#### ==1AC: Courts==

### Contention 1: IPR

#### ====Section 211 has kept the U.S. in noncompliance with TRIPS for a decade ====

\*\*Riley 07\*\*

Michael, JD candidate at the University of Miami. "Cigars and Rum: Hazardous to the Health of Intellectual Property Law? How the Cohiba Cigar and Havana Club Rum Cases Reveal a ~’Carve-Out~’ for Intellectual Property Disputes with a Cuban Nexus" The University of Miami Inter-American Law Review, Vol. 38, No. 2 (Winter, 2006/2007), pp. 457-486)

On July 7, 1999, the European Community formally took issue with Section 211

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with European trade retaliation, there has been no realization of those threats.

#### ====Repeal key to intellectual property leadership for US====

\*\*Pava 2011 \*\*(Mindy Pava, Executive Symposium Editor, Emory International Law Review; J.D. Candidate, Emory University School of Law (2011); B.S., Northwestern University (2004). "COMMENT: THE CUBAN CONUNDRUM: PROPOSING AN INTERNATIONAL TRADEMARK REGISTRY FOR WELL-KNOWN FOREIGN MARKS" LexisNexis 2011)

With an outright repeal of Section 211, the United States could again prove that

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States cannot afford to have its intellectual property threatened and subjected to reprisals.

#### ====It spills over reinforces global IPR and trade objectives====

\*\*Reinsch 10\*\* (Bill Reinsch, president of the National Foreign Trade Council, representing some 400 companies on focuses—and focuses on trade policy issues, a member of the U.S.-China Economic and Security Review Commission. "DOMESTIC AND INTERNATIONAL TRADEMARK IMPLICATIONS OF HAVANA CLUB AND SECTION 211 OF THE OMNIBUS APPROPRIATIONS ACT OF 1999." HEARING BEFORE THE COMMITTEE ON THE JUDICIARY HOUSE OF REPRESENTATIVES ONE HUNDRED ELEVENTH CONGRESS SECOND SESSION. MARCH 3, 2010. http://www.gpo.gov/fdsys/pkg/CHRG-111hhrg55221/html/CHRG-111hhrg55221.htm)

Repealing 211 would deny the Castro regime any rationale for retaliating against trademarks of U

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to the Patent and Trademark Office and to the courts where it belongs.

#### ====Scenario 1 is disease====

#### ====First is innovation —- IPR incentivizes research and development. Copycat drugs don~’t fill-in.====

\*\*Kaufmann 08\*\*

Kaufmann, 4/23/2008 (Judith – retired foreign service officer and former director of the U.S. State Department~’s Office of International Health Affairs, Intellectual Property Rights and the Pharmaceutical Industry, Focus on Intellectual Property Rights, p. [[http://iipdigital.usembassy.gov/st/english/publication/2008/04/20080429230451myleen0.4181027.html~~%23axzz2ZG5uBh4Z-http://iipdigital.usembassy.gov/st/english/publication/2008/04/20080429230451myleen0.4181027.html]])

Drugs that cure AIDS and many other diseases are available precisely because of patent protection

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, are not being used to further scientific knowledge and find new cures.

#### ====Second is trademark protection. Strong trademark protection is the best defense against counterfeit drugs.====

\*\*Powell 10\*\*

Powell, February 2010 (Adam – Research Fellow for the Law %26 Bioscience Project, J.D. Candidate at the University of California, Hastings College of the Law, Benchmark Legislation: A Measured Approach in the Fight Against Counterfeit Pharmaceuticals, Hastings Law Journal, p. Lexis-Nexis)

Traditionally, the first line of defense for pharmaceutical companies is a portfolio of strong

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their intellectual property and ensure maximum punishments for criminals by maintaining strong trademarks.

#### ====Third is harmonization. IPR harmonization undermines the ability to market counterfeit drugs.====

\*\*Ferrill 07\*\*

Ferrill, Spring 2007 (Elizabeth – Law Clerk to the Honorable Liam O~’Grady, Magistrate Judge, U.S. District Court for the Eastern District of Virginia, Clearing the Swamp for Intellectual Property Harmonization: Understanding and Appreciating the Barriers to Full TRIPS Compliance for Industrializing and Non-Industrializing Countries, University of Baltimore Intellectual Property Law Journal, p. Lexis-Nexis)

In 1994, the Agreement on the Trade-Related Aspects of Intellectual Property Rights

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difficult over the past decade. There are a number of possible explanations.

#### ====Counterfeit drugs bolster antibiotic resistance.====

\*\*Washington Post 13\*\*

Washington Post, 2/5/2013 (How fake drugs cause the spread of untreatable TB in developing countries, p. [[http://www.washingtonpost.com/blogs/worldviews/wp/2013/02/05/how-fake-drugs-cause-the-spread-of-untreatable-tb-in-developing-countries/-http://www.washingtonpost.com/blogs/worldviews/wp/2013/02/05/how-fake-drugs-cause-the-spread-of-untreatable-tb-in-developing-countries/]])

Tuberculosis, a disease that destroys lung tissue, is more commonly associated with the

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morph into new strains, making them harder and more expensive to treat.

#### ====Antibiotic resistance is a doomsday scenario involving superbugs and life-threatening infections that cause extinction====

\*\*Castillo 11\*\*

Castillo, 10/28/2011 (Rafael, Doomsday scenario with ~’superbugs~’, Philippine Daily Inquirer, p. http://business.inquirer.net/27353/doomsday-scenario-with-%E2%80%98superbugs%E2%80%99)

From time to time, we get reports about emerging superbugs—microbes which are

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compromised immune systems—is ill-fated prey to these ogre microbes.

#### ====Infectious diseases are inevitable. Rapid evolution and adaptation risk extinction====

\*\*Walsh 13\*\*

Walsh, 7/10/2013 (Bryan, From AIDS to SARS to MERS, Emerging Infectious Diseases Remain a Dire Threat, Time, p. http://science.time.com/2013/07/10/from-aids-to-sars-to-mers-emerging-infectious-diseases-remain-a-dire-threat/)

Now the world is facing another emerging infectious disease. MERS — Middle East respiratory

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as experts like Morens and Fauci know, we won~’t be lucky forever.

#### ====Scenario 2 is Pharmaceuticals ====

#### ====Current trends of innovation in pharmaceutical industry will be key to preventing a bioterror attack.====

Doug \*\*Bandow\*\*, San Diego Union- Tribune, March 27, 20\*\*05\*\*, A strong pharmaceutical industry is the best defense against pandemics, senior fellow at the Cato Institute and a former special assistant to President Reagan, [[http://www.signonsandiego.com/uniontrib/20050327/news\_lz1e27bandow.html-http://www.signonsandiego.com/uniontrib/20050327/news\_lz1e27bandow.html]]

Gurinder Shahi, a doctor in Singapore, explained: "Given how little we

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time those who benefit from industry research stopped treating drugmakers as the enemy.

#### ====Bioterrorism causes extinction====

Ochs 2 – MA in Natural Resource Management from Rutgers University and Naturalist at Grand Teton National Park ~~[Richard, "BIOLOGICAL WEAPONS MUST BE ABOLISHED IMMEDIATELY," Jun 9, http://www.freefromterror.net/other\_articles/abolish.html~~]

Of all the weapons of mass destruction, the genetically engineered biological weapons, many

AND

Can we imagine hundreds of such plagues? HUMAN EXTINCTION IS NOW POSSIBLE.

#### ====U.S. nuclear policies aren’t stable – a biological attack ensures widespread nuclear retaliation====

Potter 10 (William Potter, Sam Nunn and Richard Lugar Professor of Nonproliferation Studies

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other/potter\_william\_100115\_IFRI\_pp31.pdf)

In the case of the United States, the reorientation appears to have ¶ been

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not just reflect a commitment to retaliate; it ¶ creates a commitment".

#### ====Scenario 3 is Clean Tech====

#### ====IPRs are key to renewable energy innovation and diffusion====

\*\*IRENA 12\*\* (International Renewable Energy Agency. "IRENA~’s Workshop/Roundtable on Assessment of Intellectual Property Rights for Promoting Renewable Energy." 25 October 2012, Bonn http://www.irena.org/DocumentDownloads/events/2012/October/IPR/summary.pdf)

Innovation is essential for the accelerated development and deployment of renewable energy technologies (RET

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, as well as an understanding of practical ways of using patent information.

#### ====Shift to renewables is vital to solve warming====

Leonhardt, 12 – Washington bureau chief of the New York Times (David, 7/21. "There~’s Still Hope for the Planet." http://www.nytimes.com/2012/07/22/sunday-review/a-ray-of-hope-on-climate-change.html)

Behind the scenes, however, a somewhat different story is starting to emerge —

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pricing, "so it does make sense to think about other things."

#### ====Warming is real and anthropogenic – 97% of studies concur====

Institute of Physics 5/16/20\*\*13\*\* (The Institute of Physics is a leading scientific society. We are a charitable organisation with a worldwide membership of more than 50,000, working together to advance physics education, research and application, "Study reveals scientific consensus on anthropogenic climate change", http://www.iop.org/news/13/may/page\_60200.html, t.c.)

A comprehensive analysis of peer-reviewed articles on the topic of global warming and

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all interested parties have the opportunity to review the same data and findings."

#### Warming causes extinction of every species

Cahill ~’12 ~~[10/17/12,Abigail E. Cahill, Matthew E. Aiello-Lammens, M. Caitlin Fisher-Reid, Xia Hua, Caitlin J. Karanewsky, HaeYeongRyu, Gena C. Sbeglia, FabrizioSpagnolo, John B. Waldron, Omar Warsi and John J. Wiens. "How does climate change cause extinction," http://life.bio.sunysb.edu/ee/wienslab/wienspdfs/2012/Cahill\_et\_al\_2012\_PRSL.pdf~~]

PROXIMATE FACTORS CAUSING EXTINCTION FROM CLIMATE CHANGE We brieﬂy review and categorize the diverse proximate

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or positive impacts on the species that are interacting with the focal species.

### Contention 2: International Law

#### ====Reversing judicial application of section 211 would reinvigorate the importance of international law in the U.S. and solves separation of powers ====

\*\*Bradica 02\*\* (Assoc. Attorney - Klehr, Harrison, Harvey, Branzburg %26 Ellers LLP and former

Notes and Comments Editor, Temple International and Comparative Law Journal. "NOTES %26 COMMENTS: HAVANA CLUB RUM: ONE STEP BACK FOR U.S. INTERNATIONAL TRADEMARK POLICY" Temple International and Comparative Law Journal Spring, 2002 16 Temp. Int~’l %26 Comp. L.J. 147. LexisNexis)

The rigid application of 211 to these circumstances shows a narrow minded, shortsighted approach

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present law and not direct the judiciary how to decide a case. n231

#### ====Incorporation of International Law ensures global harmonization and modeling====

\*\*Benvenisti 8 \*\*(Eyal, Professor of Law, Tel Aviv University, RECLAIMING DEMOCRACY: THE STRATEGIC USES OF FOREIGN AND INTERNATIONAL LAW BY NATIONAL COURTS, 102 A.J.I.L. 241)

Courts that wish to signal readiness to cooperate will tend to use the language that

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the one that backs away has to offer an explanation to its peers.

#### ====Inconsistent application of international law will destroy the international legal system====

Jonathan I. Charney, Professor of Law, VanderbiltUniversity. "The Impact On The International Legal System Of The Growth Of International Courts And Tribunals," Summer, 1999 31 N.Y.U. J. Int~’l L. %26 Pol. 697

Despite this optimistic prognosis, as we enter deeper into a period of a multiplicity

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system and be careful to avoid actions that might pull the system apart.

#### ====International law is key to stopping nuclear war====

Richard Butler, Executive Chairman of the United Nations Special Commission (UNSCOM), July 13, 2001, New York Times

The administration seems to believe that international agreements will increasingly pressure the United States to

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, we may well find ourselves at year zero — on nuclear time.

#### ====American refusal to comply with international law undermines soft power and spurs terrorism====

David Cole, professor of law at Georgetown Law, this book received the American Book Award and the Hefner First Amendment Prize. Enemy Aliens, 2003 p206-208

Finally, and directly related to our exploitation of double standards at home, our

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They give ammunition to America~’s enemies, and pause to America~’s friends."7~’

#### ====Soft power is key to mobilize action to solve any impact====

Joseph Nye, professor of international relations at Harvard University, 2008 or later (n.d.) ("American Power After the Financial Crises," [[http://www.foresightproject.net/publications/articles/article.asp?p=3533)-http://www.foresightproject.net/publications/articles/article.asp?p=3533]]

Power always depends on context, and in today~’s world, it is distributed in

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even the largest country cannot achieve its aims without the help of others.

#### ====Terrorism creates multiple scenarios for nuclear conflict====

\*\*Speice, ~’06\*\*

~~[Patrick F. Speice, Jr., JD Candidate at The College of William and Mary, "NEGLIGENCE AND NUCLEAR NONPROLIFERATION: ELIMINATING THE CURRENT LIABILITY BARRIER TO BILATERAL U.S.-RUSSIAN NONPROLIFERATION ASSISTANCE PROGRAMS," William %26 Mary Law Review, February 2006, 47 Wm and Mary L. Rev. 1427~~]

Accordingly, there is a significant and ever-present risk that terrorists could acquire

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number of casualties and potentially triggering a full-scale nuclear conflict. 50

#### ====Collapse of constitutional balance of power risks tyranny and reckless warmongering ====

Martin Redish, Professor of Law and Public Policy at Northwestern, and Elizabeth Cisar, Law Clerk at the Seventh Circuit Court of Appeals, 1991 41 Duke L.J. 449

In any event, the political history of which the Framers were aware tends to

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be forced into the position of saying, "I told you so."

#### ====Failure to integrate international law into court rulings undermines US human rights leadership====

[[John Quigley-http://muse.jhu.edu/journals/human\_rights\_quarterly/v020/20.3quigley.html]] Human Rights Quarterly 20.3 (1998) 555-591 Human Rights Defenses in US Courts

Whatever the reasons for judicial reluctance to implement treaty-based rights, the result

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refuses to apply the legal standards by which it holds others to account.

#### ====Using international human rights law domestically is modeled====

Jules Lobel and Michael Ratner. "Humanitarian Military Intervention," 1/6/2006http://www.d-n-i.net/fcs/ratner\_critique.htm

Finally, the United States ought to strengthen its own participation in international human rights

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law in their domestic courts, we must apply it in our courts.

#### ====Human rights solve war everywhere—-best predictor of states~’ propensity for aggression====

\*\*Burke-White 04\*\* – William W. Burke-White, Lecturer in Public and International Affairs and Senior Special Assistant to the Dean, Woodrow Wilson School of Public and International Affairs, Princeton University, Spring 2004, Harvard Human Rights Journal, 17 Harv. Hum. Rts. J. 249, p. 279-280)

This Article presents a strategic—as opposed to ideological or normative—argument that

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U.S.-U.N. cooperation on human rights issues.

### Plan Text

#### ====The United States Supreme Court should rule in the case of Empresa Cubana Exportada de Alimentos y Productos Varios v. U.S. Department of Treasury, et al that Section 211 of the Omnibus Appropriations Act of 1998 is a prohibited violation of the Agreement on Trade Related Aspects of Intellectual Property Rights.====

### Solvency

#### ====Now is key – Other countries are criticizing the U.S.’s failure to resolve the Havana Club case.====

Agence France Presse, 6/25/2013 (EU, Cuba spar with US over ~’Havana Club~’ rum, p. Lexis-Nexis)

The European Union and Cuba locked horns with theUnited States on Tuesday at theWorld Trade

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that enough was enough, a message echoed by members, including China.

#### ====The plan can restore IP credibility without removing the current embargo.====

Pava 2011 (Mindy – Executive Symposium Editor for the Emory International Law Review, J.D. Candidate at Emory University School of Law, The Cuban Conundrum: Proposing an International Trademark Registry for Well-Known Foreign Marks, Emory International Law Review, p. Lexis-Nexis)

2. Does Section 211 Erode the United States~’s International Standing? Since Fidel Castro~’s

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the human rights arena, and the United States should make that clear.

#### ====Eliminating the Cuban IP policy allows the U.S. to harmonize IP rights globally.====

Riley, Winter 2007 (Michael – J.D. Candidate at the University of Miami, Cigars and Rum: Hazardous to the Health of Intellectual Property Law?: How the Cohiba Cigar and Havana Club Rum Cases Reveal a ~’Carve-Out~’ for Intellectual Property Disputes with a Cuban Nexus, The University of Miami Inter-American Law Review, p. Lexis-Nexis)

The Havana Club controversy has been cited as one obstacle that for several years caused

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withintrademark law, the United States~’ Cuban ~’carve-out~’ upsets this balance.