# UNLV Round 1 Cards ASU RV

## 1AC

### Plan Text

#### Plan: 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.

### Leadership

#### Contention 1: is Leadership

#### First, indefinite detention hurts US cooperation with Europe which is crucial to combat terrorism.

Archick 12 (Kristen, Specialist in European Affairs at Congressional Research Service, “U.S.-EU Cooperation Against Terrorism”, Congressional Research Service, 5-21-12, RSR]

U.S. and European officials alike maintain that the imperative to provide freedom and security at ¶ home should not come at the cost of sacrificing core principles with respect to civil liberties and ¶ upholding common standards on human rights. Nevertheless, the status and treatment of ¶ suspected terrorist detainees has often been a key point of U.S.-European tension. Especially ¶ during the former Bush Administration, the U.S.-run detention facility at Guantánamo Bay, Cuba; ¶ U.S. plans to try enemy combatants before military commissions; and the use of “enhanced ¶ interrogation techniques” came under widespread criticism in Europe. The U.S. practice of ¶ “extraordinary rendition” (or extrajudicial transfer of individuals from one country to another, ¶ often for the purpose of interrogation) and the possible presence of CIA detention facilities in ¶ Europe also gripped European media attention and prompted numerous investigations by the ¶ European Parliament, national legislatures, and judicial bodies, among others. ¶ Many European leaders and analysts viewed U.S. terrorist detainee, interrogation, and ¶ “extraordinary rendition” policies as being in breach of international and European law and as ¶ degrading shared values regarding human rights and the treatment of prisoners. Moreover, they ¶ feared that such U.S. policies weakened U.S. and EU efforts to win the battle for Muslim “hearts ¶ and minds,” considered by many to be a crucial element in countering terrorism. The Bush ¶ Administration, however, defended its detainee and rendition polices as important tools in the ¶ fight against terrorism, and vehemently denied allegations of violating U.S. human rights ¶ commitments, including the prohibition against torture. Bush Administration officials also ¶ acknowledged European concerns about Guantánamo and sought agreements with foreign ¶ governments to accept some Guantánamo detainees, but maintained that certain prisoners were ¶ too dangerous to be released.

#### 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.

#### This policy of counter terrorism crushes NATO and the Atlantic alliance.

Parker 12 (Tom, Former Policy Dir. for Terrorism, Counterterrorism and H. Rts. at Amnesty International, U.S. Tactics Threaten NATO, September 17, <http://nationalinterest.org/commentary/us-tactics-threaten-nato-7461>]

The United States has bet heavily on the efficacy of a new array of counterterrorism powers as the answer to Al Qaeda. In doing so it has evolved a concept of operations that has much more in common with the approach to terrorist threats taken by Israel and Russia than by its European partners. There has been little consideration of the wider strategic cost of these tactics, even as the Obama administration doubles down and extends their use. Meanwhile, some of America’s oldest and closest allies are beginning to place more and more constraints on working with U.S. forces. NATO cannot conduct military operations under two competing legal regimes for long. Something has to give—and it may just be the Atlantic alliance.

#### NATO prevents global nuclear war

Brzezinski 9 (Zbigniew, former U.S. National Security Adviser, Sept/Oct 2009, “An Agenda for NATO,” Foreign Affairs, 88.5, Ebsco]

NATO's potential is not primarily military. Although NATO is a collective-security alliance, its actual military power comes predominantly from the United States, and that reality is not likely to change anytime soon. NATO's real power derives from the fact that it combines the United States' military capabilities and economic power with Europe's collective political and economic weight (and occasionally some limited European military forces). Together, that combination makes NATO globally significant. It must therefore remain sensitive to the importance of safeguarding the geopolitical bond between the United States and Europe as it addresses new tasks. The basic challenge that NATO now confronts is that there are historically unprecedented risks to global security. Today's world is threatened neither by the militant fanaticism of a territorially rapacious nationalist state nor by the coercive aspiration of a globally pretentious ideology embraced by an expansive imperial power. The paradox of our time is that the world, increasingly connected and economically interdependent for the first time in its entire history, is experiencing intensifying popular unrest made all the more menacing by the growing accessibility of weapons of mass destruction -- not just to states but also, potentially, to extremist religious and political movements. Yet there is no effective global security mechanism for coping with the growing threat of violent political chaos stemming from humanity's recent political awakening. The three great political contests of the twentieth century (the two world wars and the Cold War) accelerated the political awakening of mankind, which was initially unleashed in Europe by the French Revolution. Within a century of that revolution, spontaneous populist political activism had spread from Europe to East Asia. On their return home after World Wars I and II, the South Asians and the North Africans who had been conscripted by the British and French imperial armies propagated a new awareness of anticolonial nationalist and religious political identity among hitherto passive and pliant populations. The spread of literacy during the twentieth century and the wide-ranging impact of radio, television, and the Internet accelerated and intensified this mass global political awakening. In its early stages, such new political awareness tends to be expressed as a fanatical embrace of the most extreme ethnic or fundamentalist religious passions, with beliefs and resentments universalized in Manichaean categories. Unfortunately, in significant parts of the developing world, bitter memories of European colonialism and of more recent U.S. intrusion have given such newly aroused passions a distinctively anti-Western cast. Today, the most acute example of this phenomenon is found in an area that stretches from Egypt to India. This area, inhabited by more than 500 million politically and religiously aroused peoples, is where NATO is becoming more deeply embroiled. Additionally complicating is the fact that the dramatic rise of China and India and the quick recovery of Japan within the last 50 years have signaled that the global center of political and economic gravity is shifting away from the North Atlantic toward Asia and the Pacific. And of the currently leading global powers -- the United States, the EU, China, Japan, Russia, and India -- at least two, or perhaps even three, are revisionist in their orientation. Whether they are "rising peacefully" (a self-confident China), truculently (an imperially nostalgic Russia) or boastfully (an assertive India, despite its internal multiethnic and religious vulnerabilities), they all desire a change in the global pecking order. The future conduct of and relationship among these three still relatively cautious revisionist powers will further intensify the strategic uncertainty. Visible on the horizon but not as powerful are the emerging regional rebels, with some of them defiantly reaching for nuclear weapons. North Korea has openly flouted the international community by producing (apparently successfully) its own nuclear weapons -- and also by profiting from their dissemination. At some point, its unpredictability could precipitate the first use of nuclear weapons in anger since 1945. Iran, in contrast, has proclaimed that its nuclear program is entirely for peaceful purposes but so far has been unwilling to consider consensual arrangements with the international community that would provide credible assurances regarding these intentions. In nuclear-armed Pakistan, an extremist anti-Western religious movement is threatening the country's political stability. These changes together reflect the waning of the post-World War II global hierarchy and the simultaneous dispersal of global power. Unfortunately, U.S. leadership in recent years unintentionally, but most unwisely, contributed to the currently threatening state of affairs. The combination of Washington's arrogant unilateralism in Iraq and its demagogic Islamophobic sloganeering weakened the unity of NATO and focused aroused Muslim resentments on the United States and the West more generally.

#### The NSC restores allied cooperation by strengthening the rule of law.

Rishikof 2 (Harvey, professor of law and former chair of the Department of ¶ National Security Strategy, National War College, “A New Court for Terrorism”, The New York Times, 6-8-2002,

<http://www.nytimes.com/2002/06/08/opinion/a-new-court-for-terrorism.html>, RSR]

A national security court, with its trials as open as possible, would give our allies needed reassurance, though the court would need to forgo the death penalty in order to ensure our allies would extradite terrorists. Having a specialized court would also make it possible for us to designate and fortify an existing federal courthouse to hold terrorism trials, which would improve security for all participants. A specialized judicial bench could also travel to locations like Camp X-Ray to conduct hearings.¶ The people we are fighting do not fit into our traditional legal classifications. We can continue to improvise our way through, compromising our federal criminal procedures and alienating our allies, or we can demonstrate our commitment to the rule of law by creating an institution that can handle new challenges without damaging our constitutional principles.

#### 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

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.

#### 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). ¶

### Judicial Activism

#### Contention 2: is Judicial Activism

#### Court intervention on detention is inevitable now

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

#### Vagueness in the NDAA hampers executive flexibility by encouraging judicial activism. The plan is key to reverse that.

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]

This part recommends ways to improve section 1021, with the goal of ¶ creating a clearer, more meaningful detention statute. In section 1021, ¶ Congress simply codified verbatim the executive branch’s interpretation of ¶ detention authority.350 Congress failed to define or limit key terms like ¶ “substantial support” or “associated forces,” and thus abdicated its role in ¶ shaping the substantive parameters of executive detention. This section ¶ recommends ways to improve a future detention statute and includes some ¶ proposed definitions of key detention criteria. ¶ A vague and unclear detention statute harms the separation of powers ¶ between the three branches. As Justice Jackson’s widely accepted ¶ Youngstown framework explains,351 executive war powers are relational to ¶ Congress, and the judiciary decides what Congress has or has not ¶ authorized—thus all three branches have a role. Vague statutes enhance the ¶ power of the judiciary at the expense of the legislature for two reasons. ¶ First, vague statutes make congressional intent unclear and give the courts ¶ significant discretion to determine if the President is in Zone 1, 2, or 3.352¶ Second, vague statutes invite close judicial scrutiny because they ¶ demonstrate to the courts that the political process has failed.353 Thus, ¶ vague congressional authorizations that attempt to delegate broad authority ¶ to the President can be counterproductive because, instead of empowering ¶ the President, they actually empower the courts.354¶ In addition to expanding the role of the judiciary, vague statutes create ¶ uncertainty for the executive. The President cannot act quickly and ¶ decisively if the limits of his authority are unclear.355 Finally, Congress ¶ plays an important role in detention policy, and vague statutes like section 1021 represent a congressional abdication of that role.356 Congressional ¶ legislation is essential when creating long-term, effective antiterrorism ¶ policies that have a solid legal foundation.357 This Note recommends ¶ substantive changes to section 1021 to make it a clearer, more meaningful ¶ congressional statement about the limits of indefinite executive detention. ¶ The major recommendations are: (1) move away from the AUMF; ¶ (2) provide specific definitions of key terms (proposed definitions are ¶ suggested); (3) exclude protected First Amendment activities; and ¶ (4) include a clear statement about the indefinite detention of American ¶ citizens.

#### Status quo ambiguity on indefinite detention promotes a shift to drones by hampering effective warfighting.

Chertoff 11 (Michael, Former Secretary of the Department of Homeland Security,

THE DECLINE OF JUDICIAL DEFERENCE ON NATIONAL SECURITY, Rutgers Law Review, 3 February 2011, http://www.rutgerslawreview.com/wp-content/uploads/archive/vol63/Issue4/Chertoff\_Speech\_PDF.pdf, pg. 1125-1128]

So, where has this left us? It has left us in a puzzling situation. ¶ In a decision called Al-Bihani in the D.C. Circuit in 2010, Judge ¶ Janice Rogers Brown talked about the consequences—practical ¶ consequences—of having habeas review in Guantánamo as it affects ¶ the battlefield.42 And what she said is that the process at the tail end ¶ is now impacting the front end because when you conduct combat ¶ operations, you now have to worry about collecting evidence.43¶ A somewhat darker analysis has been put forward by Ben Wittes ¶ who has recently written a book called Detention and Denial, where ¶ he argues that the courts have now created an incentive system to ¶ kill rather than capture.44 And much of the law of war over the years ¶ was designed to move away from the “give no quarter” theory, where ¶ you killed everybody at the battlefield, into the theory of you would ¶ rather capture than kill. And his point, and you can agree or ¶ disagree with it, is that you have now actually loaded it the other ¶ way; you have pushed it in the direction of kill rather than capture.45 We have complete uncertainty now in the standards to be ¶ applied in the individual cases. If you read Ben Wittes‟s book ¶ Detention and Denial, he will details about ten or twelve district ¶ court cases where literally on the same facts you get different ¶ answers.46 And it is not that the district judges are not doing their ¶ best, but they have no guidance. There is no standard, and no one ¶ has offered them a standard.¶ We now have litigation about Bagram Air Force Base in ¶ Afghanistan.47 It was absolutely predictable when Boumediene was ¶ decided that the next case would be against Bagram Airbase. I do ¶ not know how it is going to come out at the end. I think it is still in ¶ the district court, but I will tell you, the logic—now they may have ¶ stopped the logic of Guantánamo—the logic of Boumediene certainly ¶ raises questions about Bagram. How do you wind up having habeas ¶ in Bagram? And then what is going to happen when you are in a ¶ forward firebase? Are you going to have habeas cases there? No one¶ knows, but the big problem is that the battlefield commanders do not ¶ know either; that is a serious operational problem.¶ In many ways, it is absolutely a great example of what the Court ¶ in Eisentrager predicted.48 When you go down this path, you are ¶ going to actually have real operational problems with warfighting. ¶ But of course, we are not in 1950 now; we are actually in active ¶ operations.¶ Finally, and I find this really to be the most interesting ¶ contemporary question posed by this series of issues, the press ¶ reports—and I cannot verify this, I am not confirming it, but I am ¶ assuming it to be true—the press reports that President Obama has ¶ authorized the killing of Anwar al-Aulaki, the American citizen in ¶ Yemen who is, in my mind for quite good reason, believed to be a ¶ major recruiter and operation leader for al-Qaeda.49 I want to be ¶ clear: I am perfectly okay with that, and I think it is exactly the right ¶ decision, so I do not want to be misunderstood. But I will say that if ¶ you read the decision and logic of Boumediene that is a very puzzling ¶ situation for al-Aulaki. Because if you need court permission to ¶ detain somebody, and if you need court permission to wiretap ¶ somebody, how can you kill that person without court permission? But that is what warfighting is. You cannot fight a war without that. ¶ There is current litigation on this issue where people are purporting ¶ to represent al-Aulaki‟s family.50 It has been tossed out, but we are ¶ just at the early stages. And frankly, I think we are going to see ¶ more of this.51 I have been reading that there are debates taking ¶ place about this. They are holding a moot court, I believe, on this ¶ issue.¶ A lot of interesting comments can be made about where we find ¶ ourselves, where the current administration finds itself if you believe ¶ the al-Aulaki allegations to be true. But to me, what it suggests is ¶ that when you abruptly change the attitude of deference—and I ¶ think you must look at Boumediene as an abrupt change—the ¶ consequences become unpredictable and very serious. And there is a ¶ reason that judges and courts in the past forswore from doing that. ¶ We may be seeing some of this play out. How it ends is difficult to ¶ predict. ¶ Before I take a few minutes of questions, let me conclude by ¶ making sure I do not cast blame only on the Court, because it is not ¶ the Court‟s fault. This is something where everybody was complicit in ¶ putting us in this situation—all three branches of government. The ¶ fact is, I was here about seven or eight years ago in 2003, at Rutgers, ¶ not here in this particular building but across the street where they ¶ have a campus, and I gave a talk. I had just left as head of the ¶ criminal division, and I said we have kind of put a lot of things ¶ together in a jerry-built way. We need to have a sustainable legal ¶ architecture that is going to make this a framework that we are ¶ comfortable with over a long period of time. Congress has to get ¶ involved—the executive branch has to go to Congress. It is seven ¶ years later, and we have not done it. So that, to me, is a failure of ¶ both branches. For the executive branch, the failure to push ¶ Congress on this has been a mistake. It has led to, for example, a lot ¶ of delay in setting up the administrative process for dealing with ¶ these detainees. Frankly, I think that was a strategic error that more ¶ or less baited the Court into doing what the Court did. I come from ¶ the old school of believing that whatever you think the right answer ¶ is, you do not want to test the limit of what you think it is if you can ¶ avoid it. You want to go into court with the strongest possible position, and you want to be the most modest and incremental in ¶ asking for power because that is how you maximize your chance to ¶ win. I do not think the executive branch was wise in pushing the ¶ envelope on this. That included also delaying the process for years. ¶ There was a lot of internal back and forth on that. It is unfortunate ¶ that the delaying impulse won. I think that some of the processes put ¶ in place in the first couple of rounds were overly scanty—it was more ¶ parsimonious than it should have been and than it needed to be. And ¶ this comes to the point: do not tempt fate. So the executive branch, by ¶ delaying and being parsimonious with how it handled these cases, ¶ essentially begged the Court—not literally but functionally—to get ¶ involved and to step into this. And that is historically, of course, ¶ what courts do.¶ Congress has never stepped up to the plate on this—other than ¶ the jurisdiction stripping in the Detainee Treatment Act and the ¶ Military Commissions Act.52 Even there, in terms of looking at what ¶ habeas might be and writing the kind of complex procedures you ¶ would need to really build the process for detaining people, Congress ¶ still has not stepped up to do that. There are people like Senator ¶ Lindsey Graham of South Carolina who are constantly out there ¶ saying that both parties should work together to identify a solution, ¶ but I have not seen the action taken yet. So, in a way, I have to say in ¶ defense of the decision in Boumediene, at some point when the Court ¶ sees that neither branch is addressing the problem, where there is a ¶ serious issue of balancing security and liberty, and where we are ¶ uncomfortable about the idea of just locking people up indefinitely ¶ without having some confidence that we can review it, the courts are ¶ going to step in. And that leads to the old adage that hard cases ¶ make bad law.¶ The best result, in my mind, would be for the executive branch ¶ and Congress to sit down and put together, like they did with the ¶ Debt Commission now, a plan that talks about how we deal with ¶ detaining people when we are not going to put them in a criminal ¶ case or in a military commission. What is the process of review? ¶ What should the procedural rights be? What should the standard be? ¶ And what is the ultimate target that the judge has to find? I would ¶ hope that if we got that kind of comprehensive and robust statute ¶ that the courts would back off and would give the deference that has ¶ traditionally been good both for the executive and for the courts when ¶ dealing with these kinds of sensitive national security issues.

#### US targeted killing policies are causing an international drones arms race. The mere existence of the technology doesn’t make instability inevitable—how the US uses its drones matters.

Farley 11 (Robert, Assistant Professor at the Patterson School of Diplomacy and International Commerce at the University of Kentucky, Oct. 12, 2011, World Politics Review, “Over the Horizon: U.S. Drone Use Sets Global Precedent”, <http://www.worldpoliticsreview.com/articles/10311/over-the-horizon-u-s-drone-use-sets-global-precedent>]

Is the world about to see a "drone race" among the United States, China and several other major powers? Writing in the New York Times, Scott Shane argued that just such an arms race is already happening and that it is largely a result of the widespread use of drones in a counterterror role by the United States. Shane suggests that an international norm of drone usage is developing around how the United States has decided to employ drones. In the future, we may expect that China, Russia and India will employ advanced drone technologies against similar enemies, perhaps in Xinjiang or Chechnya. Kenneth Anderson agrees that the drone race is on, but disagrees about its cause, arguing that improvements in the various drone component technologies made such an arms race inevitable. Had the United States not pursued advanced drone technology or launched an aggressive drone campaign, some other country would have taken the lead in drone capabilities. So which is it? Has the United States sparked a drone race, or was a race with the Chinese and Russians inevitable? While there's truth on both sides, on balance Shane is correct. Arms races don't just "happen" because of outside technological developments. Rather, they are embedded in political dynamics associated with public perception, international prestige and bureaucratic conflict. China and Russia pursued the development of drones before the United States showed the world what the Predator could do, but they are pursuing capabilities more vigorously because of the U.S. example. Understanding this is necessary to developing expectations of what lies ahead as well as a strategy for regulating drone warfare. States run arms races for a variety of reasons. The best-known reason is a sense of fear: The developing capabilities of an opponent leave a state feeling vulnerable. The Germany's build-up of battleships in the years prior to World War I made Britain feel vulnerable, necessitating the expansion of the Royal Navy, and vice versa. Similarly, the threat posed by Soviet missiles during the Cold War required an increase in U.S. nuclear capabilities, and so forth. However, states also "race" in response to public pressure, bureaucratic politics and the desire for prestige. Sometimes, for instance, states feel the need to procure the same type of weapon another state has developed in order to maintain their relative position, even if they do not feel directly threatened by the weapon. Alternatively, bureaucrats and generals might use the existence of foreign weapons to argue for their own pet systems. All of these reasons share common characteristics, however: They are both social and strategic, and they depend on the behavior of other countries. Improvements in technology do not make the procurement of any given weapon necessary; rather, geostrategic interest creates the need for a system. So while there's a degree of truth to Anderson's argument about the availability of drone technology, he ignores the degree to which dramatic precedent can affect state policy. The technologies that made HMS Dreadnought such a revolutionary warship in 1906 were available before it was built; its dramatic appearance nevertheless transformed the major naval powers' procurement plans. Similarly, the Soviet Union and the United States accelerated nuclear arms procurement following the Cuban Missile Crisis, with the USSR in particular increasing its missile forces by nearly 20 times, partially in response to perceptions of vulnerability. So while a drone "race" may have taken place even without the large-scale Predator and Reaper campaign in Pakistan, Yemen and Somalia, the extent and character of the race now on display has been driven by U.S. behavior. Other states, observing the effectiveness -- or at least the capabilities -- of U.S. drones will work to create their own counterparts with an enthusiasm that they would not have had in absence of the U.S. example. What is undeniable, however, is that we face a drone race, which inevitably evokes the question of arms control. Because they vary widely in technical characteristics, appearance and even definition, drones are poor candidates for "traditional" arms control of the variety that places strict limits on number of vehicles constructed, fielded and so forth. Rather, to the extent that any regulation of drone warfare is likely, it will come through treaties limiting how drones are used. Such a treaty would require either deep concern on the part of the major powers that advances in drone capabilities threatened their interests and survival, or widespread revulsion among the global public against the practice of drone warfare. The latter is somewhat more likely than the former, as drone construction at this point seems unlikely to dominate state defense budgets to the same degree as battleships in the 1920s or nuclear weapons in the 1970s. However, for now, drones are used mainly to kill unpleasant people in places distant from media attention. So creating the public outrage necessary to force global elites to limit drone usage may also prove difficult, although the specter of "out of control robots" killing humans with impunity might change that. P.W. Singer, author of "Wired for War," argues that new robot technologies will require a new approach to the legal regulation of war. Robots, both in the sky and on the ground, not to mention in the sea, already have killing capabilities that rival those of humans. Any approach to legally managing drone warfare will likely come as part of a more general effort to regulate the operation of robots in war. However, even in the unlikely event of global public outrage, any serious effort at regulating the use of drones will require U.S. acquiescence. Landmines are a remarkably unpopular form of weapon, but the United States continues to resist the Anti-Personnel Mine Ban Convention. If the United States sees unrestricted drone warfare as being to its advantage -- and it is likely to do so even if China, Russia and India develop similar drone capabilities -- then even global outrage may not be sufficient to make the U.S. budge on its position. This simply reaffirms the original point: Arms races don't just "happen," but rather are a direct, if unexpected outcome of state policy. Like it or not, the behavior of the United States right now is structuring how the world will think about, build and use drones for the foreseeable future. Given this, U.S. policymakers should perhaps devote a touch more attention to the precedent they're setting.

#### Lack of US-led norms cause Chinese drone aggression in maritime disputes---that increases tensions.

Bodeen 13 (Christopher, writer for the Huffington Post, May 3rd, 2013, "China's Drone Program Appears To Be Moving Into Overdrive," Huffington Post, www.huffingtonpost.com/2013/05/03/china-drone-program\_n\_3207392.html]

BEIJING -- Determined to kill or capture a murderous Mekong River drug lord, China's security forces considered a tactic they'd never tried before: calling a drone strike on his remote hideaway deep in the hills of Myanmar.¶ The attack didn't happen – the man was later captured and brought to China for trial – but the fact that authorities were considering such an option cast new light on China's unmanned aerial vehicle program, which has been quietly percolating for years and now appears to be moving into overdrive.¶ Chinese aerospace firms have developed dozens of drones, known also as unmanned aerial vehicles, or UAVs. Many have appeared at air shows and military parades, including some that bear an uncanny resemblance to the Predator, Global Hawk and Reaper models used with deadly effect by the U.S. Air Force and CIA. Analysts say that although China still trails the U.S. and Israel, the industry leaders, its technology is maturing rapidly and on the cusp of widespread use for surveillance and combat strikes.¶ "My sense is that China is moving into large-scale deployments of UAVs," said Ian Easton, co-author of a recent report on Chinese drones for the Project 2049 Institute security think tank.¶ China's move into large-scale drone deployment displays its military's growing sophistication and could challenge U.S. military dominance in the Asia-Pacific. It also could elevate the threat to neighbors with territorial disputes with Beijing, including Vietnam, Japan, India and the Philippines. China says its drones are capable of carrying bombs and missiles as well as conducting reconnaissance, potentially turning them into offensive weapons in a border conflict.¶ China's increased use of drones also adds to concerns about the lack of internationally recognized standards for drone attacks. The United States has widely employed drones as a means of eliminating terror suspects in Pakistan and the Arabian Peninsula.¶ "China is following the precedent set by the U.S. The thinking is that, `If the U.S. can do it, so can we. They're a big country with security interests and so are we'," said Siemon Wezeman, a senior fellow at the arms transfers program at the Stockholm International Peace Research Institute in Sweden, or SIPRI.¶ "The justification for an attack would be that Beijing too has a responsibility for the safety of its citizens. There needs to be agreement on what the limits are," he said.¶ Though China claims its military posture is entirely defensive, its navy and civilian maritime services have engaged in repeated standoffs with ships from other nations in the South China and East China seas. India, meanwhile, says Chinese troops have set up camp almost 20 kilometers (12 miles) into Indian-claimed territory.

#### That leads to US-Sino nuclear war and extinction.

Fisher 11 (Max, foreign affairs writer and editor for the Atlantic, MA in security studies from Johns Hopkins, Oct 31 2011, “5 Most Likely Ways the U.S. and China Could Spark Accidental Nuclear War,” <http://www.theatlantic.com/international/archive/2011/10/5-most-likely-ways-the-us-and-china-could-spark-accidental-nuclear-war/247616>]

Neither the U.S. nor China has any interest in any kind of war with one other, nuclear or non-nuclear. The greater risk is an accident. Here's how it would happen. First, an unforeseen event that sparks a small conflict or threat of conflict. Second, a rapid escalation that moves too fast for either side to defuse. And, third, a mutual misunderstanding of one another's intentions.¶ This three-part process can move so quickly that the best way to avert a nuclear war is for both sides to have absolute confidence that they understand when the other will and will not use a nuclear weapon. Without this, U.S. and Chinese policy-makers would have to guess -- perhaps with only a few minutes -- if and when the other side would go nuclear. This is especially scary because both sides have good reason to err on the side of assuming nuclear war. If you think there's a 50-50 chance that someone is about to lob a nuclear bomb at you, your incentive is to launch a preventative strike, just to be safe. This is especially true because you know the other side is thinking the exact same thing. In fact, even if you think the other side probably won't launch an ICBM your way, they actually might if they fear that you're misreading their intentions or if they fear that you might over-react; this means they have a greater incentive to launch a preemptive strike, which means that you have a greater incentive to launch a preemptive strike, in turn raising their incentives, and on and on until one tiny kernel of doubt can lead to a full-fledged war that nobody wants.¶ The U.S. and the Soviet Union faced similar problems, with one important difference: speed. During the first decades of the Cold War, nuclear bombs had to be delivered by sluggish bombers that could take hours to reach their targets and be recalled at any time. Escalation was much slower and the risks of it spiraling out of control were much lower. By the time that both countries developed the ICBMs that made global annihilation something that could happen within a matter of minutes, they'd also had a generation to sort out an extremely clear understanding of one another's nuclear policies. But the U.S. and China have no such luxury -- we inherited a world where total mutual destruction can happen as quickly as the time it takes to turn a key and push a button.¶ The U.S. has the world's second-largest nuclear arsenal with around 5,000 warheads (first-ranked Russia has more warheads but less capability for flinging them around the globe); China has only about 200, so the danger of accidental war would seem to disproportionately threaten China. But the greatest risk is probably to the states on China's periphery. The borders of East Asia are still not entirely settled; there are a number of small, disputed territories, many of them bordering China. But the biggest potential conflict points are on water: disputed naval borders, disputed islands, disputed shipping lanes, and disputed underwater energy reserves. These regional disputes have already led to a handful of small-scale naval skirmishes and diplomatic stand-offs. It's not difficult to foresee one of them spiraling out of control. But what if the country squaring off with China happens to have a defense treaty with the U.S.?¶ There's a near-infinite number of small-scale conflicts that could come up between the U.S. and China, and though none of them should escalate any higher than a few tough words between diplomats, it's the unpredictable events that are the most dangerous. In 1983 alone, the U.S. and Soviet Union almost went to war twice over bizarre and unforeseeable events. In September, the Soviet Union shot down a Korean airliner it mistook for a spy plane; first Soviet officials feared the U.S. had manufactured the incident as an excuse to start a war, then they refused to admit their error, nearly pushing the U.S. to actually start war. Two months later, Soviet spies misread an elaborate U.S. wargame (which the U.S. had unwisely kept secret) as preparations for an unannounced nuclear hit on Moscow, nearly leading them to launch a preemptive strike. In both cases, one of the things that ultimately diverted disaster was the fact that both sides clearly understood the others' red lines -- as long as they didn't cross them, they could remain confident there would be no nuclear war.¶ But the U.S. and China have not yet clarified their red lines for nuclear strikes. The kinds of bizarre, freak accidents that the U.S. and Soviet Union barely survived in 1983 might well bring today's two Pacific powers into conflict -- unless, of course, they can clarify their rules. Of the many ways that the U.S. and China could stumble into the nightmare scenario that neither wants, here are five of the most likely. Any one of these appears to be extremely unlikely in today's world. But that -- like the Soviet mishaps of the 1980s -- is exactly what makes them so dangerous.

#### Deference stable now – court action sets the precedent for broader judicial activism.

O’Connor 7 (John, Former officer in the Marine Corp and Judge Advocate, JD, U Maryland Law School. Statistics and the Military Deference Doctrine: a Response to Professor Lichtman, 66 Md. L. Rev. 668, Lexis]

¶ As I have written elsewhere, one of the most important aspects of the military deference doctrine, and one that many commentators misunderstand,176 is that the military deference doctrine is not a venerable doctrine that has existed since the early days of the Republic. 177 Indeed, a review of the Court’s military deference jurisprudence could lead one to the conclusion that the doctrine was more or less the brainchild of Chief Justice Rehnquist, who wrote virtually every important military deference decision that the Court has issued.178 While notions of stare decisis may militate against a retreat from the military deference doctrine by the Court, the fact remains that the doctrine is one of fairly recent vintage, which was developed and perpetuated mainly through judicial opinions written by a Justice who is no longer on the Court. Moreover, **while stare decisis is a nice concept in the abstract, that doctrine did not prevent the Court from radically changing its approach** to constitutional challenges to military practices twice **before**. Therefore, **it is not out of the realm of possibility that the military deference doctrine could recede in importance** with personnel changes on the Court. This could occur through an express overruling of the doctrine, through decisions narrowing the doctrine’s application, or through a moresubtle process whereby the Court continues to pay lip service to its need to defer to political branch judgments but nevertheless **accords little or no actual deference to the policy determinations of Congress and the President. ¶** But **early indications from the Roberts Court**, with Chief Justice Roberts and Justice Alito replacing Chief Justice Rehnquist and Justice O’Connor, respectively, **provide reason to believe that the military deference doctrine will continue to be a** robust feature of the Court’s military jurisprudence, **at least in the near term**. In FAIR, **the first “military” case decided by the Roberts Court**, the Court upheld the Solomon Amendment against a constitutional challenge and, in so doing, **began its constitutional analysis by extolling the virtues of the military deference doctrine** when Congress legislates pursuant to its constitutional power to raise and support armies: ¶ The Constitution grants Congress the power to “provide for the common Defence,” “[t]o raise and support Armies,” and “[t]o provide and maintain a Navy.” Congress’ power in this area “is broad and sweeping,” and there is no dispute in this case that it includes the authority to require campus access for military recruiters. That is, of course, unless Congress exceeds constitutional limitations on its power in enacting such legislation. But the fact that legislation that raises armies is subject to First Amendment constraints does not mean that we ignore the purpose of this legislation when determining its constitutionality; as we recognized in Rostker, “judicial deference . . . is at its apogee” when Congress legislates under its authority to raise and support armies.179 ¶ While it is always dangerous to draw conclusions from a single case, **all participating members of the Court**—Justice Alito did not participate—**joined Chief Justice Roberts’s opinion, which** invoked the military deference doctrine as its first step **in constitutional analysis** once the Court resolved what the statute in fact provided.180 Moreover, **this** is a **case** that **could have been decided on a number of grounds**, such as a pure Spending Clause or First Amendment basis, 181 **without invoking the military deference doctrine, and the Court’s prominent reliance on the military deference doctrine to support its decision suggests that there is no move afoot to eradicate the doctrine, explicitly or through subtle narrowing.** For his part, Justice Alito noted prominently in his confirmation hearing that he had joined a conservative Princeton alumni group because, as an alumnus who attended Princeton on an ROTC scholarship, he was unhappy that the school had decided to abolish the campus ROTC program.182 While, again, predicting judicial attitudes based on personal history is always a risky proposition, Justice Alito’s background makes him seem like an unlikely candidate to take up the sword against the military deference doctrine, particularly when every other member of the Court joined an opinion applying it in FAIR. ¶ V. Conclusion ¶ This Article is by no means an attempt to catalogue every military deference case decided by the Court, or to discuss every nuance in its application. n183 It is important, however, that the doctrine be understood, both in terms of the facts surrounding its development and the limited scope of the doctrine as evidenced by the framework in which it is applied. Professor Lichtman's article on the military deference doctrine is thought provoking in that it challenges the orthodoxy by which the military deference doctrine is viewed - through the lens of time rather than through the lens of subject matter irrespective of time. n184 Ultimately, however, I have come to the conclusion that Professor Lichtman's analysis of the military deference doctrine is flawed in several important respects, all of which result in a fundamental misunderstanding [\*706] of the doctrine. In my estimation, the principal flaws in Professor Lichtman's analysis include: focusing on "win-loss" records rather than on the analytical framework in which those wins and losses occurred; failing to perceive that the military deference doctrine should - and does - apply only to a narrow category of "military" cases; incorrectly casting the military deference doctrine as a longstanding and relatively stable doctrine that has only subtly evolved since the early twentieth century; determining that subject matter, rather than timing, is the proper variable around which to organize an analysis of military deference decisions; and concluding that the military deference doctrine does not - and should not - apply to statutes and regulations burdening civilians instead of military personnel.¶ The military deference doctrine is, at once, both historically immature and limited, yet potent when applicable. After the disruption that occurred in the course of the Court's prior rejection of the doctrine of noninterference, the Court ultimately landed on the military deference doctrine as an appropriate analytical framework, where applicable, in the mid-1970s, and the Court has largely remained in the same place with its military jurisprudence ever since. The Court's rejection of its noninterference policy beginning in the mid-1950s likely came about as a result of what the Court perceived as overreaching by the political branches in subjecting persons - military and civilian - to courts-martial in a willy-nilly fashion. If the military deference doctrine were to recede in importance in the future, it would be a good bet that it happens because some collection of Supreme Court Justices perceives that Congress and the President are overreaching in the exercise of their constitutional powers to raise armies and regulate the armed forces. At present, though, there is no sign that such an upheaval is anywhere on the horizon.

#### Past decisions don’t matter – they did not decide on the right to indefinitely detain.

Devins 10 (Neal, Goodrich Professor of Law and Professor of Government, College of William & Mary,“Talk Loudly and Carry a Small Stick: The Supreme Court and Enemy Combatants”, Journal of Constitutional Law, Vol. 12, No. 2, February 2010, RSR]

For much the same reason, the Court understood that its decision posed few national security risks. The Court said nothing about the President's power to indefinitely detain enemy combatants, nor did the Court detail how habeas proceedings were to be conducted. 62 The Court, moreover, said nothing about the availability of habeas corpus by enemy combatants held outside U.S. soil or at facilities (like Guant~namo) that were under the control of the United States. 63 Assuming that the next administration would close GuantAnamo, the decision would only impact governmental practices for a short time.1 More than that, the Court had been told by the Bush administration that "any reopening of the prisoners' right to habeas would not be swift, but would face a variety of 'fundamental and unprecedented issues' complicating that process.' ' 65 In other words, the Court understood that the Bush administration would do everything in its power to slow down the release of enemy combatants during its final months in office. 166 For all these reasons, Boumediene should not be seen as an attempt by the Court to meaningfully transform U.S. policy towards enemy combatants (a decision that might risk national security or prompt an elected government backlash). Instead, Boumediene principally served as a vehicle for the Court to make strong symbolic statements about the judicial power to "say what the law is" and, correspondingly, the necessity of the political branches to respect the centrality of habeas corpus limits on governmental power.

#### Judicial activism makes response to nuclear weapons scenarios slow - guarantees extinction.

Knowles 9 (Robert, Acting Assistant Professor, New York University School of Law, Spring, “American Hegemony and the Foreign Affairs Constitution”, 41 Ariz. St. L.J. 87, Lexis Law]

Nonetheless, foreign relations remain special, and **courts must treat them differently in one important respect**. In the twenty-first century, **speed matters**, and the **executive branch alone possesses the ability to articulate and implement foreign policy quickly**. Even non-realists will acknowledge that the international realm is much more susceptible to crisis and emergency than the domestic realm. But speed remains more important even to non-crisis foreign affairs cases. n391 **It is true that the stable nature of American hegemony will prevent truly destabilizing events** from happening without great changes in the geopolitical situation - the sort that occur over decades. The United States will not, for some time, face the same sorts of existential threats as in the past. n392 Nonetheless, **in foreign affairs matters**, **it is only the executive branch that has the capacity successfully to conduct [\*150] treaty negotiations,** for example, **which depend on adjusting positions quickly**. **The need for speed is particularly acute in crises**. **Threats from** transnational **terrorist groups and** loose nuclear weapons are among the most serious problems facing the United States today. The United States maintains a "quasi-monopoly on the international use of force," n393 but **the** rapid pace **of change and improvements in weapons technology mean that** the executive branch must respond to emergencies long before the courts have an opportunity to weigh in**.** Even if a court was able to respond quickly enough, it is not clear that we would want courts to adjudicate foreign affairs crises without the deliberation and opportunities for review that are essential aspects of their institutional competence. Therefore, **courts should grant a higher level of deference to executive branch determinations in deciding whether to grant a temporary restraining order or a preliminary injunction in foreign affairs matters**. Under the super-strong Curtiss-Wright deference scheme, the court should accept the executive branch interpretation unless Congress has specifically addressed the matter and the issue does not fall within the President's textually-specified Article I powers.

#### Plan solves –

#### First, creating an appropriate framework limits judicial creativity

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]

What is an asset in the criminal justice system, however, would be a liability in a system whose priority is not justice for the individual but the security of the American people. That liability, though, can be satisfactorily rectified by clear procedural rules which underscore that the overriding mission – into which the judicial function is being imported for very limited purposes – remains executive and military. The default position of the criminal justice system would not carry over to a system conceived for enemies of the United States – i.e., terrorist operatives who would not be facing NSC trials in the first place absent a finding, tested by judicial review, that they were alien enemy combatants. ¶ 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.

### Solvency

#### Contention 3 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 - Prohibit

#### 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.

#### 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.

### Executive 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.”

#### CP can’t solve

#### b.) Court Creation DA – The executive cannot create a national security court, only Congress is vested with this power.

Schuck, Lecturer at Yale Law School, ‘4

[Peter, “Terrorism Cases Demand New Hybrid Courts”, LA Times, 7-9-2004,

<http://articles.latimes.com/2004/jul/09/opinion/oe-schuck9>, RSR]

The Supreme Court in its recent rulings has given U.S. citizens who are captives in the war on terror, as well as noncitizen Guantanamo detainees, the right to hearings. Now comes the hard part: what kinds of hearings, in what courts, by what process?¶ The court wisely refrained from answering these questions in detail. Arguments on the specifics had not been presented to the court, and the limited guidance that the justices did offer was more intuitive than analytical. Wisdom aside, this sort of self-restraint is constitutionally required: Article 1, Section 8, Clause 14 gives Congress -- not the judicial or the executive branch -- the authority to make rules for the armed forces, including the initial design of hearings for the prisoners.

#### They cannot fiat through constitutional restrictions because there is no literature against processes that are not constitutional. This means that the CP becomes incredibly unpredictable to the point where it’s impossible to generate clash against it. Voter for fairness and education.

#### d.) 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.

#### Congress and the courts will roll back the CP. Proves it doesn’t solve activism.

(William G. Howell, Associate Prof Gov Dep @ Harvard 2005 (Unilateral Powers: A Brief¶ Overview; Presidential Studies Quarterly, Vol. 35, Issue: 3, Pg 417)

Plainly, presidents cannot institute every aspect of their policy agenda by decree. The checks and balances that define our system of governance are alive, though not always well, when presidents contemplate unilateral action. Should the president proceed without statutory or constitutional authority, the courts stand to overturn his actions, just as Congress can amend them, cut funding for their operations, or eliminate them outright. (4) Even in those moments when presidential power reaches its zenith--namely, during times of national crisis--judicial and congressional prerogatives may be asserted (Howell and Pevehouse 2005, forthcoming; Kriner, forthcoming; Lindsay 1995, 2003; and see Fisher's contribution to this volume). In 2004, as the nation braced itself for another domestic terrorist attack and images of car bombings and suicide missions filled the evening news, the courts extended new protections to citizens deemed enemy combatants by the president, (5) as well as noncitizens held in protective custody abroad. (6) And while Congress, as of this writing, continues to authorize as much funding for the Iraq occupation as Bush requests, members have imposed increasing numbers of restrictions on how the money is to be spent.

#### Status quo detention policy violates separation of powers – plan solves by reinstituting judicial review.

Chemerinsky, Alston & Bird Professor of Law, Duke University School of Law, ‘5

[Erwin, “Enemy Combatants and Separation of Powers”, Journal of National Security Law and Policy, Vol. 1, 2005, RSR]

From the perspective of these cases, the President’s action in detaining¶ individuals as enemy combatants violates the separation of powers because¶ it prevents the judiciary from carrying out its essential function of hearing the¶ claims of individuals who contend that they are being wrongly detained.¶ These claims go to the very heart of the judicial role as it was defined in¶ Marbury v. Madison more than 200 years ago.49 In Marbury, the Supreme¶ Court stressed that we are a nation of laws, and that no one, not even the¶ President, is above the law. Marbury unequivocally held that it is the power¶ and duty of the federal judiciary to provide a remedy, even against the¶ Executive, when rights of individuals are violated. Chief Justice John¶ Marshall emphatically declared that “[t]he very essence of civil liberty¶ certainly consists in the right of every individual to claim the protection of the¶ laws, whenever he receives an injury.”50¶ Put another way, the system of checks and balances in the Constitution¶ requires that two branches of government concur for almost every major form¶ of government action. Enacting a law generally requires both legislative and¶ executive action. Putting a person in prison requires executive prosecution¶ and judicial conviction. The fundamental flaw in the Bush administration’s¶ claim of unreviewable authority to detain enemy combatants is that it¶ obliterates any notion of checks and balances.

**Separation of powers key to the economy**

**Stevenson 5** (Dru Stevenson, Assistant Professor, South Texas College of Law (Houston), March 2005, Cardozo Law Review, 26 Cardozo L. Rev. 1535)

This is similar, of course, to the argument in the Federalist Papers for Separation of Powers¶ in the federal government; namely, that democracies are chronically vulnerable to hijacking by¶ factions or special interest groups. **Separation of Powers makes it much more difficult for a**¶ **faction to seize control of the entire federal government all at once. This safeguard against**¶ **factions contained in the Separation of Powers, in turn, seems to be part of a more general**¶ **safeguard against shocks to the system from drastic changes in governmental policy.** It is true¶ that there is a danger that factions or special interest groups will infringe on the liberty of others¶ and oppress those who dissent; but in theory, it is also possible that a faction could be benevolent,¶ and able to .get more done. without a system of checks and balances. **A certain degree of**¶ epistemological **doubt overshadows the notion that sweeping change in governmental policy**¶ **would be good in the long term**; there are too many things about the future that we do not¶ understand. **A government susceptible to sudden, drastic change would create too much**¶ **uncertainty for legitimate or productive activities, discourage investment, and stifle growth and**¶ **development of the economy,** technology (which requires investments in research and invention),¶ and other areas of society that require investment of time or resources. In the end, **the fact that**¶ **Separation of Powers forces change to be incremental, thereby fostering investment in every**¶ **sector of the economy and society** (because of the increased predictability and reduced¶ uncertainty) **may be as important for national vitality as the safeguards against individual abuses**¶ **typically envisioned in the checks-and-balances discussions**.

#### Economic collapse causes global nuclear war.

Friedberg and Schoenfeld, ‘8 (Aaron [Prof. Politics. And IR @ Princeton’s Woodrow Wilson School and Visiting Scholar @ Witherspoon Institute], and Gabriel, [Senior Editor of Commentary and Wall Street Journal], “The Dangers of a Diminished America”,

http://online.wsj.com/article/SB122455074012352571.html)

Then there are the dolorous consequences of a potential collapse of the world's financial architecture. For decades now, Americans have enjoyed the advantages of being at the center of that system. The worldwide use of the dollar, and the stability of our economy, among other things, made it easier for us to run huge budget deficits, as we counted on foreigners to pick up the tab by buying dollar-denominated assets as a safe haven. Will this be possible in the future? Meanwhile, traditional foreign-policy challenges are multiplying. The threat from al Qaeda and Islamic terrorist affiliates has not been extinguished. Iran and North Korea are continuing on their bellicose paths, while Pakistan and Afghanistan are progressing smartly down the road to chaos. Russia's new militancy and China's seemingly relentless rise also give cause for concern. If America now tries to pull back from the world stage, it will leave a dangerous power vacuum. The stabilizing effects of our presence in Asia, our continuing commitment to Europe, and our position as defender of last resort for Middle East energy sources and supply lines could all be placed at risk. In such a scenario there are shades of the 1930s, when global trade and finance ground nearly to a halt, the peaceful democracies failed to cooperate, and aggressive powers led by the remorseless fanatics who rose up on the crest of economic disaster exploited their divisions. Today we run the risk that rogue states may choose to become ever more reckless with their nuclear toys, just at our moment of maximum vulnerability. The aftershocks of the financial crisis will almost certainly rock our principal strategic competitors even harder than they will rock us. The dramatic free fall of the Russian stock market has demonstrated the fragility of a state whose economic performance hinges on high oil prices, now driven down by the global slowdown. China is perhaps even more fragile, its economic growth depending heavily on foreign investment and access to foreign markets. Both will now be constricted, inflicting economic pain and perhaps even sparking unrest in a country where political legitimacy rests on progress in the long march to prosperity. None of this is good news if the authoritarian leaders of these countries seek to divert attention from internal travails with external adventures.

### Exec DA

#### Congress has already killed Obama’s flexibility – prevented transfer of detainees from Guantanamo.

Alexander, Frederick I. Richman Professor of Law, Stanford Law School, ‘12

[Janet, “MILITARY COMMISSIONS: A PLACE OUTSIDE THE LAW’S REACH”, SAINT LOUIS UNIVERSITY LAW JOURNAL, Vol. 56, 2012, RSR]

On the other hand, the limitations on presidential ability to prosecute ¶ detainees in federal court, release them to other countries, or transfer them to ¶ facilities within the United States for detention or to serve their sentences are ¶ contained in statutes and thus will apply regardless of who is president. These ¶ include the mandatory military detention provisions of the 2012 NDAA.260¶ Indeed, the Feinstein amendment to the 2012 NDAA, designed in part to meet ¶ objections to mandating military custody or trial of U.S. citizens, could well ¶ turn out to support that very outcome.261 The compromise, which helped to ¶ secure passage of the 2012 NDAA without a provision for mandatory military ¶ custody or trial, is worded simply to state that the statute does not change ¶ ―existing law.‖ Many argued at the time—apparently supported by a phrase in ¶ Hamdi—that existing law already permits treating U.S. citizens and permanent ¶ residents who are determined to be ―enemy combatants‖ or unprivileged ¶ belligerents exactly the same as foreign nationals, even if they are taken into ¶ custody inside the United States. If in the future the Supreme Court, the D.C. ¶ Circuit, or another federal circuit, so holds, then the trial, detention, and waiver ¶ provisions of the 2012 NDAA will apply equally to U.S. citizens.¶ Thus, because Congress has frustrated the executive branch‘s efforts to ¶ bring the treatment of suspected terrorists back to fundamental principles of the ¶ rule of law and the Obama Administration has abandoned as futile any attempt ¶ to secure legislation to make the changes permanent, the military ¶ commissions—however improved over the Bush era—remain ―outside the ¶ law‘s reach.‖¶ 262

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

Bauer, Junior Editor at the Alabama Law Review, ‘6

[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.

### Sanctions Politics

#### No Iranian prolif-weak institutions and technical hurdles-discount predictions because they are routinely baseless.

Hymans, USC IR professor, 2-20-13

(Jacques, “Iran Is Still Botching the Bomb”, <http://www.foreignaffairs.com/articles/139013/jacques-e-c-hymans/iran-is-still-botching-the-bomb?page=show>, DOA: 2-21-13, ldg)

At the end of January, Israeli intelligence officials quietly indicated that they have downgraded their assessments of Iran's ability to build a nuclear bomb. This is surprising because less than six months ago, Israeli Prime Minister Benjamin Netanyahu warned from the tribune of the United Nations that the Iranian nuclear D-Day might come as early as 2013. Now, Israel believes that Iran will not have its first nuclear device before 2015 or 2016. The news comes as a great relief. But it also raises questions. This was a serious intelligence failure, one that has led some of Israel's own officials to wonder aloud, "Did we cry wolf too early?" Indeed, Israel has consistently overestimated Iran's nuclear program for decades. In 1992, then Foreign Minister Shimon Peres announced that Iran was on pace to have the bomb by 1999. Israel's many subsequent estimates have become increasingly frenzied but have been consistently wrong. U.S. intelligence agencies have been only slightly less alarmist, and they, too, have had to extend their timelines repeatedly. Overestimating Iran's nuclear potential might not seem like a big problem. However, similar, unfounded fears were the basis for President George W. Bush's preemptive attack against Iraq and its nonexistent weapons of mass destruction. Israel and the United States need to make sure that this kind of human and foreign policy disaster does not happen again. What explains Israel's most recent intelligence failure? Israeli officials have suggested that Iran decided to downshift its nuclear program in response to international sanctions and Israel's hawkish posture. But that theory falls apart when judged against Tehran's own recent aggressiveness. In the past few months, Iran has blocked the International Atomic Energy Agency (IAEA) from gaining access to suspect facilities, stalled on diplomatic meetings, and announced a "successful" space shot and the intention to build higher-quality centrifuges. These are not the actions of a state that is purposely slowing down its nuclear program. Even more to the point, if Tehran were really intent on curbing its nuclear work, an explicit announcement of the new policy could be highly beneficial for the country: many states would praise it, sanctions might be lifted, and an Israeli or U.S. military attack would become much less likely. But Iran has not advertised the downshift, and its only modest concession of late has been to convert some of its 20 percent enriched uranium to reactor fuel. It is doubtful that the Iranians would decide to slow down their nuclear program without asking for anything in return. A second hypothesis is that Israeli intelligence estimates have been manipulated for political purposes. This possibility is hard to verify, but it cannot be dismissed out of hand. Preventing the emergence of a nuclear-armed Iran is Netanyahu's signature foreign policy stance, and he had an acute interest in keeping the anti-Iran pot boiling in the run-up to last month's parliamentary elections, which he nearly lost. Now, with the elections over, perhaps Israeli intelligence officials feel freer to convey a more honest assessment of Iran's status. This theory of pre-election spin is not very satisfying, however, because it fails to explain why Israeli governments of all political orientations have been making exaggerated claims about Iran for 20 years -- to say nothing of the United States' own overly dire predictions. The most plausible reason for the consistent pattern of overstatement is that Israeli and U.S. models of Iranian proliferation are flawed. Sure enough, Israeli officials have acknowledged that they did not anticipate the high number of technical problems Iranian scientists have run into recently. Some of those mishaps may have been the product of Israeli or U.S. efforts at sabotage. For instance, the 2010 Stuxnet computer virus attack on Iran's nuclear facilities reportedly went well. But the long-term impact of such operations is usually small -- or nonexistent: the IAEA and other reputable sources have dismissed the highly publicized claims of a major recent explosion at Iran's Fordow uranium-enrichment plant, for instance. Rather than being hampered by James Bond exploits, Iran's nuclear program has probably suffered much more from Keystone Kops-like blunders: mistaken technical choices and poor implementation by the Iranian nuclear establishment. There is ample reason to believe that such slipups have been the main cause of Iran's extremely slow pace of nuclear progress all along. The country is rife with other botched projects, especially in the chaotic public sector. It is unlikely that the Iranian nuclear program is immune to these problems. This is not a knock against the quality of Iranian scientists and engineers, but rather against the organizational structures in which they are trapped. In such an environment, where top-down mismanagement and political agendas are abundant, even easy technical steps often lead to dead ends and pitfalls. Iran is not the only state with a dysfunctional nuclear weapons program. As I argued in a 2012 Foreign Affairs article, since the 1970s, most states seeking entry into the nuclear weapons club have run their weapons programs poorly, leading to a marked slowdown in global proliferation. The cause of this mismanagement is the poor quality of the would-be proliferator's state institutions. Libya and North Korea are two classic examples. Libya essentially made no progress, even after 30 years of trying. North Korea has gotten somewhere -- but only after 50 years, and with many high-profile embarrassments along the way. Iran, whose nuclear weapons drive began in the mid-1980s, seems to be following a similar trajectory. Considering Iran in the broader context of the proliferation slowdown, it becomes clear that the technical problems it has encountered are more than unpredictable accidents -- they are structurally determined. Since U.S. and Israeli intelligence services have failed to appreciate the weakness of Iran's nuclear weapons program, they have not adjusted their analytical models accordingly. Thus, there is reason to be skeptical about Israel's updated estimate of an Iranian bomb in the next two or three years. The new date is probably just the product of another ad hoc readjustment, but what is needed is a fundamental rethinking.

#### No impact to Iran prolif – won’t spread.

Miklos, International Affairs Review contributor, 13

(Timothy, George Washington University's Elliott School of International Affairs Publication, “Iran Proliferation Triggering a Nuclear Domino Effect in the Middle East: An Unrealistic Scenario,” 3-3-13, da 3-27-13, <http://www.iar-gwu.org/node/468>, mee)

President Obama has stated that Iranian acquisition of a nuclear weapon will spark an arms race in the Middle East. This view is a status quo dogma among policymakers of both the Republican and Democratic parties, and dissenting views are generally ignored. Ari Shavit of Haaretz identifies the most at-risk states as Egypt, Saudi Arabia, and Turkey. However, a nuclear arms race in the Middle East in response to an Iranian weapon is highly unlikely. For those countries most likely to proliferate, the political and financial costs are too high. The nuclear domino scenario has been an accepted doctrine since 1962 when President Kennedy warned that by the 1970s there would be around 25 nuclear weapon states. Yet, today there are only nine. According to a recent Center for a New American Security (CNAS) report, “Cairo does not see Iran’s nuclear ambitions as an existential threat.” Egypt’s true enemy is Israel, which has defeated Egypt in four consecutive wars. If Egypt did not pursue a nuclear option to deter its nuclear-armed enemy Israel, then it will not do so against Iran. Egypt simply does not have the financial resources, nuclear infrastructure, or motive to build a successful clandestine nuclear program, as its facilities are under IAEA safeguards. As a signatory of the Treaty on the Non-Proliferation of Nuclear Weapons (NPT), Egypt has remained committed to non-proliferation since the Treaty’s inception and would be unlikely to withdraw. Even if Egypt had the capability and intention to pursue nuclear weapons, its security would not be enhanced. An attempted breakout would likely be destroyed in a preemptive strike by Israel, which has proven the credibility of this threat twice by destroying the Osirak reactor in Iraq in 1981 and the Al Kibar reactor in Syria in 2007. Unlike Iran, Egypt does not have long distances, deep reactors, and strong air defenses to protect itself from Israeli preemption. Iran poses the largest threat to Saudi Arabia and, as such, the Kingdom would have the strongest security motive to pursue a deterrent. Riyadh has called on a Nuclear Weapon Free Zone (NWFZ) in the Middle East, yet has repeatedly warned that an Iranian nuclear weapon may compel it to follow suit. This is not credible and is likely an attempt to pressure the United States to take greater action against Tehran. According to Philipp Bleek of the Monterey Institute, “states whose rivals pursue or acquire nuclear weapons are much likely to themselves explore a nuclear weapons option…but are no more (or less) likely to pursue or acquire nuclear weapons” ("Why do states proliferate?," Forecasting Nuclear Proliferation in the 21st Century: Volume 1 The Role of Theory). Nasser of Egypt made a similar threat in response to Israel’s nuclear program and explored Egypt’s nuclear possibilities, but in 1968 chose to sign the NPT instead. Saudi Arabia has virtually no domestic nuclear infrastructure, resources, or knowledge base to conduct a “crash” program. It is also an NPT state and has many U.S. military and foreign investors on its territory, making it difficult to support such a program. Its only option would be to purchase a nuclear weapon from Pakistan. However, Islamabad is unlikely to spare any weapons, as they are needed to deter India. Additionally, selling a nuclear weapon would bring world condemnation on Pakistan and leave it a pariah state surrounded by nuclear enemies. Riyadh would risk losing the support of the United States if it were to attempt to pursue a deterrent, leaving it open to an Israeli strike. Instead, Saudi Arabia will likely rely on its preferred weapons of “cash and diplomacy,” finding the U.S. nuclear umbrella a “more attractive offer.” Turkey is a NATO member with around 70 tactical nuclear weapons on its soil and is protected by the U.S. nuclear umbrella. An indigenous nuclear program would forfeit this position. Etel Solingen (“Domestic Models of Political Survival," Forecasting Nuclear Proliferation in the 21st Century: Volume 1 The Role of Theory) asserts that states with integrated economies face greater costs to proliferating and are therefore less likely to do so. There is too much at stake for these nations to develop nuclear weapons, as they each stand to suffer great financial and political losses and will ultimately be less secure because of it. The United States has far greater influence over these nations than it does over Iran. Washington should keep the pressure on Tehran to adhere to IAEA safeguards. However, alarmist rhetoric of a Middle East arms race is unjustified and not conducive to reaching an agreeable diplomatic settlement with Iran.

#### **No Obama PC now.**

Parnes, Staff Writer, 10-18

[Amie, “Obama’s hollow debt victory”, 10-18-13, The Hill,

http://thehill.com/homenews/administration/329219-obamas-hollow-debt-victory, RSR]

President Obama’s victory over congressional Republicans is likely to have a short shelf life. Even the president’s staunchest allies are skeptical that his triumph in the debt-ceiling battle has produced much capital for the White House to spend on priorities like immigration reform. “I don’t know that this changes anything,” one former senior administration official said. “I don’t think the president has new mojo from this.” “What did they really do? They brought the country to the same place where we were a few weeks ago,” the former official said. “This isn’t like he passed healthcare. He ended a government shutdown and raised the debt limit. Those are routine items. It’s not like he campaigned on it.” Obama took his second victory lap in two days Thursday on the heels of the bipartisan deal, chiding congressional Republicans for engaging in political brinksmanship with the economy on the day the government reopened after a 16-day shutdown. He also blamed the GOP — as he has in recent days — for bringing the nation dangerously close to defaulting on the debt limit. “You don’t like a particular policy or a particular president, then argue for your position,” Obama said in the State Dining Room at the White House. “Go out there and win an election.” “Push to change it,” the president said. “But don’t break it.” While he rallied White House allies with the sentiment, he also angered Republicans, who felt it was a sucker punch. “The president’s admonishment ignores his own shortcomings,” said one senior Republican adviser working on Capitol Hill. “The fact is, he shares equal blame for the shutdown. It’s not as if the stalemate was created overnight. The shutdown is fallout from Obama’s lack of outreach and his ineffective approach to being a leader.” The GOP adviser — who acknowledged defeat in the fight — said Obama’s admonition was “entirely void of the substance of the debate and designed to demonize legitimate opposition. “[It] totally ignored was the president’s own past opposition to raising the debt ceiling and the months leading to this episode when the White House could have been working with Congress to avoid such a crisis,” the adviser said. Republican strategist Ron Bonjean said he didn’t expect relations between Obama and Republicans to improve. “No one has political capital at this point to really accomplish major legislative initiatives by the end of this year,” Bonjean said. “It’s highly unlikely that any comprehensive immigration reform bill would be able to move through the House after such a bruising fight over the shutdown and the debt ceiling.”

#### Plan is popular – preserves his capital.

Sulmasy and Logman, ‘9

[Glenn (professor of law at the U.S. Coast Guard Academy) and Andrea (assistant professor of law at the U.S. Coast Guard Academy), “A HYBRID COURT FOR A HYBRID WAR”, Case Western Reserve Journal of International Law, Vol. 42, RSR]

Prior to the anticipated closure of the Guantánamo Bay Detention ¶ Facility on January 22, 2010 many questions remain. To date, no decision ¶ has been made regarding the transfer of the detainees. In August 2009 it was ¶ reported that the Obama Administration is reviewing a proposal that would bring the detainees to U.S. soil.46 The reported proposal would transfer ¶ Guantánamo detainees to a U.S. federal prison facility, would allow for ¶ prosecution of detainees in either federal criminal courts or under military ¶ commissions, would co-locate a court facility with the prison facility, and ¶ would allow for preventive detention of detainees considered a threat to ¶ U.S. security interests.47 The potential transfer of detainees to U.S. facilities ¶ is raising public concern and many in Congress have publicly resisted this ¶ notion.48¶ This potential forum shopping is also problematic, sets a dangerous ¶ precedent, and will likely lead, if implemented, to numerous defense challenges. It is, however, a recognition of the hybrid nature of this war with alQaeda. There must be a dedicated process and forum for addressing the ¶ detention and adjudication of the detainees. Congress has made it clear that ¶ it will not approve the requested funding for transfer of prisoners from ¶ Guantánamo until there is a definite plan in place. ¶ The NSCS is fundamentally a balance and a reasonable accommodation of many competing legal and policy interests. It is structured upon ¶ the foundations of the U.S. understanding of the rule of law. The NSCS ¶ exceeds the standards of most requirements of international law and embraces human rights by ensuring that the dignity of each alleged detainee is ¶ maintained. It is an outgrowth—or an evolution—of the military commissions. It provides the answer for policy makers to get us out of the quicksand we find ourselves in regarding detainees. We have been attempting to ¶ force the civilian justice model or the military justice model onto a new ¶ entity—the al-Qaeda fighter. Neither will work. The proposed system provides a delicate balance between the competing interests of U.S. national ¶ security and our human rights obligations to the detainees. The NSCS provides an adjudicatory system of justice that will answer the needs of policy ¶ makers for years to come. We simply cannot remain mired in the ways of ¶ the past or the ideals of our generation, but rather must step forward with ¶ pragmatic idealism as our guide and promote the rule of law while bringing ¶ unlawful combatants to justice.