## 2AC Case

### AT No Modeling

#### The aff is modeled—

#### a. The War on Terror—other countries are uniquely looking to US judicial developments on habeas and detention issues now to determine the direction the question of rule of law during times of conflict—that’s Scharf—independently, counterterrorism and detention justifies runaway executive authority—that’s CJA

#### b. Transnational Judicial Dialogue—international conferences, citing of foreign courts, and the development of legal scholarship on detention issues is occurring now—affirming court leadership on rule of law enables the US to shape rule of law—that’s Scharf

#### The US is Microsoft

Krotoszynski 9, John C. Stone Chair, Director of Faculty Research, and Professor of Law, University of Alabama School of Law

[2009, Ronald J. Krotoszynski is a John C. Stone Chair, Director of Faculty Research, and Professor of Law, University of Alabama School of Law, “The Perils and the Promise of Comparative Constitutional Law: The New Globalism and the Role of the United States in Shaping Human Rights”, 61 Ark. L. Rev. 603]

In thinking about the reality and effects of the new globalism, we should be proactive and thoughtful. This means defending our values, even if they appear exceptionalist from a global or comparative perspective, as much, if not more, than modifying our legal rules to square them with foreign views. Just because Germany has a different rule does not imply that the German rule is better, or a better rule for the United States. That said, we do need to at least think about the possibility that things could be different than they are presently. The fact that other democratic societies value rights more, or less, highly than we do should at least make us pause. It seems rude either to pretend these differences do not exist or, worse yet, that these differences simply do not matter. As I have observed in another context, "[A] circular jurisprudence that posits its own conclusions as justifications is intellectually indefensible." n52 The alternative to active global engagement, attempting to maintain a kind of intellectual isolationism, is neither attractive nor feasible because ideas travel faster and more easily than superbugs. We should be just as actively concerned and engaged about the transnational marketplace of ideas as we are about the transnational sale of pet food, lead-painted toys, or the safety of air travel. As scholars like Anne-Marie Slaughter and Harold Koh have suggested, it is not a question of whether transnational legal rules will develop - it is a question of how they will develop and the role that the United States will play in their [\*617] development. n53 In the case of freedom of expression, foreign law is very different, in myriad ways, and the United States contributes to the global discussion of this human right as much by refusing to get with the program as it would by redefining domestic First Amendment law to bring it into conformity with prevailing foreign attitudes. The development of new global legal understandings of fundamental human rights is not limited to courts. Courts are not the only source of transnational understanding of human rights, as the behavior of Congress and the executive branch also signals the content and scope of our commitment to human rights. To say that we oppose torture generally but not in the specific context of the war on terrorism has the effect of undermining the norm against torture as inconsistent with fundamental human rights. Similarly, holding persons in indefinite detention, without access to lawyers or judicial process sends a very mixed message. When the Soviet government engaged in this sort of behavior, the United States denounced it. n54 Our credibility in arguing for a right to a fair trial by an impartial tribunal, to the assistance of counsel, and to the right to be free of unreviewed (and unreviewable) executive detention has taken a hit lately. Our behavior and our practices have the effect of modeling acceptable government practices, whether we wish them to have that effect or not. We should be cautious in accepting an argument that observance of the rule of law lies within the discretion of the executive branch of government. It is said that "as one sows, so shall one reap." n55 The new legal globalism will reflect this truism. Simply put, if we ever had the luxury of saying one thing while doing another, that time has come and gone. The best way of convincing others that they must observe a particular human right would be that we observe it ourselves as a matter of course. Thus, the process of exporting legal rules is not solely a job for the judiciary, nor should it be. [\*618] V. AMERICAN CONTRIBUTIONS Over the last 200 years, the United States has been remarkably successful at exporting its legal ideas. Since World War II, the notion of limited government, checked by a written constitution with judicially enforceable rights, has become the most commonly accepted model of legitimate government. n56 The old British model of parliamentary supremacy, as a means of securing democratic control, has fallen into something of a rut. n57 The modern trend has been entirely in favor of judicial review (judicial supremacy, some might say) with democratically elected legislatures being limited by enumerated constitutional rights. n58 The separation of powers is another structural innovation of the United States that has proven quite popular. The British model of legislative, executive, and judicial power all being vested in a single body (like the Parliament) no longer seems a successful way to run a railroad. Although parliamentary systems remain popular, and involve the merger of executive and legislative power, the structural separation of courts has become a standard feature of modern democracies. In this sense, the separation of powers has become the global norm rather than the exception. Federalism provides a third major contribution to constitutionalism that the United States pioneered and which has achieved substantial adoption abroad. In a nation featuring ethnic, religious, or cultural differences, federalism provides a means of securing some measure of local autonomy that can accommodate these differences. Additionally, even in the contemporary United Kingdom, federalism has found a foothold, with local parliaments now sitting for Scotland, Wales, and Northern Ireland, and plans for an English Parliament. n59 The European Union itself represents a federalism solution to [\*619] the problem of a divided, and less efficient, Europe. By dividing power among various levels of government, centralization can coexist with local autonomy and choice. Judicial review, the separation of powers, and federalism are all contributions that the United States has made to constitutional democracy. Indeed, it would not be an overstatement to suggest that the American model of constitutionalism is to modern government as the Microsoft Corporation's "Windows" operating system is to computing. Having had so much success in defining the institutions and structures of a just government with reference to the structures and doctrines reflected in our own Constitution, why should we fear the outcome of constructive engagement with the world? n60 In this regard, it bears noting that our own framers, meeting in Philadelphia during the summer of 1787, were themselves very familiar with government structures dating back to ancient Rome and Athens. The Framers consciously considered various constitutional arrangements, including those of Great Britain, but also of Athens, Sparta, and Rome. n61 To be sure, the Framers did not overtly borrow any particular constitutional system, but developed one of their own self-styled a new order for the ages ("novus ordo seclorum"). Given this history of familiarity with comparative constitutional law, the success of American constitutional innovations, and the stakes, why should we shrink from engaging the world in defense of our domestic conception of fundamental human rights? VI. CONCLUSION We must recognize that we will participate in the new legal globalism whether we choose to be active participants in the process or passive recipients of the results. If the United States wants to impact the content of emerging human-rights norms, we need to join the conversation, even if we do so as defenders [\*620] (or exporters) of our legal norms. n62 The alternative, a kind of default, will simply mean that the United States has less impact on the development and content of both emerging legal systems and the scope and content of transnational human rights. n63 To engage the world does not require the United States to abandon its own idiosyncratic legal values, any more than consideration of American legal norms requires the Supreme Court of Canada or the German Federal Constitutional Court to abdicate responsibility for articulating and enforcing local legal imperatives.

### AT One Ruling Fails

#### Kiyemba is the test case for rule of law leadership—Habeas is the foundation of western legal jurisprudence and is the central ability of the judiciary to limit the executive’s control over people—that’s Scharf

#### It’s not just one ruling—ruling on Kiyemba starts a broader process of judicial dialogue by affirming leadership on war on terror rule of law issues which his critical for liberal democratization—that’s Scharf and Kersch

### AT Aff Can’t Solve Rule of Law

#### Judicial leadership solves rule of law—judicial independence maintains a hedge against authoritarian trends in transitional democracies—that’s CJA—affirming the strength of the judiciary key to make liberal norms effective—that’s Kersch

### AT Democracy Fails

#### Their defense doesn’t assume liberal democracies—they have shared economic, political, and social norms which creates incentives to cooperate and reduces the chances that they go to war—that’s Kersch

### AT Legitimacy Inevitable

#### Legitimacy not inevitable—hypocrisy over habeas release breeds resentement because the US talks as if it’s a leader on human rights—it independently undermines legitimacy of US legal jurisprudence which is the key factor—US legal rule breaking encourages rule breaking internationally and undermines the overall unipolar order—that’s Metcalf, Sidhu, and Knowles

### AT Alt Causes

#### Habeas outweighs Snowden—detention is seen as uniquely hypocritical because we pretend to have human rights leadership—even if other things affect general soft power, only habeas determines leadership on legal issues which is a vital aspect to soft power—that’s Metcalf Sidhu and Knowles

### AT Rendition

#### Plan’s precedent solves—deference is the legal justification of rendition

Richards 06 [Nelson, JD Cand @ Berkeley, “The Bricker Amendment and Congress’s Failure to Check the Inflation of the Executive’s Foreign Affairs Powers,” 94 Calif. L. Rev. 175, January, LN]

H. Jefferson Powell has posited that the Supreme Court has all but ceded the creation of a foreign affairs and national security legal framework to the OLC. Indeed, he goes so far as to assert that OLC legal opinions, not Supreme Court opinions, are the first sources the executive branch looks to when researching foreign affairs and national security law. Another set of John Yoo's writings support the validity of Powell's claim: the infamous memos declaring enemy combatants outside the protection of the Geneva Conventions. These, combined with the "Torture Memos," the expanding practice of "extraordinary rendition," and the current Administration's blase response to the Supreme Court's ruling that prisoners held at Guantanamo Bay are entitled to judicial access, have brought peculiar focus to the weight and seriousness of the OLC's legal authority. In the realm of foreign affairs, the Court has written off its obligation, claimed in Marbury, as the authoritative interpreter of the Constitution. While it may have reviewed some of the legal premises put forth in the above-mentioned OLC opinions, it has not curbed the OLC's claim to power over foreign affairs. The Court is more than capable of challenging the President. It has the power to send messages to the President, but it has done so only in two narrow contexts: when U.S. citizens are labeled enemy combatants (Hamdi v. Rumsfeld ) and when prisoners are held in U.S. facilities (Rasul v. Bush). The Hamdi and Rasul decisions, which amount to piecemeal restraints on the President's freedom to act, accord with the Court's general failure to check the executive's use of power abroad.

### 2AC No Link

#### The aff only maintains the effectiveness of Boumediene—that doesn’t result in targeted killings

Vladeck 12 [10/01/12, Professor Stephen I. Vladeck of the Washington College of Law at American University, “Detention Policies: What Role for Judicial Review?”, <http://www.abajournal.com/magazine/article/detention_policies_what_role_for_judicial_review/>)]

The short chapter that follows aims to take Judge Brown’s suggestion seriously. As I explain, although Judge Brown is clearly correct that judicial review has affected the size of the detainee populations within the territorial United States and at Guantanamo, it does not even remotely follow that the jurisprudence of the past decade has precipitated a shift away from detention and toward targeted killings. To the contrary, the jurisprudence of Judge Brown’s own court has simultaneously (1) left the government with far greater detention authority than might otherwise be apparent where noncitizens outside the United States are concerned; and (2) for better or worse, added a semblance of legitimacy to a regime that had previously and repeatedly been decried as lawless. And in cases where judicial review prompted the government to release those against whom it had insufficient evidence, the effects of such review can only be seen as salutary. Thus, at the end of a decade where not a single U.S. military detainee was freed by order of a federal judge, it is more than a little ironic for Judge Brown to identify “take no prisoners” as Boumediene’s true legacy.

## 2AC Ban T

#### We meet—indefinite detention with a right to habeas corpus isn’t indefinite detention

#### 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.

#### Authority = right to command or act

SUPREME COURT OF UTAH - November 7, 1941, Decided, UTAH LIGHT & TRACTION CO. v. PUBLIC SERVICE COMMISSION et al., 101 Utah 99; 118 P.2d 683; 1941 Utah LEXIS 79

In governmental law, the term "authority" has been defined as meaning legal power; a right to command or to act; the right and power of public officers to require obedience to their orders lawfully issued in the scope of their public duties. See, Black's Law Dictionary.

#### Their interpretation overlimits to only one aff in each topic area—aff flex ensures innovative topics encouraging research skills and in depth discussions

#### Our interpretation is more precise by citing a court case—that means our limit is predictable and better reflects the topic

#### Default to reasonability—competing interpretations leads to a race to limit out affs at the expense of substance—affs need to know they’re topical

## 2AC CP

### 2AC Solvency Deficits

#### Multiple condo is a voting issue—aff can’t read their best offense because the neg can just kick their argument and can cross-apply offense, kills competitive equity—they can advocate contradictory positions, kills education and advocacy skills—one condo solves their offense—if they win condo is good we should get to advocate perms

#### Doesn’t solve Judicial Globalism

#### Separation of Powers—judicial action is key restore the balance with the executive by asserting judicial strength and countering perceptoins judicial irrelevance—that’s Schnarf—the impact is our CJA evidence—prevents stable democratic transitions globally

#### Globalization—only the plan is modeled—Judiciary’s participate in transnational conferences and interactions and are looked to by foreign governments—that’s Schnarf—those are key to encourage judicial independence and strength in new states

**Doesn’t solve Legitimacy**

#### Accountability—stable interpretation of the law bolsters hegemonic stability because nations know they can rely on those interpretations—states fear the ability of the political branches to make abrupt moves and give into political influence—that’s Knowles

#### Accessibility—the court is uniquely accessible because its seen as an avenue for countries to lodge complaints against the US—credibility of judicial action is key to make the US seem broadly accountable which is key—that’s Knowles

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

#### Perm do the CP

#### Only the courts can solve – The Executive tried and congress removed their funding for transfer

Chow 11, JD from Cardozo

(Samuel, THE KIYEMBA PARADOX: CREATING A JUDICIAL FRAMEWORK TO ERADICATE INDEFINITE, UNLAWFUL EXECUTIVE DETENTIONS, www.cjicl.com/uploads/2/9/5/9/2959791/cjicl\_19.3\_chow\_note.pdf)

After the D.C. Circuit Court issued its opinion and while the petition for certiorari was pending, the Executive expressly recognized the troubling scenario that the continued detention of the Kiyemba petitioners posed. Defense Secretary Robert M. Gates concluded that it was "difficult for the State Department to make the argument to other countries they should take these people that we have deemed, in this case, not to be dangerous, if we won't take any of them ourselves." Indeed, the Executive was poised to send as many as seven of the petitioners to the United States in 2009. However, in response to the threat of such action. Congress attached a rider to the Supplemental Appropriations Act which prevented the use of defense funds to release any Guantanamo detainees into the United States. Congress also passed two additional pieces of legislation restricting the ability of Guantanamo detainees to enter the United States. The National Defense Authorization Act granted Congress a substantial degree of control over such releases and a spending provision banned the Department of Homeland Security from effectuating such release. The detainees' hope for release, therefore, turned again on the pending petition for certiorari.

## 2AC LOAC

#### AUMF decay inevitable

Barnes, 12 --- J.D. at Boston University and M.A. in Law and Diplomacy at The Fletcher School of Law and Diplomacy at Tufts University (Spring 2012, Beau D., Military Law Review, “REAUTHORIZING THE “WAR ON TERROR”: THE LEGAL AND POLICY IMPLICATIONS OF THE AUMF’S COMING OBSOLESCENCE,” 211 Mil. L. Rev. 57))

Part V outlines specific policy proposals for a reauthorization of military force against terrorist groups that reflects the current contours of the armed conflict against terrorist groups. It begins by analyzing Congress's recent efforts to reaffirm the AUMF in the 2012 National Defense Authorization Act, which ultimately failed to address the AUMF's fragile legal foundation. This section ends by arguing for a new AUMF that includes time limits, a regular review procedure, a more clearly defined geographic scope, and unambiguous target definitions, thereby avoiding excessive deference to executive branch determinations in the critical arena of targeted killing. Prolonged and systematic military action, perhaps the most consequential activity a state can undertake, should be supported by the Congress. The AUMF, passed in the uncertain days immediately following the attacks of September 11, was sufficient for its immediate purpose: preventing further attacks by those who perpetrated 9/11. The now antiquated statute, however, must be updated for the dramatically different world we face today, or else it will surely fall short of properly guaranteeing the security of the United States.

#### Thumps the DA

Barnes, 12 --- J.D. at Boston University and M.A. in Law and Diplomacy at The Fletcher School of Law and Diplomacy at Tufts University (Spring 2012, Beau D., Military Law Review, “REAUTHORIZING THE “WAR ON TERROR”: THE LEGAL AND POLICY IMPLICATIONS OF THE AUMF’S COMING OBSOLESCENCE,” 211 Mil. L. Rev. 57))

This article, prompted by Congress's recent failed efforts to revisit and refine the September 18, 2001, Authorization for Use of Military Force (AUMF), argues for a "middle ground" approach to the statute's reauthorization. It makes the case that a new authorization is needed because, contrary to the Obama Administration's suggestions, the current statute is rapidly approaching obsolescence. Despite the intense media focus on the most recent legislative cycle, Congress has left the 2001 authorization legally unaltered and still anchored to the September 11, 2001, attacks. Confronting this reality presents three options: foregoing military operations against non-Al Qaeda terrorist organizations, [\*59] accepting the AUMF's obsolescence and relying on alternative legal authority, or refashioning a new domestic statutory authority for the U.S. military's global anti-terrorist operations.

A new AUMF is the best option available to U.S. policymakers if it is to continue its military efforts against terrorist groups and networks. n7 A new authorization would clarify the authority the current AUMF grants to the president, which, especially as it relates to the use of military force against U.S. citizens and within the domestic territory of the United States, is extraordinarily vague. A new authorization would also avert tempting, but ultimately dangerous, legal alternatives--namely, harmful interpretations of domestic and international law. On the domestic front, reverting to a reliance on the president's Commander in Chief powers would place the U.S. military's global anti-terrorism efforts on a fragile legal foundation already weakened by the Supreme Court's skepticism and further remove this important military campaign from effective democratic control. In the international arena, relying instead on an overly expansive interpretation of the right to self-defense under international law would undermine the Obama Administration's efforts to lead by legal example and encourage the proliferation of a potentially destabilizing understanding of the jus ad bellum. Reaffirming the AUMF is therefore not just an issue of legal and academic curiosity, but a matter of vital domestic and international concern. Despite the urgent need for a proper legal basis for U.S. military counterterrorism operations, however, Congress's recent efforts have fallen short. This article thus argues generally for a new AUMF, but also specifically that the new authorization should strike a measured balance, granting the President the power to effectively combat global terrorism while stopping short of authorizing unlimited, permanent war with whomever the President deems an enemy. n8

## 2AC Plenary Powers

### 2AC N/U

#### Plenary powers authority over detention issue is a myth—immigration authority is under congress in the status quo and has been disproven for centuries

Tirschwell 9

[2009, Eric A. Tirschwell is the first listed lawyer on the brief, “ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT”, <http://ccrjustice.org/files/2009-12-04%20kiyemba_FINAL%20merits%20brief_0.pdf>]

The core theory of the Kiyemba panel majority was that detention power could be located in plenary Ex-ecutive control of the border—that is, in an immanent power separate from the Constitution or statute. Pet.App.4a-7a. The panel majority traced this power to Chae Chan Ping v. United States (“The Chinese Exclusion Case”), 130 U.S. 581 (1889).39 Pet.App.6a. The precarious foundations of that decision eroded more than a century ago, see Wong Wing v. United States, 163 U.S. 228, 237 (1896) (invalidating law authorizing imprisonment of any Chinese citizen in the U.S. illegally), and today have collapsed where detention power is claimed. As the Court explained in Martinez, “the security of our borders” is for Congress to attend to, consistent with the requirements of habeas and the Due Process Clause. 543 U.S. at 386 (emphasis added); see also Zadvydas, 533 U.S. at 696 (no detention power incident to border prerogative without express congressional grant, which is subject to constitutional limits); Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579, 640 (1952) (Jackson, J., concurring) (“[T]he executive branch, like the Federal Government as a whole, possesses only delegated powers. The purpose of the Constitution was not only to grant power, but to keep it from getting out of hand.”); Pet.App.29a (collecting cases). The “whole volume” of history, to which the government refers, Cert. Opp’n at 14, actually describes “the power of Congress” over regulating admission and deportation, see Galvan v. Press, 347 U.S. 522, 531 (1954) (emphasis added). The border gives the Executive no plenary power to detain. If an extra-constitutional Executive border power existed, one might have expected some treatment of it in United States v. Libellants of Amistad, 40 U.S. 518 (1841), the last of many cases argued before this Court by John Quincy Adams. Aboard a schooner that arrived off Montauk, Long Island in August, 1839 were Africans. Kidnapped by Spanish slavers, they had killed the crew and seized control of the ship. At Spain’s request, President Van Buren prosecuted treaty-based salvage claims for the vessel and, on the theory that the latter were slaves of Spaniards, the Africans themselves. The Executive asserted significant Article II interests grounded in foreign relations with Spain. Yet neither diplomatic concerns (no less urgent to the Executive of the day than the control-of-theborder interest asserted here) nor a vague notion of security (the Africans had committed homicides) dissuaded Justice Story from ordering the Africans released into Connecticut, thence to travel where they liked. 40 U.S. at 592-97.40 Nor did any notion of plenary power over immigration, which received no mention at all.

### 2AC No Link—Not Immigration

#### There’s no link—the aff only mandates that they detention is over, their evidence assumes forced release into the US—if their UQ is true, the Judiciary will craft the decision to avoid plenary powers

#### The aff doesn’t undermine immigration authority—they aren’t seeking admission and parole power maintains plenary powers

NIJC et al 9

[December 11, 2009, NATIONAL IMMIGRANT JUSTICE CENTER, AMERICAN IMMIGRATION LAWYERS [\*\*5] ASSOCIA-TION, ADVOCATES FOR HUMAN RIGHTS, NORTHWEST IMMIGRANT RIGHTS PROJECT, CENTRAL AMERICAN RESOURCE CENTER, IMMIGRANT LAW CENTER OF MINNESOTA, THE FLORENCE IMMI-GRANT AND REFUGEE RIGHTS PROJECT, AND PENNSYLVANIA IMMIGRATION RESOURCE CENTER, “ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT.”, 2008 U.S. Briefs 1234; 2009 U.S. S. Ct. Briefs LEXIS 1537]

First, for purposes of immigration law, it is significant that the Uighurs did not come within the jurisdiction of the United States voluntarily. Immigration law, at its base, is about the admission or expulsion of non-citizens from the jurisdiction of the United States. The petitioners here are not seeking admission to the United States and, moreover, the term "admission" is a statutorily defined term. 8 U.S.C. § 1101(a)(13)(A). The petitioners were captured by bounty hunters in Pakistan, ransomed to the U.S. military, and imprisoned for almost seven years in territory dominated by and under the indefinite control of the United States. Pet. App. 41a; J.A. 28a-29a, 33a-34a, 164a-166a. The Govern-ment transported the Uighurs to a territory that "while technically not part of the United [\*\*10] States, is under the complete and total control" of the United States Government. Boumediene v. Bush, 128 S. Ct. 2229, 2262 (2008). Because the Uighur prisoners have unwillingly found themselves in the jurisdiction of the United States, see id. at 2261; Rasul v. Bush, 542 U.S. 466, 480 (2004), they would not immediately fall within the purview of immigration law as non-citizens seeking admission merely because they are released into the United States under the habeas power. United States v. Brown, 148 F. Supp. 2d 191, 198 (E.D.N.Y. [\*6] 2001), abrogated on other grounds by United States v. Garcia Jurado, 281 F. Supp. 2d 498 (E.D.N.Y. 2003); Matter of Badalamenti, 19 I. & N. Dec. 623, 627 (BIA 1988); see also Matter of Yam, 16 I. & N. Dec. 535, 536--37 (BIA 1978) ("[a]n alien does not effect an entry into the United States unless, while free from actual or constructive restraint, he crosses into the territory of the United States;" where non-citizen had not entered the United States voluntarily, the "immigration judge was without jurisdiction to de-termine the [\*\*11] issue of deportability"). The decision in Sale v. Haitian Centers Council, Inc., 509 U.S. 155 (1993), superseded in part by statute, Illegal Immigration Reform and Immigrant Responsibility Act of 1998, Pub. L. No. 104-208, 110 Stat. 3009, does not address the situation of the petitioners. Opp. to Cert. at 19. The migrants in Sale were arguing for statutory rights while inter-cepted on the high seas, not while at Guantanamo Bay, and were desperately and voluntarily trying to enter the United States to seek asylum protection when they were diverted. See Sale, 509 U.S. at 162--63. Because Sale addresses non-citizens willingly seeking to enter the United States, it has nothing to say about non-citizens involuntarily brought to the United States. The Board's decision in Matter of Badalamenti is the sole relevant authority on this particular legal and policy point. The Uighurs' habeas petition did not request admission, nor did the District Court purport to order that remedy. The District Court did not order the Government to "admit" or "parole" the Uighurs as those terms are used in immigration law, and it [\*7] expressed [\*\*12] no opinion on the eventual application of the immigration laws to the Uighurs. Nor did the District Court make a determination regarding the immigration status of the Uighurs. It did not prohibit the institution of removal proceedings at any point, and it made no final orders regarding when, or under what conditions, the Uighur detainees could be brought into DHS custody. Opinion 10-17, J.A. 1609-16. Rather, the District Court exer-cised its authority in habeas corpus proceedings. Opinion 10-17, Pet. App. 57a-59a. Thus, rather than impermissibly intruding on the power of the Executive, the District Court's order maintained the status quo of the Uighurs' immigration status. Second, the concept of the geographic United States -- while relevant at a basic level of analysis in immigration law -- is, in this situation, a distraction. The Government relies heavily on the notion that the District Court's Order would blur what it describes as "the previously clear distinction between aliens outside the United States and aliens inside this country or at its borders." Opp. to Cert. at 22. While the physical location of the non-citizen may have carried a broader significance at some point in [\*\*13] the historical development of our nation's immigration laws, today it is clearly only significant to the basic questions of immigration law -- none of which are implicated here. Geographic location has not been a determinative feature under immigration law for some time. Notably, the "entry fiction," Rosales-Garcia v. Holland, 322 F.3d 386, 391 n.2 (6th Cir. 2003), superseded in part by statute, Illegal Immigration Reform and Immi-grant Responsibility Act of 1998, Pub. L. No. 104-208, 110 Stat. 3009, [\*8] explains that a non-citizen may be physically within the geographic borders, but not "within the United States" for purposes of immigration law. See Leng May Ma v. Barber, 357 U.S. 185, 186 (1958) (holding that a non-citizen who was paroled within the geographic bound-aries of the United States was not "in the United States" for purposes of immigration law). Conversely, Congress has acted to expand the power of admissibility review to non-citizens located beyond the geographic United States. In 1996, Congress created an extra-territorial power to make admissibility determinations. Under 8 U.S.C. § 1225a [\*\*14] , an immigration officer may engage in the most basic immigration function of determining admissibility at any one of several pre-inspection stations located outside the country. See U.S. Customs and Border Protection, Border Patrol Sectors, http://www.cbp.gov/xp/cgov/border\_security/border\_patrol/border\_patrol\_sectors (listing various reinspection stations) (last visited Dec. 9, 2009). Section 8 U.S.C. § 1225(a)(3)(C) authorizes removal proceedings even when a non-citizen resides abroad. The definition of what it means to be "admitted" to the United States turns not on geogra-phy, but on legality. 8 U.S.C. § 1101(a)(13)(A); Title VII of the Consolidated Natural Resources Act of 2008 ("CNRA"), Pub. L. No. 110-229, § 702(a), 122 Stat. 754, 853 (2008) (providing that U.S. immigration laws will apply to the Com-monwealth of the Northern Mariana Islands beginning November 28, 2009); see also Electronic System for Travel Authorization, https://esta.cbp.dhs.gov/esta/esta.html (pushing admissibility review to the home of the non-citizen by means of the Internet) (last visited Dec. 9, 2009). [\*9] Third, Congress has provided [\*\*15] a statutory tool to maintain the status quo on the petitioners' immigration question even if their release from unlawful custody is required. Thus, the Government's argument posits a false hypo-thetical when it asks whether Judge Urbina's order was inside or outside the immigration law framework. The habeas power and the immigration power are not in competition. This Court has made clear that federal courts have the authority to order the release of non-citizens from deten-tion into the United States -- including non-citizens inadmissible under the immigration laws. See Boumediene, 128 S. Ct. 2229; Clark v. Martinez, 543 U.S. 371 (2005). Under the Court's rulings in both Martinez and Boumediene, federal courts have the authority in habeas corpus proceedings to order the release from detention of inadmissible non-citizens if that is what is required to give effect to a statutory or constitutional prohibition on non-lawful detention. n2 n2 The Government seeks to distinguish Martinez by asserting that it applied a provision of the immigration laws that is not at issue in this case. But the relevance of Martinez lies in its holding that an individual's lack of immigration status cannot supply indefinite detention authority to the Government. Martinez followed the simple principle that when the Government lacks a con-tinued statutory basis for detaining someone, even an inadmissible non-citizen, it must release them. The Court having already interpreted the statute to provide no authority to detain, see Zadvydas v. Davis, 533 U.S. 678, 699 (2001), the presence or ab-sence of a statutory "status" which could be applied to a non-citizen upon release was not relevant to the appropriate remedy. [\*\*16] [\*10] However the Government may choose to effectuate a valid habeas release order, the immigration statute serves to implement the lawful order, not to obstruct it. 8 U.S.C. § 1182(d)(5)(A). Section 1182(d)(5)(A) authorizes the physical transfer or entry of a person into the United States while maintaining the immigration status quo. A "parole" under that section would not effect an admission of the Uighurs into the United States, 8 U.S.C. § 1182(d)(5)(A) ("[S]uch parole of such alien shall not be regarded as an admission of the alien . . . ."), create any substantive rights they do not already possess, or favor them under the immigration statute in any meaningful way. An individual who is pa-roled may be detained, deported, granted admission, or authorized to stay, among other results. With the creation of the parole power, Congress meant to eliminate the conflict that the Government asserts exists. It is a common sense statute created by Congress for the precise purpose presented here: when a human being must come into the United States but the immigration question is still one to be reserved, he may be paroled. Thus, the question [\*\*17] of admissibility is not properly before the judicial branch at this time; and, further-more, the statutory process under 8 U.S.C. § 1229a would likely resolve any disputes which arose. In the meantime, granting habeas release into the United States does not upend the immigration apple-cart. Were the Government to parole the petitioners into the United States, the Government would retain every power under the Immigration and Na-tionality Act that it holds now. See Leng May Ma, 357 U.S. at 190, superseded in part by statute, Illegal Immigration Reform and Immigrant Responsibility [\*11] Act of 1996, Pub. L. No. 104-208, 110 Stat. 3009 ("The parole of al-iens seeking admission is simply a device through which needless confinement is avoided while administrative pro-ceedings are conducted. It was never intended to affect an alien's status."); Kaplan v. Tod, 267 U.S. 228, 229--30 (1925) (inadmissible alien paroled into the United States for over ten years held not to have made "entry" under immi-gration law). Accordingly, the Uighurs' § 1182 admissibility is irrelevant to the determination of whether they could [\*\*18] be released into the United States under habeas corpus.

### 2AC No Spillover

#### Have a high threshold for their impact evidence—ending plenary power doesn’t end all power to regulate immigration

Motomura 92, Professor of Law

[November 1992, Hiroshi Motomura is a professor of law at the University of Colorado School of Law, “The Curious Evolution of Immigration Law: Procedural Surrogates for Substantive Constitutional Rights”, Columbia Law Review, Vol. 92, No. 7, Nov., 1992]

Although extending substantive constitutional rights to aliens would spell the end of the plenary power doctrine, abandoning the doctrine would not force the political branches to relinquish all power to regulate immigration. Congress and the executive branch would continue to regulate immigration, sometimes in ways that might not survive constitutional judicial review in a nonimmigration law context. I fully accept the view that the constitutional community must have boundaries to establish itself in the first place. By definition, boundaries separate insiders from outsiders, and outsiders may justifiably not enjoy the full incidents of membership in the community. My objection to the plenary power doctrine is not that it functions to limit entry to our community, but rather that it represents a "singularity"389 in our public law, a place in which the usual rules no longer apply. Simply because insiders need to distinguish themselves from outsiders does not mean that insiders must abandon the usual rules and language that they use among themselves to answer important public questions.

### 2AC Phanton Norm T/

#### The plenary powers doctrine results in phantom norm decisions that effectively undermine political immigration authority and lead to more intrusive judicial action in areas where it’s actually not critical—star this argument

Motomura 90, Associate Professor of Law

[Hiroshi Motomura is an Associate Professor of Law at the University of Colorado School of Law, “Immigration Law After a Century of Plenary power,” Yale Law Journal, December, 100 Yale L.J. 545]

Apart from awkwardness or unpredictability, subconstitutional phantom norm decisions, once established in response to problems of constitutional dimensions, set a precedent for excessive review of routine matters. By "exces- sive," I do not necessarily suggest "more" or "less" judicial review; explicit adoption of constitutional norms certainly would invite judicial scrutiny of agency decisions. Rather, I mean "excessive" in that the judicial habit of review not tied to real constitutional norms is open-ended and unbounded. As a result, courts may be least likely to intervene in agency decisionmaking when they can help most, and most likely to intervene when they can help least. The problem goes back as far as Fong Haw Tan, which by calling for interpretation of deportation statutes in the light most favorable to the alien, often asks courts to limit deference to agency interpretation of statutes. Much more recently, Jean v. Nelson330 derived limits on INS discretion in parole decisions from phan- tom constitutional considerations, when the subconstitutional texts contained no express limitations. Under a narrow reading of Jean, the INS abuses its parole discretion if it considers factors that conflict with phantom constitutional norms, whether or not a court would squarely hold unconstitutional a statute that expressly made those factors pertinent.332 Thus, it is an abuse of discretion to consider race in parole decisions, even if it is not directly unconstitutional. But it is difficult to avoid slipping into a slightly broader reading of Jean, especially (but not only) the reading that the INS abuses its discretion by considering factors not expressly authorized by statute or regulation. This reading is entirely understandable, since the prevailing view of Jean has not been to analyze it as a "phantom norm decision." Such a phantom norm analysis of Jean might help contain judicial review of agency action, but unless Jean is so limited, this slightly broader reading creates an open-ended and therefore troubling precedent for excessive judicial intrusion into agency decisionmaking. As Justice Marshall wrote in his dissent in Jean: "The Court's restrictive view of the Attorney General's discretionary authority with respect to parole decisions, adopted in the face of no authoritative statements limiting such discretion, will presumably affect the scope of his permissible discretion in areas other than parole deci-sions.... This is indeed a costly way to avoid deciding constitutional issues."333 INS v. Rios-Pineda,334 decided by the Court just six weeks before it decid- ed Jean, reflects the more typical framework for judicial review of agency deci- sions. The Court said that it was not an abuse of discretion to deny certain motions to reopen suspension of deportation proceedings. The Court also emphasized that agencies must be free to base decisions on factors that relate generally to the law entrusted to it-in this case, "legitimate concerns about administration of the immigration laws."335 These aspects of Rios-Pineda merely continued a tradition of judicial decisions that had established broad discretion for the INS.336 Two prominent examples are United States ex rel. Hintopoulos v. Shaughnessy337 and Jay v. Boyd,338 both of which involved the discretionary denial of aliens' requests for suspension of deportation. INS v. Abudu, a 1988 Supreme Court decision, adopts a similar approach,339 as have numerous lower court decisions.34 Courts that get into the habit of using expanded "abuse of discretion" and similar subconstitutional constructs to apply phantom constitutional norms indirectly are likely to succumb to the temptation to define "legitimate" so broadly that they in effect try to run the agency. While this may be under- standable in light of the record of the INS,341 judicial review still represents the commitment of a precious resource. Review of the wrong type is an uncer- tain improvement over no judicial review at all.342 And the problem is com- pounded when judicial review is not only misdirected but also imposes cumber- some or unworkable procedures.343 Plenary power has prevented the growth of a coherent constitutional frame- work for immigration law, within which its subconstitutional levels-statutes, regulations, agency directives, and so forth-can develop and be administered fairly and predictably. There is a paradox here. On the one hand, the courts adopted the plenary power doctrine to insulate immigration decisions from constitutional judicial review. Judicial sensitivity to the need to maintain the flexibility to respond to unexpected contingencies, especially pertaining to foreign policy, may explain some of the plenary power doctrine's persistence- for example, the Supreme Court decided Knauff, Mezei, and Harisiades at the height of the nation's preoccupation with the perceived Communist threat. The irony is that the steady erosion of the plenary power doctrine through phantom norm decisionmaking may, precisely because no coherent body of constitutional norms exists to anchor and thus limit judicial review in immigration cases, lead to subconstitutional decisions that intrude into executive or legislative opera- tions even more aggressively. There may be times when agency decision- making, to reach the best results, should be able to apply expertise, discretion, and flexibility after considering the unusual and the unpredictable.3" Since Mandel, the most negative effects of phantom norm decisions have been to impede the sound exercise of executive branch discretion. Tight supervision may correct short-run problems, but in the long run it also prevents immigration law from maturing and thus continues its traditional isolation-albeit isolation of a different character-from the mainstream of our public law.

### 2AC Impact D

#### Cartel violence won’t destabilize MX – Calderon initiatives

Dennis C. Blair- Director of National Intelligence- February 3, 2010, Annual Threat Assessment of the US Intelligence Community for the House Permanent Select Committee on Intelligence, <http://www.dni.gov/testimonies/20100203_testimony.pdf>

Mexico: Democracy Strong, But Faces Severe Test President Calderon of Mexico has political backing and popular support for strengthening the rule of law in the face of violence, corruption, and criminal influence of his countries’ powerful drug cartels. About 90 percent of all the cocaine that reaches the US from South America transits via Mexico, providing an enormous source of revenue and influence for illicit drug traffickers and giving gangs the means to threaten institutions, businesses, and individual citizens of Mexico. According to National Drug Intelligence Center, Mexican and Colombian drug trafficking organizations annually earn between $18-39 billion from drug sales in the United States. Calderon is determined to break the cartels power and influence and reduce drug flows despite slow progress and continued high levels of violence. He has made the war on crime a key feature of his presidency, and his approval ratings remain solid, despite the fact that drug related violence claimed more than 7,000 lives last year. Opposition political parties support a strong counter drug effort, and the Mexican military remains committed to the task. We assess that the drug cartels probably will not destabilize the political situation even with escalated violence.

## 2AC Terrorism

#### Uighurs are unique because they have no safe home country—there’s no spill over because other detainees can be returned to their homes

Tirschwell 8

[October 2008, Eric A. Tirschwell, “APPELLEES’ OPPOSITION TO GOVERNMENT’S MOTION FOR STAY PENDING APPEAL AND RESPONSE TO MOTION FOR EXPEDITED APPEAL”, <http://ccrjustice.org/files/2008-10-13%20Kiyemba%20-%20Uighur%20Opp%20to%20Govts%20Motion%20for%20Stay%20Pending%20Appeal.pdf>]

Habeas is unique: stays exacerbate the substantive wrong. Their burden on noncombatants who stood within hours of freedom is obvious and poignant. Given the record here, a further stay would also impose an intolerable burden on a district court carrying out the duties imposed on it by Boumediene four months ago. Appellees too are unique: they are not accused of taking up arms or even of antipathy toward the United States; the Government has conceded that they are not enemy combatants; they cannot be returned to their home country; and no other country will take them despite over four years of resettlement efforts. This case will open no “floodgates”—most non-combatants can be sent home.

#### The aff doesn’t cloud entry status—mean’s no spillover

Tirschwell 8

[October 2008, Eric A. Tirschwell, “APPELLEES’ OPPOSITION TO GOVERNMENT’S MOTION FOR STAY PENDING APPEAL AND RESPONSE TO MOTION FOR EXPEDITED APPEAL”, <http://ccrjustice.org/files/2008-10-13%20Kiyemba%20-%20Uighur%20Opp%20to%20Govts%20Motion%20for%20Stay%20Pending%20Appeal.pdf>]

Presence. The Government contends that releasing Appellees into the United States would “cloud” their present status. This is inaccurate. Their status will be as clear as that of the many aliens released since Clark v. Martinez. And that “cloud,” even if it existed on an interim basis, would hardly be harm so irreparable as to overcome the harm of imprisonment without lawful basis. People without right to be here cross our borders daily in great numbers, almost always without the support in place that has been arranged for Appellees; never with precise Government knowledge of who and where they are; and never with the full support and urging of the Chairman and Ranking Member of the relevant congressional oversight committee.19 And the record shows that release will cause no financial burden—indeed, Appellees will relieve the Government from expense.

## 2AC PQD

#### The Zivotofsky case killed PQD

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)

In case there was any doubt, the Supreme Court in 2012 once and for sounded the death knell for the “political question doctrine” as a nonjusticiability doctrine - even in cases involving foreign policy – in Zivotofsky v. Clinton. In Zivotofsky, the Court adopted the analysis articulated in this article – finding that the question was justiciable, and that the proper analysis was whether Congress or the President acted within their powers. In an 8-1 decision, the Supreme Court in reversed the lower courts’ dismissal based on political question grounds of the Zivotofsky’s lawsuit requesting that because he was born in Jerusalem, Israel be listed as his place of birth on his passport. The Court found that the “political question doctrine” did not bar the lawsuit. In so finding, the Court called into question the continued existence of the “political question doctrine” as a nonjusticiability doctrine in individual rights claims, even in the area of foreign policy. Moreover, the case serves as a model for how courts should approach the “political question doctrine” in the future – deciding which branch of government has the authority and discretion to act under the Constitution in the area of contention. In 2002, Congress enacted a statute that part of the Foreign Relations Authorization Act of 2003 providing that “[f]or purposes of the registration of birth, certification of nationality, or issuance of a passport of a United States citizen born in the city of Jerusalem, the Secretary shall, upon the request of the citizen or the citizen’s legal guardian, record the place of birth as Israel.” 308 When President Bush signed the Act into law, he protested that § 214 “impermissibly interferes with the President's constitutional authority to conduct the Nation's foreign affairs and to supervise the unitary executive branch.” Zivotofsky was born shortly after that, and when his parents requested that Jerusalem, Israel be listed as his place of birth, the State Department, citing State Department long-standing policy that prohibits recording “Israel” as the place of birth for those born in Jerusalem, refused to do.310 The parents sued for declaratory judgment and a permanent injunction.311 The Secretary of State moved to dismiss the case, arguing that it presented a nonjusticiable political question.312 Both lower courts dismissed the case under the “political question doctrine”.313 The District Court explained that “[r]esolving [Zivotofsky's] claim on the merits would necessarily require the Court to decide the political status of Jerusalem.”314 Concluding that the claim therefore presented a political question, the District Court dismissed the case for lack of subject matter jurisdiction. 315 The D. C. Court of Appeals, also dismissing the case on political question grounds, reasoned that the Constitution gives the Executive the exclusive power to recognize foreign sovereigns, and that the exercise of that power cannot be reviewed by the courts.316 It rejected the argument that Congress’ attempt to take a position on the matter did not change the analysis.317 Judge Edwards, however, in a notable opinion concurring in judgment, found that the “political question doctrine” did not preclude determination of the case since it involved “commonplace issues of statutory and constitutional interpretation” plainly within the constitutional authority of the Judiciary to decide.”318 Judge Edwards then opined that the Act unconstitutionally infringed on the power of the President’s recognition power, and that the plaintiff had no viable cause of action.319 The Supreme Court rejected the argument that the case required it to define U.S. policy, and criticized the court of appeals for finding that because the executive had the exclusive authority over the issue, the claim presented a nonjusticiable judicial question.320 Rather, the Court found, the suit simply required that the Court adjudicate whether Zivotofsky “can vindicate his statutory right under § 214(d) to choose to have Israel recorded as his place of birth on his passport,” by determining whether the statute was constitutional.321 The Court noted that “this is a familiar judicial exercise,” and further noted that it is the province and duty of the Court to determine the constitutionality of a statute – the only real issue in the case – something the court has the province and duty to do. 322 The Court noted it cannot refrain from this simply because the determination has political implications. The Court reasoned that if the statute impermissibly intruded upon the President’s constitutional powers, then the claim would need to be dismissed for “failure to state a claim” – not as a nonjusticiable question or for lack of standing.324 If the statute is constitutional, then the Secretary of State must be ordered to comply with the statute and issue the passport with Israel listed.325 Either way, the Court noted that no political question is involved.326 The Court then remanded the case for determination on the Constitutional question. In reaching its decision, the Court framed the “political question doctrine” quite narrowly. First, it began its analysis by citing Cohens v. Virginia328 for the proposition that “the Judiciary has a responsibility to decide cases properly before it, even those it ‘would gladly avoid,’” and noting that the Court has created a “very narrow exception” to the “political question doctrine.”329 Interestingly, rather than reiterate the six factors outlined in Baker, it suggested a narrowing test, looking at two basic factors: whether there is ‘a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it.’330 The Court rejected the argument that there was a constitutional commitment of the question about recognition of governments to the Executive, finding instead that question was one of constitutional interpretation of a statute and, thus, belonged with the Court. 331 The Court noted that it was its role to determine the powers of Congress and the Executive under the Constitution. The Court also rejected the argument that it lacked judicially manageable standards in reaching any such decision by outlining all the various arguments and principals available in order for a court to adjudicate the matter. At the end of the day, Court’s opinion reaffirmed the judiciary’s role over certain foreign affairs issues. Thus, it is fair to say that this case indicates that the Court is signaling a serious retreat in the use of the “political question doctrine” to find that individual rights cases are off-limits to the judiciary, even where those cases affect national security or foreign policy.

#### No link – the aff only operates within established judicial authority

Chow 11, JD from Cardozo

(Samuel, THE KIYEMBA PARADOX: CREATING A JUDICIAL FRAMEWORK TO ERADICATE INDEFINITE, UNLAWFUL EXECUTIVE DETENTIONS, www.cjicl.com/uploads/2/9/5/9/2959791/cjicl\_19.3\_chow\_note.pdf)

Additionally, there are ever-present concerns surrounding separation of powers. The degree to which the Court is concerning itself with foreign relations issues is unprecedented, which means any application of a balancing test would be usurping powers of the political branches that were traditionally exercised without the possibility of judicial participation. There is a general hesitation in potentially augmenting the courts authority in terrorist detentions. Yet, separation-of-powers concerns must be reconciled with the opposing, though equally compelling, counter-part—our government's system of checks and balances. Since the ideal of our tripartite government system is one where areas of authority are clearly defined, an augmentation of jurisdiction by the courts may seem suspicious. However, the idea of an unchecked Executive with the authority to indefinitely detain individuals (who the government itself has determined have no legal basis for detention) is equally, if not more so, disquieting. Moreover, the historical role of habeas courts as the final arbiter of a detention's legality provides a legitimate counter-argument that it is in fact the Executive that is intruding upon the judiciary's traditional authority. It does so by appropriating itself as the sole source of a functional remedy, thereby interfering with the courts habeas authority.

#### Their DA already happened

Kaufman 8, Marc Kaufman is a staff writer at the Washington Post, http://www.washingtonpost.com/wp-dyn/content/article/2008/01/03/AR2008010303887.html

A federal judge yesterday severely limited the Navy's ability to use mid-frequency sonar on a training range off the Southern California coast, ruling that the loud sounds would harm whales and other marine mammals if not tightly controlled.

The decision is a blow to the Navy, which has argued that it needs the flexibility to train its sonar operators without undue restrictions. In her decision, however, U.S. District Judge Florence-Marie Cooper said the Navy could conduct productive training under the limitations, which she said were required under several environmental laws.