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### 1NC DA

#### First is the Immigration Reform Good DA

#### Immigration reform will pass --- top priority and political capital is key

Matthews, 10/16 (Laura, 10/16/2013, “2013 Immigration Reform Bill: 'I'm Going To Push To Call A Vote,' Says Obama,” <http://www.ibtimes.com/2013-immigration-reform-bill-im-going-push-call-vote-says-obama-1429220)>)

When Congress finally passes a bipartisan bill that kicks the fiscal battles over to early next year, the spotlight could return to comprehensive immigration reform before 2013 ends. At least that’s the hope of President Barack Obama and his fellow Chicagoan Rep. Luis Gutierrez, D-Ill., chairman of the Immigration Task Force of the Congressional Hispanic Caucus and one of the most vocal advocates for immigration reform in the House of Representatives. “When we emerge from this crazy partisan eruption from the Republicans, there will be a huge incentive for sensible Republicans who want to repair some of the damage they have done to themselves,” Gutierrez said in a statement. “Immigration reform remains the one issue popular with both Democratic and Republican voters on which the two parties can work together to deliver real, substantive solutions in the Congress this year.” Reforming the status quo has consistently been favored by a majority of Americans. Earlier this year, at least two-thirds of Americans supported several major steps to make the system work better, according to a Gallup poll. Those steps include implementing an E-verify system for employers to check electronically the immigration status of would-be employees (85 percent), a path to citizenship for undocumented immigrants, (72 percent), an entry-exit check system to make sure people who enter the country then leave it (71 percent), more high-skilled visas (71 percent) and increased border security (68 percent). The Senate passed its version of a 2013 immigration reform bill in June that includes, but is not limited to, a pathway to citizenship for immigrants without documentation and doubling security on the southern border. But that measure has stalled in the House, where Republicans are adamant they will take a piecemeal approach. The momentum that lawmakers showed for reform has been sapped by the stalemate that that has shut down the government for 16 days and brought the U.S. to the brink of default. The Senate has agreed on Wednesday to a bipartisan solution to break the gridlock. When the shutdown and default threat is resolved (for a time), that’s when Obama will renew his push to get Congress to move on immigration reform. On Tuesday the president said reform will become his top priority.“Once that’s done, you know, the day after, I’m going to be pushing to say, call a vote on immigration reform,” Obama told Univision affiliate KMEX-TV in Los Angeles. “And if I have to join with other advocates and continue to speak out on that, and keep pushing, I’m going to do so because I think it’s really important for the country. And now is the time to do it.” The president pointed the finger at House Speaker John Boehner, R-Ohio, for not allowing the bill to be brought to the floor for a vote. Boehner had promised that the Senate’s bill would not be voted on unless a majority of the majority in the House supports it -- the same principle he was holding out for on the government shutdown before he gave in. “We had a very strong Democratic and Republican vote in the Senate,” Obama said. “The only thing right now that’s holding it back is, again, Speaker Boehner not willing to call the bill on the floor of the House of Representatives. So we’re going to have to get through this crisis that was unnecessary, that was created because of the obsession of a small faction of the Republican Party on the Affordable Care Act.” Republicans are opposing the Democratic view of immigration reform because of its inclusion of a 13-year path to citizenship for undocumented immigrants. They said this amounted to “amnesty.” Some Republicans prefer to give them legal resident status instead. Immigration advocates have also been urging Obama to use his executive authority to halt the more than 1,000 deportations taking place daily. Like the activists, Gutierrez said the government shutdown didn’t do anything to slow the number of daily deportations. Some Republicans who welcomed Sen. Ted Cruz’s filibuster over Obamacare because it shifted the focus from immigration. “If Ted [didn’t] spin the filibuster, if we don’t make this the focus, we had already heard what was coming,” Rep. Louie Gohmert, R-Texas, told Fox News on Tuesday. “As soon as we got beyond this summer, we were going to have an amnesty bill come to the floor. That’s what we would have been talking about. And that’s where the pivot would have been if we had not focused America on Obamacare.” Still, pro-immigration advocates are hopeful they can attain their goal soon. “With more prodding from the president and the American people,” Gutierrez said, “we can get immigration reform legislation passed in the House and signed into law.”

#### Releasing Gitmo detainees into the US will provoke massive backlash

NYT 09

(Chinese Inmates at Guantánamo Pose a Dilemma, www.nytimes.com/2009/04/01/us/politics/01gitmo.html?pagewanted=all&\_r=0)

The Uighurs have become something of a Guantánamo Rorschach test: hapless refugees to some, dangerous plotters to others. For the Obama administration, the task of determining which of those portraits is correct and whether the men can be released inside the United States has raised the stakes for the president’s plan to close the Guantánamo prison. Either choice is likely to provoke intense reaction. The dilemma has taken on new urgency because the plan to close the prison depends on other countries’ accepting some of the remaining 241 detainees Diplomats say that with President Obama embarking on Tuesday on a European trip, the effort could falter unless this country signals it is willing to take some of the Guantánamo prisoners. At home, though, Mr. Obama faces the prospect of a storm of protest from some quarters if he admits detainees the Bush administration labeled terrorists and barred from this country. Already, word of the men’s possible release has brought denunciations and anxiety from military groups, families of Sept. 11 victims and political figures. “I don’t think people want people that could potentially be terrorists in the United States,” said Representative J. Randy Forbes, Republican of Virginia.

#### Reform key to the economy – immigrants are key to several critical sectors

West, ‘09 – Director of Governance Studies at the Brookings Institution (7/22/09, Darrell M., “The Path to a New Immigration Reform,” http://www.brookings.edu/opinions/2009/0721\_immigration\_reform\_west.aspx)

Skeptics need to understand how important a new immigration policy is to American competitiveness and long-term economic development. High-skill businesses require a sufficient number of scientists and engineers. Many industries such as construction, landscaping, health care and hospitality services are reliant on immigrant labor. Farmers need seasonal workers for agricultural productivity. Critics who worry about resource drains must understand that immigrants spend money on goods and services, pay taxes and perform jobs and start businesses vital to our economy. Beyond the economy, immigration reform prospects improve considerably across a fresh political landscape that features a popular Democratic president armed with substantial Democratic majorities in the House and Senate, many who appear receptive to comprehensive reform. Obama has called repeatedly for big ideas and bold policy actions. The country needs new policies that emphasize the importance of immigrant workers \_ across the skills spectrum \_ to our country's long-term financial future. Our universities invest millions in training foreign students but then send them home without any U.S. job opportunities that would take advantage of their new skills. And investing in the children of middle- and lower-skilled immigrants is wise as we recognize their majority role in our workforce as the next generation rises.

#### Extinction

Harris and Burrows, ‘09 [Mathew, PhD European History at Cambridge, counselor in the National Intelligence Council (NIC) and Jennifer, member of the NIC’s Long Range Analysis Unit “Revisiting the Future: Geopolitical Effects of the Financial Crisis” <http://www.ciaonet.org/journals/twq/v32i2/f_0016178_13952.pdf>]

Increased Potential for Global Conflict Of course, the report encompasses more than economics and indeed believes the future is likely to be the result of a number of intersecting and interlocking forces. With so many possible permutations of outcomes, each with ample Revisiting the Future opportunity for unintended consequences, there is a growing sense of insecurity. Even so, history may be more instructive than ever. While we continue to believe that the Great Depression is not likely to be repeated, the lessons to be drawn from that period include the harmful effects on fledgling democracies and multiethnic societies (think Central Europe in 1920s and 1930s) and on the sustainability of multilateral institutions (think League of Nations in the same period). There is no reason to think that this would not be true in the twenty-first as much as in the twentieth century. For that reason, the ways in which the potential for greater conflict could grow would seem to be even more apt in a constantly volatile economic environment as they would be if change would be steadier. In surveying those risks, the report stressed the likelihood that terrorism and nonproliferation will remain priorities even as resource issues move up on the international agenda. Terrorism’s appeal will decline if economic growth continues in the Middle East and youth unemployment is reduced. For those terrorist groups that remain active in 2025, however, the diffusion of technologies and scientific knowledge will place some of the world’s most dangerous capabilities within their reach. Terrorist groups in 2025 will likely be a combination of descendants of long established groups\_inheriting organizational structures, command and control processes, and training procedures necessary to conduct sophisticated attacks\_and newly emergent collections of the angry and disenfranchised that become self-radicalized, particularly in the absence of economic outlets that would become narrower in an economic downturn. The most dangerous casualty of any economically-induced drawdown of U.S. military presence would almost certainly be the Middle East. Although Iran’s acquisition of nuclear weapons is not inevitable, worries about a nuclear-armed Iran could lead states in the region to develop new security arrangements with external powers, acquire additional weapons, and consider pursuing their own nuclear ambitions. It is not clear that the type of stable deterrent relationship that existed between the great powers for most of the Cold War would emerge naturally in the Middle East with a nuclear Iran. Episodes of low intensity conflict and terrorism taking place under a nuclear umbrella could lead to an unintended escalation and broader conflict if clear red lines between those states involved are not well established. The close proximity of potential nuclear rivals combined with underdeveloped surveillance capabilities and mobile dual-capable Iranian missile systems also will produce inherent difficulties in achieving reliable indications and warning of an impending nuclear attack. The lack of strategic depth in neighboring states like Israel, short warning and missile flight times, and uncertainty of Iranian intentions may place more focus on preemption rather than defense, potentially leading to escalating crises. 36 Types of conflict that the world continues to experience, such as over resources, could reemerge, particularly if protectionism grows and there is a resort to neo-mercantilist practices. Perceptions of renewed energy scarcity will drive countries to take actions to assure their future access to energy supplies. In the worst case, this could result in interstate conflicts if government leaders deem assured access to energy resources, for example, to be essential for maintaining domestic stability and the survival of their regime. Even actions short of war, however, will have important geopolitical implications. Maritime security concerns are providing a rationale for naval buildups and modernization efforts, such as China’s and India’s development of blue water naval capabilities. If the fiscal stimulus focus for these countries indeed turns inward, one of the most obvious funding targets may be military. Buildup of regional naval capabilities could lead to increased tensions, rivalries, and counterbalancing moves, but it also will create opportunities for multinational cooperation in protecting critical sea lanes. With water also becoming scarcer in Asia and the Middle East, cooperation to manage changing water resources is likely to be increasingly difficult both within and between states in a more dog-eat-dog world.

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#### Next off is the Release PIC

#### The United States federal judiciary should rule that all habeas corpus hearings of persons detained under the War Powers Authority of the President of the United States be subject to due process guarantees and that an individual detained by, and pursuant to the power of, the United States is assumed to possess the ability to challenge the legality of the detention by way of the writ of habeas corpus. The United States federal judiciary should not rule that any additional release requirements are necessary for individuals who have won their habeas corpus hearing

#### A new release requirement isn’t necessary because a court remedy power already exists – detainees are free to leave for another country or apply for immigration to the US – the only additional protection offered by the plan is automatic release into the United States which does not impact rule of law or judicial power concerns

Black 10, Former Judge Advocate General of the US Army

(Lt. Gen. Scott C., Amici Curaie in support of Respondents, Kiyemba v. Obama, www.oyez.org/sites/default/files/cases/briefs/pdf/brief\_\_08-1234\_\_8.pdf)

Petitioners have similarly misconstrued the decision below. The D.C. Circuit did not hold that federal courts lack the authority to order Petitioners’ release from unlawful detention. Rather, the D.C. Circuit held that the military is not violating Petitioners’ rights when its “detention” consists solely of preventing them from entering the United States at a time when they have no other location where they could live free from government constraints. As the appeals court explained, “The question here is not whether petitioners should be released, but where.” Pet.App.15a. When the United States tells a nonresident alien at Guantanamo Bay that he is free to leave and move anywhere other than the United States, it is up to him to point to some law, treaty, or constitutional provision to support his claim that exclusion from the United States is “unlawful” detention. Boumediene explained that access to the writ of habeas corpus does not afford a detainee substantive rights, but rather provides “fundamental procedural protections.” Boumediene, 128 S. Ct. at 2277 (emphasis added). The “privilege” of habeas corpus “entitles the prisoner to a meaningful opportunity to demonstrate that he is being held pursuant to ‘the erroneous application or interpretation’ of relevant law.” Id. at 2266 (quoting INS v. St. Cyr, 533 U.S. 289, 302 (2001)). A “meaningful opportunity” includes an opportunity “to rebut the factual basis” for continued detention by presenting witnesses and confronting government witnesses, id. at 2269, an opportunity to present his evidence to a judicial officer with “adequate authority to make a determination in light of the relevant law and facts and to formulate and issue appropriate orders for relief,” id. at 2271, and entitlement to “a prompt habeas corpus hearing.” Id. at 2275. Petitioners do not suggest the lower courts denied them any of those procedural rights. They have not claimed that they were denied an opportunity to provide relevant testimony in support of their petition, or that the lower courts lacked adequate authority to enter findings of fact or conclusions of law. Indeed, following the government’s determination that it did not deem Petitioners to be enemy combatants, there were no longer any disputed issues of material fact. In the district court, the government filed no formal return to the habeas petitions and explained that it had abandoned any interest in Petitioners’ continued “detention,” as that term is normally understood. Instead, it explained that it was keeping Petitioners at Camp Iguana only until Petitioners (with the active, good-faith assistance of the government) could identify a location to which they were willing and able to move. The D.C. Circuit rejected Petitioners’ contention that, under those circumstances, the U.S. government was required as a matter of law to release them into the United States. Nothing in Boumediene addresses whether Petitioners possess a substantive right of that nature. It thus cannot be argued that in rejecting Petitioners’ contention that they possessed such a substantive right, the D.C. Circuit was denying them any of the procedural protections guaranteed by Boumediene. Nor is there any basis for asserting that Petitioners have not been afforded adequate procedures for pressing a claim that they are entitled to enter the United States. As the D.C. Circuit noted, federal immigration laws specify procedures that allow application for entry. Pet.App.16a-19a (citing, inter alia, 8 U.S.C. § 1101(a)(16) (application for immigrant visa); 8 U.S.C. § 1201(a)(1)(B) (application for a nonimmigrant visa); 8 U.S.C. § 1157(c)(1) (requirements for admission as a “refugee”)). Petitioners specifically note that they have not sought entry under the immigration laws and insist that “[t]his case is not an immigration case,” Pet.Br.22, but the existence of procedures for applying for entry under the immigration laws precludes any argument that they are being denied the opportunity to convince federal officials that they should be released into the U.S. as an alternative to detention.

#### Counterplan solves the case – extraterritorial application of the writ is key to legitimacy, rule of law, and ending deference

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(Dawinder, SHADOWING THE FLAG: EXTENDING THE HABEAS WRIT BEYOND GUANTÁNAMO, scholarship.law.wm.edu/cgi/viewcontent.cgi?article=1597&context=wmborj)

There is nothing in these foundational principles to indicate that the responsibility of the judiciary to check the Executive and thereby safeguard individual liberty is restricted by geography. Nor is there any sense from them that the potential for the Executive to detain someone unlawfully—which provides the factual predicate necessitating the judiciary’s involvement—does not exist outside the territorial bounds of the United States. And there is nothing that may be reasonably extracted from them that suggests that the Executive may act anywhere in the world, but that the supervisory need for the courts is confined to the borders of the United States. The remainder— or difference between the unbounded reach of executive power and the enclosed power of the courts—offers ample room for executive conduct to devolve into tyranny because the courts are unable to measure such conduct against the rule of law. To fulfill the full promise of the writ of habeas corpus and identify arbitrary and wrongful imprisonments, the judicial writ must shadow executive conduct. If the Executive summons the powers of its office and the government that it heads to imprison an individual in any part of the world, it subjects the detainee to the authority of the United States, including the oversight of the judicial branch of its federal government. In other words, the courts are awakened or agitated, by necessity, by the Executive to sanitize governmental conduct by way of law. The proposition is quite simple: where the Executive may act, so the courts may follow—otherwise, we condone a situation, intolerable to the Framers, in which Law is King inside the four corners of the United States, but where the American King is Law outside of it. This understanding of the scope of the habeas writ is supported not only by the historical purposes of the writ and the constitutional tripartite checking scheme, but also by several ancillary arguments The first points to the common law. Even before the formation of an independent United States, the writ, which the American legal system imported from the AngloSaxon tradition, ran extraterritorially. As Sir William Blackstone explained with respect to the writ, “the king is at all times entitled to have an account, why the liberty of any of his subjects is restrained, wherever that restraint may be inflicted.”159 Moreover, at common law “[e]ven those designated enemy aliens,” like the petitioners in al Maqaleh, “retained habeas corpus rights to challenge their enemy designation.”160 The second is a textual argument that the Suspension Clause—which “protects the rights of the detained by affirming the duty and authority of the Judiciary to call the jailer to account”161 and, unless formally suspended, enables the judiciary to serve “as an important judicial check on the Executive’s discretion in the realm of detentions”162—is not restricted by territory by the Constitution’s own terms. Because “[t]he Suspension Clause contains no territorial limitation with respect to its scope,” argues Richard A. Epstein, “it’s a perfectly natural reading to say wherever the United States exerts power, there habeas corpus will run.”163 The third relates to the transcendence already of territorial barriers concerning the issuance of the writ. While the Supreme Court in Ahrens required district courts to issue the statutory habeas writ only if the petitioner was within its territorial jurisdiction,164 the Court subsequently departed from this restrictive view of jurisdiction to hold that habeas “petitioners’ absence from the district does not present a jurisdictional obstacle to the consideration of the claim.”165 The Court rejected the contention that a petitioner’s “presence within the territorial confines of the district is an invariable prerequisite” to the statutory habeas writ.166 The fourth identifies the proper focus of the writ. The focal point of the habeas petition is not the petitioner himself, but rather the government official holding him, namely the custodian. “The writ of habeas corpus does not act upon the prisoner who seeks relief, but upon the person who holds him in what is alleged to be unlawful custody,” the Court has explained.167 Accordingly, “[s]o long as the custodian can be reached by service of process, the court can issue a writ . . . even if the prisoner himself is confined outside the court’s territorial jurisdiction.”168 The emphasis on the jailer, rather than the petitioner, for purposes of habeas jurisdiction is in lockstep with the view, advanced thus far in this Article, that because the habeas writ is a means for the courts to check the Executive, and, specifically, to ensure that it detains an individual only in conformance with the law, the writ has the potential to run wherever the Executive is detaining an individual. Indeed, there can be little doubt that the custodian is but an agent of or proxy for the Executive itself169—the Executive makes the legal decision; the jailer holds the key.170 The fifth argument recognizes the trend of an increasingly broadening interpretation of habeas jurisdiction. “[T]he general spirit and genius of our institutions has tended to the widening and enlarging of the habeas corpus jurisdiction of the courts and judges of the United States,” according to the Court.171 An expansive view of the courts’ jurisdiction to hear habeas petitions, where geography and sovereignty are without preclusive effect on such jurisdiction, is consistent with this observation. The sixth enumerates an essential characteristic of the writ: its flexibility. The writ is an “inherently elastic concept”172 disentangled from formal restrictions.173 The seventh takes notice of the globalized world in which we live and within which the Executive may detain an individual. A rule by which habeas can follow the Executive wherever it acts comports with the realities of an increasingly globalized and technologically advanced world in which the Executive can detain—and has detained, as the post–9/11 campaigns demonstrate—individuals thousands of miles from the shores of the United States. Nations will act outside of their territorial borders with greater regularity, frequency, and ease as the world becomes “smaller”—confining judicial review to borders that are readily pierced leaves the rule of law in an outdated and stationary state while the Executive frolics both inside and outside his land and whisks away detainees at his whim. The relevance of the globalized world, marked by technology, is particularly salient today after 9/11. It should render less persuasive any suggestion that habeas be understood only as it was in 1789 or in Eisentrager, when technology and resources did not allow for the transnational, global activities that are commonplace today and thus call for evolving and more practically applicable meanings of habeas.177 “It must never be forgotten,” the Supreme Court wrote in 1939, “that the writ of habeas corpus is the precious safeguard of personal liberty and there is no higher duty than to maintain it unimpaired.”178 In short, geography and sovereignty should not impair the otherwise critical and constitutionally vital purposes of the habeas writ. C. Limiting Principles This framework contemplates a “worldwide writ,” one that is not necessarily held back by territorial borders or considerations of formal sovereignty. The concept of a “worldwide writ” was worrisome to the panel in al Maqaleh. In Judge David S. Tatel’s exchange with the petitioners’ counsel, for example, he remarked that, “you can extend habeas to Bagram, [but] I don’t see any limiting principle in your view.”179 Once you have extended it in this fashion, he continued, “you’ve extended it to every military base . . . in the world.”180 In its eventual opinion, the D.C. Circuit admitted that they were uncomfortable with the prospect of conferring habeas on “noncitizens held in any United States military facility in the world, and perhaps to an undeterminable number of other United States–leased facilities as well.”181 The court complained that petitioners’ counsel failed to soothe the court’s anxiety by providing any meaningful “limiting principle that would distinguish Bagram from any other military installation.” My proposed framework posits that the habeas writ is assumed to run wherever the United States exerts power, to the extent that it restrains the liberty of another. Therefore, at least theoretically, under this framework, the writ may reach all military bases. Given the possible number of applicable American facilities and the possibility that the writ has the potential to cover the globe, one can appreciate the concerns expressed by Judge Tatel and his brethren. But meditating on the purposes of the writ and the potential for individuals to be detained unlawfully throughout the world, among other ancillary considerations, should soften those concerns. This is not to say that all aliens apprehended or detained by the United States are automatically entitled to the writ. The assumption that they are so entitled may not be appropriate in light of the specific circumstances of a particular case. To wit: a detainee may not be entitled to the writ where the detainee has already received adequate process, such that the risk of erroneous detention is sufficiently mitigated. The statutory writ, for example, has been said to be open only to those prisoners to whom “adequate relief cannot be obtained in any other form or from any other court.” If a detainee has received an objective finding by a neutral body that the detention decision is supported by the facts and applicable law, and if the detainee has had a meaningful opportunity to contest the factual predicate for the status determination and the resulting legal conclusions, it generally may be fairly said that adequate process exists. To be sure, adequate process need not be monolithic or robust in all circumstances. Battlefield exigencies, in particular, may call for curtailed process. Apprehending purported enemies is “[a]n important incident to the conduct of war”186 and a reality of modern warfare. Accordingly, as noted in Hamdi v. Rumsfeld, when a detainee is captured on the battlefield, the subsequent proceedings “may be tailored to alleviate their uncommon potential to burden the Executive at a time of ongoing military conflict.”187 In other words, battlefield captures may allow for only minimal process.188 It should be noted, however, that the limited procedures tied to battlefield exigencies may no longer be sufficient as time marches on; military and Executive claims to battlefield exigencies lose their force as those exigencies either pass with time or as time bestows on the military and the Executive an expanding and workable window within which to manage and prepare for more demanding process.189 This enhanced opportunity may give rise to traditional circumstances and thereby standard process. Process aside, but relatedly, the recognition of habeas rights may not be proper where practical obstacles do not permit the basic administration of habeas proceedings. Not all practical obstacles should have a preclusive effect on habeas proceedings. In this respect, the practical problems identified in Eisentrager may be divided into three categories. First, whether the military arm of the government would be drawn away from its critical functions in order to participate in the legal process, whether a safe space exists for the process, and whether the application of habeas to a particular petition would engender conflict with the host country are among the practical considerations that courts generally may find relevant in determining whether a habeas action is appropriate. Second, the Eisentrager Court was troubled by the other practical issues were habeas to run, including “allocation of shipping space, guarding personnel, billeting and rations,” and “transportation for whatever witnesses the prisoners desired to call as well as transportation for those necessary to defend legality of the sentence.”193 These burdens—however seemingly costly and onerous at the time—should have less resonance in today’s world, in light of the considerable resources available to the United States and the technological achievements that enable individuals and materials to be transferred from one end of the globe to the other with relative ease and swiftness. A third category of practical concerns is based on notions that our enemies and others will gain morally or optically from habeas actions. “Such trials,” it was said in Eisentrager, “would hamper the war effort and bring aid and comfort to the enemy. They would diminish the prestige of our commanders, not only with enemies but with wavering neutrals.” The resulting “conflict between judicial and military opinion,” the argument went, would be “highly comforting to enemies of the United States.” With due respect to the Eisentrager Court, statements relating to whether habeas proceedings would bring “comfort” to the enemy and others appear to be pure speculation; there does not seem to be any evidence to support such guesswork as to our enemies’ feelings. Moreover, to the extent that the United States demonstrates fidelity to its first principles and an unflinching belief in the rule of law even during times of war, a compelling argument can be made that doing so enhances America’s “soft power” and furthers progress in the battle for hearts and minds. In either case, deciding whether the judicial action of recognizing habeas rights may affect the foreign policy interests of the United States may be a political question beyond the purview of the courts. In assessing the weight of these practical barriers, the courts should be mindful of the overarching fact that the habeas writ is malleable and must adapt to given circumstances in order for its fundamental purposes to be carried out. “The very nature of the writ demands that it be administered with the initiative and flexibility essential to insure that miscarriages of justice within its reach are surfaced and corrected,” the Court has noted. It is true that these limiting principles, or variations thereof, were suggested by the petitioners’ counsel to the D.C. Circuit in al Maqaleh. 199 The petitioners’ counsel’s proffers seemed to have at least some appeal to the panel,200 and the court ultimately was not persuaded that these limiting principles were sufficient to guard against the “worldwide writ” concerns that Judge Tatel and his colleagues had.201 Perhaps the panel felt it was unable to adopt the limiting principles without clear direction from the Supreme Court.202 If al Maqaleh is reviewed by the Supreme Court, or a similar case involving the extraterritorial reach of the writ “goes up” instead, the Justices will have the opportunity to consider and (hopefully) bless these limiting principles as to the scope of habeas rights. This discussion yields the following standard: an individual detained by, and pursuant to the power of, the United States is assumed to possess the ability to challenge the legality of the detention by way of the writ of habeas corpus, unless an individualized determination is made that either adequate process within which to make this challenge, commensurate with the circumstances, exists, or practical difficulties preclude the administration of necessary proceedings. The writ may be issued by a district court with jurisdiction over the custodian who may produce the petitioner.

### 1NC DA

#### Next off is the China Relations DA

#### US diplomatic advances have convinced China that the pivot is not a threat – maintaining supportive action key to sustain good relations

Smith 9/14, NBC News Contributor

(13, Analysis: Superpower rivalry between US, China shows signs of softening, behindthewall.nbcnews.com/\_news/2013/09/14/20476425-analysis-superpower-rivalry-between-us-china-shows-signs-of-softening?lite)

The superpower rivalry between the U.S. and China is showing signs of softening, following a series of high-level military visits and plans for a rare joint naval exercise between the two nations next year. Washington invited Beijing to participate in the biennial Rim of the Pacific Exercise (RIMPAC), which has formerly included scenarios such as China itself launching an offensive against U.S. ally Taiwan. Hosted by the U.S., RIMPAC is the world's largest maritime training operation and features 22 countries. It will be the first time China has participated. A smaller joint navy exercise last week was the first time Chinese vessels had visited U.S. waters since 2006, The Associated Press reported. Three People’s Liberation Army (PLA) ships carrying 680 officers and sailors performed drills on Sept. 6 with USS Lake Erie off Waikiki and Diamond Head, Honolulu. Two days later, Chinese Admiral Wu Shengli met U.S. Navy Chief of Operations Admiral Jonathan Greenert in San Diego, home of the U.S. naval fleet. This followed up on a visit by Chinese Defense Minister Chang Wanquan to the Pentagon in August. "Our goal is to build trust between our militaries through cooperation," Defense Secretary Chuck Hagel told reporters during Chang’s visit. The state-run China Daily newspaper characterized the admiral's visit to the U.S. as "a move experts described as part of the 'rare, determined and intensive efforts' by Beijing and Washington in recent months to improve military ties." The exchanges come as part of President Barack Obama’s “Pivot to Asia” policy, an eastern re-balancing of military might in the wake of the withdrawal from Afghanistan and Iraq, which raised eyebrows in Beijing when it was unveiled last year. Stephen Orlins, president of New-York based National Committee on U.S.-China Relations, said the series of events has the potential to build a significant affiliation between the world’s two largest economies. “It is very meaningful, and it might be just the beginning,” said Orlins, who in 2011 led a delegation of U.S. members of Congress to visit a Chinese navy submarine, and has briefed U.S. naval personnel on China. “The question is: Are these just symbolic actions or are they actually substantive? Whether this is a new relationship between the U.S. and China will depend on actions by both states.” There have also been positive steps on the political front. During this year's meeting at Sunnylands, Calif., Obama and Xi Jinping, general secretary of China’s Communist Party, began to ameliorate recent hostilities over alleged cyber attacks by Chinese hackers. These events -- both military and political -- have huge symbolic value in China, Orlins said: “The meeting with Hagel made the papers in the U.S. but in China it was front-page news."

#### Mandating release means letting Uighur’s into the United States

Kagan 10, Solicitor General US DOJ

(2/19, Elena, [www.scotusblog.com/wp-content/uploads/2010/02/SG-Kiyemba-letter-2-19-10.pdf](http://www.scotusblog.com/wp-content/uploads/2010/02/SG-Kiyemba-letter-2-19-10.pdf))

Petitioners are members of the Uighur ethnic minority group in China who were previously held in military detention in an enemy status at the Guantanamo Bay Naval Base. The United States agreed in 2008 that petitioners should not be held on that basis and continued to pursue efforts to resettle them. When a person is released from military detention based on enemy status, the assumption is that he will be returned to his country of citizenship. But the Uighurs reasonably fear torture in China, so consistent with longstanding policy, the United States has agreed to resettle them elsewhere. Petitioners sought an order from the habeas court requiring the Executive Branch to bring them to the United States and release them here because, in their view, resettlement efforts had failed. The district court issued such an order, but the court of appeals reversed. This Court granted certiorari to address the following question: “Whether a federal court exercising its habeas jurisdiction, as confirmed by Boumediene v. Bush, has no power to order the release of prisoners held by the Executive for seven years, where the Executive detention is indefinite and without authorization in law, and release into the continental United States is the only possible effective remedy.” Pet. i (citation omitted). In letters dated February 3, 2010, and February 5, 2010, counsel for the parties informed the Court that the government of Switzerland has agreed to accept for resettlemen two of the petitioners in this case, Arkin Mahmud and Bahtiyar Mahnut. One of those men (Arkin Mahmud) had not previously received an offer of resettlement from any country. The parties also informed the Court that the two men had accepted Switzerland’s offer, and are expected to be resettled shortly. Once the two men leave Guantanamo Bay for Switzerland, only five of the 22 Uighurs originally detained at Guantanamo Bay (and two of the 14 original petitioners in this Court) will remain there. All of the remaining five Uighurs at Guantanamo Bay have received two offers of resettlement, one from Palau and one from another nation. In our letter dated February 5, 2010, and in our brief on the merits (at 51-52), the government noted that these recent developments have eliminated the premise of the question presented. All of the petitioners remaining at Guantanamo Bay have received offers of resettlement from other countries. Yet petitioners' claim to be brought to and released in the United States has always depended on their having no other nations walling to accept them. Because these developments eliminate the factual premise of the question on which the Court granted review, the Court should dismiss the writ of certiorari. 1. Petitioners are Chinese nationals who are members of the Uighur ethnic group, a Turkic Muslim minority in the far-western region of China. Pet. App. la-2a. After September 11,2001, they were captured by Pakistan or coalition forces, transferred to U.S. military custody, and brought to the Guantanamo Bay Naval Base for detention under the Authorization for Use of Military Force (AUMF), Pub. L. No. 107-40,115 Stat. 224 (50 U.S.C. 1541 note). Pet. App. 2a. In all, 22 Uighurs were brought to Guantanamo Bay. J.A. 25a. All 22 Uighurs were given hearings before Combatant Status Review Tribunals (CSRTs) to determine whether they should be retained in military detention. Pet. App. 2a. The CSRTs determined that five of them should no longer be considered enemy combatants. Those five men were resettled in Albania in 2006. For the other 17 Uighurs, a CSRT issued a final determination that the record supported continued detention. See id. at 2a-3a; U.S. Br. 5. Habeas petitions were filed in federal court to challenge the legality of the detention of those 17 men (14 of whom are petitioners in this Court). In September 2008, the United States determined that these 17 men should no longer be held in military detention in an enemy status. The government moved the Uighurs to new, less restrictive housing at Guantanamo Bay and focused its efforts on resettling them. See U.S. Br. 6, 21-22. 2. Petitioners moved for judgment on their habeas petitions and sought an order requiring the Executive to bring them into the United States and release them here. The premise of their claim to such an order was that there is no other means by which they can be released from U.S. custody at Guantanamo Bay. J.A. 175a-176a. In particular, petitioners argued that, under Boimiediene v. Bush, 128 S. Ct. 2229 (2008), and the court of appeals' decision in Parked v. Gates, 582 F.Bd 884 (D.C. Cir. 2008), they are entitled to release, and because they cannot return to China, "release can only mean release into the United States." J.A. 175a-176a. Petitioners "emphasize[d] that this is an unusual case" because "[i]n most cases, release of the prisoner to his home country would be the natural remedy." J.A. 189a n.13. But here, they claimed, they are "entitled to release into the United States because no other remedy is available." Ibid.; see also J.A. 160a ("He is entitled to relief, and there is no relief—except an order that he be released into the continental United States."). That theme pervaded petitioners' presentation in the district court. J.A. 205a (stating that petitioners "are stranded because no foreign government has agreed to accept them"); J.A. 208a ("Parhat is detained for the practical reason that no safe country has been found to take him"; "[A]ll efforts to persuade allies to accept him as a refuge have failed."); J.A. 260a ("We are at the end of a five-year failed effort by the government to repatriate Parhat and the other Uighurs."); J.A. 462a There's only two places to go from Guantanamo. You can come here or you can go somewhere else in the world, but somewhere else in the world requires the cooperation of a foreign sovereign.").

#### Releasing Uigher’s into the US wrecks US/China relations

Black 10, Former Judge Advocate General of the US Army

(Lt. Gen. Scott C., Amici Curaie in support of Respondents, Kiyemba v. Obama, www.oyez.org/sites/default/files/cases/briefs/pdf/brief\_\_08-1234\_\_8.pdf)

The potential national security concerns at issue range far beyond how the Uighurs may conduct themselves once released into the United States. For example, China has stated in no uncertain terms that it wants the Uighurs returned to China and opposes permitting them to live freely in some other country. See, e.g., Peter Spiegel and Barbara Demick, “Uighur Detainees at Guantanamo Pose a Problem for Obama,” Los Angeles Times (Feb. 18, 2009) (“China is insisting that the Uighurs be sent home to face trial for separatist activities. It has further intimated that any country that offers them political asylum will in effect be harboring dangerous terrorists.”); Bradley S. Klapper, “China to Swiss: Don’t Take Uighurs from Guantanamo,” Miami Herald (Jan. 8, 2010) (“China warned the Swiss government Friday against accepting two Guantanamo inmates as part of President Barack Obama’s effort to close the detention center, calling them terrorist suspects who should face Chinese justice.”). Releasing the seven Uighurs into the United States undoubtedly would have adverse effects on U.S. relations with China. Amici submit that the Executive Branch and Congress are better equipped than is the Court to weigh the costs of those effects against whatever benefits might come from the Uighurs’ release into the United States.

#### US/China relations key to the global economy and preventing Korean war

Carpenter 9/5, Senior fellow for defense and foreign policy studies at the Cato Institute

(13, Ted Galen, Don’t Wreck Relations with Russia and China over Syria, www.cato.org/blog/dont-wreck-relations-russia-china-over-syria)

Conversely, we need cooperation from Moscow and Beijing on a host of important issues. Without Russia’s help, there is little chance for serious progress on nuclear issues, either reducing the bloated U.S. and Russian stockpiles of such weapons or discouraging Iran and other countries from barging into the global nuclear weapons club. China’s cooperation is even more important. Not only is China a major purchaser of U.S. government debt, which in an era of chronic budget deficits is no trivial matter, but the country is an increasingly crucial U.S. trading partner and a vital factor in the overall global economy. An angry, recalcitrant China would not be good for America’s or the world’s economic health. China is also the most important player in efforts to discourage North Korea from engaging in reckless, destabilizing conduct. During the first half of 2013, Beijing appeared to grow weary of Pyongyang’s disruptive, provocative conduct and began to exert pressure on its obnoxious client. That pressure has been at least one factor in North Korea’s more conciliatory behavior in the past few months. But China will have little incentive to continue that course if Washington tramples on Beijing’s interests in Syria and the rest of the Middle East.

#### Korean war goes nuclear - extinction

Hamel-Green 09, Dean of and Professor in the Faculty of Arts, Education and Human Development, Victoria University

(Michael, The Path Not Taken, The Way Still Open: Denuclearizing the Korean Peninsula and Northeast Asia, www.japanfocus.org/-Michael-Hamel\_Green/3267

The international community is increasingly aware that cooperative diplomacy is the most productive way to tackle the multiple, interconnected global challenges facing humanity, not least of which is the increasing proliferation of nuclear and other weapons of mass destruction. Korea and Northeast Asia are instances where risks of nuclear proliferation and actual nuclear use arguably have increased in recent years. This negative trend is a product of continued US nuclear threat projection against the DPRK as part of a general program of coercive diplomacy in this region, North Korea’s nuclear weapons programme, the breakdown in the Chinese-hosted Six Party Talks towards the end of the Bush Administration, regional concerns over China’s increasing military power, and concerns within some quarters in regional states (Japan, South Korea, Taiwan) about whether US extended deterrence (“nuclear umbrella”) afforded under bilateral security treaties can be relied upon for protection. The consequences of failing to address the proliferation threat posed by the North Korea developments, and related political and economic issues, are serious, not only for the Northeast Asian region but for the whole international community. At worst, there is the possibility of nuclear attack, whether by intention, miscalculation, or merely accident, leading to the resumption of Korean War hostilities. On the Korean Peninsula itself, key population centres are well within short or medium range missiles. The whole of Japan is likely to come within North Korean missile range. Pyongyang has a population of over 2 million, Seoul (close to the North Korean border) 11 million, and Tokyo over 20 million. Even a limited nuclear exchange would result in a holocaust of unprecedented proportions. But the catastrophe within the region would not be the only outcome. New research indicates that even a limited nuclear war in the region would rearrange our global climate far more quickly than global warming. Westberg draws attention to new studies modelling the effects of even a limited nuclear exchange involving approximately 100 Hiroshima-sized 15 kt bombs2 (by comparison it should be noted that the United States currently deploys warheads in the range 100 to 477 kt, that is, individual warheads equivalent in yield to a range of 6 to 32 Hiroshimas).The studies indicate that the soot from the fires produced would lead to a decrease in global temperature by 1.25 degrees Celsius for a period of 6-8 years.3 In Westberg’s view: That is not global winter, but the nuclear darkness will cause a deeper drop in temperature than at any time during the last 1000 years. The temperature over the continents would decrease substantially more than the global average. A decrease in rainfall over the continents would also follow…The period of nuclear darkness will cause much greater decrease in grain production than 5% and it will continue for many years...hundreds of millions of people will die from hunger…To make matters even worse, such amounts of smoke injected into the stratosphere would cause a huge reduction in the Earth’s protective ozone.

### 1NC T

#### Next off is T War Powers

#### War power is the power to conduct war

HIRABAYASHI v. UNITED STATES - SUPREME COURT - June 21, 1943, Decided, 320 U.S. 81; 63 S. Ct. 1375; 87 L. Ed. 1774; 1943 U.S. LEXIS 1109

The war power of the national government is "the power to wage war successfully." See Charles Evans Hughes, War Powers Under the Constitution, 42 A. B. A. Rep. 232, 238.It extends to every matter and activity so related to war as substantially to affect its conduct and progress. The power is not restricted to the winning of victories in the field and the repulse of enemy forces. It embraces every phase of the national defense, including the protection of war materials and the members of the armed forces from injury and from the dangers which attend the rise, prosecution and progress of war. Prize Cases, supra; Miller v. United States, 11 Wall. 268, 303-14; Stewart v. Kahn, 11 Wall. 493, 506-07; Selective Draft Law Cases, 245 U.S. 366; McKinley v. United States, 249 U.S. 397; United States v. Macintosh, 283 U.S. 605, 622-23. HN4Go to this Headnote in the case.Since the Constitution commits to the Executive and to Congress the exercise of the war power in all the vicissitudes and conditions of warfare, it has necessarily given them wide scope for the exercise of judgment and discretion in determining the nature and extent of the threatened injury or danger and in the selection of the means for resisting it. Ex parte Quirin, supra, 28-29; cf. Prize Cases, supra, 670; Martin v. Mott, 12 Wheat. 19, 29. Where, as they did here, the conditions call for the exercise of judgment and discretion and for the choice of means by those branches of the Government on which the Constitution has placed the responsibility of war-making, it is not for any court to sit in review of the wisdom of their action or substitute its judgment for theirs.

#### The plan only deals with immigration powers not war powers

Goldsmith 09, Chair of European and Asian Litigation at Debevoise and Plimpton

(Lord Peter, Amici Curaie in support of petitioners, Kiyemba v. Obama, www.oyez.org/sites/default/files/cases/briefs/pdf/brief\_\_08-1234\_\_7.pdf)

From the 17th century onwards the writ of habeas corpus was conceived and used as a control against the unlawful use of executive power. This was achieved by granting to courts the ability to order the immediate and non-discretionary release of an illegally detained person. It would be a surprising result that would run counter to this history if the exercise of executive powers – in this instance immigration powers – was allowed to thwart the operation of the writ. The Respondents have conceded that the Petitioners are illegally detained, and that they cannot be returned to their country of origin. In this context, to affirm the decision of the court below is in effect to suspend the operation of habeas corpus for these Petitioners.

#### Vote neg – limits – affirmative interpretation opens the topic up to include all immigration issues like detention and asylum centers – also allows all affirmatives that deal with any executive power, not just war powers

### 1NC K

#### Next off is the Law K

#### **modeling of US legal norms is a vague, empty concept – instead of guaranteeing global peace, it rhetorically provides political cover for violent western interventionism that produces mass structural violence – must be rejected**

Mattei 9 – prof of law @ Hastings

(Ugo, written with Marco de Morpurgo, M.Sc. Candidate, International University College of Turin, BOCCONI SCHOOL OF LAW, GLOBAL LAW & PLUNDER: THE DARK SIDE OF THE RULE OF LAW)

What we can identify as ‘global law’ is not a single and coherent system of law drawing legitimacy from a well-defined legal and political process. Rather, a mixture of international and transnational instruments and processes—non-democratic institutional settings, power/force relationships and ethnocentric intellectual attitudes—stand behind the legal rules that are adopted by public and private actors at the global and (consequently) at the local level. This is not a new phenomenon, although its magnitude has recently been increasing.¶ Within this framework, Western law has constantly enjoyed a dominant position during the past centuries and today, thus being in the position to shape and bend the evolution of other legal systems worldwide. During the colonial era, continental-European powers have systematically exported their own legal systems to the colonized lands. During the past decades and today, the United States have been dominating the international arena as the most powerful economic power, exporting their own legal system to the ‘periphery’, both by itself and through a set of international institutions, behaving as a neo-colonialist within the ideology known as neo- liberalism.¶ Western countries identify themselves as law-abiding and civilized no matter what their actual history reveals. Such identification is acquired by false knowledge and false comparison with other peoples, those who were said to ‘lack’ the rule of law, such as China, Japan, India, and the Islamic world more generally. In a similar fashion today, according to some leading economists, Third World developing countries ‘lack’ the minimal institutional systems necessary for the unfolding of a market economy.¶ The theory of ‘lack’ and the rhetoric of the rule of law have justified aggressive interventions from Western countries into non-Western ones. The policy of corporatization and open markets, supported today globally by the so-called Washington consensus, was used by Western bankers and the business community in Latin America as the main vehicle to ‘open the veins’ of the continent—to borrow Eduardo Galeano’s metaphor4—with no solution of continuity between colonial and post-colonial times. Similar policy was used in Africa to facilitate the forced transfer of slaves to America, and today to facilitate the extraction of agricultural products, oil, minerals, ideas and cultural artefacts in the same countries. The policy of opening markets for free trade, used today in Afghanistan and Iraq, was used in China during the nineteenth century Opium War, in which free trade was interpreted as an obligation to buy drugs from British dealers. The policy of forcing local industries to compete on open markets was used by the British empire in Bengal, as it is today by the WTO in Asia, Africa, and Latin America.¶ Foreign-imposed privatization laws that facilitate unconscionable bargains at the expense of the people have been vehicles of plunder, not of legality. In all these settings the tragic human suffering produced by such plunder is simply ignored. In this context law played a major role in legalizing such practices of powerful actors against the powerless. Yet, this use of power is scarcely explored in the study of Western law.¶ The exportation of Western legal institutions from the West to the ‘rest’ has systematically been justified through the ideological use of the extremely politically strong and technically weak concept of ‘rule of law’. The notion of ‘rule of law’ is an extremely ambiguous one. Notwithstanding, within any public discussion its positive connotations have always been taken for granted. The dominant image of the rule of law is false both historically and in the present, because it does not fully acknowledge its dark side. The false representation starts from the idea that good law (which others ‘lack’) is autonomous, separate from society and its institutions, technical, non-political, non-distributive and reactive rather than proactive: more succinctly, a technological framework for an ‘efficient’ market.¶ The rule of law has a bright and a dark side, with the latter progressively conquering new ground whenever the former is not empowered by a political soul. In the absence of such political life, the rule of law becomes a cold technology. Moreover, when large corporate actors dominate states (affected by a declining regulatory role), law becomes a product of the economy, and economy governs the law rather than being governed by it.¶ Contemporary mass cultures operate within a short time-span. Most intellectuals do not acknowledge that it is exactly because of plunder of gold, silver, bioresources and so on that development accelerated in the West, so that underdevelopment is a historically produced victimization of weaker and more enclosed communities and not the disease of lesser people.¶ Prevailing short-term and short-sighted opportunism must be overcome. An analysis of the imperial adventure rendered in legal terms opens up a possibility for a radical rethinking of a model of development defined by Western ideas of progress, development and economic efficiency. A reconfiguration would mean, first and foremost, a clear rejection of an ideology of inherent superiority of Western culture that does not recognize that the West is itself part of something much larger.

#### The impact is extinction – interventionism is unsustainable in the long-term and breeds asymmetric warfare and power balancing that escalates

Foster 3 (John, Prof. Sociology - U of Oregon, Poli Sci at York U - Toronto, “The new Age of Imperialism,” Monthly Review 55.3)

At the same time, it is clear that in the present period of global hegemonic imperialism the United States is geared above all to expanding its imperial power to whatever extent possible and subordinating the rest of the capitalist world to its interests. The Persian Gulf and the Caspian Sea Basin represent not only the bulk of world petroleum reserves, but also a rapidly increasing proportion of total reserves, as high production rates diminish reserves elsewhere. This has provided much of the stimulus for the United States to gain greater control of these resources—at the expense of its present and potential rivals. But U.S. imperial ambitions do not end there, since they are driven by economic ambitions that know no bounds. As Harry Magdoff noted in the closing pages of The Age of Imperialism in 1969, "it is the professed goal" of U.S. multinational corporations "to control as large a share of the world market as they do of the United States market," and this hunger for foreign markets persists today. Florida-based Wackenhut Corrections Corporation has won prison privatization contracts in Australia, the United Kingdom, South Africa, Canada, New Zealand, and the Netherlands Antilles ("Prison Industry Goes Global," www.futurenet.org, fall 2000). Promotion of U.S. corporate interests abroad is one of the primary responsibilities of the U.S. state. Consider the cases of Monsanto and genetically modified food, Microsoft and intellectual property, Bechtel and the war on Iraq. It would be impossible to exaggerate how dangerous this dual expansionism of U.S. corporations and the U.S. state is to the world at large. As Istvan Meszaros observed in 2001 in Socialism or Barbarism, the U.S. attempt to seize global control, which is inherent in the workings of capitalism and imperialism, is now threatening humanity with the "extreme violent rule of the whole world by one hegemonic imperialist country on a permanent basis...an absurd and unsustainable way of running the world order."\* This new age of U.S. imperialism will generate its own contradictions, amongst them attempts by other major powers to assert their influence, resorting to similar belligerent means, and all sorts of strategies by weaker states and non-state actors to engage in "asymmetric" forms of warfare. Given the unprecedented destructiveness of contemporary weapons, which are diffused ever more widely, the consequences for the population of the world could well be devastating beyond anything ever before witnessed. Rather than generating a new "Pax Americana" the United States may be paving the way to new global holocausts. The greatest hope in these dire circumstances lies in a rising tide of revolt from below, both in the United States and globally. The growth of the anti-globalization movement, which dominated the world stage for nearly two years following the events in Seattle in November 1999, was succeeded in February 2003 by the largest global wave of antiwar protests in human history. Never before has the world's population risen up so quickly and in such massive numbers in the attempt to stop an imperialist war. The new age of imperialism is also a new age of revolt. The Vietnam Syndrome, which has so worried the strategic planners of the imperial order for decades, now seems not only to have left a deep legacy within the United States but also to have been coupled this time around with an Empire Syndrome on a much more global scale--something that no one really expected. This more than anything else makes it clear that the strategy of the American ruling class to expand the American Empire cannot possibly succeed in the long run, and will prove to be its own--we hope not the world's—undoing.

#### **The affirmative model of top-down Western legal development sacralizes the rule of law, which directly ensures military interventions and a fundamentally unequal world order. Our alternative is to rethink democratic development from the bottom-up. Cast your ballot in solidarity with the global resistance to the universalizing, falsely apolitical ‘norms’ of the 1ac**

Mattei 9 – prof of law @ Hastings

(Ugo, written with Marco de Morpurgo, M.Sc. Candidate, International University College of Turin, BOCCONI SCHOOL OF LAW, GLOBAL LAW & PLUNDER: THE DARK SIDE OF THE RULE OF LAW)

In the complex spectrum of global law, both throughout the era of colonialism and neo-liberal US-led Western imperialism within a pattern of continuity, the rule of law, together with the theory of ‘lack’ and other powerful rhetorical arguments, has been used in order to legitimize political interventions and plunder in the ‘emerging’ economies. The sacred concept of rule of law, whose positive connotations are ‘naturally’ assumed, has been portrayed as the embodiment of a professional and neutral technology, thus being capable of substituting the lack of democratic legitimacy of the institutions that are protagonist in the creation of global law. But its dark side has never been shown or discussed. An imperial rule of law is now a dominant layer for the worldwide legal systems. It is produced, in the interest of international capital, by a variety of institutions, both public and private, all sharing a gap in political legitimacy sometimes referred to as ‘democratic deficit’.31 At the same time, law has been constructively turned into a technology and a mere component of an economic system of capitalism, thus hiding its intrinsic political nature, and annulling the relevance of local political systems, now impotent in front of the dynamics of global law. The ‘dry technology’ of the rule of law penetrates worldwide legal systems without any political discussion at the local level, attempting to create the conditions for the development of market economies, often without success, and causing serious consequences for the less powerful.¶ Under the technology of the rule of law, in its imperial version capable of producing plunder, the essence of the United States’ law hides. In the aftermath of World War II, there was a dramatic change in the pattern of Western legal development. Leading legal ideas once produced in continental Europe and exported through the colonized world are now, for the first time, produced in a common law jurisdiction: the United States. Clearly, the present world dominance of the United States has been economic, military and political first, and only recently legal, so that a ready explanation of legal hegemony can be found within a simple conception of law as a product of the economy.32 Furthermore, US law has been capable of expanding worldwide thanks to its prestige, the high level of professionalization of its attorneys and a series of procedural institutions, that benefit plaintiffs, that allow US courts to have a certain capacity to attract jurisdiction, while showing themselves as courts for universal justice.33¶ The general attitude of the United States has been a very ethnocentric one, and precisely that of showing itself as the guardian of a universal legality, which it is legitimized to export through its courts of law, scholarly production, military and political intervention, and through a set of US-centric international institutions. In recent times, in particular after September 11th 2001 and the declaration of the ‘war on terror’, the US rule of law has come under attack, so that once admiring crowds of lawyers and intellectuals worldwide are now beginning to look upon the United States as an uncivilized old West from the perspective of legal culture, despite the professional prestige still enjoyed by the giant New York law firms and by the US academy.¶ Notwithstanding, there has been no decline in the rhetoric of the rule of law when it comes to foreign relations. Bringing democracy and the rule of law is still used as a justification to keep intruding in foreign affairs. The same can be said for the international financial institutions and their innumerable ‘development’ projects that come packaged with the prestigious wrapping of the rule of law.¶ A rethinking of the very idea of global law is necessary and it must derive from a revaluation of the local dimension, which is currently ignored by the neo-liberal model of development. The production of global law should change its direction, and follow a bottom-up approach, rather than a top-down one, thus being sensitive to the local particularities and complexities.¶ Western spectacular ideas of democracy and the rule of law should be rethought. On this planet, resources are scarce, but there would be more than enough for all to live well. Nobody would admire and respect someone who, at a lunch buffet for seven, ate 90 percent of the food, leaving the other guests to share an amount insufficient for one. In a world history of capitalism in which the rule of law has reproduced this precise ‘buffet’ arrangement on the large scale, admiring the instruments used to secure such an unfair arrangement seems indeed paradoxical. People have to be free to build their own economies.¶ There is nothing inevitable about the present arrangements and their dominant and taken-for- granted certainties. Indeed, it may be that the present legal and political hegemonies suffer from lack: the lack of world culture and of global political realism.

### 1NC Legitimacy

#### There’s no correlation between hegemony and stability

Fettweis, PoliSci Prof @ Tulane, ’10

[Christopher J. Fettweis, Assistant Professor of Political Science at Tulane University, “Threat and Anxiety in US Foreign Policy,” Survival, 52:2, 59-82, March 25th 2010, <http://dx.doi.org/10.1080/00396331003764603>]

One potential explanation for the growth of global peace can be dismissed fairly quickly: US actions do not seem to have contributed much. The limited evidence suggests that there is little reason to believe in the stabilising power of the US hegemon, and that there is no relation between the relative level of American activism and international stability. During the 1990s, the United States cut back on its defence spending fairly substantially. By 1998, the United States was spending $100 billion less on defence in real terms than it had in 1990, a 25% reduction.29 To internationalists, defence hawks and other believers in hegemonic stability, this irresponsible ‘peace dividend’ endangered both national and global security. ‘No serious analyst of American military capabilities’, argued neo-conservatives William Kristol and Robert Kagan in 1996, ‘doubts that the defense budget has been cut much too far to meet America’s responsibilities to itself and to world peace’.30 And yet the verdict from the 1990s is fairly plain: the world grew more peaceful while the United States cut its forces. No state seemed to believe that its security was endangered by a less-capable US military, or at least none took any action that would suggest such a belief. No militaries were enhanced to address power vacuums; no security dilemmas drove insecurity or arms races; no regional balancing occurred once the stabilising presence of the US military was diminished. The rest of the world acted as if the threat of international war was not a pressing concern, despite the reduction in US military capabilities. Most of all, the United States was no less safe. The incidence and magnitude of global conflict declined while the United States cut its military spending under President Bill Clinton, and kept declining as the George W. Bush administration ramped the spending back up. Complex statistical analysis is unnecessary to reach the conclusion that world peace and US military expenditure are unrelated.

#### Low risk of Russian miscalc

Podvig, Research Director at the Center for International and Security Cooperation, ‘6 (Pavel, May, “Reducing the Risk of an Accidental Launch” Science and Global Security, Vol 14, p 75-115, http://iis-db.stanford.edu/pubs/21283/14\_2-3\_\_Podvig.pdf)

This also means that the decline of the early-warning system after the breakup of the Soviet Union has not seriously affected the role that early warning plays in the command and control system of the Russian strategic forces, which was rather limited to begin with. Because the decline has been a slow and well understood process, the Russian military had an opportunity to further adjust their operational practices to the gradual loss of early-warning capability. The danger of a miscalculation still exists, for nothing would prevent Russia from attempting to execute launch onwarning and issuing the necessary orders. However, during peacetime there will be a rather strong bias against doing so based on the information provided by the early-warning system.

#### Terrorist networks are weak – Bin Laden’s death, Abbottabad intelligence, no safe haven

WILLIAM MCCANTS - Center for Strategic Studies / Johns Hopkins – Sept/Oct 2011, Al Qaeda's Challenge, Foreign Affairs, http://www.foreignaffairs.com/articles/68160/william-mccants/al-qaedas-challenge?page=show

Al Qaeda now stands at a precipice. The Arab Spring and the success of Islamist parliamentarians throughout the Middle East have challenged its core vision just as the group has lost its founder. Al Qaeda has also lost access to bin Laden's personal connections in Afghanistan, Pakistan, and the Persian Gulf, which had long provided it with resources and protection. Bin Laden's death has deprived al Qaeda of its most media-savvy icon; and most important, al Qaeda has lost its commander in chief. The raid that killed bin Laden revealed that he had not been reduced to a figurehead, as many Western analysts had suspected; he had continued to direct the operations of al Qaeda and its franchises. Yet the documents seized from bin Laden's home in Abbottabad, Pakistan, reveal how weak al Qaeda had become even under his ongoing leadership. Correspondence found in the raid shows bin Laden and his lieutenants lamenting al Qaeda's lack of funds and the constant casualties from U.S. drone strikes. These papers have made the organization even more vulnerable by exposing its general command structure, putting al Qaeda's leadership at greater risk of extinction than ever before. Al Qaeda has elected Zawahiri as its new chief, at least for now. But the transition will not be seamless. Some members of al Qaeda's old guard feel little loyalty to Zawahiri, whom they view as a relative newcomer. Al Qaeda's members from the Persian Gulf, for their part, may feel alienated by having an Egyptian at their helm, especially if Zawahiri chooses another Egyptian as his deputy. Despite these potential sources of friction, al Qaeda is not likely to split under Zawahiri's reign. Its senior leadership will still want to unite jihadist groups under its banner, and its franchises will have little reason to relinquish the recognition and resources that come with al Qaeda affiliation. Yet those affiliates cannot offer al Qaeda's senior commanders shelter. Indeed, should Pakistan become too dangerous a refuge for the organization's leaders, they will find themselves with few other options. The Islamic governments that previously protected and assisted al Qaeda, such as those in Afghanistan and Sudan in the 1990s, either no longer exist or are inhospitable (although Somalia might become a candidate if the militant group al Shabab consolidates its hold there). In the midst of grappling with all these challenges, al Qaeda must also decide how to respond to the uprisings in the Arab world. Thus far, its leaders have indicated that they want to support Islamist insurgents in unstable revolutionary countries and lay the groundwork for the creation of Islamic states once the existing regimes have fallen, similar to what they attempted in Iraq. But al Qaeda's true strategic dilemma lies in Egypt and Tunisia. In these countries, local tyrants have been ousted, but parliamentary elections will be held soon, and the United States remains influential. The outcome in Egypt is particularly personal for Zawahiri, who began his fight to depose the Egyptian government as a teenager. Zawahiri also understands that Egypt, given its geostrategic importance and its status as the leading Arab nation, is the grand prize in the contest between al Qaeda and the United States. In his recent six-part message to the Egyptian people and in his eulogy for bin Laden, Zawahiri suggested that absent outside interference, the Egyptians and the Tunisians would establish Islamic states that would be hostile to Western interests. But the United States, he said, will likely work to ensure that friendly political forces, including secularists and moderate Islamists, win Egypt's upcoming elections. And even if the Islamists succeed in establishing an Islamic state there, Zawahiri argued, the United States will retain enough leverage to keep it in line. To prevent such an outcome, Zawahiri called on Islamist activists in Egypt and Tunisia to start a popular (presumably nonviolent) campaign to implement sharia as the sole source of legislation and to pressure the transitional governments to end their cooperation with Washington. Yet Zawahiri's attempt to sway local Islamists is unlikely to succeed. Although some Islamists in the two countries rhetorically support al Qaeda, many, especially the Muslim Brotherhood, are now organizing for their countries' upcoming elections -- that is, they are becoming Islamist parliamentarians. Even Egyptian Salafists, who share Zawahiri's distaste for parliamentary politics, are forming their own political parties. Most ominous for Zawahiri's agenda, the Egyptian Islamist organization al-Gama'a al-Islamiyya (the Islamic Group), parts of which were once allied with al Qaeda, has forsworn violence and recently announced that it was creating a political party to compete in Egypt's parliamentary elections. Al Qaeda, then, is losing sway even among its natural allies. This dynamic limits Zawahiri's options. For fear of alienating the Egyptian people, he is not likely to end his efforts to reach out to Egypt's Islamist parliamentarians or to break with them by calling for attacks in the country before the elections. Instead, he will continue urging the Islamists to advocate for sharia and to try to limit U.S. influence. In the meantime, Zawahiri will continue trying to attack the United States and continue exploiting less stable postrevolutionary countries, such as Libya, Syria, and Yemen, which may prove more susceptible to al Qaeda's influence. Yet to operate in these countries, al Qaeda will need to subordinate its political agenda to those of the insurgents there or risk destroying itself, as Zarqawi's group did in Iraq. If those insurgents take power, they will likely refuse to offer al Qaeda safe haven for fear of alienating the United States or its allies in the region. Thanks to the continued predominance of the United States and the growing appeal of Islamist parliamentarians in the Muslim world, even supporters of al Qaeda now doubt that it will be able to replace existing regimes with Islamic states anytime soon. In a recent joint statement, several jihadist online forums expressed concern that if Muammar al-Qaddafi is defeated in Libya, the Islamists there will participate in U.S.-backed elections, ending any chance of establishing a true Islamic state. As a result of all these forces, al Qaeda is no longer the vanguard of the Islamist movement in the Arab world. Having defined the terms of Islamist politics for the last decade by raising fears about Islamic political parties and giving Arab rulers a pretext to limit their activity or shut them down, al Qaeda's goal of removing those rulers is now being fulfilled by others who are unlikely to share its political vision. Should these revolutions fail and al Qaeda survives, it will be ready to reclaim the mantle of Islamist resistance. But for now, the forces best positioned to capitalize on the Arab Spring are the Islamist parliamentarians, who, unlike al Qaeda, are willing and able to engage in the messy business of politics.

### 1NC Rule of Law

#### Deference is inevitable – the best they can achieve is inconsistent application of precedent.

Posner and Vermeule, 10- \*professor of law at the University of Chicago AND \*\*professor of law at Harvard (Eric and Adrian, The Executive Unbound, p. 52-54)

THE COURTS

We now turn from Congress to the courts, the other main hope of liberal legalism. In both economic and security crises, courts are marginal participants. Here two Schmittian themes are relevant: that courts come too late to the crisis to make a real difference in many cases, and that courts have pragmatic and political incentives to defer to the executive, whatever the nominal standard of review. The largest problem, underlying these mechanisms, is that courts possess legal authority but not robust political legitimacy. Legality and legitimacy diverge in crisis conditions, and the divergence causes courts to assume a restrained role. We take up these points in turn. The Timing of Review A basic feature of judicial review in most Anglo-American legal systems is that courts rely upon the initiative of private parties to bring suits, which the courts then adjudicate as “cases and controversies” rather than as abstract legal questions. This means that there is always a time lag, of greater or lesser duration, between the adoption of controversial government measures and the issuance of judicial opinions on their legal validity ensures that courts are less likely to set precedents while crises are hot, precedents that will be warped by the emotions of the day or by the political power of aroused majorities.70 Delayed review has severe costs, however. For one thing, courts often face a fait accompli. Although it is sometimes possible to strangle new programs in the crib, once those measures are up and running, it is all the more difficult for courts to order that they be abolished. This may be because new measures create new constituencies or otherwise entrench themselves, creating a ratchet effect, but the simpler hypothesis is just that officials and the public believe that the measures have worked well enough. Most simply, returning to the pre-emergency status quo by judicial order seems unthinkable; doing so would just re-create the conditions that led the legislature and executive to take emergency measures in the first place. For another thing, even if courts could overturn or restrict emergency measures, by the time their review occurs, those measures will by their nature already have worked, or not. If they have worked, or at least if there is a widespread sense that the crisis has passed, then the legislators and public may not much care whether the courts invalidate the emergency measures after the fact. By the time the courts issue a final pronouncement on any constitutional challenges to the EESA, the program will either have increased liquidity and stabilized financial markets, or not. In either case, the legal challenges will interest constitutional lawyers, but will lack practical significance. Intensity of Review Another dimension of review is intensity rather than timing. At the level of constitutional law, the overall record is that courts tend to defer heavily to the executive in times of crisis, only reasserting themselves once the public sense of imminent threat has passed. As we will discuss in chapter 3, federal courts deciding administrative cases after 9/11 have tended to defer to the government’s assertion of security interests, although more large number work is necessary to understand the precise contours of the phenomenon. Schmitt occasionally argued that the administrative state would actually increase the power of judges, insofar as liberal legislatures would attempt to compensate for broad delegations to the executive by creating broad rights of judicial review; consider the Administrative Procedure Act (APA), which postdates Schmitt’s claim. It is entirely consistent with the broader tenor of Schmitt’s thought, however, to observe that the very political forces that constrain legislatures to enact broad delegations in times of crisis also hamper judges, including judges applying APA-style review. While their nominal power of review may be vast, the judges cannot exercise it to the full in times of crisis. Legality and Legitimacy At a higher level of abstraction, the basic problem underlying judicial review of emergency measures is the divergence between the courts’ legal powers and their political legitimacy in times of perceived crisis. As Schmitt pointed out, emergency measures can be “exceptional” in the sense that although illegal, or of dubious legality, they may nonetheless be politically legitimate, if they respond to the public’s sense of the necessities of the situation.71 Domesticating this point and applying it to the practical operation of the administrative state, courts reviewing emergency measures may be on strong legal ground, but will tend to lack the political legitimacy needed to invalidate emergency legislation or the executive’s emergency regulations. Anticipating this, courts pull in their horns. When the public sense of crisis passes, legality and legitimacy will once again pull in tandem; courts then have more freedom to invalidate emergency measures, but it is less important whether or not they do so, as the emergency measure will in large part have already worked, or not. The precedents set after the sense of crisis has passed may be calmer and more deliberative, and thus of higher epistemic quality—this is the claim of the common lawyers, which resembles an application of the Madisonian vision to the courts—but the public will not take much notice of those precedents, and they will have little sticking power when the next crisis rolls around.

#### Lack of military education about CMR makes the gap inevitable

Noonan 8 – Michael P. Noonan, managing director of the Program on National Security at the Foreign Policy Research Institute and a veteran of Operation Iraqi Freedom, January 2008, “Mind the Gap: Post-Iraq Civil-Military Relations in America,” online: http://www.fpri.org/enotes/200801.noonan.mindthegap.html

Repairing the “rent fabric” of contemporary U.S. civil-military relations will require a sustained and comprehensive effort. One key element will be to address professional military education from pre-commissioning through the war college levels. Civil-military relations are too silent a theme throughout the military educational system. Among the services, for instance, only the Army and Marine Corps have civil-military relations books on their professional reading lists. Another element that is needed is an explicit code for the military profession. The code would define the fundamentals of the professional officer “dedicated to this republic’s values and institutions,” distinguish between the professional military and the National Guard and reserves, denote the rights, privileges, and obligations of retired senior officers, define the expectations for loyalty, obedience, and dissent in clear terms, and clarify for both branches of government the necessity for the institutional integrity of the armed forces of the United States above reproach. Once established, it needs to be taught to the military and civilians alike and enforced. “We all realize that civilians have a right to be wrong in our system, but we devote too little study to minimizing the frequency of its occurrence.” A national commission on the American military ethic, said Hoffman, should also be established to define and complete the ethical codification, with bipartisan political, civilian, and military representation.¶ In conclusion, Hoffman stated, “Unless serious efforts are made to rectify the components that constitute the entire relationship between the nation and its uniformed servants, expectations for improved performance are low, and my expectation for greater volatility between institutions of government is high.” Our leaders failed us in the planning and conduct of the conflict in Iraq, and while this may not comprise a “dereliction of duty,” it is a failure nonetheless. “If we continue to ignore the difficulty inherent to the uneasy dialogue that supports the ultimate decision about going to war, and we fail to educate future leaders about the duty and professional obligation inherent to that decision, we are going to continue to pay a high price,” argued Hoffman.

#### Friendly democracies can decipher between good and bad US norms, and authoritarian nations don’t care either way

John O. McGinnis 7, Professor of Law, Northwestern University School of Law. \*\* Ilya Somin \*\* Assistant Professor of Law, George Mason University School of Law. GLOBAL CONSTITUTIONALISM: GLOBAL INFLUENCE ON U.S. JURISPRUDENCE: Should International Law Be Part of Our Law? 59 Stan. L. Rev. 1175

The second benefit to foreigners of distinctive U.S. legal norms is information. The costs and benefits of our norms will be visible for all to see. n268 Particularly in an era of increased empirical social science testing, over time we will be able to analyze and identify the effects of differences in norms between the United States and other nations. n269 Such diversity benefits foreigners as foreign nations can decide to adopt our good norms and avoid our bad ones.

The only noteworthy counterargument is the claim that U.S. norms will have more harmful effects than those of raw international law, yet other nations will still copy them. But both parts of this proposition seem doubtful. First, U.S. law emerges from a democratic process that creates a likelihood that it will cause less harm than rules that emerge from the nondemocratic processes [\*1235] that create international law. Second, other democratic nations can use their own political processes to screen out American norms that might cause harm if copied.

Of course, many nations remain authoritarian. n270 But our norms are not likely to have much influence on their choice of norms. Authoritarian states are likely to select norms that serve the interests of those in power, regardless of the norms we adopt. It is true that sometimes they might cite our norms as cover for their decisions. But the crucial word here is "cover." They would have adopted the same rules, anyway. The cover may bamboozle some and thus be counted a cost. But this would seem marginal compared to the harm of allowing raw international law to trump domestic law.

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

Easterbrook (Gregg, The New Republic Editor) 2003 [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.

# 2nc

## CP

### AT: Remedy Key

#### 1) New release requirements aren’t key to judicial remedy powers – the court already has the power to require habeas release and most of the detainees who have won their habeas hearing have been let go. The only detainees the plan effects are those who don’t want to go to other countries and demand release into the US. They have been provided all their rights, they’re just picky. This is not critical to the rule of law or court powers. That’s the 1NC black evidence

#### 2) Remedy and release already exists – all detainees who have won their habeas hearing have either left or turned down resettlement offers. They are free to go

Kagan 10, Solicitor General US DOJ

(2/19, Elena, [www.scotusblog.com/wp-content/uploads/2010/02/SG-Kiyemba-letter-2-19-10.pdf](http://www.scotusblog.com/wp-content/uploads/2010/02/SG-Kiyemba-letter-2-19-10.pdf))

3. Since well before the district court issued its order that petitioners be brought to and released in the United States, the United States has undertaken extensive diplomatic efforts to resettle the Uighurs at Guantanamo Bay. Before January 20, 2009, Executive Branch officials approached a substantial number of countries concerning the Uighurs’ resettlement, recognizing that those efforts were laying the groundwork for a potentially lengthy dialogue with other nations. Later, consistent with the President’s directives in Executive Order No. 13,492, 74 Fed. Reg. 4897 (2009), the Secretary of State appointed a Special Envoy, Daniel Fried, to intensify diplomatic efforts to repatriate or resettle individuals cleared for transfer from Guantanamo Bay. Since accepting his appointment, Ambassador Fried has regularly traveled abroad to meet with representatives of other nations and discuss transfers of Guantanamo Bay detainees. He has focused his efforts on resettling detainees whom the United States could not send to their home countries because of concerns about possible torture, and has made resettlement of the Uighurs a top diplomatic priority. See U.S. Br. 3-4, 8-10 These diplomatic efforts had met with considerable success even before the Court granted certiorari. In May 2006, the five Uighurs whose CSRTs determined that they should no longer be detained were resettled in Albania. In June 2009, four Uighurs were resettled in Bermuda. And in September 2009, Palau offered to accept 12 of the 13 Uighurs remaining at Guantanamo Bay. Six of those 12 accepted Palau’s offer and were resettled there in October 2009 (after this Court’s grant of certiorari). The remaining six (including the five who will be left at Guantanamo Bay after Mr. Mahmud and Mr. Mahnut go to Switzerland) did not accept that offer. U.S. Br. 5, 9-10. Since the Court granted certiorari, the government of Switzerland agreed to accept the one Uighur detainee who had not previously received an offer, as well as his brother; they have accepted that offer and are expected to be resettled in Switzerland in the near future. U.S. Br. 10. And as noted in the government’s brief (at 10), the five other Uighurs who remain at Guantanamo Bay also received an offer from a country other than Palau; they did not accept that offer, and it was withdrawn after several months. If petitioners were to express interest, the United States would again discuss the matter with the government of Palau. Earlier this month, the President of Palau publicly announced that Palau remains receptive to resettling the Uighurs who remain at Guantanamo Bay, and has reiterated that the Uighur transferees are welcome to stay indefinitely. See Palau Willing to Take Remaining Guantanamo Uighurs (Feb. 8, 2010) <http://news.yahoo.com/s/afp/20100209/ wl\_asia\_afp/uschinaxinjiangguantanamopalaujustice>; see U.S. Br. 19 n.24. The United States also continues to work to find other options for resettlement. U.S. Br. 52. The government’s success in obtaining resettlement offers for all of the Uighurs at Guantanamo Bay is part of a broader pattern. Over the past year, 48 individuals have been transferred from Guantanamo Bay to nine different countries. U.S. Br. 4. And just several days ago, Spain agreed to accept five detainees. See Peter Finn, Spain to Accept Five Guantanamo Detainees, Wash. Post, Feb. 16, 2010 <http://www.washingtonpost.com/ wp-dyn/content/article/2010/02/15/AR2010021501746.html>. In particular, all 11 of the detainees in addition to the Uighurs who have obtained habeas orders of release that are final and not subject to appeal have been transferred. U.S. Br. 15. 4. These developments undermine not only the factual premise of the question on which this Court granted review, but the premise of petitioners’ arguments throughout the entirety of the relevant proceedings in this case. As explained above, petitioners consistently have argued that, because no other nation would accept them, their remedy of release from Guantanamo Bay could only be effective if a federal court were to order the Executive to bring them into the United States and release them here. But to the extent this might have appeared to be the case once, it is not the case now. All of the Uighurs who were once in military detention in an enemy status at Guantanamo Bay have either been resettled elsewhere, accepted an offer of resettlement (with resettlement soon to follow), or received two offers of resettlement but chosen not to accept them. And the five in the last category would likely still have the option of resettling in Palau if they expressed sufficient interest for the United States to again approach and engage in substantive discussions with the Palauan government. Or these five may benefit from the United States’ ongoing diplomatic efforts to resettle them elsewhere. In sum, all of the petitioners have had an option for release from custody other than a judicial order of release into the United States. The question upon which the Court granted certiorari is therefore no longer presented as to any petitioner, because release into the United States has not been the “only possible effective remedy.” Pet. i

#### 3) The counterplan is sufficient to solve – we have the United States take a huge leap forward in application of the rule of law and judicial power to detention decisions by declaring that detainees throughout the world are entitled to full habeas and due process protections. This would be a massive shift domestically and internationally -mandating release into the US is not necessary to solve. That’s the 1NC Sidhu evidence.

#### 4) Extraterritorial application of habeas key to restoration of the rule of law – solvency is impossible without it because we could just detain outside the US

Sidhu 11, JD George Washington

(Dawinder, SHADOWING THE FLAG: EXTENDING THE HABEAS WRIT BEYOND GUANTÁNAMO, scholarship.law.wm.edu/cgi/viewcontent.cgi?article=1597&context=wmborj)

This Boumediene standard, although expanding the scope of the habeas writ, is not sufficient. It does not avert the possibility that the Executive may have space within which it can detain individuals outside of meaningful judicial review. Nor does it avert the possibility that the Executive essentially may “contract away” the protection offered by the writ—that is, the freedom from unlawful deprivation of liberty at the hands of the government. In particular, while the government may not, under Boumediene, avoid habeas by forfeiting formal sovereignty over a territory and then entering into a lease granting it total control, the government may, under Boumediene, skirt habeas by setting up shop in an area it has not occupied for very long or by having other nations on a lease for a territory even though it maintains complete control over the detainees. For example, the United States may, consistent with Boumediene, completely control a detention facility on a base whose other facilities (e.g., air fields, mess halls, exercise and training areas, housing) are shared with an ally, and repel habeas because the United States does not have plenary control of the overall area. In light of this possibility, the ability of the detainees to challenge whether they are being held in accordance with the law should not depend on whether the territory or base is exclusively controlled by the United States, but instead should hinge on whether the detainee himself is under the exclusive control of a United States custodian. Put differently, the interest in determining the reach of habeas should not turn on the legal or practical control over specific identifiable regions of land, such as sovereign nations or territories, but rather control over the individuals whose liberty has been arrested, perhaps wrongfully. Doing so would restore the mutuality between the purpose of the writ—to check whether a detainee has been held consistent with the law—and who may assert the writ—a detainee who has been held by the Executive. Location, geography, and sovereignty produce artificial, judicially created filters between the writ and the detainee, though for the detainee himself, being jailed in the territorial United States, in a territory controlled by the United States, or in a facility controlled by the United States is the same—his liberty has been restrained by the United States. These layers of obstruction, once removed, permit the rule of law to be coextensive with executive action with respect to detentions of individuals.

### PICS Good 2NC

#### PICS good

#### 1- Decisionmaking – Good decisionmaking requires making comparisons between similar courses of action – PICS teach us to find the best policy possible – Debate should teach us to be better decisionmakers because it’s the only transferable skill to the rest of our lives

#### 2- Negative flexibility- The aff gets to parametricize the rez by picking one example- it’s an inherent advantage because they know way more about their *one* aff than the neg who has to be prepared for *every* aff- the best check is to be able to test individual parts of the aff

#### 3- No abuse – Lit base checks infinite regression and makes PICs predictable – “plan good” is offense against every PIC

#### Reject the arg, not the team

### Conditionality Good 2NC

#### First our offense-

#### 1- Critical thinking- Reacting to multiple attacks increases aff ability to evaluate their best arguments and collapsing down teaches the neg to make strategic, reactive decisions- that’s key to decisionmaking skills

#### 2- Negative flexibility- The aff gets to parametricize the rez by picking one example- its an inherent advantage because they know way more about their *one* aff than the neg who has to be prepared for *every* aff- the only check is to advance multiple cps

#### Now our defense-

#### 1- Not “infinitely” regressive- time limits and quality of argument create a limit. Our interp is: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

#### 2- Ground- Aff can always make “aff key” args and addons- it’s offense against any and all CPs

#### 3- Strat and time skew are inev- The alternative to multiple advocacies is more T and Das- those require just as many answers and create strategic double binds too

#### 4- CPs aren’t uniquely complex and perms check the advantages of neg fiat- a SKFTA CP is way less threatening than a SKFTA DA because you can perm it

#### 5- To vote aff you have to believe the debate is irreparably damaged by conditionality- it might make debate hard but not impossible

#### 6- Don’t be fooled by “reciprocity”- the aff’s job is to pick the question of debate and the neg’s is to find a way to disprove it- that’s why stability is important for the aff and flexibility is key for the neg

### Bagram

#### Extraterritorial application of habeas protections key to strong judicial check on the executive – also bagram

Sidhu 11, JD George Washington

(Dawinder, SHADOWING THE FLAG: EXTENDING THE HABEAS WRIT BEYOND GUANTÁNAMO, scholarship.law.wm.edu/cgi/viewcontent.cgi?article=1597&context=wmborj)

The writ of habeas corpus activates courts’ duty to check arbitrary or unlawful restraints by the Executive on individual liberty. In times of war, courts have been compelled to determine whether the writ is available to individuals held by the Executive outside of the territorial boundaries of the United States. In Johnson v. Eisentrager, in which World War II detainees were held in Germany, the Supreme Court answered in the negative, while in Boumediene v. Bush, involving post–9/11 detainees housed at Guantánamo, the Court reached the opposite conclusion. Operating within these two guideposts, the U.S. Court of Appeals for the District of Columbia Circuit decided in al Maqaleh v. Gates that three detainees held at Bagram Air Base, Afghanistan were not entitled to the constitutional habeas privilege. The purpose of this Article is to explain why the D.C. Circuit got it wrong. Part I provides an overview of the facts and relevant law that formed the basis for the decision. Part II shows that the court misapplied the basic factors set forth initially by the Court in Eisentrager and later clarified in Boumediene. Part III contains a proposed framework that reorients and reframes these factors in order to make habeas jurisdiction analyses more workable and consistent with the historical justifications for the writ, separation of powers considerations, and governing case law. Part IV applies this framework to the Bagram petitions and, in doing so, highlights the problematics of the D.C. Circuit’s decision. In short, under both existing standards and the suggested new way of looking at questions of wartime habeas jurisdiction, I posit that the petitions should not have been dismissed. If left to stand, al Maqaleh will not only cast the detainees into an indefinite legal abyss, but will place the Executive beyond the courts’ traditional constitutional checking duties precisely when the wartime Executive is most tempted to act outside of established law—that is, when judicial review is most critically needed.

## K

### 2NC Overview

#### extend the Mattei card – modeling of US legal norms actively provides political cover for further Western military interventions into other countries to preserve “the rule of law” – this creates an imperative for escalating cycles of violence through asymmetric backlashing and power balancing that ensure escalation to extinction – that’s Foster

#### they’ve also conceded that we control terminal uniqueness on impact questions. Since the western order is unsustainable in the long run, modeling can’t save it – only a risk for our impacts

#### it also produces massive structural violence by creating economic and legal structures that benefit the west – the effect is global poverty and inequality

#### **you should privilege this form of structural violence in your impact valuations because there is an ethical need to keep it from being invisible – it’s also an exponential form of attritional violence so even if the aff only causes a “small” amount of structural violence, the terminal impact is huge**

Nixon 11

(Rob, Rachel Carson Professor of English, University of Wisconsin-Madison, Slow Violence and the Environmentalism of the Poor, pgs. 2-3)

Three primary concerns animate this book, chief among them my conviction that we urgently need to rethink-politically, imaginatively, and theoretically-what I call "slow violence." By slow violence I mean a violence that occurs gradually and out of sight, a violence of delayed destruction that is dispersed across time and space, an attritional violence that is typically not viewed as violence at all. Violence is customarily conceived as an event or action that is immediate in time, explosive and spectacular in space, and as erupting into instant sensational visibility. We need, I believe, to engage a different kind of violence, a violence that is neither spectacular nor instantaneous, but rather incremental and accretive, its calamitous repercussions playing out across a range of temporal scales. In so doing, we also need to engage the representational, narrative, and strategic challenges posed by the relative invisibility of slow violence. Climate change, the thawing cryosphere, toxic drift, biomagnification, deforestation, the radioactive aftermaths of wars, acidifying oceans, and a host of other slowly unfolding environmental catastrophes present formidable representational obstacles that can hinder our efforts to mobilize and act decisively. The long dyings-the staggered and staggeringly discounted casualties, both human and ecological that result from war's toxic aftermaths or climate change-are underrepresented in strategic planning as well as in human memory. Had Summers advocated invading Africa with weapons of mass destruction, his proposal would have fallen under conventional definitions of violence and been perceived as a military or even an imperial invasion. Advocating invading countries with mass forms of slow-motion toxicity, however, requires rethinking our accepted assumptions of violence to include slow violence. Such a rethinking requires that we complicate conventional assumptions about violence as a highly visible act that is newsworthy because it is event focused, time bound, and body bound. We need to account for how the temporal dispersion of slow violence affects the way we perceive and respond to a variety of social afflictions-from domestic abuse to posttraumatic stress and, in particular, environmental calamities. A major challenge is representational: how to devise arresting stories, images, and symbols adequate to the pervasive but elusive violence of delayed effects. Crucially, slow violence is often not just attritional but also exponential, operating as a major threat multiplier; it can fuel long-term, proliferating conflicts in situations where the conditions for sustaining life become increasingly but gradually degraded.

#### **legal modeling produces economic inequality and poverty, which ensures backlash that guts all aff solvency – turns the case**

Tamanaha 8 – prof of law @ Hammond

(Brian, The Dark Side of the Relationship Between the Rule of Law and Liberalism, NYU Journal of Law & Liberty)

Despite positioning themselves as defenders of liberty—a claim that is merited on its own terms—this article has shown a consistent pattern of liberals in the classical vein trying to prevent, narrow, invalidate, or discredit democratically produced legislation that seeks to redistribute property or temper market mechanisms to further competing aims. At the turn of the 20th century this was evident in the actions of U.S. courts that struck or narrowed social welfare and labor legislation; at the turn of the 21st century this is evident in the neoliberal package of reforms imposed on developing countries seeking aid.123 For anyone who sees democracy—the exercise of political choice over one’s affairs—as an expression of liberty, this side of liberalism involves persistent attempts to invoke the rule of law to restrict the exercise of political liberty. This is the dark side of the rule of law within liberal theory.¶ Those in the West who find solace in the fact that developing countries have thus far suffered the brunt of the aforementioned anti-democratic imposition of neoliberal reforms are perhaps un- duly optimistic in thinking they have escaped a similar fate. This very same process, with similar anti-democratic tendencies, is taking place writ large around the globe as the imperatives of market capitalism increasingly dictate policies to national governments.124 The “great transformation” Polanyi described involved the market coming to occupy the dominant organizing position within capitalist societies.125 We may well be witnessing the completion of this transformation, not just in the sense that every individual nation comes to be organized in this fashion, but in the further sense that the entire community of nations (the global order) is increasingly organized in the same terms. Liberal mechanisms and institutions functioning at the transnational level (for example, the World Trade Organization) are already coalescing into a de facto kind of “economic constitutionalism” which, through the operation of the rule of law, constrains, overrides, and dictates to domestic law making in connection with liberal economic matters (affecting property rights, tariffs, subsidies, efforts to protect jobs). In the past, natural law, the common law, and constitutional provisions provided the controlling norms that were enforced by the rule of law. In the future, if current developments bear out, it will be unadulterated liberal economic norms that control world-wide. Liberals will view this prospect happily, but individuals and societies that prefer other values above (or equal to) material improvement will find it alienating and disempowering.¶ There is also a dark side for the rule of law in this relation- ship. As I have argued elsewhere,126 the rule of law originated prior to liberalism and can exist independent of liberalism. Liberals tend to obscure this in their jealous identification of the rule of law with liberalism. From a broader perspective, the singular achievement of the rule of law is its insistence that governments must act in accordance with the law—an essential restraint that is valuable in all societies regardless of their social, cultural, economic, or political orientation. In view of the awesome power and resources governments can wield, holding the government to legal restraints is a universal good.¶ The risk in recent developments is that the rule of law is ripe to be tainted by its close identification with liberalism, particularly in developing countries. A number of these countries have suffered from the adverse consequences of neoliberal reforms;127 the disparity in wealth has increased to new heights in many countries, without any evident improvement for the poor majority;128 and in many of these societies the populace had little say over whether to accept or modify these reforms. International development organizations now divert money away from infrastructure projects in favor of rule of law projects, like training judges and police, and drafting and implementing legal codes that protect property and foreign investment. In all these various activities, the “rule of law” is put forth as the “front man” for the liberal package. If this initiative goes badly in any number of possible ways owing to an innumerable complex of local and global factors, as seems likely to occur in many places, if substantial pain is suffered without the promised economic benefits to the general public, if courts are perceived to defend the rich who enjoy increasing wealth while most in society are left wanting, the rule of law may be held responsible or tarnished, viewed by the populace with suspicion or cynicism— making it all the harder to implant and build the rule of law.¶ It would be a tragic paradox if the great liberal advocates for the rule of law contributed to preventing it from taking hold and spreading around the world.

### 2NC FW

#### The role of the teacher is to guide students toward ethically constructing advocacies – this means debate should focus on how we think about problems and not just particular policies, so you should look at systems and not the singular event of their impact scenarios – deprioritize issues of link uniqueness and alternative solvency – our link arguments prove there’s a larger set of social relations the plan creates and the standpoints we take in relation to that are important

#### Our alternative is a technique for creating a new social vocabulary surrounding social issues – if our vocabulary is good, you should endorse and adopt it as a method for future policy research.

#### **This is a comparatively more productive strategy than the aff’s hubristic attempts to change the world – only our framework produces an ethical self that can create productive micropolitics**

Chandler 13 – prof of IR @ Westminster

(The World of Attachment? The Post-humanist Challenge to Freedom and Necessity, Millenium: Journal of International Studies, 41(3), 516– 534)

The world of becoming thereby is an ontologically flat world without the traditional hierarchies of existence and a more shared conception of agency. For Bennett, therefore, ‘to begin to experience the relationship between persons and other materialities more horizontally, is to take a step toward a more ecological sensibility’.78 Here there is room for human agency but this agency involves a deeper understanding of and receptivity to the world of objects and object relations. Rather than the hubristic focus on transforming the external world, the ethico-political tasks are those of work on the self to erase hubristic liberal traces of subject-centric understandings, understood to merely create the dangers of existential resentment. Work on the self is the only route to changing the world. As Connolly states: ‘To embrace without deep resentment a world of becoming is to work to “become who you are”, so that the word “become” now modifies “are” more than the other way around.’ Becoming who you are involves the ‘microtactics of the self’, and work on the self can then extend into ‘micropolitics’ of more conscious and reflective choices and decisions and lifestyle choices leading to potentially higher levels of ethical self-reflectivity and responsibility. Bennett argues that against the ‘narcissism’ of anthropomorphic understandings of domination of the external world, we need ‘some tactics for cultivating the experience of our selves as vibrant matter’. Rather than hubristically imagining that we can shape the world we live in, Bennett argues that: ‘Perhaps the ethical responsibility of an individual human now resides in one’s response to the assemblages in which one finds oneself participating. Such ethical tactics include reflecting more on our relationship to what we eat and considering the agentic powers of what we consume and enter into an assemblage with. In doing so, if ‘an image of inert matter helps animate our current practice of aggressively wasteful and planet-endangering consumption, then a materiality experienced as a lively force with agentic capacity could animate a more ecologically sustainable public’. For new materialists, the object to be changed or transformed is the human – the human mindset. By changing the way we think about the world and the way we relate to it by including broader, more non-human or inorganic matter in our considerations, we will have overcome our modernist ‘attachment disorders’ and have more ethically aware approaches to our planet. In cultivating these new ethical sensibilities, the human can be remade with a new self and a ‘new self-interest’.

# 1NR

## DA

### Impacts

#### Relations are a prerequisite to global peace

**Zhou 8**— Assistant Professor in the Department of Asian Languages and Cultures at Hobart and William Smith Colleges – NY -- Dr. Jinghao, Does China’s Rise Threaten the United States? Asian Perspective, Vol. 32, No. 3, 2008, pp. 171-182

Third, there are many common interests between China and the United States.26On the one hand, China-U.S. relations are critical not only to both countries but also to the entire international community. David M. Lamptonnotes that “there is **no global issue** that can be effectively tackled without Sino-American cooperation.”27On the other hand, it is one of the greatest challenges for the United States to coexist with China in the new century.28To be sure, they share many opportunities for mutual benefit. Economically, the Chinese economy heavily relies on Western expertise, Chinese foreign trade largely depends on foreign-invested companies, and about 60 percent of China’s total exports are produced by foreign-funded enterprises. All of this makes China sensitive to the ups and downs of the international economy, and in particular that of the U.S. economy. If the U.S. economy has troubles, it hurts China’s economic growth. In turn, China is the largest market of the United States. Sara Bongiorni has recounted the story of how her family wanted to spend a year without buying anything made in China. In fact, Bongiorni discovered it was not only difficult but also not worthwhile to do so, because she found that there are vast consumer areas that are nearly all Chinese-dominated. Thus, it is really difficult to exclude China from economic globalization.29 Politically, China and Western societies need to work closely together in order to maintain the **global peace.** In fact, China has successfully worked with Western governments on several key international issues. China hosted the Six Party Talks. As a result, North Korea agreed to disable its nuclear programs by the end of 2007.30 China took tough actions on Iran’s nuclear program, showing the seriousness of China’s commitment to nonproliferation. The United States and China also share common interests in energy, global warming, human rights, anti-corruption, social welfare, the role of nongovernmental organizations,AIDS and other disease prevention, United Nations reform, and counterterrorism. China and the United States recently signed an agreement to open a military hot line between their defense departments. Fourth, a hostile U.S. relationship with China would damage both countries’ interests and make it impossible for them to work jointly on global issues. As early as 60 years ago, an Australian ambassador warned the United States that it was very dangerous to be hostile to China and suggested that it keep China as a friend, because China might easily become a very powerful military nation in 50 years. Likewise, John Ikenberry advised that the United States cannot stop China’s rise.31 If the United States tries to keep China weak, it would increase China’s domestic instability, which would negatively affect global peace and development.The most important thing for the United States to do is not to block China from becoming a powerful country, but to understand China and learn to live with a rising China. In the meantime, the United States should urge the Chinese government to become a responsible, accountable, and democratic stakeholder.32 If China moves in that direction, the United States can focus on shared interests such as fighting terrorism and promoting world peace.

#### Chinese relations solve peace and bioweapons—solves their Russia impact

Wenzhong 04, PRC Ministry of Foreign Affairs, 2-7-2K4 (Zhou, “Vigorously Pushing Forward the Constructive and Cooperative Relationship Between China and the United States,” http://china-japan21.org/eng/zxxx/t64286.htm)

China's development needs a peaceful international environment, particularly in its periphery. We will continue to play a constructive role in global and regional affairs and sincerely look forward to amicable coexistence and friendly cooperation with all other countries, the United States included. We will continue to push for good-neighborliness, friendship and partnership and dedicate ourselves to peace, stability and prosperity in the region. Thus China's development will also mean stronger prospect of peace in the Asia-Pacific region and the world at large. China and the US should, and can, work together for peace, stability and prosperity in the region. Given the highly complementary nature of the two economies, China's reform, opening up and rising economic size have opened broad horizon for sustained China-US trade and economic cooperation. By deepening our commercial partnership, which has already delivered tangible benefits to the two peoples, we can do still more and also make greater contribution to global economic stability and prosperity. Terrorism, cross-boundary crime, proliferation of advanced weapons, and spread of deadly diseases pose a common threat to mankind. China and the US have extensive shared stake and common responsibility for meeting these challenges, maintaining world peace and security and addressing other major issues bearing on human **survival** and development. China is ready to keep up its coordination and cooperation in these areas with the US and the rest of the international community. During his visit to the US nearly 25 years ago, Deng Xiaoping said, "The interests of our two peoples and those of world peace require that we view our relations from the overall international situation and a long-term strategic perspective." Thirteen years ago when China-US relations were at their lowest ebb, Mr. Deng said, "In the final analysis, China-US relations have got to get better." We are optimistic about the tomorrow of China-US relations. We have every reason to believe that so long as the two countries view and handle the relationship with a strategic perspective, adhere to the guiding principles of the three joint communiqués and firmly grasp the common interests of the two countries, we will see even greater accomplishments in China-US relations.

#### Relations solve terrorism

**Xinbo 4**, Wu Xinbo, Professor, Center for American Studies, Fudan University, Shanghai, 2004

(“The Promise and Limitations of a Sino-US Partnership*,” The Washington Quarterly*, Vol. 27, No. 4)

The primary perceived threat to U.S. national security then changed, as clearly conveyed in its September 2002 National Security Strategy (NSS) report, to "the crossroads of radicalism and technology,"11 otherwise defined as the combination of terrorism and WMD. By fundamentally shifting the priorities on the U.S. national security agenda and U.S. threat perceptions, the September 11 terrorist attacks made terrorism a much more urgent task than balancing emerging powers. In the realm of U.S. foreign policy, China was thus transformed from a "strategic competitor" requiring imminent attention to a potential partner in the war on terrorism. As demonstrated by Bush's trips to China in October 2001 and February 2002, Washington now was interested in developing "candid, constructive, and cooperative" relations with China. Meanwhile, Beijing also saw the opportunity to improve ties with Washington and reached out to the United States by providing **valuable assistance** and cooperation in the war on terrorism, such as supporting all UN counterterrorism resolutions, **sharing intelligence, and cracking down** on the financing of terrorist activities, among others. As such, the events of September 11 transformed the mood of Sino-U.S. relations from negative to positive.

### 1NR AT Harding

#### Letting Uighurs into the US is a game changer for US/China relations – it’s of huge importance to them

LA Times 09

(Uighur detainees at Guantanamo pose a problem for Obama, articles.latimes.com/2009/feb/18/world/fg-uighurs-gitmo18)

But freed to where? China is insisting that the Uighurs be sent home to face trial for separatist activities. It has further intimated that any country that offers them political asylum will in effect be harboring dangerous terrorists. "On the issue of the Chinese terrorist suspects detained in Guantanamo, we have repeatedly stated that we oppose any country receiving these people," Foreign Ministry spokeswoman Jiang Yu said this month. How the Uighurs are handled could play a role in defining what kind of relationship the Obama administration forges with Beijing in its early months. China has made it clear that it wants to be considered an ally in the battle against terrorism, which is coming closer to China's borders as the administration shifts focus from Iraq to Afghanistan.

#### US support for Uighurs trades off with Chinese pressure on North Korea

Kirk 09, Reporter covering Korea for over 30 years

(Donald, Asia Times Online, Washington funds its Uyghur 'friends', www.atimes.com/atimes/China/KG18Ad01.html)

For now, the question is how is China likely to view the NED support for a Uyghur organization that actively opposes Chinese policies and Chinese control. Doug Bandow of the Cato Institute in Washington sees officials in Beijing as responding by lack of cooperation with the US on restraining North Korea. Upset that the United States might play a role, however small, on behalf of Uyghurs, the Chinese already see North Korea as a buffer against the United States and Japan. Although China may not want North Korea to test missiles or explode nuclear devices, the Chinese may also be asking themselves what's the point of pressuring North Korea to stop what it's doing when the United States seems to be our enemy. United States support of the Uighur cause, on top of support of Tibetan dissidents may be all the more disturbing to China in view of the large ethnic Korean minority across the Tumen River in Manchuria. Might ethnic Koreans some day rebel against rule from Beijing? And would the United States stand by them, possibly extending them funding? China already is under heavy pressure to view defectors from North Korea as true refugees rather than round them up periodically and send them back to face execution, torture, beatings and imprisonment in the North. Any sign of US intervention in Manchuria is sure to drive China closer to North Korea. The result could be Chinese refusal to enforce the resolution adopted by the United Nations Security Council after North Korea's nuclear test on May 25. China could ignore, or partly ignore, sanctions imposed against North Korean firms that stop them from exporting missiles, nukes and their components. The gulf between China and the United States would deepen with the Korean Peninsula caught between these lumbering national giants. Gershman downplays the suggestion that the NED might be responsible for China's hardening its policy on North Korea. "China is not going to be influenced by a few grants that NED makes," he remarked. "China needs to be a player" - playing the role of influencing North Korea to abandon an increasingly confrontational policy. It might seem unfair to suggest maybe the US Congress should stop funding NED just because China objects to some of its activities. The problem remains, however, that the US response to Uyghur protest may have an adverse impact on US-Chinese relations. Under the circumstances, China may be all the more reluctant to talk some sense into the North Koreans at a time when Chinese pressure is needed.

### 1NR AT China Fails

#### North Korea concessions prove China working with the US now

China Times 10/3

(China and US should forge new ties on trust and pragmatism, www.wantchinatimes.com/news-subclass-cnt.aspx?id=20131003000009&cid=1701)

Senior Chinese and US officials have increased their level of interaction over the course of 2013, with China's new president, Xi Jinping, meeting his US counterpart Barack Obama twice this year, in southern California in June and during the G20 summit in September. Analysts have been scrutinizing these meetings, including comments made by Chang Wanquan, China's defense minister, during his visit to the US in August, to shed some light on the future of Sino-US relations. Beijing has stepped up its diplomatic overtures to the US in a bid to further Xi's "new big power relationship" concept, although the US has only perfunctorily referred to the situation as a "new Sino-US cooperative mode," showing the latter has yet to firmly embrace China's initiative. During his visit to the US last week, China's foreign minister Wang Yi said the "new big power relationship" means "no confrontation, no conflict, mutual respect and cooperation for mutual wins," to which US Secretary of State John Kerry responded by saying that the new Sino-US relationship calls for practical cooperation and constructive control of divergence. Despite their respective interpretations, both sides stressed practical cooperation and working out differences. To alleviate the strategic concerns of the US, Beijing has repeatedly pledged never to strive for or claim hegemony and expressed its aspiration for an environment suitable for peaceful development and abstention from challenging and replacing the dominant status of the US, as well as putting forward a desire to uphold peace jointly with the US. Wang Yi proposed to initially apply the the new relationship concept in the Asia-Pacific region by "respecting and tending the core interests of each other" and "conducting substantial cooperation in solving Asia-Pacific disputes," implying that practical cooperation in Asia-Pacific issues can lead to cooperation in other fields. Going beyond words, Beijing has taken moves such as placing an export ban on military and civilian equipment and technology to North Korea. During his recent visit to the US, Wang Yi also expressed China's willingness to cooperate and talk with the US over such thorny issues as Syria, North Korea's nuclear arms program, climate change and internet security, on top of initiating a joint cultivation program for Afghan diplomats.

#### China pressuring North Korea to return to talks now – key to success

CBS News 13

(9/24, China ups pressure on North Korea by detailing list of weapons-related items it won't sell to ally, www.cbsnews.com/8301-202\_162-57604314/)

China has tightened restrictions on North Korea by issuing a long list of weapons-related technology and materials banned from export to its neighbor, reflecting Beijing's desire to get Pyongyang to scrap its nuclear programs and rejoin disarmament talks. The announcement posted Tuesday on the Chinese Commerce Ministry website comes as two American experts claim that Pyongyang can now make crucial equipment for producing uranium-based bombs on its own, cutting out imports that had been one of the few ways outsiders could monitor the country's secretive atomic work. The list of forbidden items on the ministry website includes those with both civilian and military applications in the nuclear, ballistic, chemical and biological fields. The notice said the list was aimed at boosting enforcement of U.N. Security Council resolutions on North Korea passed since 2006. The move is a continuation of China's new policy of putting slightly greater pressure on North Korea to coax it back to disarmament talks, said Li Mingjiang, China security expert at Singapore's Nanyang Technological University. China could have simply implemented the ban but announcing it so publicly was a sign to the U.S. and the rest of the international community that Beijing is sincere in meeting its commitments, Li said. He said it's also a rebuke to Pyongyang. "The leaders in Pyongyang will hate this. They'll be angry," Li said. Pyongyang likely will "swallow the bitter pill" and may respond with concessions, he said. China, wary of undermining its isolated neighbor and creating instability on its northeastern border, has often argued against stricter sanctions on North Korea and has, at times, been accused of not enforcing them enthusiastically enough. However, Beijing was angered by North Korea's long-range rocket launch last December and its third nuclear test in February, leading it to agree to tightened sanctions in March that also promise further measures in the event of another launch or nuclear test. Since becoming North Korea's leader in December 2011, Kim Jong Un has repeatedly angered Beijing by refusing to heed its prodding to engage in economic reform and return to nuclear talks U.S. officials have long pushed for tightened sanctions enforcement, with Secretary of State John Kerry, Under Secretary of Defense for Policy James Miller, and chief North Korea envoy Glyn Davies visiting Beijing on lobbying missions in recent months. Those efforts have borne some success, with Chinese customs agents tightening inspections on a range of items, including luxury goods that Kim uses to shore up his support from the North Korean elite. In late 2011, Beijing forced the China Construction Bank to close accounts opened by the Korea Kwangson Banking Corp. and the Golden Triangle Bank to comply with previous U.N. sanctions. China provides North Korea with a crucial economic lifeline, supplying almost all its fuel and more than 83 percent of its imports, from heavy machinery to grain and consumer goods.

### AT Impact Defense

#### North Korea will attack---they think their nuclear capability is strong enough

Garnaut 10(John, Correspondent for The Age, “ Eyes on China as nuclear factor shifts Korean stand-off”, <http://www.theage.com.au/world/eyes-on-china-as-nuclear-factor-shifts-korean-standoff-20100528-wlia.html>) ZParks

While many residents in the South have become numb to the tantrums of their northern neighbours, this one has a new deadly edge. Sinking the Cheonan is the North's first major conventional attack on the South since the late 1960s, marking a major shift in the North's risk calculus. ''It does seem to be a very calculated attack,'' said Peter Hayes, executive director of the Nautilus Institute for Security and Sustainable Development. ''Given [North Korean leader] Kim Jong-il is acutely aware that his conventional warfare capability is inferior in almost every respect, it shows that he thinks his nuclear capability can now compensate.'' During much of the Cold War era, North Korea's economy and military capability were stronger than the South and it could also assume protection from either China or the Soviet Union. But the Soviet Union backed away from Pyongyang during the 1980s and then collapsed, throwing its Stalinist satellite into a new era of strategic vulnerability. Analysts say North Korea began developing its nuclear ''deterrent'' as its capacity to inflict unacceptable casualties through conventional means diminished. Pyongyang agreed to Bill Clinton's 1994 agreement to cease its nuclear program when faced with both significant inducements and a real threat of American attack. Mr Kim now appears to have correctly calculated that his adversaries are divided, their will for war is low, and they will not risk a North Korean nuclear reply to an attack. US Secretary of State Hillary Clinton, in Seoul this week, promised to work with South Korea to chart a course to the United Nations Security Council, which is little different from ineffective US responses to previous provocations from Pyongyang.

#### Just the existence of nukes themselves causes extinction

Straits Times, 09 ("North Korea Set to Undermine Asia's Peace and Stability", The Straits Times, June 1st 2009, June 27th 2010, Lexis Nexis, KONTOPOULOS)

HAVING tested a nuclear device, the next strategic and logical move for North Korea is to acquire nuclear weapons. This new military status will inevitably undermine peace and stability in the Korean peninsula in particular and Asia in general. A nuclear North Korea is bad news for the world. The possession of nuclear weapons by an impoverished country, with an unpredictable regime that ignores all United Nations resolutions, is a nightmare waiting to happen. Just one wrong miscalculation and Asia will bear the brunt of this new catastrophe for years to come. Imagine - Hiroshima and Nagasaki happened 64 years ago, but the fear, memories and tribulations continue to linger on till this day. Using nuclear capability to annihilate another country is not the answer to world domination. So this prompts the next question: Why would a poor country want to possess such destructive power and which countries are the likely targets? Answer: South Korea, Japan and the United States. If North Korea has nuclear weapons, the South would want them to retaliate, and Japan would need them as a deterrent. And we know for sure that the US will wipe North Korea out if any US territory is attacked. This is the apocalypse of nuclear war Asia faces.

## Case

### AT Spillover

#### 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.

#### No deference now and case by case approach means no spillover

Siegel 12, Associate at Cleary Gottlieb

(Ashley E., SOME HOLDS BARRED: EXTENDING EXECUTIVE DETENTION HABEAS LAW BEYOND GUANTANAMO BAY, www.bu.edu/law/central/jd/organizations/journals/bulr/documents/SIEGEL\_000.pdf)

This Note explores the novel area of law extending habeas rights to war-on terror detainees, the past precedents that may suggest what direction the jurisprudence will take, and how the jurisprudence should resolve the case of a foreign detainee held by a foreign government at the behest of the United States. Part I reviews habeas law from its historical roots to its modern application in executive detention cases brought about by the United States’ detention of aliens at Guantanamo Bay. Part II examines alien detention abroad apart from the habeas context. Part III explores the likelihood and appropriateness of extending the Boumediene line of cases to scenarios of alien detainees held abroad by foreign governments at the behest of the United States. The Supreme Court has recently demonstrated a greater willingness to exert its power in the national security realm, no longer giving broad deference to the Executive’s wartime powers. The Supreme Court in this realm appears to take a functionalist, case-by-case approach that leaves open the possibility that the Court will exert itself in different executive detention contexts. Given the vital, fundamental individual rights implicated by executive detention, the Supreme Court should continue to actively review the actions of the legislative and executive branches. Further, based on the reasoning supporting its past precedents, the Court should extend jurisdiction to detainees held by foreign nations at the behest of the U.S. government.

#### The court won’t independently enforces the plan

Katyal 2006 – Saunders Professor of National Security Law at Georgetown (10/26, Neal, Yale Law Journal, “Toward Internal Separation of Powers”, http://yalelawjournal.org/the-yale-law-journal-pocket-part/executive-power/toward-internal-separation-of-powers/)

CONCLUSION America faces a choice. It can either take its chances with an extremely powerful executive branch and the attendant risks that the courts will underreact and overreact, or it can harken back to a tradition of divided government that has served our country well. September 11 did change everything, but it is up to us to figure out how to translate the ideas of divided government into a modern age in which Presidents must act quickly to avoid calamity.

Courts, of course, are not unaware that a trend toward greater executive power in this time of crisis exists. As a result, one can expect that as the executive becomes more monolithic, courts will function as a sort of check. But judicial checking is bound to fail. It will often occur too late, if at all. Courts lack expertise in many areas, and they may intervene when they should not and refrain from intervening when they should. For this reason, and others advanced in this Essay, a set of institutional design choices must be made that permits both sources of executive legitimacy—democratic will and expertise— to function simultaneously.