### Demo

#### Democracy slows proliferation

William H. **Kincade**, “Nuclear Proliferation: Diminishing Threat?” INSS OCCASIONAL PAPER n. 6, December 19**95**, <http://www.fas.org/irp/threat/ocp6.htm>

Many of the technical and economic disincentives to deployment cited above involve difficult domestic decisions or trade-offs, imposed or influenced by broad external developments, such as major changes in the global economy, or the emergence of patterns of technological innovation, evolution, and diffusion that discourage nuclear force proliferation. The degree of domestic political awareness of these international pattern changes is related to the openness of the polity or the strength of its democracy. The most likely proliferators in Table 2 (Iran, Iraq, Libya, North Korea) are the most closed and authoritarian states, as well as the ones with the greatest pretensions to international power or fear of their enemies. Brazil and Argentina, on the other hand, as a result of their own achieved détente, agreed to a cessation in nuclear weapons rivalry after the 1983 election of Raul Alfonsin as Argentina's first democratic president in more than 10 years.62 South Africa gave up its small force as a result of the end of the Cold War, which lessened its security concerns, and of President F.W. de Klerk's effort to democratize the country.63 As South Korea and Taiwan have moved hesitantly toward democracy, they have also proved susceptible to U.S. influence regarding nuclear proliferation. Presumably they count their security relations with Washington--explicit and tacit--as a better guarantee than independent nuclear forces. Democracy is comparatively robust in India. In Pakistan, it has been the norm but not always the practice.64 Both countries have paused on the threshold of deployment. If links between democratization and non-proliferation remain unclear or inconsistent, evidence of the nexus of highly authoritarian regimes, political ambition, and nuclear ambition is strong.

#### No arms races.

Waltz 12, Professor of PoliSci @ Columbia, Research Scholar @ Saltzman Institute of War and Peace Studies

[Kenneth N. Waltz (Senior Research Scholar at the Saltzman Institute of War and Peace Studies, Adjunct Professor of Political Science at Columbia University, winner of James Madison Lifetime Achievement Award in Political Science, has 5 honorary doctorates, had an award named after him for studies on international security and arms control), The Spread of Nuclear Weapons: A Debate Renewed, p. 29-30]

One may believe that old American and Soviet military doctrines set the pattern that new nuclear states will follow. One may also believe that they will suffer the fate of the United States and the former Soviet Union, that they will compete in building larger and larger nuclear arsenals while continuing to accumulate conventional weapons. These are doubtful beliefs. One can infer the future from the past only insofar as future situations may be like past ones. For three main reasons, new nuclear states are likely to decrease, rather than to increase, their military spending.¶ First, nuclear weapons alter the dynamics of arms races. In a competition of two or more parties, it may be hard to say who is pushing and who is being pushed, who is leading and who is following. If one party seeks to increase its capabilities, it may seem that others must too. The dynamic may be built into the competition and may unfold despite a mutual wish to resist it. But need this be the case in a strategic competition among nuclear countries? It need not be if the conditions of competition make deterrent logic dominant. Deterrent logic dominates if the conditions of competition make it nearly impossible for any of the competing parties to achieve a first- strike capability. Early in the nuclear age, the implications of deterrent strategy were clearly seen. "When dealing with the absolute weapon," as William T. R. Fox put it, "arguments based on relative advantage lose their point."29 The United States has sometimes designed its forces according to that logic. Donald A. Quarles, when he was President Eisenhower's secretary of the Air Force, argued that "sufficiency of air power" is determined by "the force required to accomplish the mission assigned." Avoidance of total war then does not depend on the "relative strength of the two opposed forces." Instead, it depends on the "absolute power in the hands of each, and in the substantial invulnerability of this power to interdiction." 30 In other words, if no state can launch a disarming attack with high confidence, force comparisons are irrelevant. Strategic arms races are then pointless. Deterrent strategies offer this great advantage: Within wide ranges neither side need respond to increases in the other side's military capabilities.

### Restriction T

#### C/I—War powers authority of indefinite detention is keeping people without being charges filed—the aff means he can no longer do that for a CATEGORY OF PEOPLE

The Committee on Federal Courts 4 [2004, The Committee on Federal Courts, “THE INDEFINITE DETENTION OF "ENEMY COMBATANTS": BALANCING DUE PROCESS AND NATIONAL SECURITY IN THE CONTEXT OF THE WAR ON TERROR \*”, 59 The Record 41, The Record of The Association of The Bar of the City of New York]

The President, assertedly acting under his "war power" in prosecuting the "war on terror," has claimed the authority to detain indefinitely, and without access to counsel, persons he designates as "enemy combatants," an as yet undefined term that embraces selected suspected terrorists or their accomplices.

Two cases, each addressing a habeas corpus petition brought by an American citizen, have reviewed the constitutionality of detaining "enemy combatants" pursuant to the President's determination:

- Hamdi v. Rumsfeld, 316 F.3d 450 (4th Cir. 2003), cert. granted, 124 S. Ct. 981 (Jan. 9, 2004) (No. 03-6696), concerns a citizen seized with Taliban military forces in a zone of armed combat in Afghanistan;

- Padilla ex. rel. Newman v. Bush, 233 F. Supp. 2d 564 (S.D.N.Y. 2002), rev'd sub nom., Padilla ex. rel. Newman v. Rumsfeld, 352 F.3d 695 (2d Cir. 2003), cert. granted, 124 S. Ct. 1353 (Feb. 20, [\*42] 2004) (No. 03-1027), concerns a citizen seized in Chicago, and suspected of planning a terrorist attack in league with al Qaeda.

Padilla and Hamdi have been held by the Department of Defense, without any access to legal counsel, for well over a year. No criminal charges have been filed against either one. Rather, the government asserts its right to detain them without charges to incapacitate them and to facilitate their interrogation. Specifically, the President claims the authority, in the exercise of his war power as "Commander in Chief" under the Constitution (Art. II, § 2), to detain persons he classifies as "enemy combatants":

- indefinitely, for the duration of the "war on terror";

- without any charges being filed, and thus not triggering any rights attaching to criminal prosecutions;

- incommunicado from the outside world;

- specifically, with no right of access to an attorney;

- with only limited access to the federal courts on habeas corpus, and with no right to rebut the government's showing that the detainee is an enemy combatant.

#### Restriction includes a limitation

STATE OF ARIZONA, Appellee, v. JEREMY RAY WAGNER, April 10, 2008, Filed, Appellant., 1 CA-CR 06-0167, 2008 Ariz. App. Unpub. LEXIS 613, opinion by Judge G. MURRAY SNOW

P10 The term "restriction" is not defined by the Legislature for the purposes of the DUI statutes. See generally A.R.S. § 28-1301 (2004) (providing the "[d]efinitions" section of the DUI statutes). In the absence of a statutory definition of a term, we look to ordinary dictionary definitions and do not construe the word as being a term of art. Lee v. State, 215 Ariz. 540, 544, ¶ 15, 161 P.3d 583, 587 (App. 2007) ("When a statutory term is not explicitly defined, we assume, unless otherwise stated, that the Legislature intended to accord the word its natural and obvious meaning, which may be discerned from its dictionary definition."). P11 The dictionary definition of "restriction" is "[a] limitation or qualification." Black's Law Dictionary 1341 (8th ed. 1999). In fact, "limited" and "restricted" are considered synonyms. See Webster's II New Collegiate Dictionary 946 (2001). Under these commonly accepted definitions, Wagner's driving privileges were "restrict[ed]" when they were "limited" by the ignition interlock requirement. Wagner was not only [\*7] statutorily required to install an ignition interlock device on all of the vehicles he operated, A.R.S. § 28-1461(A)(1)(b), but he was also prohibited from driving any vehicle that was not equipped with such a device, regardless whether he owned the vehicle or was under the influence of intoxicants, A.R.S. § 28-1464(H). These limitations constituted a restriction on Wagner's privilege to drive, for he was unable to drive in circumstances which were otherwise available to the general driving population. Thus, the rules of statutory construction dictate that the term "restriction" includes the ignition interlock device limitation.

#### Prefer—

#### Precision—our ev cites the committee on federal courts and a court case—limits are meaningless if they’re not predictable

#### Aff ground—every aff in their interpretation would lose to the circumvention—aff ground outweighs cuz it sets the direction of the debate

#### Good is good enough—competing interpretations leads to a race to the bottom and a substance crowdout

### 2AC Congress CP

**Doesn’t solve legitimacy –**

**a) Stable interp – US structures unique for credibility, stability of law key because countries know they can rely on them, that’s Sidhu and Knowles**

**b) Accountability - uniquely accessible because its seen as an avenue for countries to lodge complaints against the US, that’s Knowles**

#### Doesn’t solve democracy –

**a) Deference – k2 restore balance between executive and counters view of judicial irrelevance, otherwise risks new states taking over their judiciaries, becomes authoritarian and prevents stable transition. That’s Milko, CJA, and Vaughn**

**b) Modelling – translational judiciary conferences and networks means only the judiciary is perceived by foreign governments, that encourages judicial independence, that’s Suto and Kersch**

#### Legislative action fails—isn’t globalized and doesn’t check the executive

Flaherty 11, Professor of International Law

[2011, Martin S. Flaherty is a Leitner Professor of International Law, Fordham Law School; Visiting Professor, Woodrow Wilson School of Public and International Affairs, Princeton University, “Judicial Foreign Relations Authority After 9/11”, 56 N.Y.L. Sch. L. Rev. 119]

2. Legislative Globalization This pro-executive conclusion becomes even harder to resist given the slowness with which national legislators have been interacting with their counterparts. Several factors account for the slower pace of legislative globalization. Membership in a legislature almost by definition entails not just representation but representation keyed to national and subnational units. The turnover among legislators typically outpaces either executive officials or, for that matter, judges. In further contrast to legislators, regulators need to be specialists, and specialization facilitates cross-border interaction if only because it is easier to identify counterparts and focus upon common challenges. n137 Transnational legislative networks exist nonetheless and are growing. To take one example, national legislators have begun to work with one another in the context of such international organizations as NATO, the Organization for Security and Co-operation in Europe (OSCE), and the Association of Southeast Asian Nations (ASEAN). To take another example, independent legislative networks have begun to emerge, such as the Inter-Parliamentary Union and Parliamentarians for Global Action. n138 Yet even were national legislators to "catch up" to their executive counterparts in any meaningful way, the result would not necessarily be more robust or adequate protection of fundamental rights in times of perceived danger or the protection of minority rights at any time. Human rights organizations around the world are all too familiar with the democratic pathology of draconian statutes hastily enacted in response to actual attacks or perceived threats, including the Prevention of Terrorism Act in the United Kingdom, the USA PATRIOT Act in the United States, and the Internal Security Act in Malaysia. n139 It is for this reason that the essential player in the matter of rights protection must remain the courts. [\*143] 3.

#### Perm do both—solves the NB because Obama will be seen as taking the lead

#### Perm do the CP

#### CP doesn’t solve and links to the net-benefit- Congressional statues would be reviewed by the Supreme Court, but wouldn’t be effective and would take years to solidify

Eviatar 10 (Daphne- Senior Associate in Human Rights First’s Law and Security Program, June 10, “Judges to Congress: Don't Legislate Indefinite Detention”, http://www.huffingtonpost.com/daphne-eviatar/judges-to-congress-dont-l\_b\_607801.html)

For months now, certain commentators and legislators have been arguing that Congress needs to pass a new law authorizing the indefinite detention without charge or trial of suspected terrorists and their supporters.¶ On its face, that would seem to violate some basic tenets of the U.S. Constitution. But the U.S. government is already detaining hundreds of suspects captured abroad at Guantanamo Bay and elsewhere. The question is whether Congress should expand that authority and define it in more detail.¶ Writers such as Benjamin Wittes of the Brookings Institution and lawmakers such as Senator Lindsey Graham of South Carolina argue that even though hundreds of people have been detained over the last eight years at Guantanamo Bay, the law that justifies their detention or mandates their release isn't clear, and Congress needs to step in and make new rules.¶ In fact, as a new report issued today by 16 former federal judges makes clear, that's nonsense. The people in the best position to decide when military detention is legal are already doing just that. The new report, published by Human Rights First and the Constitution Project, explains exactly how that process is working -- and demonstrates that it's actually working very well. Responding to a series of habeas corpus petitions, where Guantanamo detainees have asked the federal court to review the legality of their detentions, federal district court judges in Washington, D.C., have already issued written opinions concerning 50 different detainees that set out the legal standard for indefinite wartime detention, and which cases do and do not meet it.¶ The claim by Wittes and Graham that judges are somehow overstepping their bounds and usurping the role of Congress reflects a fundamental misunderstanding of how the federal courts and judges work. In fact, the courts are doing just what they're supposed to do: interpret the law.¶ The reason judges are so well-situated to explain the contours of U.S. detention authority is because, according to judicial rulings, the right to detain arises out of existing laws, including the Authorization for Use of Military Force against Terrorists, or AUMF, passed by Congress in 2001; the traditional law of war; and the U.S. Constitution.¶ Traditionally, a government at war can detain fighting members of the enemy's forces, under humane conditions, until the war is over. Although that authority is less clear when the government is fighting a loose coalition of insurgent forces around the world rather than another country, the Supreme Court has said that at least in some circumstances, pursuant to the AUMF, the United States can detain enemy fighters seized on the battlefield.¶ It's the Supreme Court's rulings on the subject, combined with the law of war and the mandates of the U.S. Constitution, that highly experienced federal judges have been applying to the habeas corpus cases that have come before them. Applying those rulings, they've developed a clear and consistent body of law that explains what kind of evidence the government needs to have amassed against a suspected insurgent to justify his military detention.¶ Under the D.C. District Court's rulings, for example, Fouad Al Rabiah, a 43-year-old, 240-pound, Kuwaiti Airways executive with a long history of volunteering for Islamic charities who'd been discharged from compulsory military service in Kuwait due to a knee injury, and who suffered from high blood pressure and chronic back pain, did not meet the requirement of being "part of" or having "substantially supported" al Qaeda, the Taliban or associated forces. Although seized while attempting to leave Afghanistan in 2001, by the time of Al Rabiah's hearing, even the government had decided the witnesses who claimed he'd helped al Qaeda weren't credible. The government's own interrogators didn't believe his "confessions," which the court determined had been coerced and were "entirely incredible."¶ On the other hand, Fawzi Al Odah, also Kuwaiti, did meet the law's detention standards. The same judge found that he'd attended a Taliban training camp, learned to use an AK-47, traveled with other armed fighters on a route common to jihadists, and took directions from Taliban leaders - all making it more likely than not that he was a member of Taliban fighting forces.¶ Still, despite the courts' careful analysis in these cases, Congress could step in and write its own new law on indefinite detention. But how can any one statute possibly address all the vastly different factual scenarios, many spanning several countries and decades, that constitute the government's claims that any particular individual is detainable? What's more, any new law will still have to meet the requirements of the U.S. Constitution, and the Supreme Court gets the ultimate say on that. Any new statute passed by Congress, then, would likely be challenged as soon as it's applied, causing more confusion about what the law really is until the U.S. Supreme Court weighs in on that new statute several years later.¶ The federal judges of the D.C. District Court and Court of Appeals are already way ahead of that game. In addition to the trial court opinions, the appellate court recently issued its own opinion setting out the law of detention and the government's constitutional authority. That decision may be appealed to the Supreme Court, whose opinion would set out the binding standard that every judge and future U.S. administration will have to follow.¶ The upshot of all this is that if Congress legislates some new detention standard now, it will actually take a lot longer to get a clearly-defined and binding law that guides the government than it would if Congress just let the courts continue to play the role they're supposed to: deciding the legality of government detention.¶ Wittes, Graham and others may secretly be hoping that Congress will legislate in this area anyway and try to expand the government's indefinite detention autuhority beyond Guantanamo Bay to reach even suspects arrested on U.S. soil. But that would create a whole new constitutional firestorm, resulting in exactly the opposite of what they say they're after: a clear and reliable statement of the law.

### 2AC Executive DA

#### Deference on questions of executive war authority is a myth – the court has never adopted that practice and the Zivotofsky ruling is the death knell

Skinner 8/23, Professor of Law at Willamette

(13, Gwynne, Misunderstood, Misconstrued, and Now Clearly Dead: The 'Political Question Doctrine' in Cases Arising in the Context of Foreign Affairs, papers.ssrn.com/sol3/papers.cfm?abstract\_id=2315237)

Lower federal courts often erroneously cite the “political question doctrine” to dismiss as nonjusticiable individual rights claims arising in foreign or military affairs contexts, a trend that has increased since the 1962 case of Baker v. Carr. Similarly, lower courts have begun citing “special factors counselling hesitation” when dismissing constitutional claims (“Bivens claims”) in similar contexts, inappropriately treating “special factors” as a nonjusticiability doctrine. Lower federal courts should not cite either doctrine as a reason to avoid adjudicating individual rights claims arising **in the context of foreign or military affairs**. Rather, lower federal **courts should adjudicate these claims** on their merits **by deciding whether the political branch at issue had the power under the Constitution to act as it did. Doing so is consistent with the manner in which the Supreme Court has approached these types of cases for over 200 years. The Court affirmed this approach in the 2012 case of Zivotofsky v. Clinton, a case in which the Court once and for all rung the death knell for the application of the “political question doctrine”** as a nonjusticiability doctrinein cases involving individual rights – even those arising **in a foreign policy context.** In fact, **a historical review of Supreme Court cases demonstrates that the Supreme Court has never applied the** so-called “**political question doctrine**” as a true nonjusticiable doctrine **to dismiss individual rights claims** (and arguably, not to any claims at all), **even those arising in the context of foreign or military affairs**. This includes the seminal “political question” case of Marbury v. Madison. Rather, **the Supreme Court has almost always rejected the “political question doctrine” as a basis to preclude adjudication of individual rights claims, even in the context of foreign or military affairs**. Moreover, the Supreme Court has consistently admonished lower courts regarding the importance of the judiciary branch’s adjudication of individual rights claims, even in such contexts.13 That is not to say that from time to time the Court has not cited a “political question doctrine” in certain of its cases. However, a close review of those cases demonstrates that rather than dismissing such claims in those cases as “nonjusticiable,” the Court in fact adjudicated the claims by finding that either the executive or Congress acted constitutionally within their power or discretion. Moreover, **the post-9/11 Supreme Court cases of Hamdi** v. Rumsfeld, **Rasul** v. Bush, **and** Bush v. **Boumediene, in which the Supreme Court consistently found that the political branches overstepped their constitutional authority, clarified that the doctrine should not be used to dismiss** individual rights claims as nonjusticiable**, even those arising in a foreign or military affairs context. In case there remained any doubt, the Supreme Court in Zivotofsky rejected the “political question doctrine**” as a nonjusticiability doctrine, at least in the area individual rights, if not altogether. The Court found the case, involving whether the parents of a boy born in Jerusalem had the right to list Israel as his place of birth pursuant to a Congressional statute, was justiciable.17 The Court addressed the real issue, which was whether Congress had the authority to trump the President over whether Israel could be listed as the country of birth on passports where a person was born in Jerusalem, notwithstanding the President’s sole authority to recognize other governments. 18 In ruling as it did, the Court stayed true to many of its earlier cases involving “political questions” by adjudicating the claim through deciding whether one of the political branches took action that was within its constitutional authority. **In the case, the Court showed its willingness to limit the power of the President in the area of foreign affairs** rather than finding the claim nonjusticiable.

#### **Every case since 9/11 non-uniques your link**

Flaherty 12, Leitner Professor of International Law, Fordham Law School

(Martin S., “ARTICLE: Judicial Foreign Relations Authority After 9/11” 2New York Law School Law Review 56 N.Y.L. Sch. L. Rev. 119, Lexis)

For a time the forces of judicial isolationism appeared to have gained traction and may yet carry the day. It is all the more surprising, then, that the Supreme Court reasserted the judiciary's traditional foreign affairs role in the areas in which its opponents assert deference is most urgent--national security, terrorism, and war. Yet so far, in every major case arising out of 9/11, the Court has rejected the position staked out by the executive branch, even when supported by Congress. At critical points, moreover, each of these rejections involved the Court reclaiming its primacy in legal interpretation, an area in which advocates of judicial deference have appeared to make substantial progress. The Court nonetheless rejected deference in statutory construction in Rasul v. Bush. n16 It took the same tack with regard to treaties in Hamdan v. Rumsfeld. n17 It further rejected deference in constitutional interpretation in both Hamdi v. Rumsfeld n18 and Boumediene v. Bush. n19 Together, these cases represent a stunning reassertion of the judiciary's proper role in foreign relations. Whether reassertion will mean restoration, however, still remains to be seen.

#### Our internal link outweighs—hegemonic stability is based on security guarantees and trade relationships fostered by the US—ensuring the durability of that system depends states’ acceptance of the hegemon’s role—maintaining the order through military power alone exhausts resources and lead to counterbalancing

#### Our evidence is comparative—the hegemonic model reduces the need for executive branch flexibility, and the institutional competence terrain shifts toward the courts—because a governance in a hegemonic system depends on voluntary acquiescence, the courts are critical

#### Democracy solves the impact

Spiro 2, Professor at Hofstra Law School

[Winter 2002, Peter J. Spiro is a Professor, Hofstra Law School, “Explaining the End of Plenary Power”, 16 Geo. Immigr. L.J. 339]

Building on those two girders, one can describe how plenary power was generated by the international context from which it emerged. That context was historically characterized by the proto-anarchical nature of relations among states and the resulting need to centralize foreign policymaking in non-judicial institutions. Immigration policy inherently implicated foreign relations, and those relations were, up until recently, characterized by great instability and risk. In the late nineteenth century, nations still routinely made war on each other, for reasons of pure power projection; there was little in the way of a normative or institutional superstructure to act as a brake on conflict. That conflict posed a serious threat, not the least to the not-yet-superpower United States. In a world in which the use of force remained a legitimate means of extending state power, foreign relations were the ultimate high-stakes arena. The world that bore plenary power was also one that demanded unitary decisionmaking. In the face of potentially catastrophic downside risk, the state needed to centralize the formulation of foreign policy. The courts were least suited to assume that institutional task. As famously propounded in Curtiss-Wright, traditional foreign policymaking required speed, secrecy, and singular responsibility, qualities antithetical to judicial process. n42 Nor could the courts claim any substantive competence in the area. Foreign relations were an area that could not tolerate judicial freelancing. n43 In the worst scenario, a court would make the wrong call for want of accurate information and foreign policy expertise, leading us into conflict with another country with all the dangers such conflict posed. n44 Alternatively, the [\*350] courts would make their rulings and have them ignored by the political branches, diminishing critical institutional capital in the process. n45 Either way, there were powerful incentives for the courts to remain on the sidelines when it came to foreign relations. Hence the political question doctrine in matters involving foreign relations, of which plenary power is a variant. n46 Indeed, all of the major plenary power cases stress the foreign relations element of immigration lawmaking and the dangers posed by judicial intervention in such matters. n47 Until recent years, that abnegation was justifiable, if not always justified. Even in such cases as Knauff and Mezei, which have appropriately fallen into disrepute with the passage of time, there were ways of filling out the picture that would have dictated restraint, given the magnitude of the perceived threat. n48 So strong was the judicial reticence that the Court refused anything more than cursory constitutional review even where an immigration controversy implicated no apparent foreign policy sensitivities. n49 The Court feared, perhaps, that to impose constitutional constraints in an innocuous case might dictate their application in ones involving greater foreign policy dangers (or, alternatively, give rise to transparently unprincipled decisional criteria that [\*351] could be used to undermine rights in the domestic context). Better to stay out of the area altogether. And that the Court has largely done until the cases this past Term. n50 There is nothing in the cases themselves to suggest that the shift is owed to the international context. But the context has witnessed an architectural transformation away from those features that sustained plenary power. First, the world is a far less dangerous place today, at least as between states (bracketing for a moment the problem of terrorism). In its traditional conception, war has become something of an anachronism. Democracies have been shown not to make war on each other as a historical matter, n51 and as the realm of democracy expands, so too does the zone of peace. That has lowered the stakes of foreign relations. The downside risk of upsetting relations among nations is now significantly less daunting than in the heyday of plenary power. Compared to the context in which plenary power was spawned (the late nineteenth century), there are more effective institutional brakes on the way to armed conflict. The chances of the United States finding [\*352] itself in real war with a major power -- of the sort of the World Wars -- is virtually nil. Compared to the context in which plenary power found its most extreme form, during the Cold War, the strength of hostile adversaries is not nearly as threatening. It is easy to forget the Cold War perception that the world stood at the brink of nuclear annihilation. That fear has dissipated. The fact that foreign relations no longer pose its historical dangers makes it a less weighty interest relative to individual rights. Foreign relations, in theory, used to pose the ultimate threat, with survival in the balance. That rendered it almost an incommensurable value, a trump against which all others lost. Now that major conflict is unlikely and annihilation improbable (at least as undertaken by another country), it no longer presents a showstopper. Foreign relations interests can be assessed and balanced. They can also be incorrectly assessed and balanced without risk of catastrophic results. It is no longer so easy to frame these interests as imperatives, qualitatively distinguishable from other societal concerns. The transformed nature of foreign relations also puts less of a premium on the decisionmaking anomalies that distinguished it from other areas of lawmaking. The hallmarks of centralization, secrecy, and dispatch no longer present a clear functional advantage. On the contrary, most of the issues that have come to the fore in the new global order (human rights, environmental protection, health, trade, market regulation, etc.) demand a counter-approach at both the domestic and international levels. These issues are, first of all, better addressed through decentralized institutional mechanisms, both governmental and non-governmental. Anne-Marie Slaughter has highlighted the "disaggregation" of central governments in international policymaking. n53 No longer do foreign ministries hold a monopoly on foreign policymaking; other kinds of agencies are forming decisionmaking networks among their international counterparts and undertaking international policy with only marginal participation of diplomatic corps. Beyond the decentralization of central government actors, other entities, including subnational governments and non-governmental organizations, are also emerging as independent players on the international stage. n54 Secrecy is antithetical to efficient decisionmaking on most of the new global issues; one cannot make good policy with respect to environmental protection, for instance, without the full dissemination of relevant data. This observation ties into the decentralization phenomenon. As entities other than foreign ministries come to play an important part in international decisionmaking they need to be afforded full information; [\*353] traditional national security classification schemes pose an impediment to efficient decisionmaking rather than a premise to it. n55 Finally, speed is no longer of the essence in most international policymaking. Because it poses less of a competitive proposition (at least among nation-states), international affairs no longer require the battlefield agility -- real and proverbial -- of earlier times. These developments -- the diminished risks of foreign relations and the changed nature of international decisionmaking -- are what allow the retreat from plenary power and the more vigorous participation of the courts in immigration lawmaking. The diminished risks of foreign relations (again, bracketing for now the question of terrorism) reduce the risk of judicial error. No longer, as they did in the Cold War, do the courts have to fret that a misstep on their part will lead us into World War III or irretrievably undermine national security in the traditional sense of protecting against state adversaries. Nor do they have to conceive of foreign policy as a finely calibrated enterprise not admitting of multiple actors. American judges are themselves increasingly active on the international stage and are developing sustained relationships with their foreign counterparts. n56 In the immigration realm that translates into greater possible institutional discretion for the courts. First, it will allow courts to entertain constitutional challenges to elements of the immigration law regime that have only an attenuated connection to foreign policy. n57 The Fiallo and Nguyen cases present examples. Although both involved foreign nationals (as do all immigration cases), the cases could not have been of much concern to other countries. n58 In the past, such cases might have been avoided for fear of impacting foreign policy in even a marginal fashion or for fear of making judicial involvement unavoidable in other cases with more apparent foreign policy implications. But even such cases that do have a clear foreign policy element are fair judicial game. Because the stakes are lower and because foreign policymaking is now a multilevel game, the courts can assert themselves in the way they assert themselves in other contexts. Zadvydas presents an example. The case clearly involved foreign policy; the United States had been negotiating for [\*354] the return of the detained aliens with their homeland governments. n59 But that no longer posed an obstacle to review, as it almost surely would have in the past.

#### The plan has no negative effect on the military – Boumediene should have already caused the link

ACLU 09 [American Civil Liberties Union]

(Brief Amicus Curiae of the American Civil Liberties Union in Support of Petitioners, www.americanbar.org/content/dam/aba/publishing/preview/publiced\_preview\_briefs\_pdfs\_09\_10\_08\_1234\_PetitionerAmCuACLU.authcheckdam.pdf)

The third Boumediene factor, the practical obstacles involved, again weighs more heavily in favor of these Petitioners than it did in Boumediene. In Boumediene, the Court acknowledged that recognizing habeas jurisdiction in domestic courts for Guantanamo detainees could impose some costs — both economic and non-economic — on the military. But it stressed that Boumediene did not pose the risks that the Eisentrager Court apparently perceived regarding 'judicial interference with the military's efforts to contain 'enemy elements, guerilla fighters, and "were-wolves,"' noting that although the detainees were "deemed enemies of the United States," who might be "dangerous ... if released," they were "contained in a secure prison facility located on an isolated and heavily fortified military base." Id. at 2261 (quoting Eisentrager, 339 U.S. at 784). In this case, allowing the Petitioners to assert their due process claim would add nothing, or virtually nothing, to the economic and procedural burdens that the Government already faces by virtue of the Petitioners' undeniable right to habeas corpus. Nor would it interfere with the military's activities against our enemies, since the United States does not even claim that the Petitioners are enemies — or, for that matter, that the military has any desire to continue to detain them. Finally, neither this case nor Boumediene raises the specter of "friction with the host government," because the United States is "answerable to no other sovereign for its acts on the "answerable to no other sovereign for its acts on the base." Id. at 2261. The Boumediene factors, then, show that recognizing the Petitioners' due process right to be free from indefinite arbitrary detention raises fewer and less substantial functional concerns (if any) than recognizing the Boumediene petitioners' habeas rights did. Nor do any other factors from the Court's extraterritoriality cases — such as the possibility of cultural or legal incompatibility between the right recognized and the location of the person asserting that right, see, e.g., Dowries, 182 U.S. at 282 — raise any significant obstacle to recognizing the due process right at issue here. Boumediene s anatysis thus compels the conclusion that the Petitioners are entitled to challenge their ongoing detention under the Due Process Clause.10

#### Review inevitable – now is better for flexibility

Wittes 08, Senior Fellow in Governance Studies at the Brookings Institution

(Benjamin, The Necessity and Impossibility of Judicial Review, https://webspace.utexas.edu/rmc2289/National%20Security%20and%20the%20Courts/Law%20and%20the%20Long%20War%20%20Chapter%204.pdf)

WE COME, then, to the question of what judicial review ought to look like in the war on terror if one accepts that it should exist more robustly than the administration prefers but should not be of an unbridled or general nature, as human rights advocates wish to see. The answer is conceptually simple, though devilishly complicated in operation: Judicial review should be designed for the relatively narrow purpose of holding the executive to clearly articulated legislative rules, not to the often vague standards of international legal instruments that have not been implemented through American law. Judges should have an expanded role in the powers of presidential preemption in the antiterrorism arena, for the judiciary is essential to legitimizing the use of those powers. Without them, the powers themselves come under a barrage of criticism which they cannot easily withstand. And eventually the effort to shield them from judicial review fails, and the review that results from the effort is more intrusive, more suspicious, and less accommodating of the executive's legitimate need for operational flexibility. Judges, in other words, should be a part of the larger rules the legislature will need to write to govern the global fight against terrorism. Their role within these legal regimes will vary-from virtually no involvement in cases of covert actions and overseas surveillance to extensive involvement in cases of long-term detentions. The key is that the place of judges within those systems is not itself a matter for the judges to decide. The judiciary must not serve as the designer of the rules.

#### **Plan creates a dialogue which legitimates executive actions**

Gatmaytan 10, Associate Professor, University of the Philippines

(Dante, “Crafting Policies for the Guantánamo Bay Detainees: An Interbranch Perspective” DEPAUL!RULE!OF!LAW!JOURNAL!

International\*Human\*Rights\*Law\*Institute, Fall 2010, http://laworgs.depaul.edu/journals/RuleofLaw/Documents/Gatmaytan\_-\_Guantanamo%20final.pdf)

The Petitioners in Boumediene were aliens detained at Guantánamo after being captured during the war on terror. They were then classified as enemy combatants by the CSRTs.81 Every petitioner sought a writ of habeas corpus in United States District Court for the District of Columbia district court, which dismissed the cases for lack of jurisdiction because Guantánamo is outside of the United States. 82 The D.C. Circuit then concluded that the MCA stripped away its jurisdiction to consider the habeas applications of the petitioners. As a result, the petitioners were not entitled to habeas proceedings and therefore the court did not need to determine whether the DTA provided an adequate substitute for habeas.83 On June 12, 2008, the Supreme Court decided Boumediene v. Bush. 84 It ruled that the detainees were not barred from seeking habeas merely because they had been designated as enemy combatants or held at Guantánamo Bay.85 Again, while the Supreme Court took a position opposed to the Executive, its language did not seem to reflect a degree of condemnation. Rather, its language may be interpreted as part of a continuing dialogue that urged the executive and legislative branches to fashion a policy consistent with its view: We acknowledge, moreover, the litigation history that prompted Congress to enact the MCA. In Hamdan the Court found it unnecessary to address the petitioner’s Suspension Clause arguments but noted the relevance of the clear statement rule in deciding whether Congress intended to reach pending habeas corpus case. This interpretive rule facilitates a dialogue between Congress and the Court. If the Court invokes a clear statement rule to advise that certain statutory interpretations are favored in order to avoid constitutional difficulties, Congress can make an informed legislative choice either to amend the statute or to retain its existing text. If Congress amends, its intent must be respected even if a difficult constitutional question is presented. The usual presumption is that Members of Congress, in accord with their oath of office, considered the constitutional issue and determined the amended statute to be a lawful one; and the Judiciary, in light of that determination, proceeds to its own independent judgment on the constitutional question when required to do so in a proper case.86 If this ongoing dialogue between and among the branches of Government is to be respected, we cannot ignore that the MCA was a direct response to Hamdan’s holding that the DTA’s jurisdiction-stripping provision had no application to pending cases….87 Later, the Court stated: Our opinion does not undermine the Executive’s powers as Commander in Chief. On the contrary, the exercise of those powers is vindicated, not eroded, when confirmed by the Judicial Branch. Within the Constitution’s separation-of-powers structure, few exercises of judicial power are as legitimate or as necessary as the responsibility to hear challenges to the authority of the Executive to imprison a person. Some of these petitioners have been in custody for six years with no definitive judicial determination as to the legality of their detention. Their access to the writ is a necessity to determine the lawfulness of their status, even if, in the end, they do not obtain the relief they seek. Because our Nation’s past military conflicts have been of limited duration, it has been possible to leave the outer boundaries of war powers undefined. If, as some fear, terrorism continues to pose dangerous threats to us for years to come, the Court might not have this luxury. This result is not inevitable, however. The political branches, consistent with their independent obligations to interpret and uphold the Constitution, can engage in a genuine debate about how best to preserve constitutional values while protecting the Nation from terrorism.88 That the Supreme Court believed it was engaged in dialogue with the other branches of government is unmistakably clear. Indeed, the Court’s language since Hamdan has been explicit. But the successive losses suffered by the Bush administration as well as its refusal to acquiesce to the Supreme Court’s paradigm suggests that there was in fact no dialogue occurring–a quarrel perhaps, but not a dialogue. This policy debate therefore raises questions regarding the usefulness of the interbranch framework. Still as the analysis that follows illustrates, the apparent animosity between the executive and legislative branches on one hand and the Judiciary on the other was a court-led attempt to bring the branches together in genuine dialogue.

#### There’s no impact even if a Court messes up foreign policy

Knowles 9 [Spring, 2009, Robert Knowles is an Acting Assistant Professor, New York University School of Law, “American Hegemony and the Foreign Affairs Constitution”, ARIZONA STATE LAW JOURNAL, 41 Ariz. St. L.J. 87]

But there are limits. Although speed matters a great deal during crises, its importance diminishes over time and other institutional competences assume greater importance. When decisions made in response to emergencies are cemented into policy over the course of years, the courts' institutional capabilities - information-forcing and stabilizing characteristics - serve an important role in evaluating those policies. n394 Once a sufficient amount of time has passed, the amount of deference given to executive branch determinations should be reduced so that it matches domestic deference standards. One of the core realist arguments for deference, the risk of collateral consequences, carries far less weight under a hegemonic model. Court decisions have consequences for third parties in the domestic realm all of the time. Given the hierarchical nature of U.S. hegemony, the response from other nations is likely to be more similar to the response by domestic parties than in the past. A typical example invoked by deferentialists involves a court decision - for example, recognizing the government of Taiwan - that angers the Chinese government. n395 Although such a scenario is not out of the question, there are several reasons why the consequences would not be as dire as often predicted by deferentialists. American military dominance [\*151] makes it highly unlikely that war would result from such an incident. n396 Moreover, China, too, cares about legitimacy and is far more likely to retaliate in some other way, possibly harming the United States' interests, but through means that would capture attention in the U.S. domestic realm, leading to accountability opportunities. Assuming that the decision is non-constitutional, the Chinese government could seek to have its preferred interpretation enacted into law. Indeed, it is entirely possible that other nations would be content with conflicting decisions from different branches of the U.S. government. Suppose that the President roundly condemns the offensive court decision and declares the judge to be an "activist." If the damage done by the court decision was largely dignitary, an angry denouncement from the executive branch may be all that is needed. Past empires relied on multi-vocal signaling to maintain imperial rule. n397 But with the advent of globalization, intra-executive branch multi-vocality is much more difficult because advances in co mmunication permit various parts of the "rim" to communicate with one another. n398 The American separation-of-powers system provides a way around this problem, allowing the U.S. government to "speak in different voices" at once.

### Bioweapons

#### No bioweapon could kill off humanity – natural resistance and technology check.

Easterbrook 3

[Gregg, editor of The New Republic, Wired, "We're All Gonna Die!" 11/7, http://www.wired.com/wired/archive/11.07/doomsday.html]

3. Germ warfare! Like chemical agents, biological weapons have never lived up to their billing in popular culture. Consider the 1995 medical thriller Outbreak, in which a highly contagious virus takes out entire towns. The reality is quite different. Weaponized smallpox escaped from a Soviet laboratory in Aralsk, Kazakhstan, in 1971; three people died, no epidemic followed. In 1979, weapons-grade anthrax got out of a Soviet facility in Sverdlovsk (now called Ekaterinburg); 68 died, no epidemic. The loss of life was tragic, but no greater than could have been caused by a single conventional bomb. In 1989, workers at a US government facility near Washington were accidentally exposed to Ebola virus. They walked around the community and hung out with family and friends for several days before the mistake was discovered. No one died. The fact is, evolution has spent millions of years conditioning mammals to resist germs. Consider the Black Plague. It was the worst known pathogen in history, loose in a Middle Ages society of poor public health, awful sanitation, and no antibiotics. Yet it didn't kill off humanity. Most people who were caught in the epidemic survived. Any superbug introduced into today's Western world would encounter top-notch public health, excellent sanitation, and an array of medicines specifically engineered to kill bioagents. Perhaps one day some aspiring Dr. Evil will invent a bug that bypasses the immune system. Because it is possible some novel superdisease could be invented, or that existing pathogens like smallpox could be genetically altered to make them more virulent (two-thirds of those who contract natural smallpox survive), biological agents are a legitimate concern. They may turn increasingly troublesome as time passes and knowledge of biotechnology becomes harder to control, allowing individuals or small groups to cook up nasty germs as readily as they can buy guns today. But no superplague has ever come close to wiping out humanity before, and it seems unlikely to happen in the future.

### Chemical Weapons

#### Chemical weapons won’t be used – too unreliable.

Mackenzie 7

(Debora, NewScientist Staff writer, 4/25/7, “Chemical weapons still causing concern,” http://www.newscientist.com/article/mg19426014.700-chemical-weapons-still-causing-concern.html)

Since it came into force on 29 April 1997, nearly all the world's states have signed up to the CWC, and inspectors regularly verify that their chemical plants are clean. "The international norm against chemical weapons is firmly established," says Rogelio Pfirter, head of the Organisation for the Prohibition of Chemical Weapons (OPCW), the CWC's secretariat at The Hague in the Netherlands. It helps that governments now have little appetite for chemical weapons. They are bad for a country's image, unreliable on the battlefield and are not an effective deterrent: having a chemical arsenal did not stop Iraq being attacked in 1991. These factors have contributed to the success of the CWC, says former OPCW inspector Sergey Batsanov.

### AT: Warming Impact

#### Impacts inev – even if we could get to zero emissions, temperatures rise until the year 3000.

Solomon et al 9, Chairwoman of the IPCC

(Susan- member of the US National Academy of Sciences, the European Academy of Sciences, and the Academy of Sciences of France, Nobel Peace Prize Winner, Chairwoman of the IPCC, February 10, “Irreversible climate change due to carbon dioxide emissions” PNAS, Vol 106, http://www.pnas.org/content/early/2009/01/28/0812721106.full.pdf)

Over the 20th century, the atmospheric concentrations of key greenhouse gases increased due to human activities. The stated objective (Article 2) of the United Nations Framework Convention on Climate Change (UNFCCC) is to achieve stabilization of greenhouse gas concentrations in the atmosphere at a low enough level to prevent ‘‘dangerous anthropogenic interference with the climate system.’’ Many studies have focused on projections of possible 21st century dangers (1–3). However, the principles (Article 3) of the UNFCCC specifically emphasize ‘‘threats of serious or irreversible damage,’’ underscoring the importance of the longer term. While some irreversible climate changes such as ice sheet collapse are possible but highly uncertain (1, 4), others can now be identified with greater confidence, and examples among the latter are presented in this paper. It is not generally appreciated that the atmospheric temperature increases caused by rising carbon dioxide concentrations are not expected to decrease significantly even if carbon emissions were to completely cease (5–7) (see Fig. 1). Future carbon dioxide emissions in the 21st century will hence lead to adverse climate changes on both short and long time scales that would be essentially irreversible (where irreversible is defined here as a time scale exceeding the end of the millennium in year 3000; note that we do not consider geo-engineering measures that might be able to remove gases already in the atmosphere or to introduce active cooling to counteract warming). For the same reason, the physical climate changes that are due to anthropogenic carbon dioxide already in the atmosphere today are expected to be largely irreversible. Such climate changes will lead to a range of damaging impacts in different regions and sectors, some of which occur promptly in association with warming, while others build up under sustained warming because of the time lags of the processes involved. Here we illustrate 2 such aspects of the irreversibly altered world that should be expected. These aspects are among reasons for concern but are not comprehensive; other possible climate impacts include Arctic sea ice retreat, increases in heavy rainfall and flooding, permafrost melt, loss of glaciers and snowpack with attendant changes in water supply, increased intensity of hurricanes, etc. A complete climate impacts review is presented elsewhere (8) and is beyond the scope of this paper. We focus on illustrative adverse and irreversible climate impacts for which 3 criteria are met: (i) observed changes are already occurring and there is evidence for anthropogenic contributions to these changes, (ii) the phenomenon is based upon physical principles thought to be well understood, and (iii) projections are available and are broadly robust across models. Advances in modeling have led not only to improvements in complex Atmosphere–Ocean General Circulation Models (AOGCMs) for projecting 21st century climate, but also to the implementation of Earth System Models of Intermediate Complexity (EMICs) for millennial time scales. These 2 types of models are used in this paper to show how different peak carbon dioxide concentrations that could be attained in the 21st century are expected to lead to substantial and irreversible decreases in dry-season rainfall in a number of already-dry subtropical areas and lower limits to eventual sea level rise of the order of meters, implying unavoidable inundation of many small islands and low-lying coastal areas. Results Longevity of an Atmospheric CO2 Perturbation. As has long been known, the removal of carbon dioxide from the atmosphere involves multiple processes including rapid exchange with the land biosphere and the surface layer of the ocean through air–sea exchange and much slower penetration to the ocean interior that is dependent upon the buffering effect of ocean chemistry along with vertical transport (9–12). On the time scale of a millennium addressed here, the CO2 equilibrates largely between the atmosphere and the ocean and, depending on associated increases in acidity and in ocean warming (i.e., an increase in the Revelle or ‘‘buffer’’ factor, see below), typically 20% of the added tonnes of CO2 remain in the atmosphere while 80% are mixed into the ocean. Carbon isotope studies provide important observational constraints on these processes and time constants. On multimil- lenium and longer time scales, geochemical and geological processes could restore atmospheric carbon dioxide to its pre- industrial values (10, 11), but are not included here. Fig. 1 illustrates how the concentrations of carbon dioxide would be expected to fall off through the coming millennium if manmade emissions were to cease immediately following an illustrative future rate of emission increase of 2% per year [comparable to observations over the past decade (ref. 13)] up to peak concentrations of 450, 550, 650, 750, 850, or 1,200 ppmv; similar results were obtained across a range of EMICs that were assessed in the Intergovernmental Panel on Climate Change (IPCC) Fourth Assessment Report (5, 7). This is not intended to be a realistic scenario but rather to represent a test case whose purpose is to probe physical climate system changes. A more gradual reduction of carbon dioxide emission (as is more likely), or a faster or slower adopted rate of emissions in the growth period, would lead to long-term behavior qualitatively similar to that illustrated in Fig. 1 (see also Fig. S1). The example of a sudden cessation of emissions provides an upper bound to how much reversibility is possible, if, for example, unexpectedly damaging climate changes were to be observed. Carbon dioxide is the only greenhouse gas whose falloff displays multiple rather than single time constants (see Fig. S2). Current emissions of major non-CO2 greenhouse gases such as methane or nitrous oxide are significant for climate change in the next few decades or century, but these gases do not persist over time in the same way as carbon dioxide (14). Fig. 1 shows that a quasi-equilibrium amount of CO2 is expected to be retained in the atmosphere by the end of the millennium that is surprisingly large: typically 40% of the peak concentration enhancement over preindustrial values ( 280 ppmv). This can be easily understood on the basis of the observed instantaneous airborne fraction (AFpeak) of 50% of anthropogenic carbon emissions retained during their buildup in the atmosphere, together with well-established ocean chemistry and physics that require 20% of the emitted carbon to remain in the atmosphere on thousand-year timescales [quasi- equilibrium airborne fraction (AFequi), determined largely by the Revelle factor governing the long-term partitioning of carbon between the ocean and atmosphere/biosphere system] (9–11). Assuming given cumulative emissions, EMI, the peak concen- tration, CO2peak (increase over the preindustrial value CO20), and the resulting 1,000-year quasi-equilibrium concentration, CO2equi can be expressed as COpeak 2 = CO02 + AFpeak EMI [1] COequi 2 = CO02 + AFequi EMI [2] so that COequi2 – CO0 2 = AFequi/AFpeak (COpeak 2 – CO02) [3] Given an instantaneous airborne fraction (AFpeak) of 50% during the period of rising CO2, and a quasi-equilbrium airborne factor (AFequi) of 20%, it follows that the quasi-equilibrium enhancement of CO2 concentration above its preindustrial value is 40% of the peak enhancement. For example, if the CO2 concentration were to peak at 800 ppmv followed by zero emissions, the quasi-equilibrium CO2 concentration would still be far above the preindustrial value at 500 ppmv. Additional carbon cycle feedbacks could reduce the efficiency of the ocean and biosphere to remove the anthropogenic CO2 and thereby increase these CO2 values (15, 16). Further, a longer decay time and increased CO2 concentrations at year 1000 are expected for large total carbon emissions (17). Irreversible Climate Change: Atmospheric Warming. Global average temperatures increase while CO2 is increasing and then remain approximately constant (within 0.5 °C) until the end of the millennium despite zero further emissions in all of the test cases shown in Fig. 1. This important result is due to a near balance between the long-term decrease of radiative forcing due to CO2 concentration decay and reduced cooling through heat loss to the oceans. It arises because long-term carbon dioxide removal and ocean heat uptake are both dependent on the same physics of deep-ocean mixing. Sea level rise due to thermal expansion accompanies mixing of heat into the ocean long after carbon dioxide emissions have stopped. For larger carbon dioxide concentrations, warming and thermal sea level rise show greater increases and display transient changes that can be very rapid (i.e., the rapid changes in Fig. 1 Middle), mainly because of changes in ocean circulation (18). Paleoclimatic evidence suggests that additional contributions from melting of glaciers and ice sheets may be comparable to or greater than thermal expansion (discussed further below), but these are not included in Fig. 1. Fig. 2 explores how close the modeled temperature changes are to thermal equilibrium with respect to the changing carbon dioxide concentration over time, sometimes called the realized warming fraction (19) (shown for the different peak CO2 cases). Fig. 2 Left shows how the calculated warmings compare to those expected if temperatures were in equilibrium with the carbon dioxide concentrations vs. time, while Fig. 2 Right shows the ratio of these calculated time-dependent and equilibrium tempera- tures. During the period when carbon dioxide is increasing, the realized global warming fraction is 50–60% of the equilibrium warming, close to values obtained in other models (5, 19). After emissions cease, the temperature change approaches equilib- rium with respect to the slowly decreasing carbon dioxide concentrations (cyan lines in Fig. 2 Right). The continuing warming through year 3000 is maintained at 40–60% of the equilibrium warming corresponding to the peak CO2 concentration (magenta lines in Fig. 2 Right). Related changes in fast-responding atmospheric climate variables such as precipitation, water vapor, heat waves, cloudiness, etc., are expected to occur largely simultaneously with the temperature changes. Irreversible Climate Change: Precipitation Changes. Warming is expected to be linked to changes in rainfall (20), which can adversely affect the supply of water for humans, agriculture, and ecosystems. Precipitation is highly variable but long-term rainfall decreases have been observed in some large regions including, e.g., the Mediterranean, southern Africa, and parts of south- western North America (21–25). Confident projection of future changes remains elusive over many parts of the globe and at small scales. However, well-known physics (the Clausius–Clapeyron law) implies that increased temperature causes increased atmospheric water vapor concentrations, and changes in water vapor transport and the hydrologic cycle can hence be expected (26–28). Further, advances in modeling show that a robust characteristic of anthropogenic climate change is poleward expansion of the Hadley cell and shifting of the pattern of precipitation minus evaporation (P–E) and the storm tracks (22, 26), and hence a pattern of drying over much of the already-dry subtropics in a warmer world ( 15°-40° latitude in each hemi- sphere) (5, 26). Attribution studies suggest that such a drying pattern is already occurring in a manner consistent with models including anthropogenic forcing (23), particularly in the south- western United States (22) and Mediterranean basin (24, 25). We use a suite of 22 available AOGCM projections based upon the evaluation in the IPCC 2007 report (5, 29) to characterize precipitation changes. Changes in precipitation are expected (5, 20, 30) to scale approximately linearly with increasing warming (see Fig. S3). The equilibrium relationship between precipitation and temperature may be slightly smaller (by 15%) than the transient values, due to changes in the land/ ocean thermal contrast (31). On the other hand, the observed 20th century changes follow a similar latitudinal pattern but presently exceed those calculated by AOGCMs (23). Models that include more complex representations of the land surface, soil, and vegetation interactively are likely to display additional feedbacks so that larger precipitation responses are possible. Here we evaluate the relationship between temperature and precipitation averaged for each month and over a decade at each grid point. One ensemble member is used for each model so that all AOGCMs are equally weighted in the multimodel ensemble; results are nearly identical if all available model ensemble members are used. Fig. 3 presents a map of the expected dry-season (3 driest consecutive months at each grid point) precipitation trends per degree of global warming. Fig. 3 shows that large uncertainties remain in the projections for many regions (white areas). How- ever, it also shows that there are some subtropical locations on every inhabited continent where dry seasons are expected to become drier in the decadal average by up to 10% per degree of warming. Some of these grid points occur in desert regions that are already very dry, but many occur in currently more temperate and semiarid locations. We find that model results are more robust over land across the available models over wider areas for drying of the dry season than for the annual mean or wet season (see Fig. S4). The Insets in Fig. 3 show the monthly mean projected precipitation changes averaged over several large regions as delineated on the map. Increased drying of respective dry seasons is projected by 90% of the models averaged over the indicated regions of southern Europe, northern Africa, southern Africa, and southwestern North America and by 80% of the models for eastern South America and western Australia (see Fig. S3). Although given particular years would show exceptions, the long-term irreversible warming and mean rainfall changes as suggested by Figs. 1 and 3 would have important consequences in many regions. While some relief can be expected in the wet season for some regions (Fig. S4), changes in dry-season precipitation in northern Africa, southern Europe, and western Australia are expected to be near 20% for 2 °C warming, and those of southwestern North America, eastern South America, and southern Africa would be 10% for 2 °C of global mean warming. For comparison, the American ‘‘dust bowl’’ was associated with averaged rainfall decreases of 10% over 10–20 years, similar to major droughts in Europe and western Australia in the 1940s and 1950s (22, 32). The spatial changes in precipitation as shown in Fig. 3 imply greater challenges in the distribution of food and water supplies than those with which the world has had difficulty coping in the past. Such changes occurring not just for a few decades but over centuries are expected to have a range of impacts that differ by region. These include, e.g., human water supplies (25), effects on dry-season wheat and maize agriculture in certain regions of rain-fed farming such as Africa (33, 34), increased fire frequency, ecosystem change, and desertification (24, 35–38). Fig. 4 Upper relates the expected irreversible changes in regional dry-season precipitation shown in Fig. 3 to best estimates of the corresponding peak and long-term CO2 concentrations. We use 3 °C as the best estimate of climate sensitivity across the suite of AOGCMs for a doubling of carbon dioxide from preindustrial values (5) along with the regional drying values depicted in Fig. 3 and assuming that 40% of the carbon dioxide peak concentration is retained after 1000 years. Fig. 4 shows that if carbon dioxide were to peak at levels of 450 ppmv, irreversible decreases of 8–10% in dry-season precipitation would be expected on average over each of the indicated large regions of southern Europe, western Australia, and northern Africa, while a carbon dioxide peak value near 600 ppmv would be expected to lead to sustained rainfall decreases of 13–16% in the dry seasons in these areas; smaller but statistically significant irreversible changes would also be expected for southwestern North America, eastern South America, and Southern Africa. Irreversible Climate Change: Sea Level Rise. Anthropogenic carbon dioxide will cause irrevocable sea level rise. There are 2 relatively well-understood processes that contribute to this and a third that may be much more important but is also very uncertain. Warm- ing causes the ocean to expand and sea levels to rise as shown in Fig. 1; this has been the dominant source of sea level rise in the past decade at least (39). Loss of land ice also makes important contributions to sea level rise as the world warms. Mountain glaciers in many locations are observed to be retreating due to warming, and this contribution to sea level rise is also relatively well understood. Warming may also lead to large losses of the Greenland and/or Antarctic ice sheets. Additional rapid ice losses from particular parts of the ice sheets of Greenland and Antarctica have recently been observed (40–42). One recent study uses current ice discharge data to suggest ice sheet contributions of up to 1–2 m to sea level rise by 2100 (42), but other studies suggest that changes in winds rather than warming may account for currently observed rapid ice sheet flow (43), rendering quantitative extrapolation into the future uncertain. In addition to rapid ice flow, slow ice sheet mass balance processes are another mechanism for potential large sea level rise. Paleoclimatic data demonstrate large contributions of ice sheet loss to sea level rise (1, 4) but provide limited constraints on the rate of such processes. Some recent studies suggest that ice sheet surface mass balance loss for peak CO2 concentrations of 400–800 ppmv may be even slower than the removal of manmade carbon dioxide following cessation of emis- sions, so that this loss could contribute less than a meter to irreversible sea level rise even after many thousands of years (44, 45). It is evident that the contribution from the ice sheets could be large in the future, but the dependence upon carbon dioxide levels is extremely uncertain not only over the coming century but also in the millennial time scale. An assessed range of models suggests that the eventual contribution to sea level rise from thermal expansion of the ocean is expected to be 0.2–0.6 m per degree of global warming (5). Fig. 4 uses this range together with a best estimate for climate sensitivity of 3 °C (5) to estimate lower limits to eventual sea level rise due to thermal expansion alone. Fig. 4 shows that even with zero emissions after reaching a peak concentration, irreversible global average sea level rise of at least 0.4–1.0 m is expected if 21st century CO2 concentrations exceed 600 ppmv and as much as 1.9 m for a peak CO2 concentration exceeding 1,000 ppmv. Loss of glaciers and small ice caps is relatively well understood and is expected to be largely complete under sustained warming of, for example, 4 °C within 500 years (46). For lower values of warming, partial remnants of glaciers might be retained, but this has not been examined in detail for realistic representations of glacier shrinkage and is not quantified here. Complete losses of glaciers and small ice caps have the potential to raise future sea level by 0.2–0.7 m (46, 47) in addition to thermal expansion. Further contributions due to partial loss of the great ice sheets of Antarctica and/or Greenland could add several meters or more to these values but for what warming levels and on what time scales are still poorly characterized. Sea level rise can be expected to affect many coastal regions (48). While sea walls and other adaptation measures might combat some of this sea level rise, Fig. 4 shows that carbon dioxide peak concentrations that could be reached in the future for the conservative lower limit defined by thermal expansion alone can be expected to be associated with substantial irreversible commitments to future changes in the geography of the Earth because many coastal and island features would ultimately become submerged. Discussion: Some Policy Implications It is sometimes imagined **that** slow processes such as climate changes pose small risks, on the basis of the assumption that a choice can always be made to quickly reduce emissions and thereby reverse any harm within a few years or decades. We have shown that this assumption is incorrect for carbon dioxide emissions, because of the longevity of the atmospheric CO2 perturbation and ocean warming. Irreversible climate changes due to carbon dioxide emissions have already taken place, and future carbon dioxide emissions would imply further irreversible effects on the planet, with attendant long legacies for choices made by contemporary society. Discount rates used in some estimates of economic trade-offs assume that more efficient climate mitigation can occur in a future richer world, but neglect the irreversibility shown here. Similarly, understanding of irreversibility reveals limitations in trading of greenhouse gases on the basis of 100-year estimated climate changes (global warming potentials, GWPs), because this metric neglects carbon dioxide’s unique long-term effects. In this paper we have quantified how societal decisions regarding carbon dioxide concentrations that have already occurred or could occur in the coming century imply irreversible dangers relating to climate change for some illustrative populations and regions. These and other dangers pose substantial challenges to humanity and nature, with a magnitude that is directly linked to the peak level of carbon dioxide reached.

### 2AC NSA Thumper

#### Supreme court action on NSA war powers inevitable—triggers the link

Fitzgerald 12/28

[12/28/13, Sandy Fitzgerald, “Supreme Court May Have to Break NSA Surveillance Stalemate”, <http://www.newsmax.com/Newsfront/nsa-surveillance-contradictory-supreme/2013/12/28/id/544180#ixzz2pI4aAjrN>]

It may be up to the U.S. Supreme Court to decide whether the National Security Agency's collection of Americans' phone data is constitutional, after two federal judges issued contradictory landmark rulings on the matter. The American Civil Liberties Union already plans to appeal Friday's decision by U.S. District Judge William Pauley III in New York that said the agency's bulk telephone metadata is not only legal but necessary, reports cruxialcio.com. Pauley said the metadata, which includes records of the numbers that were called and how long calls last while not recording the content of the calls is a vital tool for capturing terrorists. "The bulk telephony metadata collection program represents the government's counter-punch: connecting fragmented and fleeting communications to reconstruct and eliminate al-Qaeda's terror network," Pauley said. But his ruling came less than two weeks after another federal judge, U.S. District Court Judge Richard Leon in Washington, D.C., said the metadata collection was a likely violation of citizens' rights to privacy. The American Civil Liberties Union, which claimed the program is unconstitutional and sued the government, said it would appeal the ruling. "We are extremely disappointed with this decision, which misinterprets the relevant statutes, understates the privacy implications of the government’s surveillance and misapplies a narrow and outdated precedent to read away core constitutional protections," said Jameel Jaffer, ACLU deputy legal director. The appeals would be filed in courts in New York and Washington on either case, and if the split remains, will likely head to the Supreme Court after that, The New York Times reports. Even Pauley, while making his ruling, admitted that the NSA's data collection, revealed by whistleblower Edward Snowden, "imperils the civil liberties of every citizen," but still might have captured the terrorists before the 9-11 attacks on the Pentagon and World Trade Center. But he said it is up to the president and Congress to end the NSA's activities, not the courts. Pauley also said that it is not up to him to say if the law will be appealed at the Supreme Court level. "The Supreme Court has instructed lower courts not to predict whether it would overrule a precedent even if its reasoning has been supplanted by later cases," noted Pauley.

#### Sotomayor’s legal opinion means it’ll result in restrictions—extremely influential and dominant manifesto

Serwer 13

[12/23/13, Adam Serwer, “How Sotomayor undermined Obama’s NSA”, <http://www.msnbc.com/msnbc/how-sotomayor-undermined-obamas-nsa>]

If Edward Snowden gave federal courts the means to declare the National Security Agency’s data-gathering unconstitutional, Sonia Sotomayor showed them how. It was Sotomayor’s lonely concurrence in U.S. v Jones, a case involving warrantless use of a GPS tracker on a suspect’s car, that the George W. Bush-appointed Judge Richard Leon relied on when he ruled that the program was likely unconstitutional last week. It was that same concurrence the White House appointed review board on surveillance policy cited when it concluded government surveillance should be scaled back. “It may be necessary to reconsider the premise that an individual has no reasonable expectation of privacy in information voluntarily disclosed to third parties,” Sotomayor wrote in 2012. “This approach is ill suited to the digital age, in which people reveal a great deal of information about themselves to third parties in the course of carrying out mundane tasks.” Not a single other member of the high court signed onto Sotomayor’s concurrence; her three Democratic appointed colleagues sided with a narrower one written by Justice Samuel Alito. Though all nine justices agreed that police would likely need to get a warrant to place a GPS device on a suspect’s car, it was Sotomayor who was willing to argue that modern technology had essentially changed the meaning of what privacy means when so much of our personal information and history is preserved online, and can be easily collected by the government in mass quantities. When the Framers of the Constitution wrote of “persons, houses, papers, and effects,” they could not have imagined cloud storage or cell phone location tracking. The legal challenges to the NSA’s metadata program may never reach the Supreme Court. But if they do, the high court will have to reckon with Sotomayor’s reasoning in Jones. “Sotomayor’s concurrence in Jones is already proving to be extremely influential,” says Adam Winkler, a law professor at the UCLA School of Law. “Sotomayor was willing to face up to the challenges of new technology, that people still have a right to privacy even if they’re giving up information to a cell phone provider or doing a search on Google.” More than just a legal opinion, Sotomayor penned a legal manifesto on privacy for a digital age debated among Fourth Amendment scholars and brandished by civil libertarians seeking to prevent the coming of a digital government panopticon. “GPS monitoring generates a precise, comprehensive record of a person’s public movements that reflects a wealth of detail about her familial, political, professional, religious, and sexual associations,” Sotomayor wrote–a description that could easily be applied to all sorts of digital records. Judge Leon cited that sentence in his ruling that the NSA’s metadata gathering was likely unconstitutional, explaining how “[r]ecords that once would have revealed a few scattered tiles of information about a person now reveal an entire mosaic–a vibrant and constantly updating picture of the person’s life.” The legal argument behind the NSA’s data-gathering is based in part on long-standing Fourth Amendment doctrine that when we give up information to third parties like the phone company, it’s no longer private. Civil liberties groups had long argued that view was increasingly anachronistic, but it was Sotomayor’s concurrence that, for the first time, gave those theories the legitimacy that comes with being adopted by a member of the high court. Sotomayor would provide civil liberties groups with a firm hand-hold as they sought to challenge the government’s warrantless acquisition of all types of digital records, from cell tower data to the NSA’s metadata program. “Justice Sotomayor’s concurrence in Jones was the first time a Supreme Court justice seemed to acknowledge and speak directly to that new reality,” said Catherine Crump of the ACLU, who helped write the group’s Supreme Court brief in Jones. “To have a Supreme Court Justice acknowledge that there is a difference between a few discrete pieces of information about someone and the complete records you can now gather in the era of big data made us feel like we were on the right path.” Winkler compared Sotomayor’s concurrence in Jones to Justice Louis Brandeis’ concurrence in Whitney v. California, whose expansive interpretation of the First Amendment we now take for granted. “I think that Sotomayor’s concurrence is going to be seen much the same way,” Winkler said. If it seems ironic that a justice appointed by President Obama may have lit a legal path to overturning his own surveillance policy, the greater shock should belong to Sotomayor’s early detractors. When Obama first tapped Sotomayor in 2009, she was savaged as an intellectual lightweight, an affirmative action baby who would never be able to write the sort of far-sighted dissents or concurrences that might persuade judges appointed by the opposite party or potentially become law. That is, the exact sort of concurrence she penned in Jones. When the woman who would become the first Latina Supreme Court justice wasn’t being attacked as an anti-white racist by the likes of National Journal columnist Stuart Taylor Jr. or former House Speaker Newt Gingrich, leading liberal legal minds were wringing their hands about her supposed lack of sophistication or intelligence. In a 2009 article for The New Republic, Jeffrey Rosen quoted anonymous sources questioning Sotomayor’s intelligence and wondered whether she met the “demanding standard” for a Supreme Court Justice. Sotomayor, Harvard Law Professor Laurence Tribe wrote to Obama, is “not nearly as smart as she seems to think she is,” and her “reputation for being something of a bully could well make her liberal impulses backfire” and alienate potential swing votes from the conservative wing of the court. Rosen didn’t respond to a request for comment from msnbc. Tribe however, acknowledged underestimating Sotomayor. “I greatly underestimated how powerful a jurist Justice Sotomayor would be. From the start, she has been an enormously impressive justice, making a major impact in cases like Jones, among many others,” Tribe wrote in an email. “I now regard her as a major force on the Court – someone who is likely to make a historic contribution – and I have no doubt that I was totally wrong in my initial expressions of doubt.”

### 2AC District Courts

#### **The DC District Court would order release**

Schroeder et al 9, retired federal judges

(James C., GARY A. ISAAC Counsel of Record STEPHEN J. KANE STEPHEN S. SANDERS CHAD M. CLAMAGE JOSHUA M. GRENARD, “On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit” <http://www.oyez.org/sites/default/files/cases/briefs/pdf/brief__08-1234__6.pdf>)

All nine members of the Boumediene Court recognized that the power to order release is a fundamental element of the Article III courts’ habeas jurisdiction. “[T]hough release need not be the exclusive remedy and is not the appropriate one in every case in which the writ is granted,” nevertheless “the habeas court must have the power to order the conditional release of an individual unlawfully detained.” 128 S. Ct. at 2266 (emphasis added).6 Accord id. at 2271 (“when the judicial power to issue habeas corpus properly is invoked the judicial officer must have adequate authority \* \* \* to formulate and issue appropriate orders for relief, including, if necessary, an order directing the prisoner’s release”) (emphasis added); id. at 2283 (Roberts, C.J., dissenting) (“the writ requires most fundamentally an Article III court able to hear the prisoner’s claims and, when necessary, order release”).Thus, Boumediene makes clear that the petitioners were entitled to petition for a writ of habeas corpus to challenge their imprisonment at Guantanamo. Boumediene makes plain as well that, at the very least, the Article III courts adjudicating such petitions must have, and do have, “the power to order the conditional release of an individual unlawfully detained.” Boumediene, 128 S. Ct. at 2266 (emphasis added).

### 2AC Court Capital DA

#### Interbranch conflicts don’t spill over—individual court cases are decided on specific issues

Redish and Drizen 87, Professor of Law and Law Clerk

[April, 1987, Martin H. Redish (Professor of Law, Northwestern University) and Karen L. Drizin (Law Clerk to the Honorable Seymour Simon, Illinois Supreme Court) “CONSTITUTIONAL FEDERALISM AND JUDICIAL REVIEW: THE ROLE OF TEXTUAL ANALYSIS”. NEW YORK UNIVERSITY LAW REVIEW V. 62]

Dean Choper's fundamental assumption, then, is that Supreme Court abstention on issues of constitutional federalism would somehow increase, or at least curtail loss of, limited capital for the more vital area of individual liberty. However, even if one were to concede that judicial review is more fundamental to our constitutional scheme in the area of individual liberty than in matters of federalism, acceptance of Dean Choper's proposal would not necessarily follow. The problem is that it is neither intuitively nor empirically clear that the Court's so-called capital is transferable from one area of constitutional law to another. As one of the current authors has previously argued: It is difficult to imagine . . . that the widespread negative public reactions to Miranda v. Arizona, Engle v. Vitale, or Roe v. Wade would [\*37] have been affected at all by the Court's practices on issues of separation of powers and federalism. Rather, public reaction in each seems to have focused on the specific, highly charged issues of rights for criminals, prayer in public schools, and abortions. It is doubtful that the Court would have had an easier time if it had chosen to stay out of interbranch and intersystemic conflicts. 146

#### Increasing the quantity of cases on the docket enables the court to rule against the executive more—status quo depletion ensures excessive executive influence

Owens and Simon 12, Assistant Professor of Political Science and a Fellow at Harvard Law

[2012, Ryan Owens is a Lyons Family Faculty Scholar & Assistant Professor of Political Science, University of Wisconsin-Madison, David Simon is a Fellow, the Project on Law & Mind Sciences, Harvard Law School; Ph.D. Candidate, University of Cambridge; LL.M., Harvard Law School; J.D., Chicago-Kent College of Law; B.A., University of Michigan, “Explaining the Supreme Court's Shrinking Docket”, 53 Wm. & Mary L. Rev. 1219, <http://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=3424&context=wmlr>]

In addition to unsettled law and a hampered Court, a small docket may lead to the excessive influence of certain parties or interests. Scholars often complain that organized interests exert too much control in politics and upon the Court.171 Copyright law scholars, for example, lament how Disney single-handedly induced Congress to extend copyright protection by twenty years.172 In administrative law, special interest groups often “capture” agencies in areas ranging from gun regulation173 to aviation rules174 to copyright policy. Recently, Richard Lazarus highlighted the potential capture of the Supreme Court. He argued that the Supreme Court bar—a highly specialized and powerful group of attorneys—substantially influences the Court’s decision to grant or deny cert.176 To show this, Lazarus studied cert petition grant rates from 1980 to 2008. Specifically, he examined the rate at which the Court granted cert when “expert Supreme Court advocate[s]”177 sought review.178 He found that, over the years, expert practitioners continually gained influence over the Court’s docket.179 In 1980, for example, the Court granted cert in 5.8 percent of cases brought by expert practitioners.180 By 2007 and 2008, that rate had increased to 53.8 percent and 55.5 percent, respectively.181 This capture, Lazarus fears, skews the Court’s docket toward issues that are not “truly the most important for the nation.”182 Instead, the cases that the Court hears reflect the preferences of a small cadre of lawyers and their clients.183 The Justices and their clerks cannot pay close attention to the thousands of cert petitions filed each year.184 What constitutes an information deficit for the Justices, then, becomes a “tactical advantage” for the Supreme Court bar.185 They have the reputation, forum, and experience to argue persuasively that their cases are the ones the Court should hear. Lazarus is not alone; additional empirical evidence drives home the point that elite attorneys can influence Justices. Consider the work of Kevin McGuire, who examined the success of Washington, D.C. attorneys.186 McGuire found that Washington, D.C.-based attorneys are much more likely than non-Washington attorneys to succeed before the Court.187 In a similar work, McGuire found that attorneys who are more experienced than their opposing counsel are more likely to win their cases.188 Although there are a host of factors that lead to their victories—such as the incentive to provide more credible information and the ability to key in on the Justices’ individual proclivities—the unmistakable fact is that elite attorneys observe more victories before the Court and, thus, are in a position to exert heightened influence over Justices.189 When the Court’s docket is small, the proportion of influence these attorneys exert over federal law grows dramatically. Of course, no attorney can compare to attorneys in the Office of the Solicitor General (OSG) in terms of influencing the Court. A smaller Court docket surely, then, promises to increase the influence of the executive branch. Consider recent work by Ryan Black and Ryan Owens.190 The authors examined every case coming from a federal court of appeals in which the OSG filed an amicus curiae brief at the agenda stage between the 1970 and 1993 Terms.191 They analyzed each Justice’s general ideological views as well as his or her theoretically expected agenda vote in the case.192 They then examined whether each Justice cast a vote consistent with the recommended action of the OSG.193 The findings are remarkable. Even those Justices most likely to disagree with the OSG—both in a general ideological sense and in the particulars of the case before them—still followed the OSG’s recommendation more than 35 percent of the time.194 Put in more personal terms, the results demonstrated that Justice Thurgood Marshall, a staunch liberal, followed a recommendation made by President Reagan’s Solicitor General Rex Lee thirty-five times out of one hundred, even when Marshall totally disagreed with the OSG recommendation in the case. That Justices followed OSG recommendations to such a degree even when they had so little agreement with the OSG provided, the authors believed, strong evidence of OSG influence.195 Additional work on the OSG suggests that the executive branch might disproportionately benefit from a smaller docket. In a forthcoming book by Black and Owens,196 the authors use cutting-edge matching methods to find evidence of OSG influence. The authors compare the success of OSG attorneys with the success of attorneys who formerly worked in the OSG, and with the success of attorneys who never worked in the OSG.197 They matched observations such that OSG attorneys and non-OSG attorneys were as identical as possible in terms of experience, resources, amicus assistance, and other factors.198 The goal was to ensure that the two different groups of attorneys were identical, save for the fact that in one set of cases, the OSG argued before the Court, whereas in the other set of cases a non-OSG attorney argued before the Court. The results are compelling. In terms of success before the Court, an OSG attorney is 12 percent more likely to win than an otherwise identical non-OSG attorney who formerly worked in the OSG, and 14 percent more likely to win than an otherwise identical non-OSG attorney who never worked in the OSG.199 Moreover, the Court’s majority opinions are significantly more likely to borrow language from the OSG’s briefs than from otherwise identical non-OSG attorney’s briefs.200 Finally, the Court is much more likely to positively or negatively interpret precedent when the OSG makes such a recommendation versus an identical case in which it does not.201 In short, the OSG wields considerable influence across the Court’s decision-making process. Such influence, we believe, will be magnified exponentially with a depleted docket.

#### **Public supports the plan**

Reuters 13 (Quoting John McCain, Republican Senator, 6-9-13, "Support growing to close Guantanamo prison: senator" Reuters) www.reuters.com/article/2013/06/09/us-usa-obama-guantanamo-idUSBRE9580BL20130609

Republican Senator John McCain said on Sunday there is increasing public support for closing the military prison at Guantanamo Bay, Cuba, and moving detainees to a facility on the U.S. mainland. "There's renewed impetus. And I think that most Americans are more ready," McCain, who went to Guantanamo last week with White House chief of staff Denis McDonough and California Democratic Senator Dianne Feinstein, told CNN's "State of the Union" program. McCain, a senior member of the Senate Armed Services Committee, said he and fellow Republican Senator Lindsey Graham, of South Carolina, are working with the Obama administration on plans that could relocate detainees to a maximum-security prison in Illinois. "We're going to have to look at the whole issue, including giving them more periodic review of their cases," McCain, of Arizona, said. President Barack Obama has pushed to close Guantanamo, saying in a speech in May it "has become a symbol around the world for an America that flouts the rule of law."

#### That boosts legitimacy

Durr et al 2K (Robert, “Ideological Divergence and Public Support for the Supreme Court,”, American Journal of Political Science, Volume 44, No. 4, October, p. 775)

We expect our improve measure of aggregate Supreme Court support will be useful to other students of the Court. Unlike support for other institutions, interest in Supreme Court support is driven not by a hypothesized electoral linkage, but by the expectation that the Court necessarily depends on public support as a source of institutional legitimacy and political capital. The level of support the Court enjoys has long been viewed as a crucial resource, both by helping engender a positive response to the Court’s decisions and by encouraging the successful execution of its proclamations, necessarily carried out by other actors and institutions (Caldeira 1986).

#### Judges don’t consider capital when deciding.

Landau, JD Harvard and clerk to US CoA judge, 2005

(David Landau, JD Harvard Law, clerk to Honorable Sandra L. Lynch, U.S. Court of Appeals for the First Circuit, 2005, “THE TWO DISCOURSES IN COLOMBIAN CONSTITUTIONAL JURISPRUDENCE: A NEW APPROACH TO MODELING JUDICIAL BEHAVIOR IN LATIN AMERICA” 37 Geo. Wash. Int'l L. Rev. 687)

Theoretically, attitudinalists could argue that judges rule in accordance with their own ideological preferences honestly, rather than strategically, because for some reason judges simply are not capable of, or prefer not to, act strategically. In practice, however, this is not what they say. Attitudinalists instead say that the factual environment renders strategic action unnecessary, at least for U.S. Supreme Court justices, because, for example, federal judges have life tenure, U.S. Supreme Court justices have no real ambition for higher office, and congressional overrides are rarely a realistic danger. [n25](https://webgateway.dartmouth.edu/us/lnacademic/,DanaInfo=www.lexisnexis.com+frame.do?tokenKey=rsh-20.940299.0671169885&target=results_DocumentContent&reloadEntirePage=true&rand=1248637360461&returnToKey=20_T7032636157&parent=docview#n25) "The Supreme Court's rules and structures, along with those of the American political system in general, give life-tenured justices  [\*696]  enormous latitude to reach decisions based on their personal policy preferences." [n26](https://webgateway.dartmouth.edu/us/lnacademic/,DanaInfo=www.lexisnexis.com+frame.do?tokenKey=rsh-20.940299.0671169885&target=results_DocumentContent&reloadEntirePage=true&rand=1248637360461&returnToKey=20_T7032636157&parent=docview#n26) In other words, both strategic and attitudinal models, in practice, assume that judges are willing and able to act strategically. Where the two theories differ is in their factual assumptions: Strategic models support the belief that judges face various types of constraints that force them to support decisions that differ from their preferred policy points, while attitudinalists believe that the institutional environment leaves at least those judges that they study - generally U.S. Supreme Court justices - free to make decisions that are exactly in accord with their preferred policies. Similarly, followers of strategic theory could theoretically believe that judges act strategically to maximize achievement of some set of goals other than their ideological policy preferences. For example, perhaps judges could prefer "legalistic" goals like adherence to precedent, but would have to defect strategically from absolute adherence to those goals given the presence of other institutions with some clout, like the U.S. Congress. In practice, however, this is not what happens. Instead, strategic theorists virtually always model judges as strategically furthering sets of ideological policy goals, which are the exact same goals modeled by the attitudinal theorists. [n27](https://webgateway.dartmouth.edu/us/lnacademic/,DanaInfo=www.lexisnexis.com+frame.do?tokenKey=rsh-20.940299.0671169885&target=results_DocumentContent&reloadEntirePage=true&rand=1248637360461&returnToKey=20_T7032636157&parent=docview#n27) What we have, then, are two theories that in practice tend to collapse into one. In both theories, actors are assumed: (1) to have preferences; and (2) to act strategically for the maximization of those preferences. [n28](https://webgateway.dartmouth.edu/us/lnacademic/,DanaInfo=www.lexisnexis.com+frame.do?tokenKey=rsh-20.940299.0671169885&target=results_DocumentContent&reloadEntirePage=true&rand=1248637360461&returnToKey=20_T7032636157&parent=docview#n28) In addition, attitudinalists and strategic theorists both believe in a particular kind of rational choice theory: Specifically, the actors' preferences are assumed to be solely ideological, policy-based goals derived from the political realm. It is important to emphasize that both theories also believe that the  [\*697]  proper way to test judicial behavior is to look at what judges actually do, not at what they say: Thus, what matters is the outcome, not the reasoning of the case.

### 2AC Depleted Docket T/—UQ

#### Supreme court’s docket is depleted now

Wolf 12/16

[12/16/13, Richard Wolf, “Shrinking high court docket bedevils conservatives”, <http://www.usatoday.com/story/news/politics/2013/12/16/supreme-court-labor-housing-abortion-discrimination/4038497/>]

WASHINGTON — The Supreme Court's docket is shrinking, and with it an opportunity for conservatives to make gains in several policy arenas, from abortion and age discrimination to low-income housing and labor relations. All four of those issues have disappeared from the justices' schedule in recent weeks before they could be decided on their merits. Each time, given the court's conservative tilt, liberals heaved a sigh of relief.

### AT: Trade Impact

### 2AC Farm Bill Ptx DA

#### Compromise legislation will face significant opposition and other issues thump the link

Pottorf, 1/3 --- Doane chief economist & Washington analyst (1/3/2014, Rich, “D.C. Watch: No holiday break for farm bill committee,” <http://www.porknetwork.com/pork-news/latest/DC-Watch-No-holiday-break-for-farm-bill-committee-238627861.html>))

Congress has been on holiday for the last couple of weeks but key members of the farm bill conference committee and their staffs have been working behind the scenes on a compromise farm bill proposal.

Cap Building Senate Agriculture Committee Chairperson Debbie Stabenow, D-Mich., has promised to unveil the framework for a new bill soon after Congress reconvenes.

The top four negotiators on the House-Senate Conference Committee have been working on a possible compromise, but there is grumbling from some of the other 37 members about being shut out of the process.

The comments suggest the compromise may face some significant opposition in full committee.

Congress has other pressing issues to deal with besides the farm bill.

The continuing resolution funding the government expires on Jan. 15, and Congress must act before then or the government will shut down again.

The staffs of the different appropriations committees have been working through the holidays trying to put together spending packages that fit into the overall budget approved by Congress in December. Congress will need to either pass this omnibus spending bill or approve another continuing resolution to avoid a government shutdown.

With elections looming this fall, no one wants that!

Some in Congress want to use savings from the farm bill to offset the cost of extending unemployment benefits that expired in December for some 1.3 million long-term unemployed. The big debate is over how to pay for another extension.

The Congressional Budget Office puts cost at $6.4 billion over 10 years.

We are also in the middle of the comment period for EPA’s proposed rule that would lower the biofuels mandate for 2014.

The comment period runs through Jan. 28, but EPA has already received more than 10,600 comments. To view or submit comments, visit www.regulations.gov and search under the docket number EPA-HQ-OAR-2013-0479.

Under the proposed rule, the amount of biofuels mandated would total 15.2 billion gallons - with slightly more than 13 billion gallons from corn-based ethanol. But if EPA drops its proposal under heavy opposition and takes no action, the mandate for biofuels use in 2014 would exceed 18 billion gallons.

There will likely be some important court rulings during 2014. Several rulings that were handed down in 2013 have been appealed. Here are the big ones for agriculture:

EPA’s ruling about limiting runoff of fertilizers and sediment in the Chesapeake Bay was upheld in 2013, but has been appealed.

In contrast EPA denied a petition to develop numeric limits for fertilizer runoff in the Mississippi River Basin, but a federal court has required EPA to determine if nutrient limitations are appropriate.

EPA’s proposed rule for the renewable fuels mandate has not been finalized yet, but it looks like the final rule may be challenged in court, especially if the proposed rule is upheld.

The Country of Origin Labeling law is under attack on several fronts. Supporters of COOL won the first round in federal court and that ruling has been appealed. In addition the law is being challenged at the World Trade Organization.

It is possible that tax refunds will be delayed this year unless Congress raises the debt ceiling in a timely manner.

The limit will reset on Feb. 8, and the Treasury Department will need to meet government obligations without exceeding the current cap. However, keeping under the cap will be difficult since the government outlays are at their highest levels at that time of year because of income tax refunds.

#### Won’t pass

**Mayer, 12/30/13** (Amy, “One thing that didn’t happen in 2013: a Farm Bill” High Plains Public Radio, <http://hppr.org/post/one-thing-didn-t-happen-2013-farm-bill>)

The inability to settle on a farm bill illustrates the deep divisions that have become the norm on Capitol Hill. The massive food and agriculture package used to be relatively easy thanks to bipartisan and urban-rural alliances. But this year, progress was a slow slog.

A nine-month extension passed in January bought some time. This summer, the Senate passed its bill, but the House didn’t. Then the House sent two bills to the conference committee, one for agriculture and the other for food stamps.

The conference committee charged with drafting a final bill met off and on for months. The main negotiators were the leaders from each party of the Agriculture Committees of each house – Sen. Debbie Stabenow and Sen. Thad Cochran from the Senate, and Rep. Colin Peterson and Rep. Frank Lucas from the House. Despite reporting progress, the four lawmakers were unable to finish the job before the House adjourned for the year on Friday.

There are three fundamental reasons today’s lawmakers have such a hard time getting the job done. Iowa State University political scientist David Peterson says one is the striking chasm separating today’s Washington politicians.

“We’ve seen an increasing polarization within Congress, in particular we’ve seen the modern Republican Party move further to the right,” Peterson said. “The Democrats have moved some to the left, but really what is driving it is the Republicans have moved further to the right.”

That leaves fewer players drawn toward the middle, where compromises are forged. And it takes a majority of both bodies, plus the president, to enact laws.

“The problem we’ve got right now is that the amount of things that a majority of the House, and in particular a majority of the Republicans—a majority of the majority party in the House—the Democratic Senate, and the Democratic president can agree on is vanishingly small,” Peterson said.

On top of polarization and gridlock, add the lack of earmarks. Peterson says in times past, Congressional leaders could use those small, very specific addendums to sway neutral lawmakers to their side of a bill. But in the last decade, he says, Congress got rid of earmarks. Now deadlines are a main driver pushing Congress to act, though they haven’t been very effective. To be sure, it’s not just the farm bill suffering from this. Everything in Congress is, but the farm bill’s history of wending its way through relatively easily makes the delay more striking.

#### Vote won’t be for weeks and negotiations don’t involve Obama

**Clayton, 1/2/14** (Chris, “New Year means New Farm Bill” <http://www.kxlo-klcm.com/site/index.php?option=com_content&view=article&id=2269:new-year-means-new-farm-bill&catid=8:ag-news-pod&Itemid=115>)

USDA will continue holding back on any effort to implement permanent law with expectations that Congress will move over the next few weeks to complete work on a farm bill.

Agriculture Secretary Tom Vilsack told DTN earlier this week he has high hopes Congress will follow through on conference negotiations between the House and Senate. Such efforts allow USDA to avoid buying milk products at twice the market price because of provisions in permanent law, the secretary said.

"I honestly think right now what we are seeing are positive signs from the leadership of the conference committee on the House and the Senate side and some indication from the House and Senate leadership that there is a desire and interest to get this done," Vilsack said.

The Senate returns to session Monday while the House returns Tuesday. Though no meeting time has been set, the House and Senate conferees on the farm bill could schedule a meeting later next week to vote on some contentious issues the principal negotiators have not been able to resolve in private talks.

"So at this point in time, our focus is on providing technical assistance, ideas and creative thought so whatever differences exist between the House and Senate can be resolved quickly and when they get back in a week or so they can finish up the conference report, have the conference committee vote on whatever issues divide them and present a conference report and hopefully get it passed," Vilsack said.

### 2AC Politics DA (0:42)

#### Won’t pass --- Obama’s weak and incapable, no coop and midterms

Walsh, 12/31 --- longtime chief White House correspondent for U.S. News & World Report (12/31/2013, Kenneth T., “Miscues of 2013 Loom Over 2014 for Obama,” <http://www.usnews.com/news/blogs/Ken-Walshs-Washington/2013/12/31/miscues-of-2013-loom-over-2014-for-obama>))

There was a moment of hope for a new spirit of compromise at the end of 2013 when both major parties in Congress agreed on a modest budget compromise, which Obama endorsed. It did little to solve the country's fundamental fiscal problems but it did avoid another messy confrontation and a government shutdown, so it was deemed progress of a sort. Yet the differences between Democrats and Republicans are so deep, and Obama has shown such an inability to bridge them, that the outlook for 2014 is for more battles on issues ranging from the budget to the debt ceiling and the minimum wage. Senate Republicans also are upset because majority Democrats, with White House support, changed a key rule and made it easier to win approval for Obama's nominations for judgeships and other offices. GOP leaders billed this as a power grab. Dimming the prospects for compromise are the midterm elections in November. The major parties are expected to cater as much as possible to their bases to generate turnout rather than reach out to each other or appeal to the political center. And this will probably harden positions all around. Overall, Obama's popularity is waning. The latest Washington Post-ABC News poll finds that only 43 percent of Americans approve of his job performance, 11 percentage points below his favorable rating from a year ago. Fifty-five percent disapprove. The job approval of Congress is worse, but Obama's poor ratings mean many legislators won't fear him if he takes them on, minimizing his influence.He is also suffering from a decline in the number of Americans who believe he is trustworthy, partly a result of false promises he made that Americans could keep their health insurance policies if they liked them under Obamacare. A Wall Street Journal/NBC News poll found that only 37 percent of Americans believe he is honest and straightforward, a drop of 10 percentage points from the start of 2013. Adding to his problems were leaks of classified information by former National Security Agency contractor Edward Snowden that revealed a vast government surveillance operation that troubled many citizens.

#### Reemergence of partisanship is inevitable and nothing will pass --- election pressures and debt ceiling

McManus, 12/30 (Doyle, 12/30/2013, “Partisan clashes unlikely to cool down in 2014,” <http://bostonherald.com/news_opinion/opinion/op_ed/2013/12/partisan_clashes_unlikely_to_cool_down_in_2014>))

It would be nice to think that Congress’ easy passage of a bipartisan compromise on the federal budget this month was the sign of a new spirit of cooperation on Capitol Hill. But in the hallways of the Senate last week, there was little evidence of bipartisanship, or even Christmas cheer.“We need a cooling-off period,” U.S. Sen. Lisa Murkowski (R-Alaska) told me. “I’ve raised two boys. Sometimes you need to go to separate rooms to cool down.” Indeed, next year is unlikely to get better, for one simple reason: It’s a congressional election year. And not an ordinary election year. A significant number of Republican incumbents in both the House and Senate will face primary challenges from Tea Party conservatives. That means that some of the legislators who were once likely to seek cross-aisle compromises will be trying to show how tough and conservative they are. Getting Democrats and Republicans to agree on anything will be harder than ever. “Good things seldom happen in election years,” noted former U.S. Rep. Bill Frenzel, a moderate Republican from Minnesota. Where are the conflicts likely to come? U.S. Rep. Paul D. Ryan (R-Wis.), who fashioned the bipartisan budget deal with U.s. Sen. Patty Murray (D-Wash.), has already promised another collision over the federal debt ceiling. Republicans have tried several times to use the debt ceiling — the limit on the Treasury’s authority to borrow — as leverage to force fiscal concessions from President Obama, even though refusal to raise the limit could lead to a default on the federal debt and disastrous consequences for the economy. “We will not want to walk away with nothing” from a debt ceiling vote, Ryan vowed on CNBC, although he added that the GOP caucus hasn’t yet decided what to ask for in return. U.S. Sen. Mitch McConnell (R-Ky.) seconded the idea, noting that the debt ceiling is one way for Republicans to “get the president’s attention.” The only good news in this picture is that the disastrous government shutdown in October may have taught both sides a thing or two about how to avoid needless catastrophes. Ryan says Republicans have learned a lesson from that episode. Next year, he said, they’ll be looking for goals that are practical, not unreachable. “You can’t let the perfect be the enemy of the good,” he said. That was the message U.S. House Speaker John A. Boehner (R-Ohio) was trying to reinforce when he denounced conservative organizations for pushing his caucus into the October shutdown, advisors say. Boehner has told House members that even though he welcomes a fight over the debt ceiling, he doesn’t want to risk a federal default, especially in an election year. “If it happened, we’d get blamed for it,” a Boehner advisor noted. On the other side, even though Obama insists he will refuse to negotiate over the debt limit, that doesn’t mean nobody will negotiate. In two debt-limit battles this year, Obama refused to bargain — but Reid stepped in and helped arrange a deal. Obama’s absence from those negotiations wasn’t a problem; it was a plus. Especially in an election year, Republicans don’t want to be tarred as too eager to compromise with a man conservatives love to loathe. A deal with Reid looks better; a compromise with the less-pugnacious Murray, better still. So, with luck, what we can hope for next year is a return to what you might call “normal” partisan warfare: tough, sometimes even angry, but not as destructive (or, in the Republicans’ case, self-destructive) as before. Just don’t expect much to get done. There won’t be a grand bargain over spending and taxes; that has turned out to be unreachable. But there may be a bit more progress on massaging the budget cuts of the “sequester,” a process Ryan and Murray began this month. And there won’t be a grand compromise over a comprehensive immigration reform bill. The House will try to pass some piecemeal measures, but the two parties remain far apart on whether to offer undocumented immigrants a pathway to citizenship.

#### Obama’s PC is useless --- poor outreach prevents him from mobilizing support for agenda

Pace, 12/29 (Julie, 12/29/2013, “Obama's presidency beset by fits, starts in year 5,” <http://www.ajc.com/ap/ap/social-issues/obamas-presidency-beset-by-fits-starts-in-year-5/ncTM8/)>)

There's a certain irony in Obama's success depending on Congress, a body with whom he has had a lukewarm partnership. Lawmakers from both parties say Obama doesn't talk to them much, nor do his aides. Letters go unanswered. Policies come out of the blue. Social interactions are few. Both sides wistfully recall the voluble Clinton, who figured out how to craft deals with Republicans on welfare reform and other agenda items after the GOP took control of the House and made big gains in the Senate two years into his presidency. Sen. Tom Coburn, an Oklahoma Republican who worked with Obama when he was a senator and still considers the president a friend, says flatly: "He's flunked in terms of relations with Congress." "If you know him personally, he's a very likable person," says Coburn. "But it's different than with most other presidents in terms of having relationships with Congress. ... There's a lack of a personal touch." Of course, the president's tepid relationship with Congress is hardly his fault alone. The tea party forces that pulled House Republicans to the right in recent years made it difficult for the GOP to reach agreement with Democrats on much of anything, and produced the showdown over the president's health care law that spawned the government shutdown. Obama did attempt to improve relations with Republicans earlier this year, holding a few dinners with GOP lawmakers. His chief of staff, Denis McDonough, has been widely praised by Republicans for being a frequent visitor to Capitol Hill. But some lawmakers say that's as far as the outreach goes. Sen. John McCain, the Arizona Republican who ran against Obama in 2008 but has since tried to work with him on immigration and the budget, said no one from the White House legislative affairs staff has ever called him or come to his office just to chat. \_\_\_ What does it matter if Obama doesn't buddy up to his former colleagues? He needs those relationships to advance his agenda in Congress. And the strained ties with legislators are emblematic of a broader problem for Obama rooted in his tendency to keep a tight inner circle."Instead of going out and talking to his enemies, making friends and schmoozing, or banging heads together with them or whatever, you can see that the man is diffident — deeply, deeply diffident about the kinds of politicking that are necessary to build consensus," says Nigel Nicholson, a professor at the London Business School who has written a book about leadership in which Obama is a frequent topic. The president has been getting plenty of that kind of advice in recent weeks. Critics called for a sweeping shakeup of his White House inner circle. Even his allies called for someone — anyone — to be fired for the health care failures. Obama has responded in his typically restrained fashion. No one has lost a job over the massive health care screw-up, though the White House hasn't ruled that out. And while the president is doing some minor shuffling in the West Wing, he's largely bringing in people he already knows. To critics, the limited staff changes smack of a White House that doesn't fully understand the depths of its problems. But presidential friend Ron Kirk said they are indicative of Obama's "fairly dispassionate temperament," which allows him to hold steady in the face of adversity. "He understands that overreacting to any one development in the moment is not the best way to achieve a long-term and stable objective," said Kirk, who served as U.S. trade representative in Obama's first term. \_\_\_ The president's agenda for his sixth year in office is a stark reminder of how little he accomplished in 2013. Obama plans to make another run at immigration reform. He'll seek to increase the minimum wage and expand access to early childhood education, proposals he first outlined in his 2013 State of the Union address. And he'll look to implement key elements of the climate change speech he delivered earlier this year, many of which are stagnant. Foreign policy could be an oasis for the struggling second-term president. With Russia's help, he turned his public indecision over attacking Syria into an unexpected agreement to strip President Bashar Assad of his chemical weapons, though the success of the effort won't be known for some time and the civil war in Syria rages on. Obama also authorized daring secret negotiations with Iran, resulting in an interim nuclear agreement. But even the president says the prospects of getting a final deal are only 50-50. In a year-end news conference, the president optimistically predicted that 2014 would be "a breakthrough year for America." But Obama's dismal standings in the polls suggest he can't count on a public groundswell to propel his agenda. The heady days of 2009 when aides boasted of Obama as "the best brand on earth" are long gone.

#### Not an opportunity cost — a rational policymaker can do both — that’s key to portable decision-making skills

#### Court shields and plan pacifies the base

Stimson 9 [09/25/09, Cully Stimson is a senior legal fellow at the Heritage Foundation and an instructor at the Naval Justice School former American career appointee at the Pentagon. Stimson was the Deputy Assistant Secretary of Defense for Detainee Affairs., “Punting National Security To The Judiciary”, http://blog.heritage.org/2009/09/25/punting-national-security-to-the-judiciary/]

So what is really going on here? To those of us who have either served in senior policy posts and dealt with these issues on a daily basis, or followed them closely from the outside, it is becoming increasingly clear that this administration is trying to create the appearance of a tough national-security policy regarding the detention of terrorists at Guantanamo, yet allow the courts to make the tough calls on releasing the bad guys. Letting the courts do the dirty work would give the administration plausible cover and distance from the decision-making process. The numbers speak for themselves. Of the 38 detainees whose cases have been adjudicated through the habeas process in federal court in Washington, 30 have been ordered released by civilian judges. That is close to an 80 percent loss rate for the government, which argued for continued detention. Yet, how many of these decisions has this administration appealed, knowing full well that many of those 30 detainees should not in good conscience be let go? The answer: one. Letting the courts do it for him gives the president distance from the unsavory release decisions. It also allows him to state with a straight face, as he did at the Archives speech, “We are not going to release anyone if it would endanger our national security, nor will we release detainees within the United States who endanger the American people.” No, the president won’t release detainees; he’ll sit back and let the courts to do it for him. And the president won’t seek congressional authorization for prolonged detention of the enemy, as he promised, because it will anger his political base on the Left. The ultra-liberals aren’t about to relinquish their “try them or set them free” mantra, even though such a policy threatens to put terrorists back on the battlefield. Moreover, the president would have to spend political capital to win congressional authorization for a prolonged detention policy. Obviously, he would rather spend that capital on other policy priorities. Politically speaking, it is easier to maintain the status quo and let the detainees seek release from federal judges. The passive approach also helps the administration close Gitmo without taking the heat for actually releasing detainees themselves.

#### Won’t be released till June

SCOTUS 12, Supreme Court of the United States, 7/25/2012 (“The Court and Its Procedures,”

<http://www.supremecourt.gov/about/procedures.aspx>, Accessed 7/25/2012, rwg)

**The Court maintains this schedule each Term** until all cases ready for submission have been heard and decided. **In May and June the Court sits only to announce orders and opinions**. The Court recesses at the end of June, but the work of the Justices is unceasing. During the summer they continue to analyze new petitions for review, consider motions and applications, and must make preparations for cases scheduled for fall argument.

#### **Aff is popular- new GOP strategy**

McLaughlin 8/9 (Seth- Washington Times Staff Writer, 2013, “Rand Paul: GOP can grow base by opposing indefinite detention”, http://www.washingtontimes.com/news/2013/aug/9/rand-paul-gop-can-grow-base-opposing-indefinite-de/)

Sen. Rand Paul says that one of the ways he can bring more minority and younger voters into the party is to push back against indefinite detention.¶ Speaking with Bloomberg Businessweek, Mr. Paul, a likely 2016 presidential candidate, said this week that young blacks and Hispanics have a sense of justice and often mistrust government.¶ “So one of the big issues that I’ve fought here is getting rid of the provision called indefinite detention,” the Kentucky Republican said. “This is the idea that an American citizen could be accused of a crime, held indefinitely without charge, and actually sent from America to Guantanamo Bay and kept forever. I think there is something in that message of justice and a right to a trial by jury and a right to a lawyer that resonate beyond the traditional Republican Party and will help us to grow the Republican Party with the youth.”¶ Mr. Paul has argued that his libertarian brand of politics can help the GOP reach out to young voters and minorities who have supported Democrats in recent elections.