench to match the popular will, then any improvement they might achieve in rights protection is also available legislatively. Either way, there is no way to conclude that disempowering reforms would lead to more abuse of rights than other reform options, and may well lead to their greater vindication. D. Regularity A separate aim of many reforms is to regularize the appointment of Supreme Court justices.200 According to the standard narrative, the Supreme Court appointment process has grown increasingly fractious since the Senate rejected Robert Bork’s nomination in 1987.201 Today, it is popular to insist that the appointment process is “dysfunctional[,]”202 “broken,”203 or otherwise in disrepair. Complaints about the dysfunction of the appointment process are typically coupled with worries about undue “politicization.”204 As discussed above, worries about politicization go to the Supreme Court’s legitimacy. Apart from legitimacy, however, several reformers allege concern with the functionality of the appointment process. According to these scholars and advocates, increased “polarization” and the stakes of judicial appointments have resulted in a system burdened by gridlock and that encourages destabilizing political tactics.205 Most of the contestation over Supreme Court appointments is tied directly to important normative disputes within our political community. As such, so long as Supreme Court justices continue to wield tremendous authority, it is both predictable and appropriate that political actors will fight aggressively for control of the Court. Given the stakes, efforts to regularize the appointment process through mere shifts in personnel will predictably fail. To see why, take the proposal to impose term limits on Supreme Court justices. As described above, this proposal would, in its most popular form, allot one Supreme Court appointment per congressional term, with each justice permitted to serve for a period of eighteen years.206 One of the supposed advantages of this reform is that it would help regularize the appointment process by lowering the stakes of individual appointments.207 Because each president “gets two appointments per term,” the motivation to contest specific appointments is, we are told, substantially less.208 Notice, however, that each president “get[ting]” two appointments is more hope than promise under this scheme. Because its advice and consent function would remain the same, an opposition Senate would retain the incentive to reject nominations, thereby helping to accrue partisan advantage on the Supreme Court over time. Even if quorum and vacancy rules would eventually force the choice of confirming a nominee or rendering the Supreme Court incapable of issuing binding judgments,209 a strategic opposition might easily prefer to effectively empower the courts of appeals, building partisan advantage at that level through similar tactics. The point here is that Supreme Court term limits would do little to deter an opposition party from engaging in constitutional hardball. While true that the stakes of an eighteen-year appointment would be lower than an appointment of an indefinite tenure, determining the ideological character of the Supreme Court would remain an enormously high-stakes affair. If the fate of climate or health care legislation, say, were to continue to rest with that institution, it would be malpractice for progressives not to do everything within their power to ensure that the Supreme Court was progressively inclined. Other purportedly regularizing personnel reforms suffer from similar defects. Partisan-balance requirements, for example, would present an opposition Senate with the same opportunity to refuse to confirm nominees to seats assigned to the President’s party. Again, an opposition Senate might be left with the choice of confirming a nominee or depriving the Supreme Court of a quorum, but as our current politics shows, such aggressive tactics are sometimes appealing.210 Merit selection presents similar issues, though this time with both the President and the Senate. Barring constitutional amendment, any potential nominees chosen by a nonpartisan or bipartisan panel would have to be nominated by the President formally.211 Given a cooperative Senate, a boldly progressive or conservative President would have little reason to assent to the sort of centrist or moderate candidate such panels are designed to produce. The same would be true for a stridently progressive or conservative Senate. Why settle for a “compromise” nominee when one has the leverage to demand more? The complication with lottery systems is slightly different. As described above, such proposals would replace our system of permanent Supreme Court justices with panels composed of randomly selected judges from the federal courts of appeals or permanent associate justices drawn from an enlarged pool. Pursuant to this reform, although the Supreme Court as such would retain its authority, the authority of the individual judges who make up the Court would be substantially reduced. On this scheme, individual judicial appointments would be less significant than the appointment of justices today.212 Still, because this proposal would make every federal court of appeals judge a potential Supreme Court justice, the stakes of filling court of appeals vacancies would increase accordingly. Given the already rising level of contestation over such nominations, it is hence easy to imagine a panel system causing appointment “dysfunction” merely to spread. Again and again, we see the same basic issue. Under our constitutional scheme, both the President and Senate have a say in the appointment of justices.213 Because Supreme Court justices wield tremendous authority and because ideology determines in part how they wield it, those two parties will be disposed to fight should their ideologies differ. The intensity of that disposition will depend, of course, on the strength of their ideological disagreement. In a country racked with intense political disagreement, however, that disposition is going to be incredibly strong at least some of the time. Given the intensity of that disposition, comparatively small adjustments like the imposition of term limits would barely affect, say, an opposition Senate’s decision-making calculus. With the stakes of appointments so incredibly high, such modest if salutary reforms are not at the requisite scale. By comparison, more aggressive disempowering reforms might at least register with a president or opposition Senate. Stripping courts of jurisdiction over constitutional cases or requiring a supermajority to declare federal legislation invalid, for example, would meaningfully reduce the stakes for Supreme Court appointments and judicial appointments more generally. Even with its authority so limited, the Court’s ideological character would continue to matter even outside of constitutional or politically significant cases. Still, in terms of stakes, disempowering reforms would make the appointment of justices more akin to the appointment of agency officials. To be sure, the appointment of such officials is also increasingly contested, as should be expected in polarized times. In terms of regularization, then, even aggressive disempowering reforms can only promise modest benefits.

<<PARAGRAPHS RESUME>>

E. Pragmatism

A less conceptually ambitious but equally commonplace framework for evaluating a reform scheme is pragmatism: case-by-case consideration of the reform’s outcomes. This criterion is not oriented to the legitimacy of the Supreme Court either as an apolitical, neutral institution or as one made safe for democratic life. Pragmatism appeals to a narrower kind of legitimacy: one of output. Are the results of Supreme Court decision-making good (enough), or at least not bad (enough)? But the truth is that, as our parentheticals indicate, such a criterion is overwhelmingly oriented to harm avoidance, pointing not to good results but to ones that are a tolerable mix of outcomes, or—even more modestly—do not incur grievous enough harm.214

As an example of pragmatism in action, consider June Medical Services v. Russo,215 the Court’s latest consideration of an already whittled-away abortion right. The case might have constrained that right further, reducing the number of Louisiana clinics where women can seek abortions from four to one, but instead protected the right. In the hours after the decision, liberal outlets responded with a palpable relief. Early narratives said Chief Justice Roberts had “betrayed” his conservative movement in failing to grasp a long-sought prize here, and in his vote two weeks earlier to extend statutory civil rights protection to sexual orientation.216 Yet commenters also noted that Roberts’ majority decision, clearly in response to the erosion of the Supreme Court’s sociological legitimacy, also opened the way to less brazen legislative curtailments of abortion rights in the future.217 Though not the dire outcome long feared, Roberts’s controlling opinion was widely recognized as a terrible blow for the very right it purported to preserve.

Routinely, pragmatism really amounts to what one might call a Supreme Court liberalism of fear.218 It greets the fact that justices have not eroded past progressive gains, while also restraining the conservative majority from experiments that are too perilous—as if such triangulation were a worthy cause. This pragmatic sensibility surges in real time at the end of each Supreme Court term as observers, though far from celebration, welcome individual case results as examples of the institution not doing its worst. Chief Justice John Roberts has, over the last decade, become the icon for this approach,219 [FOOTNOTE 219] 219. For recent instances in an infinite commentary to this effect, see, for example, Jeffrey Rosen, John Roberts Is Just Who the Supreme Court Needed, ATLANTIC (July 13, 2020), https://www.theatlantic.com/ideas/archive/2020/07/john-roberts-just-who-supreme-court needed/614053/ [https://perma.cc/43UR-PF3J]; Hail to the Chief: Justice John Roberts Joins the Supreme Court’s Liberal Wing in Some Key Rulings, ECONOMIST (July 2, 2020), https://www.economist.com/united-states/2020/07/04/justice-john-roberts-joins-the-supreme-courts liberal-wing-in-some-key-rulings [https://perma.cc/ER3G-H34Q]. [END FOOTNOTE 219] sometimes abetted by due respect for Justice Elena Kagan as a master strategist of achieving harm avoidance through compromise with conservatives.220

Assuming the pragmatic rationale really does minimize harm in the absence of a possibility of help—both prongs of which are easy to dispute—it could succeed on its own terms. For many, however, it tolerates the enormous harm it says it avoids while foreclosing help through institutional creativity backed by political action. Worse, the rationale’s price is a set of unacceptable baselines that it defends. The basic objection to this outlook, then, is that it is not very pragmatic. What is pragmatic about accepting the continued erosion of current baselines that leave cherished liberal policies like abortion rights221 and affirmative action222 hanging by a thread, even as multi-decade conservative inroads in many doctrines—including edging up to the deconstruction of the administrative state223—continue accruing? Such “pragmatism” allows existing doctrines and case law to remain entrenched, on the rationale that the Supreme Court could worsen them. For progressives, by contrast, the current baselines are the problem and could allow a Supreme Court, even one saved from doing its worst, to damage their legislative proposals. The pragmatic framework rests content with the existing baseline of stunted left-wing policy, as if a right-wing adventurism blocked by John Roberts justified the threat a powerful Supreme Court—and John Roberts himself—would pose to genuine progressive reform were it to emerge.

In fairness, one sometimes senses that pragmatism shelters the utopian hope that someday the Supreme Court will return to its predestined role institutionalizing justice in the country. That maximalism can take refuge in minimalism does not mean the permanent replacement of the one by the other. Indeed, pragmatists often feel that depression about outlooks—acceptance of bad outcomes because they could be worse—is in fact justified solely because the alternative is to attack the Supreme Court itself, to which they profess independent allegiance. “The Roberts court, against all expectations, has made this battered country a better, safer place[,]” wrote senior courtwatcher Linda Greenhouse in response to the recent abortion case, epitomizing the pragmatic stance.224 “For now[,]” she clarified—adding that, while she “breathed a deep sigh of relief,” it was not just for the Louisiana women affected but also “for the Supreme Court itself, for having avoided plunging along with Justices Clarence Thomas, Samuel Alito, Neil Gorsuch and Brett Kavanaugh into an institutional abyss.”225 In other words, the pragmatist acceptance of an unacceptable baseline requires some justification other than pragmatism itself. If it were plausible that keeping the Supreme Court from the abyss for now would allow it to ascend to the empyrean later, “pragmatism” might make sense. But it’s not, which reveals pragmatism to be a kind of utopianism.

<<TEXT CONDENSED, NONE OMITTED>>

The limitations of pragmatism—normally deployed by those uninterested in or wary of institutional reform debates—make it a weak candidate for justifying Supreme Court reform. As a potential rationale for reform, pragmatism faces the threshold worry that it is the default stance of those who complacently accept the institution as it is. It is hard to imagine a compelling justification for institutional reform that appeals to slightly better outcomes and does not shift major baselines. Nor, if pragmatists called for reform out of exasperation with enough bad news, does their framework obviously help select among reforms. There is no denying that Supreme Court reform in the name of pragmatic output legitimacy could make sense on its own terms—a slightly less scary nightmare is worthwhile if waking up is not an option—even if it entrenches the prevailing low expectations for output. It might face a constituency problem: if those interested in Supreme Court reform at all move to put pressure on the mainstream acceptance of the institution in current form, it is because they are dissatisfied with how little pragmatism currently boasts. If they adopted a pragmatic rationale for evaluating their prospects, advocates of Supreme Court reform would have to rationalize embarking on an agenda that will be decried as radical when their ends are merely to reinstate low expectations at a somewhat higher level. And if it is true that the Supreme Court could indeed get even worse either by abandoning favorite progressive precedents or minting novel conservative doctrines, pragmatic reform would not necessarily change this. The framework also provides little help for selecting among imaginable reforms, especially compared to a democracy criterion for evaluating them. Once again, contrast a partisan balance scheme with a jurisdiction stripping one. The first might well aim to “reset” the current lopsided ideological configuration of the Supreme Court by repopulating the justices and depriving conservatives of their current majority. But while this scheme is a pragmatic choice to reset the Supreme Court to a stage prior to Justice Neil Gorsuch, a Justice Merrick Garland on the bench instead would have resulted in modest doctrinal variation at best.226 Such reform does nothing to reverse decades-long drift or to prepare the ground for progressive legislative reform, which in fact it leaves almost as endangered as before. Supreme Court personnel reforms on pragmatist terms might achieve slightly better outputs than before. But the same is true of disempowering reforms. At worst, jurisdiction stripping simply leaves things the way they are, made no worse by Supreme Court intervention—this time because it is disempowered to act. The same is true of a supermajority rule. At worst, it would stabilize current doctrine because not enough votes are available for a conservative majority to erode past progressive victories or to set off in radical new directions of its own. In short, whatever modest improvement of current baselines that personnel reforms justified pragmatically can achieve, those justified democratically can as well. At best, those latter reforms may make room for political branches to alter existing baselines by passing legislation that a disempowered Supreme Court can no longer block as easily. Contesting a pragmatic view through progressive beliefs, personnel reform sounds like a choice between resting content with the current Roberts Court or turning it back into the one in which Roberts could indulge his priors while allowing Justice Kennedy to control the right instead of him. By contrast, disempowering reforms, by sidelining the institution altogether, far more plausibly allow a potential shift away from a pragmatism of harm avoidance and reduction to make room for progressive reform if the political branches settle on it. That may, in the end, be the only durably pragmatic hope Americans have in the future. IV. FEASIBILITY Part III assessed reform proposals in terms of desirability. Here, we turn to feasibility, asking which reforms stand a chance at successful implementation. To do so, we evaluate the various proposals according to two criteria. First, we consider whether a given proposal would be legal, which is to say consistent with the Constitution without amendment. Second, we look at political feasibility, examining whether a stable coalition might emerge in support of a reform. As we show below, both personnel and disempowering reforms are subject to legal objection. In most cases, however, those objections admit of rejoinders, leaving the two approaches roughly on par. Similarly, while any reform faces an uphill political battle, we argue that disempowering reforms have at least as good a chance as personnel reforms at garnering coalitional support. A. Legal The legality of different reform proposals has been covered exhaustively by existing scholarship. In this brief survey, we suggest that both personnel and disempowering reforms are fairly characterized as legally plausible. Because both types of reforms are vulnerable to judicial obstruction, the fate of either would depend on the willingness of the political branches to push back in support. 1. Personnel Reforms Among personnel reforms, court-packing is probably the most uncontroversially legal. As others have documented, the number of seats on the Supreme Court has been set since its inception by statute,227 and Congress has adjusted the size of the Court—from six to seven,228 to nine,229 to ten,230 back to nine231—numerous times.232 This longstanding congressional practice couples with relative constitutional textual silence. While Article III assumes the existence of a Supreme Court and Article I, section 3 that there will be a Chief Justice, nothing else in the text seems to bear on how large or small the Court must be.233 Such historical and textual evidence notwithstanding, court-packing has been and continues to be subject to legal objection.234 For instance, the 1937 Senate Judiciary Committee declared President Franklin Roosevelt’s court packing proposal unconstitutional. According to the Committee, the apparent purpose of the reform was to “appl[y] force to the judiciary,” coercing it to adopt a “line of decision” that it otherwise would not.235 The proposal, the Committee continued, was “an invasion of the judicial power such as has never been attempted” before, alleging that prior adjustments to the Court’s size were not intended to “influence . . . decisions.”236 After court-packing, the legality of personnel reforms gets murkier. Panel systems, for example, typically require individuals to be appointed both as a federal circuit court judge and as an associate justice. As Epps and Sitaraman concede, one could argue that such dual appointments would be unconstitutional, reasoning that both Article III237 and the Appointments Clause238 understand those two offices as distinct and so not to be combined or jointly held by some individual.239 Maybe more worrisome, transitioning to a panel system could be characterized as effectively removing sitting justices from office in violation of Article III.240 Term limits for Supreme Court justices are vulnerable to analogous objections. Imposing term limits on all federal judges would plainly require constitutional amendment. For the Supreme Court, the proposed workaround is for appointees to serve as active justices for a fixed term, after which those individuals would transition either to “senior” status, sitting only in the event of recusal or temporary disability, or to acting as judges on the federal courts of appeals.241 The senior status proposal invites charges of effective removal from office. Rotating justices to circuit court judges is more promising (though not without concern242). And even that approach leaves the issue of sitting justices, who would either have to be removed without being “removed” or allowed to depart the Supreme Court over time. Partisan balance reforms are open to challenge as well. Partisan balance is a familiar feature of agency design and has generally been upheld by courts, though we lack a definitive endorsement along the lines of Humphrey’s Executor.243 Partisan balance on courts, however, raises distinctive questions. For one, the Supreme Court is, unlike the Federal Elections Commission or the Securities and Exchange Commission, a creature of the Constitution,244 suggesting that Congress may have less discretion in setting qualifications for Supreme Court justices. More still, depending on the formulation, conditioning appointment to the Court upon the party affiliation of the appointee or the appointing president or on the approval of some congressional block245 would present either First Amendment246 or Appointments Clause concerns.247 Last, merit selection presents obvious Appointments Clause worries insofar as the recommendations of the selection committee are binding.248 Epps and Sitaraman cleverly try to avoid this worry by assigning appointment of a subset of justices to the other, regularly appointed justices and then limiting the pool of potential Supreme Court justices to judges previously appointed to lower federal courts.249 In so doing, Epps and Sitaraman attempt to mirror the widely accepted practice of federal judges sitting “by designation” in different jurisdictions and at different levels of the judicial hierarchy.250 Even here, though, the Supreme Court’s current hostility to institutional innovation poses a serious challenge,251 as no lower court judge has ever sat by designation on the Supreme Court. 2. Disempowering Reforms Disempowering reforms are also legally contestable. Jurisdiction stripping is perhaps the most aggressive reform and famously raises numerous constitutional questions—questions that become more difficult the more comprehensive the strip. In particular, the Supreme Court has remarked repeatedly that “serious” concerns “would arise if a federal statute were construed to deny any judicial forum for a colorable constitutional claim.”252 Such worries apply to specific constitutional issues, let alone to broad categories of claims. Despite this controversy, stripping courts of jurisdiction, even over constitutional challenges, has strong textual footing. As numerous scholars have observed, Article III’s grant of authority to Congress to “make . . . Exceptions” to the Supreme Court’s appellate jurisdiction while at the same time placing the existence of “inferior” federal courts entirely within congressional control suggests that Congress enjoys sweeping authority concerning federal jurisdiction.253 And as to state courts, both the Supremacy Clause and the Necessary and Proper Clause appear to provide Congress substantial discretion there as well.254 Taken together, Christopher Sprigman argues that these features indicate the Constitution “gives to Congress the power to choose whether it must answer, in a particular instance, to judges or to voters,” relying in some instances on political rather than judicial checks to enforce constitutional constraints.255 Voting rules present different issues. Sachs, for instance, argues that a supermajority rule for constitutional invalidation would amount to Congress “pick[ing] and choos[ing] among different substantive holdings,” requiring a “supermajority to express one legal conclusion,” but allowing a “minority of Justices” to uphold another.256 Similarly, Evan Caminker worries that “Article III implicitly mandates that the Supreme Court decide cases by bare-majority rule.”257 And likewise, Epps and Sitaraman acknowledge that some read Article III as granting the Court exclusive or final authority to “decide how to resolve its own cases.”258 Jed Shugerman has offered the most comprehensive response to these objections. He begins by noting that the Court already makes various decisions pursuant to non-majority rules—whether to grant certiorari, for example.259 In addition, Shugerman observes, Congress already exercises authority over how the Court operates, defining by statute, for example, how many justices constitute a quorum.260 Last, as to the concern about Congress dictating substantive holdings, Shugerman argues, channeling Frank Easterbrook,261 that supermajority rule should be conceived as a constraint on the Court’s jurisdiction, depriving it of jurisdiction to pass on a constitutional question if only a bare majority of justices vote in favor of unconstitutionality.262 Finally, proposals for a legislative override raise fundamental questions about the constitutional basis of judicial review. In its weaker form, a legislative override would amount to an assertion of constitutional departmentalism, respecting individual judicial judgments but reserving to Congress the right to interpret the Constitution independently. Departmentalism has a strong legal263 and historical264 pedigree. At the same time, this sort of limited override would leave the Supreme Court as the final arbiter on most constitutional matters, especially in areas such as climate change in which only a single judgment could substantially undermine federal policy.265 By contrast, allowing for a legislative override that displaces or precludes future contrary judicial judgments requires, by definition, a rejection of what Mark Tushnet calls “[s]trong-form” judicial review.266 It is widely (though not universally) accepted that the Constitution provides for that form of review with respect to individual judgments, making displacement of judgments an uphill constitutional battle.267 With respect to future contrary judgments, however, one could fashion a legislative override as a forward-looking strip of jurisdiction, depriving courts of the opportunity to issue analogous judgments going forward. Such an override would, of course, inherit the constitutional questions surrounding jurisdiction stripping more generally.268 In sum, both personnel and democratic reforms are vulnerable to constitutional objection. Few if any of those objections are knockdown. Both types of reform are, broadly speaking, legally plausible. Nonetheless, to call both types of reform plausible is not to say that the current Court would rule in their favor. The Court has been hostile to institutional innovation, as well as protective of its present character and authority. It would be presumptively hostile to almost any of these proposals. As we see today, though, the Court is also acutely aware of its relative institutional power. Ultimately, the likelihood of success for any of these plausible legal theories depends upon the political support in their favor. B. Political A separate question from the legal availability of these reforms concerns their political feasibility. By “political feasibility,” we mean the range of non legal constraints and possibilities that might make enacting one reform rather than another less or more likely. In the litigious real world, legality may loom large in the political feasibility of any reform. Still, separating the criteria is useful. There is no point in pursuing one reform, however legally plausible, if it is wholly infeasible on other grounds. Conversely, the ease of forming a coalition or gathering momentum for a given reform might offset its legal challenges. The worry that institutional intervention will cause “spirals” of tit-for-tat partisan response is also serious enough to warrant separate treatment; such a destructive cycle of vengeance is to be avoided, other things being equal. As with feasibility generally, this specific risk of spiraling varies across different reforms tremendously. Our essential contention is that personnel reforms are no more politically feasible and often less so than disempowering reforms are (in part because the latter are not plausibly subject to the risk of spiraling out of control). If legality is no bar to more desirable proposals for Supreme Court reform, neither is political feasibility. 1. In General Political feasibility is often treated as a hard constraint, forbidding Supreme Court reform of any kind.269 And the suggestion that any institutional intervention is unavailable affects personnel and disempowering reforms alike. It makes sense to begin, therefore, with the argument that a progressive frame makes more plausible—if not necessary—a lifting of the usual marginalization of reform of the Supreme Court. Dispute about which reform is feasible, after all, pales beside the consensus that none is. But the erosion of that belief in the last few years means its grounds are no longer what they once were. Supreme Court reform was once a fringe notion, and figures as different as Earl Warren and Adrian Vermeule have concurred that it would remain so forever. In 1974, Warren reflected that reformers had not only “consistently fallen under the weight of their own ineptitude,” but the Supreme Court itself “has remained steadfast as an institution,” and “prevailed . . . over those who would destroy its function and its symbol as the chief architect of our constitutional way of life.”270 A quarter-century later, as minor proposals to impose term limitations on Supreme Court justices were percolating, Vermeule offered an elaborate rationale for why Supreme Court reform could never happen. While he grudgingly acknowledged that it is not that “structural reform is impossible,” the hard truth is that “it is systematically unlikely to occur.”271 But there is no doubt that it has become more mainstream today than in nearly a century. As Roberto Unger once remarked in another context, “The distance between the unthinkable and the familiar may be short in the history of politics and of law.”272 One might reply—and the end of the 2019 term substantiates it—that the Chief Justice or an alliance of liberals and conservatives on the court will always prioritize decreasing the feasibility of reform by avoiding sufficiently outrageous outcomes. On one hand, there is currently an alliance of sentiment between “pragmatists,” who operate with a harm reduction philosophy while never challenging the institutional foundations of Supreme Court partisanship or power. On the other hand, there are justices who rank sociological legitimacy over other concerns, even when it means that conservatives deny themselves the disruptive outcomes they may have spent a career preparing to reach.273 This suggests that Supreme Court reform can never become feasible; to the extent it looms, steps to postpone it will be taken. There are two responses to such a hypothesis. The first is that it is hardly guaranteed that the line of feasibility is set in stone, however assiduously managed by those who wish to draw it just far enough so that it is never reached. On the contrary, it is widely recognized that, with the Supreme Court moving further right after Kennedy was replaced by Roberts as median justice, the line of feasibility has been eroded to a remarkable extent. And the events of the late Lochner era prove that there certainly are conditions for it to be erased altogether. The “four horsemen” before the switch in time aroused sufficient political rage to prompt open national debate about the role of the Court in the constitutional order. Judicial intransigence has occurred, and the politics of its overcoming too, albeit with the results of doctrinal rather than institutional reform.274 It is hard to understand what arguments could acknowledge the feasibility of the first but deny the second. The basic answer to the premise that Supreme Court reform could never be feasible is captured by the Georgia deacon when asked if he believes in baptism by total immersion. “Believe in it?” he replies. “I’ve seen it done!”275 Far more important, it takes two to tango. The variable of popular mobilization is central to the feasibility of Supreme Court reform. In a progressive frame, America looks to be moving from a period of quiescence to one of radicalization, and for good reason. If so, no amount of management of institutional credibility inside and outside the Court can avoid answering to the changing—sometimes rapidly changing—demands of mobilized populations. This popular will can and should outstrip any amount of flexibility in Court self management, even in the most generous scenario. Of course, we can embroil ourselves in a debate between followers of Robert Dahl,276 who contend that the Supreme Court just follows popular opinion, and those of President Franklin Roosevelt, who reply that, even if “ultimately the people and the Congress have had their way” in the long run, “that word ‘ultimately’ covers a terrible cost.”277 Our point is merely that even if maximum political feasibility concerns are deployed to keep the Supreme Court’s current institutional form stable, its need to engage in doctrinal management to keep the threat of reform at bay could increasingly fail—making such reform more and more plausible. It is also worth noting that the opposite perspective, which turns feasibility concerns against our exploration of Supreme Court reform, will not work either. On this view, opponents of any reform might claim that, if statutory reform is available, then options like constitutional amendment or revision make more sense. Our response is that there is a great deal of distance between the threshold for institutional reform by statute and the threshold for a constitutional amendment to pass Congress and win approval from the requisite states.278 In fact, due to well-rehearsed reasons, proceeding by constitutional amendment through Congress (to say nothing of a convention, whether for amending or replacing the original text) is practically unthinkable for the moment, even compared to the currently narrow likelihood of statutory intervention. The bolder ideas are increasingly familiar in American constitutional thought after a long absence, associated with commentators such as Sandy Levinson279 and Lawrence Lessig.280 But no matter the desirability of constitutional reform on its own terms, there can be no doubt that the statutory alteration of the Supreme Court within the existing constitutional framework is more feasible. One need not claim that amendments are wholly infeasible to easily conclude that the reforms we categorize and compare in this Article are far more so. 2. Personnel Reforms Personnel changes have to be disaggregated in order to assess their political feasibility. This is not only because court-packing is more or less clearly legal compared to other more contestable personnel reforms, but also because it has received the huge lion’s share of attention in the debates that followed the blocked confirmation of then-Judge Garland. Court-packing or personnel expansion might seem like the most politically feasible reform. And it is true that, currently, it is one of two reforms—the other being term limitation281—that has generated a contemporary advocacy group of its own. Its early familiarity and historical prominence have made expansion the go-to reform. To take one prominent example, Mark Tushnet, while mentioning that “it’s important to keep in mind the background concern about structural reform more generally[,]” has recently oriented his historic challenge to Supreme Court conservatism to court packing (and chairs the academic advisory board of Pack the Court, the advocacy group favoring this reform). It is this reform, rather than other ones, that has become “thinkable again.”282 But familiarity can breed contempt, not just feasibility. The very prominence of court-packing, far from bolstering the feasibility of court expansion, could undercut it. Its uses in Eastern Europe in a wave of attacks on judicial independence are another strike against it.283 More Democrats— including Joseph Biden during his campaign to become Democratic Party nominee for president—are now on record opposing it more than any other reform, and its meteoric rise in recent debate means it elicited unique pushback.284 While President Franklin Roosevelt proved its use as a threat, at least on most accounts of the Supreme Court’s switch in time in the 1930s, the episode left bad enough memories in some quarters, raising its prominence only to undermine its feasibility now.285 Not least, court-packing is the reform most imaginably subject to tit-for-tat acts of repeated expansion without an institutional brake other than durable electoral dominance—a risk we treat separately below. For now, our point is just that the early prominence of court packing, and the somewhat radioactive associations it acquired in the 1930s (and, even more, in some recent re-readings of that era), are an enormous strike against its political feasibility. As for the other personnel reforms, they fall naturally into two sets, with deadly if opposite political feasibility concerns. One set is politically infeasible because it is utopian. Its proposals presuppose restoration of the status quo ante of a pre-polarized judiciary, against the background of endemic polarization that rules such restoration out. The other set is feasible but trivial. Term limitation may well be the most plausibly available of the reforms, but only because it would not solve the problem that justifies reform in the first place. Take merit selection or partisan balance to begin with. All of their imaginable or proposed versions reflect a utopian aspiration to bracket the very political breakdown (and opportunity) of contemporary American politics. They want to wish it away in favor of centrist partisan agreement that has evaporated in the very years that Supreme Court reform has become plausible. The framing of the problem these solutions presuppose rules them out in practice. And besides this sort of infeasibility, many personnel changes also suffer from the mismatch between their technocratic or wonkish character and the progressive coalition that alone has prioritized Supreme Court reform in recent years. The Epps-Sitaraman hybrid proposal is exemplary in this regard. Its endorsement by Buttigieg—celebrated and reviled as a centrist technocrat—is revealing (much like his deference to “smarter legal minds than mine” and to the Yale Law Journal by name onstage at the October 15, 2019 debate of Democratic candidates for president).286 The point is not so much that obscurity afflicts personnel alternatives to court-packing, since disempowering reforms currently have the same problem. It is that the over-complication of some proposals depends on the belief that experts can find the formula to exit political crisis and stalemate. This dooms any case for their feasibility. What only law professors can understand, a popular movement will never demand. On the other side of the mismatch between such personnel reforms and the rising progressive coalition, the reforms would fall badly short of progressive aspirations in an emergency, even if they were available. Progressives, to put it bluntly, are not rallying increasingly around the cause of Supreme Court reform to make the centrist ACA compromise invalidation-proof, or to postpone carbon neutrality to 2050 in hopes that massive concession in advance will save it from the kind of gutting the ACA has suffered in the past decade. Nor, to face expanding inequality, do progressives expect to avoid targeting wealth through direct taxes out of fear of a return to nineteenth-century jurisprudence.287 In a plausible political reality, a progressive coalition will support Supreme Court reform to make progressive legislation viable, and nothing short of it. That merit selection or partisan balance, for the sake of a Supreme Court in centrist equipoise, would surge in the quest to protect such legislation is even more of a fantasy than the feasibility of such reforms against the background of a polarized political class. If such personnel reforms fail the test of political feasibility because they are utopian, by contrast, term limitation might well work because it makes so little difference. Indeed, it is probably for this reason that the American people have considered this reform for decades, while disregarding bolder steps as out of bounds. As we’ve discussed throughout, the goal of term limitations is to ensure that opportunities to appoint Supreme Court justices are distributed evenly according to electoral outcomes. Such reforms would work less well than is often suggested since Congress cannot simply legislate away an obstructionist Senate. They would slightly lower the stakes of Supreme Court appointments and make it more likely that winning a presidential election would mean more chance to shape the Court’s ideological character. But that is all. Laudable as such a reform might be, the imposition of Supreme Court term limits would give progressives little reason for solace. Under the standard proposal, Supreme Court justices would serve for terms of almost two decades, meaning that the dead hand of the recent past would continue to shape judicial policymaking in the present day. To ensure judicial approval of an ambitious legislative agenda, progressives would need to capture the presidency and different chambers of Congress not once but repeatedly, replacing justices from both conservative and more moderate periods. Given the difficulty of achieving sufficiently large legislative majorities to enact Green New Deal-type legislation, the additional burden of appointing sympathetic justices over years, if not decades, is one that progressives plainly ought to reject. 3. Disempowering Reforms Given these concerns with personnel reforms, it seems natural to conclude that disempowering reforms would be no less politically feasible. And there are reasons to believe they would be more so. Jurisdiction stripping may be different. The formidable legal objections it faces, especially where constitutional rights are concerned, affect its political feasibility. Its erosion of the subject-matter jurisdiction of the courts might well feel especially radioactive to some audiences.288 One possibility to exploit, on the model of the World War II price controls regime, is to couple stripping with reallocation of jurisdiction. This is almost certainly the more politically palatable move.289 Either way, there is no reason to believe that jurisdiction stripping would be less feasible on grounds of this kind other than aggressive moves like court-packing, which resemble East European analogues more closely than jurisdiction stripping does. As noted above, some of the personnel reforms suffer feasibility concerns because of their technocratic complication. In contrast, all three of the main disempowering reforms considered—jurisdiction stripping, legislative override, and supermajority rule—have an inverse superiority because they are easier for a general public to understand and evaluate. Like the personnel reforms that have ever gained popularity, court expansion and term limitation, the disempowering reforms are clear and simple.290 One enormous advantage that disempowering reforms have over even clear and simple personnel reforms is that they can cut across existing partisan configuration by not aiming at direct partisan advancement. Disempowering reforms have a unique advantage in making possible conservative buy-in or even creative new coalition building. They have broader coalitional possibilities by redirecting partisan strife to other arenas, without favoring any direct partisan tilt themselves. Court-packing exemplifies a personnel reform guaranteed to attract fierce and immediate resistance for serving Democrats, rather than democracy. But disempowering reforms favor electoral winners generally. True, not all personnel reforms seem as naked an attempt to secure momentary partisan advantage as others. But, as we have already argued, the broader constituency for term limitations could prompt buy-in from a much wider array of supporters mainly because its effect is likely to be so minimal. Other personnel reforms, like the balanced bench or merit selection, will look like Democratic partisan moves to conservatives who enjoy current preponderance in the federal courts. Meanwhile, the disempowering moves improve no one’s position, except those who go on to win elections at various levels. As noted earlier, the critique of the Supreme Court and a number of its recent doctrines as antidemocratic—including in a number of dissents accusing the majority of elite power grabs291—has tended to be conservative in the last several generations, rather than liberal. This trend continued even after the conservative ascendancy in court output began in the 1970s. Since the early twentieth century, conservatives have tended to initiate disempowering institutional reforms to the Supreme Court, including the supermajority rule proposal.292 It would probably go too far to suggest that calls for democracy, so familiar in conservative responses to some Supreme Court doctrine, would raise the feasibility of disempowering reforms by themselves. Right-wing commentators and judges who have spent decades calling for more democracy and less judicial authority are hardly locked into their rhetoric, not least since the judges have felt free to deploy their authority to their own ends. But it would not be rhetorically easy for those who have called for more democracy, rather than judicial control, to refuse its introduction now. By the same token, left-wing disempowering has some past commitments of its own to live down, since progressives have been fair-weather friends of democratic empowerment themselves. For both reasons, it would make more sense to treat disempowering reforms as invitation for coalition-building now, with potentially more chance of success than personnel reforms. In particular, disempowering reforms avoid what Vermeule penetratingly calls the “trade-off between impartiality and motivation,”293 one of his reasons that he infers dooms Supreme Court reform altogether. On his account, nonpartisan attempts at institutional innovation lose the very short-term benefit that justifies and grounds support for reform in the first place. His example is term-limitations proposals that grandfather in extant justices so that no serving justice is deprived of life tenure.294 Disempowering proposals, which Vermeule does not consider per se, may suffer other problems but escape this one. That is, disempowering the court serves whatever majority can now take more security in the immunity of its lawmaking to invalidation. Abstractly, because of the institutional separation disempowering proposals rely on between a site of disempowerment (the court) and a site of contestation (the rest of politics), they can proceed neutrally in the first while retaining heated partiality in the second. Indeed, since disempowering reforms have no direct implications for partisan empowerment in the short term, but instead favor whoever can muster majorities,295 there is reason to believe they can boast unique feasibility benefits in coalitional politics. Unlike personnel reforms, they harmonize with the partisan realignment that many anticipate or even consider necessary for a progressive movement beyond the limits of the country’s current partisan configuration—for example, to create a multiracial working-class party with broader appeal.296

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In some quarters, the fact that progressives might come to agreement with (some of) their usual enemies over disempowering reforms might seem like a strike against them. But in most imaginable scenarios, a compromise to shift partisan contention from the Supreme Court to political contest (where it belongs) would benefit, rather than hurt, progressives on the national level. Almost all the areas progressives care about, where the Supreme Court hasn’t delivered—from labor rights to partisan gerrymandering to racial justice—would benefit from democratization, whether or not the threat the Supreme Court poses to their legislative agenda crystallizes. And framing disempowering reform as a compromise that cuts across other ideological disputes would counteract the frequent anxiety that anything less than full engagement in partisan contention through the courts would amount to “unilateral disarmament.”297 A better and fairer way to conceive of disempowering reforms is as a weapons control regime within one arena, in order to concentrate fully on the fight in democratic arenas.

Of course, the greater political feasibility of disempowering reforms that this argument implies is not necessarily costless. Though our point is that judicial empowerment has not favored progressive victories lately, if ever, no one thinks that democratic processes ever guarantee them either. But as with rights above, it is hard to imagine that disempowering reforms would incur less constitutional supervision of the states, in either of two alternative scenarios. The first is that the reforms are calibrated to democratize power at the federal level without returning it to states, as in a supermajority requirement only for constitutional challenges to federal law. The second is that, even if such a reform were extended to challenges of the constitutionality of state law, it would require even more votes to overturn cases from Brown298 to Obergefell v. Hodges,299 and plausibly would never happen. In any event, what passes for federal supervision of outlying states is at its weakest in at least a half century, compatible with current outcomes like restricted abortion rights300 and the unconstitutionality of Medicaid expansion to populations that most need it.301 Nor is strengthening it through any reform of the judiciary an option.

#### Economic decline guarantees extinction---escalates global tinderboxes and undermines societal adaptation.

Cavaciuti-Wishart et al. 24 [Ellissa Cavaciuti-Wishart, MPhil, Head, Global Risks, World Economic Forum; Sophie Heading, MA, Lead, Global Risks, World Economic Forum; Kevin Kohler, MA, Specialist, Global Risks, World Economic Forum; and Saadia Zahidi, MPhil, Managing Director, World Economic Forum, "Global Risks 2024: At a Turning Point," & "Global Risks 2034: Over the Limit," in The Global Risks Report 2024, Chapters 1-2, January 2024, pg. 14-39]

Weakened systems only require the smallest shock to edge past the tipping point of resilience. In the second time frame covered by the survey, respondents were asked to rank the likely impact of risks in the next two years. The results suggest that corrosive socioeconomic vulnerabilities will be amplified in the near term, with looming concerns about an Economic downturn (Chapter 1.5), resurgent risks such as Interstate armed conflict (Chapter 1.4), and rapidly evolving risks like Misinformation and disinformation (Chapter 1.3).

As discussed in last year’s Global Risks Report, less predictable and harder-to-handle inflation heightens the risk of miscalibration of efforts to balance price stability and economic growth (Chapter 1.5: Economic uncertainty). Economic risks are notable new entrants to the top 10 rankings this year, with both Inflation (#7) and Economic downturn (#9) featuring in the two-year time frame (Figure 1.3). Economic risks are prioritized in particular by public- and private-sector respondents (Figure 1.5). Geoeconomic confrontation (#14) is a marked absence from the top 10 rankings this year (Figure 1.4) and has decreased in perceived severity compared to last year’s scores. However, like related economic risks, it features among the top concerns for both public- and private-sector respondents (at #10 and #11, respectively) as a continuing source of economic volatility.

[Figures omitted]

Misinformation and disinformation has risen rapidly in rankings to first place for the two-year time frame, and the risk is likely to become more acute as elections in several economies take place this year (Chapter 1.3: False information). Societal polarization is the third-most severe risk over the short term, and a consistent concern across nearly all stakeholder groupings (Figures 1.5 and 1.6). Divisive factors such as political polarization and economic hardship are diminishing trust and a sense of shared values. The erosion of social cohesion is leaving ample room for new and evolving risks to propagate in turn. Societal polarization, alongside Economic downturn, is seen as one of the most central risks in the interconnected “risks network”, with the greatest potential to trigger and be influenced by other risks (Figure 1.7).

[Figures omitted]

Interstate armed conflict (#5) rises in the rankings for the two-year horizon, across nearly all stakeholder groups, except for government respondents. This divergence may simply reflect different views around defining conflict: interstate armed conflict in the strict definition has remained relatively rare thus far, but international interventions in intrastate conflict are on the rise (Chapter 1.4: Rise in conflict).

Extreme weather events, a persistent concern between last year and this year, is at #2, Cyber insecurity at #4, Involuntary migration at #8 and Pollution at #10, rounding out the top 10 concerns in respondents’ risk perceptions through to 2026. Overall, global risks have lower severity scores compared to last year’s results.7 Further down in the two-year time frame rankings, Critical change to Earth systems comes in at #11, Debt in 16th place, and Adverse outcomes of AI technologies and other frontier technologies in 29th and last place, respectively.

The following sections explore some of the most severe risks that many expect to play out over the next two years, focusing on three entrants to the top 10 risks list over the short term: Misinformation and disinformation (#1), Interstate armed conflict (#5) and Economic downturn (#9). We briefly describe the latest developments and key drivers for false information, a rise in conflict and economic uncertainty, and consider their emerging implications and knock-on effects.

False information

[Figure omitted]

* Misinformation and disinformation may radically disrupt electoral processes in several economies over the next two years.
* A growing distrust of information, as well as media and governments as sources, will deepen polarized views – a vicious cycle that could trigger civil unrest and possibly confrontation.
* There is a risk of repression and erosion of rights as authorities seek to crack down on the proliferation of false information – as well as risks arising from inaction.

The disruptive capabilities of manipulated information are rapidly accelerating, as open access to increasingly sophisticated technologies proliferates and trust in information and institutions deteriorates. In the next two years, a wide set of actors will capitalize on the boom in synthetic content,8 amplifying societal divisions, ideological violence and political repression – ramifications that will persist far beyond the short term.

Misinformation and disinformation (#1) is a new leader of the top 10 rankings this year. No longer requiring a niche skill set, easy-to-use interfaces to large-scale artificial intelligence (AI) models have already enabled an explosion in falsified information and so-called ‘synthetic’ content, from sophisticated voice cloning to counterfeit websites. To combat growing risks, governments are beginning to roll out new and evolving regulations to target both hosts and creators of online disinformation and illegal content.9 Nascent regulation of generative AI will likely complement these efforts. For example, requirements in China to watermark AI-generated content may help identify false information, including unintentional misinformation through AI hallucinated content.10 Generally however, the speed and effectiveness of regulation is unlikely to match the pace of development.

Synthetic content will manipulate individuals, damage economies and fracture societies in numerous ways over the next two years. Falsified information could be deployed in pursuit of diverse goals, from climate activism to conflict escalation.

New classes of crimes will also proliferate, such as non-consensual deepfake pornography or stock market manipulation.11 However, even as the insidious spread of misinformation and disinformation threatens the cohesion of societies, there is a risk that some governments will act too slowly, facing a trade-off between preventing misinformation and protecting free speech, while repressive governments could use enhanced regulatory control to erode human rights.

Mistrust in elections

Over the next two years, close to three billion people will head to the electoral polls across several economies, including the United States, India, the United Kingdom, Mexico and Indonesia (Figure 1.9).12 The presence of misinformation and disinformation in these electoral processes could seriously destabilize the real and perceived legitimacy of newly elected governments, risking political unrest, violence and terrorism, and a longer-term erosion of democratic processes.

Recent technological advances have enhanced the volume, reach and efficacy of falsified information, with flows more difficult to track, attribute and control. The capacity of social media companies to ensure platform integrity will likely be overwhelmed in the face of multiple overlapping campaigns.13 Disinformation will also be increasingly personalized to its recipients and targeted to specific groups, such as minority communities, as well as disseminated through more opaque messaging platforms such as WhatsApp or WeChat.14

The identification of AI-generated mis- and disinformation in these campaigns will not be clear-cut. The difference between AI- and humangenerated content is becoming more difficult to discern, not only for digitally literate individuals, but also for detection mechanisms.15 Research and development continues at pace, but this area of innovation is radically underfunded in comparison to the underlying technology.16 Moreover, even if synthetic content is labelled as such,17 these labels are often digital and not visible to consumers of content or appear as warnings that still allow the information to spread. Such information can thus still be emotively powerful, blurring the line between malign and benign use. For example, an AI-generated campaign video could influence voters and fuel protests, or in more extreme scenarios, lead to violence or radicalization, even if it carries a warning by the platform on which it is shared that it is fabricated content.18

The implications of these manipulative campaigns could be profound, threatening democratic processes. If the legitimacy of elections is questioned, civil confrontation is possible – and could even expand to internal conflicts and terrorism, and state collapse in more extreme cases. Depending on the systemic importance of an economy, there is also a risk to global trade and financial markets. State-backed campaigns could deteriorate interstate relations, by way of strengthened sanctions regimes, cyber offense operations with related spillover risks, and detention of individuals (including targeting primarily based on nationality, ethnicity and religion).19

[Figure omitted]

Societies divided

Misinformation and disinformation and Societal polarization are seen by GRPS respondents to be the most strongly connected risks in the network, with the largest potential to amplify each other. Indeed, polarized societies are more likely to trust information (true or false) that confirms their beliefs. Given distrust in the government and media as sources of false information,20 manipulated content may not be needed – merely raising a question as to whether it has been fabricated may be sufficient to achieve relevant objectives. This then sows the seeds for further polarization.

As identified in last year’s Global Risks Report (Chapter 1.2: Societal polarization), the consequences could be vast. Societies may become polarized not only in their political affiliations, but also in their perceptions of reality, posing a serious challenge to social cohesion and even mental health. When emotions and ideologies overshadow facts, manipulative narratives can infiltrate the public discourse on issues ranging from public health to social justice and education to the environment. Falsified information can also fuel animosity, from bias and discrimination in the workplace to violent protests, hate crimes and terrorism.

Some governments and platforms, aiming to protect free speech and civil liberties, may fail to act to effectively curb falsified information and harmful content, making the definition of “truth” increasingly contentious across societies. State and non-state actors alike may leverage false information to widen fractures in societal views, erode public confidence in political institutions, and threaten national cohesion and coherence. Trust in specific leaders will confer trust in information, and the authority of these actors – from conspiracy theorists, including politicians, and extremist groups to influencers and business leaders – could be amplified as they become arbiters of truth.

Defining truth

False information could not only be used as a source of societal disruption, but also of control, by domestic actors in pursuit of political agendas.21 Although misinformation and disinformation have long histories, the erosion of political checks and balances, and growth in tools that spread and control information, could amplify the efficacy of domestic disinformation over the next two years.22 Global internet freedom is already in decline and access to wider sets of information has dropped in numerous countries.23 Falls in press freedoms in recent years and a related lack of strong investigative media, are also significant vulnerabilities that are set to grow.24

Indeed, the proliferation of misinformation and disinformation may be leveraged to strengthen digital authoritarianism and the use of technology to control citizens. Governments themselves will be increasingly in a position to determine what is true, potentially allowing political parties to monopolize the public discourse and suppress dissenting voices, including journalists and opponents.25 Individuals have already been imprisoned in Belarus and Nicaragua, and killed in Myanmar and Iran, for online speech.26

[Figure omitted]

The export of authoritarian digital norms to a wider set of countries could create a vicious cycle: the risk of misinformation quickly descends into the widespread control of information which, in turn, leaves citizens vulnerable to political repression and domestic disinformation.27 GRPS respondents highlight strong bilateral relationships between Misinformation and disinformation, Censorship and surveillance (#21) and the Erosion of human rights (#15), indicating a higher perceived likelihood of all three risks occurring together (Figure 1.10).

This is a particular concern in those countries facing upcoming elections, where a crackdown on real or perceived foreign interference could be used to consolidate existing control, particularly in flawed democracies or hybrid regimes. Yet more mature democracies could also be at risk, both from extensive exercises of government control or due to trade-offs between managing mis- and disinformation and protecting free speech. In January last year, Twitter and YouTube agreed to remove links to a BBC documentary in India.28 In Mexico, civil society has been concerned about the government's approach to fake news and its implications for press freedom and safety.29

Rise in conflict

[Figure omitted]

* Escalation in three key hotspots – Ukraine, Israel and Taiwan – is possible, with high-stakes ramifications for the geopolitical order, global economy, and safety and security.
* Geographic, ideological, socioeconomic and environmental trends could converge to spark new and resurgent hostilities, amplifying state fragility.
* As the world becomes more multipolar, a widening array of pivotal powers will step into the vacuum, potentially eroding guardrails to conflict containment.

The world has become significantly less peaceful over the past decade, with conflict erupting in multiple regions last year.30 Active conflicts are at the highest levels in decades, while related deaths have witnessed a steep increase, nearly quadrupling over the two-year period from 2020 to 2022 (Figure 1.12), largely attributable to developments in Ethiopia and Ukraine. While difficult to attribute to a single cause, longer-term shifts in geopolitical power, economic fragility and limits to the efficacy and capacity of international security mechanisms have all contributed to this surge.

Interstate armed conflict (#5) is a new entrant to the top 10 risk rankings this year. Specific flashpoints could absorb focus and split the resources of major powers over the next two years, degrading global security and destabilizing the global financial system and supply chains. Although war between two states in the strict definition remains relatively rare (Figure 1.12), this could contribute to conflict contagion, leading to rapidly expanding humanitarian crises that overwhelm the capacity to respond.

[Figure omitted]

High-stakes hotspots

Over the next two years, the attention and resources of global powers are likely to be focused on three hotspots in particular: the war in Ukraine, the Israel-Gaza conflict and tensions over Taiwan. Escalation in any one of these hotspots would radically disrupt global supply chains, financial markets, security dynamics and political stability, viscerally threatening the sense of security and safety of individuals worldwide.

All three areas stand at a geopolitical crossroads, where major powers have vested interests: oil and trade routes in the Middle East, stability and the balance of power in Eastern Europe, and advanced technological supply chains in East Asia. Each could lead to broader regional destabilization, directly drawing in major power(s) and escalating the scale of conflict. All three also directly involve power(s) reckoned to possess nuclear capabilities.

Over the next two years, the war in Ukraine could sporadically alternate between intensifying and refreezing. Despite sanctions, Russia has continued to benefit from energy profits and commodity exports – and this could increase further if the conflict in the Middle East widens.31 Pro-Russian or neutral sentiment in Eastern and Central Europe could soften support from Ukraine’s European allies,32 while support in the United States could wane under domestic pressures, other international priorities, or under a new government. Global divisions with respect to the Middle East conflict may also complicate efforts by Ukraine to maintain unity with Western allies, while also garnering support from the Global South.33 If the conflict intensifies, it is still more likely to do so through conventional rather than nuclear means, but it could also expand to neighbouring countries. While post-conflict scenarios for both Ukraine and Russia are difficult to predict, the war could ‘refreeze’ into a prolonged, sporadic conflict that could last years or even decades.34

Proximate developments in the Middle East are a source of considerable uncertainty, risking further indirect or direct confrontation between global powers. If the Israel-Gaza conflict destabilizes into wider regional warfare, more extensive intervention by major powers is possible, including Iran and the West.35 Beyond potentially seismic shocks to global energy prices and supply chains, escalation could split the attention and resources of the EU and the United States between Ukraine and Israel.36 The scale of Gulf countries’ or Western intervention is uncertain; it’s likely to continue to be deeply polarizing domestically and hold significant political sway.

Numerous GRPS respondents also cited Taiwan and disputed territories in East and South-East Asia as areas of concern. In contrast to Russia, which doubled its defense spending target to more than $100 billion in 2023, and the United States, which allocated over $113 billion in assistance relating to the war in Ukraine alone,37 China has largely acted as a non-interventionist power in both the Ukraine and Middle East conflicts, avoiding the risk of overstretch.38 While there is no evidence to suggest that escalation is imminent, there remains a material possibility of accidental or intentional outbreak of hostilities, given heightened activity in the region.39

Conflict contagion

As high-stakes hotspots undermine global security, a wider set of trends may fuel a combustible environment in which new and existing hostilities are more likely to ignite. As conflicts spread, guardrails to their containment are eroding and resolve for long-term solutions have stalled.40 In parallel, the internationalization of conflicts by a wider set of alternate powers will accelerate ‘multipolarity’ and the risk of inadvertent escalation.

First, simmering tensions and frozen conflicts that are proximate to existing hotspots could heat up. For example, spillover impacts from a high concentration of conflicts, such as in Asia and Africa (Figure 1.13), could range from more readily available arms trafficking to conflict-driven migration. Other states could also deliberately stoke tensions in neighbouring countries to divert attention and resources, through disinformation campaigns or the deployment of state-backed militia groups, for example. Frozen conflicts at risk could include the Balkans, Libya, Syria, Kashmir, Guyana, the Kurdish region and Korean peninsula.41 These risks are well-recognized by business leaders: Interstate armed conflict features as a top-five risk in 20 countries (18%) surveyed in the Forum’s Executive Opinion Survey (EOS, see Appendix C: Executive Opinion Survey: National Risk Perceptions), including Egypt, Iraq, Kazakhstan and Serbia, and is the top risk in Armenia, Georgia, Kyrgyzstan and Japan.

Second, resource stress, economic hardship and weakened state capacity will likely grow and, in turn, fuel conflict.42 There may also be a rise of ‘ungoverned countries’, where non-state actors fight for control over large swathes of territory, or where parties not recognized by the international system gain full control. For example, resource-rich countries could become caught in a battleground of proxy warfare between multiple powers, including neighbouring economies, organized crime networks and paramilitary groups (Chapter 2.6: Crime wave).43

[Figure omitted]

Third, with instant information networks and reinforcing algorithms, the symbolism of high-stakes hotspots could trigger contagion beyond conflict geographies. Deeply ingrained ideological grievances are in some cases driving hostilities, and these divisions are resonating with communities and political parties elsewhere. This expands beyond religious and ethnic divisions to broader challenges to systems of governance. National identities, international law and democratic values are coming into question, contributing to civil unrest, threatening human rights, and reigniting violence, including in advanced democracies and between the Global North and South.

North-South rift

Dissatisfaction with the continued political, military and economic dominance of the Global North is growing, particularly as states in the Global South bear the brunt of a changing climate, the aftereffects of pandemic-era crises and geoeconomic rifts between major powers. Historical grievances of colonialism, combined with more recent ones regarding the costs of food and fuel, geopolitical alliances, the United Nations and Bretton Woods systems, and the loss and damage agenda, could accelerate anti-Western sentiment over the next two years. In conjunction with more thinly spread resources and tighter economic conditions, military power projection by the West could fade further, potentially creating power vacuums in parts of Africa, the Middle East and Asia. France, for example, has withdrawn troops on request from Mali, Burkina Faso and Niger over the past two years.44

As the dominance of long-held power centres wanes, alternate powers will compete for influence in interstate and intrastate conflicts, potentially leading to deadlier, prolonged proxy warfare and overwhelming humanitarian crises.45 There are a number of incentives to this involvement, from access to raw resources, such as minerals and oil, to the protection and promotion of trade, investment and security interests. Pivotal powers will also increasingly lend support and resources to garner political allies, taking advantage of this widening rift between the Global North and the Global South.

As a new set of influences in global affairs takes shape, political alliances and alignment within the Global South will also shape the longer-term trajectory of internationalized conflicts. A deep divide on the international stage could mean that coordinated efforts to isolate ‘rogue’ states may be increasingly futile, while international governance and peacekeeping mechanisms shown to be ineffective at ‘policing’ conflict could be sidelined.

Economic uncertainty

[Figure omitted]

* The near-term outlook remains highly uncertain due to domestic factors in some of the world's largest markets as well as geopolitical developments.
* Continued supply-side pressures and demand uncertainty could contribute to persistent inflation and high interest rates.
* Small- and medium-sized companies and heavily indebted countries will be particularly exposed to slowing growth amid elevated interest rates.

According to one narrative, the global economy has shown surprising resilience in the face of the most aggressive global tightening of monetary policy in decades. Despite widespread predictions of a recession in 2023 (Figure 1.15),46 the perception of a ‘softer landing’ appears to be prevailing. Inflation is falling amid tight labour markets and stronger-than-anticipated consumer spending and growth, particularly in the United States.47

In another version, persistently elevated inflation in many countries and high interest rates are weighing heavily on economic growth, particularly in export- and manufacturing-led markets. An already visible economic downturn is likely to spread, with a risk that new economic shocks would be unmanageable in such fragility and debt passes the tipping point of sustainability.

[Figure omitted]

These contrasting narratives encapsulate the highly uncertain economic outlook. Fears of an Economic downturn are widespread among private-sector respondents, featuring as a top-five risk in 102 countries (90%) surveyed in the EOS, a significant uptick from 2022 (Figure 1.16). A slowdown in global growth is already occurring, but it is taking place under a different set of economic parameters than previous cycles, heightening uncertainty. Over the next two years, there may be a lack of coherence in forward projections within and between economies, particularly with respect to inflation, interest rates and growth rates. With contrasting views about the future, the risk of miscalibration by central banks, governments and companies will rise accordingly, potentially deepening and prolonging economic risks. Additionally, continued trade conflicts and geoeconomic rifts between the United States, European Union and China add to the significant economic uncertainty ahead.

Supply-driven price pressures

Markets are already anticipating interest rate cuts in key economies in the first half of this year.48 However, there are several inflationary pressures that may stymie expectations and present a less-smooth path to inflation targets. If price pressures continue, central banks could be hesitant to cut rates in response to signals of weaker growth, resulting in higher-for-longer inflation and interest rates.

Reflecting tighter financial conditions, both headline and core inflation have dropped in the United States and the Eurozone (Figure 1.17).49 In parallel, there has been a slowdown in economic growth in key industries and markets. The global economy had been propped up by continued strength in services throughout 2023, which is now flagging, while manufacturing has already been in contraction for over a year (Figure 1.18).50 Economic growth is stagnant in the European Union, at 0.6% last year, with estimates suggesting that the economic powerhouse of Germany contracted by 0.3% in 2023.51 Profits of the S&P 500, excluding the ‘Magnificent 7’ tech stocks, were estimated to contract by 8.6% last year.52

[Figures omitted]

Yet even as inflation has been partially tamed through higher interest rates, it has not reached central bank targets of two percent and there remains a material risk of largely supply-side price pressures over the next two years. For example, El Niño-impacts to food production and logistics could drive inflation and costly disruptions to supply chains. Any amplification of the Middle East conflict could trigger price spikes in energy and further disrupt shipping routes, compounding continued impacts from the war in Ukraine.53 The cost-of-living impact of persistent inflation, perceived to be declining in 2024, could resurge as the continued impact of elevated prices persists. A wage-price spiral is still possible, with EOS respondents anticipating labour shortages in key sectors and economies over the next two years (Chapter 2.5: End of development?). Stronger industrial policies and trade controls emanating from advanced economies, targeting the green transition and advanced technology, could also remain a persistent inflationary trend over this period.

Uncertainty within global powerhouses

The outlooks for the two largest economies – China and the United States – are highly complex, and these two key sources of uncertainty could lead to unanticipated, and possibly divergent, implications for the trajectory of the global economy.

China’s economy is widely expected to slow this year, with the weakening of the property market and local and external demand generally cited as primary causes.54 Despite retaining its ‘A1’ long-term credit rating, the outlook for China’s government debt was recently downgraded from ‘neutral’ to ‘negative’, reflecting risks relating to ‘structurally and persistently lower medium-term economic growth’.55 Yet investment in both manufacturing and energy infrastructure have been key drivers of growth in recent years, replacing lost construction demand to a degree.56 Although challenges remain, in the absence of further shocks, there is room for an upside surprise – local consumption may revive, growth may be less sluggish and the slowdown shallower than pervasive market expectations. In addition, in the absence of further geoeconomic backlash, excess capacity in advanced manufacturing, particularly in green technologies, could help counteract global price pressures, lending momentum to the green transition and global demand.57

There is similar uncertainty in the United States. Some forecasts are already pricing in up to 2.4% economic growth for 2024, and others predict rate cuts in the early half of the year.58 Fiscal policy has remained loose even as monetary policy tightened, with the United States running a $1.7 trillion deficit in 2023, effectively doubling the deficit in the past year alone.59 This could continue to keep demand-driven price pressures high. The correlation between consumer sentiment and spending is also adding to uncertainty: economic pessimism may be widespread, but it is not necessarily dampening demand – yet.60 On the other hand, debt servicing hit over $981 billion in Q3 2023 – an increase of over $753 billion compared to the same period in 2022, a sum similar to the budgetary spend on defense.61 Any fiscal consolidation in the United States – or a political stand-off relating to debt loads – could have a profound effect on global markets and trade, while any overestimation of the slowdown could lead to earlier or sharper intervention on interest rates and re-spark demand-side price pressures. The outcome of the US presidential elections in November creates additional uncertainty for the country’s economic outlook, depending on the policy choices of the next government.62

Debt distress

Higher interest rates amid slowing growth will strain debt loads for the public and private sector alike. The corporate debt default rate remains far lower than peaks hit during the 2008-09 Global Financial Crisis (Figure 1.19).63 The majority of corporate debt is also years from maturity. Less than 14% of S&P 500 debt is set to mature in the next two years, with nearly half to mature after 2030.64 In essence, the world’s largest companies will be effectively insulated from higher interest rates for more than half a decade.

However, small and medium-sized companies, that form the backbone of many domestic markets, will be particularly sensitive to slowing economic growth and persistently high interest rates. As struggling companies cut costs, unemployment may rise, reducing consumer spending and creating a negative feedback loop that can contribute to a deeper economic downturn. This could also contribute to heightened market concentration, as start-ups struggle and larger, more financially robust corporations consolidate their position, including in the tech sector (Chapter 2.4: AI in charge).

Heavily indebted countries are also exposed to these economic conditions. The risk of sovereign debt defaults is rising but notably, even with a strong US dollar, larger emerging economies such as Mexico and Brazil have largely avoided debt distress to date.65 This has been attributed to structurally different conditions in these markets than in the past, including central bank independence and the accumulation of large foreign-exchange reserves.66 In other parts of the world, like in Egypt, Ethiopia, Ghana, Lebanon, Pakistan, and Tunisia, the risks are much higher. The impacts of tighter financial conditions will build over time, and pressures on fiscal balances will rise. Given historically high debt loads, many governments might be unable or unwilling to help cushion economic impacts to the same degree as they have in recent years, sharpening the slowdown for companies and individuals.

[Figure omitted]

Looking ahead

These results point to a global risks landscape where economic, geopolitical and societal vulnerabilities will continue to build. Worrying developments emerging today have the potential to become chronic global risks over the next decade.

As constant upheaval becomes the norm, decades of investment in human development – and human resilience – are slowly being chipped away, potentially leaving even comparatively strong states and individuals vulnerable to rapid shocks from novel and resurgent sources. The impacts of extreme weather may deplete available economic resources to mitigate and adapt to climate change. Increasing vulnerabilities, brought about by resource stress, conflict and increasing polarization, could expose societies and whole economies to crime and corruption. Exponential technology growth may leave the next generation without a clear path to improve human potential, security and wellbeing.

How these global risks evolve will reflect the global conditions that are slowly taking shape across multiple spheres: geostrategic, environmental, demographic and technological. Chapter 2 discusses a world that is being stretched beyond its limit, highlighting a series of emergent risks that are arising in the context of these structural regime shifts. A multiplicity of futures are conceivable over the next decade. While the next chapter explores the most concerning potential outcomes, Chapter 3 explores how a more positive path can be shaped through acting today.

[Endnotes omitted]

Global Risks 2034: Over the limit

This chapter focuses on the longer-term horizon, highlighting risks that may become the most severe over the next decade. While the short-term risks landscape described in Chapter 1 may, if not addressed, contribute to these negative, longer-term outcomes, attention, planning and action today can still set us on a markedly more positive trajectory.

The world in 2034

The next decade will usher in a period of significant change, stretching our adaptive capacity to the limit. GRPS respondents are far less optimistic about the outlook for the world over the longer term than the short term. As noted in Chapter 1, nearly two-thirds (63%) of respondents to the GRPS predict a turbulent or stormy outlook, with upheavals and an elevated risk of global catastrophes at best (Chapter 1, Figure 1.1).

A diagram with colorful dots and text

Description automatically generated with medium confidence

Comparing the two- and 10-year time frames reveals a deteriorating global risks landscape. Thirty-three of the 34 global risks increase in severity score over the longer-term, reflecting respondents’ concerns about the heightened frequency or intensity of these risks over the course of the 10-year horizon (Figure 2.1).

Environmental and technological risks are among those expected to deteriorate the most in severity over this period and dominate the longer-term global risks landscape. Nearly all environmental risks are included in the top 10 rankings for the decade ahead (Figure 2.2). Extreme weather events are anticipated to become even more severe, as the top ranked risk over the next decade.

Mirroring last year’s results, the perceived severity of Biodiversity loss and ecosystem collapse worsens the most of all risks, increasing by a full two Likert points, rising from #20 in the short-term to 3rd place. Critical change to Earth systems (#2) and Natural resource shortages (#4) are also among those perceived to materially deteriorate, contributing to their entrance into the top 10 ranking of risks over the next 10 years, while the related risk of Involuntary migration rises one place to #7 over the next decade. Pollution remains in 10th place. In contrast, Non-weather related natural disasters (#33) falls close to the bottom of rankings over both time horizons, likely reflecting the nature of such a tail risk and the often geographically isolated nature of these events.

[Figure omitted]

These results highlight divergent perceptions around the comparative urgency of environmental risks. Biodiversity loss and ecosystem collapse (#20 in the two-year time frame) and Critical change to Earth systems (#11 in the two-year time frame) feature in the longer-term rankings for all stakeholder groups (Figure 2.3). However, it appears that younger respondents prioritize these risks as a more urgent concern, ranking them higher in the two-year period compared to other age groups (Chapter 1, Figure 1.6). Private-sector respondents, unlike those from civil society or government, feel that most environmental risks will materialize over a longer time frame (Figures 1.5 and 2.3). This dissonance in perceptions among key decision-makers could mean the time to act may soon pass, without sufficient progress made (Chapter 2.3: A 3°C world).

Concerns around the possible implications of recent technological developments are also clearly evident. Adverse outcomes of AI technologies is anticipated to experience one of the largest deteriorations in severity. It rapidly rises from #29 over the two-year period to #6 over the 10-year period, likely reflecting the possible systemic or even existential nature of related risks as AI penetrates economic, social and political systems (Chapter 2.4: AI in charge). Despite worsening severity scores over this time frame, the most prominent technological risks in the short term, Misinformation and disinformation and Cyber insecurity, drop in ranking but remain in the top 10 over the longer-term, at 5th and 8th place, respectively. The related risk of Societal polarization also drops from 3rd place in the short term to 9th place over the longer-term horizon.

Despite a small increase in perceived severity, the societal risk of Lack of economic opportunity falls from #6 over two years to #11 in the global rankings; however, it makes the top 10 rankings for both civil society and academia respondents over the longer-term horizon (Figure 2.3). The divergence from perceptions of the public sector – which do not rank this risk in the top 10 – coupled with the long-term, cumulative effects of a low-opportunity world on the next generation make this a risk to watch over the coming years (Chapter 2.5: End of development?). The related economic risk of Illicit economic activity is perceived to be of lower severity over both time periods. However, it is seen to be driven by several risks ranked in both the short- and longer-term top 10, suggesting it may be an underappreciated risk over the coming decade (Chapter 2.6: Crime wave).

[Figure omitted]

Inflation is the only risk with a severity score predicted to improve over the next decade, and it moves from #7 to #32. In fact, most economic risks fall rapidly in comparative rankings of risk perception over the next decade, with, for example, Economic downturn dropping from #9 to #28 over the longer-term horizon. This may reflect that Geoeconomic confrontation (#16), a key driver of many of economic risks, has decreased significantly in perceived severity over both time horizons when compared to last year’s scores.1

Indeed, geopolitical risks are noticeably absent from the top 10 rankings over the next decade. Interstate armed conflict exhibits the same longterm severity score as last year but falls from 5th to 15th place over the 10-year period. Similar to last year, Terrorist attacks sits in the bottom left quadrant of Figure 2.1, indicating lower perceived severity over both the short and long term. While the latest available data indicates that overall lethality remains contained compared to other risks, at 6,701 global fatalities in 2022, terrorism has the potential to spark broader conflict and unrest, such as the current conflict in the Middle East.2

### 1NC---CP

Next Off is the CBR PIC:

#### The United States federal government should:

#### ---not strengthen collective bargaining rights for workers subject to the Immigration Reform and Control Act;

#### ---clarify that the Immigration Reform and Control Act does not precede or repeal remedies for harassment, injuries, wage violations, and other workplace-related abuses protected by the Fair Labor Standards Act, Title VII, and other federal and state employment statutes;

#### ---increase enforcement of and penalties for violations of employment law;

#### ---strengthen paid sick leave laws for workers in the US, including expanding enforcement and educational outreach to frontline industries;

#### ---expand public benefits to all workers in the US in times of economic crises, modelled off of the CARES Act;

#### ---design and implement a regulatory framework for safety protocols in infrastructure development in collaboration with stakeholders, increase funding for OSH research on technology and benchmarks to maximize safety, and offer bilingual training and education for undocumented workers to navigate their legal rights;

#### ---establish a legalization program for undocumented and temporary workers and prohibit deportations, arrests, and raids.

#### Expanding anti-retaliation protections for violating employment law solves

Marisa Díaz & Christopher Ho 20 - Immigrant Worker Justice Program Director at National Employment Law Project, Senior Staff Attorney in the National Origin and Immigrants’ Rights Program at Legal Aid at Work, J.D. from Stanford Law & J.D. from Stanford Law, Senior Staff Attorney at The Legal Aid Society at the Employment Law Center, San Francisco. “BRIEF OF TENNESSEE IMMIGRANT AND REFUGEE RIGHTS COALITION, LATINO MEMPHIS, ET AL. AS AMICI CURIAE IN SUPPORT OF PLAINTIFF-APPELLEE RICARDO TORRES,” 08/13/2020, Document 27, Comments on Case No. 20-5492.

Denying Mr. Torres any remedies for retaliation based on filing a workers’ compensation claim would effectively deny him his right to be free from such retaliation. This is but an application of the ancient legal maxim ubi jus, ibi remedium—“Where there is a right, there is a remedy.”9

Undocumented workers compose a significant subset of the workforce in the U.S. and Tennessee in industries with high rates of workplace injuries. Fears of immigration and job-related retaliation make such workers particularly vulnerable to workplace abuse. Without meaningful anti-retaliation remedies, reporting becomes a “Hobson’s choice,” and “employees understandably might decide that matters had best be left as they are.” Mitchell v. Robert DeMario Jewelry, Inc., 361 U.S. 288, 293 (1960). Undermining workplace protections hurts not only undocumented workers; it also endangers the rights and safety of all workers. When remedies for injuries and retaliation are weakened, so too are the incentives for employers to rectify unsafe practices. “[I]t needs no argument to show that fear of economic retaliation might often operate to induce aggrieved employees quietly to accept substandard conditions.” Id. at 292 (citing Holden v. Hardy, 169 U.S. 366, 397 (1898)).

Undocumented workers in the United States—of whom there are approximately eight million—are an integral part of the nation’s workforce and work alongside U.S. citizens.10 They are concentrated in industries with disproportionately high levels of injury and death, such as agriculture, manufacturing, construction, and food services.11 About half of all crop farmworkers in the United States—more than one million—are undocumented.12 Tennessee reflects these national trends; it is home to over 348,000 immigrants, of whom roughly 130,000 are undocumented.13 Tennessee’s undocumented community is overrepresented in similarly high-risk industries.14 Annually in the U.S., approximately 4,800 workers are killed on the job, and almost three million others become ill or injured, often in these same industries.15

Courts have recognized the extreme vulnerability of undocumented workers to workplace abuse.16 Undocumented workers face increased risks of harassment, injuries, wage violations, and other abuses.17 Studies reveal that while undocumented workers experience more workplace injuries and are subject to more wage violations than nonimmigrant workers, they report injuries and violations less frequently.18 Undocumented workers walk a tightrope to protect their jobs and health while avoiding workplace retaliation, which often includes immigration-related threats.19 Rendering workplace protections “inapplicable” to undocumented workers “would leave helpless the very persons who most need protection from exploitative employer practices[.]” N.L.R.B. v. Apollo Tire Co., 604 F.2d 1180, 1184 (9th Cir. 1979) (Kennedy, J., concurring).

Foreclosing remedies “virtually guts” anti-retaliation protections, Contreras v. Corinthian Vigor Ins. Brokerage, Inc., 25 F. Supp. 2d 1053, 1058 (N.D. Cal. 1998), leaving workers without a critical means to uphold basic workplace rights. The experience of Maricruz Ladino exemplifies both the vulnerabilities of undocumented workers and the importance of remedies. She came forward to report rampant sexual assault and harassment among farmworker women despite her fears of immigration and job-related consequences, including termination.20 Indeed, once she spoke out, her employer threatened her and eventually fired her: “Then there were threats . . . that if I continued with the case, I would be deported.”21 Despite these risks, she sued the company and ultimately settled her claim.22

Workers speaking out can inform broader, industry-wide policy changes. Notably, due to cases like that of Ms. Ladino, farms in California with over 50 employees must now participate in sexual harassment trainings to ensure basic workplace safety.23

Conversely, without remedies for undocumented workers, employers lose a critical deterrent against unsafe policies, and all workers suffer. As the Ohio Court of Appeals analogously observed, “If illegal aliens were injured, the employer would not lose any money because the aliens could not collect workers’ compensation. Therefore, the employer may become lax in workplace safety, knowing it would suffer no consequences if its employees were injured at work.” Rajeh, 813 N.E.2d at 703. Employers who expose undocumented workers to unsafe or unhealthy conditions expose their entire workforce to the same risks.

Workers need meaningful anti-retaliation protections to freely report workplace injuries or labor violations. When those protections are weakened, even for just a subset of workers, more workers are more likely to stay silent, leading to preventable injuries. Cultural shifts in the reporting of sexual harassment illustrate the critical role of coworkers’ reporting in one’s decision to report abuse. According to a 2016 report by the U.S. Equal Employment Opportunity Commission, 60 to 70 percent of women have experienced sexual harassment during their careers, yet approximately 70 percent of those women never complained internally to their employers.24 The #MeToo movement, however, has encouraged more people to report illegal harassment.25 Simply put, when one employee reports a labor violation, it breaks down the culture of silence around reporting and uplifts conditions for all workers.

The COVID-19 pandemic only points to the need for meaningful antiretaliation protections that encourage workers to report problems. Currently, reports indicate that some employers are pressuring individuals to continue working despite extremely high risks of contracting COVID-19.26 At least one federal suit has been filed against a company for threatening to fire employees who did not continue working despite potential COVID-19 exposure.27 In recent months, COVID-19 outbreaks have been reported at farms and food processing plants nationwide.28 At one Tennessee farm, 100 percent of farmworkers tested positive for the virus.29 Safeguards against retaliation for reporting workplace injuries are paramount, since COVID-19 threatens the health and safety of all workers, and their broader communities, regardless of immigration status.

This Court should affirm that federal immigration law does not preempt the award of state-law remedies to Mr. Torres. Without a remedy, there is effectively no right. See Marbury, 5 U.S. (1 Cranch) at 163. Foreclosing meaningful relief to workers like Mr. Torres would exacerbate the unsafe working conditions and fear of retaliation already experienced by undocumented workers, leading to more dangerous workplaces for all.

#### Strengthening paid sick leave laws solves their disease internal link AND alt causes thump

Shefali 1AC Milczarek-Desai 23 - Associate Professor of Law and Co-Director of the Bacon Immigration Law and Policy Program at University of Arizona. “Opening the Pandemic Portal to Re-Imagine Paid Sick Leave for Immigrant Workers,” August 2023, California Law Review, vol. 111.

Court cases furthered exacerbated IRCA’s negative impact on the employment and labor rights of im/migrant workers because they opened the door to limiting certain remedies for im/migrant workers, whose workplace rights had been violated. This case law is important to understand before examining why im/migrant workers fail to benefit from paid sick leave laws because it contextualizes im/migrant workers’ predicament when it comes to asserting rights in the workplace, such as the right to paid sick leave.

After IRCA “injected the nation’s immigration laws directly into the workplace,”[86] the Supreme Court, in Hoffman Plastic Compounds, Inc. v. NLRB, severely limited im/migrant workers’ rights under a leading federal labor rights law.[87] The National Labor Relations Act (NLRA) provides workers with the right to engage in union-related activities and concerted action in the workplace.[88] If a worker faces adverse employment action including, but not limited to, termination for participating in activity protected under the statute, the NLRA provides the worker with the sole monetary remedy of backpay.[89] Backpay means the earnings a worker would have made but for an employer’s retaliatory actions.[90] The National Labor Relations Board (NLRB) is the federal administrative agency tasked with bringing NLRA claims against employers and determining backpay awards.[91] In determining whether to award backpay under the NLRA, the NLRB can take into account whether a worker sought replacement employment in good faith after termination.[92]

Hoffman Plastic arose when Jose Castro, a worker in the polyvinyl resins and plastic pipework company, was fired by his employer for attempting to unionize his workplace.[93] The NLRB determined that Mr. Castro’s rights had been violated by Hoffman Plastic Compounds, Inc., and that he should be awarded $66,951 in backpay.[94] The employer appealed and argued that Mr. Castro, who lacked work authorization,[95] should not be entitled to backpay because IRCA made it unlawful to employ unauthorized workers.[96]

In an earlier case that arose before the passage of IRCA, the Court had held that unauthorized workers were covered by the NLRA because the Act states that the “‘term employee’ shall include any employee.”[97] In Hoffman Plastic, the Court followed its precedent that unauthorized workers like Mr. Castro were covered under the NLRB.[98] However, the opinion, written by then-Chief Justice William Rehnquist, went on to state that, due to IRCA having “significantly changed” the legal landscape, Mr. Castro could not be awarded backpay.[99] The Court asserted that IRCA made “combating the employment of [undocumented workers]” central to immigration law and policy and that awarding Mr. Castro backpay “runs counter to policies underlying IRCA.”[100] The Court’s opinion, however, ignored the legislative history clearly stating that IRCA should not be read to alter unauthorized workers’ rights under employment and labor laws since the very purpose of the NLRA’s backpay provision is to deter violations of workers’ rights to unionize.[101] Instead, the Court reasoned that, because IRCA prohibited Mr. Castro from legally working in the United States in the first place, it would contravene everything IRCA stood for to award him backpay. This reasoning is based on the notion that a worker would have been employed but for an employer’s unlawful action.[102] The Court went on to state that awarding backpay to unauthorized workers under the NLRA “condones and encourages future violations.” [103] This, it said, was because unauthorized workers would not be able to fulfill their duty to mitigate damages “without triggering new IRCA violations, either by tendering false documents to employers or by finding employers willing to ignore IRCA and hire illegal workers.”[104] Thus, the Court concluded that “allowing the Board to award backpay to [persons without work authorization] would unduly trench upon explicit statutory prohibitions critical to federal immigration policy.”[105]

The central dilemma in Hoffman Plastic perfectly illustrates the collision between immigration laws, like IRCA, and workers’ rights laws, like the NLRA. On the one hand, Hoffman Plastic Compounds, Inc. clearly violated Mr. Castro’s labor rights, and IRCA’s legislative history states that the rights of workers are not to be diminished by IRCA. On the other hand, the logic of backpay is that a worker would have been employed but for an employer’s bad actions. The Court could have chosen to adhere to the plain language of the NLRA, which does not require work authorization as a prerequisite for mitigation of damages under its backpay provision, but it did not.[106] Rather, the Hoffman Plastic Court chose to privilege immigration enforcement above workers’ rights.[107]

Refusing to award workers backpay when employers are liable for workers’ rights violations—what Professor Wishnie referred to as “functional immunity” from employment and labor laws—has done little to nothing to further IRCA’s prohibition on unauthorized employment but has significantly hurt labor rights.[108] Worse still, Hoffman Plastic brought the exact opposite result from what IRCA sought because the Court’s holding incentivizes employers to hire people without work authorization who are barred from seeking certain types of damages.[109]

By gutting NLRA backpay protections for unauthorized workers,[110] Hoffman Plastic signaled to employers that they could retaliate against im/migrant workers who dared engage in collective bargaining or other NLRA protected activities with impunity—even if they were found liable they would not have to make backpay awards.[111] Employers soon began pressing courts to apply Hoffman Plastic logic to damages under other federal employment and labor laws such as Title VII and the FLSA.[112]

The most recent battle over the reach of Hoffman Plastic arose in the context of a state workers’ compensation law. In Torres v. Precision Industries, Inc., Ricardo Torres hurt his back while working at Precision Industries.[113] He filed for worker’s compensation under Tennessee state law, and was terminated for doing so by his employer in contravention of that law’s anti-retaliation provision.[114] When Mr. Torres sued for retaliatory discharge, Precision Industries borrowed Hoffman Plastic logic to argue that the former employee should not be awarded any damages, not merely non-payment of backpay, because he lacked work authorization.[115] A federal district court in Tennessee initially agreed with the employer and prohibited Mr. Torres from recovering economic and non-economic damages based on IRCA.[116] Relying heavily on Hoffman Plastic, the Sixth Circuit Court of Appeals ultimately upheld the portion of the district court’s decision on remand that denied Mr. Torres backpay for the period in which he was unauthorized to work.[117] The appeals court concluded, however, that Mr. Torres could recover other types of damages because IRCA does not “preempt compensatory and punitive damage awards unrelated to an employee’s immigration status.”[118] The court made this distinction by focusing on that portion of the Hoffman Plastic decision pointing out that backpay mitigation requires an unauthorized person to seek employment.[119] Thus, the Sixth Circuit holding reasons that even though IRCA was created to “halt the hiring and continued employment of unauthorized [workers] . . . this does not mean Congress has occupied the entire field of employment regulation, including causes of action arising out of an individual’s employment, authorized or not.”[120]

The Precision Industries opinion, like the Hoffman Plastic opinion, straddles the intersection between immigration enforcement and workers’ rights. Both Precision Industries and Hoffman Plastic continue to indulge the legal fiction that situates im/migrant workers as impossible subjects forced to occupy a space that refuses to recognize their rights but that profits from their labor.[121] Even though these cases do not limit im/migrant workers’ rights to remedies under most employment and labor laws, the next Section explains how the collision between immigration enforcement and workers’ rights—created in part by IRCA and its resulting case law—largely strips im/migrant workers of meaningful access to employment and labor protections such as paid sick leave.

C. The Emergence of the “Brown Collar Workforce”

The COVID-19 pandemic has laid bare a twenty-first-century workforce that is highly stratified and segregated based on race and immigration status.[122] In this picture, im/migrant workers toil in occupations and industries that have come to be associated with laudable buzzwords such as “frontline” and “essential,” which really are code words for jobs that pay little, often are dangerous to health and safety, and have high rates of employment and labor law violations.[123] What led to the overrepresentation of im/migrant workers in these jobs[124] is a long and complicated puzzle, painstakingly put together by renowned scholars, such as historian Mae Ngai and sociologist Ruth Milkman.[125] Their work carefully traces the decades-long lineage of im/migrant workers’ concentration in certain types of jobs. It also shows that changes to the legal landscape between the mid-1960s and the mid-1980s ultimately resulted in the making of what often is referred to today as the “brown collar workplace.”[126]

With the passage of Title VII, which forbid workplace discrimination on the basis of race, national origin, ethnicity, sex and religion,[127] Black Americans, along with other less-educated Americans, began fleeing undesirable jobs made worse by the weaking of labor unions.[128] At the same time, as described above, the 1965 amendments to the INA and the first-time imposition of quotas on legal migration from Mexico resulted in a newly undocumented workforce desperate for work.[129] Twenty years later, IRCA’s passage in 1986 led to the Hoffman Plastic decision, workplace raids, and im/migrant workers’ increased sense of vulnerability.[130] This vulnerability is a key element in the making of the brown collar workforce because it creates subservience,[131] which is appealing to employers who engage in violations of workplace rights.[132] Indeed, researchers have shown that brown collar workers’ vulnerable status makes them less likely to engage in complaint-making when their employment and labor rights are violated.[133]

In addition to a lack of im/migrant worker complaint-making, there is also an enforcement problem. Employment and labor laws disincentivize violations of workplace rights by making employers pay when violations occur.[134] For example, the FLSA permits workers whose minimum wage and overtime rights have been violated to seek up to double the amount they are owed in unpaid wages;[135] the NLRA allows workers to be paid for time they could not work due to retaliatory discharge;[136] Title VII provides for backpay, frontpay, and compensatory and punitive damages;[137] and most local minimum wage and paid sick time laws allow workers to recover liquidated damages in addition to compensatory damages for employer violations.[138] These laws also come with strong prohibitions against retaliation when workers assert their rights, which can result in additional monetary damages.[139] Importantly, in order to get from violation to economic recovery for workers and punishment for employers, the system relies nearly exclusively on worker complaints.[140] This bottom-up method of workers’ rights enforcement does not function as intended when it comes to im/migrant workers.[141]

Employment and labor laws on federal, state, and local levels set up a dual system whereby enforcement action can be taken by the agency tasked with upholding the law at issue or by an individual worker or groups of workers under private rights of action.[142] Sometimes the two enforcement mechanisms work in tandem, such as when workers file complaints with the appropriate agency and then the agency investigates and, if necessary, takes legal action.[143] Over time, consistent starvation of agency budgets on the federal level as well as in many states has led to worker complaints being “the primary driver of enforcement activity.”[144] The legal system assumes that all workers have equal access to complaint-making. Several empirical studies conducted by economists over the past twenty years have disproved this assumption when it comes to the most vulnerable workers.[145]

In a 2004 study, David Weil and Amanda Pyles examined three years’ worth of complaint data at the U.S. Department of Labor (DOL) for violations under the FLSA and the Occupational Safety and Health Act (OSHA).[146] After deducing that “the annual probability of receiving an inspection for one of the 7.0 million establishments covered [by the FLSA or OSHA] is well below .001,”[147] the researchers concluded that holding employers who commit FLSA and OSHA violations responsible is mostly contingent upon worker complaint-making.[148] They then hypothesized that a worker is more likely to engage in the complaint-making process if the perceived benefits to the worker outweigh the costs.[149]

The researchers defined the cost of making a complaint not only as retaliatory behavior by the employer, but also the cost in time and energy required to research and understand the laws under which an employee’s rights may have been violated.[150] After sifting through the data, the researchers concluded that “the nature of the benefits and costs [of complaint-making] preclude many workers from exercising their rights in the first place, resulting in a modest-level of complaint activity.”[151] They theorized that workers who “feel vulnerable to exploitation,” including “immigrant workers,” are even less likely to assert their workplace rights.[152]

This research makes two important contributions to understanding the plight of im/migrant workers. First, it demonstrates that the existing system of bottom-up workplace rights enforcement wrongly assumes that all workers experiencing workplace violations have equal access to vindicating their rights by complaining either to agencies or through private rights of action.[153] Second, it shows that differently situated workers have differing benefit/cost ratios for engaging in complaint-making, and that the most vulnerable workers are unlikely to assert their workplace rights because the costs greatly exceed the benefits of complaining about workers’ rights violations.[154] Additional studies confirm that im/migrant workers often fall into this “most vulnerable” category and are less likely than other workers to engage in complaint-making when their workers’ rights are violated.[155]

Building on earlier studies, in 2014, economists Charlotte Alexander and Arthi Prasad examined the “powerful incentives [vulnerable workers have] to stay silent in the face of workplace problems” by specifically surveying im/migrant workers.[156] Reviewing data collected from over four-thousand workers in three of the largest U.S. cities, they found that im/migrant workers do not benefit from employment and labor laws for two main reasons: 1) they lack the legal knowledge “to identify violations of their rights and access the proper enforcement procedures,” and 2) the risks in complaint-making far outweigh the benefits for these workers.[157] The researchers further found that even when workers had knowledge of workplace rights and how to engage in complaint-making, “43 [percent] of workers who had experienced a workplace problem . . . decided not to make a claim”[158] and that “the most common reason” for im/migrant workers’ “silence was their fear of employer retaliation.”[159]

Other research shows that im/migrant workers often do not complain about workplace abuses because they anticipate retaliation before it occurs.[160] This has been well documented in im/migrant-heavy workplaces where employer threats—both spoken and unspoken—prevent workers from raising their workplace rights for fear of adverse employment action.[161] These silencing tactics are especially effective because, under the law, employees cannot state a claim for employer retaliation until after the retaliation occurs.[162] Thus, the mere threat of retaliation is often enough to foreclose im/migrant workers from making complaints.[163] Alexander and Prasad’s 2014 study also found that when im/migrant workers overcome the fear of retaliation and complain, roughly 43 percent “experienced some form of employer reprisal in response” and of these reprisals, 35 percent “constituted unlawful retaliation in violation of labor and employment laws.”[164] While the remainder of reprisals “likely did not rise to the level of an ‘adverse employment action’” as defined under employment and labor laws, they “nevertheless likely had a silencing effect on workers.”[165] Importantly, even when actionable retaliation occurs, anti-retaliation remedies in employment and labor laws “can be invoked only after the employee has suffered [harm], and offer, at best, the possibility of an uncertain remedy after a long delay.”[166]

For example, in Tolano v. El Rio Bakery, four im/migrant workers filed claims against their employer under the FLSA, NLRA, and state minimum wage law for failing to pay overtime or minimum wage and for engaging in retaliation against the workers when they collectively complained about these violations of their workplace rights.[167] After the case was filed in federal district court, the employer filed for bankruptcy, which led the district court to stay its case pending the bankruptcy court’s determination.[168] Almost a year later, the bankruptcy court rejected the employer’s bid for bankruptcy protection. In the intervening months, the employer shut down its business, sold all assets, and disappeared.[169] Thus, when the district court resumed the initial case and ultimately awarded the workers a combined $197,078 in monetary damages, there was little to no hope of actual recovery for the im/migrant workers who braved making a legal complaint.[170]

A similar situation developed with Turman v. Koji’s Japan, Inc., a class action that began in 2010 as a result of an employer systematically violating workers’ rights under the FLSA and state labor laws.[171] Like the employer in Tolano, the restaurant responded by shuttering its business and filing for bankruptcy, while the sole shareholder and director absconded with the assets.[172] Over eleven years of litigation and several court decisions later, an appellate court finally ruled that the restaurant’s sole shareholder and director was personally liable for violations of workers’ rights under both the FLSA and state law.[173]

Thus, even when vulnerable workers muster the courage to complain, despite the costs they are likely to encounter, they may never recover damages to make up for lost wages or time. Even when courts award damages, workers may have to wait many years for payment. Moreover, employers often avoid paying the steep prices needed to deter them from committing future workplace violations.[174] Thus, the logic behind enforcement of employment and labor laws, which depends on workers making complaints, has failed im/migrant workers.[175]

Viewed another way, the effectiveness of workers’ rights laws depend “significantly on worker ‘voice,’” and cannot help im/migrant workers when their voices are effectively silenced.[176] To be sure, this silencing is based, in large part, on fear of employer retaliation and the threat of immigration enforcement. But there is also another more insidious reason for this silencing. In 2010, Latin American Studies scholar Shannon Gleeson interviewed forty-one Latinx workers, both with and without work authorization, in the restaurant industry in two large U.S. cities to determine why im/migrant workers are less likely to engage in complaint-making.[177] Gleeson found that not only did rights enforcement face substantial barriers created by “limitations of an underresourced labor standards enforcement bureaucracy, lack of knowledge about rights, and employer intimidation,” but workers themselves had internalized a “legal consciousness” that prevented them from making claims when their workplace rights were violated.[178] Gleeson concluded that because the im/migrant workers she interviewed assumed a stance in which they did not believe they were worthy of accessing their workplace rights, “efforts toward reducing [barriers to workplace rights enforcement], while certainly necessary, may be insufficient to ameliorate the fundamental challenge that undocumented status poses.”[179]

In summary, the century-long collision between immigration laws and employment and labor laws has produced a brown collar workforce critical to the American economy but unable to benefit from basic workplace rights. The COVID-19 pandemic has revealed that this disenfranchisement reverberates beyond the well-being of individual workers by threatening entire industries, those they serve, and the public at large. One way to address this crisis is to locate im/migrant workers outside the binary of immigration enforcement versus workers’ rights and inside a public health matrix dependent upon the health and safety of frontline, essential workers. Paid sick leave laws are a portal through which this re-imagining can occur.

II. Paid Sick Leave in America

The pandemic has demonstrated that public health suffers when low-wage im/migrant workers do not have access to paid sick leave. This Section situates paid sick leave rights within a broader public-health policy conversation and highlights the importance of ensuring that im/migrant workers benefit from paid sick leave laws. It does so by describing the United States’ paid sick leave laws and the significant public health benefits they confer to multiple stakeholders.

A. The Legal Landscape

The federal government has never enacted a permanent, national, paid sick time law.[180] Indeed, America lags far behind nearly all of its counterparts among wealthy nations and even among many developing countries in this regard.[181] Congress tried but failed to enact the Pandemic Protection for Workers, Families, and Businesses Act after the 2010 H1N1 epidemic.[182] The Healthy Families Act, first introduced in Congress in 2004 and most recently re-introduced in 2019, has also failed to garner the Congressional votes required to become law.[183] Congress finally implemented a national paid sick leave mandate in the form of the Families First Coronavirus Response Act (FFCRA) after the COVID-19 pandemic hit U.S. shores. However, that mandate was temporary and expired six months before the deadly Delta variant gripped the nation in the summer of 2021.[184] Even when it was in effect, FFCRA was limited in scope because it excluded millions of U.S. workers, including those working at companies with more than 500 employees, those at workplaces with fewer than 50 employees,[185] and those designated by their employers as healthcare workers and first responders.[186]

The only paid sick leave laws in the United States today have been enacted by states and municipalities. Since 2006, when San Francisco became the first place in America to enact a paid sick leave ordinance, local paid sick time laws have burgeoned.[187] Although these laws vary, most are based on a system whereby workers earn one hour of paid sick time for every thirty to forty hours worked.[188] Workers may use a capped number of earned paid sick time hours per year[189] for a variety of reasons including preventative medical care for themselves or a family member, their own illness, caring for a sick family member, and in some cases, for domestic violence related reasons and during a public health emergency.[190] These laws also have a notice requirement; employers must notify their employees of their right to take sick leave and the terms under which they can use it.[191]

Contrary to some employer concerns that workers would abuse paid sick leave, studies of paid sick time laws in several jurisdictions have shown that workers are unlikely to use their earned paid sick days for reasons that don’t qualify for paid sick time.[192] Rather, “employees treat paid sick days not as an entitlement, but as insurance, to use when illness strikes the worker or a family member.”[193]

The modern patchwork of local paid sick leave laws has significantly increased the number of American workers with access to paid sick days. New York City’s law, for example, expanded paid sick leave coverage by 1.2 million workers.[194] Two years after San Francisco’s law went into effect, 99 percent of the city’s workplaces with twenty or more employees provided paid sick days and “[l]ow-wage workers . . . significantly benefitted from the ordinance, especially those working in food service and accommodation sectors.”[195] A survey of employers one year after Seattle’s paid sick time law passed found that “marginalized workers—those in low-paying and part-time positions—are likely to gain significant coverage through mandated paid sick leave policies.”[196] Connecticut’s paid sick leave law similarly resulted in “the largest increases in paid sick leave coverage . . . where workers needed the assistance most, e.g., healthcare, education and social services, hospitality, and retail.”[197]

B. Paid Sick Days Create Net Benefits

Numerous empirical and simulated studies show that paid sick days create net benefits because they achieve the twin goals of ensuring worker health and community safety. This research has revealed that workers without access to paid sick leave are more likely to engage in “presenteeism”[198] than their counterparts with leave, and that these sick workers subsequently infect others at high rates.[199] The converse also is true: when workers have access to paid sick leave, there is a correlative reduction in the spread of viral infections.[200]

Empirical data collected during the H1N1 epidemic of 2009–10[201] revealed that about eight million workers showed up to work with that dangerous influenza virus and went on to infect about seven million additional people.[202] A 2013 National Health Interview Survey concluded that “both full-time and part-time workers without paid sick leave are more likely to attend work while sick.”[203] Although no large-scale studies have yet discerned how many workers went to work infected with the novel coronavirus or how many additional COVID-19 cases resulted, an empirical study during the first summer of the pandemic showed that nursing home aides who engaged in presenteeism were responsible for 44 percent of COVID-19 spread among multiple nursing homes, co-workers, and older residents.[204]

A significant body of research has established that presenteeism is responsible for several large outbreaks of foodborne illnesses too. In 2008, a worker without paid sick leave at a Chipotle restaurant in Ohio came to work ill, prepared food, and subsequently infected 500 people, resulting in hundreds of dollars in cost to the local community.[205] A Wyoming norovirus outbreak in 2012 affected over three hundred people and was traced to restaurant workers who showed up to work sick.[206] Moreover, each year, “there are approximately seventy-six million instances of food-borne illness nationwide . . . and food-service workers who go to work despite being sick were the leading causes of such outbreaks.”[207] Looking beyond the costs incurred by workers, consumers, and communities when disease outbreaks occur, the Harvard Business Review has estimated that presenteeism costs “American companies . . . more than $150 billion” annually.[208]

On the flip side of presenteeism are paid sick leave policies, which have been shown to reduce disease outbreaks. For example, one study comparing the rate of foodborne illnesses in jurisdictions before and after they adopted paid sick leave laws found that the rate diminished by 22 percent after paid sick leave was mandated.[209] A Harvard School of Public Health survey showed that while paid sick leave did not eliminate presenteeism, it “greatly reduce[d] it.”[210] A simulated study using Google Flu Trends data demonstrated that when workers have access to paid sick leave policies that allow them to stay home when they are sick, infection rates decrease by about 10 percent.[211] At least three other simulated studies showed a similar and significant reduction in pandemic spread as a result of paid sick leave laws.[212] Yet another simulated study suggested that paid sick leave would encourage workers to abide by governmental quarantine recommendations.[213] Two other studies have shown that paid sick leave policies result in increased vaccination rates for a broad spectrum of workers.[214] One of these studies, based on Medical Panel Expenditure data from 2006–10, projects that higher vaccination rates due to paid sick days “would result in 18.2 thousand fewer health care visits” and “64 thousand fewer work absences from influenza” alone.[215]

Employees are not the only beneficiaries of paid sick time laws, which have also been linked to favorable conditions for employers. Studies have consistently “found a relationship between paid sick leave policies and economic benefits for employers such as improved employee productivity, reduced turnover and lower associated hiring and training costs as well as improved employee morale and loyalty.”[216] Moreover, several studies conducted in jurisdictions with paid sick leave mandates show that the “overall [negative] impact on businesses was minimal” in that employers reported experiencing “little or no additional costs” and that implementing paid sick days “had minimal effect on business operations.”[217] In New York City, where the paid sick time law covers 3.4 million workers, 94 percent of employers reported “the law ‘had no effect on business’ productivity, while 2 [percent] . . . reported that productivity actually increased.’”[218] Employers also reported little to no extra cost for implementation of the paid sick leave law.[219] Surveys collected from employers in San Francisco and Connecticut, two other jurisdictions with paid sick leave laws, show that most employers did not experience an increase in costs as a result of these laws.[220] Similarly, the California Chamber of Commerce, which originally opposed that state’s paid sick leave law, “reported that employers have not experienced the expected burden” of the law and reported little to no difficulty in complying with the law.[221] In short, a substantial and growing body of empirical data and research confirms “that paid sick leave can be used as an effective policy instrument for controlling epidemics”[222] without harming business interests.

C. Paid Sick Leave and Im/migrant Workers

Despite the demonstrable win-win-win that paid sick leave brings to workers, employers, and the public at large, low-wage workers—a workforce that includes large numbers of im/migrant workers, and everyone they come into contact with—are being excluded from these benefits. DOL figures reveal that “low-income workers still lag far behind in access to paid sick leave.”[223] Nationwide, “only about 65 [percent] of American full-time workers have access to sick leave” and in low-wage, part-time, and service sectors of the economy, this numbers drops precipitously to 20 [percent] of the workforce.[224] All in all, about “forty-four million workers—primarily within low-income brackets—lack access to even a single paid sick day in the United States.”[225] Moreover, using data from the Centers for Disease Control and the U.S. Bureau of Labor Statistics, researchers have estimated that “at least 20 million Americans go to work sick, which [researchers] attribute to lack of access to paid sick leave.”[226] Indeed, one worker survey found that “[o]nly 13 [percent] of low-income workers . . . reported beliefs that they could stay home during a pandemic outbreak.”[227] Many of these workers are im/migrants who work in essential industries performing frontline jobs.[228]

National surveys collected in the aftermath of the H1N1 Pandemic revealed that Latinx workers “had a higher risk of infection due to disproportionate lack of access to paid sick leave” and that these workers had “lower rates of paid-leave access” than their counterparts during that epidemic.[229] Not only were workers in these groups unable to stay home when ill or appropriately socially distance while at work, but they also faced increased hospitalizations and deaths.[230] These higher hospitalization and death rates among racial and ethnic minorities have been replicated during the current COVID-19 pandemic, with Black and Latinx individuals being three times as likely to contract coronavirus and twice as likely to die from it than individuals in other ethnic groups.[231]

While some portion of im/migrant workers’ lack of access to paid sick leave can no doubt be attributed to jurisdictions without paid sick leave laws, emerging research shows that even im/migrant workers who live in jurisdictions with paid sick leave mandates fail to benefit from these laws.[232] To date, no comprehensive study has gathered data regarding the extent to which im/migrant workers have been able to access paid sick leave when they live and work in jurisdictions with paid sick leave laws. The COVID-19 pandemic, however, has prompted researchers to begin looking at this important question since earlier disease outbreak data shows that paid sick leave laws among this group of workers significantly reduces the spread of contagious diseases and resulting fatalities. The largest such study so far to look at this issue was conducted in the middle of the COVID-19 pandemic by the University of Massachusetts Labor Center, which collected surveys from 1600 frontline, essential, low-wage workers.[233] The data revealed that workers felt unprotected from COVID-19 at work and that they could not quit due to economic concerns.[234] Thus, this study revealed information previous research had not unearthed—that despite a robust state paid sick leave law and temporary federal paid sick leave legislation then in effect, a large percentage of low-wage workers, many of whom identified as Latinx, did not receive paid sick days.[235]

Empirical researchers have yet to explore why im/migrant workers do not benefit from paid sick leave laws when such laws exist, although at least two small-scale studies have been launched by the Clinic.[236] The next Section utilizes critical legal theories to construct a framework within which to analyze im/migrant workers’ inability to access paid sick time in jurisdictions with paid sick leave laws.

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III. Im/migrant Workers, Paid Sick Leave, and COVID-19

As described in Section II, paid sick leave laws benefit multiple stakeholders because when workers can take paid sick time, they reduce the risk of disease transmission to all members of the public they encounter. The collision of immigration enforcement and workers’ rights, described in Part I, however, has historically prevented low wage, im/migrant workers from accessing workers’ rights, including paid sick leave. This Section uses critical race and movement law theories to explain why im/migrant workers have not, to date, benefitted from existing paid sick leave laws. It then employs critical race, movement, and public health law frameworks to argue that paid sick leave should be situated within a paradigm of mutual aid, as opposed to a traditional workers’ rights paradigm, to better benefit im/migrant workers.

A. Paid Sick Leave’s Failure to Protect Im/migrant Workers

Dating at least as far back as the 1918 flu pandemic, racial and ethnic minorities in the United States have fared worse than the rest of the population during disease outbreaks.[237] In the wake of COVID-19’s devastation in marginalized communities, critical legal scholars have asserted that this type of disproportional impact is “not due to any biological differences between races, but rather . . . a result of social factors.”[238] One such factor is workers’ ability, or lack thereof, to stay home from work to rest, recover, and seek medical attention when sick. As discussed above, emerging studies show that im/migrant workers largely lack access to this social benefit even when they live in jurisdictions with robust paid sick leave laws.

Critical race theory’s critique of the formal equality doctrine provides a framework to analyze and explain this situation. Critical race theorists have long pointed out that formal equality,[239] which is embedded in all workers’ rights legislation and is what requires the law to protect workers equally,[240] must be distinguished from substantive equality,[241] which “asks whether an individual can actually do what the right allows [them] to do in theory.”[242] Viewing paid sick leave laws with this distinction in mind demonstrates that im/migrant workers experience a wide chasm between the formal equality written into paid sick leave laws and the substantive equality in the outcomes that result from these same laws.

The nation’s collection of paid sick leave laws are intended to benefit all workers, including im/migrant workers, because they apply to all workers regardless of documentation status, job, or industry.[243] These laws mandate that workers earn, and have the opportunity to use, a set number of paid sick days per year.[244] They also provide robust remedies when workers’ paid sick leave rights are violated. For instance, most laws allow for double or treble damages when workers are not paid for sick leave days that they have earned.[245] This means that workers who earned but were denied paid sick days can be compensated two to three times their hourly wage rate if they had to take time off from work for a paid sick leave purpose. Moreover, all paid sick leave laws contain anti-retaliation provisions intended to prevent employers from punishing workers who either use paid sick leave or assert their right to it.[246] At least one state law imposes a severe penalty for retaliation, requiring employers to pay a minimum of $150 per day as long as the retaliatory action continues or until final judgment is rendered.[247] Finally, all paid sick leave laws can be enforced by filing complaints with the appropriate state or local agency or through private right of action in court.

In this respect, paid sick leave laws mirror earlier workplace rights such as minimum wage, overtime, and anti-discrimination mandates—all of which provide damages to workers for rights violations, anti-retaliation protection, and complaint procedures through labor agencies and courts.[248] The empirical data regarding im/migrant workers and other employment and labor protections, however, demonstrates that im/migrant workers are less likely to benefit from rights such as minimum wage and overtime for a plethora of reasons, including fear of immigration enforcement, threats of retaliation, lack of education and knowledge about workers’ rights, and financial inability to retain counsel or other legal support.[249] These obstacles make im/migrant workers less likely to engage in complaint-making.[250] Complaint-making, however, is critical because the research also shows that under-resourced labor agencies rely on worker complaints in order to enforce workers’ rights laws.[251]

In spite of this evidence, paid sick leave laws, many of which were enacted after this research was conducted and made available,[252] continue to provide the same mechanisms for enforcement as earlier workers’ rights laws that were not already benefitting im/migrant workers. It stands to reason that paid sick leave laws, which are modeled after traditional workers’ rights laws, also fail im/migrant workers. This is because these workers are less likely to engage in the requisite complaint-making when faced with employers who do not provide paid sick days even when the law requires it.[253] The underlying reasons for not engaging in complaint-making likely mirror the reasons found under traditional workers’ rights laws—fear due to the worker’s or a family member’s immigration status, threats of adverse employment action, and lack of understanding of paid sick leave rights.[254] Thus, when viewed through the lens of critical race theory’s critique of the formal equality doctrine, paid sick leave laws fall short of conferring substantive equality upon im/migrant workers just like their traditional workers’ rights counterparts.

It seems clear that paid sick leave laws were crafted with traditional workers’ rights laws in mind but without a corresponding thought as to these laws’ shortcomings when it comes to assisting im/migrant workers. This is somewhat surprising given that the contemporary paid sick leave movement, which began in the early 2000s, had its origins in grassroots advocacy that included im/migrant rights groups.[255] The emergent field of movement law theory provides guidance in understanding how paid sick leave advocates may have unintentionally replicated earlier workplace rights’ blind spots, and how this might be avoided in the creation of future paid sick leave policy.

Movement law, like critical legal studies, is interested in ideals such as justice and equality that come under the purview of the law but that the law has failed to achieve.[256] Its focus is on working in solidarity with social and grassroots movements in order to create legal meaning and frameworks, and to do so without imposing a hierarchical structure that places the law, lawyers, and legal scholars at the top and groups of people organizing for a more just, equitable, and sustainable future at the bottom.[257] In other words, movement law urges those with legal knowledge to co-generate “ideas alongside social movements” rather than for them.[258]

Viewed through a movement law lens, paid sick leave laws are crafted in a manner that do not consider the lived reality of im/migrant workers. For example, it is common for im/migrant workers and communities to be unaware of their workplace rights or, even if they have knowledge regarding workers’ rights, to lack an understanding of the specific mechanisms for provision and enforcement of these rights.[259] Paid sick leave laws reflect this on a basic level because some provide state and local labor agencies with the option to engage in community education and outreach.[260] But these laws are silent when it comes to determining how to go about identifying vulnerable worker groups for outreach purposes, the importance of gaining community trust, and/or best practices for educating marginalized groups. Perhaps due to these oversights, labor agency educational programming often does not reach im/migrant workers.[261]

Paid sick time laws also ignore the reality that most im/migrant workers cannot afford legal assistance to file workplace complaints with labor agencies or courts. Labor agency complaint procedures can be byzantine,[262] and successfully filing a court action requires some degree of legal knowledge, advice, or representation. Without creating alternative mechanisms for enforcement—that is, modes of enforcement that do not rely largely on worker complaint-making—paid sick leave laws all but ensure im/migrant workers’ inability to benefit from paid sick days when faced with non-compliant employers. For example, sick time laws could require state and local labor agencies to conduct periodic sick leave audits of employers in industries that are known violators of workers’ rights. As written, however, paid sick leave laws do not embrace movement law strategies informed by im/migrant workers’ stories, concerns, and suggestions, which in turn might have led to better protections for this subset of workers.[263]

Drafters of paid sick leave laws are not the only ones who have failed to appreciate the “limits of rights discourse to transform the prevailing order”[264] when it comes to im/migrant workers and paid sick time. Scholars and policy analysts analyzing paid sick leave laws, including those discussing vulnerable groups’ lack of access to paid sick days, are silent when it comes to im/migrant workers’ predicaments and perspectives.[265] In this way, the literature surrounding paid sick leave continues to ignore voices and experiences that are traditionally overlooked by the legal academy and its primary reliance on “traditional legal sources.”[266] When workers’ perspectives are ignored, recommendations for enhancing paid sick leave’s reach to marginalized workers risk being stale upon arrival.[267] Indeed, otherwise comprehensive legal articles discussing paid sick leave exemplify this when they call for expanding paid sick leave by using existing laws as templates to increase the number of jurisdictions with paid sick time and, ultimately, to enact a national paid sick leave law.[268] Although this scholarship is well meaning, its failure to acknowledge the limits of current paid sick leave laws and to explore why im/migrant workers’ are not able to access them leaves the most vulnerable workers out of the paid sick time paradigm.

B. Shifting the Paid Sick Time Paradigm to Center Im/migrant Workers

Shifting the paid sick time paradigm in a manner that is more inclusive of vulnerable workers will require scholars and policymakers to center im/migrant workers when advocating for and drafting sick time laws.[269] This centering does not mean that marginalized workers necessarily have all the answers. Rather, this type of engagement with im/migrant workers and their communities often makes legal theory and law work “better, [and be] more hopeful, more grounded, and more accountable.”[270] This is critical given the hegemonic forces, lack of political will, and limited economic resources that buttress status quo notions, such as the sufficiency of formal equality within paid sick leave laws.[271] It is precisely because of these types of challenges and obstacles that movement law urges those trained in law to “take cues from social movement epistemes,” in order to be able to “gesture at new possibilities.”[272] This Section aims to do just that by first learning alongside a group of essential, frontline workers who successfully advocated for their workplace rights, and then applying these lessons to show how paid sick leave laws could be more effective for im/migrant workers.

In 2018, a group of nurses at two hospitals in Tucson, Arizona, many of whom are im/migrants, decided to organize themselves under National Nurse’s United (NNU), an AFL-CIO affiliated union, because hospital management had consistently failed to ensure safe working conditions for them and their patients.[273] At first, the nurses’ chances of unionizing seemed miniscule because Arizona has very few unionized workplaces and unionizing in the state is difficult.[274] The nurses, however, crafted a unique strategy: they centered their campaign around narrating personal stories about what it felt like to be essential, frontline, healthcare workers who are overworked and dangerously understaffed while tending to patients in need of critical care and attention.[275] Importantly, the nurses’ narrative shifted focus away from their workplace right to organize to change hospital staffing policies and onto their lack of ability to provide the best care possible for their patients given current staff-to-patient ratios. Additionally, early in the campaign, the nurses prioritized providing legal knowledge to and cultivating solidarity among their ranks.[276] This was important given that the nurses knew management would engage in aggressive and unlawful tactics against nurses advocating for the union, such as threats and retaliatory behavior.[277] By fall of 2019, just months before COVID-19 inundated hospitals and healthcare workers nationwide, the Tucson nurses achieved what no other group of hospital workers in the state had ever done before: they unionized their hospitals. As a result, they ensured that their voices would be heard and their concerns addressed—and they did this in furtherance of their goal to provide the best quality healthcare to the people they had dedicated their careers to serving.

The nurses who brought NNU to Arizona engaged in a seemingly simple yet extraordinary move—they situated their workers’ rights within a broader public health conversation. The NNU provides useful lessons for shifting the paid sick leave paradigm, notwithstanding the differences between unionization campaigns and drafting paid sick time legislation that embraces im/migrant workers.

When the NNU nurses foregrounded their patients’ well-being and tied this to their need for lower staff-to-patient ratios, they activated critical race theory’s “interest convergence principle.” A term coined by Derrick Bell, interest convergence posits that minority groups, such as im/migrant workers, significantly benefit from laws and social policies that also benefit dominant groups.[278] The nurses highlighted the convergence of their interests and their patients’ interests by focusing their unionizing campaign on patients’ negative healthcare outcomes when nurses are overworked and understaffed. The same strategy can be used to enhance paid sick leave protections for im/migrant workers by pointing out that dominant groups—be they nursing home residents, meat purchasers, or restaurant goers—will benefit if workers in these industries, many of whom are im/migrants, are more likely to use paid sick leave.

Critical race theorists do not always view interest convergence as a successful strategy because, as Bell argued, “even when the interest convergence principle results in an effective . . . remedy [for marginalized groups], that remedy will be abrogated at the point that policymakers fear [it] . . . is threatening the superior societal status of [dominant groups].”[279] Although this failure of interest convergence to sustainably help vulnerable groups often has played out as Bell feared,[280] this critique does not necessarily extend to laws and policies connecting workers’ rights to public health. For instance, low staff-to-patient ratios at a hospital arguably enhances the quality of life for all patients regardless of their status in dominant or vulnerable groups. The same can be said for paid sick leave laws that embrace im/migrant workers. For example, disincentivizing presenteeism by providing an im/migrant worker who is sick with COVID-19, H1N1, or even the common flu with paid sick leave benefits both that worker and an exponentially larger number of individuals, some of whom are from dominant groups that rely on that worker’s labor. When paid sick leave is viewed as a broader public health measure, rather than as an individual workers’ rights issue, it perfectly converges the interests of workers and those who rely on and benefit from the workers’ labor.[281]

Recently, health law scholars have hit upon a similar idea in calling for a “solidarity-based theory of public health” that highlights the interconnectedness of workers’ rights and public health outcomes.[282] Specifically, they argue that because “[i]nfectious disease pandemics are fueled by the connection of people to one another in society,” the public’s health and safety can be safeguarded only by acknowledging these connections and working toward mutual aid.[283] When viewed within this paradigm of connection and mutual aid, paid sick leave is more than a workplace right—it is a highly efficacious tool for achieving and maintaining the health and safety of entire populations, especially during times of disease outbreaks, epidemics, and pandemics. Indeed, a central policy purpose behind paid sick leave is to ensure that workers take time off from work when they are ill rather than engaging in presenteeism, which spreads infection and disease.[284] Thus, attempts to expand paid sick leave laws that are inclusive of im/migrant workers must prominently feature the fact that paid sick leave laws protect everyone—im/migrant workers by providing time off for medical care, rest, and recovery,[285] and everyone else by protecting the public from sick workers who can spread contagion.[286]

Framing paid sick leave as a hybrid law at the intersection of workplace rights and public health shifts the paid sick time paradigm to embrace im/migrant workers in three ways. First, it removes im/migrant workers’ access to paid sick leave from the confines of immigration enforcement and im/migrant workers’ rights, which have stifled the ability of paid sick leave laws to adequately reach and protect im/migrant workers.

Second, situating im/migrant workers and paid sick leave within a public health matrix allows us to see how “fundamentally individualistic employment and anti-discrimination laws have undermined—rather than supported—workers’ ability to protect themselves and others.”[287] Employment and labor laws are focused on the “attribution of fault and responsibility” among workers and employers, which not only obfuscates communal or governmental responsibilities but also does not result in effective public health outcomes.[288] Paid sick leave laws exemplify this problem. Even though these laws exist to safeguard workers and the public, their enforcement mechanisms for apportioning blame and damages focus on individual employers and, because im/migrant workers are unlikely to complain about their employers, these laws do not ultimately function as intended.[289]

Third, tying im/migrant workers’ rights to public health opens the door to innovations that do not currently exist in paid sick leave laws. For example, perhaps the very process whereby paid sick days are requested and provided needs to be re-examined. If the underlying goal of paid sick leave is to ensure public health and safety beyond a singular workplace, then it does not make sense to expect individual employers to bear the brunt of paying for all sick days, as is required under most state paid sick leave laws.[290] Rather, a system more akin to workers’ compensation, where employers are required to purchase insurance to pay for injured workers’ medical bills, might be more appropriate. A workers’ compensation model is especially attractive to im/migrant workers since workers’ compensation does not exclude im/migrant workers as is the case under public benefits models such as unemployment insurance.[291] Therefore, im/migrant workers might be less fearful of making paid sick leave claims under a workers’ compensation-type rubric.[292] Moreover, workers’ compensation claims contain built-in mechanisms for attorney’s fee payments, which may make it more feasible for im/migrant workers to file these claims as opposed to claims for other types of workers’ rights.[293]

Shifting paid sick time from an exclusively workers’ rights-based paradigm to a mutual aid paradigm centers the importance of low wage, im/migrant workers’ access to paid sick leave. When these workers, who often are also essential and frontline workers, can afford to stay home while ill, they simultaneously benefit the public at large by preventing disease outbreaks. Thus, situating paid sick leave within a public health matrix underscores why lawmakers and policymakers should put care and attention into ensuring that im/migrant workers meaningfully benefit from paid sick leave laws.

C. Challenges and Recommendations to Ensuring that Im/migrant Workers Benefit from Paid Sick Leave Laws

While locating paid sick leave policies within a public health matrix highlights the public health benefits of providing im/migrant workers with access to paid sick leave, it is not enough to ensure that im/migrant workers will be able to benefit from paid sick leave laws. To do this, scholars and policymakers must spend time engaging with, listening to, and learning from im/migrant workers. Lawmakers can then look to this research and craft more inclusive paid sick leave laws that implement effective strategies to educate im/migrant workers about their paid sick leave rights, encourage workers to request paid sick time, and enforce paid sick leave laws when they are not followed. For example, im/migrant workers might express that education and outreach components of paid sick leave laws would be more beneficial if they instructed labor agencies to use certain types of presentation techniques such as the use of interpreters and bilingual materials. Im/migrant workers may also favor outreach methods that utilize individuals whom their community trusts, such as embedded community health workers.[294]

Including im/migrant workers in these conversations also helps policymakers understand what exactly is needed to help workers feel safe, or at the very least emboldened to engage in complaint-making. This is another important lesson that can be gleaned from the NNU nurses’ campaign. Because the nurses took time to engage in community building within their ranks before launching a full-scale unionizing effort, those nurses singled out for employment retaliation were more able to withstand management’s intimidation tactics. Some workers, however, will never feel comfortable making complaints against employers who violate their paid sick leave rights. To address these situations, policymakers must take fears of immigration enforcement and job loss into account when crafting paid sick leave laws.[295] They can do so by using scarce resources to target enforcement of paid sick leave laws in frontline, essential industries like agriculture, meat-processing, and long-term care that rely heavily on im/migrant labor. They also can work closely with advocates within im/migrant worker communities to begin conversations about the benefits of paid sick leave not just for individual workers, but also for their families and communities.

Although there is no substitute for spending time alongside the very workers that paid sick leave laws intend to, but fail to, protect, this is not a panacea because workers do not speak in a unified voice.[296] It is highly likely that im/migrant worker communities will contain different, sometimes opposing views regarding how best to craft paid sick leave laws that provide maximum benefits. This means that movement lawyers and policymakers must do the difficult work of tolerating dissonance, participating in active listening, and practicing patience, while workers identify possible solutions. There may be other hurdles as well. For instance, extrapolating from prior research about im/migrant workers and other workplace rights, it is plausible that at least some workers have culturally-based or self-limiting beliefs that will prompt them to shy away from asserting their paid sick time rights and encourage them to engage in presenteeism.[297] Even robust laws and policies may not be able to address deeply embedded psychological factors.

Overcoming these types of obstacles will take time, research, and experimentation in the field. To date, no large-scale quantitative or qualitative data has been collected on im/migrant workers’ experiences with paid sick leave laws. This type of research would allow policymakers to evaluate the efficacy of different paid sick leave models and conduct additional research on how im/migrant workers have benefited. In collecting this data, researchers and policymakers should consider collaborating with trusted partners of im/migrant communities, such as embedded community health workers, to understand and address the psychological barriers im/migrant workers face when accessing their paid sick leave rights.

#### Expanding public benefits during economic crises solves immigrant resilience AND alt causes thump

Huyen 1AC Pham et al 24 - University Distinguished Professor of Law at Texas A&M University School of Law. Natalie C. Cook – M.A. candidate at Bush School of Government and Public Service. Ernesto Amaral - Associate Professor in the Department of Sociology at Teas A&M. Raymond Robertson - Professor of Economics and Government at Bush School of Government and Public Service. Suojin Wang – Professor of Statsitics at Texas A&M. “The Limits of Immigrant Resilience,” August 2024, Southern California Interdisciplinary Law Journal 33(3), pg 509-546.

IV. CONCLUDING THOUGHTS

Thus far, this Article contrasted our findings of immigrant labor outcomes during the COVID-19 pandemic with evidence of immigrant resilience during the Great Recession, the most recent economic crisis in the United States. The literature is replete with other examples of immigrant resilience and their ability and willingness to adapt to harsh labor market conditions. Studying foreign-born workers in the European Union during the Great Recession, Martin Kahanec and Martin Guzi found that immigrant workers responded more fluidly than natives to labor shortages by moving across regions, occupations, and sectors.24 3 Kerry Preibisch analyzed the labor patterns of immigrant agricultural workers in Canada and observed that they boosted the Canadian economy with their willingness to work seasonally in accordance with agricultural cycles. 244 In the face of scarce economic opportunity, Professors Yemisi Freda Awotoye and Robert Singh found that United States immigrants are more likely than natives to become entrepreneurs and create jobs, not only for themselves, but also for others. 245Adaptability in the face of challenging labor market conditions is a hallmark of immigrant workers.

These findings suggest important limits to that resilience: when employment options (even bad employment options) are severely limited, immigrant workers fare poorly, particularly in comparison with native-born workers. These findings may feel limited to the unique circumstances of the COVID-19 pandemic, but there are other scenarios where labor options could be similarly and severely restricted for immigrant workers. Of note, with the continued rise of restrictive sub-federal immigration laws across the United States,246 the ability of immigrant workers to move within the country for jobs may be severely hampered.247 States, cities, and counties have enacted laws that deputize local law enforcement officials to enforce federal immigration laws and that limit immigrant access to employment, housing, and benefits.248 These laws create very negative sub-federal immigration climates that may restrict the movement of immigrants to those jurisdictions.24 9 It is also possible that a more geographically uniform economic recession that could severely restrict job opportunities for immigrants in ways that implicate their resilience. 250 Finally, as the threat of airborne diseases continues to grow,251 lawmakers must consider the implications for vulnerable immigrant populations in future pandemics and health crises.

Limits on immigrant resilience raise important policy concerns. First, immigrant workers and their families may be more vulnerable during times of economic crisis than previously thought. Insightful research has been done about the challenges that immigrants face in the United States,252 but the underlying assumption for much of that research is that immigrants have access to work, albeit often under harsh and dangerous conditions. Without access to work and its income streams, immigrants and their families may be in more dire straits than previously considered, and the human welfare consequences of this are significant.

Flowing from this, governments should seriously consider expanding public benefits to immigrants, especially during economic crises. In March 2020, in response to COVID-19, Congress passed the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act"). 253 The $2.2 trillion Act offered generous aid to many, including expanded unemployment benefits for workers,254 direct stimulus payments to individuals,255 forgivable loans to businesses, 256 a moratorium on eviction and foreclosures,2 funding for the healthcare industry,258 and funding for state and local governments.259 Subsequent laws extended and expanded these benefits.20

One group that was largely left out of these crucial aid distributions were foreign-born individuals living in the United States who do not have citizenship. Some of the aid exclusions targeted undocumented immigrants by requiring proof of lawful immigration status as a prerequisite for receiving aid-for example, the federal supplemental unemployment benefits.26I Other aid exclusions targeted undocumented immigrants but also swept up immigrants with lawful immigration status.262 For example, the direct stimulus payments were not granted to any taxpayers who filed with individual tax identification numbers ("ITINs"), instead of Social Security Numbers ("SSNs").263 Though undocumented immigrants are eligible to obtain ITINs, other immigrants with lawful immigration status also use ITINs, including foreign nationals who are students, professors, or researchers living in the United States but do not qualify for SSNs, or dependents and spouses of citizens or lawful permanent residents who similarly do not qualify for SSNs.264 Significantly, the stimulus payment exclusion also applied to family members who filed jointly with an ITIN taxpayer, even if those family members had SSNs.25 The Migration Policy Institute estimates that about 14.4 million people were excluded from stimulus payments on these grounds.266

Similarly, provisions in the CARES Act that expanded Medicaid benefits to the uninsured to cover the testing and treatment of COVID-19 excluded undocumented individuals and many foreign-born individuals with lawful status, including those with green cards who had not met five-year eligibility requirements, Deferred Action for Childhood Arrivals ("DACA") beneficiaries, and individuals with Temporary Protected Status. 267 When COVID-19 vaccines first became available, there were even debates about whether proof of lawful immigration status should be required to receive the vaccine.21 When asked if undocumented workers at a local meatpacking facility would be vaccinated as part of the state's vaccination efforts, Governor Pete Ricketts of Nebraska responded, "You're supposed to be a legal resident of the country to be able to be working in those plants, so I do not expect that illegal immigrants will be part of the vaccine with that program."219 After outcry ensued, Rickett's communications director clarified that undocumented immigrants would receive vaccines, but that the state would prioritize citizens and legal residents. 270

The policy reasons offered for these COVID-era restrictions are familiar in debates about immigrant access to public benefits generally. Some policymakers wanted to prioritize scarce resources for American citizens or those with lawful, more long-term connections to the United States.271 Other policymakers took a more negative approach, not wanting to "reward" those who violated United States immigration laws with public benefits or to be a "pull factor" to encourage immigration violations by others.272 But our results show that immigrants experienced an extraordinarily harsh labor market during COVID-19, harsh even as compared with past economic crises. Thus, governments at the federal and sub-federal levels would be well-advised to extend benefits, without regard for immigration status, when economic conditions mimic those experienced during the pandemic.

#### Establishing occupational safety regulations, research, and outreach initiatives solves AND alt causes thump

Ahmad 1AC Baghdadi 24 – Assistant Professor in the Department of Civil and Environmental Engineering at Umm al-Qura University. “Navigating occupational safety and health challenges in sustainable infrastructure projects: a comprehensive review,” 2024, Frontiers in Built Environment, vol. 10.

Infrastructure projects play a crucial role in improving societal well-being by facilitating access to essential systems, services, and utilities necessary for economic activities. However, the nature of these projects presents significant challenges and threats that can result in serious injuries to personnel and contractors, thereby necessitating effective management to prevent and mitigate such risks (Prochazkova and Prochazka, 2014). Unlike many other industries where project staff may not need to be present on-site at all times (Alaloul et al., 2020), all workers and technical engineers involved in infrastructure projects are required to work on-site, either to carry out operations or ensure project completion according to specifications (Balkhyour, Ahmad and Rehan, 2019). Therefore, the ability to manage unforeseen circumstances is imperative.

Construction and infrastructure projects encounter similar risks. In contrast, infrastructure projects often face additional challenges and safety issues that are uncontrollable, such as those related to OSH concerns, which is related to third-party public safety (Campbell, 2008). Infrastructure construction sites are perceived as inherently risky environments characterised by unstructured conditions, inadequate facilities, congested workspaces, and exposure to adverse weather conditions Eppenberger and Haupt, 2003). Therefore, ensuring the safety of workers and the general public is paramount in such projects.

Challenges to OSH in infrastructure projects are generally intertwined with construction challenges (Campbell, 2008), which is why prioritising infrastructure OSH is imperative for stakeholders, including owners, consultants, contractors, governments, and project participants (Reid, 2009). Continuously improving OSH conditions is essential for all countries, with an emphasis on enhancing the risk assessment process and the effectiveness of risk elimination or reduction decisions (Cagno et al., 2001).

Various factors contribute to the heightened risks and vulnerabilities of OSH in infrastructure projects compared to other types of construction projects. Such factors include construction methods, use of heavy equipment, workers’ casual attitudes towards safety, inadequate leadership, and limited client and project management involvement in OSH (Laryea, 2010). Furthermore, accidents affect not only the individuals involved, but also the project parameters, leading to delays and loss of productivity (Chileshe and Dzisi, 2012; Saad, 2016) emphasised that poor safety performance results in increased overall OSH expenses. This study focused on identifying the barriers and challenges to OSH in infrastructure projects. Contextual factors, which are often viewed as spin-offs of barriers, encompass variables that are indirectly related to OSH interventions but significantly influence their success (Stolk et al., 2012; Micheli et al., 2018). Evaluating OSH in infrastructure projects becomes challenging if these barriers are not addressed (Abu Aisheh et al., 2021).

Worksite incidents often occur due to failure to recognise or address inherently dangerous conditions, negligence, or disregard for safety protocols (Zerguine et al., 2016). Inadequate personal protective equipment (PPE), lack of safety training, absence of well-structured safety management systems and insufficient supervision also contribute to safety hazards in infrastructure projects (Hamid et al., 2008; Teo et al., 2008; Priyadarshani et al., 2013; Nawi et al., 2016).

Workers’ negligence, inability to follow job processes, high-level work, unsafe working conditions, poor site management, lack of skill and attitude towards safety all contribute to safety challenges in infrastructure projects (Ammad et al., 2020). Accidents are also attributed to a lack of safety awareness, educational training, company insurance and practical guidance, as well as unregulated activity and insufficient equipment (Enshassi et al., 2008).

A lack of safety training and policies are significant barriers to safety implementation in infrastructure projects (Saad, 2016). Safety training is vital for accident prevention and reduction (Yiu et al., 2018). Insufficient safety awareness and understanding among workers lead to unsafe behaviours and practices (Chileshe and Dzisi, 2012; Sobral and Soares, 2019). Thus, effective safety communication between managers and workers is crucial for safety management (Hanafi, 2018). Communication difficulties, including linguistic, religious, and cultural barriers, may hinder safety efforts on worksites (Mouleeswaran, 2014). Management’s inconsistent OSH behaviour, inadequate information and communication, and prioritisation of production over safety are the main barriers to safety implementation (Garnica and Barriga, 2018). The four key challenges to OSH implementation are an uncomfortable work environment, lack of safety awareness, absence of safety management programmes and industry norms discouraging safety programmes (Buniya et al., 2021). Meanwhile, factors such as poor project preparation, financial constraints, inadequate data, lack of emergency plans, hazardous conditions and overall project constraints further exacerbate the safety challenges in infrastructure projects, especially in developing countries (Nawaz et al., 2020)

Risky work environments, limited equipment accessibility, social isolation and individual obligations during the workday are significant concerns that affect safety performance (Pamidimukkala and Kermanshachi, 2021). Tight project schedules add pressure and stress, contributing to health and safety hazards and reduced productivity (Kartam, Flood and Koushki, 2000). Perceived OSH challenges include costs, lack of management commitment, inadequate safety culture, resource shortages, lack of enforcement, training deficiencies and lack of understanding of development (Dugolli, 2021). Poor data management makes estimating risk impact and taking corrective measures difficult (Khan, 2013; Revathi K et al., 2017). Alcohol consumption at work increases the risk of injury for drinkers and others, underscoring the importance of safety awareness and education (Meliá and Becerril, 2009; Arezes and Bizarro, 2011; Manjula and De Silva, 2014). Safety knowledge is crucial for promoting safety practices and behaviours (Manjula and De Silva, 2014).

A lack of safety regulations, procedures, standards, and effective communication of safety standards hinder safety programmes (Aksorn and Hadikusumo, 2008). Company culture plays a significant role in employee safety; a lack of commitment to safety and failure to follow safety regulations contribute to deficiencies in safety (Zhang and Gao, 2012). Workers’ failure to use PPE correctly is attributed to ignorance, negligence, apathy, and excessive trust, thereby underscoring the importance of safety awareness and training (Tan and Razak, 2014). Insufficient safety regulations, procedures, and standards, coupled with ineffective communication, further hinder safety efforts (Aksorn and Hadikusumo, 2008; Mahmoudi et al., 2014).

Table 1 presents a comprehensive compilation of the OSH challenges encountered in infrastructure projects, classified into distinct categories: Organisational factors; resource and infrastructure factors; legislative and regulatory factors; human factors; environmental and external factors; safety practices and procedures. Within each category, specific barriers identified from the literature review are delineated, along with corresponding references. This systematic categorisation facilitated a structured comprehension of the multifaceted challenges that are inherently present in ensuring OSH compliance within infrastructure projects.In infrastructure projects, OSH challenges are intricate and encompass various factors that significantly influence safety outcomes and project success. Understanding these challenges from organisational dynamics to regulatory frameworks and external factors is crucial. This discussion aimed to dissect different categories and factors of OSH challenges, emphasising those with the most impact and their implications for project stakeholders. Doing so enabled us to deepen our understanding of OSH management in infrastructure projects and identify areas for targeted interventions to improve safety outcomes and project performance.

• Most significant category and factors:

- Organisational factors: Our findings highlight the critical role of organisational factors, such as management commitment, resource allocation, safety culture and effective safety management practices, in ensuring worker wellbeing and project success (Nawaz et al., 2020; Al-Mhdawi et al., 2024). Strong commitment from top management is essential for fostering a safety-first culture and ensuring adequate resource provision for safe work practices (Nawaz et al., 2020; Al-Mhdawi et al., 2024). Conversely, a weak safety culture and lack of worker engagement present significant barriers to effective safety management (Nawaz et al., 2020; Al-Mhdawi et al., 2024). Implementing robust safety management systems, including planning, training, and monitoring, is vital for mitigating health and safety risks (Nawaz et al., 2020; Al-Mhdawi et al., 2024). Failures in safety management practices contribute to unsafe work conditions and undermine safety efforts (Nawaz et al., 2020; Al-Mhdawi et al., 2024), and inadequate planning and communication among stakeholders can further exacerbate safety challenges Nawaz et al., 2020).

- Legislative and regulatory factors: Adhering to OSH regulations is crucial for maintaining a safe work environment and upholding ethical standards in infrastructure projects (Nordengen and Roux, 2013). Non-compliance can lead to severe repercussions, underscoring the need for a robust regulatory framework and a culture of safety compliance in the industry Nordengen and Roux, 2013). Effective legislation, enforcement and awareness of safety requirements are essential for promoting safe work practices and ensuring stakeholders’ accountability (Nordengen and Roux, 2013). Compliance with OSH regulations is indispensable for meeting legal obligations, minimising le-gal liabilities and fostering a safety culture within infrastructure projects (Nordengen and Roux, 2013).

• Least significant category and factors:

- Environmental and external factors: Environmental and external factors are important, yet their direct impact on safety outcomes in infrastructure projects is perceived as less significant than that of organisational and legislative factors (McDonnell and Chung, 2002; Nekhoroshkov and Nekhoroshkov, 2018; Abolelmagd et al., 2023). However, proactive risk management remains crucial for addressing challenges and ensure project success (McDonnell and Chung, 2002; Nekhoroshkov and Nekhoroshkov, 2018; Abolelmagd et al., 2023). While environmental factors such as adverse weather conditions and regulatory changes can introduce complexities and risks, they are often beyond the direct control of project stakeholders (McDonnell and Chung, 2002; Nekhoroshkov and Nekhoroshkov, 2018; Abolelmagd et al., 2023). Effective risk management strategies and contingency planning can help mitigate their impact on safety and overall project performance (McDonnell and Chung, 2002; Nekhoroshkov and Nekhoroshkov, 2018; Abolelmagd et al., 2023).

- Safety practice and procedure factors: Safety practices and procedures are vital for creating a safe work environment. However, their influence on safety outcomes is considered relatively less significant than that of organisational and legislative factors (Nawaz et al., 2020; Bolsherotov, 2021; Al-Mhdawi et al., 2024). The effectiveness of safety practices depends on the support and compliance established at higher organisational and regulatory levels (Nawaz et al., 2020; Bolsherotov, 2021; Al-Mhdawi et al., 2024). Without robust organisational support and adherence to regulatory requirements, safety protocols may not be adequately implemented or enforced, limiting their direct impact on safety outcomes (Nawaz et al., 2020; Al-Mhdawi et al., 2024). Safety practices and procedures represent the implementation tier of safety management systems, and their efficacy is contingent upon support from organisational and regulatory levels (Nawaz et al., 2020; Al-Mhdawi et al., 2024).

4 Case studies and comparative analysis

Infrastructure projects and other construction ventures face distinct OSH challenges due to differences in scale, complexity, duration and impact on public safety and the environment. Recognising these variations is crucial for implementing effective safety management practices that address the specific hazards and regulatory requirements associated with each project type (Baniassadi et al., 2018; Greiman and Sclar, 2019; Indrayana and Suraji, 2022). Four case studies are represented, to illustrate the significant differences in OSH challenges between infrastructure projects and other forms of construction.

4.1 Infrastructure projects

4.1.1 Big Dig tunnel project (Boston, Massachusetts, USA)

• OSH challenges: The extensive scale and complexity of the Big Dig project in Boston introduced significant safety challenges, with workers encountering risks associated with confined spaces, underground utility handling and coordination with multiple stakeholders. Notably, the threat of tunnel collapses posed a considerable risk, exemplified by incidents such as the 2006 ceiling panel collapse, resulting in a motorist fatality (Albee, 1991).

• Key differences: Infrastructure projects such as the Big Dig involve specialised construction techniques and intricate underground work, such as tunnelling and bridge construction, necessitating tailored safety measures and equipment (Albee, 1991; Welsh, 1999).

4.1.2 Channel Tunnel (Eurotunnel)

• OSH challenges: The construction of the Channel Tunnel between the UK and France presented unique safety challenges due to its underwater nature. Workers navigated the underwater conditions, managed compressed air environments and prevented flooding during the construction process (Welsh, 1999).

• Key differences: Underwater or subsurface construction projects such as the Channel Tunnel pose distinct hazards related to water pressure and diving operations, requiring specialised expertise and equipment (Anner et al., 2013; Gueorguiev, 2019; Li et al., 2021).

4.2 Construction projects

4.2.1 Rana Plaza building collapse (Dhaka, Bangladesh)

• OSH challenges: The Rana Plaza disaster highlighted common safety issues in various construction contexts, such as inadequate building codes, poor structural integrity and unsafe working conditions. Workers, particularly in garment factories, faced risks such as overcrowding, absence of fire exits and structural deficiencies (Hossain, 2019; Trebilcock, 2020; Grier et al., 2023; Rehman et al., 2023).

• Key differences: Infrastructure projects focus on challenges related to scale and complexity, whereas other construction forms prioritise different safety aspects, such as fire safety and building integrity, necessitating tailored safety measures (Rudnik, 2018; Chen et al., 2022).

4.2.2 Grenfell Tower fire (London, UK)

• OSH challenges: The Grenfell Tower fire exposed systemic failures in fire safety, building regulations and construction practices. Issues such as inadequate fire safety pro-visions and confusing building regulations contributed to the tragic outcome (Mitchener, 2018; Chen et al., 2019; Ewen, 2023).

• Key differences: Residential construction projects such as Grenfell Tower prioritise fire safety and evacuation procedures, while infrastructure projects may emphasise hazards such as structural stability and environmental impact (Baniassadi et al., 2018; Indrayana and Suraji, 2022).

4.3 Comparative analysis

• Scale and complexity: Infrastructure projects typically involve larger scales and complexities due to their extensive nature, encompassing structures such as bridges, highways, airports and tunnels. Thus, managing safety across vast areas and intricate structures presents unique challenges (Masrom et al., 2015; Ayat et al., 2023). In contrast, other construction projects vary in size and complexity, with more standardised processes and less extensive spatial requirements (Dardiri et al., 2017).

• Workforce skills and training: Infrastructure projects demand a highly specialised workforce with expertise in various engineering disciplines, requiring training in specific safety protocols. Other construction projects may have a more generalised workforce with training focused on standard construction safety practices (Misra and Mohanty, 2021; Ahmed, 2023).

• Duration and timeline: Infrastructure projects typically have longer durations, which is why the possibility of accidents may increase over time. Other construction projects may vary in duration, affecting the intensity and duration of the OSH challenges faced by workers (Jones, Caudle and Pappworth, 1996).

• Regulatory compliance: Infrastructure projects are subject to complex regulations due to their significant impact on public safety and the environment. Compliance with OSH regulations, environmental regulations and industry standards adds complexity to safety management (Dimitrova et al., 2014; Mwelu et al., 2018).

• Public safety concerns: Infrastructure projects prioritise public safety because they have a direct impact on public wellbeing, involving hazards such as working near live traffic. Other construction projects may entail fewer public safety risks (Chi et al., 2016).

• Environmental impact: Infrastructure projects have significant environmental implications, requiring compliance with environmental regulations. While all construction projects must consider environmental impact, the scale and scope of these projects may vary (Alamgir et al., 2018; Saldaña-Márquez et al., 2019). Understanding these differences is essential for implementing tailored safety measures that address the unique challenges in each type of construction project.

5 Conclusion and recommendations

Infrastructure projects are indispensable for societal advancement, but strict adherence to OSH regulations to safeguard both individuals and property is necessary for such projects to be executed successfully. These projects, which are characterised by complexity and hazards, can give rise to hazardous environments and adverse environmental impacts if safety measures are not prioritised (Gámez-García et al., 2019). Inadequate OSH practices contribute significantly to the rate of injuries, fatalities, and property damage in construction projects, particularly in infrastructure projects. Infrastructure projects have long been associated with risks and incidents, resulting in project delays, escalated costs, diminished productivity, and negative reputational consequences (Sathvik et al., 2023). Hence, ensuring OSH compliance is essential to avoid accidents. Identifying impediments to OSH in the infrastructure sector is critical so that governments, organisations and policymakers can devise and implement effective interventions gradually to ameliorate these barriers and enhance OSH performance. This research identified major hurdles that need to be addressed to improve OSH performance in the infrastructure sector. The findings of this review can serve as a basis for further exploration of the identified challenges. This study is significant because it elucidates the OSH challenges and barriers in infrastructure projects, provides insights to improve OSH and educates professionals in the field. Addressing infrastructure challenges is imperative because they affect not only project deliverables, but also the safety of the involved personnel. In addition, the findings contribute to infrastructure safety by offering theoretical insights and a comprehensive understanding of stakeholder challenges during infrastructure development.

<<THEIR CARD ENDS>>

Organisational and legislative factors are the most significant categories and factors influencing OSH in infrastructure projects. Their impact on safety culture, resource allocation, compliance and accountability highlight their significance in ensuring the wellbeing of workers and the success of projects. Addressing organisational and legislative factors through proactive measures and robust safety management practices is essential for promoting a safe work environment, minimising risks, and achieving positive outcomes in infrastructure projects. These include:

• Design and implement safety protocols specifically tailored to address the distinct risks and complexities inherent in infrastructure projects, with factors such as project scale, environmental considerations and resource limitations taken into consideration.

• It is crucial to prioritize the early detection, evaluation, and reduction of risks at every phase of infrastructure projects. This proactive approach ensures that potential dangers to both workers and the environment are minimized effectively. By addressing risks before they escalate, we can safeguard the health and safety of personnel and protect the natural surroundings throughout the project’s duration.

• Advocate for the establishment and enforcement of robust regulatory frameworks that effectively uphold safety standards and ensure compliance with OSHregulations in infrastructure development endeavours.

• It is essential to foster cooperation between different stakeholders involved in infrastructure projects, such as government bodies, contractors, engineers, and safety experts. This collaboration should aim to facilitate the exchange of best practices, insights gained from past experiences, and innovative approaches. By sharing this valuable information, all parties can work together more effectively to tackle occupational safety and health (OSH) challenges that arise during infrastructure projects.

• Dedicate sufficient resources to ongoing research with the specific goal of improving occupational safety and health (OSH) practices, technologies, and methodologies. This research should be specially designed to meet the distinct needs of infrastructure projects. By investing in such targeted research, we can develop and refine strategies and tools that are directly applicable to the challenges faced in these complex environments. This commitment to innovation will help ensure that OSH measures keep pace with the evolving demands of infrastructure development and continue to protect workers effectively.

• Offer specialised training programmes and educational initiatives to equip workers with the skills, knowledge and awareness required to identify and mitigate OSH risks effectively.

• Cultivate a culture of safety across all organisational levels, emphasising the importance of OSH practices, fostering open communication and empowering workers to actively engage in safety initiatives.

• Establish robust mechanisms for monitoring and evaluating the effectiveness of implemented safety measures, identifying areas for improvement, and ensuring the continuous enhancement of OSH performance in infrastructure projects.

• Involve local communities in the planning and execution of infrastructure projects to address safety concerns, environmental impacts, and community wellbeing, thereby fostering transparency and trust.

• Embrace innovative technologies such as drones, sensors, and virtual reality simulations to enhance the safety monitoring, risk assessment and decision-making processes in infrastructure projects.

#### A legalization program and restrictions on deportation solve advantage 2

Rappaport 26 [Nolan Rappaport, Executive Branch Immigration Law Expert in the House Judiciary Committee, “Should the US limit deportations only to dangerous criminals?,” The Hill, 01/08/28, <https://thehill.com/opinion/immigration/5677426-immigration-laws-presidential-power/>] \*\*we don’t endorse language used in small text of card

On the other hand, given that there are more than 14 million in the country illegally, it is possible that some — or even many — of them could help to meet our employment needs if they had authorization to work here. And they could be identified with a points-system like the ones used in Canada and Australia.

A legalization program would provide the work authorization they need; however, with one exception, that is not a realistic solution. It has been 40 years since the Immigration Reform and Control Act of 1986 established the last large legalization program. But a legalization program for Deferred Action for Childhood Arrivals (DACA) participants might be possible.

Trump initiated talks with Democrats on such a program during his first term in office, and the proposal he made can be modified to attract the bipartisan support needed to move it through the legislative process. If that approach fails, a modified DACA program should be considered that would provide temporary lawful status and employment authorization to adult immigrants who can meet America’s employment needs. The number of participants could be limited to make the proposal acceptable to Republicans by restricting participation to only the most highly qualified immigrants.

The fact that the administration doesn’t have the authority to shield noncriminal aliens from deportation doesn’t mean that it can’t be done. Congress has the authority to do it. But that isn’t likely to happen. If Congress had wanted deportations to be limited to criminal aliens who pose a threat to national security or public safety, it would have written its laws that way to begin with.

### 1NC---DA

#### Powerful opponents respond to the plan’s pro-worker ruling by demanding defunding and rollback

Madland 21 [David; May 15; Senior Fellow and Strategic Director of the American Worker Project at the Center for American Progress; Re-Union: How Bold Labor Reforms Can Repair, Revitalize, and Reunite the United States; “Creating the New System,” p. 158]

Importantly, these factors do not need to stay aligned for very long in order for reform policy to have a lasting impact. If the new labor system is ever able to become law, it is likely that powerful opponents would seek to weaken or undermine its implementation through a variety of strategies, just as they did when the NLRA was passed in 1935. Administrative budgets and regulations would be heavily contested, political supporters targeted, lawsuits filed, studies and news reports on the policy’s supposed harms produced, and new “reform” legislation introduced. These efforts would likely have significant financial backing and after some time would probably succeed in at least watering down the original law. The current pro-business makeup of the courts makes it seem very likely that at least some elements of the new labor system would be undermined.56

#### That causes congressional curbing that obliterates enforcement and independence

Bridge 24 [Dave; 2024; PhD, Associate Professor of Political Science at Baylor University; Pushback: The Political Fallout of Unpopular Supreme Court Decisions, “Theory,” Ch. 2]

I argue that in certain instances, instead of resolving the internal tension in the coalition, the court exacerbates it. That is, factions within the majority party who feel they have suffered injustice will not always blindly accept judicial rulings that go against their secondary preferences. They might push back against the court—both at its rulings and at its institutional independence. Moreover, dissatisfied members of the majority coalition may be joined by opportunistic members of the minority coalition. This cross-partisan combination may even form a majority.

This is key—when the cross-partisan alliance constitutes a majority, it can effectively push back against judicial decisions. While the regime politics paradigm has done much to dispel the myth of the countermajoritarian difficulty, the Supreme Court can still behave in countermajoritarian ways. The majority, however, might be different from our traditional notions. In other words, in some cases, we must look beyond using partisan labels as a proxy for political preferences. Once again: not all Democrats (or Republicans) are the same. And there are instances in which Democrats and Republicans (legislators and/or voters) might ally with each other to form a cross-partisan majority intent on curtailing the judiciary and the ideas it espouses. I discuss possible consequences in detail below, but in short, cross-partisan majorities might prove successful in delaying or thwarting the implementation of judicial decisions; curbing the court; and/ or shifting the electorate so as to bring a new majority coalition into power.

All told, the court is not exempt from reflecting and responding to the developmental challenge of factional in- fighting. When the court upholds the preferences of one faction, the losing factions become understandably upset. And they act on those feelings. Put simply, when the Supreme Court “chooses sides,” it does not mend the coalition’s fault lines; rather, the court awakens the fault lines. Ultimately, the court’s actions can lead, ironically, to the demise of its own institutional authority and its own affiliated coalition.

<<YOU KNOW THE DRILL: TEXT CONDENSED, NONE OMITTED>>

Expectations In this section, I use the regime politics assumptions, political party assumptions, and theory to generate predictions regarding cross-partisan countermajoritarian decisions.13 Here, it is helpful to describe two types of majorities that the Supreme Court could counter. I derive terms from Key.14 First, the “majority in the government” comprises members of Congress from both parties who are dissatisfied with the court. Second, the “majority in the electorate” comprises dissatisfied voters (again, from both parties). Now, nearly all judicial decisions on constitutional issues engender some reaction from dissatisfied factions. But the reaction is more likely to have a significant effect—an effective pushback—if a national majority (either in the government or in the electorate) comes together to oppose the court. Granted, it is tough to measure these kinds of majorities with complete precision.15 Still, were a cross-partisan majority in the government and/or majority in the electorate to emerge, we might expect some observable qualities. I discuss those qualities below and use the introductory chapter’s example of the 1950s communism cases as an example to show how the expectations play out in actual political development. Details of the cases are interesting; but more important than their individual contents was the collective result.16 In the first set of cases in 1956–57, the Warren Court repeatedly ruled in favor of communists’ rights. It had declared that public officials could only prosecute communists based on acts (or plans to act) and not on political beliefs. Legislatures, administrative bureaucracies, and public service professions had to clear high bars to, respectively, investigate, fire, and deny employment access to suspected communists. Thus, the public’s (and Congress’s) interpretation of the 1956–1957 decisions was that “fourteen communist leaders had been freed, two suspected communists apparently had been allowed to practice law … and state and congressional investigations had been frustrated.”17 Expectation #1: Surface-level Indicators To start, I offer two “surface-level” indicators of a cross- partisan countermajoritarian Supreme Court decision. While both indicators are intuitive expectations, I qualify their effectiveness in measuring countermajoritarianism. First, perhaps the most obvious indicator of a countermajoritarian decision would be public opinion polls showing that a national majority opposes the ruling. If the court’s decision reflects the sec ondary preferences of the dominant coalition’s lead faction, and if a representative sample of the national majority nevertheless opposes the decision, then we should suspect a cross-partisan majority. Public opinion polls from the 1950s show that most Americans probably would have disagreed with the court’s decisions on communism.18 The National Opinion Research Center (NORC) conducted a national poll in 1954 entitled “Communism, Conformity, and Civil Liberties.” It found that 75 percent had a “very favorable” or “favor able” view of “committees investigating communism” (e.g., the House on Un- American Activities Committee). When asked about “some of the bad things (if any) that you feel these committees have done,” 60 percent gave the nonlisted response “not putting enough communists in jail.” Only 2 percent thought the committees created “a general atmosphere of fear and suspicion.” Some of the poll’s questions asked about issues that were raised in Supreme Court cases: 94 percent of respondents approved of universities firing communists (Slochower v. Board of Education, 1956); 72 percent disapproved of communists making public speeches (Pennsylvania v. Nelson, 1956); and 60 percent believed communists should be jailed (Yates v. United States, 1957).19 The problem with relying solely on public opinion polls is that the court’s decision itself may temporarily sway the public. Thus, we might say that the anticommunism majority was not organic; instead, it was a reactionary result of the court’s rulings on the issue. This objection is tough to overcome because it is hard to identify why respondents believe what they do. That said, the fact that the NORC poll was taken before 1956–57 might give it some independence from the court’s decisions.20 Second, I look for claims by members of the minority party and the nonleading faction(s) of the dominant party that the court has acted in a countermajoritarian fashion or that the justices are unaccountable. If these members of Congress claim a countermajoritarian difficulty or an accountability problem, perhaps there is one. After the communism cases, one Republican member of Congress fumed against “the extreme liberal wing of the United States Supreme Court,” which had struck down laws favored by the majority.21 Southern Democrats, too, relayed concerns, such as James Davis’s (D- GA) claim that the court was like a king who was “independent of the will of a Nation.”22 In total, these two surface- level indicators are just that: surface-level. They are inconclusive and have their respective drawbacks. However, they are intuitive checks for a reason. In fact, they are likely the first indicators we would want to see before moving into the two more complicated expectations below. Public opinion polls and congressional rhetoric are not sufficient to identify countermajoritarianism, but when combined with other observable effects, they help triangulate on cross- partisan countermajoritarian Supreme Court decisions. They are informative pieces of the observable effects puzzle. Therefore, I look for public opinion and legislators’ rhetoric and the following expectations. Expectation #2: Nonleading Faction Response When the Supreme Court rules in favor of the secondary preferences of the dominant party’s lead faction, then we might expect nonleading factions to try to push back. Going beyond theatrical rhetoric denouncing the decision as countermajoritarian, members of Congress have another powerful weapon in their arsenal: court-curbing proposals. These “attacks” aim to undermine judicial authority and independence. If dissatisfied with the court, nonleading faction members can introduce attacks that seek to alter the court and its opinions. The appendix to this book discusses the extension of a database that registers thousands of court-curbing proposals.23 The database provides clues (i.e., home state and partisan affiliation) about each attacker’s factional affiliation. Note that outside a few high-profile examples (e.g., Sixteenth Amendment), court-curbing legislation rarely passes or works. Nevertheless, attacks against the Supreme Court indicate a possibly countermajoritarian court. Indeed, for the purposes of identifying such rulings, it does not matter whether a court-curbing bill passes. Its mere introduction suggests that its sponsor is unhappy with the judiciary—precisely the type of information I seek to discover.24 In fact, members of Congress likely know that attacks are practically futile. They introduce them to send important signals to various targets. We do not know the full extent of the reasons behind various attacks, but if combined with other cross-partisan countermajoritarian indicators, then they add another piece to the observable effects puzzle. Obviously, they are a position-taking device that allows members of Congress to grandstand for constituents.25 But if linked to other behavior, then maybe legislators attack to say something to the court (“back off this issue”), copartisans (“this is an ideological fault line within the coalition”), or the opposition party (“there is a cross-partisan alliance opportunity”). Lastly, dissatisfied nonleading faction members of the majority coalition have a final option available: switching parties. This is an extreme measure, and we should not expect to see it often. Supreme Court decisions alone are unlikely to cause such a defection, but they might trigger, or add to the mounting frustration behind, a polit ical figure deciding to move to the opposition party. One example arises from the communism cases. Ronald Reagan’s feelings towards radical leadership within the Screen Actors Guild played a role in him switching to the GOP.26 By the mid- 1950s, Reagan held strong anticommunism stances that aligned with the Republican Party.27 T hough infrequent, even a handful of switches might imply that the court has upset some element(s) of the dominant coalition. If combined with Expectation #3, there is reason to suspect a cross-partisan majority. Expectation #3: Minority Party Response Like members of the nonleading faction of the dominant party, we should also expect members of the minority party to alter their behavior. For starters, they too can propose court-curbing bills, such as William Jenner (R- IN) and John Butler’s (R- MD) cosponsored bill seeking to strip the court of jurisdiction over cases involving communists’ rights. On a grander scale, the minority party could also move to take advantage of the apparent fault line in the dominant coalition. If conscious of the opportunity, the minority party can attract wavering members of the dominant party. The “issue evolution” strand of the political parties literature explains how minority parties can use newly arising issues to enlarge their coalition.28 To attract new partisans, minority parties must provide early policy cues—position-taking stances that signal the electorate as to how their party views a new political issue. In addition to providing a clearer sense of the parties’ stances, politicians also keep the issue on the agenda, giving it a higher likelihood of being more salient. In time, the consistent blitz of position-taking signals may cause voters from one (or more) faction of the dominant coalition to move to the opposition coalition. These signals may take many forms: “policy proposals, conventions, speeches, campaign ads, public demonstrations, letters to the editor, talk shows, and so on.”29 Court-curbing attacks certainly qualify as an appropriate, and understudied, issue evolution mechanism, especially since members of Congress are “the most consistently important and recognizable source of partisan cues.”30 I do not mean to say that attacks are the only—or the most important—cue. Indeed, I look to other signaling devices, such as speeches by lawmakers, party plat forms, internal party strategy memos, and presidential addresses. In all of these, we would expect to see the minority party changing its focus, rhetoric, and strategy on issues raised by the Supreme Court. Put simply, we would expect the minority party to recognize a split in the opposition party, and for the minority party to try to widen that split to win more voters. Regarding communism, some Republicans doggedly focused on the court’s decisions. For example, Craig Hosmer (R- CA) candidly announced that the GOP leadership “instructed [members of Congress] . . . to press vigorously for the enactment of the [court- curbing] legislation before adjournment.”31 Admittedly, this could have been a policy concern rather than a coalition- building effort. In fact, there was not much of an attempt to enlarge the GOP after the communism decisions. Because court-curbing proposals had their intended effect, Republicans had no opportunity to push the communism issue or formally curb the court. Throughout the book, I return to the interplay of court-curbing and judicial responses.

<<PARAGRAPH INTEGRITY RESUMES>>

Pushback

If a cross-partisan majority opposes a Supreme Court ruling, then that majority may have recourse. Again, any court decision that involves secondary preferences will lead to some factions being dissatisfied; and those factions, too, have recourse on their own. But when the coalition of objectors encompasses a cross-partisan majority, the options available to that alliance are more likely to have an effect than when a smaller minority faction opposes the court on its own. Even so, a cross-partisan majority alliance will face obstacles. Nonleading factions of the dominant party may not believe that a judicial decision warrants an alliance with the opposition party, or vice versa. Even if the parties are united, it is difficult to overturn a court ruling. Still, if the entire cross-partisan majority is so strongly opposed to the court that members of one party are willing to ally with those from another, then we should see some manifestations of that alliance. I present three different types of pushback, depending on the nature of the majority in the government or majority in the electorate.

1. Grassroots pushback. Local citizens and local decision-makers (e.g., sheriffs, school boards) undermine the court’s effectiveness. Supreme Court decisions go unenforced, or the extent of those decisions’ enforcement are limited by local communities who do not agree with the court’s opinion.32

2. Congressional pushback. The minority party reaches across the aisle to dissatisfied factions in the majority party to undermine the court’s judicial independence. The legislature introduces bills that target the court itself (e.g., restricting jurisdiction) or its rulings (e.g., overriding a judicial opinion). In addition, Congress need not explicitly target the judiciary. Instead, Congress can pass bills that scale back the implementation of a decision.33

3. Electoral pushback.34 The most dramatic and impactful response would be if dissatisfied factional members of the majority party band together with the minority party to form a new alliance that seeks to electorally displace the dominant coalition with which the court is affiliated. In this case, the minority party not only tries but succeeds to advertise the court ruling(s) in a way to reach out to new voters.35

#### Inadequate resourcing forces courts to deny data-protection cases because of complexity.

Haley ’20 [Thomas; October 1; Law Professor at the University of Virginia Law School; Washington Law Review, “Data Protection in Disarray,” vol. 95]

The Seventh Circuit may have said the quiet part out loud: "The standing rule reduces the workload of the federal judiciary...." (205) While literally true, that is neither an accepted nor acceptable justification for standing doctrine. (206) The existence of a "Case" or "Controversy" does not depend on how pleased the court will be to hear it. Article III does not give the judiciary the ability to set its caseload. And a dispute will be no less adversarial between the parties if it is the tenth hearing on a court's calendar rather than the first. Indeed, around the time that the Supreme Court threw standing jurisprudence for a loop in Clapper, it admonished that federal courts are obligated to hear cases falling within their jurisdiction. (207)

Yet the appeal of the standing dismissal to the federal judge is impossible to ignore. The massive and increasing caseload in the federal courts is well known. In the data-protection context, cases typically promise to be long and involved. Most arise from large-scale data breaches or inappropriate, indiscriminate data collection. As such, they are usually brought as class actions and implicate complex technical issues. One can certainly understand why overworked judges might be eager to get such cases off their dockets.

With that in mind, dismissal for lack of standing has a special appeal over other means of dispensing with a case: it is a non-merits dismissal. Even if erroneous or improperly motivated, a dismissal for lack of standing works relatively little injustice, as its effect is only to banish the suit to state court. Moreover, as the data show, state-law and common-law claims predominate in data-protection litigation--the majority of cases analyzed involved such claims, while fewer than half of cases asserted claims under federal law. Allowing state courts to deal with state-law claims is a hallmark feature of the federal system, CAFA notwithstanding.

The Northern District of Illinois' BIPA series of cases may proceed from this impulse. Most were brought initially in state court, then removed to federal court by defendants who seemed intent on challenging plaintiffs' right to bring suit at all. Confronted with the prospect of overseeing a lengthy, complicated class-action lawsuit brought by plaintiffs who did not want to be in federal court in the first place against defendants who appeared to be engaging in gamesmanship, the judges of the Northern District of Illinois may well have viewed dismissal for lack of standing as the best of all possible worlds.

The data are potentially consistent with this explanation. In particular, appellate courts have been significantly more solicitous of plaintiffs in data-protection cases, finding standing in 75% of cases, compared to only 51% of district courts. In data-breach cases, which likely present both the most technically complicated inquiries and the most diffuse harms, appellate courts upheld standing in 79% of cases, compared to a mere 41% of district court cases.

#### Data protection is key to existential up AND downsides of AI.

Sartor ’20 [Giovanni and Francesca Lagioia; June 2020; professor at Faculty of Law at the University of Bologna; Senior Research Fellow at the EUI; European Parliamentary Research Service, “The Impact of the General Data Protection Regulation (GDPR) on artificial intelligence,” no. 641.530]

The future emergence of a general artificial intelligence is already raising serious concerns. A general artificial intelligence system may improve itself at an exponential speed and quickly become superhuman; through its superior intelligence it may then acquire capacities beyond human control. 10 In relation to self-improving artificial intelligence, humanity may find itself in a condition of inferiority similar to that of animals in relation to humans. Some leading scientists and technologists (such as Steven Hawking, Elon Musk, and Bill Gates) have argued for the need to anticipate this existential risk, 11 adopting measures meant to prevent the creation of general artificial intelligence or to direct it towards human-friendly outcomes (e.g., by ensuring that it endorses human values and, more generally, that it adopts a benevolent attitude). Conversely, other scientists have looked favourably on the birth of an intelligence meant to overcome human capacities. In an AI system's ability to improve itself could lie the 'singularity' that will accelerate the development of science and technology, so as not only to solve current human problems (poverty, underdevelopment, etc.), but also to overcome the biological limits of human existence (illness, aging, etc.) and spread intelligence in the cosmos. 12

The risks related to the emergence of an 'artificial general intelligence' should not be underestimated: this is, on the contrary, a very serious problem that will pose challenges in the future. In fact, as much as scientists may disagree on whether and when 'artificial general intelligence,' will come into existence, most of them believe that this objective will be achieved within the end of this century. 13 In any case, it is too early to approach 'artificial general intelligence' at a policy level, since it lies decades ahead, and a broader experience with advanced AI is needed before we can understand both the extent and proximity of this risk, and the best ways to address it.

Conversely, 'artificial specialised intelligence' is already with us, and is quickly transforming economic, political, and social arrangements, as well as interactions between individuals and even their private lives. The increase in economic efficiency already is reality (see Figure 2), but AIprovides further opportunities: economic, social, and cultural development; energy sustainability; better health care; and the spread of knowledge. In the very recent White Paper by the European Commission14 it is indeed affirmed that AI.

will change our lives by improving healthcare (e.g. making diagnosis more precise, enabling better prevention of diseases), increasing the efficiency of farming, contributing to climate change mitigation and adaptation, improving the efficiency of production systems through predictive maintenance, increasing the security of Europeans, and in many other ways that we can only begin to imagine.

The opportunities offered by AI are accompanied by serious risks, including unemployment, inequality, discrimination, social exclusion, surveillance, and manipulation. It has indeed been claimed that AI should contribute to the realisation of individual and social interests, and that it should not be 'underused, thus creating opportunity costs, nor overused and misused, thus creating risks.' 15 In the just mentioned Commission's White paper, it is indeed observed that the deployment of AI

entails a number of potential risks, such as opaque decision-making, gender-based or other kinds of discrimination, intrusion in our private lives or being used for criminal purposes.

Because the need has been recognised to counter these risks, while preserving scientific research and the beneficial uses of AI, a number of initiatives have been undertaken in order to design an ethical and legal framework for 'human-centred AI.' Already in 2016, the White House Office of Science and Technology Policy (OSTP), the European Parliament's Committee on LegalAffairs, and, in the UK, the House of Commons'Science and Technology Committee released their initial reports on how to prepare for the future of AI16. Multiple expert committees have subsequently produced reports and policy documents. Among them, the High-Level Expert Group on artificial intelligence appointed by the European Commission, the expert group on AI in Society of the Organisation for Economic Co-operation and Development (OECD), and the select committee on artificial intelligence of the United Kingdom (UK) House of Lords.17

The Commission's White Paper affirms that two parallel policy objectives should be pursued and synergistically integrated. On the one hand research and deployment of AI should be promoted, so that the EU is competitive with the US and China. The policy framework setting out measures to align efforts at European, national and regional level should aim to mobilise resources

to achieve an 'ecosystem of excellence' along the entire value chain, starting in research and innovation, and to create the right incentives to accelerate the adoption of solutions based on AI, including by small and medium-sized enterprises (SMEs)

On the other hand, the deployment of AI technologies should be consistent with the EU fundamental rights and social values. This requires measures to create an 'ecosystem of trust,' which should provide citizens with 'the confidence to take up AI applications' and 'companies and public organisations with the legal certainty to innovate using AI'. This ecosystem

must ensure compliance with EU rules, including the rules protecting fundamental rights and consumers' rights, in particular for AI systems operated in the EU that pose a high risk.

It is important to stress that the two objectives of excellence in research, innovation and implementation, and of consistency with individual rights and social values are compatible, but distinct. On the one hand the most advanced AI applications could be deployed to the detriment of citizens' rights and social values; on the other hand the effective protection of citizens' from the risks resulting from abuses AI does not provide in itself the incentives that are needed to stimulate research and innovation and promote beneficial uses. This report will argue that GDPR [General Data Protection Regulation] can contribute to address abuses of AI, and that it can be implemented in ways that do not hinder its beneficial uses. It will not address the industrial and other policies that are needed to ensure the EU competitiveness in the AI domain.

### 1NC---T

#### “Substantially” means 33 percent

Maples 7 (Larry, “Pitfalls in Preserving Net Operating Losses”, The CPA Journal, 3-1, Lexis)

If a new loss corporation has substantial nonbusiness assets, the value of the old loss corporation must be reduced by the amount of the nonbusiness assets less liabilities attributable to those assets. "Substantial" is defined as one-third of total assets. This is a difficult provision to interpret. IRC section 382(1)(4) provides that a value reduction in the old loss corporation is required if, just after an ownership change, the new loss corporation has substantial nonbusiness assets. This language seems odd because the purpose of IRC section 382 is to prevent loss trafficking, so it would seem that the asset test ought to apply to the old loss corporation.

#### Violation---Immigrants only make up 20% of the workforce

#### It’s a voter for limits and ground---anything smaller could be any single person and skirts generics

### 1NC---CP

#### The American Federation of Labor and Congress of Industrial Organizations ought to condition an escalating series of strikes and disruptions of logistical activities on the United States federal government clarifying that the Immigration Reform and Control Act does not precede or repeal collective bargaining rights for workers in the United States.

#### Militant union activity is effective at pressuring federal adoption---solves the case and revitalizes militant labor activity

Kagan 25 [Marc Kagan, author of the book manuscript The Fall and Rise and Fall of NYC’s TWU Local 100, 1975–2009, currently being prepared for publication, “Unions Need to Mount a Militant Response to Trump’s Assault,” Jacobin, 4-6-2025, https://jacobin.com/2025/04/unions-trump-federal-workers-militancy]

Too many unions have responded to Donald Trump’s historic attacks on federal workers with little more than words. To beat back his anti-union assault, organized labor needs to break with decades of timidity.

In its statement responding to Donald Trump’s deunionization of most federal workers — voiding existing collective bargaining agreements, canceling their right to negotiate new ones, and eliminating automatic deduction of dues from workers’ paychecks — the International Union of Painters and Allied Trades at first seems to pull no punches. “This may be the biggest attack on the Labor Movement in American history,” it declares. Looking back, it faults the labor movement’s inadequate response in 1981 to Ronald Reagan’s firing of striking air traffic controllers. Then it lamely urges workers to “fight back.”

Regrettably, that inadequate reply to Trump’s authoritarian assault is far from uncommon. While objecting to federal deunionization, the statement of the National Nurses Union, which represents members at Department of Veterans Affairs (VA) hospitals, doesn’t even mention Trump. Nor does the United Food and Commercial Workers (UFCW) or the Plumbers and Pipefitters. You would search in vain for a statement from my old union, the Transport Workers Union (TWU). Meanwhile, TWU warned its large New York local not to use Trump’s name in any statement concerning federal policy, such as on cuts in transit funding.

With this cowardice, these unions are apparently leaving themselves room to kiss the ring later on. After all, there were unions in Benito Mussolini’s Italy — they just had to toe the line when the Fascist representative in the workplace or the government ministry snapped their fingers. Or perhaps unions are concerned about upsetting Trump supporters in their ranks. Certainly, unions need to be educating their pro-Trump members, but they can’t do that if they are too afraid to even mention the president’s name.

Other unions’ responses have been only marginally better. The AFL-CIO’s home page blames Trump for attacking federal workers’ bargaining rights but then only proposes that people call Congress to complain. Elsewhere, it writes, “now is the time to be even louder” — but suggests no other action. In a similar vein, AFSCME president Lee Saunders declares that his members “are prepared to fight.” RWDSU will “stand with federal workers . . . and we will not remain silent.” LIUNA members “will rise up together to defend our rights.” The IAM “will fight this attack on our nation’s heroes and continue to uplift our dedicated public servants”; it also boasts of filing two lawsuits. OPEIU “call[s] on Congress to take the action necessary to stymie this unilateral undermining of workers’ rights.” The Steelworkers don’t even offer rhetorical solidarity but merely point out that “this executive order undermines our federal institutions and invites true waste.”

So where is this “fight,” beyond lawsuits? After listening to my complaints about unions’ general lack of mobilization for a mid-March anti-cuts, anti-layoffs demonstration in New York City, one leader of a midsize international union told me most unions will remain firmly on the sidelines until the AFL itself issues a call to participate.

Fight . . . or Capitulate?

As other institutions of liberal democracy continue to shy from a real fight, unions — still the largest organized component of the US working class — are desperately needed. Yet in truth, rallying their members in the streets won’t be enough; for the labor “movement” to actually help stop Trumpism, it needs to be preparing now for political strikes in support of democratic as well as union rights, laws, and norms. Because Trump, Elon Musk, and their corporate and Christian nationalist supporters likely won’t be thwarted by lawsuits. And their first response to hundreds of thousands or even millions in the streets may very well be an even quicker tempo and more repression, not less.

What’s necessary, though, is unfortunately anathema to most American unions. For decades — at least since PATCO, if not before — they have practiced and refined policies of risk aversion. My New York City home is sometimes called a “union town,” but this spring marks the fiftieth anniversary of its municipal unions’ decision to capitulate, rather than fight, the advent of American neoliberalism alongside what David Harvey called “the construction of consent.”

In 1975, Gerald Ford, William Simon, and Alan Greenspan saw the city’s plea for federal loan guarantees as an opportunity to call down the curtain on the New Deal/Great Society era. Faced with austerity, wage freezes, and the layoffs of 20 percent of their members, union leaders meekly complied, setting the stage for similar concessions in auto and steel just a few years later. Then they ran to the state capitol begging for help from their own angry members canceling their union memberships. As one observer put it, forcing disgusted workers to pay dues “will help unions be more objective in dealing with employers and better able to pursue a more responsible course of action. . . . [It] will result in more statesmanship on the part of union leaders who are free from the fear of economic blackmail by their members.”

Undoubtedly those leaders rationalized their risk aversion: the fiscal crisis or the threat of Chrysler bankruptcy was surely just a temporary blip from which their unions would soon recover. Or the danger of a head-on challenge to the state and finance capital was too great. Those arguments prevailed over more militant ones urging a fight when unions were still relatively strong.

Today we know unions made a tragic miscalculation. Then, having chosen this path, they continued to acquiesce to neoliberalism year after year. A conciliatory mode of unionism became habitual, reinforced by structural incentives meant to temper their tone and actions and the power of the law. Unions embraced a culture of safety, passivity, and defensiveness. Even worse, leaders promoted successors with similar views; such was the process of Darwinian natural selection at union halls — in New York and across the country. That has allowed the steady drip, drip, drip of declining union numbers and power. Only a relative handful of unions and union locals have resisted this trend.

Today, with potentially far greater consequences, unions are practicing the policies they know all too well. The rationalizations are easy to make: It’s too bad what is happening to federal workers, but we are too weak to fight Trump. Better to keep our heads down, mitigate risk, minimize our losses, and hope to staunch the pain by electing Democrats in 2026 and 2028.

Or, as some have already, by filing lawsuits. There’s nothing wrong with demanding that Trump obey the law, but this dam is already leaking, and we should expect that soon it will be breached in many places as the Justice Department maneuvers to find friendlier courts. Then what?

A Program for Labor

Given the urgency of the moment, vital organizational tasks need to be pressed forward at the same time as escalating actions. Even well-intentioned top-down edicts will not muster the forces we need to oppose state power. Basic union-building work must proceed at triple time, such as intensive outreach to, education of, and support for, stewards or equivalent shop-floor union reps. That’s critical to spur the kind of discussions in the workplaces that can engage and activate members while neutralizing and then winning over 2024 Trump voters in the unions’ ranks.

This is just Organizing 101. Some unions already know how to do this, while others will hopefully learn, and learn quickly. The real question is volition: whether unions have the will to take the step from bread-and-butter economic issues to anti-Trump political ones, and from indecisiveness to militancy.

Unions need to provide multiple points of entry to political action, which include a way for every worker to step up: some very broad, others more militant, enabling the activist core to provide a spark that can draw others forward. Similarly, more militant or organized unions need to forge ahead, modeling the strategies and tactics that their less organized counterparts will also need to embrace. And more militant branches, locals, and workplaces will need to move faster than moribund national leaders may like, pulling them along and pressuring them to move from lip service to action.

In the present climate, mobilizing members, getting them in the streets in great numbers, and especially preparing for politically oriented walkouts and strikes that the government will deem illegal is very risky. As our activity intensifies, so will state repression. Union assets may be seized, and union leaders may be arrested.

Yet opposition today — immediately, with the resources we can muster, even while seeking to rally our forces to greater efforts — is the least risky course if we hope to preserve real unions and what’s left of American democracy. It’s already clear that to wait for leadership from other major institutional forces is wishful thinking. Unions must provide that leadership; and the more militant and progressive unions must provide leadership to the rest of the labor “movement” — not through press releases, but through deeds that provide an example that others can follow.

#### Union militancy rebuilds labor power to tackle corporate threats including climate change and mass surveillance

Vgontzas 23 [Nantina Vgontzas, PhD in sociology from New York University, City University of New York, “Toward Realignment: Big Tech, Organized Labor, and the Politics of the Future of Work,” Labor Studies Journal, Vol. 48, Issue 3, 08/25/2023, Sage Journals, p. 265–275]

A future that revalues workers will require not only revitalizing the U.S. labor movement but realigning its political alliances and, specifically, eschewing compromises that further entrench big tech as a center of neoliberal power. During the twentieth century, the Democratic Party incorporated organized labor by linking the micropolitics of capitalist shopfloor control to a macropolitics of industrial growth and full employment. This framework of political incorporation foreclosed the wider class solidarity needed for expanding the reach of the labor movement and, eventually, for maintaining its relevance altogether. As the Democratic Party turned to cultivating a new base in finance, tech, and their elite workforces, the unions of the new economy, based largely in the service sector, made limited gains amid an ongoing bipartisan retrenchment of the industrial welfare state. In recent years, neoliberal hegemony has begun to be challenged, and nascent organizing among Amazon warehouse workers, Uber and Lyft drivers, and other frontline tech workers holds the potential for restoring the fortunes of labor. For parts of the labor officialdom, this moment is an opportunity to revive the old incorporation model – in exchange for ceding the right to contest algorithmic control and employment status. I see this strategy as not only reinforcing insecure work but preempting the formation of coalitions that can tackle the vast societal issues exacerbated by algorithmic control, from police surveillance and military expansion to housing insecurity and climate change. In this piece, I call for a political realignment that centers the agency of the working class in contesting the influence of big tech on and off the shopfloor, rather than serving as its junior partner. My case has four parts. I begin by sketching the limits of contemporary labor experimentation in the United States. Second, I review how Revaluing Work(ers) clarifies normative questions in debates about the future of work, while third, I discuss the political stakes of these questions through a critique of contemporary labor incorporation. Last, I lay out how breaking with big tech would provide opportunities to transcend the deteriorating status quo and reconnect issues of shopfloor control to a transformative vision of political governance.

The Limits of Contemporary Labor Experimentation

When today's elites discuss the future of work, they typically mean the end of work as such. From their perspective, technology is a means for intensifying labor on the path to automating it (Frey and Osborne 2017; Acemoglu and Restrepo 2017; Ford 2016). Yet the past reveals a more nuanced reality, one in which workers have leveraged their position within capitalist production to contest their exploitation and displacement. Through trade unions and mass parties, workers in the twentieth century changed the terms of technical innovation from being singularly dictated by the profit motive to accommodating concerns over their welfare and the common good. At its best, workers incorporated technology within a vision of transforming the very power relations under which work is organized, challenging the terms of property ownership itself. Under their control, technology could be used to abolish not work, but alienated work. As I will elaborate below, it is this radical vision of wrangling technology away from capitalist control that labor needs to embrace again.

Of course, the idea of workers exerting control over an industrial society receded with the global neoliberal turn. In 1973, the effort that got closest to using computerization to distribute decision power in factory management, Project Cybersyn in Chile, was abandoned with the overthrow of the socialist Allende administration (Medina 2011). With the assault on worker institutions and welfare states that spread during a global economic downturn, elites eroded popular forms of sovereignty that they deemed interfered with market efficiency. The repression of labor and concomitant restructuring of production formed the backdrop against which mainstream economists, consulting firms, and ideologues of capital muted the role of collective agency in nascent discussions of the future of work, focusing instead on the technological innovations that facilitated an ongoing dispersal of supply chains (Singh et al. 2021). Despite producing some of the earliest writings on the future of work (AFL-CIO 1983, 1985), organized labor was steadily excised as a stakeholder in corporate governance, a maneuver that was made explicit in the 1997 annual statement of the Business Roundtable (Kochan 2020). Ensuing discourse insidiously enshrined market fundamentalism, at once abstracting modern computing from its social context of capitalist control while deputizing it as the main agent of social change (Schulze-Cleven 2021). This shift naturalized technological disruptions of work while putting the burden of adjustment on workers through individualistic solutions like workforce development. Minimal purchase was put on the prospect of state regulation, let alone worker contestation.

Since the 2008 financial crisis, neoliberal orthodoxy has come under question as waves of mass mobilization have challenged economic, political, and social inequality. Amid this revival in movement activity, labor organizations with the support of philanthropic partners have sought a seat back at the table with capital. In 2015, executives from Lyft, Instacart, Etsy, Handy, and other corporations signed a joint letter with leaders from the Service Employees International Union (SEIU), the National Domestic Workers Alliance (NDWA), New America, and other civil society organizations that called for the creation of a digital portable benefits platform, which would enable workers misclassified as independent contractors and thus disqualified from national labor protections to transfer benefits like paid time off from one employer to the next (Portable Benefits 2015). In 2017, Google named the NDWA among its Future of Work grant recipients, seeding a digital portable benefits platform named Alia, while the AFL-CIO revived its earlier work by establishing the Commission on the Future of Work and Unions. The next year, a Future of Work(ers) agenda was proposed by then Jobs With Justice director Sarita Gupta, Justice for Janitors campaign architect Stephen Lerner, and Kalmanovitz Initiative for Labor and the Working Poor director Joseph McCartin. The Ford Foundation went on to establish a program under the same name, while similar efforts have been introduced by the Russell Sage Foundation, Aspen Institute, and labor studies and employment relations programs at universities. Most recently, these efforts have materialized as legislation: In spring 2022, the Portable Benefits for Independent Workers Pilot Program Act was introduced to the U.S. Senate with significant bipartisan support. Yet these steps fail to recast the terms on which the U.S. labor movement is politically incorporated by the state. A future in which the working class controls its labor and destiny will require a realignment of political alliances such that it can transcend a decaying framework of incorporation and reclaim its protagonist role as an agent of social transformation.

Transcending Technological Determinism Through Normative Commitments

Revaluing Work(ers) provides a strong foundation for this endeavor. The volume's analysis of the future of work through a historical and interdisciplinary lens transcends technological determinism by making explicit the normative stakes of the future of work debates. By drawing out the implicit values of mainstream future of work discourses, the book demonstrates the uncritical assumption of a forward march of technology as highly ideological in its valorization of capitalist control. As Michael Merrill and Dorothy Sue Cobble (2021) argue in the book, the notion that artificial intelligence and machine learning are qualitative advances in technology is not only temporally myopic; it overlooks the social context in which property owners have long used technology to dominate and immiserate workers. This context can be traced to the coterminous development of plantation slavery and capitalist industrialization, which saw the transfer and extension of data gathering practices across these systems of labor commodification (Rosenthal 2018). Entangled market and racial logics of computation persist to this day and indeed have been exacerbated within the deregulatory context of neoliberalism, as can be starkly observed in Amazon warehouses, UPS trucks, Ubers, and other algorithmically surveilled workplaces. In recentering workers, the volume demonstrates that technological innovation is not some neutral force but a means for subordinating them.

The volume also envisions alternative futures of work beyond domination and displacement. Drawing on examples from energy workers, domestic workers, and education workers, the authors show how workers are fighting for a future where regenerative care work and its workers are valued. It does not call for a simple return to the past; the compromises that labor made with capital in the twentieth century were ecologically unsustainable and insufficiently democratic. Earlier periods of unionism and policymaking in the United States entailed accommodating to white capitalist minority rule. To avoid these pitfalls, the volume suggests concrete tactics in the form of unions combining sectoral bargaining with bargaining for the common good, state policies promoting universal health care and green stimulus, and technological innovations in care work that would strengthen benefits for workers historically excluded from the welfare state.

How can these various efforts to revalue work be cohered through the vision of unalienating it? The social question begs the political: Whereas the social position of the working class gives it the potential to reshape the contemporary political economy around principles of care and sustainability, that potential must be activated by “articulating different sectors and demands into blocs, which, in turn, provide the mass impetus for the reformation of states and other institutions” (de Leon, Desai and Tuğal 2015, 27). History is instructive here. In the last century, except during revolutionary periods when the working class sought to smash the capitalist state, labor generally was incorporated by the state through a redistribution of the social surplus and legal recognition of collective bargaining rights (Collier and Collier 1991). Across countries, labor morphed from “being a problem for the state to police, to being a constituency for the state to address and administer” (Eidlin 2016, 496). But it did so in quite different ways. In the social democratic and developmental states of Europe and the postcolonial world, this incorporation was mediated by labor parties that passed social reforms upon coming into power (Eley 2002). The United States, meanwhile, was unique in lacking a labor party; at best, organized labor served as a junior partner in political coalitions dominated by capital (Davis 1980). This legacy imposes heavy burdens on a nascent U.S. socialist movement today, including the political marginalization of the working class (Moody 2022), the depoliticization and bureaucratization of its organizations (Zeitlin and Stepan-Norris 2002), and a limited welfare state that since its inception has narrowed the scope of mass solidarity through racialized and gendered exclusions (Dubal Forthcoming). My analysis makes the case for a radical break with existing patterns of labor's political incorporation in the United States.

The Future of Work as a Political Project

All three pillars of labor's political incorporation during the twentieth century deserve reevaluation. The first pillar is the disconnect between how the working class is organized economically and how it becomes organized politically (Wood 1981; Luxemburg 2008 [1900]). Economically, the working class is organized as a mass whose location in the capitalist production process gives it the potential to disrupt the source of capitalist power. Politically, the masses are disorganized as individuals who then become activated through parties, unions, cooperatives, neighborhood associations, and other organizations (Poulantzas 1969; Przeworski 1980). This individualization has constrained the coordination of the masses across workplaces and neighborhoods, and therefore the development of organizational, educational, and militant capacities needed to overthrow capitalist rule.

The second pillar consists of the constraints put on the two major forms of representative democratic participation available to the working class, political parties, and trade unions. Not only have parties that are programmatically committed to worker interests had to appeal to the middle class to secure a majority electoral base, but upon taking power, the imperative to maintain stability as managers of a capitalist state has attenuated their commitment to backing labor strikes and other activities disrupting capitalist hegemony, particularly once capital escalates conflicts with its own strikes (de Leon, Desai and Tuğal 2015; Block 1987). Meanwhile, unions have also served as contradictory vehicles of change (Vgontzas 2020). The first century of the labor movement saw the section of the workforce with the greatest structural power in the production process, skilled workers, frame the struggle for control over production and technical innovation as a defense of their craft, divorced from broader questions of social and political power. Even when radical shop stewards participated in revolutionary processes, they did not connect their struggle for worker control to a political strategy of abolishing capitalism (Hoffrogge 2015). Following the revolutionary defeats of the interwar and postwar periods, a tendency toward “economism” was institutionalized through regulated industrial relations. In many countries, political strikes were outlawed, and unions accepted capitalist control over the production process in exchange for the legal right to bargain over wages and benefits, otherwise known as the “effort bargain” (Hammond 1957; Murray and Schwartz 2019). Political demands were effectively relegated to the parliamentary arena.

As a third pillar, economism was legitimated by a hegemonic framework that linked the shopfloor effort bargain to macroeconomic goals of national growth, full employment, and welfare benefits (Brenner 2006; Burawoy 1979). The “social partnership” template was first forged in Western Europe, where the state used welfare as a mechanism of political consent and control (Tuğal 2009; Panitch 1981). In the United States, a postwar structure of enterprise bargaining circumscribed support for universal welfare, which union bureaucracies perceived as a threat to the competitive advantage they offered as agents bargaining benefits at the company level (Lichtenstein 1995). Moreover, in a settler colonial state that in its constitution entrenched white elite rule, this muted impulse to fight on behalf of the general interests of the working class was compounded by the racialized exclusion of agricultural and domestic workers from labor protections (Roediger 1991). Social partnership, narrow in both form and scope, limited the potential for class solidarity. In the postwar period, this limitation was expressed through the liberal alliance of white workers and farmers with a ruling faction of multinational manufacturers, banks, insurance, and the military complex (Patel and Goodman 2020).

This alliance did not endure. As a profitability crisis in the global manufacturing sector spread throughout the wider economy in the 1970s, state managers accelerated the ongoing process of financialization in the U.S., and in turn, the Democratic Party deprioritized industry and in its place nurtured the growth of finance and tech as a foundation for recomposing its elite base (Van Deventer 2020; Ferguson and Rogers 1986; Vgontzas and Whittaker 2021). As capital intensified its assault on industrial unions, forcing them into concessionary bargaining in their strongholds while outsourcing production to nonunion sites in the U.S. and Global South, the U.S. labor movement saw itself renewed largely through organizing efforts in the “new economy” (Fantasia and Voss 2004). Through campaigns like Justice for Janitors, SEIU and other unions grew by mobilizing immigrant workers in the service sector while lobbying for immigrant rights amid an increasingly harsher deportation regime (Lopez 2004; Milkman 2006). But for the most part, this renewal effort continued to rely on the social partnership framework, in which union leaders and staffers liaised with politicians and nonprofit officials while restricting worker engagement to tightly controlled pressure campaigns. The goal was to inflict enough brand damage that pressures employers to negotiate with union officials, who then agreed to give management unilateral rights over the conditions and terms of employment in exchange for minimal wage increases (Voss and Sherman 2000; McAlevey 2016; Fine 2005). Absent from this approach was the activation of militant workplace leadership that could obstruct operations and reshape power relations on the shopfloor.

At the policy level, neoliberalized social partnership has translated into technocratic coalitions where leading private sector unions and allied nonprofits pursue reforms that are compatible with the main priorities of the Chamber of Commerce, such as minimum wage ordinances rather than more ambitious demands like corporate taxes. This Democratic partnership machine operates alongside the more longstanding and conservative partnership machine of building trades unions, construction employer associations, and related interests in private equity and fossil fuels. Meanwhile, in the public sector, union reform efforts and strike waves have led to more militant bargaining that challenges the austerity policies of local governments, but these have not yet coalesced into any kind of political realignment. In its current configuration, the labor movement remains unable to challenge the structural power of finance, tech, real estate, insurance, oil, and other core sectors of the new economy. It is incorporated within an accumulation regime that is hollowing out its own social and political relevance.

Contesting Tech and Transcending Incorporation

The future of the U.S. labor movement depends on transcending its current patterns of political incorporation. Some terms are more fixed than others. The first two pillars of incorporation discussed above are constitutive of capitalism. The disconnect between how the working class is economically and politically organized, and the pressures that its organizations face as a consequence ultimately of capitalist control over investment, are structural constraints on how workers build power. It is the third pillar – a mode of labor incorporation that involves economism and partnership between capital, labor, and the state – that is historically conjunctural, and that has already become undone to a large extent. Labor has considerable latitude to rearticulate its relationship to capital and the state through a decisive break with ingrained dynamics.

For now, the technocratic wing of the U.S. labor movement is attempting to shore up the partnership framework with industrialists in big tech. The momentum around portable benefits has coincided with various state legislatures considering sectoral bargaining reforms that would make it easier for unions to represent gig workers – in exchange for conceding their right to bargain over digital piece payment and algorithmic management. These initiatives, scaffolded by the Clean Slate for Worker Power project at Harvard Law School, have been promoted by Uber and Lyft in alliance with various union locals in California, New York, Connecticut, Illinois, and Washington, which in April 2022 became the first state to pass the proposal into law. This has not come without critique. As Veena Dubal (2021, 13) has argued, historically, sectoral bargaining emerged where organized labor had institutional protections that it could leverage to raise the employment floor, whereas “current schemes – presented as a compromise between a few hyper-valued companies with significant capital and a large vulnerable workforce – were drafted as a mechanism to limit rights and near universal standards.” Indeed, conservatives ranging from former Mitt Romney advisor Oren Cass and American Enterprise Institute fellow J.D. Vance to former U.S. Attorney General Jeff Sessions and U.S. Senator Marco Rubio have gone so far as to support this version of sectoral bargaining as a means for substituting labor protections (American Compass 2020). In this sense, portable benefits should be cause for concern. In a context where a weak labor movement would be premising its renewal not on concerted activity but mere representation, privatized benefits could contribute a material basis toward further foreclosing the horizon of universal protections.

Rather than brokering a neoliberal bargain that would enshrine the precarious work on which barely profitable platform companies depend, the U.S. labor movement has an opportunity to nurture growing concerted activity in the tech sector as a basis for establishing a mass politics whereby the working class is not incorporated by the capitalist state but rather, over time, challenging capitalist rule. In San Diego, taxi workers are collaborating with tech workers and researchers to become integrated as the first and last leg of public transit in place of privatized options that have contributed to increased congestion and pollution, while throughout California and other states, the independent union Rideshare Drivers United has created a hybrid organizing framework in which workers are recruited through social media and app-based technologies and over time integrated into organizing committees (Irani et al. 2021; Dolber 2020). Meanwhile, at Amazon, groups like Amazonians United, Awood Center, Amazon Labor Union, and Amazon Workers United have organized walkouts and other direct actions to challenge a racialized and gendered regime of surveillance that harms the health of workers and their communities (Vgontzas 2022a). This focus on the algorithmic shopfloor has spurred workers to connect with others across the supply chain. For instance, at the height of militant action during the pandemic, warehouse workers coordinated with office tech workers organized through Amazon Employees for Climate Justice to challenge unsafe protocols, situating the struggle to gain control over their work within the struggle to reimagine care infrastructures (Vgontzas 2022b). Such efforts, which do not predicate their power on the profitability of firms and in some cases are open to dismantling their technologies, constitute a refusal of a partnership model that in the past traded wider community concerns for narrow economistic interests. As care and climate crises intensify, the labor movement can work to facilitate regional alliances of warehouse workers and drivers capable of disrupting the chokepoints of regional markets, community alliances with environmental justice groups fighting to restrict warehouse emissions and racial justice groups fighting to curtail tech surveillance, as well as multiscalar alliances between logistics and tech workers who can build collective capacities and visions around reconfiguring infrastructures in service of the green internationalist good. It is along these multiple axes that labor may overcome the division between the economic and the political to reach a future of social transformation.

#### Global warming ensures multiple pathways to extinction through non-linear feedback loops

Spangenberg 25 [Joachim H. Spangenberg Professor at University of Versailles St. Quentin, Research Coordinator at the Sustainable Europe Research Institute, member of the Executive Committee of the International Network of Engineers and Scientists for Global Responsibility, PhD in Economics. Citing, among others: Chi Xu, Professor of Ecology at Nanjing University; Timothy A. Kohler, Professor of Anthropology at Washington State University, Fellow at the Research Institute for Humanity and Nature; Tim Lenton, Professor of Earth Science at University of Exeter, PhD, University of East Anglia; Jens-Christian Svenning, Professor in the Department of Bioscience at Aarhus University; Marten Scheffer, Professor at Wageningen University; Nicole D. Miranda, Professor of Engineering Science at the University of Oxford; Jesus Lizana, Associate Professor in Engineering Science at the University of Oxford; Sarah Sparrow, Associate Professor in Environmental Impact, University of Oxford; Miriam Zachau-Walker, PhD Candidate in Engineering Science; Peter A.G. Watson, PhD, Senior Lecturer at School of Geographical Sciences at Bristol University; David C.H. Wallom, Professor in Informatics at Oxford; Radhika Khosla, PhD, Associate Professor at the School of Geography and the Environment at Oxford; Malcolm McCulloch, PhD, Professor of Engineering at Oxford, “The roadmap to collapse: whatever the last summers have been like for you, one thing is clear: you are currently experiencing the coolest period of your lives,” Consumption and Society Journal, Vol. 4, No. 1, pp. 141-55, 2025]

Science

The effects of such a strong warming are still insufficiently researched – some scientists speak of the ‘climate endgame’ (Kemp et al, 2022). Climate researchers have constantly underestimated both the extent and the speed of change, and economists, who have long played down climate change, still massively misperceive science (economics is a scholastic system, not a science: Diesendorf et al, 2024), underestimate the social costs of the climate crisis, and thus misadvise policy (Rennert et al, 2022).

2030

Economy and Politics

The war in Ukraine has ended with a compromise, Russia keeping Crimea, but the Near East conflict is close to a nuclear confrontation. The United States has withdrawn support from Ukraine, leaving the multi-billion job to rebuild the country to Europe; no comparable efforts are undertaken in Palestine. The significant weaponry production facilities built up during the war in Ukraine continue producing, flooding the world with exports from Europe, Russia and the United States, and fuelling military conflicts around the world. The international order, international regulations and norms are eroding. Throughout the world economy, resource constraints are felt – this is a major challenge to the EU refining economy model (importing cheap resources at low cost, exporting sophisticated products at high ones). With these effects on top of the decades-old trend of secular stagnation, economic growth has come to a standstill. To secure resource access and trade, the major powers (United States, China, Russia and their satellites) increasingly use military means.

The electrification of all spheres of life continues, following US standards for the West, and Chinese ones for the rest of the world. Artificial intelligence and Large Language Models made the share of global greenhouse gas emissions double from about 4 per cent of the global total – an unbroken trend driven by demand and supply. Governments invest heavily in subsidising technical solutions to still not declining CO2 emissions like carbon capture and storage (CCS – capturing CO2 from production processes, purifying and compressing it, transporting it to on-shore and off-shore underground dumping sites and storing it there). However, the volumes stored remain marginal, and the process is expensive and increases overall energy consumption. The new ‘hydrogen ready’ natural gas fired power stations built in the first half of the decade continue running on fossil fuels as the limited amount of ‘green hydrogen’ available is used for production processes. Hence, even if some of them are converted to hydrogen, the hydrogen they use is generated from natural gas. So while gasoline use is decreasing, natural gas consumption increases steeply.

Consumers are still unwilling to change habits – solar energy production in households has been growing significantly as it saves costs, but overall energy consumption is still increasing. Reduction of heat demand falls short of what is needed to limit the climate crisis, sustainable mobility including less car use, and even the market share of electric vehicles, is only growing slowly – bans on fossil fuel cars have been abandoned under the pressure of public opinion and conservative parties. Sufficiency is still anathema, even more so as expectations of rising incomes are being disappointed. After a short phase of war Keynesianism (growth through military investment), economic growth is further slowing down due to higher resource and energy costs, insecure supply chains, re-shoring (relocating industries back into the national economy – a kind of insurance against supply risks, associated with less division of tasks and higher cost).

Society

Social inequality is increasing, as the richer strata of society are better able to protect themselves from climate impacts than the poorer, but this is accepted after decades of neoliberal education – social consideration is dwindling, self-fulfilment at the expense of others is on the rise (Benz, 2022), the brutalisation of elites has taken hold of the middle classes (Heitmeyer, 2012). The crisis of care, remunerated and voluntary, is accelerating (Spangenberg and Lorek, 2022). As in the past after floods, droughts, cyclones and heat waves, violence against women and members of gender minorities is on the rise – mental stress, drug abuse, economic problems, food insecurity and poor social infrastructure after climate disasters are the immediate triggers (Rodrigues, 2022).

The readiness to employ violence in all kinds of conflicts, or just for the fun of it, continues to increase – police, fire brigades and ambulances are attacked, as are local politicians. As frightened people withdraw from such engagement, public security and democracy are suffering, and extremism is on the rise. Together with the increasing income polarisation, this leads to emerging unrest, intensifying social tensions exploited by the far right/neo-fascists; and populist parties win majorities.

Climate

The global temperature rise has surpassed 1.5°C and is on its way to 2° to 3°C (Carrington, 2022). The causes are manifold – besides the lack of political will and sufficient funding, and institutional feasibility constraints, the conversion of many economic sectors is failing due to a lack of skilled workers, especially in handicraft professions. Second, physical resources are lacking, not only because of unreliable supply chains, but also because minerals and metals are not available in sufficient quantities – past expansion plans have systematically ignored the finite nature of resources. Given the lack of resources, competition of decarbonisation strategies with digital applications and armament is leading to a price explosion that is slowing down the expansion of renewable energies. NATO members have increased their military spending to 2 per cent of their GDP, causing annual additional emissions larger than those of Russia, the world’s largest natural gas producer. Accelerated clean energy production reduces the energy cost, but contributes little to reducing the overall emissions.

Due to insufficient decarbonisation, lack of conservation of materials and energy, and the influence of the fossil fuel industry, greenhouse gas emissions remain too high. For example, since 2022, the 12 largest oil and gas companies alone have spent €103 million per day on the development and exploitation of new oil and gas fields (Carrington, 2021). Correspondingly, emissions have increased by 14 per cent since 2020 instead of falling by 50 per cent as required (McKie, 2022). Governments did nothing to prevent oil and gas multinationals from embarking on these projects, which clearly made compliance with the 1.5° limit impossible (Carrington and Taylor, 2022).

As a result of higher evaporation, summer drought is the new normal in Europe, including heat waves and large-scale forest fires (up 40 per cent in the Mediterranean). The number of heat days has doubled compared to 1971–81 and the number of frost days has dropped significantly. At the same time, there are extreme cold spells (persistent low temperatures of up to minus 20°C in Central Europe and massive snowfalls in the Mediterranean) due to polar air intrusions, caused by the weakening of the circumpolar jet stream. The ongoing Amazon dieback has turned wider parts of the basin from carbon sinks into carbon emission sources, further accelerating climate change.

Although heavy rainfall on land has increased by 16 per cent in Europe, and massive investments in flood protection are required, more than 270 million people suffer from water shortages, and in some regions water has to be rationed regularly. Water-intensive agricultural crops are being cut back, ploughing is becoming problematic. Harvests are at risk due to the mix of heat, drought, heavy rain and frost periods, while varieties genetically optimised for one environmental condition fail under the other conditions. In particular, winter cereals, depending on a prolonged period of low temperatures before they can shoot and flower (vernalisation), produce significantly reduced yields.

The collapse of the Greenland ice sheet is accelerating, but it is not yet clear by when it will have melted completely, raising global sea levels by seven metres. Decision-makers are hoping for the long term and postponing protective measures for coastal regions that go beyond incremental dike increases. The tipping points of the climate, first exceeded in the early 2020s, are becoming a cascade (Armstrong McKay et al, 2022). Migration and immigration of species result in communities that have never existed in the past 10,000 years, altering the spectrum of ecosystem services provided. The restoration of ecosystems and their services proves to be impossible.

Health

In particular in ageing societies, health costs are spiralling out of control (in European public health systems less than in the United States). The problem is aggravated by the additional challenges caused by environmental degradation, like more frequent pandemics, new infectious diseases and the curbs on medical research introduced to minimise the risk of terrorists using bio-medical know-how to produce and disseminate bioweapons (Brent et al, 2024).

The areas suitable for malaria transmission have grown by 10 per cent and more where re-wetting of wetlands was implemented. Disease vectors such as the tiger mosquito are forming stable local populations in formerly temperate climate zones, ticks continue to spread, and known tropical pathogens are spreading at an increasing rate (Mora et al, 2022). It is not possible to prevent the new waves of infection through precautionary measures due to the multitude of mechanisms of action.

2040

Economy

The obstacles to growth already manifest in 2030 have been growing, and new ones have emerged, for individual countries (mostly the heavily export-dependent ones like China and Germany), and for the world economy as a whole. Already 15 years ago, economic research estimated that an increase in global temperature of 1°C would lead to a 12 per cent decline in global GDP (Bilal and Känzig, 2024), and the ‘locked in’ global economic damage caused by global warming up to the year 2050 was estimated to be almost US$60,000 billion, corresponding to 30 per cent of the global economy (Kotz et al, 2024) – now the bill has to be paid. Add to this the expenditure on coastal protection, relocation of dykes and partial abandonment of cities and settlements due to the faster than expected rise in sea levels now and in the next decades (Taberna, 2022), what we have been facing since 2030 is just the beginning of a long-term, climate change-induced recession of the entire global economy (Kotz et al, 2024).

Hence, after years of stagnation, economic growth has turned negative. The economic reason is that to generate growth, the annual investment must be higher than what is needed to compensate for loss to wear and tear, and the requirements of technological development – otherwise the production potential does not increase. Investments are financed from the surplus of the previous year, plus by credit. The latter is limited in the private sector by the risk of over-indebtedness, and in the public sector by the necessity to keep redemption below a level impinging on key policy priorities, and to limit the regressive effects of taxpayers financing the interest for rich lenders. Hence the necessary massive defensive investments in climate adaptation, the repair of environmental damages, protection of biodiversity (not least for food security) and cleaning the environment from health-threatening pollution with particulate matter, microplastics and the like – economically necessary to avoid future losses – begin crowding out investments in expanding the production potential. The increased spending on CCS and hydrogen processes and infrastructures, armaments, and business subsidies for climate neutral production (state subsidies cover a significant share of the European chemical industry’s 2021–50 decarbonisation funding gap of US$550 billion [Scott, 2024]), and so on, exacerbates the situation. Furthermore, the health systems are at the brink of collapse due to heat-induced treatment needs, and with them the stability of an ageing society (Romanello et al, 2021). Such investments are classified as ‘defensive’, as they prevent damages accumulating, but are not (or only to a certain part) enhancing the production potential. Subsidies are claimed as for the business sector, defensive investment needs are mostly the result of mandatory legal obligations. Innovation, dematerialization and digitalization suffer, in particular as decarbonization, digitalization and weapons production are competing for the same or similar physical resources. As defensive investments are crowding out business production capacity enhancing investments, the production potential is shrinking, and GDP declines. For some time, public authorities have tried to compensate such investment capital scarcity with public funding, but the required level is surpassing all estimates of public fund availability. The necessary level of government spending begins to lead to a higher tax burden on corporate profits and to declining real incomes, public disapproval and social unrest.

Consumption

Consumption, which has been the main driver of ecological burdens since the turn of the millennium, is declining – the consumer society is running out of consumers (Spangenberg and Kurz, 2023). However, this externally enforced reduction in consumption leads an ever fiercer defence of privileges, less willingness to voluntarily reduce consumption, or to share the remaining wealth with others, in particular with the Global South. Hence, public pressure results in an end to development cooperation and (the always insufficient) financial support for climate adaptation to poor countries. The result is more climate refugees, clashing with a decreasing willingness to welcome any kind of migrants as they are – wrongly – perceived as competitors for the diminishing consumption space. Consumer dissatisfaction spills over into increasing scepticism regarding the liberal democratic system – an institutional crisis is emerging (Kalke et al, 2024).

Politics

The global political situation has become volatile, with a group of major powers struggling for dominance, while the majority of countries tries to navigate the stormy waters in changing collaborations and confrontations. Trade wars and patent conflicts prevail; international regimes of intellectual property rights have collapsed and free trade in resources has come to a virtual standstill. Armed conflicts are fueled by geopolitics and upscaled by weapons export since 2025, resource wars increase, but in order to avoid nuclear escalation, the major powers impose an allocation system for raw materials, with quotas for all countries (which many consider a neocolonial means to deny access to non-affiliate countries). There are political and armed conflicts about access to increasingly short freshwater supplies. The global water crisis takes its toll, hunger is getting normalized in many parts of the world, due to declining harvests due to heat stress and lack of irrigation water.

Public pressure demands a ‘Fortress’ policy, denying climate refugees access to the still relatively affluent countries – a demand the strong extreme right is more than happy to fulfil (nativism, economic fears, and so on). Permanent involvement in resource wars and repulsion fights against refugees at all borders leads to a militarizing of societies, but also to a more favorable view on elements of a war economy. This, together with the shortage of physical resources, has drastic political consequences.

Domestically, in most European countries and beyond, politicians have pulled the emergency brake and declared both a ‘climate war’ (mostly neglecting other environmental problems) and ‘identity defense’ (rejection not only of refugees, but all ‘foreign’ inhabitants – at the expense of lacking skills and workers in the labor force). As the permanent resource constraints and the high cost of enforcing access make it impossible to any longer ignore the problem of overconsumption, decisionmakers try to find ways to accommodate the internationally set resource quota. The limited materials are auctioned off nationally, with special purchase rights for non-commercial users. This mechanism, borrowed from war economics, leads to a massive restructuring of industry, as high resource efficiency becomes a prerequisite for a secured further existence. In order to limit overconsumption, those consumer goods that have become scarce are given away on non-tradable ration coupons. This ensures that scarce goods are available to all and are not consumed or hoarded by a privileged few at the expense of the general public.

2050

Rising temperature, rising sea levels, rising migration

The emergency measures introduced in 2040 have managed to prevent or at least postpone the collapse otherwise due. Nevertheless, global warming surpasses 2.5°C (that is, 5°C over land), triggered by tipping cascades such as the melting of permafrost regions since 2040, when the conditions for their permanent existence were no longer given, transforming large parts of Siberia, Alaska and northern Canada into barely usable, greenhouse gas emitting swamps (IPCC, 2021; Fewster et al, 2022) plagued by wildfires. Wetlands and moors are drying out – and thus releasing additional CO2. Deadly heat waves and temperatures of over 50°C are no longer uncommon in the tropics, and temperate latitudes exceed 40°C in summer, causing tens of thousands of heat deaths annually in Europe. In many regions in the South, but also in European regions such as the Spanish highlands, human life is no longer possible.

Anthropogenic warming is casting billions of people outside of the boundaries of normal human habitation, with abundant negative consequences for human wellbeing, mortality and levels of international migration (Scheffer et al, 2024). A billion people are facing coastal flooding risk from rising seas, and more people are forced out of their homes by weather disasters, in particular flooding, sea level rise and tropical cyclones (Selby et al, 2024). Once warming exceeds a few more tenths of a degree, it will lead to large areas becoming uninhabitable (IPCC, 2022).

While most refugees stay in neighbouring countries until their capacities are exhausted, many move to the North, only temporarily stopped at the crumbling military border defence of the EU (less so, and later, the United States). Migration is enhanced by the neocolonial economic policy of the dominant powers, with militarily supported land-grabbing where fertile ground and water are available (for example, Ukraine) to overcome domestic food supply volatility problems.

Freshwater scarcity

Heavy rainfall on land has increased by more than a third; summer precipitation comes in the form of flash floods, which only partly seep into the ground and replenish the groundwater available for dry periods. Freshwater has become scarce and is part of the rationing system. Private swimming pools, watering lawns or washing private cars have been banned. Not least because of the melting of the last glaciers in the Alps and the Andes/Rocky Mountains, river levels fluctuate extremely, affecting both shipping and summer water supplies. More than 390 million people are suffering from water scarcity, and their number is bound to rise. The thawing of the Himalayan glaciers accelerates (they had lost 40 per cent of their area by 2020 [Lee et al, 2021]), putting the regular water supply of two billion people at risk, who depend on the waters of Indus, Ganges, Brahmaputra, Irrawaddy, Mekong and Yangtzekiang (Wester et al, 2019).

Sea levels are rising faster than expected and are approaching one metre. Salt water penetrates the groundwater reservoirs in coastal regions and all major river deltas, putting some of the ‘bread baskets’ of the world at risk (for example, in Egypt, Vietnam, India, Bangladesh, Argentina, the United States). The tidal flats and salt marshes along the North Sea and similar coastal regions are under pressure – where dikes are not moved back, sacrificing land to the sea and allowing salt marshes to move inland, they are flooded and some of the most biologically diverse habitats on earth are thus lost (Saintilan et al, 2022). The oceans are not only becoming warmer and hence low-oxygen, but also more acidic, affecting countless species along the entire food chain. Shell-forming animal species are dying out, fish stocks – until 2040 a major protein source of humankind – have more or less collapsed due to past overfishing, persistent ocean pollution, acidification and the loss of breeding grounds (temperate salt marshes decline, coral reefs are gone). Habitat for nearly 20 per cent of all insect species has at least halved.

Food (in)security

The cultivation of wheat, barley, rye, oats and maize is hardly possible anymore (wheat becomes sterile at 30°C, maize pollen at 35°C); agriculture has switched to millet/sorghum and chickpeas instead of wheat, yams instead of potatoes, as well as cassava/ manioc and sweet potatoes. Small farmers have not survived the crisis economically. In addition, higher CO2 concentrations reduce the quality of proteins in cereals and fruits, and cows have to digest more grass for the same milk yield.

The number of frost days has decreased sharply, in many years they no longer occur – a problem for food production from fruit trees, vegetables and wheat. To these plants, prolonged cold exposure is required to provide competency to flower (vernalisation). In other years, non-moving polar air masses lead to weeks of deep low temperatures, which do not suit many of the new, drought-resistant agricultural plants. These are hot–cold times. Vegetation also feels the effects: native tree species are not adapted to heat and drought, but Mediterranean species are not adapted to the cold spells. As a result, more than half of Europe’s tree species are threatened with extinction. Forest fires accelerate that – burning areas in the Mediterranean region have grown by more than 60 per cent.

Health

Areas suitable for malaria transmission have grown by 15 per cent. Tropical disease vectors are well established, but tropical and emerging pathogens are spreading mainly through transmission by indigenous species; dengue, chika and West Nile fever are regular occurrences. New pathogens have emerged from zoonoses, pandemics with previously unknown pathogens regularly claim numerous victims worldwide – the ‘age of pandemics’, of which IPBES had warned urgently, has dawned (IPBES, 2020).

Alternative scenario for Europe (other regions unaffected)

Following the calculations of Ditlevsen and Ditlevsen (2023), the AMOC/Gulf Stream warm water circulation would collapse between 2025 and 2095 with a central estimate of 2050 (assuming emissions are not reduced, in line with our earlier assumptions). Such a collapse would result in Western Europe suffering far more extreme winters, rapidly rising sea levels on the east coast of the United States and a lack of vital tropical rainfall. During the last ice age, some major changes in AMOC flow caused winter temperatures to change by 5–10°C in just one to three years. The chilling effect would be moderated by the heating that has already occurred in the northern hemisphere (Spangenberg et al, 2012).

2070

A dystopian situation has emerged: planetary boundaries continue to be crossed, tipping cascades cause irreversible damage and have escaped human control, ecosystem cycles are collapsing. The loss of pollinators reduces food availability; fermented substitutes are consumed instead. Desperate attempts at geoengineering have not solved any problem, but created new damages and conflicts. The global heating has surpassed +2.5°C and is heading for 3°C – which implies 5–6°C heating over land (IPCC, 2021). All coral reefs and almost all large tropical forests have disappeared. The melting of the Greenland ice sheet, the increasing loss of South Polar ice and of almost all glaciers is driving up sea levels. Coastal cities around the world are being abandoned, partly because of direct flooding and ever stronger typhoons, partly because infrastructures cannot withstand rising sea levels despite high dikes. Life expectancy is decreasing, and water and food supply has become unreliable, even in the richest parts of the world.

For two billion people, survival in their homeland is no longer possible – flight or death is the alternative as a result of heat, drought, lost soil fertility or as a result of flooding and salinisation. As neighbouring countries and regions can no longer absorb the refugees – they are already overburdened and suffer just as much from climate and environmental destruction – a global migration of more than one billion of people has set in, upsetting all previous geopolitical power constellations. Countries are at permanent war to uphold the neocolonial status quo, but the threat of nuclear escalation is growing by the day. The mood of migrants is not only desperate, but also aggressive: those affected are well aware that they are innocent victims of the North’s overconsumption. Already in 2020, the richest 10 per cent of humanity (that is, all those with an annual income of over US$90,000) emitted almost half of all CO2 emissions, while the poorer half of the world’s population was only responsible for 12 per cent (Herrmann, 2022). Such facts have been sinking into the collective consciousness and attitudes. The Global North has been stealing the future as well as the present, not only from its own children but, above all, from those who live in the most affected parts of the world. The EU and the United States are losing their defensive wars against migrants, and their militarised societies fail to adapt to the inflow of refugees. The result of the conflict is unpredictable, but will certainly be paid for with high human sacrifices.

In temperate latitudes, landscapes are dotted with wind turbines and solar panels; there are also a few trees, but only a few species that have adapted to climate change and water scarcity. Lush greenery, buzzing insects, singing birds – absent. The planet has become silent – 90 years after Rachel Carson’s Silent Spring.

### 1NC---DA

#### US FDI is high and growing

Barraza 25 [Kelly Barraza, Managing Editor at Site Selection Magazine, “FDI IN AMERICA: How Does the U.S. Stack Up in FDI?,” Site Selection, 11/05/2025, https://siteselection.com/fdi-in-america-how-does-the-u-s-stack-up-in-fdi/]

Foreign investment in the States continues to roll in as trade temperatures fluctuate.

Foreign dollars invested in the United States increased by $332.1 billion to $5.71 trillion at the end of 2024, with the manufacturing sector seeing the highest increases and retaining the largest sector of foreign direct investment (FDI) in the country. This year has also seen a yo-yo effect when it comes to foreign investment, with a disappointing first quarter followed by a rebound in the second financial quarter of the year, showing over $100 billion in preliminary FDI recorded in Q2 of 2025, per the U.S. Bureau of Economic Analysis.

UN Trade & Investment (UNCTAD) released its FDI Explorer in early October, tracking global investment flows. The U.S. continues to be the top economy in both inward and outward FDI, with $266 billion invested outside of the country; Japan and China’s FDI investments in other countries totaled $204 billion and $163 billion, respectively. The U.S., Singapore and Hong Kong were the top three economies receiving FDI ($279 billion, $143 billion and $126 billion, respectively), with the U.S — aided by semiconductor megaprojects — helping North America see an increase of 23% in FDI projects.

One expert says there’s room for plenty more. Asked how FDI can aid the American economy, Harry Moser, founder and president of the Reshoring Initiative, says, “There are hundreds of places, especially the supply chain gaps in which most of the market demand for a product is supplied from offshore, e.g., electronic assembly, rare earth minerals, tool steel, contract manufacturer doing complex assemblies, carbide, etc.”

Projects, Projects Everywhere

According to a 2025 SelectUSA report on FDI trends in U.S. manufacturing sectors, with data provided by Moody’s Solutions and IBM-Plant Location International, manufacturing has consistently attracted significant FDI over the past 10 years and has been one of the largest recipient sectors of foreign investment in the country; from 2014 to 2024, there have been 4,031 FDI projects announced and completed in U.S. manufacturing, with $826 billion in capital expenditure and more than 667,000 jobs created.

#### Increased union density causes restrictions on FDI---those are modelled globally. Otherwise, mobile capital undercuts bargaining power---presumption

Owen 13 [Erica Owen, Ph.D. in political science from the University of Minnesota, Assistant Professor at Texas A&M University (2011-2018), “Unionization and Restrictions on Foreign Direct Investment,” International Interactions Journal, Vol. 39, Issue 5, T&F Online via MSU libraries]

Abstract

Although inward foreign direct investment (FDI) has many benefits for a country as a whole, like trade, it is a source of competition for producers in the host country, with concomitant effects on labor markets. The entrance of foreign multinationals increases demand for skilled labor at the expense of unskilled labor, and also increases the elasticity of demand for labor because multinationals are able to shift production across borders. This raises the question of whether or not labor has an impact on policy toward inward FDI. I suggest that organized labor is a key determinant of the influence of labor on inward FDI restrictions. Not only do unions mitigate the collective action problem facing labor, but unionized workers, regardless of skill level, have incentives to support restrictions on inward FDI because rising elasticity of demand restricts bargaining power. I expect that higher levels of unionization will lead to greater restrictions on inward FDI. I find support for this hypothesis in an analysis of U.S. industry-level formal restrictions on inward FDI between 1981 and 2000. Industry skill intensity, a proxy for the distributional consequences of FDI for labor, does not explain variation in barriers to inward FDI, suggesting that the confluence of interests and influence is necessary for labor to influence policy.

The increased globalization of production is one of the most important changes in the world economy. Driven by multinational corporations, flows of foreign direct investment (FDI) increased from $54.1 billion in 1980 to an all-time high of $1,975 billion in 2007 (Citation UNCTAD 2012). FDI is an attractive form of capital that may lead to the creation of jobs, and the diffusion of technology and productivity from foreign to domestic firms, given sufficient levels of human capital in the host. Footnote 1 However, FDI may also be a strategy for accessing foreign markets (as an alternative to licensing or exporting). Footnote 2 Consequently, domestic firms may support barriers to inward FDI in order to protect the domestic market from competition introduced by the entrance of foreign firms (Citation Crystal 1998, Citation 2003; Citation Pandya 2008). Like trade, FDI may increase the aggregate welfare of the host, but it also generates distributional consequences. Therefore, FDI and decisions about how to regulate its flows across borders are political issues. This paper asks under what conditions we should see governments restrict FDI inflows.

Inward FDI changes the demand for domestic factors of production, particularly skilled and unskilled labor, and also the elasticity of demand. Crucially, because multinationals tend to invest in sectors of comparative advantage, in developed countries, multinationals tend to demand more skilled labor relative to purely domestic firms. This shifts demand from low skill to high skill workers and changes the composition of jobs in the economy. Additionally, greater elasticity of demand constrains the bargaining power of workers. This threat disproportionately affects unskilled workers in developed countries who compete with workers in lower wage countries. Distributional consequences, therefore, suggest that industries that use unskilled labor intensively are likely to have barriers to FDI.

However, preferences alone cannot explain policy outcomes; we must account for the influence of competing interests on the political process. Labor must overcome a collective action problem in order to influence policymakers and thus outcomes. Unions are likely to be the most successful vehicle for this because in addition to facing competitive pressures generated by inward FDI, unions have additional incentives to support restrictions. The presence of mobile capital constrains the bargaining power of unions. Moreover, the net effect of FDI on employment is not necessarily positive, especially in developed countries where a majority of FDI inflows occur through mergers and acquisitions rather than the establishment of new facilities via greenfield investment. Footnote 3

Two recent FDI transactions illustrate these dynamics in the United States. Two iconic American firms, Anheuser-Busch (AB) and Maytag, were targets of separate takeover bids in 2008 and 2005 respectively. Ultimately, InBev, a Dutch firm, acquired AB, while Haier Corp., a Chinese firm, withdrew its bid for Maytag citing political opposition. In both cases, national security was a nonissue. Nor was it based on the nationality of the investor; indeed, also in 2005, Lenovo, another Chinese firm, acquired IBM's personal computer division. The level of unionization was a key difference: unlike AB workers, Maytag workers were highly unionized and the union was vocal in its opposition to the takeover. These examples illustrate the importance of the confluence of interests and influence, leading industries with higher levels of unionization to be more protected from inward FDI.

As an initial test of this theory, I look at industry level restrictions on inward FDI in the United States. The United States is an ideal case for substantive and practical reasons. The United States is one of the largest recipients annually of FDI inflows, and foreign firms play an important role in the U.S. economy. By 2008, U.S. affiliates of foreign firms employed nearly 5.6 million workers in the United States, representing 4.7 % of total private sector employment, with much higher percentages in the area of manufacturing (Citation Anderson 2010:47). American FDI policies may also plausibly influence those in other countries. Moreover, unions in the United States are often viewed as weak, particularly in comparison with their Western European counterparts, making this a difficult test of the theory. Although aggregate formal barriers to FDI have remained largely constant over time, they vary substantially at the industry level. As I discuss below, the main political variables of interest are available at the industry level only in the United States, though the theory applies more broadly. The main analysis looks at formal restrictions between 1980 and 2000, and in an extension, I examine informal restrictions on manufacturing industries between 1998 and 2005. I find that distributional consequences alone cannot explain variation in restrictions, but that sectors with higher levels of unionization have more barriers to inward FDI as hypothesized.

The paper proceeds as follows. The first section reviews existing studies of the politics of FDI restrictions. The second section discusses the impact of inward FDI on factor, specifically labor, markets. The third section discusses the preferences of unions and their ability to influence policy. The fourth section discusses the measurement of the dependent and independent variables. The main results, robustness checks and extension to informal barriers, are presented in the fifth, sixth, and seventh sections respectively. The eighth section concludes the paper.

#### FDI deters escalation of resource conflicts over oil and minerals

Shim 24 [Gyu Sang Shim, Instructional Assistant Professor at the Bush School DC, Research Fellow with the Mosbacher Institute at Texas A&M University, “The Restraining Effects of Foreign Direct Investment on Armed Conflict,” Policy Briefs from the Mosbacher Institute for Trade, Economics, and Public Policy, Vol. 15, Issue 6, September 2024, https://bush.tamu.edu/wp-content/uploads/2024/09/V15-6-Restraining-Effects-of-FDI-on-Armed-Conflight.pdf]

Despite the well-documented connection between resource wealth and conflict, levels of violence in mining regions can vary significantly. For example, although diamond and copper mines in the southern regions of the Democratic Republic of Congo (DRC) were the location of intense conflict during the civil wars, recent violence has shifted to the eastern parts of the country. Similarly, in Ukraine's Donbas, separatists targeted Ukrainian-owned mines but spared the vicinity of a German company's facility. My recent research suggests that the threat of military intervention from the home governments of foreign miners can restrain attacks on the vicinity of foreign-owned facilities, especially when the home country has strong military capabilities and a reputation for intervention.

The presence of extractive resources within a nation can be a double-edged sword. While offering substantial economic potential, it often comes with an increased risk of civil conflict. Research shows that resource wealth, especially lootable resources like minerals, can entice rebel groups to engage in violence to gain control and exploit these resources.1 Insurgents frequently target oil-drilling operations and mining sites to fund their activities. Despite this, the security situation in mining regions varies widely. Some become intense conflict zones, while others remain relatively stable. This disparity can be influenced by the involvement of foreign investment.

WHAT’S THE TAKEAWAY?

Foreign-owned mines can receive additional military and diplomatic protection from their home countries, unlike domestic operations.

The effectiveness of foreign miners in restraining conflict depends on the credibility of military threat from their home countries.

Host countries can boost stability and security by attracting FDI from nations with strong military capabilities and global reputations

The main difference between extractive foreign direct investment (FDI) and domestic mining operations is the home country of the operating entity, although there can also be differences in capital investment and productivity. Domestic mining operations do not benefit from the "protection of nationals abroad" or "diplomatic protection" provided by foreign governments. In contrast, attacks on foreign-operated mines can lead to military interventions by the home countries of these foreign entities. For instance, when Occidental Petroleum's Can o Limo n Coven as oil pipeline in Colombia was repeatedly attacked by revolutionary forces starting in the 1990s, the US responded with substantial military aid, significantly reducing the attacks. Similarly, France sent special forces in 2013 to protect Areva's uranium mines in Niger from rebel group threats, and Angola intervened in Guinea-Bissau in 2012 to protect its investments in bauxite and oil production. Russia has also used private military companies like the Wagner Group to safeguard its gold mines in Su dan.

Additionally, foreign miners' home countries with significant political and economic leverage can influence host governments and collaborators of armed groups to ensure the safety of their nationals' mining operations.2 When multinational mining corporations face security threats due to conflict and instability, their home countries can use a multifaceted strategy such as threatening sanctions and economic repercussions against the host government to emphasize the urgency of the situation. Simultaneously, they might negotiate for additional foreign aid or security support, using their economic influence to persuade the host government to enhance security measures. By leveraging their geoeconomic power in this way, foreign governments can effectively push host nations to improve security, thereby reducing the risk of insurgent attacks and contributing to greater overall stability around foreign-owned mining facilities.

ARMED CONFLICT IN THE DRC

The Congo civil war's origins trace back to the 1960s, driven by disputes over mining interests from the colonial era. Belgian firms, having con trolled mineral-rich Katanga and South Kasai during colonial rule, supported secessionist movements to protect their interests after Congo's 1960 independence, leading to clashes with Congolese forces. UN intervention shifted control from Belgian to American investors through US aid to Mobutu's regime. American firms took over cop per and diamond mines in these regions, but a col lapse in copper prices and oil crises in the mid 1970s led to their withdrawal and renewed conflict. This instability prompted Belgian and French military interventions, and post-Cold War shifts in US policy contributed to Mobutu’s decline and the onset of the First Congo War in 1996.

The maps in Figure 1 illustrate the geographical distribution of armed conflicts and mining operations in the DRC. Mining activities in Congo commenced only after the end of the Second Congo War in 2003. The left map depicts conflict locations before this period, highlighting extensive violence in regions that would later host foreign owned mines. This historical context reveals a persistent link between violence and valuable mineral resources. In contrast, the map on the right, covering the period after 2003, shows a significant re duction in conflicts near foreign-owned mines. Despite the DRC's ongoing conflict and rich mineral resources, areas like Katanga and South Kasai, once major conflict zones, now exhibit relative stability. New conflict concerns, however, have emerged in regions such as Ituri, North Kivu, and South Kivu, indicating evolving patterns of violence.

THE CREDIBILITY OF THREAT MATTERS

The impact of foreign-owned mines on armed conflicts varies significantly depending on the credibility of the threat posed by the home countries of these foreign miners. The home country’s military capacity and reputation play a crucial role in this restraining effect. An analysis of georeferenced data from 1998 to 2010, covering 6,222 mining facilities across 148 countries3, reveals that foreign miners from a country that spends over $50 billion annually on military activities can prevent about two armed conflicts in regions of interest. This preventive effect, however, decreases by ap proximately 0.03 for every $1 billion reduction in military spending by the country. As Figure 2 shows, nations with significant military capabilities and a robust reputation for intervention, such as the United States, France, Italy, and Russia, create a strong deterrent effect.4 Their considerable military presence and history of intervention con tribute to a perception that aggression towards their interests will provoke substantial retaliation, thus reducing conflicts by at least two. In contrast, countries with a lower perceived military threat or less certain intervention policies, like Canada, China, Japan, Germany, and the United Kingdom, do not deter conflicts as effectively.

Some may wonder about alternative mechanisms that may prevent armed conflict in a region. One possible alternative explanation is that foreign miners may bribe armed groups. However, bribes do not guarantee the safety of business operations. In the case of Lafarge, a French cement company, many workers had been kidnapped by armed groups for ransom. When the Kurds kidnapped 9 employees in 2012, the firm had to pay €200,000 to release them, and the size of the payments subsequently increased. When Lafarge concluded that the demands of ISIS were no longer affordable, ISIS attacked the Lafarge cement factory and killed over 50 employees in September 2014. The other alternative explanation of the restraining effect of foreign miners is mercenaries hired by foreign mining corporations. These private security forces, however, often engage in human rights violations5 in regions where foreign mining facilities are located, which has been suggested as a cause of armed conflict near foreign-owned mines. According to the data analysis, firms that are more capable of bribing and hiring mercenaries do not necessarily experience more or less armed conflict in regions where their facilities are located.

The conflict in Donbas starting April 12, 2014, illustrates this dynamic. Ukrainian-owned mines in the region were heavily targeted by separatists, while Knauf Gypsum, the only foreign miner and a Ger man company in the region, was spared, likely due to Germany and NATO's strong military reputation. However, Knauf Gypsum closed its factory on February 24, 2022, following the Russian invasion of Ukraine. The German government, which had been willing to offer assistance to Knauf in 2014, was un able to provide the same level of support in 2022.

IMPLICATIONS

The impact of foreign-owned versus domestic owned mining operations on local conflicts is significantly shaped by the credibility of the threat posed by the home countries of foreign investors. My analysis underscores the pivotal role that threat perception plays in determining the efficacy of foreign miners in maintaining security in volatile regions. When military intervention by a foreign miner’s home country is deemed less likely, these foreign enterprises often face difficulties in stabilizing their operational environments and mitigating conflict. The credibility of such threats can be bolstered not only through substantial military capabilities but also through a robust reputation for global security engagement.

China’s recent military involvement in Africa, notably through the establishment of a military base in Djibouti in 2017, illustrates its strategic intent to safeguard its investments and business interests in the region. This move supports the security of pro jects associated with the Belt and Road Initiative, demonstrating a broader strategy to ensure the protection of Chinese investments through a credible and active security presence.

Additionally, host countries can also foster peace by attracting FDI from nations with substantial military capabilities and strong global reputations to strategically important locations. This strategy enhances the security of investment sites by leveraging the military and diplomatic influence of the investing countries, thereby contributing to broader regional stability.

#### Africa war escalates and draws in great powers.

Mohammed 25 [Samiya Mohammed, Advocacy & PR Officer at Horn Review, Researcher at the Ethiopian Institute for Foreign Affairs in Addis Ababa, “The Pyromaniac's Shadow: Eritrea's Pursuit of Regional Discord in the Horn of Africa”, https://x.com/HornReview/status/1899777464571728082]

The implications of such a development would be catastrophic. The Horn region, already grappling with internal divisions and economic challenges, cannot afford another descent into conflict. To Ethiopia’s west, Sudan is engulfed in a brutal civil war. To the east, Somalia struggles to rebuild after decades of collapse.

Across the Sahel, extremist groups are gaining ground. A resurgence of conflict in Tigray would create a belt of chaos stretching from the Sahel to the Horn of Africa, emboldening groups like al-Shabab and ISIL (ISIS) and disrupting global trade through the Red Sea.

The stakes could not be higher. The Horn of Africa is not just an African problem; it is a global challenge. The region’s instability has far-reaching consequences, from waves of refugees straining fragile systems in Europe to the spread of extremist ideologies into the Middle East. Global powers, from Washington to Beijing to Brussels, have a vested interest in ensuring the Horn does not descend into chaos.

Diplomatic pressure must be exerted to deter those, like Isaias, who seek to undermine peace. The Pretoria Peace Agreement must be defended, and regional cooperation incentivized through investments in trade, infrastructure, and governance. The international community must recognize that the Horn’s stability is a shared interest, one that requires sustained engagement and support.

The Horn of Africa stands at a crossroads. The choices made today will determine whether the region becomes a bridge of cooperation and prosperity or a cauldron of conflict and despair. The world cannot afford to stand idly by as Isaias Afwerki and others like him stoke the flames of discord. The time to act is now.

If the Horn descends into chaos, the ripple effects will be felt far beyond its borders. But if peace takes root, the region could become a beacon of hope, a testament to the power of diplomacy and cooperation. The Horn of Africa’s future is not just a regional concern; it is a global imperative. The world must rise to the challenge, for the sake of the Horn’s people and for the stability of our interconnected world.

## Workplace Safety

### 1NC---Inherency

#### The entire advantage is a lie. Hoffman Plastic has not been extended to any issue besides backpay

Bihari 11 [Luiz Arthur Bihari, J.D. and BA from University of Toronto, “Clashing Laws: Exploring the Employment Rights of Undocumented Migrants," University of Toronto Faculty of Law Review, vol. 69, no. 2, Spring 2011, pp. 9-30, HeinOnline via MSU libraries]

iii. Narrowing the Scope of Hoffman Plastic

Despite the condemnation of unauthorized employment, the Supreme Court's decision in Hoffman Plastic did not go as far as to reverse the conclusion in Sure Tan v NLRB that undocumented workers were also covered under labour laws. Instead, the court limited the scope of its decision to the question of backpay. In contrast to the British courts, the Supreme Court did not render the contract of employment illegal or void ab initio. On the other hand, immigration law had a role in shaping the remedies available for violations of the National Labor Relations Act.

Lower courts in the United States have mostly adopted a narrow reading of Hoffman Plastic, restricting its impact to the award of backpay under the National Labor Relations Act, and according undocumented workers the protection of employment statutes and the common law. Courts have upheld the minimum wage and overtime protections of undocumented workers,5 7 especially when considering recovery of unpaid minimum wages for services already performed. 8 Courts have also extended protection to undocumented workers in cases dealing with worker's compensation benefits 9 and awarded damages for lost wages in employment-related tort cases under state common law. 60

Singh v Jutla'61 one of the only court decisions to consider a case involving an employer who knowingly hired an undocumented worker, "determined that the employer was not immune from post-discharge liability," including compensatory and punitive damages for violations of the Fair Labor Standards Act.62 Courts have also interpreted work-related state legislation as extending protection to undocumented workers,63 although this record has not been unanimous."4 As in Farmer Bros Co v Workers' Compensation Appeals Board and Ruiz,6s most of these decisions concluded that "there is no pre-emption language in the IRCA expressly affecting state workers' compensation laws."6 According to these courts, statutory silence in the IRCA should not be interpreted as an implied entrenchment of immigration law in the sphere of labour and employment regulations. Another common argument in the courts paralleled the dissent in Hoffman Plastic, concluding that limiting the enforcement of these employment rights would not only "lessen an employer's incentive to comply with the Labor Law and supply all of its workers the safe workplace that [the] Legislature demands," but also increase the demand for undocumented workers due to their lower costs.67

Two courts have also dealt with the impact of Hoffman Plastic on discrimination claims under Title VII of the Civil Rights Act of 1964 ["Tide VII"],68 paralleling the discrimination cases in the UK previously discussed. In Escobar v Spartan Security Service,69 the federal district court in Texas applied the decision in Hoffman Plastic, holding that undocumented workers were not entitled to backpay under Title VII. However, the court refused to extend the reach of its decision to other remedies under Title VII, confirming that undocumented workers were entitled to such important forward-looking remedies as reinstatement or front pay. In Rivera v NIB CO,7° the Ninth Circuit court concluded in dicta that Hoffman Plastic should not be extended to Title VII claims. The court held that punitive damages, while unavailable under the National Labor Relations Act, are an important remedy under Tide VII. Furthermore, the court found that, while the NLRB has limited discretion regarding remedies available for breaches of the National Labor Relations Act, Tide VII is enforced by the federal court system, which has no similar limitation.71

### 1NC---AT: Disease I/L

#### Disease internal link is terrible

#### 1. The idea that a subset of workers coming in sick is the lynchpin of whether a disease would spread to an existential level is ludicrous. Global alt causes and many other factors like government response outweigh.

#### 2. 1AC Milczarek-Desai has tons of alt causes like time, costs, lack of knowledge, and an internalized “legal consciousness” that overwhelms legal rights

#### There’s also alt causes to sick leave – 45% of the US population has no coverage

[For reference. MSU = Green]

Shefali Milczarek-Desai 23 - Associate Professor of Law and Co-Director of the Bacon Immigration Law and Policy Program at University of Arizona. “Opening the Pandemic Portal to Re-Imagine Paid Sick Leave for Immigrant Workers,” August 2023, California Law Review, vol. 111.

Court cases furthered exacerbated IRCA’s negative impact on the employment and labor rights of im/migrant workers because they opened the door to limiting certain remedies for im/migrant workers, whose workplace rights had been violated. This case law is important to understand before examining why im/migrant workers fail to benefit from paid sick leave laws because it contextualizes im/migrant workers’ predicament when it comes to asserting rights in the workplace, such as the right to paid sick leave.

After IRCA “injected the nation’s immigration laws directly into the workplace,”[86] the Supreme Court, in Hoffman Plastic Compounds, Inc. v. NLRB, severely limited im/migrant workers’ rights under a leading federal labor rights law.[87] The National Labor Relations Act (NLRA) provides workers with the right to engage in union-related activities and concerted action in the workplace.[88] If a worker faces adverse employment action including, but not limited to, termination for participating in activity protected under the statute, the NLRA provides the worker with the sole monetary remedy of backpay.[89] Backpay means the earnings a worker would have made but for an employer’s retaliatory actions.[90] The National Labor Relations Board (NLRB) is the federal administrative agency tasked with bringing NLRA claims against employers and determining backpay awards.[91] In determining whether to award backpay under the NLRA, the NLRB can take into account whether a worker sought replacement employment in good faith after termination.[92]

Hoffman Plastic arose when Jose Castro, a worker in the polyvinyl resins and plastic pipework company, was fired by his employer for attempting to unionize his workplace.[93] The NLRB determined that Mr. Castro’s rights had been violated by Hoffman Plastic Compounds, Inc., and that he should be awarded $66,951 in backpay.[94] The employer appealed and argued that Mr. Castro, who lacked work authorization,[95] should not be entitled to backpay because IRCA made it unlawful to employ unauthorized workers.[96]

In an earlier case that arose before the passage of IRCA, the Court had held that unauthorized workers were covered by the NLRA because the Act states that the “‘term employee’ shall include any employee.”[97] In Hoffman Plastic, the Court followed its precedent that unauthorized workers like Mr. Castro were covered under the NLRB.[98] However, the opinion, written by then-Chief Justice William Rehnquist, went on to state that, due to IRCA having “significantly changed” the legal landscape, Mr. Castro could not be awarded backpay.[99] The Court asserted that IRCA made “combating the employment of [undocumented workers]” central to immigration law and policy and that awarding Mr. Castro backpay “runs counter to policies underlying IRCA.”[100] The Court’s opinion, however, ignored the legislative history clearly stating that IRCA should not be read to alter unauthorized workers’ rights under employment and labor laws since the very purpose of the NLRA’s backpay provision is to deter violations of workers’ rights to unionize.[101] Instead, the Court reasoned that, because IRCA prohibited Mr. Castro from legally working in the United States in the first place, it would contravene everything IRCA stood for to award him backpay. This reasoning is based on the notion that a worker would have been employed but for an employer’s unlawful action.[102] The Court went on to state that awarding backpay to unauthorized workers under the NLRA “condones and encourages future violations.” [103] This, it said, was because unauthorized workers would not be able to fulfill their duty to mitigate damages “without triggering new IRCA violations, either by tendering false documents to employers or by finding employers willing to ignore IRCA and hire illegal workers.”[104] Thus, the Court concluded that “allowing the Board to award backpay to [persons without work authorization] would unduly trench upon explicit statutory prohibitions critical to federal immigration policy.”[105]

The central dilemma in Hoffman Plastic perfectly illustrates the collision between immigration laws, like IRCA, and workers’ rights laws, like the NLRA. On the one hand, Hoffman Plastic Compounds, Inc. clearly violated Mr. Castro’s labor rights, and IRCA’s legislative history states that the rights of workers are not to be diminished by IRCA. On the other hand, the logic of backpay is that a worker would have been employed but for an employer’s bad actions. The Court could have chosen to adhere to the plain language of the NLRA, which does not require work authorization as a prerequisite for mitigation of damages under its backpay provision, but it did not.[106] Rather, the Hoffman Plastic Court chose to privilege immigration enforcement above workers’ rights.[107]

Refusing to award workers backpay when employers are liable for workers’ rights violations—what Professor Wishnie referred to as “functional immunity” from employment and labor laws—has done little to nothing to further IRCA’s prohibition on unauthorized employment but has significantly hurt labor rights.[108] Worse still, Hoffman Plastic brought the exact opposite result from what IRCA sought because the Court’s holding incentivizes employers to hire people without work authorization who are barred from seeking certain types of damages.[109]

By gutting NLRA backpay protections for unauthorized workers,[110] Hoffman Plastic signaled to employers that they could retaliate against im/migrant workers who dared engage in collective bargaining or other NLRA protected activities with impunity—even if they were found liable they would not have to make backpay awards.[111] Employers soon began pressing courts to apply Hoffman Plastic logic to damages under other federal employment and labor laws such as Title VII and the FLSA.[112]

The most recent battle over the reach of Hoffman Plastic arose in the context of a state workers’ compensation law. In Torres v. Precision Industries, Inc., Ricardo Torres hurt his back while working at Precision Industries.[113] He filed for worker’s compensation under Tennessee state law, and was terminated for doing so by his employer in contravention of that law’s anti-retaliation provision.[114] When Mr. Torres sued for retaliatory discharge, Precision Industries borrowed Hoffman Plastic logic to argue that the former employee should not be awarded any damages, not merely non-payment of backpay, because he lacked work authorization.[115] A federal district court in Tennessee initially agreed with the employer and prohibited Mr. Torres from recovering economic and non-economic damages based on IRCA.[116] Relying heavily on Hoffman Plastic, the Sixth Circuit Court of Appeals ultimately upheld the portion of the district court’s decision on remand that denied Mr. Torres backpay for the period in which he was unauthorized to work.[117] The appeals court concluded, however, that Mr. Torres could recover other types of damages because IRCA does not “preempt compensatory and punitive damage awards unrelated to an employee’s immigration status.”[118] The court made this distinction by focusing on that portion of the Hoffman Plastic decision pointing out that backpay mitigation requires an unauthorized person to seek employment.[119] Thus, the Sixth Circuit holding reasons that even though IRCA was created to “halt the hiring and continued employment of unauthorized [workers] . . . this does not mean Congress has occupied the entire field of employment regulation, including causes of action arising out of an individual’s employment, authorized or not.”[120]

The Precision Industries opinion, like the Hoffman Plastic opinion, straddles the intersection between immigration enforcement and workers’ rights. Both Precision Industries and Hoffman Plastic continue to indulge the legal fiction that situates im/migrant workers as impossible subjects forced to occupy a space that refuses to recognize their rights but that profits from their labor.[121] Even though these cases do not limit im/migrant workers’ rights to remedies under most employment and labor laws, the next Section explains how the collision between immigration enforcement and workers’ rights—created in part by IRCA and its resulting case law—largely strips im/migrant workers of meaningful access to employment and labor protections such as paid sick leave.

C. The Emergence of the “Brown Collar Workforce”

The COVID-19 pandemic has laid bare a twenty-first-century workforce that is highly stratified and segregated based on race and immigration status.[122] In this picture, im/migrant workers toil in occupations and industries that have come to be associated with laudable buzzwords such as “frontline” and “essential,” which really are code words for jobs that pay little, often are dangerous to health and safety, and have high rates of employment and labor law violations.[123] What led to the overrepresentation of im/migrant workers in these jobs[124] is a long and complicated puzzle, painstakingly put together by renowned scholars, such as historian Mae Ngai and sociologist Ruth Milkman.[125] Their work carefully traces the decades-long lineage of im/migrant workers’ concentration in certain types of jobs. It also shows that changes to the legal landscape between the mid-1960s and the mid-1980s ultimately resulted in the making of what often is referred to today as the “brown collar workplace.”[126]

With the passage of Title VII, which forbid workplace discrimination on the basis of race, national origin, ethnicity, sex and religion,[127] Black Americans, along with other less-educated Americans, began fleeing undesirable jobs made worse by the weaking of labor unions.[128] At the same time, as described above, the 1965 amendments to the INA and the first-time imposition of quotas on legal migration from Mexico resulted in a newly undocumented workforce desperate for work.[129] Twenty years later, IRCA’s passage in 1986 led to the Hoffman Plastic decision, workplace raids, and im/migrant workers’ increased sense of vulnerability.[130] This vulnerability is a key element in the making of the brown collar workforce because it creates subservience,[131] which is appealing to employers who engage in violations of workplace rights.[132] Indeed, researchers have shown that brown collar workers’ vulnerable status makes them less likely to engage in complaint-making when their employment and labor rights are violated.[133]

In addition to a lack of im/migrant worker complaint-making, there is also an enforcement problem. Employment and labor laws disincentivize violations of workplace rights by making employers pay when violations occur.[134] For example, the FLSA permits workers whose minimum wage and overtime rights have been violated to seek up to double the amount they are owed in unpaid wages;[135] the NLRA allows workers to be paid for time they could not work due to retaliatory discharge;[136] Title VII provides for backpay, frontpay, and compensatory and punitive damages;[137] and most local minimum wage and paid sick time laws allow workers to recover liquidated damages in addition to compensatory damages for employer violations.[138] These laws also come with strong prohibitions against retaliation when workers assert their rights, which can result in additional monetary damages.[139] Importantly, in order to get from violation to economic recovery for workers and punishment for employers, the system relies nearly exclusively on worker complaints.[140] This bottom-up method of workers’ rights enforcement does not function as intended when it comes to im/migrant workers.[141]

Employment and labor laws on federal, state, and local levels set up a dual system whereby enforcement action can be taken by the agency tasked with upholding the law at issue or by an individual worker or groups of workers under private rights of action.[142] Sometimes the two enforcement mechanisms work in tandem, such as when workers file complaints with the appropriate agency and then the agency investigates and, if necessary, takes legal action.[143] Over time, consistent starvation of agency budgets on the federal level as well as in many states has led to worker complaints being “the primary driver of enforcement activity.”[144] The legal system assumes that all workers have equal access to complaint-making. Several empirical studies conducted by economists over the past twenty years have disproved this assumption when it comes to the most vulnerable workers.[145]

In a 2004 study, David Weil and Amanda Pyles examined three years’ worth of complaint data at the U.S. Department of Labor (DOL) for violations under the FLSA and the Occupational Safety and Health Act (OSHA).[146] After deducing that “the annual probability of receiving an inspection for one of the 7.0 million establishments covered [by the FLSA or OSHA] is well below .001,”[147] the researchers concluded that holding employers who commit FLSA and OSHA violations responsible is mostly contingent upon worker complaint-making.[148] They then hypothesized that a worker is more likely to engage in the complaint-making process if the perceived benefits to the worker outweigh the costs.[149]

The researchers defined the cost of making a complaint not only as retaliatory behavior by the employer, but also the cost in time and energy required to research and understand the laws under which an employee’s rights may have been violated.[150] After sifting through the data, the researchers concluded that “the nature of the benefits and costs [of complaint-making] preclude many workers from exercising their rights in the first place, resulting in a modest-level of complaint activity.”[151] They theorized that workers who “feel vulnerable to exploitation,” including “immigrant workers,” are even less likely to assert their workplace rights.[152]

This research makes two important contributions to understanding the plight of im/migrant workers. First, it demonstrates that the existing system of bottom-up workplace rights enforcement wrongly assumes that all workers experiencing workplace violations have equal access to vindicating their rights by complaining either to agencies or through private rights of action.[153] Second, it shows that differently situated workers have differing benefit/cost ratios for engaging in complaint-making, and that the most vulnerable workers are unlikely to assert their workplace rights because the costs greatly exceed the benefits of complaining about workers’ rights violations.[154] Additional studies confirm that im/migrant workers often fall into this “most vulnerable” category and are less likely than other workers to engage in complaint-making when their workers’ rights are violated.[155]

Building on earlier studies, in 2014, economists Charlotte Alexander and Arthi Prasad examined the “powerful incentives [vulnerable workers have] to stay silent in the face of workplace problems” by specifically surveying im/migrant workers.[156] Reviewing data collected from over four-thousand workers in three of the largest U.S. cities, they found that im/migrant workers do not benefit from employment and labor laws for two main reasons: 1) they lack the legal knowledge “to identify violations of their rights and access the proper enforcement procedures,” and 2) the risks in complaint-making far outweigh the benefits for these workers.[157] The researchers further found that even when workers had knowledge of workplace rights and how to engage in complaint-making, “43 [percent] of workers who had experienced a workplace problem . . . decided not to make a claim”[158] and that “the most common reason” for im/migrant workers’ “silence was their fear of employer retaliation.”[159]

Other research shows that im/migrant workers often do not complain about workplace abuses because they anticipate retaliation before it occurs.[160] This has been well documented in im/migrant-heavy workplaces where employer threats—both spoken and unspoken—prevent workers from raising their workplace rights for fear of adverse employment action.[161] These silencing tactics are especially effective because, under the law, employees cannot state a claim for employer retaliation until after the retaliation occurs.[162] Thus, the mere threat of retaliation is often enough to foreclose im/migrant workers from making complaints.[163] Alexander and Prasad’s 2014 study also found that when im/migrant workers overcome the fear of retaliation and complain, roughly 43 percent “experienced some form of employer reprisal in response” and of these reprisals, 35 percent “constituted unlawful retaliation in violation of labor and employment laws.”[164] While the remainder of reprisals “likely did not rise to the level of an ‘adverse employment action’” as defined under employment and labor laws, they “nevertheless likely had a silencing effect on workers.”[165] Importantly, even when actionable retaliation occurs, anti-retaliation remedies in employment and labor laws “can be invoked only after the employee has suffered [harm], and offer, at best, the possibility of an uncertain remedy after a long delay.”[166]

For example, in Tolano v. El Rio Bakery, four im/migrant workers filed claims against their employer under the FLSA, NLRA, and state minimum wage law for failing to pay overtime or minimum wage and for engaging in retaliation against the workers when they collectively complained about these violations of their workplace rights.[167] After the case was filed in federal district court, the employer filed for bankruptcy, which led the district court to stay its case pending the bankruptcy court’s determination.[168] Almost a year later, the bankruptcy court rejected the employer’s bid for bankruptcy protection. In the intervening months, the employer shut down its business, sold all assets, and disappeared.[169] Thus, when the district court resumed the initial case and ultimately awarded the workers a combined $197,078 in monetary damages, there was little to no hope of actual recovery for the im/migrant workers who braved making a legal complaint.[170]

A similar situation developed with Turman v. Koji’s Japan, Inc., a class action that began in 2010 as a result of an employer systematically violating workers’ rights under the FLSA and state labor laws.[171] Like the employer in Tolano, the restaurant responded by shuttering its business and filing for bankruptcy, while the sole shareholder and director absconded with the assets.[172] Over eleven years of litigation and several court decisions later, an appellate court finally ruled that the restaurant’s sole shareholder and director was personally liable for violations of workers’ rights under both the FLSA and state law.[173]

Thus, even when vulnerable workers muster the courage to complain, despite the costs they are likely to encounter, they may never recover damages to make up for lost wages or time. Even when courts award damages, workers may have to wait many years for payment. Moreover, employers often avoid paying the steep prices needed to deter them from committing future workplace violations.[174] Thus, the logic behind enforcement of employment and labor laws, which depends on workers making complaints, has failed im/migrant workers.[175]

Viewed another way, the effectiveness of workers’ rights laws depend “significantly on worker ‘voice,’” and cannot help im/migrant workers when their voices are effectively silenced.[176] To be sure, this silencing is based, in large part, on fear of employer retaliation and the threat of immigration enforcement. But there is also another more insidious reason for this silencing. In 2010, Latin American Studies scholar Shannon Gleeson interviewed forty-one Latinx workers, both with and without work authorization, in the restaurant industry in two large U.S. cities to determine why im/migrant workers are less likely to engage in complaint-making.[177] Gleeson found that not only did rights enforcement face substantial barriers created by “limitations of an underresourced labor standards enforcement bureaucracy, lack of knowledge about rights, and employer intimidation,” but workers themselves had internalized a “legal consciousness” that prevented them from making claims when their workplace rights were violated.[178] Gleeson concluded that because the im/migrant workers she interviewed assumed a stance in which they did not believe they were worthy of accessing their workplace rights, “efforts toward reducing [barriers to workplace rights enforcement], while certainly necessary, may be insufficient to ameliorate the fundamental challenge that undocumented status poses.”[179]

In summary, the century-long collision between immigration laws and employment and labor laws has produced a brown collar workforce critical to the American economy but unable to benefit from basic workplace rights. The COVID-19 pandemic has revealed that this disenfranchisement reverberates beyond the well-being of individual workers by threatening entire industries, those they serve, and the public at large. One way to address this crisis is to locate im/migrant workers outside the binary of immigration enforcement versus workers’ rights and inside a public health matrix dependent upon the health and safety of frontline, essential workers. Paid sick leave laws are a portal through which this re-imagining can occur.

II. Paid Sick Leave in America

The pandemic has demonstrated that public health suffers when low-wage im/migrant workers do not have access to paid sick leave. This Section situates paid sick leave rights within a broader public-health policy conversation and highlights the importance of ensuring that im/migrant workers benefit from paid sick leave laws. It does so by describing the United States’ paid sick leave laws and the significant public health benefits they confer to multiple stakeholders.

A. The Legal Landscape

The federal government has never enacted a permanent, national, paid sick time law.[180] Indeed, America lags far behind nearly all of its counterparts among wealthy nations and even among many developing countries in this regard.[181] Congress tried but failed to enact the Pandemic Protection for Workers, Families, and Businesses Act after the 2010 H1N1 epidemic.[182] The Healthy Families Act, first introduced in Congress in 2004 and most recently re-introduced in 2019, has also failed to garner the Congressional votes required to become law.[183] Congress finally implemented a national paid sick leave mandate in the form of the Families First Coronavirus Response Act (FFCRA) after the COVID-19 pandemic hit U.S. shores. However, that mandate was temporary and expired six months before the deadly Delta variant gripped the nation in the summer of 2021.[184] Even when it was in effect, FFCRA was limited in scope because it excluded millions of U.S. workers, including those working at companies with more than 500 employees, those at workplaces with fewer than 50 employees,[185] and those designated by their employers as healthcare workers and first responders.[186]

The only paid sick leave laws in the United States today have been enacted by states and municipalities. Since 2006, when San Francisco became the first place in America to enact a paid sick leave ordinance, local paid sick time laws have burgeoned.[187] Although these laws vary, most are based on a system whereby workers earn one hour of paid sick time for every thirty to forty hours worked.[188] Workers may use a capped number of earned paid sick time hours per year[189] for a variety of reasons including preventative medical care for themselves or a family member, their own illness, caring for a sick family member, and in some cases, for domestic violence related reasons and during a public health emergency.[190] These laws also have a notice requirement; employers must notify their employees of their right to take sick leave and the terms under which they can use it.[191]

Contrary to some employer concerns that workers would abuse paid sick leave, studies of paid sick time laws in several jurisdictions have shown that workers are unlikely to use their earned paid sick days for reasons that don’t qualify for paid sick time.[192] Rather, “employees treat paid sick days not as an entitlement, but as insurance, to use when illness strikes the worker or a family member.”[193]

The modern patchwork of local paid sick leave laws has significantly increased the number of American workers with access to paid sick days. New York City’s law, for example, expanded paid sick leave coverage by 1.2 million workers.[194] Two years after San Francisco’s law went into effect, 99 percent of the city’s workplaces with twenty or more employees provided paid sick days and “[l]ow-wage workers . . . significantly benefitted from the ordinance, especially those working in food service and accommodation sectors.”[195] A survey of employers one year after Seattle’s paid sick time law passed found that “marginalized workers—those in low-paying and part-time positions—are likely to gain significant coverage through mandated paid sick leave policies.”[196] Connecticut’s paid sick leave law similarly resulted in “the largest increases in paid sick leave coverage . . . where workers needed the assistance most, e.g., healthcare, education and social services, hospitality, and retail.”[197]

B. Paid Sick Days Create Net Benefits

Numerous empirical and simulated studies show that paid sick days create net benefits because they achieve the twin goals of ensuring worker health and community safety. This research has revealed that workers without access to paid sick leave are more likely to engage in “presenteeism”[198] than their counterparts with leave, and that these sick workers subsequently infect others at high rates.[199] The converse also is true: when workers have access to paid sick leave, there is a correlative reduction in the spread of viral infections.[200]

Empirical data collected during the H1N1 epidemic of 2009–10[201] revealed that about eight million workers showed up to work with that dangerous influenza virus and went on to infect about seven million additional people.[202] A 2013 National Health Interview Survey concluded that “both full-time and part-time workers without paid sick leave are more likely to attend work while sick.”[203] Although no large-scale studies have yet discerned how many workers went to work infected with the novel coronavirus or how many additional COVID-19 cases resulted, an empirical study during the first summer of the pandemic showed that nursing home aides who engaged in presenteeism were responsible for 44 percent of COVID-19 spread among multiple nursing homes, co-workers, and older residents.[204]

A significant body of research has established that presenteeism is responsible for several large outbreaks of foodborne illnesses too. In 2008, a worker without paid sick leave at a Chipotle restaurant in Ohio came to work ill, prepared food, and subsequently infected 500 people, resulting in hundreds of dollars in cost to the local community.[205] A Wyoming norovirus outbreak in 2012 affected over three hundred people and was traced to restaurant workers who showed up to work sick.[206] Moreover, each year, “there are approximately seventy-six million instances of food-borne illness nationwide . . . and food-service workers who go to work despite being sick were the leading causes of such outbreaks.”[207] Looking beyond the costs incurred by workers, consumers, and communities when disease outbreaks occur, the Harvard Business Review has estimated that presenteeism costs “American companies . . . more than $150 billion” annually.[208]

On the flip side of presenteeism are paid sick leave policies, which have been shown to reduce disease outbreaks. For example, one study comparing the rate of foodborne illnesses in jurisdictions before and after they adopted paid sick leave laws found that the rate diminished by 22 percent after paid sick leave was mandated.[209] A Harvard School of Public Health survey showed that while paid sick leave did not eliminate presenteeism, it “greatly reduce[d] it.”[210] A simulated study using Google Flu Trends data demonstrated that when workers have access to paid sick leave policies that allow them to stay home when they are sick, infection rates decrease by about 10 percent.[211] At least three other simulated studies showed a similar and significant reduction in pandemic spread as a result of paid sick leave laws.[212] Yet another simulated study suggested that paid sick leave would encourage workers to abide by governmental quarantine recommendations.[213] Two other studies have shown that paid sick leave policies result in increased vaccination rates for a broad spectrum of workers.[214] One of these studies, based on Medical Panel Expenditure data from 2006–10, projects that higher vaccination rates due to paid sick days “would result in 18.2 thousand fewer health care visits” and “64 thousand fewer work absences from influenza” alone.[215]

Employees are not the only beneficiaries of paid sick time laws, which have also been linked to favorable conditions for employers. Studies have consistently “found a relationship between paid sick leave policies and economic benefits for employers such as improved employee productivity, reduced turnover and lower associated hiring and training costs as well as improved employee morale and loyalty.”[216] Moreover, several studies conducted in jurisdictions with paid sick leave mandates show that the “overall [negative] impact on businesses was minimal” in that employers reported experiencing “little or no additional costs” and that implementing paid sick days “had minimal effect on business operations.”[217] In New York City, where the paid sick time law covers 3.4 million workers, 94 percent of employers reported “the law ‘had no effect on business’ productivity, while 2 [percent] . . . reported that productivity actually increased.’”[218] Employers also reported little to no extra cost for implementation of the paid sick leave law.[219] Surveys collected from employers in San Francisco and Connecticut, two other jurisdictions with paid sick leave laws, show that most employers did not experience an increase in costs as a result of these laws.[220] Similarly, the California Chamber of Commerce, which originally opposed that state’s paid sick leave law, “reported that employers have not experienced the expected burden” of the law and reported little to no difficulty in complying with the law.[221] In short, a substantial and growing body of empirical data and research confirms “that paid sick leave can be used as an effective policy instrument for controlling epidemics”[222] without harming business interests.

C. Paid Sick Leave and Im/migrant Workers

Despite the demonstrable win-win-win that paid sick leave brings to workers, employers, and the public at large, low-wage workers—a workforce that includes large numbers of im/migrant workers, and everyone they come into contact with—are being excluded from these benefits. DOL figures reveal that “low-income workers still lag far behind in access to paid sick leave.”[223] Nationwide, “only about 65 [percent] of American full-time workers have access to sick leave” and in low-wage, part-time, and service sectors of the economy, this numbers drops precipitously to 20 [percent] of the workforce.[224] All in all, about “forty-four million workers—primarily within low-income brackets—lack access to even a single paid sick day in the United States.”[225] Moreover, using data from the Centers for Disease Control and the U.S. Bureau of Labor Statistics, researchers have estimated that “at least 20 million Americans go to work sick, which [researchers] attribute to lack of access to paid sick leave.”[226] Indeed, one worker survey found that “[o]nly 13 [percent] of low-income workers . . . reported beliefs that they could stay home during a pandemic outbreak.”[227] Many of these workers are im/migrants who work in essential industries performing frontline jobs.[228]

National surveys collected in the aftermath of the H1N1 Pandemic revealed that Latinx workers “had a higher risk of infection due to disproportionate lack of access to paid sick leave” and that these workers had “lower rates of paid-leave access” than their counterparts during that epidemic.[229] Not only were workers in these groups unable to stay home when ill or appropriately socially distance while at work, but they also faced increased hospitalizations and deaths.[230] These higher hospitalization and death rates among racial and ethnic minorities have been replicated during the current COVID-19 pandemic, with Black and Latinx individuals being three times as likely to contract coronavirus and twice as likely to die from it than individuals in other ethnic groups.[231]

While some portion of im/migrant workers’ lack of access to paid sick leave can no doubt be attributed to jurisdictions without paid sick leave laws, emerging research shows that even im/migrant workers who live in jurisdictions with paid sick leave mandates fail to benefit from these laws.[232] To date, no comprehensive study has gathered data regarding the extent to which im/migrant workers have been able to access paid sick leave when they live and work in jurisdictions with paid sick leave laws. The COVID-19 pandemic, however, has prompted researchers to begin looking at this important question since earlier disease outbreak data shows that paid sick leave laws among this group of workers significantly reduces the spread of contagious diseases and resulting fatalities. The largest such study so far to look at this issue was conducted in the middle of the COVID-19 pandemic by the University of Massachusetts Labor Center, which collected surveys from 1600 frontline, essential, low-wage workers.[233] The data revealed that workers felt unprotected from COVID-19 at work and that they could not quit due to economic concerns.[234] Thus, this study revealed information previous research had not unearthed—that despite a robust state paid sick leave law and temporary federal paid sick leave legislation then in effect, a large percentage of low-wage workers, many of whom identified as Latinx, did not receive paid sick days.[235]

Empirical researchers have yet to explore why im/migrant workers do not benefit from paid sick leave laws when such laws exist, although at least two small-scale studies have been launched by the Clinic.[236] The next Section utilizes critical legal theories to construct a framework within which to analyze im/migrant workers’ inability to access paid sick time in jurisdictions with paid sick leave laws.

### 1NC---AT: Disease !

#### COVID thumps the supply chain disruptions impact to disease

#### Pandemics won’t cause extinction---genetic diversity, lethality-virulence trade-offs, and isolation check

Vermeer et al. 25 [Michael J.D. Vermeer, PhD Chemistry, senior physical scientist at RAND; Emily Lathrop, PhD Mechanical Engineering, associate engineer at RAND; and Alvin Moon, PhD Mathematics, associate mathematician at RAND, “On the Extinction Risk from Artificial Intelligence,” RAND, 05/2025, p. 18-21, https://www.rand.org/content/dam/rand/pubs/research\_reports/RRA3000/RRA3034-1/RAND\_RRA3034-1.pdf]

Requirement 1. Multiple Pathogens Are Likely Required Because a Single Pathogen Would Be Unlikely to Kill a Sufficient Percentage of the Population to Be an Extinction Threat

To support this assertion, we look first to historical pandemics. Natural biological threats have existed for millennia. The 14th-century bubonic plague—the Black Death—wiped out 30–50 percent of Europe’s population, and the 1918 influenza pandemic resulted in 50 million deaths worldwide (Shipman, 2014). The combination of drought and pathogens introduced during the European conquest of Mexico in the 16th century led to more than a 90-percent reduction in the native population (Acuna-Soto et al., 2002). However, although these examples led to drastic human population declines, they did not fully extinguish the human population. Indeed, with one known exception—the extinction of the Christmas Island rat, preceded by the emergence of a deadly pathogen in the population—there are no well-corroborated instances of pathogens causing the complete extinction of a mammalian species (Wyatt et al., 2008).

A greater threat would likely come from novel pathogens, including both modified natural pathogens or completely de novo pathogens, designed for high transmissibility and high lethality. However, even pathogens designed to cause these effects might be limited by human heterogeneity. Human genetic diversity plays a key role in limiting the effectiveness of pathogens across populations. Within a population, pathogens affect individuals differently depending on factors related to the specific genetic characteristics of each host (Jones, 2021). Some individuals or subpopulations might possess genetic traits that confer resistance or immunity to certain pathogens. For example, differences in viral receptors between individuals can affect the ability of the hepatitis C virus to enter a host’s cells (Huang et al., 2019).

The strength of immune response can vary among individuals, influencing their ability to fight off infections. The likelihood that a pathogen will cause death is influenced by the immune response that an individual is able to put up against the pathogen (Rouse and Sehrawat, 2010), meaning that outcomes will vary between individuals, even when controlling for pathogen dose.

Relatedly, the infection dose—the amount of a pathogen that an individual is exposed to—can significantly alter the course of a disease (Rouse and Sehrawat, 2010). Individuals who only receive a small infection dose have a higher chance of successfully mounting an immune response, and infection dose is a factor that cannot easily be controlled for. This is the case not only for transmissible pathogens that spread person-to-person but also for nontransmissible pathogens, such as Bacillus anthracis, the causative agent of anthrax. As a result, it is unlikely that even a carefully engineered pathogen would be 100 percent lethal for all humans, as certain individuals or populations might possess traits that allow them to fight the disease or receive a nonlethal dose of the pathogen that causes the disease. Case studies have suggested that exposure to even highly lethal viruses, such as rabies, is not always fatal (Gold et al., 2020).

The postinfection survival of some individuals leads to several important consequences. First, some populations will emerge with immunity; survivors might develop immunological memory, thereby reducing the severity of disease on reinfection. Second, over generations, natural selection will dictate that hosts with immune systems that are better equipped to fight off a pathogen will survive and pass along those traits to offspring. Third, subpopulations with increased immunity within a larger population can alter disease dynamics, thereby lowering the pool of susceptible individuals and reducing the continued spread of a pathogen in the population (Grassly and Fraser, 2008).

Finally, even if a single pathogen could be designed to be consistently highly lethal after many replications, we assert that sufficient numbers of humans would likely survive to avoid extinction. A virus that was 99.99 percent lethal and reached the entire human population, for example, might leave at least 800,000 individuals alive. As previously noted, the minimum viable population for human beings is unknown, but it is likely well below 800,000 people.

Requirement 2. Widespread Dissemination in Multiple Places Is Likely Required Because Initial Infections of a Small Population in One Location Could Allow a Pathogen to Mutate to Become Less Lethal over Time

For transmissible pathogens, evolutionary pressures and host-pathogen interactions result in altered pathogen characteristics as the pathogen reproduces within a host and spreads host to host (Geoghegan and Holmes, 2018; Gerstein, Espinosa, and Leidy, 2024). This results in modifications to pathogen characteristics, leading to variants with modified lethality and transmissibility. In addition to host-pathogen interactions altering pathogen characteristics, viruses are prone to transcription and translation errors, resulting in random mutations over time and unpredictable changes in pathogen characteristics (Sanjuán et al., 2010).

In one well-cited evolutionary biology study, researchers traced the evolution of the myxoma virus, which was introduced to Australia in 1950 to control the invasive rabbit population (Kerr et al., 2012). The original virus was highly lethal with a 99.8 percent fatality rate. However, once released, the virus quickly mutated, and, within two years, the landscape was dominated by less lethal strains, even with the continued release of very virulent strains into the local population (Kerr et al., 2012). Although these less lethal strains still had fatality rates of between 70 percent and 95 percent, this allowed for the survival of some rabbits; this natural selection resulted in the emergence of rabbit resistance to myxomatosis (Marshall and Douglas, 1961). Ultimately, the virus failed to exterminate the invasive rabbit population, and invasive rabbits persist in Australia as of this writing. Interestingly, this experiment was independently repeated in France in 1952 with similar results: the emergence of attenuated (i.e., less virulent) strains and natural selection for resistant rabbits (Kerr et al., 2012). We note, however, that the different generational periods for humans and rabbits might indicate the need for caution in applying this example to an equivalent scenario affecting humans. Rabbits reach reproductive age on much shorter timescales than humans do and have many more offspring per pregnancy. Therefore, it might be much more challenging for a human population to recover and sustain itself in the face of a similarly lethal transmissible virus.

Both theory and historical examples of virus evolution indicate that highly lethal viruses will often evolve to decreased virulence over time, resulting in lower mortality (Geoghegan and Holmes, 2018). This makes intuitive sense because very lethal pathogens will quickly sicken and kill their hosts, thereby limiting their own transmission opportunities. Conversely, less virulent strains that allow hosts to survive longer have more chances of spreading among a population, leading to increased presence in a population. If a pathogen retains alternative nonhuman hosts—a reservoir species—it might be less self-limiting because the pathogen could conceivably maintain high lethality in human hosts concurrently with transmissibility from the reservoir species. Others have found, however, that low-virulence infections have a greater chance of establishing transmission in human hosts, which might diminish the ability of pathogens to completely wipe out a human population, even where a reservoir species exists (Geoghegan and Holmes, 2018; Geoghegan et al., 2016).

Requirement 3. Follow-Up Actions Are Likely Required After an Initial Dissemination of a Pathogen Because Natural and Artificial Isolation Might Shield Human Communities from Infection

The path of the coronavirus disease 2019 (COVID-19) pandemic illustrates that a highly transmissible pathogen can readily infect every region of the world despite efforts to contain it (e.g., lockdowns) (Onyeaka et al., 2021; Jeanne et al., 2023); it was a pandemic with truly global diffusion. Although the relatively low lethality of COVID-19—relative to the extremely high lethality assumed in our scenario—and the prevalence of asymptomatic cases likely aided in the diffusion of the virus, the pandemic showed that a pathogen could realistically have global diffusion. However, global diffusion is not sufficient for a pathogen to create an extinction risk—it must reach nearly every human community on earth, even those that are naturally or artificially isolated.

There still exist uncontacted tribes, and many regions and communities remain relatively isolated. As a highly lethal pandemic spreads, it is likely that human communities would take steps to isolate themselves to whatever extent they could to prevent infection; island nations have even been suggested as potential refuges from pandemics with extinction potential (Boyd and Wilson, 2020; Turchin and Green, 2019). Where human communities are successful in isolating themselves from contact with the pathogen, follow-up actions would be required to either intentionally disseminate the pathogen among them or to find other means to exterminate surviving humans.

### 1NC---AT: Infra I/L

#### No infrastructure internal link:

#### 1. No internal link to reliable infrastructure---a few delays from workplace accidents doesn’t mean all infrastructure becomes unreliable

#### 2. 1AC Baghdadi has alt causes to safety including culture, lack of training, and resources that are the primary reason for accidents

[For reference. MSU = Green]

Ahmad Baghdadi 24 – Assistant Professor in the Department of Civil and Environmental Engineering at Umm al-Qura University. “Navigating occupational safety and health challenges in sustainable infrastructure projects: a comprehensive review,” 2024, Frontiers in Built Environment, vol. 10.

Infrastructure projects play a crucial role in improving societal well-being by facilitating access to essential systems, services, and utilities necessary for economic activities. However, the nature of these projects presents significant challenges and threats that can result in serious injuries to personnel and contractors, thereby necessitating effective management to prevent and mitigate such risks (Prochazkova and Prochazka, 2014). Unlike many other industries where project staff may not need to be present on-site at all times (Alaloul et al., 2020), all workers and technical engineers involved in infrastructure projects are required to work on-site, either to carry out operations or ensure project completion according to specifications (Balkhyour, Ahmad and Rehan, 2019). Therefore, the ability to manage unforeseen circumstances is imperative.

Construction and infrastructure projects encounter similar risks. In contrast, infrastructure projects often face additional challenges and safety issues that are uncontrollable, such as those related to OSH concerns, which is related to third-party public safety (Campbell, 2008). Infrastructure construction sites are perceived as inherently risky environments characterised by unstructured conditions, inadequate facilities, congested workspaces, and exposure to adverse weather conditions Eppenberger and Haupt, 2003). Therefore, ensuring the safety of workers and the general public is paramount in such projects.

Challenges to OSH in infrastructure projects are generally intertwined with construction challenges (Campbell, 2008), which is why prioritising infrastructure OSH is imperative for stakeholders, including owners, consultants, contractors, governments, and project participants (Reid, 2009). Continuously improving OSH conditions is essential for all countries, with an emphasis on enhancing the risk assessment process and the effectiveness of risk elimination or reduction decisions (Cagno et al., 2001).

Various factors contribute to the heightened risks and vulnerabilities of OSH in infrastructure projects compared to other types of construction projects. Such factors include construction methods, use of heavy equipment, workers’ casual attitudes towards safety, inadequate leadership, and limited client and project management involvement in OSH (Laryea, 2010). Furthermore, accidents affect not only the individuals involved, but also the project parameters, leading to delays and loss of productivity (Chileshe and Dzisi, 2012; Saad, 2016) emphasised that poor safety performance results in increased overall OSH expenses. This study focused on identifying the barriers and challenges to OSH in infrastructure projects. Contextual factors, which are often viewed as spin-offs of barriers, encompass variables that are indirectly related to OSH interventions but significantly influence their success (Stolk et al., 2012; Micheli et al., 2018). Evaluating OSH in infrastructure projects becomes challenging if these barriers are not addressed (Abu Aisheh et al., 2021).

Worksite incidents often occur due to failure to recognise or address inherently dangerous conditions, negligence, or disregard for safety protocols (Zerguine et al., 2016). Inadequate personal protective equipment (PPE), lack of safety training, absence of well-structured safety management systems and insufficient supervision also contribute to safety hazards in infrastructure projects (Hamid et al., 2008; Teo et al., 2008; Priyadarshani et al., 2013; Nawi et al., 2016).

Workers’ negligence, inability to follow job processes, high-level work, unsafe working conditions, poor site management, lack of skill and attitude towards safety all contribute to safety challenges in infrastructure projects (Ammad et al., 2020). Accidents are also attributed to a lack of safety awareness, educational training, company insurance and practical guidance, as well as unregulated activity and insufficient equipment (Enshassi et al., 2008).

A lack of safety training and policies are significant barriers to safety implementation in infrastructure projects (Saad, 2016). Safety training is vital for accident prevention and reduction (Yiu et al., 2018). Insufficient safety awareness and understanding among workers lead to unsafe behaviours and practices (Chileshe and Dzisi, 2012; Sobral and Soares, 2019). Thus, effective safety communication between managers and workers is crucial for safety management (Hanafi, 2018). Communication difficulties, including linguistic, religious, and cultural barriers, may hinder safety efforts on worksites (Mouleeswaran, 2014). Management’s inconsistent OSH behaviour, inadequate information and communication, and prioritisation of production over safety are the main barriers to safety implementation (Garnica and Barriga, 2018). The four key challenges to OSH implementation are an uncomfortable work environment, lack of safety awareness, absence of safety management programmes and industry norms discouraging safety programmes (Buniya et al., 2021). Meanwhile, factors such as poor project preparation, financial constraints, inadequate data, lack of emergency plans, hazardous conditions and overall project constraints further exacerbate the safety challenges in infrastructure projects, especially in developing countries (Nawaz et al., 2020)

Risky work environments, limited equipment accessibility, social isolation and individual obligations during the workday are significant concerns that affect safety performance (Pamidimukkala and Kermanshachi, 2021). Tight project schedules add pressure and stress, contributing to health and safety hazards and reduced productivity (Kartam, Flood and Koushki, 2000). Perceived OSH challenges include costs, lack of management commitment, inadequate safety culture, resource shortages, lack of enforcement, training deficiencies and lack of understanding of development (Dugolli, 2021). Poor data management makes estimating risk impact and taking corrective measures difficult (Khan, 2013; Revathi K et al., 2017). Alcohol consumption at work increases the risk of injury for drinkers and others, underscoring the importance of safety awareness and education (Meliá and Becerril, 2009; Arezes and Bizarro, 2011; Manjula and De Silva, 2014). Safety knowledge is crucial for promoting safety practices and behaviours (Manjula and De Silva, 2014).

A lack of safety regulations, procedures, standards, and effective communication of safety standards hinder safety programmes (Aksorn and Hadikusumo, 2008). Company culture plays a significant role in employee safety; a lack of commitment to safety and failure to follow safety regulations contribute to deficiencies in safety (Zhang and Gao, 2012). Workers’ failure to use PPE correctly is attributed to ignorance, negligence, apathy, and excessive trust, thereby underscoring the importance of safety awareness and training (Tan and Razak, 2014). Insufficient safety regulations, procedures, and standards, coupled with ineffective communication, further hinder safety efforts (Aksorn and Hadikusumo, 2008; Mahmoudi et al., 2014).

Table 1 presents a comprehensive compilation of the OSH challenges encountered in infrastructure projects, classified into distinct categories: Organisational factors; resource and infrastructure factors; legislative and regulatory factors; human factors; environmental and external factors; safety practices and procedures. Within each category, specific barriers identified from the literature review are delineated, along with corresponding references. This systematic categorisation facilitated a structured comprehension of the multifaceted challenges that are inherently present in ensuring OSH compliance within infrastructure projects.In infrastructure projects, OSH challenges are intricate and encompass various factors that significantly influence safety outcomes and project success. Understanding these challenges from organisational dynamics to regulatory frameworks and external factors is crucial. This discussion aimed to dissect different categories and factors of OSH challenges, emphasising those with the most impact and their implications for project stakeholders. Doing so enabled us to deepen our understanding of OSH management in infrastructure projects and identify areas for targeted interventions to improve safety outcomes and project performance.

• Most significant category and factors:

- Organisational factors: Our findings highlight the critical role of organisational factors, such as management commitment, resource allocation, safety culture and effective safety management practices, in ensuring worker wellbeing and project success (Nawaz et al., 2020; Al-Mhdawi et al., 2024). Strong commitment from top management is essential for fostering a safety-first culture and ensuring adequate resource provision for safe work practices (Nawaz et al., 2020; Al-Mhdawi et al., 2024). Conversely, a weak safety culture and lack of worker engagement present significant barriers to effective safety management (Nawaz et al., 2020; Al-Mhdawi et al., 2024). Implementing robust safety management systems, including planning, training, and monitoring, is vital for mitigating health and safety risks (Nawaz et al., 2020; Al-Mhdawi et al., 2024). Failures in safety management practices contribute to unsafe work conditions and undermine safety efforts (Nawaz et al., 2020; Al-Mhdawi et al., 2024), and inadequate planning and communication among stakeholders can further exacerbate safety challenges Nawaz et al., 2020).

- Legislative and regulatory factors: Adhering to OSH regulations is crucial for maintaining a safe work environment and upholding ethical standards in infrastructure projects (Nordengen and Roux, 2013). Non-compliance can lead to severe repercussions, underscoring the need for a robust regulatory framework and a culture of safety compliance in the industry Nordengen and Roux, 2013). Effective legislation, enforcement and awareness of safety requirements are essential for promoting safe work practices and ensuring stakeholders’ accountability (Nordengen and Roux, 2013). Compliance with OSH regulations is indispensable for meeting legal obligations, minimising le-gal liabilities and fostering a safety culture within infrastructure projects (Nordengen and Roux, 2013).

• Least significant category and factors:

- Environmental and external factors: Environmental and external factors are important, yet their direct impact on safety outcomes in infrastructure projects is perceived as less significant than that of organisational and legislative factors (McDonnell and Chung, 2002; Nekhoroshkov and Nekhoroshkov, 2018; Abolelmagd et al., 2023). However, proactive risk management remains crucial for addressing challenges and ensure project success (McDonnell and Chung, 2002; Nekhoroshkov and Nekhoroshkov, 2018; Abolelmagd et al., 2023). While environmental factors such as adverse weather conditions and regulatory changes can introduce complexities and risks, they are often beyond the direct control of project stakeholders (McDonnell and Chung, 2002; Nekhoroshkov and Nekhoroshkov, 2018; Abolelmagd et al., 2023). Effective risk management strategies and contingency planning can help mitigate their impact on safety and overall project performance (McDonnell and Chung, 2002; Nekhoroshkov and Nekhoroshkov, 2018; Abolelmagd et al., 2023).

- Safety practice and procedure factors: Safety practices and procedures are vital for creating a safe work environment. However, their influence on safety outcomes is considered relatively less significant than that of organisational and legislative factors (Nawaz et al., 2020; Bolsherotov, 2021; Al-Mhdawi et al., 2024). The effectiveness of safety practices depends on the support and compliance established at higher organisational and regulatory levels (Nawaz et al., 2020; Bolsherotov, 2021; Al-Mhdawi et al., 2024). Without robust organisational support and adherence to regulatory requirements, safety protocols may not be adequately implemented or enforced, limiting their direct impact on safety outcomes (Nawaz et al., 2020; Al-Mhdawi et al., 2024). Safety practices and procedures represent the implementation tier of safety management systems, and their efficacy is contingent upon support from organisational and regulatory levels (Nawaz et al., 2020; Al-Mhdawi et al., 2024).

4 Case studies and comparative analysis

Infrastructure projects and other construction ventures face distinct OSH challenges due to differences in scale, complexity, duration and impact on public safety and the environment. Recognising these variations is crucial for implementing effective safety management practices that address the specific hazards and regulatory requirements associated with each project type (Baniassadi et al., 2018; Greiman and Sclar, 2019; Indrayana and Suraji, 2022). Four case studies are represented, to illustrate the significant differences in OSH challenges between infrastructure projects and other forms of construction.

4.1 Infrastructure projects

4.1.1 Big Dig tunnel project (Boston, Massachusetts, USA)

• OSH challenges: The extensive scale and complexity of the Big Dig project in Boston introduced significant safety challenges, with workers encountering risks associated with confined spaces, underground utility handling and coordination with multiple stakeholders. Notably, the threat of tunnel collapses posed a considerable risk, exemplified by incidents such as the 2006 ceiling panel collapse, resulting in a motorist fatality (Albee, 1991).

• Key differences: Infrastructure projects such as the Big Dig involve specialised construction techniques and intricate underground work, such as tunnelling and bridge construction, necessitating tailored safety measures and equipment (Albee, 1991; Welsh, 1999).

4.1.2 Channel Tunnel (Eurotunnel)

• OSH challenges: The construction of the Channel Tunnel between the UK and France presented unique safety challenges due to its underwater nature. Workers navigated the underwater conditions, managed compressed air environments and prevented flooding during the construction process (Welsh, 1999).

• Key differences: Underwater or subsurface construction projects such as the Channel Tunnel pose distinct hazards related to water pressure and diving operations, requiring specialised expertise and equipment (Anner et al., 2013; Gueorguiev, 2019; Li et al., 2021).

4.2 Construction projects

4.2.1 Rana Plaza building collapse (Dhaka, Bangladesh)

• OSH challenges: The Rana Plaza disaster highlighted common safety issues in various construction contexts, such as inadequate building codes, poor structural integrity and unsafe working conditions. Workers, particularly in garment factories, faced risks such as overcrowding, absence of fire exits and structural deficiencies (Hossain, 2019; Trebilcock, 2020; Grier et al., 2023; Rehman et al., 2023).

• Key differences: Infrastructure projects focus on challenges related to scale and complexity, whereas other construction forms prioritise different safety aspects, such as fire safety and building integrity, necessitating tailored safety measures (Rudnik, 2018; Chen et al., 2022).

4.2.2 Grenfell Tower fire (London, UK)

• OSH challenges: The Grenfell Tower fire exposed systemic failures in fire safety, building regulations and construction practices. Issues such as inadequate fire safety pro-visions and confusing building regulations contributed to the tragic outcome (Mitchener, 2018; Chen et al., 2019; Ewen, 2023).

• Key differences: Residential construction projects such as Grenfell Tower prioritise fire safety and evacuation procedures, while infrastructure projects may emphasise hazards such as structural stability and environmental impact (Baniassadi et al., 2018; Indrayana and Suraji, 2022).

4.3 Comparative analysis

• Scale and complexity: Infrastructure projects typically involve larger scales and complexities due to their extensive nature, encompassing structures such as bridges, highways, airports and tunnels. Thus, managing safety across vast areas and intricate structures presents unique challenges (Masrom et al., 2015; Ayat et al., 2023). In contrast, other construction projects vary in size and complexity, with more standardised processes and less extensive spatial requirements (Dardiri et al., 2017).

• Workforce skills and training: Infrastructure projects demand a highly specialised workforce with expertise in various engineering disciplines, requiring training in specific safety protocols. Other construction projects may have a more generalised workforce with training focused on standard construction safety practices (Misra and Mohanty, 2021; Ahmed, 2023).

• Duration and timeline: Infrastructure projects typically have longer durations, which is why the possibility of accidents may increase over time. Other construction projects may vary in duration, affecting the intensity and duration of the OSH challenges faced by workers (Jones, Caudle and Pappworth, 1996).

• Regulatory compliance: Infrastructure projects are subject to complex regulations due to their significant impact on public safety and the environment. Compliance with OSH regulations, environmental regulations and industry standards adds complexity to safety management (Dimitrova et al., 2014; Mwelu et al., 2018).

• Public safety concerns: Infrastructure projects prioritise public safety because they have a direct impact on public wellbeing, involving hazards such as working near live traffic. Other construction projects may entail fewer public safety risks (Chi et al., 2016).

• Environmental impact: Infrastructure projects have significant environmental implications, requiring compliance with environmental regulations. While all construction projects must consider environmental impact, the scale and scope of these projects may vary (Alamgir et al., 2018; Saldaña-Márquez et al., 2019). Understanding these differences is essential for implementing tailored safety measures that address the unique challenges in each type of construction project.

5 Conclusion and recommendations

Infrastructure projects are indispensable for societal advancement, but strict adherence to OSH regulations to safeguard both individuals and property is necessary for such projects to be executed successfully. These projects, which are characterised by complexity and hazards, can give rise to hazardous environments and adverse environmental impacts if safety measures are not prioritised (Gámez-García et al., 2019). Inadequate OSH practices contribute significantly to the rate of injuries, fatalities, and property damage in construction projects, particularly in infrastructure projects. Infrastructure projects have long been associated with risks and incidents, resulting in project delays, escalated costs, diminished productivity, and negative reputational consequences (Sathvik et al., 2023). Hence, ensuring OSH compliance is essential to avoid accidents. Identifying impediments to OSH in the infrastructure sector is critical so that governments, organisations and policymakers can devise and implement effective interventions gradually to ameliorate these barriers and enhance OSH performance. This research identified major hurdles that need to be addressed to improve OSH performance in the infrastructure sector. The findings of this review can serve as a basis for further exploration of the identified challenges. This study is significant because it elucidates the OSH challenges and barriers in infrastructure projects, provides insights to improve OSH and educates professionals in the field. Addressing infrastructure challenges is imperative because they affect not only project deliverables, but also the safety of the involved personnel. In addition, the findings contribute to infrastructure safety by offering theoretical insights and a comprehensive understanding of stakeholder challenges during infrastructure development.

### 1NC---AT: Infra !

#### No infrastructure impact:

#### 1. Infrastructure impact card doesn’t say anything.

#### 2. Global infrastructure vulnerabilities make all the general impacts inevitable

#### 3. Repairs and redundancies check

Stewart & Mueller 20 [Mark Stewart, Centre for Infrastructure Performance and Reliability, The University of Newcastle; and Dr. John Mueller, Professor of Political Science at Ohio State University, Woody Hayes Chair of National Security Studies at the Mershon Center for International Security Studies, Senior Fellow at the Cato Institute, Member of the American Academy of Arts and Sciences; “Terrorism risks, chasing ghosts and infrastructure resilience,” Sustainable and Resilient Infrastructure Journal, Vol. 5, 2020, Taylor & Francis, https://doi.org/10.1080/23789689.2018.1448664]

Bridges, pipelines, railroads, roads, power lines, communication facilities and other utilities or lifelines are all vulnerable to terrorist attack because they are located in every community, are difficult to protect, and are often in isolated or remote locations. Damage to these infrastructure elements can cause short- and long-term social and economic effects, and this, in principle, should make them highly attractive targets for terrorists.

Yet most damage can be repaired fairly quickly. In Iraq, where there have been many IED attacks on such elements, repair teams from the Iraqi Ministry of Oil, working in the most hostile security environment imaginable, can right the damage in several days or in some cases several weeks. The vulnerability of pipelines also makes them resilient because if they are easily accessible to terrorists, they are equally easily accessible to repair teams.

Off-shore oil and gas platforms are vulnerable to terrorism because of their remote locations, but they are often located in severe marine environments that would make any attack particularly dangerous, if not impossible, for would-be terrorists. Offshore platforms are more vulnerable to hurricanes, earthquakes, storms and ship impact. And as we have seen with the 2010 Gulf of Mexico BP oil spill, they are equally vulnerable to equipment malfunction and operator error – in fact, there have been numerous instances of explosions, blowouts and other accidents over the years. Contingency plans are available for most of these events, which in most cases would be equally appropriate to mitigate the effects of a terrorist attack.

Most other infrastructure is similarly resilient and can be readily repaired, resulting in minimal damage or disruption to communities. This can be seen, for example, when power poles or transmission towers are damaged in a storm, when communication cables are accidentally severed by construction workers, or when pipelines catch fire or explode because of accidents or lack of maintenance. Moreover, alternate means of supply are also often available, and diversions around damaged infrastructure can allow lines of transport, supply or communication to be maintained.

Thus, terrorist attacks on such infrastructure elements are unlikely to cause significant long-term losses to society because damage is often repairable at an entirely bearable cost and in a timely fashion. It is important for society to become ‘resilient,’ arguing that ‘the more resilient we become as a society, the less consequential acts of terrorism become’ (Flynn, 2004). That is, particularly given the limited damage terrorism is likely to perpetrate, society should prepare itself to be able to absorb the effects, deal with them, keep things in perspective, and then, in an orderly manner, get on with its normal task without unnecessarily inflicting further damage on itself by excessive reaction or, as Flynn puts it, by ‘spooking’ itself. To do otherwise is to play into the hands of the terrorists (Mueller & Stewart, 2012, 2016a). However, only about 15% of U.S. domestic homeland security expenditures are devoted to mitigation and resilience (OMB 2016). For a fuller discussion, see our first two books (Mueller & Stewart, 2011, 2016a).

#### 4. Past blackouts empirically deny the impact

### 1NC---AT: Food Wars !

#### Other factors thump, like aging populations, and its empirically denied by Ukraine and COVID.

Zalán Márk Maró et al 25 – Assistant Professor in the Department of Agricultural Economics and Institute of Sustainable Development at Corvinus University. Judit Nagy – Assistant Professor in the Department of Supply Chain Management at Corniuvs University. Endre Mihály Molnár – Associate Research Fellow in the Department of Enterprise Development and Management and Institute of Entrepreneurship and Innovation at Cornivus University. Tamás Mizik – Professor in the Department of Agricultural Economics and Institute of Sustainable Development at Corniuvs University. “Challenges and potential solutions to employment issues in the agri-food sector of developed countries - A systematic literature review,” December 2025, Sustainable Futures, vol. 10.

4. Summary and conclusions

4.1. Summary and synthesis of the findings

The challenges experienced in recent years and decades, including factors such as an aging population, changing consumption patterns and a growing demand for organic foods, have significantly burdened the agricultural sector. Furthermore, the recent, suddenly occurring new challenges (e.g., COVID-19 pandemic, the Ukrainian-Russian conflict) have also heavily affected and tested the agri-food sector. Regrettably, agriculture's importance, for example, in the ratio of total GDP and employment, has declined in developed countries. Based on the two-stage, comprehensive systematic literature review presented in this paper, employment in developed countries’ agriculture is characterized by specific areas of focus: (1) family farming; (2) unique employment characteristics related to migration and mobility; (3) gender issues; (4) wage disparities; (5) educational considerations; and (6) productivity enhancements. The review included the summarization and synthesis of 128 articles. Most of the articles dealt with the United States, followed by the EU (mainly Italy and Poland) in Fig. 5.

#### No food wars.

Vestby ’18 [Vestby, Ida Rudolfsen, and Halvard Buhaug; 5-18-18; Doctoral Researcher at the Peace Research Institute Oslo; doctoral researcher at the Department of Peace and Conflict Research at Uppsala University and PRIO; Research Professor at the Peace Research Institute Oslo (PRIO); Professor of Political Science at the Norwegian University of Science and Technology (NTNU); and Associate Editor of the Journal of Peace Research and Political Geography; “Does hunger cause conflict?” Prio, https://blogs.prio.org/ClimateAndConflict/2018/05/does-hunger-cause-conflict/]

It is perhaps surprising, then, that there is little scholarly merit in the notion that a short-term reduction in access to food increases the probability that conflict will break out. This is because to start or participate in violent conflict requires people to have both the means and the will. Most people on the brink of starvation are not in the position to resort to violence, whether against the government or other social groups. In fact, the urban middle classes tend to be the most likely to protest against rises in food prices, since they often have the best opportunities, the most energy, and the best skills to coordinate and participate in protests.

Accordingly, there is a widespread misapprehension that social unrest in periods of high food prices relates primarily to food shortages. In reality, the sources of discontent are considerably more complex – linked to political structures, land ownership, corruption, the desire for democratic reforms and general economic problems – where the price of food is seen in the context of general increases in the cost of living. Research has shown that while the international media have a tendency to seek simple resource-related explanations – such as drought or famine – for conflicts in the Global South, debates in the local media are permeated by more complex political relationships.

## Worker Organizing

### 1NC---Solvency

#### The aff doesn’t solve deportations – unions alone can’t stop broad deportations campaign. Nothing prevents deportations outside of the workplace.

#### The advantage starts at 6%

Mimi Goldberg 24 – JD from Cornell Law School. “Quizás Se Puede: Evaluating Union Success in Incorporating Immigrant Workers,” 2024, Harvard Civil Rights-Civil Liberties Law Review, vol. 59, pg. 303-324.

B. Results

This review of union contracts reveals that a small but sizable minority of unions are successful in advocating for immigrant worker protections . During the period examined, 1,016 CBAs were available through Bloomberg Law’s database . However, only 113 of these contracts contained any mention of immigration or work authorization (11%) . An even smaller percentage of CBAs (6.4%) contained substantive provisions related to immigration status . While these numbers leave room for improvement, they indicate that some unions are taking immigration issues seriously

The most common provision within union contracts was an antidiscrimination provision (present in 56%), which forbade discrimination on account of immigration status . 57 However, since discrimination on account of immigration status is already unlawful,58 these provisions tended to be mere virtue signaling rather than a substantive gain for immigrant workers . In over one third of the union contracts containing immigration provisions (38%), these provisions were the only type of protection specifically offered to immigrant workers . 59

#### Current deportations thump---their evidence is status quo descriptive

Sarah Krieger 25 – Policy Analyst at USCIS Office of Policy & Strategy. “The Price of Cruelty: How Trump’s Mass Deportation Agenda Endangers Us All,” 10/03/2025, National Immigration Law Center, https://www.nilc.org/articles/the-price-of-cruelty-how-trumps-mass-deportation-agenda-endangers-us-all/

The second Trump administration has – in less than a year – established a whole-of-government campaign against immigrants. Their mass deportation agenda is being carried out through indiscriminate and often violent raids and arrests. These arrests have drawn significant attention for the resulting family separations and disappearances of community members to inhumane prisons here and abroad. In addition to this immediate pain to those whose families are being torn apart, the Trump administration’s immigration agenda directly harms our collective economy, health, and safety as a nation. This commentary reviews the harm thus far to our country, as the administration pursues its mindless ambitions.

The only coherent policy goal of this administration when it comes to immigration is its relentless pursuit of cruelty—no matter what the cost and no matter what else is impacted. The strategy is clear: to cultivate so much suffering and fear, through real and threatened violence, that immigrants choose to abandon their communities and lives in the United States. As a nation, we are witnessing the profound cost—in both tangible and intangible ways—of a government deliberately targeting a community for misery, making life so unbearable that they consider exiling themselves to survive.

Our Economy

The human costs of mass deportation are clear, but sometimes less visible are the financial costs to American communities. The harm is immediate and expansive, affecting our nation’s GDP, the job market, the cost of goods, and lost tax revenue.

Mass deportations are forecast to reduce our nation’s Gross Domestic Product (GDP, a measure of the overall economy) by more than 7 percent in the next three years—greater than the damage to the U.S. economy during the Great Recession from 2007 to 2009, when the country’s GDP fell by more than 4 percent. In addition, despite the administration’s claims, the actual consensus of researchers is clear: mass deportations cause U.S. citizens to lose jobs. According to one estimate, if the administration succeeds in its staggering and inhumane goal of removing 4 million people over the next 4 years, there would be 2.6 million fewer jobs for U.S.-born workers.

Communities are also seeing the ramifications of this cruelty in the prices they pay for food and housing. Economists have estimated that deporting 1.3 million immigrants would increase prices 1.5 percent in the next three years. Deporting 8.3 million immigrants in that time would increase prices by more than 9 percent. This is greater than the inflation the United States saw from 2019 to 2021, during the COVID-19 pandemic, when prices went up by less than 8 percent over three years.

Immigrants are essential to the U.S. economy, paying almost $580 billion in taxes annually, including massive contributions to federal, state, and Social Security taxes. Contrary to this administration’s claims, undocumented immigrants contribute far more to Social Security than they receive; in 2022, for example, they contributed $26 billion in Social Security taxes, despite being ineligible to receive the benefits they pay for. The Social Security program is already facing a funding shortfall; lower immigration (not even mass deportation) would create an increased shortfall by more than 11 percent. The administration’s efforts to allow the Internal Revenue Service to share private taxpayer information with Immigration and Customs Enforcement (ICE) will likely result in less tax revenue from immigrants due to a chilling effect.

Small businesses and farmers are already enduring very real harms less than one year into the administration’s campaign of cruelty. Since January, the labor force has already shrunk by more than 1.2 million immigrant workers. Restaurant owners, already facing economic hardships, are struggling to keep their businesses staffed and afloat. Other small business owners across the country have experienced sharp decreases in customer traffic due to fears of immigration enforcement. Some business owners report losing up to 50 percent of their customers, and up to two-thirds of their workforce. Farmers are especially hard hit. Over the last three decades, approximately 40 percent of the farm labor force has been made up of undocumented immigrants. In addition to mass deportation, the reduction in the numbers of immigrants arriving to the United States is also “really hurting” farmers.

Despite all the economic benefits immigrants contribute, this administration has chosen to spend astonishing sums on harming them – approximately $170 billion over the next four years – that could be far better used to strengthen and support our communities, not break them apart. $170 billion would fund a paid family and medical leave program or a universal preschool program for almost a decade. Or it could clear the backlog of all needed infrastructure improvements to our country’s public transit systems, twice.

### 1NC---AT: Econ !

#### Alt causes to slow growth AND their evidence says war causes slow growth, NOT the other way around. MSU is Green.

Dambisa Moyo 24, PhD, Contributor, Project Syndicate. Member, House of Lords, United Kingdom. Principal, Versaca Investments, "The Eight Headwinds Threatening Global Growth In 2025," Project Syndicate, 12/06/2024, https://www.project-syndicate.org/onpoint/powerful-headwinds-herald-decade-of-paltry-growth-by-dambisa-moyo-2024-12

NEW YORK – As we enter the second quarter of the twenty-first century, slow economic growth will remain the world’s most persistent challenge, transcending national borders and affecting developed and developing countries alike.

The economies of the United States, the European Union, and Japan are all projected to grow by less than 3% per year for the foreseeable future – the threshold needed to double per capita income within a generation (25 years). At the same time, large emerging economies like Brazil, Argentina, and South Africa are also expected to experience sluggish growth over the next decade.

While total global GDP has increased to $110 trillion, progress remains unevenly distributed, threatening to erode living standards. Worse, the world economy faces powerful headwinds that could stifle growth, innovation, and investment, triggering political and social instability.

Governments and business leaders must adjust their models and assumptions accordingly. In the face of significant policy shifts, investors will need to rethink their investment and allocation strategies to navigate an era defined by uncertainty and uneven growth.

Looking ahead, eight risks to global GDP growth stand out: geopolitical fissures; divisive domestic politics; technological disruption and the rise of artificial intelligence; demographic trends; rising inequality between and within countries; natural-resource scarcities; government debt and loose fiscal policies; and deglobalization. Taken together, these headwinds will be a persistent impediment to economic growth in the coming years.

*No World Order*

The first drag on global growth is the escalation in geopolitical tensions – particularly among the US, China, and Russia – compounded by additional threats from Iran and North Korea. As the rift between developed and developing economies widens, developing countries are increasingly joining economic alliances like the BRICS bloc, which expanded from five members at the start of 2024 to nine by the end of the year. In the near term, there is a growing risk that this geopolitical tug-of-war could escalate into an all-out military conflict.

Over the past 50 years, the world economy has gone from being a positive-sum game to a negative-sum game. The positive-sum era, driven by economic and global cooperation, reached its zenith during the Washington Consensus period, which was highlighted by the fall of the Berlin Wall in 1989 and China’s accession to the World Trade Organization in 2001. But following the 2008 financial crisis, the world entered a negative-sum period, marked by declining growth, intensifying competition, and rising international tensions, further heightened by the COVID-19 pandemic, Russia’s invasion of Ukraine, and the Gaza War.

Widening geopolitical fissures have laid bare deep vulnerabilities. China, for example, is one of America’s largest foreign creditors, holding more than $770 billion in US Treasuries. This gives it significant leverage over the US, whose policymakers increasingly regard it as a political and ideological rival. Against this backdrop, the intensifying race between China and the West for technological dominance in AI, quantum computing, and semiconductors has fractured the digital economy, giving rise to a balkanized “splinternet.”

As decades of multilateral cooperation give way to economic fragmentation, new cross-country alliances have weakened the US-led international order and the Bretton Woods institutions, such as the World Bank and the International Monetary Fund. The expanded BRICS bloc – led by Brazil, Russia, India, China, and South Africa – is the most significant of these alliances, representing more than 40% of the world’s population and 36% of global GDP.

Meanwhile, so-called “swing states” like Turkey, Saudi Arabia, and other Gulf Cooperation Council countries are reshaping global trade routes, reconfiguring supply chains, and redirecting investment flows, altering the distribution and pricing of key commodities such as foodstuffs and critical minerals.

Beyond stifling global GDP growth, these geopolitical rifts are hindering collective efforts to tackle climate risks, as developed and developing economies remain deeply divided over the urgency, scope, and aggressiveness of the regulatory and policy reforms required to combat climate change and advance the clean-energy transition.

*Populism and Domestic Politics*

Many advanced economies are also grappling with deepening political polarization at home. US President-elect Donald Trump’s return to the White House – much like Brexit and Trump’s first election victory in 2016 – heralds a period of widespread uncertainty and major political transformations.

Amid these populist gales, developed economies’ budgets are increasingly strained by expanded welfare programs. In 2022, for example, the EU spent €3.1 trillion ($3.3 trillion) – 19.5% of its GDP and nearly 40% of its total expenditures – on social protection.

As demands on government budgets grow, worsening fiscal positions will make it increasingly difficult for many countries to provide essential public goods like health care, education, and infrastructure. The resulting fiscal pressures will likely deepen polarization and lead to more policy volatility.

#### Economy is strong

Casselman and Smith 12-22 [Ben Casselman is the chief economics correspondent for The Times. He has reported on the economy for nearly 20 years. Colby Smith covers the Federal Reserve and the U.S. economy for The Times. 12-22-2025 https://www.nytimes.com/2025/12/22/business/economy-unemployment-wages-affordability.html]

Cautious Optimism

Despite such concerns, many forecasters expect growth to pick back up next year, and for the labor market to improve rather than deteriorate further.

They point to several potential sources of strength. The tax cuts that Congress passed this year should lead to larger refunds for many Americans, which should provide a lift to consumers early in the year. The law also included provisions to encourage companies to invest.

Lower interest rates — the result of a series of cuts the Federal Reserve made this fall — should also help businesses and consumers. Policymakers are weighing whether to deliver more reductions in the coming year.

But perhaps the biggest lift could come from reduced uncertainty after a uniquely tumultuous year in which businesses and investors contended with seismic changes related to tariffs, immigration restrictions and government regulation.

“2025 was hampered by all the policy-related uncertainty,” said Stephen Stanley, chief U.S. economist at Santander, a bank. “The policy landscape is going to allow businesses to re-engage, and when they do that, I think you’ll see a pickup in investment.”

Policymakers are similarly optimistic. John Williams, president of the Federal Reserve Bank of New York, said in an interview with CNBC on Friday that he was “feeling actually pretty good” about the economy.

“We got through 2025,” he said. “This has been an uncertain year. A lot has happened, and the economy has come through this.”

But that rosy outlook could be upended if the A.I. boom fades and takes the stock market along with it, or if the calmer year many hope for from Mr. Trump does not come to fruition, either because of new tariffs or other policy changes.