# ASU RV Round 1 Gonzaga

## 1AC

### Plan Text

#### The United States Congress should establish a National Security Court with sole jurisdiction over cases pursuant to Section 1021 of the National Defense Authorization Act for Fiscal Year 2012.

### Inherency

#### Contention 1 is inherency

#### D.C. courts are shaping detention policy now but lack of Supreme Court action means detention is here to stay.

Horowitz 13 (Colby, J.D. Candidate at Fordham University, “CREATING A MORE MEANINGFUL ¶ DETENTION STATUTE: LESSONS LEARNED ¶ FROM HEDGES V. OBAMA”, Fordham Law Review, Vol. 81, 2013, RSR]

The Supreme Court has not decided the merits of a detention case since ¶ Boumediene in 2008.144 Additionally, in 2011 the Supreme Court denied ¶ certiorari to six different Guantanamo detainee cases appealed from the D.C. Circuit.145 As a result of its continued abstention, the Supreme Court ¶ has had little impact in shaping the substantive parameters of executive ¶ detention.146¶ The substantive law of executive detention has been primarily created by ¶ the D.C. District Court and the D.C. Circuit as they evaluate habeas corpus ¶ petitions from detainees held at Guantanamo Bay.147 As the law has ¶ evolved since 2008, the D.C. courts have often applied different or ¶ changing standards, and some believe that “the D.C. Circuit’s opinions ¶ almost uniformly favor the government.”148 Additionally, some ¶ commentators have expressed concerns about “the habeas process as a ¶ lawmaking device” and fear that the standards established by the D.C. ¶ Courts are “interim steps” or “a kind of draft” until the Supreme Court ¶ eventually steps in to resolve the issues.149¶ The judges of the D.C. courts recognize that they are creating law. In ¶ their opinions, they have often commented on the lack of guidance from the ¶ Supreme Court150 and their significant role in shaping substantive detention ¶ law with each decision.151

#### The NDAA of 2012 codifies the right of the president to indefinitely detain – expands on the AUMF.

Greenwald 11 (Glenn, Columnist for the Guardian, “Three myths about the detention bill”, Salon, 12-16-11,

<http://www.salon.com/2011/12/16/three_myths_about_the_detention_bill/>, RSR]

Section 1021 of the NDAA governs, as its title says, “Authority of the Armed Forces to Detain Covered Persons Pursuant to the AUMF.” The first provision — section (a) — explicitly “affirms that the authority of the President” under the AUMF ”includes the authority for the Armed Forces of the United States to detain covered persons.” The next section, (b), defines “covered persons” — i.e., those who can be detained by the U.S. military — as “a person who was a part of or substantially supported al-Qaeda, the Taliban, or associated forces that are engaged in hostilities against the United States or its coalition partners.” With regard to those “covered individuals,” this is the power vested in the President by the next section, (c): It simply cannot be any clearer within the confines of the English language that this bill codifies the power of indefinite detention. It expressly empowers the President — with regard to anyone accused of the acts in section (b) – to detain them “without trial until the end of the hostilities.” That is the very definition of “indefinite detention,” and the statute could not be clearer that it vests this power. Anyone claiming this bill does not codify indefinite detention should be forced to explain how they can claim that in light of this crystal clear provision.¶ It is true, as I’ve pointed out repeatedly, that both the Bush and Obama administrations have argued that the 2001 AUMF implicitly (i.e., silently) already vests the power of indefinite detention in the President, and post-9/11 deferential courts have largely accepted that view (just as the Bush DOJ argued that the 2001 AUMF implicitly (i.e., silently) allowed them to eavesdrop on Americans without the warrants required by law). That’s why the NDAA can state that nothing is intended to expand the 2001 AUMF while achieving exactly that: because the Executive and judicial interpretation being given to the 20o1 AUMF is already so much broader than its language provides.¶ But this is the first time this power of indefinite detention is being expressly codified by statute (there’s not a word about detention powers in the 2001 AUMF). Indeed, as the ACLU and HRW both pointed out, it’s the first time such powers are being codified in a statute since the McCarthy era Internal Security Act of 1950, about which I wrote yesterday.

### Terrorism

#### Contention 2 is terrorism

#### Indefinite detention leads to terrorism – multiple warrants

#### First, motivation – comparative studies prove that indefinite detention increases the motivation for terrorism and the likelihood of an attack.

Roberts 11 (Associate Professor of Philosophy at East Carolina University, Rodney, “Utilitarianism and the Morality of Indefinite Detention”, Criminal Justice Ethics, Vol. 30, No. 1, RSR]

Finally, ‘‘there is no evidence that preventive detention works. Comparative studies of terrorism stretching back more than 20 years have concluded that draconian measures\* such as prolonged detention without trial\*are not proven to reduce violence, and can actually be counterproductive.’’ 30 Since it may contribute to the ‘‘underlying factors [that] are fueling the spread of the jihadist movement,’’ namely, ‘‘injustice and fear of Western domination, leading to anger, humiliation, and a sense of powerlessness,’’ there is a sense in which indefinite detention can be selfdefeating\*it may increase the likelihood of future attacks.31

#### Second, distrust – indefinite detention generates resentment that kills effective community cooperation within counter terrorism efforts.

Hathaway et al 13[Oona (Gerard C. and Bernice Latrobe Smith Professor of International Law, Yale Law School); Samuel Adelsberg (J.D. candidate at Yale Law School); Spencer Amdur (J.D. candidate at Yale Law School); Freya Pitts (J.D. candidate at Yale Law School); Philip Levitz (J.D. from Yale Law School); and Sirine Shebaya (J.D. from Yale Law School), “The Power To Detain: Detention of Terrorism Suspects After 9/11”, The Yale Journal of International Law, Vol. 38, 2013, RSR]

Legitimacy of the trial process is important not only to the individuals charged but also to the fight against terrorism. As several successful habeas corpus petitions have demonstrated, insufficient procedural protections create a real danger of erroneous imprisonment for extend periods. 249 Such efforts can generate resentment and distrust of the United States that undermine the effectiveness of counterterrorism efforts. Indeed, evidence suggests that populations are more likely to cooperate in policing when they believe they have been treated fairly.250 The understanding that a more legitimate detention regime will be a more effective one is reflected in recent statements from the Department of Defense and the White House.251

#### Third, signaling – use of indefinite detention hinders allied cooperation over counterterrorism – security experts overwhelmingly vote aff.

Pearlstein 9 (Visiting Research Scholar and Lecturer in Public and International Affairs, Woodrow, Wilson School of Public and International Affairs, Princeton University, Deborah, “WE'RE ALL EXPERTS NOW:¶ A SECURITY CASE AGAINST SECURITY DETENTION”, Case Western Journal of International Law, Vol. 40, 2009, RSR]

Particularly in the challenge of counterterrorism detention policy,¶ the United States has had to face the reality that programs it has pursued¶ principally for tactical purposes have resulted in significant strategic setbacks.¶ As one recent and striking poll of a bipartisan group of leading U.S.¶ foreign policy experts found, eighty-seven percent of experts polled believed¶ that features of the U.S. detention system had hurt more than helped¶ in the fight against Al Qaeda. 17 Indeed, detention programs have at times¶ resulted in significant tactical losses. Britain, America's close ally, pulled¶ out of planned joint counterterrorism operations with the CIA because it¶ could not obtain adequate assurances that U.S. agents would refrain from¶ rendition or cruel treatment.' 8 The costs of such trade-offs may be especially¶ acute in some circumstances-for example, if securing international cooperation¶ for the disposition of fissile material is central to a state's strategic¶ counterterrorism plan.

#### Intelligence cooperation is crucial to quell the threat of terrorism.

Cordesman 10 (Anthony, Arleigh A. Burke Chair in Strategy at CSIS, “The True Lessons of Yemen and Detroit: How the US Must Expand and Redefine International Cooperation in Fighting Terrorism”, CSIS, 2010, RSR]

The second answer is to put even more emphasis on international cooperation in counterterrorism. Our first line of defense lies in the capabilities and actions of other states – particularly our friends and allies in Muslim states and states with large Muslim populations. Defeating terrorism locally -- before it can establish major sanctuaries, create international networks, escalate to insurgency, take control of governments – is critical to any broad success. The US must continue to work with other states, and strengthen formal international efforts in counterterrorism – in spite of their limits – but that much more is required. Informal efforts will be as important. One has only to consider what would have happened if we had not steadily improved counterterrorism cooperation and support from countries like Egypt, Jordan, and Saudi Arabia to realize how much more often the US would be under direct threat; how much more often our other allies would be attacked, and how many of our global economic and strategic interests would face far more serious threats.

#### High risk of nuclear terror - an attack results in extinction.

Dvorkin 12 (Major General (retired), doctor of technical sciences, professor, and senior fellow at the Center for International Security of the Institute of World Economy and International Relations of the Russian Academy of Sciences, Vladimir, The Center participates in the working group of the U.S.-Russia Initiative to Prevent Nuclear Terrorism, 9/21/12, "What Can Destroy Strategic Stability: Nuclear Terrorism is a Real Threat," belfercenter.ksg.harvard.edu/publication/22333/what\_can\_destroy\_strategic\_stability.html]

Hundreds of scientific papers and reports have been published on nuclear terrorism. International conferences have been held on this threat with participation of Russian organizations, including IMEMO and the Institute of U.S. and Canadian Studies. Recommendations on how to combat the threat have been issued by the International Luxembourg Forum on Preventing Nuclear Catastrophe, Pugwash Conferences on Science and World Affairs, Russian-American Elbe Group, and other organizations. The UN General Assembly adopted the International Convention for the Suppression of Acts of Nuclear Terrorism in 2005 and cooperation among intelligence services of leading states in this sphere is developing.¶ At the same time, **these efforts fall short for a number of reasons, partly because various acts of nuclear terrorism are possible. Dispersal of radioactive material by detonation of conventional explosives (“dirty bombs”) is a method that is most accessible for terrorists. With the wide spread of radioactive sources, raw materials for such attacks have become much more accessible than weapons-useable nuclear material or nuclear weapons.** The use of **“**dirty bombs” will not cause many immediate casualties, but it **will result into long-term radioactive contamination, contributing to the spread of** panic and socio-economic destabilization**.**¶ Severe **consequences can be caused by sabotaging nuclear power plants, research reactors, and radioactive materials storage facilities. Large cities are especially vulnerable to such attacks. A large city may host dozens of research reactors with a nuclear power plant or a couple of spent nuclear fuel storage facilities and dozens of large radioactive materials storage facilities located nearby.** The past few years have seen significant efforts made to enhance organizational and physical aspects of security at facilities, especially at nuclear power plants. **Efforts have also been made to improve security culture. But these efforts do not preclude the possibility that** well-trained terrorists may be able to penetrate nuclear facilities**.**¶ **Some estimates show that sabotage of a research reactor in a metropolis may expose hundreds of thousands to high doses of radiation. A formidable part of the city would become uninhabitable for a long time**.¶ Of all the scenarios, it **is building an improvised nuclear device by terrorists that poses the maximum risk. There are no engineering problems that cannot be solved if terrorists decide to build a simple “gun-type” nuclear device.** **Information on the design of such devices, as well as implosion-type devices, is available in the public domain**. It is the acquisition of weapons-grade uranium that presents the sole serious obstacle. Despite numerous preventive measures taken, we cannot rule out the possibility that **such materials can be bought on the black market.** Theft of weapons-grade uranium is also possible**. Research reactor fuel is considered to be particularly vulnerable to theft, as it is scattered at sites in dozens of countries. There are about 100 research reactors in the world that run on weapons-grade uranium fuel, according to the International Atomic Energy Agency (IAEA).**¶ **A terrorist “gun-type” uranium bomb can have a yield of least 10-15 kt, which** is comparable to the yield of the bomb dropped on Hiroshima**.** **The explosion of such a bomb in a modern metropolis can kill and wound hundreds of thousands and cause serious economic damage. There will also be long-term sociopsychological and political consequences**.¶ The vast majority of states have introduced unprecedented security and surveillance measures at transportation and other large-scale public facilities after the terrorist attacks in the United States, Great Britain, Italy, and other countries. These measures have proved burdensome for the countries’ populations, but the public has accepted them as necessary. **A nuclear terrorist attack will make the public accept further measures meant to enhance control even if these measures significantly restrict the democratic liberties they are accustomed to. Authoritarian states could be expected to adopt even more restrictive measures**.¶ If a nuclear terrorist act occurs, **nations will delegate tens of thousands of their secret services’ best personnel to investigate and attribute the attack. Radical Islamist groups are among those capable of such an act.** We can imagine what would happen if they do so, **given the anti-Muslim sentiments and resentment that conventional terrorist attacks by Islamists have generated in developed democratic countries. Mass deportation of the non-indigenous population and severe sanctions would follow such an attack in what will cause violent protests in the Muslim world. Series of armed clashing terrorist attacks may follow. The prediction that Samuel Huntington has made in his book “**The Clash of Civilizations **and the Remaking of World Order” may come true**. Huntington’s book clearly demonstrates that it is not Islamic extremists that are the cause of the Western world’s problems. Rather there is a deep, intractable conflict that is rooted in the fault lines that run between Islam and Christianity. **This is especially dangerous for Russia because these fault lines run across its territory.** To sum it up, the political leadership of Russia has every reason to revise its list of factors that could undermine strategic stability.  BMD does not deserve to be even last on that list because its effectiveness in repelling massive missile strikes will be extremely low. BMD systems can prove useful only if deployed to defend against launches of individual ballistic missiles or groups of such missiles. Prioritization of other destabilizing factors—that could affect global and regional stability—merits a separate study or studies. But even without them I can conclude that nuclear terrorism should be placed on top of the list. The threat of nuclear terrorism is real, and a successful nuclear terrorist attack would lead to a radical transformation of the global order.  All of the threats on the revised list must become a subject of thorough studies by experts. States need to work hard to forge a common understanding of these threats and develop a strategy to combat them.

#### Independently, an attack breaks the nuclear taboo – leads to nuclear war.

Bin 9 (director of Arms Control Program at the Institute of International Studies, Tsinghua University, 5-22-09 About the Authors Prof. Li Bin is a leading Chinese expert on arms control and is currently the director of Arms Control Program at the Institute of International Studies, Tsinghua University. He received his Bachelor and Master Degrees in Physics from Peking University before joining China Academy of Engineering Physics (CAEP) to pursue a doctorate in the technical aspects of arms control. He served as a part-time assistant on arms control for the Committee of Science, Technology and Industry for National Defense (COSTIND).Upon graduation Dr. Li entered the Institute of Applied Physics and Computational Mathematics (IAPCM) as a research fellow and joined the COSTIND technical group supporting Chinese negotiation team on Comprehensive Test Ban Treaty (CTBT). He attended the final round of CTBT negotiations as a technical advisor to the Chinese negotiating team. Nie Hongyi is an officer in the People’s Liberation Army with an MA from China’s National Defense University and a Ph.D. in International Studies from Tsinghua University, which he completed in 2009 under Prof. Li Bin]

**The nuclear taboo is a** kind **of international norm and this type of norm is supported by the promotion of the norm through international social exchange.** **But at present the increased threat of nuclear terrorism has lowered people’s confidence that nuclear weapons will not be used**. **China and the United States have a broad common interest in combating nuclear terrorism.** **Using technical and institutional measures to break the foundation of nuclear terrorism and lessen the possibility of a nuclear terrorist attack can not only weaken the danger of nuclear terrorism itself but also** strengthen people’s confidence in the nuclear taboo**, and in this way preserve an international environment beneficial to both China and the United States.** **In this way even if there is crisis in China-U.S. relations caused by conflict, the nuclear taboo can also help both countries reduce suspicions about the nuclear weapons problem, avoid miscalculation and thereby reduce the** danger of a nuclear war**.**

### Leadership

#### Contention 3 is Leadership

#### First, indefinite detention hurts U.S. diplomatic power in championing human rights – empirics prove.

Chaffee 9 (Devon, Advocacy Counsel at Human Rights First, “THE COST OF INDEFINITELY KICKING THE CAN: WHY CONTINUED¶ "PROLONGED" DETENTION IS NO SOLUTION TO GUANTANAMO”, Case Western Journal of International Law, Vol. 42, 2009, RSR]

The world is watching to see whether the Obama administration fulfills¶ its promise to close Guantanamo, but also to see how it faces the difficult¶ questions that must be confronted to truly resolve the detainee cases¶ and not simply move them elsewhere. If the handling of the former Guantanamo¶ detainees falls short of the standards that U.S. allies expect, those¶ allies are likely to have continuing concerns about cooperating with the U.S.¶ in joint detention operations. Moreover, if our European allies perceive that¶ the process afforded some of the Guantanamo detainees falls short of international¶ standards, they will be less likely to continue to offer their much¶ needed assistance in relocating other detainees. When the Council for the¶ EU expressed support for receiving Guantanamo detainees it did so with the¶ explicit understanding that the underlying policy issues would be addressed¶ in a manner consistent with international law, presumably as that law is¶ understood not just by the U.S. but also by EU member states.20¶ In his speech in May, the President spoke of continued detention at¶ Guantanamo as a system to "hold individuals to keep them from carrying¶ out an act of war . ,,2 But the continued indefinite detention of Guantanamo detainees under the auspices of a law of war framework is in stark¶ contrast to past examples of U.S. armed conflict detention or current detention¶ policies in Iraq or Afghanistan. In previous conflicts, the U.S. afforded¶ prisoners the procedures proscribed in the Geneva Conventions 22 and U.S.¶ military regulation 23 at the point of capture and it released or transferred the¶ prisoners promptly upon the end of the conflict. 24 The prisoners currently¶ held at Guantanamo were afforded no review at the point of capture, and¶ many were held for over two years before any process was provided. As¶ Lawrence Wilkerson, Colin Powell's chief of staff recently wrote, "no meaningful¶ attempt at discrimination was made in-country by competent officials,¶ civilian or military, as to who we were transporting to Cuba for detention¶ and interrogation., 25 That many of the Guantanamo detainees were¶ denied process at the point of capture and that they have already been detained¶ for such an extended period of time increases the importance of ensuring¶ that the cases are dealt with in a manner that is consistent with the¶ approach of our allies and with American traditions of justice. A policy that¶ involves continued indefinite detention without charge falls short of what is¶ needed to repair the damage inflicted on U.S. diplomatic power and ability¶ to champion human rights abroad.

#### **No alt causes – detention is the biggest internal link to credibility loss.**

Welsh 11 (J.D. from the University of Utah, David, currently a doctoral student at the University of Arizona, “Procedural Justice Post-9/11: The Effects of¶ Procedurally Unfair Treatment of Detainees on Perceptions of Global Legitimacy”, 9 U.N.H. L. Rev. 261, March 2011, Lexis, RSR]

The Global War on Terror n1 has been ideologically framed as a struggle between the principles¶ of freedom and democracy on the one hand and tyranny and extremism on the other. n2¶ Although this war has arguably led to a short-term disruption of terrorist threats such as al-Qaeda, it has also damaged¶ America's image both at home and abroad. n3 Throughout the world, there is a growing¶ consensus that America has "a lack of credibility as a fair and just world leader." n4 The¶ perceived legitimacy of the United States in the War on Terror is critical because terrorism is¶ not a conventional threat that can surrender or can be defeated in the traditional sense. Instead,¶ this battle can only be won through legitimizing the rule of law and undermining the use of¶ terror as a means of political influence. n5 Although a variety of political, economic, and security policies¶ have negatively impacted the perceived legitimacy of the United States, one of the most¶ damaging has been the detention , treatment, and trial (or in many cases the lack thereof) of suspected¶ terrorists. While many scholars have raised constitutional questions about the [\*263] legality of¶ U.S. detention procedures, n6 this article offers a psychological perspective of legitimacy in the¶ context of detention.

#### U.S. leadership is essential to promoting global protection of human rights.

Roth 9 (Director of Human Rights Watch, Kenneth, Human Rights Watch World Report 2009, Introduction by Kenneth Roth,

<http://www.hrw.org/en/world-report-2009/taking-back-initiative-human-rights-spoilers>]

The US and the EU are not the only ones promoting human rights abroad. Increasingly, some governments in Latin America, Africa, and Asia can be looked to for support on international rights initiatives. Those that stand out include Argentina, Chile, Costa Rica, Mexico, and Uruguay in Latin America, and Botswana, Ghana, Liberia, and Zambia in Africa. In Asia, Japan and South Korea tend to be sympathetic to rights but are generally reluctant to take strong public positions.¶ Yet forced to act without the firm and consistent backing of the major Western democracies, these important voices are rarely able to mount on their own a major international diplomatic effort to address serious human rights abuses. Even the best-intentioned middle-sized powers cannot forge a solution to the world's most repressive situations without the partnership of the larger Western powers that still dominate the United Nations, have large and active diplomatic corps, and can deploy substantial military and economic resources. So by default, those often setting the human rights agenda in international forums are opponents of human rights enforcement-governments of nations such as Algeria, China, Egypt, India, Pakistan, and Russia. They want to return to an era when the defense of human rights was left to the discretion of each government, and violations carried little international cost.

#### Human rights protection prevents extinction

Annas et al 2 Edward R. Utley Prof. and Chair Health Law @ Boston U. School of Public Health and Prof. SocioMedical Sciences and Community Science @ Boston U. School of Medicine and Prof. Law @ Boston U. School of Law [George, Lori Andrews, (Distinguished Prof. Law @ Chicago-Kent College of Law and Dir. Institute for Science, Law, and Technology @ Illinois Institute Tech), and Rosario M. Isasa, (Health Law and Biotethics Fellow @ Health Law Dept. of Boston U. School of Public Health), American Journal of Law & Medicine, “THE GENETICS REVOLUTION: CONFLICTS, CHALLENGES AND CONUNDRA: ARTICLE: Protecting the Endangered Human: Toward an International Treaty Prohibiting Cloning and Inheritable Alterations”, 28 Am. J. L. and Med. 151, L/N]

The development of the atomic bomb not only presented to the world for the first time the prospect of total annihilation, but also, paradoxically, led to a renewed emphasis on the "nuclear family," complete with its personal bomb shelter. The conclusion of World War II (with the dropping of the only two atomic bombs ever used in war) led to the recognition that world wars were now suicidal to the entire species and to the formation of the United Nations with the primary goal of preventing such wars. n2 Prevention, of course, must be based on the recognition that all humans are fundamentally the same, rather than on an emphasis on our differences. In the aftermath of the Cuban missile crisis, the closest the world has ever come to nuclear war, President John F. Kennedy, in an address to the former Soviet Union, underscored the necessity for recognizing similarities for our survival: ¶ [L]et us not be blind to our differences, but let us also direct attention to our common interests and the means by which those differences can be resolved . . . . For, in the final analysis, our most basic common link is that we all inhabit this small planet. We all breathe the same air. We all cherish our children's future. And we are all mortal. n3 ¶ That we are all fundamentally the same, all human, all with the same dignity and rights, is at the core of the most important document to come out of World War II, the Universal Declaration of Human Rights, and the two treaties that followed it (together known as the "International Bill of Rights"). n4 The recognition of universal human rights, based on human dignity and equality as well as the principle of nondiscrimination, is fundamental to the development of a species consciousness. As Daniel Lev of Human Rights Watch/Asia said in 1993, shortly before the Vienna Human Rights Conference: ¶ Whatever else may separate them, human beings belong to a single biological species, the simplest and most fundamental commonality before which the significance of human differences quickly fades. . . . We are all capable, in exactly the same ways, of feeling pain, hunger, [\*153] and a hundred kinds of deprivation. Consequently, people nowhere routinely concede that those with enough power to do so ought to be able to kill, torture, imprison, and generally abuse others. . . . The idea of universal human rights shares the recognition of one common humanity, and provides a minimum solution to deal with its miseries. n5 ¶ Membership in the human species is central to the meaning and enforcement of human rights, and respect for basic human rights is essential for the survival of the human species. The development of the concept of "crimes against humanity" was a milestone for universalizing human rights in that it recognized that there were certain actions, such as slavery and genocide, that implicated the welfare of the entire species and therefore merited universal condemnation. n6 Nuclear weapons were immediately seen as a technology that required international control, as extreme genetic manipulations like cloning and inheritable genetic alterations have come to be seen today. In fact, cloning and inheritable genetic alterations can be seen as crimes against humanity of a unique sort: they are techniques that can alter the essence of humanity itself (and thus threaten to change the foundation of human rights) by taking human evolution into our own hands and directing it toward the development of a new species, sometimes termed the "posthuman." n7 It may be that species-altering techniques, like cloning and inheritable genetic modifications, could provide benefits to the human species in extraordinary circumstances. For example, asexual genetic replication could potentially save humans from extinction if all humans were rendered sterile by some catastrophic event. But no such necessity currently exists or is on the horizon.

#### Human right deficits on detention fuels authoritarian crackdowns in Russia---destroys US-Russia engagement.

Mendelson 9 (Sarah, director, Human Rights and Security Initiative, CSIS, "U.S.-Russian Relations and the Democracy and Rule of Law Deficit" tcf.org/assets/downloads/tcf-russiarelations.pdf, DOA: 7-23-13, y2k]

Since the collapse of the Soviet Union in 1991, every U.S. administration has considered Russia’s political trajectory a national security concern.1 Based on campaign statements and President Barack Obama’s early personnel choices, this perspective likely will affect policy toward Russia in some way for the foreseeable future.2 While the Obama administration plans to cooperate with Moscow on a number of issues, it will find that Russia’s current deficit in the areas of democracy and the rule of law complicate the relationship and may, in some cases, undermine attempts at engagement. The organizers of the Century Foundation Russia Working Group have labeled this policy problem “coping with creeping authoritarianism.” Results from nearly a dozen large, random sample surveys in Russia since 2001 that examine the views and experiences of literally thousands of Russians, combined with other research and newspaper reporting, all suggest the current democracy and rule of law deficit is rather stark.3 The deficit does not diminish the importance of Russia in international affairs, nor is it meant to suggest the situation is unique to Russia. The internal conditions of many states have negative international security implications. As Europeans repeatedly pointed out during the administration of George W. Bush, U.S. departures from the rule of law made the United States increasingly problematic as a global partner, whether through the use of force in Iraq or the manner in which the United States pursued and handled terrorist suspects. In fact, coping with authoritarian trends in Russia (and elsewhere) will involve changes in U.S. policies that have, on the surface, nothing to do with Russia. Bush administration counterterrorism policies that authorized torture, indefinite detention of terrorist suspects, and the rendering of detainees to secret prisons and Guantánamo have had numerous negative unintended consequences for U.S. national security, including serving as a recruitment tool for al Qaeda and insurgents in Iraq.4 Less often recognized, these policies also have undercut whatever leverage the United States had, as well as limited the effectiveness of American decision-makers, to push back on authoritarian policies adopted by, among others, the Putin administration. At its worst, American departures from the rule of law may have enabled abuse inside Russia. These departures certainly left human rights defenders isolated.5 Repairing the damage to U.S. soft power and reversing the departure from human rights norms that characterized the Bush administration’s counterterrorism policies will provide the Obama administration strategic and moral authority and improve the ability of the United States to work with allies. It also can have positive consequences for Obama’s Russia policy. The changes that need to be made in U.S. counterterrorism policies, however politically sensitive, are somewhat more straightforward than the adjustments that must be made to respond to the complex issues concerning Russia. The Obama administration must determine how best to engage Russian leaders and the population on issues of importance to the United States, given Russia’s poor governance structures, the stark drop in oil prices, Russia’s continued aspirations for great power status, and the rather serious resentment by Russians concerning American dominance and prior policies. The policy puzzle, therefore, is how to do all this without, at the same time, sacrificing our values and undercutting (yet again) U.S. soft power.

#### Continued human rights violations risk a Russian revolution.

Ullman 13 Senior Advisor at the Atlantic Council, Harlan, “The Third Russian Revolution,” UPI, 6—12—13, www.upi.com/Top\_News/Analysis/Outside-View/2013/06/12/Outside-View-The-third-Russian-Revolution/UPI-84461371009900/]

Make no mistake: On the current trajectory, Russia won't be immune to many of the forces that provoked the so-called colored revolutions in adjacent states and even the misnomered Arab Awakening. A third Russian revolution is unfolding. The only questions are when will that revolution reach a critical mass and, most importantly, will the forces of autocracy or pluralism carry the day? Russia, of course, experienced two revolutions in the 20th century. The Kaiser's Germany provoked the first by sending Lenin from Switzerland to Russia in the famous sealed train in 1917. That led to the undoing of the tsar and the Kerensky government as well as the Treaty of Brest-Litovsk that ended the war with Germany and allowed the Bolsheviks to sweep away the opposition. The second revolution came about in some seven decades later. The causes were a corrupt and fundamentally dishonest political system kept in place by a disciplined central leadership and dictatorship of the party. But that required able or at least competent leadership. Instead, the ruling Politburo became a genitocracy headed by sick, old men. Leonid Brezhnev took years to die and was replaced by two even less well general secretaries. In the mid-1970s, CIA Director William Colby repeatedly predicted Brezhnev's pending demise. It wasn't until 1982 that Colby's forecast came true. In the succession process, a few younger members were elevated to the Politburo. Because of the succession of antiquated leaders, Mikhail Gorbachev found himself moving from post to post from his appointment to the Politburo in 1979. In each post, he realized that the Soviet Union was an empty shell and each department was grossly mismanaged and underperforming. Six years later, when he became general secretary, Gorbachev was determined to save the Soviet Union and modernize the failing system. Gorbachev's tools were glasnost (openness) and perestroika (restructuring). The floodgates of reform were fully opened and the old and unworkable system couldn't resist them. By 1991, the Soviet Union was no more. In the two decades since, Vladimir Putin has emerged as the Ironman of Russia. In the process, Russia has been described and viewed by many as a kleptocracy ruled by the few who have pillaged national wealth for their own benefits. Under what Republicans and Democrats alike in the United States see as a government of and by thugs, human rights have been violated; dissidents and members of the media arrested; and opponents of the Kremlin subjected to purges and show trials leading to long prison sentences. Russia's immediate neighbors are fearful of the return of the aggressive Russian bear anxious to spread its influence through manipulating its oil and natural gas reserves for political purposes and through military maneuvers designed to intimidate. Further, cyberattacks, principally against Estonia, reinforce this perception of a neo-Soviet Union under the leadership of former KGB Colonel Putin. And Putin's commitment to far greater military spending as well as unwillingness to accept NATO's missile defenses raises sinister possibilities. Within Russia, discontent on the part of many Russians is waxing. Outright theft on the part of oligarchs has gone too far. Persecution of political opposition is particularly vexing. And the health and longevity of a declining population reflects more than excesses of consumption of vodka and harsh winters. Indeed, as a buffer to Putin's intent to ramp up his military, the Kremlin faces a very limiting factor: 90 percent of all Russian youth are unfit for military service. Unfortunately, the West in general and the United States in particular have never been very good at Kremlinology (or indeed in understanding many foreign cultures). Whether Putin is aware of the ticking time bomb over which he presides or not, Russia is still very important to Western interests. Syria and Iran are two major crises where Russian support could be important.

#### That causes miscalculation and nuclear war

Pry 99 (Former US Intelligence Operative, ‘Peter Vincent, War Scare: U.S.-Russia on the Nuclear Brink, netlibrary]

Russian internal troubles—such as a leadership crisis, coup, or civil war—could aggravate Russia’s fears of foreign aggression and lead to a miscalculation of U.S. intentions and to nuclear overreaction. While this may sound like a complicated and improbable chain of events, Russia’s story in the 1990s is one long series of domestic crises that have all too often been the source of nuclear close calls. The war scares of August 1991 and October 1993 arose out of coup attempts. The civil war in Chechnya caused a leadership crisis in Moscow, which contributed to the nuclear false alarm during Norway’s launch of a meteorological rocket in January 1995. Nuclear war arising from Russian domestic crises is a threat the West did not face, or at least faced to a much lesser extent, during the Cold War. The Russian military’s continued fixation on surprise-attack scenarios into the 1990s, combined with Russia’s deepening internal problems, has created a situation in which the United States might find itself the victim of a preemptive strike for no other reason than a war scare born of Russian domestic troubles. At least in nuclear confrontations of the 1950s–1970s—during the Berlin crisis, Cuban missile crisis, and 1973 Middle East war—both sides knew they were on the nuclear brink. There was opportunity to avoid conflict through negotiation or deescalation. The nuclear war scares of the 1980s and 1990s have been one-sided Russian affairs, with the West ignorant that it was in grave peril.

#### US-Russia relations key to solve extinction.

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

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

#### Plan solves – removes the stigma from GITMO and is modeled globally.

Kimery 9 (Homeland Security Today's Online Editor and Online Media Division manager, Anthony, draws on 30 years of experience and extensive contacts as he investigates homeland security, counterterrorism and border security, citing Glenn Sulmasy, first permanent commissioned military law professor at the Coast Guard Academy, where he is a Professor of Law teaching international, constitutional, and criminal law, "The Case For A 'National Security Court'", December 3, [www.hstoday.us/blogs/the-kimery-report/blog/the-case-for-a-national-security-court/a9333d82c11cecd35e74c8c0b65c2698.html](http://www.hstoday.us/blogs/the-kimery-report/blog/the-case-for-a-national-security-court/a9333d82c11cecd35e74c8c0b65c2698.html)]

However, in interviews with HSToday.us, Sulmasy argued that “we have to be aware that the issue of captured fighters will not go away once GITMO is closed - it will continue with the Bagram detainees and other inevitable captures in the generational conflict against international terrorism.”¶ So, “rather than creating opportunities for ‘forum shopping’ - either employing military commissions for some and civilian courts for others - the nation needs ‘one’ system - a hybrid system that meets all needs associated with the unique legal status of these detainees” – and all future combatants captured or arrested in the WOAQ, Sulmasy argues.¶ Sulmasy insists that a National Security Court “offers the United States a ‘way out’ of GITMO-like problems” in the future.¶ In the July 2007 HSToday.us report, Toward a Homeland Security Court for Captured Terrorists, Sulmasy’s ideas about how best to resolve the dilemma GITMO and the Military Commissions Act (MCA) created were first discussed in detail. They are rooted in the spacious realization that the war on terrorism inherently presents complex new legalities as a consequence of the unparalleled, un-conventional war on terrorists - and it is a war.¶ Sulmasy says the approach he proposes would not only restore respect for America’s system of justice and legitimize the judicial handling of WOAQ prisoners, but it would serve as a template for other nations to emulate.¶ “Another need for [national security] courts is to deal with the latest issues,” Sulmasy explained. “US citizens who turn their backs on the government and seek to overthrow it by engaging in jihad right now are treated differently than jihadists from other countries. A homeland security court would remove this disparity … We cannot, once again, allow the sleeping giant to go back to sleep. We must remain vigilant and recognize that how we deal with the detention of the Al Qaeda jihadists [and like-minded jihadists] is critical to our winning this long war."¶ The Bush administration and Congress unquestionably rushed to conceive an ill-thought-out post-9/11 process for legally meting out the fate of suspected terrorists captured during combat in the WOAQ. But now the US requires a new judicial system for this new non-state war that likely will continue to be waged for decades to come, proponents for this system like Sulmasy argue.¶ “I think they were right, initially: We were being attacked and expecting flurries of attacks over the next few years … five to six years later, however, we need to look at fresh options,” Sulmasy said.

#### Next, blanket indefinite detention violates the Geneva Convention – doesn’t differentiate between types of combatants nor the different durations of conflict.

Murphy 7 (Law Professor at George Washington University Law School, “Evolving Geneva Convention Paradigms in the¶ 'War on Terrorism': Applying the Core Rules to the¶ Release of Persons Deemed 'Unprivileged¶ Combatants'”, GW Law Faculty Publications & Other Works, 2007, RSR]

The general assertion that all detainees at Guantánamo Bay may be detained for the “duration¶ of hostilities” is doubtful. First, that assertion may be overbroad in covering all persons detained¶ worldwide in the “war on terrorism.” While detention of persons on the battlefield in Afghanistan,¶ whether the person is associated with the Taliban or with Al Qaeda, seems fairly to fall within the¶ scope of the evolving laws of war, the detention of persons outside Afghanistan who are suspected¶ of connections to global terrorism is more problematic. The laws of war operate within temporal and¶ geographic realms; considerable attention is given to when it can be said that an “armed conflict”¶ has arisen and ended, and to where it is that protected persons are located (in enemy territory, in¶ occupied territory, in neutral territory, etc.) These rules do not fit well the new paradigm of an armed¶ conflict between a state and a non-state actor that is transnational in nature, especially when that nonstate actor is not a centralized organization. Links to Al Qaeda may be found in numerous countries,¶ not because the indigenous factions there are actively engaged in a coordinated fight against the¶ United States, but because Al Qaeda attracts movements that seek to reduce Western influence in their countries or region, be it Somalia, Algeria, or elsewhere.135 A principal architect of the radical¶ thinking that came to characterize Al Qaeda, Abu Musab al-Suri, has written that Al Qaeda is not¶ an organization, it is not a group, nor do we want it to be. . . . It is a call, a reference, a¶ methodology.”136 If that is correct, it becomes very strained to view all persons suspected of ties to¶ Al Qaeda as unlawful combatants engaged in an armed conflict with the United States. It would be¶ as if, during the Cold War, the United States decided to treat all persons suspected of being¶ communists as combatants because communist groups were fighting the United States in places like¶ Vietnam or Korea.¶ While it may be the case that Al Qaeda persons detained outside Afghanistan fall within the¶ same rules at those detained on the battlefield, it may also be the case that the rules are different.¶ Perhaps in recognition of this fact, the Supreme Court in Hamdi, after stating the general principle¶ of the law of war that detention may last no longer than active hostilities, went on to note that “[i]f¶ the practical circumstances of a given conflict are entirely unlike those of the conflicts that informed¶ the development of the law of war, that understanding may unravel.”137 Indeed, the Court appears¶ to have been influenced by the fact that Hamdi allegedly took up arms with the Taliban and that¶ active fighting against Taliban forces remained ongoing in Afghanistan. ¶ If Al Qaeda suspects picked up in places other than the battlefield in Afghanistan are not¶ regarded as combatants under the laws of war, then they would fall under the same rules that apply¶ to any transnational criminal; they could be arrested and tried in regular courts for transnational¶ crime, and otherwise could be closely monitored by law enforcement authorities. They could not,¶ however, simply be detained without trial indefinitely.¶ Second, even if one assumes that all the detainees at Guantánamo Bay should be treated¶ alike, the general assertion that they may be detained for the “duration of hostilities” still is¶ problematic. That general assertion appears based on Article 118 of Geneva Convention III¶ (“[p]risoners of war shall be released and repatriated without delay after the cessation of active¶ hostilities”), and perhaps on the analogous Article 133 of Geneva Convention IV (any internment¶ of civilians “shall cease as soon as possible after the close of hostilities”). Persons who have been¶ prosecuted in accordance with the conventions, of course, may be held even after the cessation of¶ hostilities, but they remain under the protections of the conventions until the completion of their sentences and their release.¶ The sentiment expressed by the 1949 Geneva Convention provisions in favor of expeditious¶ release after the cessation of hostilities was animated by the problems that were experienced prior¶ to 1949. The 1907 Hague Regulations138 and the 1929 Geneva Conventions on Prisoners of War139¶ were interpreted as allowing a detaining power not to repatriate until either the conclusion of an¶ armistice agreement or even a final peace agreement. Since those agreements might take months or¶ even years after the cessation of active hostilities, the repatriation of millions of prisoners of war in¶ both the world wars were considerably delayed.140 Consequently, the1949 Geneva Conventions (and¶ Protocol I) sought to detach the issue of repatriation from the conclusion of a formal agreement, and¶ instead tie the matter to core justification for detention—i.e., whether the individual would pose a¶ threat to the detaining power after release. In this sense, the obligation became a unilateral one¶ imposed on the detaining power, and not one contingent on some formal of consent from the¶ opposing belligerent. For the 1949 Geneva Conventions, the threat no longer existed once the¶ hostilities were over.¶ Yet, regardless of the duration of the conflict, Geneva Convention III and Geneva Convention¶ IV are oriented toward an individualized assessment of the circumstances arising with respect to¶ individual POWs and civilian internees. Under Geneva Convention III, a detaining power may¶ release a particular POW on “parole or promise,”141 and may also “conclude agreements with a view¶ to the direct repatriation or interment in a neutral country of able-bodied prisoners of war who have¶ undergone a long period of captivity.”142 Likewise, the standard set forth in Geneva Convention IV¶ for release of civilian internees is not tied to the cessation of hostilities; it provides that civilian¶ internees “shall be released by the Detaining Power as soon as the reasons which necessitated his¶ internment no longer exist.”143

#### Adapting to public perception on detention and international law is key to regain credibility of US compliance

Murphy 7 (Law Professor at George Washington University Law School, “Evolving Geneva Convention Paradigms in the¶ 'War on Terrorism': Applying the Core Rules to the¶ Release of Persons Deemed 'Unprivileged¶ Combatants'”, GW Law Faculty Publications & Other Works, 2007, RSR]

The dominant paradigms of the 1949 Geneva Conventions, which concern either inter-state¶ or internal armed conflict, do not sit well with the new face of armed conflict presented by Al Qaeda.¶ The non-state actor who engages in heinous conduct has been an outcast to the laws of war, whether¶ one looks at the terrorism of William Quantrill in the 1860's or the terrorism of Al Qaeda today. For¶ that reason, it is understandable that the full protections envisaged by those conventions were not¶ applied in the types of conflicts that emerged after 9/11. Nevertheless, influenced by developments¶ in the fields of human rights and international criminal law, the laws of war have now evolved to a¶ point where the “public dictates of conscience” compel the application of core protections even for¶ the outcast. Those protections are reflected in both conventional and customary international law,¶ and may be seen in common Article 3 of the 1949 Geneva Conventions, and Article 75 of their¶ Additional Protocol I. If the United States wishes to act in accordance with international law, such standards should guide the United States in the conditions of the detention and the mechanisms by¶ which detainees are prosecuted for crimes.¶ Moreover, those standards should guide the United States in its decision-making on the¶ release of detainees. Detainees in the “war on terror” may not be held until the “cessation of¶ hostilities.” They may only be held so long as the particular detainee at issue represents a danger or¶ threat to the detaining power. The detaining power is obligated to undertake periodic reviews, by an¶ appropriate court or administrative board, of whether that threat continues to exist. Once the detainee¶ is determined not to be a threat, or their mental or physical fitness has been gravely diminished, the¶ detainee must be released immediately. If the detainee will likely be exposed to abuse by being sent¶ back to his country of origin, he may not be returned. In that case, or in the case of a detainee whose¶ country of origin will not accept his return or recognize his nationality, the United States is obligated¶ to release the detainee in the United States until an appropriate alternative place for relocation can¶ be resolved. Continued detention of persons deemed not to be a threat is unlawful and¶ unconscionable.

#### US Failure to adhere to Geneva undermines the entire Geneva regime

Beard 7 (Jack, ecturer at UCLA former Deputy General Counsel at the D.o.D., “The Geneva Boomerang: The Military Commissions Act of 2006 And US Counterterror operations,” The American Journal of International Law, KM]

At a fundamental level, unilateral revision of the Geneva Conventions by the United States undermines the credibility of the U.S. commitment to the existing Geneva regime. In an international setting that lacks effective external enforcement mechanisms, allowing the easy violation of agreements, a state may seek to send a signal of credible commitment to other states by constraining its own ability to act in ex ante legal structures, institutions, or procedures that reduce ex post incentives for such noncompliance. n58 A legislative act that restrains or makes it [\*66] costly to exercise such discretionary power and reduces the attractiveness of breaching an agreement can serve such a signaling function. n59 To the extent, however, that the MCA is perceived as unilaterally revising key obligations in the Geneva Conventions and providing the president with the discretion to issue further reinterpretations, it undermines the credible commitment of the United States to other states in the international community. n60 And to the extent that the U.S. commitment is perceived as increasingly less credible, theory suggests that other countries are unlikely to maintain the stringency of their own commitments.

#### The Geneva Conventions are key to prevent the development and use of chemical and biological weapons.

GCSP 5 [Geneva Centre for Security Policy, “Biological and Chemical Weapons Seminar,” June 2005, <http://www.gcsp.ch/e/meetings/Security_Challenges/WMD/Meeting_Conf/2005/BC%20Weapons%20Seminar/summary.htm>, KM]

On 9-10 June 2005, the GCSP hosted an international seminar initiated by France and Switzerland on the occasion of the 80th anniversary of the signing of the Geneva Protocol prohibiting the Use of Chemical and Bacteriological Weapons in collaboration with the United Nations Institute for Disarmament Research (UNIDIR). Over 100 participants attended the event, representing 39 States Parties, 8 UN agencies and the European Union, 12 non-governmental organisations and 10 media organisations. Ambassador Raimund Kunz, Head of the Directorate of Security Policy of the Swiss Defence Department, and Ambassadors François Rivasseau and Jürg Streuli, respectively the French and Swiss Permanent Representatives to the Conference on Disarmament, opened the seminar. The first session considered the historical background to the adoption of the 1925 Geneva Protocol and why its prohibition was extended to include bacteriological weapons, and the philosophical and ethical reasons for preserving humankind from the scourge of weapons of mass destruction. The second session considered the current situation and why there is a continuing threat from biological weapons, including from non-State actors, as well as the measures that should be taken to counter this threat, including inter-governmental cooperation through Interpol. The WHO presented the global health response to epidemics, caused naturally, accidentally or deliberately, and the International Organisation for Animal Health (OIE) described its policies to prevent or cure animal epidemics. The session also considered the implications of industrial and scientific developments in biology and biotechnology as well as legal and ethical measures in relation to bio-security. The third session examined the possible responses of international law, including the classical rules of humanitarian law relating to poisoning and the deliberate spread of disease as related to modern responsibilities, and responses that could be based on traditional instruments of disarmament, namely the 1972 Biological Weapons Convention and the 1993 Chemical Weapons Convention. The final session considered emergency responses to the threat of biological and chemical weapons. The French Head of the MFA Disarmament Unit took stock of the implementation of the Chemical Weapons Convention and the UK Permanent Representative to the Conference on Disarmament, President of the Biological and Toxin Weapons Convention Review Process, envisaged what the States Parties to the Convention might do at the Sixth Review Conference in 2006. Then the seminar considered the actions taken by groups of States such as the G8 (Global Partnership against Weapons of Mass Destruction) and the European Union (Common Strategy on the Non-Proliferation of WMD) to strengthen the regimes prohibiting chemical and biological weapons, as well as the implementation of the UN Security Council Resolution 1540 (2004). Thanks in particular to the active presence of NGOs, think tanks and journalists, the seminar was lively with a rich debate following the presentations that covered much ground and led to the recognition of a number of conclusions and points for further consideration: The 1925 Geneva Protocol was the cornerstone of a multilateral regime that now, through the 1972 Biological Weapons Convention and the 1993 Chemical Weapons Convention, totally prohibits not only the use but also the production and possession of both chemical and biological weapons.

#### Bioweapons cause extinction – new advances in biotech take out your defense.

Myhrvold 13 (Nathan, former Chief Technology Officer at Microsoft, founder of Intellectual Ventures—one of the largest patent holding companies in the world, “Strategic Terrorism: A Call to Action”, The Lawfare Research Paper Series Research paper NO . 2, http://www.lawfareblog.com/wp-content/uploads/2013/07/Strategic-Terrorism-Myhrvold-7-3-2013.pdf]

**Biotech**nology **is advancing so rapidly** that **it is hard to**  **keep track of all** **the new potential threats**. Nor is it clear that anyone is even trying. In addition to lethality and drug resistance, many other parameters can be played with, given that the infectious power of an epidemic depends on many properties, including the length of the latency period during which a person is contagious but asymptomatic. Delaying the onset of serious symptoms allows each new case to spread to more people and thus makes the virus harder to stop. This dynamic is perhaps best illustrated by HIV , which is very difficult to transmit compared with smallpox and many other viruses. Intimate contact is needed, and even then, the infection rate is low. The balancing factor is that HIV can take years to progress to AIDS , which can then take many more years to kill the victim. What makes HIV so dangerous is that infected people have lots of opportunities to infect others. This property has allowed HIV to claim more than 30 million lives so far, and approximately 34 million people are now living with this virus and facing a highly uncertain future.15 A virus genetically engineered to infect its host quickly, to generate symptoms slowly—say, only after weeks or months—and to spread easily through the air or by casual contact would be vastly more devastating than HIV . It could silently penetrate the population to unleash its deadly effects suddenly. This type of epidemic would be almost impossible to combat because most of the infections would occur before the epidemic became obvious. **A technologically sophisticated terrorist group could**  **develop** such **a virus and kill a large part of humanity with it**. **Indeed, terrorists may not have to develop it themselves:**  **some scientist may** do so first and publish the details. **Given the rate at which biologists are making discoveries** about viruses and the immune system, **at some point in**  **the near future**, **someone may create artificial pathogens**  **that could** drive the human race to extinction. Indeed, a detailed species-elimination plan of this nature was openly proposed in a scientific journal. The ostensible purpose of that particular research was to suggest a way to extirpate the malaria mosquito, but similar techniques could be directed toward humans.16 When I’ve talked to molecular biologists about this method, they are quick to point out that it is slow and easily detectable and could be fought with biotech remedies. If you challenge them to come up with improvements to the suggested attack plan, however, they have plenty of ideas. **Modern biotechnology** **will soon be capable**, if it is not already, **of bringing about the demise of the human race**— or at least of killing a sufficient number of people to end high-tech civilization and set humanity back 1,000 years or more. **That terrorist groups could achieve this level of technological**  **sophistication may seem far-fetched, but** keep in mind **that it takes only a handful of individuals to accomplish**  **these tasks**. Never has lethal power of this potency been accessible to so few, so easily. Even more dramatically than nuclear proliferation, **modern biological science has frighteningly undermined the correlation between the lethality of a weapon and its cost**, a fundamentally stabilizing mechanism throughout history. **Access to extremely lethal**  **agents**—lethal enough to exterminate Homo sapiens—**will**  **be available to anybody with a solid background in biology,**  **terrorists included**. The 9/11 attacks involved at least four pilots, each of whom had sufficient education to enroll in flight schools and complete several years of training. **Bin Laden had a degree**  **in civil engineering**. Mohammed Atta attended a German university, where he earned a master’s degree in urban planning—not a field he likely chose for its relevance to terrorism. **A future set of terrorists could** just as **easily be**  **students of molecular biology who enter their studies innocently**  **enough but later put their skills to homicidal use**. Hundreds of universities in Europe and Asia have curricula sufficient to train people in the skills necessary to make a sophisticated biological weapon, and hundreds more in the United States accept students from all over the world. **Thus it seems likely that sometime in the near future a** **small band of terrorists**, or even a single misanthropic individual, **will overcome our best defenses and do something**  **truly terrible, such as fashion a bioweapon that could kill millions or even billions of people**. Indeed, **the creation of such weapons within the next 20 years seems to be a virtual certainty**. The repercussions of their use are hard to estimate. One approach is to look at how the scale of destruction they may cause compares with that of other calamities that the human race has faced.

#### Plan solves perception of US compliance with international law.

McCarthy and Velshi 9 [Andrew (Director of the Center for Law & Counterterrorism at the Foundation for the Defense of Democracies) and Alykhan (staff attorney at the Center for Law & Counterterrorism, where he focuses on the international law of armed conflict and the use of force), “We Need a National Security Court”, Submission for AEI, 2009, RSR]

To be clear, this is not to suggest that the United States has not honored its treaty obligations. Indeed, it ¶ has, for example, correctly construed al Qaeda to be outside the Geneva prisoner-of-war standards. The¶ point here is that a judicial tribunal, following the law publicly and faithfully from outside the executive ¶ branch, would do much to educate the public on what U.S. obligations actually are, would correct the ¶ misinformation which has been pervasive since military operations began after the 9/11 attacks, and would ¶ – in the same way criminal trials now do – provide a credible barometer for government to meet. ¶ Government’s anticipated success in doing so would do much to enhance America’s reputation for ¶ honoring its international commitments, which has been battered – for the most part, inaccurately and ¶ unfairly – for the past five year.

#### A national security court would solve US compliance with Geneva - allows for oversight to review the individual detentions

McCarthy and Velshi 9 [Andrew (Director of the Center for Law & Counterterrorism at the Foundation for the Defense of Democracies) and Alykhan (staff attorney at the Center for Law & Counterterrorism, where he focuses on the international law of armed conflict and the use of force), “We Need a National Security Court”, Submission for AEI, 2009, RSR]

The NSC would oversee a new process for ¶ monitoring and reviewing the detention of alien enemy combatants captured by our ¶ military (and allied forces) outside U.S. territory and detained wherever the military ¶ chooses to detain them (including within the United States). The district court division of ¶ the NSC would perform, primarily, a monitoring function. As already noted, judicial ¶ review would principally proceed at the appellate level, as it now does under the DTA ¶ and MCA. The process would work as follows. Within a reasonable time after capture, the ¶ Justice Department would report to the NSC the fact that an alleged unlawful combatant ¶ had been captured in a particular theater of combat and was being detained.69¶ Presumptively within one year of capture, the military would hold a CSRT pursuant to ¶ the procedures currently in place.70 Assuming the detainee is designated an alien enemy¶ combatant, the appeal process would proceed, first in the military system and, ultimately, ¶ to the appellate tribunal of the NSC. ¶ Review in the NSC would proceed in a manner similar to that envisioned by the ¶ MCA. In creating the NSC, Congress would (a) make a finding that aliens who are nonU.S. persons (i.e., who are neither American citizens nor lawful permanent resident aliens ¶ of the United States) have no entitlements under the Constitution, and (b) provide that ¶ such aliens have no enforceable entitlements against detention during wartime under any ¶ U.S. statute or treaty if found by a properly constituted CSRT to be enemy combatants. ¶ Consequently, review in the NSC would be limited to challenging compliance at the ¶ appellant’s CSRT with the military’s standards and procedures for CSRTs. To avoid the empirical problem of judicial activism, the Congress would make clear that the grounds it ¶ has set forth are the only available grounds for judicial review.71¶ In connection with each certified combatant, the Justice Department would also ¶ certify to the NSC (at the district court level) that hostilities were ongoing in the war on ¶ terror, that hostilities were ongoing in the theater of combat relevant to the particular ¶ enemy combatant (which, of course, will not necessarily be the place where the ¶ combatant was captured), and that it was in the national security interest of the United ¶ States that the combatant continue to be held because of the likelihood that he would ¶ resume operations against the United States if released. The CSRT determination would ¶ be reviewed annually, as would DOJ’s certification.¶ The government’s certification would be unreviewable as long as the executive ¶ branch represented that combat operations were still ongoing in the theater which was the ¶ predicate (or were the predicates) for finding the particular detainee an alien enemy ¶ combatant. Here, it is worth pausing to rehearse that, once prospects for useful ¶ intelligence have been exhausted, the sole justification for holding enemy combatants is ¶ to prevent them from rejoining the battle. While it is often observed that the global war ¶ on terror may go on indefinitely, this does not mean it will go on throughout the world ¶ indefinitely. ¶ Of course, some detainees will be a credible threat to join the battle wherever it ¶ rages. However, the evidence that would make such a threat credible will frequently ¶ provide grounds for charging the terrorist-combatant with war crimes and prosecuting ¶ him – such that it will not be necessary to detain him interminably merely as an enemy ¶ combatant (which is the principal international objection to current U.S. policy). Other ¶ detainees will only be credible local threats, and will not be a continuing national security ¶ challenge for the United States once combat operations have been completed in the place ¶ where they were captured. Such combatants should be repatriated once combat operations ¶ in their region have wound down (and it bears mention here that the United States has, in fact, released hundreds of combatants from Guantanamo Bay).72 Moreover, as progress is ¶ made in the war on terror, and particularly if functioning governments replace tyrannical ¶ regimes, it will increasingly be possible to repatriate combatants with the confidence that ¶ they will be treated appropriately (including by prosecution, if grounds exist) by the new ¶ governments in their home countries (or in countries where they have committed crimes). ¶

### Solvency

#### Contention 4 is solvency

#### The court preserves national security while sending an international signal

Sulmasy 6 (Commander and associate professor of law at the U.S. Coast Guard Academy,

[Glenn, “THE LEGAL LANDSCAPE AFTER HAMDAN:¶ THE CREATION OF HOMELAND SECURITY¶ COURTS”, NEW ENG. J.INT'L & COMP.L., Vol. 13, RSR]

Article I judges with law of armed conflict expertise would proceed¶ over the trials. Theses judges will be appointed by the President and¶ possess the educational background necessary to determine the lawfulness¶ of intelligence gathering, terrorist surveillance, and other necessary areas in¶ the field of terrorism and homeland security. Several scholars, advocating¶ against judicial intervention in the war, correctly note that those who are¶ making such decisions now are not necessarily versed in this unique area of¶ the law.43 Whether you agree or disagree, the nature of this war seems to¶ necessitate judicial intervention more than has been custom or standard in¶ previous U.S. military wars and operations. As it stands now, the system¶ allows for judges who have no background in warfare or national security¶ to intervene, hear, and decide cases with little or no understanding of the¶ issues because they are beyond the scope of their expertise.4 The threat¶ we face demands these procedures as a minimum requirement.¶ Prosecutors, assigned by the Department of Justice (hereinafter¶ referred to as "DOJ") would represent the government and exercise¶ prosecutorial discretion on whether or not to proceed in cases. Oversight¶ would be conducted by the Chief, Criminal Division of DOJ. 45 The powers¶ of these prosecutors, as in other nations, would be great, but they would¶ still operate under the ethical rules standard for all U.S. government¶ attorneys.¶ Judge advocates (military lawyers) would serve as government¶ provided defense counsel. This group would be similar to what has been¶ provided for the detainees in the military commissions. The judge¶ advocates would be made available by the Department of Homeland Security46 and the Department of Defense. Initially, a pool of ten judge¶ advocates would serve on defense teams. If desired, the accused may¶ employ, at his expense, civilian counsel as long as they have requisite¶ classified document clearance(s). This would ensure alleged international¶ terrorists with a defense capable of handling their cases. Further, this¶ would help satisfy some international concern about lack of representation.¶ As a result of the sensitive nature of intelligence gathering and¶ methods employed as well as ensuring such hearings do not become¶ propaganda tools for the enemy,47 the trials would be closed to the public.¶ Reasons for closed trials include disallowing access to the media, an action¶ that was not taken in the trials of the perpetrators of the World Trade¶ Center bombings in 1993 and the recent Moussaoui case.48 However,¶ representatives from several appointed NGO's and the United Nations¶ would be permitted to attend as "observers" to ensure fairness of the trial¶ and to witness the procedural protections expected of a nation dedicated to¶ upholding the rule of law.¶ The trials would be held on military bases located within the¶ continental United States. This would keep the detainees held in a location¶ that is secure, like GITMO, but with less controversy. This would, in part,¶ also remove some of the international concerns about the detention centers¶ located in GITMO. Under this proposal, our own armed forces, alleged¶ and convicted criminals, are held at the same location as the terrorist. Fort¶ Leavenworth in Kansas, or even Fort Belvoir in Washington D.C., would¶ be appropriate locations to detain, try, and imprison persons accused of¶ engaging in international terror. Since Eisentrager has been essentially¶ overruled by recent cases, 49 the extraterritoriality needs are no longer¶ applicable and, in essence, are moot.50¶ As noted previously, military brigs are the most appropriate place to detain accused terrorists because it is both a secure place and it affords the¶ same protection against abuse given to those in the U.S. service members¶ who are tried, convicted, and sentenced under the UCMJ by courts-martial.¶ Having the detainees alongside members of the U.S. military would go a¶ long way toward reducing international concerns of torture and unfair¶ tribunals. In addition, it seems as though keeping the detainees within our¶ nation would provide an additional appearance of process and certainly¶ remove the taint of being held in the base at GITMO. Remaining¶ consistent with the theme of the homeland security courts being a hybrid,¶ any appeals would go through the Courts of Appeals of the Armed Forces¶ (CAAF)." This limited right of appeal would ensure the cases were heard¶ by an outside panel of judges versed in military law, the laws of war, and¶ have some background in the procedural nuances of national security law.¶ Appellate counsel would be provided by Air Force, Coast Guard, Navy-¶ Marine Corps, and the Army.¶ Under this system, the death penalty would still be an authorized¶ punishment. This penalty would only be authorized in those cases deemed¶ egregious enough and ones that severely impact the homeland security of¶ the United States. Certain aggravating factors would have to be developed¶ and codified to distinguish between what cases are appropriate for a life¶ sentence or those better suited as capital cases. Recognizing that this¶ would still cause concern among our European and other international¶ colleagues, this proposal certainly requires further elaboration prior to¶ implementation.

#### Congressional action is the only way to make the executive accountable – empirically proven, the court will back them up and preserves executive flexibility.

Harvard Law Review 12 [“RECENT LEGISLATION”, Vol. 125, 2012, RSR]

Just as the Commander-in-Chief power is not preclusive with respect to detainee transfers in general (sections 1026 through 1028), the ¶ President’s foreign affairs powers are also not preclusive with respect ¶ to transfers to foreign countries (section 1028). The Court has long ¶ recognized that the President’s foreign affairs powers go beyond those ¶ explicitly granted in the Constitution and that the President has a ¶ unique role as “the sole organ of the federal government in the field of ¶ international relations.”59 Yet the Court has not held that the President enjoys preclusive power over the whole foreign affairs arena;60¶ nor has it ever invalidated an act of Congress as infringing upon the ¶ President’s foreign affairs power.61 Even strong foreign affairs ¶ presidentialists concede that Congress retains those powers granted by ¶ the constitutional text.62 Congress’s constitutionally granted foreign affairs powers include not only those facially related to foreign affairs — ¶ such as ratifying treaties, confirming ambassadors, and regulating foreign commerce63 — but also those that clearly affect foreign relations, ¶ such as declaring and regulating war.64 History and custom also support ¶ the constitutionality of congressional restrictions on detainee transfers to ¶ foreign states.65 Congress has long helped shape immigration and deportation policies,66 and — most relevant for the detainee-transfer con- text — has regulated extradition, both by treaty and by legislation.67¶ As the Court has recognized, extradition is “not confided to the Executive in the absence of treaty or legislative provision.”68¶ Despite Congress’s constitutional authority to regulate detainee ¶ transfers, President Obama’s policy criticisms of the specific restrictions in the NDAA were valid. The statute eliminates the flexibility to try Guantánamo detainees in civilian courts (a practice used to ¶ great effect by the Bush administration with other terrorism suspects69), makes it impossible to close Guantánamo Bay,70 and abandons many of the detainees whom the administration no longer views ¶ as dangerous but is barred by statute from transferring.71¶ Nevertheless, Congress’s general involvement in detention policy ¶ may be positive for its own sake, even if it missteps in individual cases. ¶ Congress not only legitimates and helps make accountable executive ¶ branch actions,72 but it is also the only branch capable of fashioning a ¶ comprehensive legal regime for military detention of terrorist suspects.73 In addition, institutional constraints such as the bicameralism ¶ requirement and the presidential veto74 limit the potential damage of ¶ congressional meddling in tactical wartime decisions.75 Although the ¶ President is right to work with Congress to repeal the problematic ¶ NDAA provisions,76 he should respect its role in this policy arena and ¶ neither ignore the restrictions nor interpret them out of existence in the ¶ name of avoiding constitutional difficulties.77 Just because a congressional policy choice is wrong does not make it unconstitutional.

## 2AC

### T

#### A. We meet –

#### 1. Indefinite detention without trial will no longer exist. The aff will result in trials for covered persons, limiting Obama's ability to detain presumed terrorists without trial. 1AC Sulmasy.

#### 2. Decreasing authority requires reducing the permission to act, not the ability to act.

Taylor 96 Attorney at Gambrell & Stolz, LLP, Atlanta (Ellen, 21 Del. J. Corp. L. 870 (1996), Hein Online)

The term authority is commonly thought of in the context of the law of agency, and the Restatement (Second) of Agency defines both power and authority.'89 Power refers to an agent's ability or capacity to produce a change in a legal relation (whether or not the principal approves of the change), and authority refers to the power given (permission granted) to the agent by the principal to affect the legal relations of the principal; the distinction is between what the agent can do and what the agent may do.

#### B. Counter Interpretation:

#### 1. Restriction means a statute that limits activity

Law.com Dictionary, no date (accessed 08-06-09)

http://dictionary.law.com/Default.aspx?selected=1835&bold=restrict

restriction n. **any limitation on activity, by statute, regulation or contract provision**. In multi-unit real estate developments, condominium and cooperative housing projects managed by homeowners' associations or similar organizations, such organizations are usually required by state law to impose restrictions on use. Thus, **the restrictions are** part of the "covenants, conditions and restrictions" intended to enhance the use of common facilities and property which are **recorded and incorporated into the title of each owner**.

#### 2. Review is restriction

Rice and Saul 2002 [Paul, professor of law at the Washington College of Law at American University, and Benjamin, law clerk for the Honorable Judge Steadman, “Is the war on terror a war on attorney-client privilege?, Criminal Justice, Summer, p. 23]

The second option would be to suppress everything. Suppression may be the most appropriate option for two reasons. First, because courts have shown an unwillingness to engage in a meaningful review of executive national security claims, the consequences of judicial acquiescence may be less serious. Second, suppression would serve as a check against the executive branch attempting to overuse national security powers. If the government knows that no evidence obtained under the order may be used in the prosecution of any defendant, then the government will only monitor inmates under the order when it truly believes such monitoring may result in leads that may prevent future terrorist acts.

#### 3. We meet our c/I – we have congress create a statute for the NSC to provide regulation over Obama's war powers authority regarding indefinite detention.

#### C. Reasons to prefer:

#### 1. Ground – establishing a court to provide judicial review is critical to aff ground. Establishing courts aff are the only part of the topic where the power is solely vested in Congress. Absent this, the executive restraint or other agent CPs solve all our ground. Makes it impossible to be aff.

#### 2. Limits – Allowing for affs that only provide direct judicial review is the most limiting interpretation of the topic. Makes it mandatory that affs provide a direct restriction on the ability of the executive to detain.

#### Competing interpretations are bad: Race to the bottom: they’re just trying to limit out one more case

#### Prefer reasonability: as long as we’re reasonably topical, there’s no reason to pull the trigger. Don’t vote on potential abuse.

### Executive Restraint CP

#### Permutation do both. Solves the net benefit <insert explanation>.

#### Links to politics – immense opposition to bypassing debate

Hallowell 13

(Billy Hallowell, writer for The Blaze, B.A. in journalism and broadcasting from the College of Mount Saint Vincent in Riverdale, New York and an M.S. in social research from Hunter College in Manhattan, “HERE’S HOW OBAMA IS USING EXECUTIVE POWER TO BYPASS LEGISLATIVE PROCESS” Feb. 11, 2013, <http://www.theblaze.com/stories/2013/02/11/heres-how-obamas-using-executive-power-to-bylass-legislative-process-plus-a-brief-history-of-executive-orders/>, KB)

“In an era of polarized parties and a fragmented Congress, the opportunities to legislate are few and far between,” Howell said. “So presidents have powerful incentive to go it alone. And they do.”¶ And the political opposition howls.¶ Sen. Marco Rubio, R-Fla., a possible contender for the Republican presidential nomination in 2016, said that on the gun-control front in particular, Obama is “abusing his power by imposing his policies via executive fiat instead of allowing them to be debated in Congress.”¶ The Republican reaction is to be expected, said John Woolley, co-director of the American Presidency Project at the University of California in Santa Barbara.¶ “For years there has been a growing concern about unchecked executive power,” Woolley said. “It tends to have a partisan content, with contemporary complaints coming from the incumbent president’s opponents.”

#### Rollback DA - Future presidents prevent solvency

Harvard Law Review 12,

["Developments in the Law: Presidential Authority," Vol. 125:2057, www.harvardlawreview.org/media/pdf/vol125\_devo.pdf]

The recent history of signing statements demonstrates how public opinion can effectively check presidential expansions of power by inducing executive self-binding. **It remains to be seen**, however, **if this more restrained view of signing statements can remain intact, for it relies on the promises of one branch — indeed of one person — to enforce and maintain the separation of powers**. To be sure, President **Obama’s guidelines for the use of signing statements contain all the hallmarks of good executive branch policy: transparency, accountability, and fidelity to constitutional limitations.** Yet, in practice**, this apparent constraint (**however well intentioned**) may amount to** little more than voluntary self-restraint. 146 Without a formal institutional check, it is unclear what mechanism will prevent the next President (or President Obama himself) from reverting to the allegedly abusive Bush-era practices. 147 Only time, and perhaps public opinion, will tell.

#### Credibility DA - Multiple branch involvement is key to credibility, meaning only the plan can solve our internal links.

Wittes and Gitenstein, ‘7

[Benjamin (Senior Fellow in Governance Studies at the Brookings Institution, where he is the Research Director in Public Law, and Co-Director of the Harvard Law School - Brookings Project on Law and Security) and Mark (non-resident senior fellow at the Brookings Institution), “A Legal Framework for Detaining Terrorists: Enact a Law to End the Clash over Rights”, Opportunity 8, The Brookings Institution, RSR]

The paradox is that, precisely because terrorists flout the rules of warfare and make ¶ themselves harder to distinguish from civilians when captured, they necessitate a level ¶ of due process that conventional forces, which make no secret of their status as ¶ belligerents, do not require. The question is what sort of process might identify these ¶ unlawful combatants accurately and with public credibility. The Geneva ¶ Conventions require only that, in cases of doubt, all individuals receive review by a ¶ “competent tribunal”— historically, cursory field panels that provide few procedural ¶ protections. But such panels are a bad fit with the war on terrorism. In many of ¶ these cases, the factual issues are too complicated, the lines between civilian and ¶ combatant too hazy, the duration of the conflict too uncertain, and the consequences ¶ to the liberty of individuals too vast. ¶ Congress therefore needs to create new statutory procedures for handling “unlawful ¶ enemy combatants” of the Guantanamo type. The procedures must not be subject to ¶ the whim of the executive. Instead, they should be blessed by all three branches of ¶ government, reflecting the unified will of the American political system. These ¶ processes need not include all the protections of a criminal trial. But, they need to be considerably more robust than the process applied to prisoners in a conventional ¶ military conflict or the process applied to detainees today at Guantanamo.

### Heg DA

#### Our credibility internals solve the impact better than flexibility

Schwarz, senior counsel, and Huq, associate counsel at the Brennan Center for Justice at NYU School of Law, 2007 [Frederick A.O., Jr., partner at Cravath, Swaine & Moore, chief counsel to the Church Committee, and Aziz Z, former clerk for the U.S. Supreme Court, Unchecked and Unbalanced: Presidential Power in a Time of Terror, p. 201]

The Administration insists that its plunge into torture, its lawless spying, and its lock-up of innocents have made the country safer. Beyond mere posturing, they provide little evidence to back up their claims. Executive unilateralism not only undermines the delicate balance of our Constitution, but also lessens our human liberties and hurts vital counterterrorism campaigns. How? Our reputation has always mattered. In 1607, Massachusetts governor John Winthrop warned his fellow colonists that because they were a "City on a Hill," "the eyes of all people are upon us."4 Thomas Jefferson began the Declaration of Independence by invoking the need for a "decent respect to the opinions of mankind:' In today's battle against stateless terrorists, who are undeterred by law, morality, or the mightiest military power on earth, our reputation matters greatly.¶ Despite its military edge, the United States cannot force needed aid and cooperation from allies. Indeed, our status as lone superpower means that only by persuading other nations and their citizens—that our values and interests align with theirs, and so merit support, can America maintain its influence in the world. Military might, even extended to the globe's corners, is not a sufficient condition for achieving America's safety or its democratic ideals at home. To be "dictatress of the world," warned John Quincy Adams in 1821, America "would be no longer the ruler of her own spirit." A national security policy loosed from the bounds of law, and conducted at the executive's discretion, will unfailingly lapse into hypocrisy and mendacity that alienate our allies and corrode the vitality of the world's oldest democracy.5

#### The aff doesn’t link – limits judicial creativity while resulting in quick prosecutions.

McCarthy and Velshi, ‘9

[Andrew (Director of the Center for Law & Counterterrorism at the Foundation for the Defense of Democracies) and Alykhan (staff attorney at the Center for Law & Counterterrorism, where he focuses on the international law of armed conflict and the use of force), “We Need a National Security Court”, Submission for AEI, 2009, RSR]

In such a system, the opportunities for judicial creativity would be limited by ¶ being plainspoken and unapologetic in enabling legislation about the fact that the ¶ defendants are not Americans but those who mean America harm; that the task of federal ¶ judges is not to ensure that defendants are considered as equals to our government before ¶ the bar of justice, but merely to ensure that they are not capriciously convicted of war ¶ crimes by the same branch of government that is prosecuting the war; that if credible and ¶ convincing evidence supports the allegations, the system’s preference is that defendants ¶ be convicted and harshly sentenced; and that the authority of judges is enumerated and ¶ finite – if the rules as promulgated do not expressly provide for the defendant to have ¶ particular relief, the judge is powerless to direct it. In short, the system would curb ¶ judicial excess by the recognition, which underlies the military justice system, that ¶ prosecuting war remains a quintessentially executive endeavor; in the NSC, judges would ¶ be a check against arbitrariness but they would not have any general supervisory ¶ authority over the conduct of proceedings and they would not be at liberty to create new ¶ entitlements

by analogizing to ordinary criminal proceedings. ¶ Similarly, the demonstrated weaknesses in the military commission system would ¶ be ameliorated by the unique assets of federal judges. The commissions have developed ¶ at a snail’s pace, and, in addition, been bogged down over procedural confusion, the need to revise the rules, and allegations of conflicts of interest.74 Federal judges routinely ¶ handle and bring to conclusion matters of greater complexity than war crimes tribunals, ¶ and we could with confidence entrust the Chief Justice to select jurists with demonstrated ¶ ability in this regard. Judges are expert at working through novel and complex procedural ¶ rules, and at ensuring that the rules are followed when they are clear. They are highly ¶ experienced at dealing with aggressive prosecutors and self-styled activist lawyers, both ¶ of which are wont to be drawn to national security cases. Most significantly, their ¶ independence would make them unstinting in the face of claimed conflicts. It would ¶ instantly mean decisions could be made, and the proceedings moved forward, ¶ unburdened by any appearance of impropriety. There would no longer be any colorable ¶ complaint that the authority advancing the allegations was the same authority ¶ determining the legal and factual validity of the allegations.

### Advantage CP

#### GTRI doesn’t solve – information and cooperation obstacles.

Webb 4 (Greg Webb, Global Security Newswire, Nations Back Global Threat Reduction Initiative, Nuclear Threat Initiative, 22 September 2004, http://www.nti.org/gsn/article/nations-back-global-threat-reduction-initiative/, da 9-22-13) PC

The GTRI effort was described by one U.S. official as being “like motherhood: everyone is for it,” and a number of recent successes have bolstered its startup. In particular, the United States has financed or administered several missions to transfer fresh HEU fuel, from research reactors in Eastern Europe and central Asia, back to Russia, the original supplier.¶ Despite these successes, implementation of the global effort poses daunting obstacles, according to experts here. The hurdles consist of an incomplete inventory of nuclear materials worldwide, the cost of implementing reactor security or conversion measures, and some nations’ resistance to surrendering materials they believe give them more international standing.¶ The hopes for the program are ambitious.¶ “The challenge we face in the 21st century … is not just a challenge related to securing dangerous materials,” Abraham said in his opening statement to the meeting. “Rather, the challenge that confronts us is directed at thwarting the aims of senseless killers, killers always searching for more treacherous means to sow terror and death.”¶ To date, U.S.-sponsored missions have returned weapon-usable materials from a number of research reactors to Russia. These missions include the repatriation of 48 kilograms of HEU fuel from Serbia (see GSN, Aug. 23, 2002), 14 kilograms from Romania (see GSN, Sept. 22, 2003), 17 kilograms from Bulgaria (see GSN, Dec. 29, 2003), nearly 17 kilograms from Libya (see GSN, March 8), and most recently 11 kilograms of enriched uranium from Uzbekistan (see GSN, Sept. 14). ¶ In addition, the United States recently retrieved spent nuclear fuel assemblies it had provided to research reactors in Germany (see GSN, Aug. 13).¶ More missions are expected in the near future, with Russia’s top nuclear official Alexander Rumyantsev announcing Monday that discussions were under way to remove fresh fuel from Ukraine and the Czech Republic, and that efforts to collect spent fuel are being negotiated with Uzbekistan and Serbia.¶ These missions, however, have dealt only with known stocks of fresh and spent fuel.¶ A looming problem might be to simply identify and locate all the nuclear materials in the United States and Russia as well as the material those nations have supplied to the world over the past five decades.¶ “The first task we must undertake involves creating an official inventory of high-risk materials worldwide, which includes, but is not limited to, materials located at enrichment plants, conversion facilities, reprocessing plants, research reactor sites, fuel fabrication plants and temporary storage facilities. It also includes the kinds of material that could be used in a [radiological dispersal device],” Abraham said.¶ This task would certainly be complicated at a global level, experts here said, but of more worry perhaps would be the initial problem of creating an accurate database of materials located in the former Soviet Union.¶ “We are well aware of the location of research reactors and critical assemblies,” Rumyantsev said in a press briefing Sunday.¶ However, two U.S. officials said that the movement of nuclear research materials was so pervasive during the Soviet era that Russia does not have a complete understanding of where the materials are today.¶ An additional hurdle could be paying for the initiative on a global scale. The United States has so far funded the operations, but the plan calls for more expensive activities, such as converting HEU-fueled reactors to use lower enrichment levels.¶ A recent U.S. Government Accountability Office report noted that in the United States itself there are eight research reactors that could be converted to use low-enriched fuel, but so far no funds have been allocated for that work (see GSN, Aug. 2).¶ Also hindering the initiative’s progress is the prospect that some nations could be reluctant to abandon their nuclear facilities, according to Bill Potter, director of the Center for Nonproliferation Studies at the Monterey Institute of International Studies.¶ In Russia alone, Potter said, no research facility has completely parted with its highly enriched uranium. The Russian sites “do attach importance of certain kinds to the presence of HEU,” he said.

### Debt Ceiling Politics

#### Case OW.

#### Boehner can’t unite the GOP on the debt ceiling

Alberta 9-26 (Tim Alberta, leadership reporter for the National Journal, Republicans Not Sold on Boehner's Debt-Ceiling Plan, National Journal, 26 September 2013, http://www.nationaljournal.com/congress/republicans-not-sold-on-boehner-s-debt-ceiling-plan-20130926, da 9-26-13) PC

Speaker John Boehner attempted Thursday morning to sell House Republicans on a debt-ceiling plan that would delay the implementation of Obamacare, jumpstart the Keystone Pipeline, and introduce other conservative reforms in hopes of uniting the GOP conference ahead of tough votes on the continuing resolution and debt-ceiling.¶ But reaction from members was mixed, at best.¶ "We shouldn't even be talking about the debt-ceiling until we get [the Senate] to vote on a good CR for America," fumed Rep. Louie Gohmert of Texas, who plans to vote against the debt-ceiling bill when it hits the floor, which could happen as soon as Friday.¶ Rep. Mo Brooks of Alabama said he was undecided on the debt-limit package, even though "it definitely has a lot of goodies in it." Brooks added: "It does not cut spending and does not solve the problem."¶ Asked if it could pass the House, Brooks replied, "In my judgment, no."¶ Others Republicans, though, were more optimistic. Rep. Tom Price of Georgia, who has been working with leadership to craft a comprehensive strategy to deal with the CR and debt-ceiling fights, said members seemed satisfied that Boehner's proposal meets the criteria they have long demanded for a debt-ceiling increase.¶ "It meets the Boehner Rule -- any increase is met by dollar-for-dollar decrease in spending as well as reforms," Price said. "It will delay Obamacare for a year. ... And it keeps the House moving in a direction where the Senate has to respond, which is important."¶ But does it have enough support to pass the House? "I think so, yeah," Price said.¶ Rep. Kevin Brady of Texas agreed, saying conservatives should rally behind the Boehner plan. "We should be unified in bringing this debt-ceiling proposal out of the House," said Brady, noting that the package includes "very strong, pro-growth policies that will help reduce the deficit."¶ Brady said of a potential floor vote Friday: "There should be more than 218."¶ The prospect of a quick floor vote, however, did not sit well with undecided Republicans like Rep. Jim Bridenstine of Oklahoma. "I'm looking forward to seeing what leadership puts on the table," he said. "I think there's a lot more to be discussed."¶ Rep. Randy Weber of Texas agreed: "I have decided not take a position as of yet," he said. "I want to hear more."¶ Meanwhile, conservative leaders wouldn't bite when asked whether the debt-ceiling proposal has the votes to pass.¶ "You must confuse me with the whip," said a smiling Rep. Jeb Hensarling of Texas. Pressed to analyze the support within his conference for Boehner's plan, Hensarling repeated three times: "I expect Republicans to be united."¶ Even Rep. Steve Scalise, chairman of the Republican Study Committee, seemed uncertain of whether Boehner's presentation had won over a sufficient number of conservatives. "We're going to find out," he said. "You'll have to ask the whip."

#### PC low and fails for fiscal fights

Greg Sargent 9-12, September 12th, 2013, "The Morning Plum: Senate conservatives stick the knife in House GOP leaders," Washington Post, factiva

All of this underscores a basic fact about this fall's fiscal fights: Far and away the dominant factor shaping how they play out will be the divisions among Republicans. There's a great deal of chatter (see Senator Bob Corker for one of the most absurd examples yet) to the effect that Obama's mishandling of Syria has diminished his standing on Capitol Hill and will weaken him in coming fights. But those battles at bottom will be about whether the Republican Party can resolve its internal differences. Obama's "standing" with Republicans -- if it even could sink any lower -- is utterly irrelevant to that question.¶ The bottom line is that, when it comes to how aggressively to prosecute the war against Obamacare, internal GOP differences may be unbridgeable. Conservatives have adopted a deliberate strategy of deceiving untold numbers of base voters into believing Obamacare will be stopped outside normal electoral channels. Central to maintaining this fantasy is the idea that any Republican leader who breaks with this sacred mission can only be doing so because he or she is too weak and cowardly to endure the slings and arrows that persevering against the law must entail. GOP leaders, having themselves spent years feeding the base all sorts of lies and distortions about the law, are now desperately trying to inject a does of reality into the debate by pointing out that the defund-Obamacare crusade is, in political and practical terms alike, insane. But it may be too late. The time for injecting reality into the debate has long since passed.

#### Debt ceiling downgrade won’t hurt the economy---empirics

Brian Dooley 12, "Will US debt rating be downgraded again?", 12/29, [www.royalgazette.com/article/20121229/BUSINESS08/712299981](http://www.royalgazette.com/article/20121229/BUSINESS08/712299981)

So what happens when the world’s largest bond sector faces a potential downgrade due to political instability, runaway budget deficits and an anaemic economic recovery?¶ The answer might be found in what was witnessed last year at the time of the S&P downgrade, which also involved longer term US securities being placed on “negative watch”. S&P said they believed “the fiscal consolidation plan that Congress and the Administration recently agreed fell short of what is necessary to stabilise the government’s medium term debt dynamics”. The downgrade was prompted by the debt ceiling debate which requires Congress to approve increases in America’s debt capacity at regular intervals.¶ S&P argued that the predictability and effectiveness of American policymaking had both declined to a level of concern and cited pessimism that Congress and the Administration could bridge the vast gulf between the two main political parties. In short, the agency took a “show me” attitude about America being able to hammer out an effective plan which put the country back on track.¶ Oddly enough, Treasury bond prices had actually been increasing in the midst of the debt ceiling debate in the summer of 2011 as investors grew sanguine about the prospects for a successful budget negotiation. Prices rose and yields fell right up until the day of the downgrade after which bonds sold off sharply. On that day, the benchmark ten-year US Treasury bond yield ticked up to from 2.47 percent to 2.58 percent and prices of bonds declined across the curve.¶ Immediately after the S&P downgrade, however, investors shrugged off the news and Treasury bonds resumed their rally into the end of the year. Perhaps bond buyers were encouraged that an agreement had finally been struck and that Moody’s and Fitch, the two other major credit rating agencies had not followed the S&P action. Massive bond buying the US Federal Reserve didn’t hurt either.

### Terrorism K

#### Our interpretation is that debate should be a question of the aff plan versus a competitive policy option or the status quo.

#### This is key to ground and predictablity – infinite number of possible kritik alternatives or things the negative could reject explodes the research burden. That’s a voting issue.

#### Focusing on statism and security is key to real world change.

Buzan 4 (Barry , December, Montague Burton Prof. of International Relations @ the London School of Economics and honorary prof. @ the University of Copenhagen, "Realism vs. Cosmopolitanism" http://www.polity.co.uk/global/realism-vs-cosmopolitanism.asp

**A.Mc.:** But would not a realist response be that the very issues David seeks to highlight are largely marginal to the central dilemmas of world politics: the critical issues of war and peace, life and death. **B.B.:** Again, that is a difficult question for realism because in traditional realism there was a rather clear distinction between 'high' and 'low' politics, high politics being about diplomacy and war, and low politics being about economics and society and many issues like the weather and disease. And because of the change in the importance of the different sectors that I mentioned earlier, this becomes problematic for realism. But the realists have been fairly agile. The realist line of defence would be that in most areas of world politics - again the emphasis on politics - states are still the principle authorities. And there is nothing that stops them from co-operating with each other. Thus, realists, or at least a good proportion of realists, can live quite comfortably with the idea of international regimes in which states, as the basic holders of political authority in the system, get together sometimes with other actors, sometimes just with other states, to discuss issues of joint concern, and sometimes they can hammer out of a set of policies, a set of rules of the game, which enable them to co-ordinate their behaviour. Now, this certainly does not feel like traditional power politics realism. You can think of it to some extent in terms of power politics by looking at issue power; who are the big players in relation to any big issue? Who are the people who have any kind of control? Who loses out?, etc.. There is, therefore, an element of power politics in this whole notion of regimes, and it does retain a strong element of state centrism. I think the realist would say: if you discount the state, where is politics? Where is it located? You cannot eliminate politics, as some liberals sometimes seem to do. To wish the state away, to wish politics away, is not going to generate results. The good dyed-in-the-wool realist would argue that power politics is a permanent condition of human existence. It will come in one form or another, in one domain or another, in relation to one issue or another, but it will always be there. It will be politics and it will be about relative power. And at the moment the state is still an important player in the game.

#### **Perm do both: Discourse must be combined with interventions at the policy level to change the knowledge economy of terrorism**

Graham et. al. 4 (Phillip W., Sen. Public Health Researcher @ RTI International, Discourse and Society, 2004, 15(2-3). pp. 199-221., Muse) JPG

Martin and Rose (2003) suggest that the challenge for discourse analysis is to show how emancipation, as well as domination, is achieved through discourse; that an analytical focus on ‘hegemony’ must be balanced with a focus on discourses of empowerment—discourses designed to ‘make peace, not war’, that successfully ‘redistribute power without necessarily struggling against it’ (2003: 264; cf Martin, 1999); and that analysis needs to move away from ‘demonology’ and ‘deconstruction’ towards the design of ‘constructive’ discourse (Martin, in press). These are certainly important considerations for the theory and practice of discourse analysis. At least as important to our mind are clear understandings of macro-social, -cultural, and -economic changes, all of which can be seen quite clearly from a discourse-historical perspective—in a process of historical *reconstruction*—to grasp human history as a seamless, unbroken whole. It has become clear that in what is called “a global knowledge economy”, meanings and their mediations perform increasingly important and overt political-economic functions (cf. Graham, 2002; Fairclough and Graham, 2002). The sole social function of academics is, and always has been, ‘to influence discourse’ (David Rooney, personal correspondence)—that is all we can do as academics, whether through teaching, writing, or through the manifold arts of activism. Feudalism was tied to land and militarism; mercantilism was tied to gold and mercenary armies; capitalism was tied to ownership of productive apparatus and imperialism; corporatism is tied to the ownership of legal fictions—money, corporations, and intellectual property—and ‘information warfare’, all of which are products of discourse (Graham, 2002). Each of these developments—each stage in the ‘phylogenesis’ of western economic systems (Martin, 2003: 266)—has tended towards an increasing reliance on abstract- discursive rather than brute-physical coercion in the maintenance of inequalities.The current political economic system, as transitional as it may be, is undoubtedly the most discourse- and media-reliant system in history, precisely because of its size and the high levels of abstraction that both support it and constitute the bulk of its commodities (Graham, 2000). Understanding this means understanding the importance and potential of discursive interventions. The Pentagon’s ‘Total Information Awareness’ program fully recognises this (DARPA, 2003). Similarly, whichever group perpetrated the attacks on the World Trade Centre and the Pentagon also fully recognised it: the attacks were directed at symbolic centres of a globally hegemonic system and were designed specifically for their mass media impact. Merely exposing facts and breaking silences (as per Chomsky and Pilger) is not enough either; the current malaise is primarily axiological (values-based). Discursive interventions at the axiological level are necessary in the policy field, in the multiple fields of mass media, and in every local field. Ours is a discourse-based global society, a discourse-based global economy, and a discourse-based global culture. Consequently, humanity has never been so close to realising our ‘species-being’ (Marx, 1844/1975: ch 4)—our universal humanity—whilst simultaneously being so close to achieving self-annihilation. Discursive interventions will necessarily be decisive in the outcome between these two paths

#### Case outweighs.

#### EFFORTS TO FIND A RADICAL THIRD OPTION TO THE WAR ON TERRORISM GENERATES A PATERNALISTIC UNDERSTANDING OF THE OTHER AND TIES THE HANDS OF THE UNITED STATES PREVENTING ACTION TO STOP GENOCIDE, TERRORISM, SEXISM AND OTHER ATROCITIES—THE CHOICES ARE HARDLINE OR ANNIHILATION

Hanson 4 (Professor of Classical Studies at CSU Fresno, City Journal, Spring, City Journal, Spring, http://www.city-journal.org/html/14\_2\_the\_fruits.html)

Rather than springing from realpolitik, sloth, or fear of oil cutoffs, much of our appeasement of Middle Eastern terrorists derived from a new sort of anti-Americanism that thrived in the growing therapeutic society of the 1980s and 1990s. Though the abrupt collapse of communism was a dilemma for the Left, it opened as many doors as it shut. To be sure, after the fall of the Berlin Wall, few Marxists could argue for a state-controlled economy or mouth the old romance about a workers’ paradise—not with scenes of East German families crammed into smoking clunkers lumbering over potholed roads, like American pioneers of old on their way west. But if the creed of the socialist republics was impossible to take seriously in either economic or political terms, such a collapse of doctrinaire statism did not discredit the gospel of forced egalitarianism and resentment against prosperous capitalists. Far from it. If Marx receded from economics departments, his spirit reemerged among our intelligentsia in the novel guises of post-structuralism, new historicism, multiculturalism, and all the other dogmas whose fundamental tenet was that white male capitalists had systematically oppressed women, minorities, and Third World people in countless insidious ways. The font of that collective oppression, both at home and abroad, was the rich, corporate, Republican, and white United States. The fall of the Soviet Union enhanced these newer post-colonial and liberation fields of study by immunizing their promulgators from charges of fellow-traveling or being dupes of Russian expansionism. Communism’s demise likewise freed these trendy ideologies from having to offer some wooden, unworkable Marxist alternative to the West; thus they could happily remain entirely critical, sarcastic, and cynical without any obligation to suggest something better, as witness the nihilist signs at recent protest marches proclaiming: “I Love Iraq, Bomb Texas.” From writers like Arundhati Roy and Michel Foucault (who anointed Khomeini “a kind of mystic saint” who would usher in a new “political spirituality” that would “transfigure” the world) and from old standbys like Frantz Fanon and Jean-Paul Sartre (“to shoot down a European is to kill two birds with one stone, to destroy an oppressor and the man he oppresses at the same time”), there filtered down a vague notion that the United States and the West in general were responsible for Third World misery in ways that transcended the dull old class struggle. Endemic racism and the legacy of colonialism, the oppressive multinational corporation and the humiliation and erosion of indigenous culture brought on by globalization and a smug, self-important cultural condescension—all this and more explained poverty and despair, whether in Damascus, Teheran, or Beirut. There was victim status for everybody, from gender, race, and class at home to colonialism, imperialism, and hegemony abroad. Anyone could play in these “area studies” that cobbled together the barrio, the West Bank, and the “freedom fighter” into some sloppy global union of the oppressed—a far hipper enterprise than rehashing Das Kapital or listening to a six-hour harangue from Fidel. Of course, pampered Western intellectuals since Diderot have always dreamed up a “noble savage,” who lived in harmony with nature precisely because of his distance from the corruption of Western civilization. But now this fuzzy romanticism had an updated, political edge: the bearded killer and wild-eyed savage were not merely better than we because they lived apart in a pre-modern landscape. No: they had a right to strike back and kill modernizing Westerners who had intruded into and disrupted their better world—whether Jews on Temple Mount, women in Westernized dress in Teheran, Christian missionaries in Kabul, capitalist profiteers in Islamabad, whiskey-drinking oilmen in Riyadh, or miniskirted tourists in Cairo. An Ayatollah Khomeini who turned back the clock on female emancipation in Iran, who murdered non-Muslims, and who refashioned Iranian state policy to hunt down, torture, and kill liberals nevertheless seemed to liberal Western eyes as preferable to the Shah—a Western-supported anti-communist, after all, who was engaged in the messy, often corrupt task of bringing Iran from the tenth to the twentieth century, down the arduous, dangerous path that, as in Taiwan or South Korea, might eventually lead to a consensual, capitalist society like our own. Yet in the new world of utopian multiculturalism and knee-jerk anti-Americanism, in which a Noam Chomsky could proclaim Khomeini’s gulag to be “independent nationalism,” reasoned argument was futile. Indeed, how could critical debate arise for those “committed to social change,” when no universal standards were to be applied to those outside the West? Thanks to the doctrine of cultural relativism, “oppressed” peoples either could not be judged by our biased and “constructed” values (“false universals,” in Edward Said’s infamous term) or were seen as more pristine than ourselves, uncorrupted by the evils of Western capitalism.¶ Who were we to gainsay Khomeini’s butchery and oppression? We had no way of understanding the nuances of his new liberationist and “nationalist” Islam. Now back in the hands of indigenous peoples, Iran might offer the world an alternate path, a different “discourse” about how to organize a society that emphasized native values (of some sort) over mere profit. So at precisely the time of these increasingly frequent terrorist attacks, the silly gospel of multiculturalism insisted that Westerners have neither earned the right to censure others, § Marked 10:49 § nor do they possess the intellectual tools to make judgments about the relative value of different cultures. And if the initial wave of multiculturalist relativism among the elites—coupled with the age-old romantic forbearance for Third World roguery—explained tolerance for early unpunished attacks on Americans, its spread to our popular culture only encouraged more.¶ This nonjudgmentalism—essentially a form of nihilism—deemed everything from Sudanese female circumcision to honor killings on the West Bank merely “different” rather than odious. Anyone who has taught freshmen at a state university can sense the fuzzy thinking of our undergraduates: most come to us prepped in high schools not to make “value judgments” about “other” peoples who are often “victims” of American “oppression.” Thus, before female-hating psychopath Mohamed Atta piloted a jet into the World Trade Center, neither Western intellectuals nor their students would have taken him to task for what he said or condemned him as hypocritical for his parasitical existence on Western society. Instead, without logic but with plenty of romance, they would more likely have excused him as a victim of globalization or of the biases of American foreign policy. They would have deconstructed Atta’s promotion of anti-Semitic, misogynist, Western-hating thought, as well as his conspiracies with Third World criminals, as anything but a danger and a pathology to be remedied by deportation or incarceration

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#### Creating a fair process for detainees preserves executive flexibility – results in judicial deference.

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[Jay, “DETAINEES UNDER REVIEW: STRIKING THE RIGHT¶ CONSTITUTIONAL BALANCE BETWEEN THE EXECUTIVE'S¶ WAR POWERS AND JUDICIAL REVIEW”, Vol. 57, No. 4, RSR]

Establishing a detainee review process that is as transparent and fair as¶ possible may be the best way to "strik[e] the proper constitutional balance."'179 In considering the executive's concerns for national security and¶ protection of classified information, the courts have shown an ability to be¶ flexible and accommodate the special needs of the executive while preserving¶ the fundamental precepts of the Constitution. That flexibility will likely¶ come into play regardless of whether a court is reviewing a habeas petition¶ or the final decision of a tribunal under a separate statutory scheme like that¶ in the Detainee Treatment Act.¶ If a court is reviewing a non-citizen detainee's habeas claim, now that¶ the Supreme Court has established in Rasul that federal courts do have jurisdiction¶ over detainees at Guantanamo, the federal courts and habeas jurisprudence¶ may actually prove beneficial for the executive. For instance,¶ because a habeas court looks primarily to the authority and process of detention¶ in a habeas case, this Comment argues that from a practical standpoint¶ the more the executive branch establishes a solidly fair and judicial¶ process for determining detainee status, the better it would be for the executive.¶ Since the courts tend to deny habeas petitions when there is apparent¶ authority and alternative remedies available to a habeas petitioner, it is logical¶ that a full and fair process establishing those remedies for non-citizen¶ detainees is in the executive's best interest. In other words, if the executive¶ branch wants to preserve its independent control over detainees, then practically¶ speaking it could rely on history and precedence as a model. The¶ courts will defer to executive action, but only to a point. They will seek to¶ preserve the authority of the Constitution, albeit in a restrained sense considering¶ the unique nature of detaining enemy combatants in the "war on¶ terror." Habeas corpus jurisprudence teaches that as long as there is a way¶ for an independent judiciary to examine the lawfulness of executive detention,¶ or at least ensure that the detainee has an appropriate alternative remedy¶ available, then that detention will be upheld. Thus, ironically, the way¶ for the executive to retain control over detainees is to create a full and fair¶ tribunal process

. Moreover, the traditional deference the judiciary pays to¶ the executive branch when it is looking at executive wartime actions or¶ judgments should also give the executive branch confidence that federal¶ court jurisdiction over detainees at Guantanamo Bay is not going to hinder¶ its execution of the "war on terror."¶ When it passed the Detainee Treatment Act, Congress intended to interject¶ congressional oversight into the detainee review process by dictating¶ the standard of evidence used, and it wanted to ensure that the procedures of¶ the CSRT are in accordance with the Constitution. 80 The passage of the Act¶ clearly shows that the executive should anticipate more, not less, assertion¶ of authority over the detainee review process by the other branches of government.¶ Although the consequences of the Act are unknown at this point in¶ time, it is also fairly clear that however the courts consider the detainee review process-whether it is through habeas litigation or under another¶ statutorily prescribed method like that of the Detainee Treatment Act-the¶ analysis will be in terms of whether that process fundamentally complies¶ with the Constitution. Thus, from just a pragmatic standpoint, it would be¶ prudent for the executive branch to ensure that the detainee review procedures¶ uphold the ideals of that great charter.¶ Consequently, creating a detainee review process as transparent and fair¶ as possible is the best option for our government and this nation as it seeks¶ to strike the right balance between executive war powers and judicial right¶ of review.