## Observation 1: inherency

#### **Section 1021 of the 2012 NDAA affirms presidential authority to indefinitely detain those with connection to terrorism including United States citizens**

Horowitz 13 [Colby, JD candidate Fordham Law School, captain US army, "Creating a more meaningful detention statute: Lessons learned from Hedges v. Obama" Fordham Law Review, april]

Section 1021 is titled “Affirmation of Authority of the Armed Forces of¶ the United States to Detain Covered Persons Pursuant to the Authorization¶ for Use of Military Force.”94 This section “affirms that the authority of the¶ President to use all necessary and appropriate force pursuant to the [AUMF]¶ includes the authority for the Armed Forces of the United States to detain¶ covered persons . . . pending disposition under the law of war.”95 Section¶ 1021 specifies two categories of “covered persons” that can be detained:¶ section 1021(b)(1) applies to those who “planned, authorized, committed,¶ or aided the terrorist attacks that occurred on September 11, 2001, or¶ harbored those responsible,” and section 1021(b)(2) applies to those who¶ were “a part of or substantially supported al-Qaeda, the Taliban, or¶ associated forces that are engaged in hostilities against the United States or¶ its coalition partners, including any person who has committed a belligerent¶ act or has directly supported such hostilities in aid of such enemy forces.”96¶ President Obama commented that, despite new language in the NDAA¶ that is not included in the AUMF, section 1021 “breaks no new ground and¶ is unnecessary.”97 The President’s interpretation is supported by a¶ subsection of section 1021 titled “Construction,” which states that¶ “[n]othing in this section is intended to limit or expand the authority of the¶ President or the scope of the [AUMF].”98 Another subsection, titled¶ “Authorities,” further limits section 1021 by declaring that “[n]othing in¶ this section shall be construed to affect existing law or authorities relating¶ to the detention of United States citizens, lawful resident aliens of the¶ United States, or any other persons who are captured or arrested in the¶ United States.”99¶ Although other statutes (like the DTA and MCA) have dealt with¶ executive detention, section 1021 of the NDAA is the first statute to¶ explicitly codify the President’s substantive authority to detain terrorist¶ suspects pursuant to the AUMF.100 As commentators have recognized, the¶ problem is that the meaning of section 1021 is far from clear.101 There are¶ two general views about the scope of section 1021. Some, including the¶ Chairman of the Senate Armed Services Committee, believe that it does¶ nothing new.102 Others view section 1021 as a dangerous expansion of the¶ power of executive detention beyond the scope of the AUMF.103¶ Regardless of whether section 1021 actually expands the President’s¶ substantive detention authority, both sides seem to agree on two things.¶ First, section 1021 is significant because irrespective of its precise meaning,¶ it is an explicit congressional affirmation of executive detention¶ practices.104 As will be discussed in the next section, congressional¶ approval can significantly expand the President’s war powers. Second,¶ section 1021 leaves open the possibility of indefinite detention of American¶ citizens.105 As mentioned above, section 1021(e) merely states that the law¶ remains unchanged regarding citizens, lawful resident aliens, or persons¶ captured in the United States. It does not affirmatively state that individuals¶ in these categories cannot be detained. The language of section 1021(e)¶ (also known as the Feinstein Amendment I) leaves the question of whether¶ American citizens can be indefinitely detained to the other branches.106¶ The Supreme Court recognized the right to detain an American citizen in¶ Hamdi107—a right, however, that appears to be against the policy of the¶ Obama Administration.108 As one Senator predicted, “[t]hese detention¶ provisions, even as they are amended, will present numerous constitutional¶ questions that the courts will inevitably have to resolve.”109¶

#### **Despite empty rhetoric of closing Guantanamo. Obama continues to support indefinite detention**

Huskey 11 [Kristine, founder and former director of the national security clinic at the University of Texas School of law, "Guantanamo and Beyond: Reflections on the Past, Present, and Future of Preventive Detention" University of New Hampshire Law Review, 9(2)

That the Obama Administration is set to officially condone the¶ practice of indefinite military preventive detention should not come¶ as a surprise, as I believe it does to many.42 The clues have been¶ there all along, even as the White House was fervently advocating¶ for the closure of Guantanamo. First, the same 2009 executive order¶ calling for closure retains the option of continued detention without¶ trial on the table by specifically allowing the Guantanamo Review¶ Task Force—newly established to review each detainee’s case—to¶ reach a determination for a “disposition” other than transfer or prosecution.¶ 43 Second, just months later, in an important speech on national¶ security, President Obama made it clear that detaining individuals¶ without trial may be a necessary last-choice option, and, to¶ that end, a preventive-detention regime was entirely acceptable:¶ We are not going to release anyone if it would endanger our¶ national security . . . . Where demanded by justice and national¶ security, we will seek to transfer some detainees to the¶ same type of facilities in which we hold all manner of dangerous¶ and violent criminals within our borders -- namely,¶ highly secure prisons that ensure the public safety.¶ . . . .¶ Now, finally, there remains the question of detainees at¶ Guantanamo who cannot be prosecuted yet who pose a clear¶ danger to the American people. . . . We’re going to exhaust¶ every avenue that we have to prosecute those at Guantanamo¶ who pose a danger to our country. But even when this¶ process is complete, there may be a number of people who¶ cannot be prosecuted for past crimes, in some cases because¶ evidence may be tainted, but who nonetheless pose a threat to¶ the security of the United States. . . .¶ . . . Having said that, we must recognize that these detention¶ policies cannot be unbounded. They can’t be based¶ simply on what I or the executive branch decide alone.¶ That’s why my administration has begun to reshape the standards¶ that apply to ensure that they are in line with the rule of¶ law. We must have clear, defensible, and lawful standards¶ for those who fall into this category. We must have fair procedures¶ so that we don’t make mistakes. We must have a¶ thorough process of periodic review, so that any prolonged¶ detention is carefully evaluated and justified.44¶ Third, in January 2010, the executively created Guantanamo Review¶ Task Force released its final report, indicating that there were¶ almost fifty men at Guantanamo who could neither be tried nor released¶ but who would be subject to detention and continuing “executive¶ review.”45¶ Now, recent reports confirm what has been quietly occurring all¶ along: The White House has been preparing an executive order that¶ sets forth a system of indefinite detention at Guantanamo and, potentially,¶ elsewhere.46 In short, this system would enable detainees to¶ challenge their detention on a regular basis by requiring a minimal¶ review every six months and then a more lengthy annual review before¶ an executive ‘parole-like’ review board made up of officials¶ from civilian and military agencies.47 Further, the pending executive¶ order envisions that the executive review board would have the authority¶ to release a detainee if appropriate.48 Of course, with the¶ NDAA 2011 restrictions in place, the review board’s authority to¶ order the release of any detainee at Guantanamo would be severely¶ restrained. It is important to note that such an executive review¶ process would not replace the habeas reviews required by the Supreme¶ Court in Boumediene, but would supplement it.49 In essence,¶ the executive review would weigh the necessity of the detention rather¶ than its lawfulness, which is what the federal courts have been¶ doing in the ongoing habeas hearings pursuant to Boumediene’s¶ mandate.50¶

## **Observation 2: Dimensions of Evil**

#### **The worst dimensions of evil are occurring at G’tmo.**

Ghoshray 11 [Saby, Dr., scholar in constitutional law, international law, capital jurisprudence, military tribunals etc. Wayne Law Review "GUANTANAMO: UNDERSTANDING THE NARRATIVE OF DEHUMANIZATION THROUGH THE LENS OF AMERICAN EXCEPTIONALISM AND DUALITY OF 9/11" Spring, 57 Wayne L. Rev. 163

What does Guantanamo have to do with such transmogrification of the U.S. legal framework as it relates to security detention? To understand Guantanamo from a deeper perspective we must go beyond legal representation. This perspective is largely absent in contemporary discourse, except one recent scholarship by Professor Muneer Ahmad, to whose article I owe an amount of intellectual debt. n84 This exploration requires us to carve out an existential phenomenological n85 space for [\*179] Guantanamo in our construct, rather than restricting Guantanamo with the hackneyed description of a physical detention facility. Extracting Guantanamo from a physical description of objects and persons interrelated by a set of laws is not easy. Guantanamo is nestled within a physical facility. It evolved in existence through legal representation, devoid of social constructs that expands its narrative. In establishing this legal representation, Guantanamo has been described by various monikers as "an anomalous zone," n86 or "a legal black hole," n87 or "a legal outer space." n88 When we hear Guantanamo, images of chained detainees, n89 or torture facilities, n90 or barbed wire fence impervious to the prying eye of the world, n91 are conjured up in our mind. Neither the imagery, nor the associated legal representations can give Guantanamo the deeper, more fundamental phenomenological ascendance--a vital ingredient for our collective construct to see the truth, and discern the comprehensive nature of this dark saga of human history.¶ [\*180] Thus, expounding upon humanity's fall from grace, I place Guantanamo at the same ontological space shared by the human desires and characteristics that formed the saga of Amistad described at the beginning of this article. At the ephemeral level, Guantanamo's announced reincarnation in 2002, n92 from being a temporary processing center for Haitian asylum seekers n93 to a detention center for terrorist detainees, n94 represents a mere physical facility's invigorative transformation. This transformation was sold to the larger public as a protection of humanity from manifest evil. n95 On a deeper level, however, [\*181] it represents a superpower's response to an existential threat to its security. In its response, the superpower must embark on whatever means necessary to ensure that security. n96 The providers of such a security mechanism have preference for the-end-to-the-means over means-to-the-end in their quest to conquer this manifest evil. For the most part, it seems the public, foreign and domestic, was content with the process. Percolating beneath this means-to-the-end have been two [\*182] ontological dimensions n97--perpetuation of evil n98 and dehumanization of individuals n99--that are the very manifestation of such evil, who are [\*184] occluded from the view of the general public for most of the time. n100 Indeed, thorough understandings of these underlying dimensions are needed for full appreciation of the narrative of Guantanamo.

#### Indefinite detention in G’tmo is resulting in torture and other horrendous human rights abuses

The Toronto Star 2013 (Suspects tortured after 9/11, panel finds; Damning report calls on Obama to close Guantanamo by 2014, lexisnexis, pg. A19)

**An independent task force issued a damning review of Bush-era interrogation practices** on Tuesday, **saying the highest U.S. officials bore ultimate responsibility for the "indisputable" use of torture, and it urged President** [Barack Obama](http://www.lexisnexis.com.lib-proxy.fullerton.edu/lnacui2api/search/XMLCrossLinkSearch.do?bct=A&risb=21_T17965556556&returnToId=20_T17965556559&csi=8286&A=0.7160687838671154&sourceCSI=9369&indexTerm=%23PE0009TJP%23&searchTerm=Barack%20Obama%20&indexType=P) **to close the Guantanamo detention camp by the end of 2014.**¶ In one of the most comprehensive studies of U.S. treatment of terrorism suspects, the panel concluded that never before had there been "the kind of considered and detailed discussions that occurred after Sept. 11 directly involving a president and his top advisers on the wisdom, propriety and legality of inflicting pain and torment on some detainees in our custody."¶ **"It is indisputable that the United States engaged in the practice of torture,"** the 11-member task force, assembled by the non-partisan Constitution Project think-tank, said in its 577-page report.¶ **The scathing critique of methods used under the Republican administration of former president** [George W. Bush](http://www.lexisnexis.com.lib-proxy.fullerton.edu/lnacui2api/search/XMLCrossLinkSearch.do?bct=A&risb=21_T17965556556&returnToId=20_T17965556559&csi=8286&A=0.7160687838671154&sourceCSI=9369&indexTerm=%23PE0009U6F%23&searchTerm=George%20W.%20Bush%20&indexType=P) **also sharpened the focus on the plight of inmates at Guantanamo, which Bush opened and his Democratic successor has failed to close.¶** [Obama](http://www.lexisnexis.com.lib-proxy.fullerton.edu/lnacui2api/search/XMLCrossLinkSearch.do?bct=A&risb=21_T17965556556&returnToId=20_T17965556559&csi=8286&A=0.7160687838671154&sourceCSI=9369&indexTerm=%23PE0009TJP%23&searchTerm=Obama%20&indexType=P) **banned abusive interrogation techniques such as waterboarding when he took office in early 2009, but the military prison at the U.S. naval base in Cuba has remained an object of condemnation by human rights advocates**.¶ A clash between guards and prisoners at the Guantanamo Bay camp last weekend and the release of harrowing accounts by inmates about force-feeding of hunger strikers threw a harsh spotlight on the predicament of the inmates, many held without charge or trial for more than decade.¶ **The task force** called the indefinite detention of prisoners at Guantanamo "abhorrent and intolerable" and ca**lled for it to be closed by the end of 2014, when NATO's combat mission in Afghanistan is due to end and most U.S. troops will leave that country**.¶ The panel, which included leading politicians from both parties, two retired U.S. generals, and legal and ethics scholars, spent two years examining the U.S. treatment of suspected militants detained after the attacks of Sept. 11, 2001.¶

#### Indefinite detention at g’tmo perpetuates the worst forms of dehumanization.

Ghoshray 11 [Saby, Dr., scholar in constitutional law, international law, capital jurisprudence, military tribunals etc. Wayne Law Review "GUANTANAMO: UNDERSTANDING THE NARRATIVE OF DEHUMANIZATION THROUGH THE LENS OF AMERICAN EXCEPTIONALISM AND DUALITY OF 9/11" Spring, 57 Wayne L. Rev. 163

The framework supporting the concept of evil may be unstable on the surface, but it is incumbent upon us to understand the genesis of the theory of evil within the context of conquering the existential threat to security. The concept of evil has long been a staple for politicians and U.S. Administrations. n101 One need not look far to find the supporting evidence. n102 Once the personification of evil is complete, the framework of securing the populace from these threats becomes more efficient--as it then becomes the sacred duty of the U.S. Government to liberate American citizens and other citizens of the world from such evil. n103 This distorted sense of reality pervading the populace makes it easier for dehumanization to continue, as the existential evil must be destroyed at [\*185] any cost--a rationale used so craftily against the detainees at Guantanamo. Therefore, whatever the ends, a rationale can be created to justify the means to achieve them. It is now very easy to understand how this framework can create a distorted sense of reality. This distorted appearance that the American detention measures are divinely inspired, placing the righteous masses against the solitary figure of evil, allows for the dehumanization to continue. Under this very convenient scenario, n104 the governmental machinery wants the masses to believe that this world would be a much safer place--even if it means some "evil" humans are stripped of their human dignity. n105 What does systematic dehumanization do to other humans? Why have the conversations surrounding Guantanamo mostly left out the aspect of dehumanization? To me, systematic dehumanization is largely predicated on relegation of a section of humanity with minimal to no rights. However, for the time being, let us leave the rights discussion suspended for a later stage so that we can focus on developing a better comprehension of the shaping effect of Guantanamo as a phenomenological event on the broader U.S. detention framework. Now we will peel away Guantanamo's existential and psychological dimensions.¶ On the surface it seems the U.S. detention framework applied to detainees captured in war zones fighting U.S. forces has no ontological relationship with the detention framework applied to individual instances of terrorist detention. However, as long as the concept of Guantanamo is alive in the minds of the law enforcement community, no processing of a detainee can be decoupled, and thus, analyzed independent of Guantanamo. Because Guantanamo is an ontological space in itself, it pervades beyond individual events and engulfs anything and everything that falls within its ontological sphere of influence. This becomes apparent as we trace the genesis of Guantanamo further.¶ Guantanamo was created as a response to an unprecedented event. The response alternatives did not have a pre-codified legal framework. Rather, sets of alternative means of legal response have been abstracted [\*186] from the codified norms of international law and made to fit the desired goal. Unfortunately, a logical abstraction of the norms of international law would be contradictory to domestic aspirations n106 and thus would not be palatable for domestic consumption. n107 In addition, the U.S. Administration did not have the answers to all the possible legal outcomes that might emerge should a deterministic legal framework be applied vis-a-vis the terrorist detainees. n108 Thus, absent absolute clarity with respect to procedural steps, the Administration resorted to a nebulous framework, designed to be an all-encompassing legal vacuum adept at suspending procedural due process rights for the unforeseeable future, and yet, achieve the desired means to lock away the "evil." n109¶ It became clear as time passed that some detainees have no relationship to the crime they have been charged with, n110 yet allowing the justice mechanism to follow its logical contour was not an option for the Administration on two grounds. n111 First, the domestic political agenda was not conducive to the possibility of "release" of manifest "evil." n112 Second, the public has been sold the story of an existential threat and the valor of protection against such evil. n113 Releasing detainees held at Guantanamo will not only be monumentally embarrassing for the Administration, but also spear the bubble of the convenient narrative of good vs. evil.¶ [\*187] As a result, the government created more layers, as revealed through the litany of procedural framework including the Combatant Status Review Tribunal. n114 Despite their appearance of legal maturity, these procedures provided no deterministic outcome related to detention relief. In time both the Guantanamo detainees and domestic terror suspects became embroiled in prolonged detention--which matured into a systemic phenomenon. n115 In this way, the engulfing influence of Guantanamo grew out of its legal representation as a physical facility and evolved into the phenomenological space. In this newly minted space, Guantanamo began exerting its influence across the wide spectrum of the law enforcement community, which became subconsciously aware of its ontological existence. Whenever there is a perception of a threat, actual or manufactured, construction of evil becomes easier. This enables a construction of sending the terrorist to Guantanamo. n116 Guantanamo also provides law enforcement with the much needed flexibility to determine what means must be resorted to in order to guarantee a desired outcome. n117

#### Torture is a systematic oppression that kills agency and value to life. It’s a technique of perpetual dying.

**Wolfgang 1999** (German Philosopher, Anthropologist- professor at Universities of Gottingen & Erfurt. [Sofsky, "The endurance of impotence: The dynamics of persecutory violence," International Psychoanalysis Newsletter,)

The prisoners will be incarcerated or put into camps and, not rarely, are there subjected to torture. As a method of punitive and loyal justice, torture has a long prehistory which goes back to the early tyrannies. However, in the 20th century, torture has been systematized as a means of national persecution terror and been handed over to special units of the police, the military or the militia. Its executors have invented a multitude of new methods and have freed torture from the aims of finding the truth. Contrary to a widely held view, torture is not a means to extort confessions, information or proofs. Whatever may be declared the official aim, torture is not an instrument of interrogation, for the ultimate aim of torture is not to get the victim to talk but rather to silence him. The model of the duel, of a trial of strength of the will, is a bagatellization. Torture eliminates action and breaks the person through pain, panic and isolation. The victim is totally in the hands of the perpetrator and is at the mercy of his whims, rage, lust and destructive will. Any part of his body, any of his attitudes or stirrings can be used as a point of attack for the tormentors. Torture transforms the person into an organism, into a living piece of flesh. It tests physical reactions, generates pain and forces the tortured one to scream His insides are turned outwards, his language stifled in pain. The tortured person no longer experiences his body as a source of his own force for action. In the frenzy of pain, his own body itself becomes his enemy. It is his body which confronts him with the suffering from which he cannot escape, however much he grits his teeth. The mortal enemy is within himself, rages in his inside and destroys the final resistance. Torture is by no means restricted to external wounds. It splits the person through the centre into two parts. Since the victim's body becomes the accomplice of the torture, it destroys the somatic relation to himself and with it the foundation of his will, his speech, his soul, his psyche. Torture, therefore, is not a technique of killing but of perpetual dying. What torture is on a small scale, the concentration camp is on a large scale. It is not the sudden death which contains the meaning of this institution but the continuous presence of the torment. The camp is the central institution of persecutory terror in the 20th century. It serves the imprisonment of political enemies less than the transformation and extinction of those who are redundant. In the midst of society and set into a complex mesh of political and economical institutions, the concentration camp is a cosmos at the border of the social world, a universum of unparalleled destructivity

#### Dehumanization brings society to total damnation, this is the largest impact in the round

Fasching 1993 Professor of Religious Studies in the University of South Florida [Darrell J., Part II of The ethical challenge of Auschwitz and Hiroshima: Apocalypse or Utopia?, Chapter 4 "The Ethical Challenge of Auschwitz and Hiroshima to Technological Utopianism", part 4 "The Challenge of Auschwitz and Hiroshima: From Sacred Morality to Alienation and Ethics", Ebooks]

Although every culture is inherently utopian in its potentiality, the internal social dynamic through which its symbolic world-view is maintained as a sacred order has a tendency to transform it into a closed ideological universe (in Karl Mannheim's sense of the ideological; namely, a world-view that promises change while actually reinforcing the status quo) that tends to define human identity in terms advantageous to some and at the expense of others. Historically the process of dehumanization has typically begun by redefining the other as, by nature, less than human. So the Nazis did to the Jews, and European Americans did to the Native Americans, men have done to women, and whites to blacks. By relegating these social definitions to the realm of nature they are removed from the realm of choice and ethical reflection. Hence those in the superior categories need feel no responsibility toward those in the inferior categories. It is simply a matter of recognizing reality. Those who are the objects of such definitions find themselves robbed of their humanity. They are defined by and confined to the present horizon of culture and their place in it, which seeks to rob them of their utopian capacity for theonomous self-transcending self-definition. The cosmicization of social identities is inevitably legitimated by sacred narratives, whether religious or secular-scientific (e.g., the Nazi biological myth of Aryan racial superiority), which dehumanize not only the victims but also the victors. For to create such a demonic social order the victors must deny not only the humanity of the other who is treated as totally alien but also their own humanity as well. That is, to imprison the alien in his or her enforced subhuman identity (an identity that attempts to deny the victim the possibility of self-transcendence) the victor must imprison himself or herself in this same world as it has been defined and deny his or her own self-transcendence as well. The bureaucratic process that appears historically with the advent of urbanization increases the demonic potential of this process, especially the modern state bureaucracy organized around the use of the most efficient techniques to control every area of human activity. The result is, as Rubenstein reminds us, the society of total domination in which virtually nothing is sacred, not even human life. The heart of such a bureaucratic social order is the sacralization of professional roles within the bureaucratic structure such that technical experts completely identify themselves with their roles as experts in the use of techniques while totally surrendering the question of what those technical skills will be used for to the expertise of those above them in the bureaucratic hierarchy. It is no accident that the two cultures that drew the world into the cataclysm of World War II, Germany and Japan, were militaristic cultures, cultures that prized and valued the militaristic ideal of the unquestioningly obedient warrior. In these nations, the state and bureaucratic order became one and the same. As Lewis Mumford has argued, the army as an invention of urban civilization is a near-perfect social embodiment of the ideal of the machine. 37 The army brings mechanical order to near perfection in its bureaucratic structure, where human beings are stripped of their freedom to choose and question and where each individual soldier becomes an automaton carrying out orders always "from higher up" with unquestioning obedience.

#### Additionally, Human rights protection prevents extinction

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

The development of the atomic bomb not only presented to the world for the first time the prospect of total annihilation, but also, paradoxically, led to a renewed emphasis on the "nuclear family," complete with its personal bomb shelter. The conclusion of World War II (with the dropping of the only two atomic bombs ever used in war) led to the recognition that world wars were now suicidal to the entire species and to the formation of the United Nations with the primary goal of preventing such wars. n2 Prevention, of course, must be based on the recognition that all humans are fundamentally the same, rather than on an emphasis on our differences. In the aftermath of the Cuban missile crisis, the closest the world has ever come to nuclear war, President John F. Kennedy, in an address to the former Soviet Union, underscored the necessity for recognizing similarities for our survival:

[L]et us not be blind to our differences, but let us also direct attention to our common interests and the means by which those differences can be resolved . . . . For, in the final analysis, our most basic common link is that we all inhabit this small planet. We all breathe the same air. We all cherish our children's future. And we are all mortal. n3

That we are all fundamentally the same, all human, all with the same dignity and rights, is at the core of the most important document to come out of World War II, the Universal Declaration of Human Rights, and the two treaties that followed it (together known as the "International Bill of Rights"). n4 The recognition of universal human rights, based on human dignity and equality as well as the principle of nondiscrimination, is fundamental to the development of a species consciousness. As Daniel Lev of Human Rights Watch/Asia said in 1993, shortly before the Vienna Human Rights Conference:

Whatever else may separate them, human beings belong to a single biological species, the simplest and most fundamental commonality before which the significance of human differences quickly fades. . . . We are all capable, in exactly the same ways, of feeling pain, hunger, [\*153] and a hundred kinds of deprivation. Consequently, people nowhere routinely concede that those with enough power to do so ought to be able to kill, torture, imprison, and generally abuse others. . . . The idea of universal human rights shares the recognition of one common humanity, and provides a minimum solution to deal with its miseries. n5

Membership in the human species is central to the meaning and enforcement of human rights, and respect for basic human rights is essential for the survival of the human species. The development of the concept of "crimes against humanity" was a milestone for universalizing human rights in that it recognized that there were certain actions, such as slavery and genocide, that implicated the welfare of the entire species and therefore merited universal condemnation. n6 Nuclear weapons were immediately seen as a technology that required international control, as extreme genetic manipulations like cloning and inheritable genetic alterations have come to be seen today. In fact, cloning and inheritable genetic alterations can be seen as crimes against humanity of a unique sort: they are techniques that can alter the essence of humanity itself (and thus threaten to change the foundation of human rights) by taking human evolution into our own hands and directing it toward the development of a new species, sometimes termed the "posthuman." n7 It may be that species-altering techniques, like cloning and inheritable genetic modifications, could provide benefits to the human species in extraordinary circumstances. For example, asexual genetic replication could potentially save humans from extinction if all humans were rendered sterile by some catastrophic event. But no such necessity currently exists or is on the horizon.

## **Plan**

#### In the National Defense Authorization Act of 2014, The United States Congress should repeal section 1021 of the 2012 National Defense Authorization Act and include consistent with the international Law of Armed Conflict and the Geneva Convention.

## Observation 3: Solvency

#### **AUMF isn’t the issue here. It is necessary for Congress to pass legislation that clarifies detention policy which limits executive authority**

Horowitz 13 [Colby, JD candidate Fordham Law School, captain US army, "Creating a more meaningful detention statute: Lessons learned from Hedges v. Obama" Fordham Law Review, april]

The AUMF is the foundational legal authorization for both the overall¶ fight against terrorism358 and post-9/11 executive detention.359 However,¶ the AUMF, which is over ten years old, makes no mention of detention,360¶ and lower courts are constantly reinterpreting it on a case-by-case basis¶ without meaningful guidance from Congress.361 This Note does not argue¶ that the AUMF itself should be repealed or replaced.362 Even if the AUMF¶ remains the background authorization for the use of force, Congress needs¶ to pass a specific detention statute that can be understood independent of¶ the AUMF.363 Congress failed to do this with section 1021 when it stated¶ that, “Nothing in this section is intended to limit or expand the authority of¶ the President or the scope of the [AUMF].”364 If a detention statute cannot¶ be interpreted independent of the AUMF, the statute will create more¶ confusion than clarity.365 A meaningful detention statute must establish¶ clear, fixed legal standards for detention. Relying on the AUMF allows¶ Congress to avoid including specific definitions and constraints on¶ executive detention. Congressional detention legislation must impose some¶ limits on executive power.

**Congress should create a statute of NDAA consistent with the international Law of Armed Conflict and the Geneva Convention.**

**Hammond 12** (Kate Hammond, JD Candidate, USC, Fall 2012, “THE NATIONAL DEFENSE AUTHORIZATION ACT AND THE UNBOUND AUTHORITY TO DETAIN: A CALL TO CONGRESS” 22 S. Cal. Interdis. L.J. 193) sbb

A. Who Can Be Detained for Providing Substantial Support Should Be Consistent with the Law of Armed Conflict¶ Assuming the law of armed conflict ("LOAC") applies in some way - whether by analogy or directly - to military¶ detention in the current conflict against al Qaeda and the Taliban,¶ n172¶ Congress should frame the executive's detention¶ authority so that it is consistent with the LOAC.¶ **The Third and Fourth Geneva Conventions contain specific provisions governing who may be detained, how they**¶ **must be treated while they are detained, and when they must be released**. **The Third Geneva Convention provides for the**¶ **detention of prisoners of war**. **Those who may be detained as prisoners of war generally include members of the armed**¶ **forces and** those who accompany the armed forces, such as¶ **Civilian members of military aircraft crews, war correspondents, supply contractors, members of labour units or of**¶ **services responsible for the** [\*218] **welfare of the armed forces**, provided that they have received authorization, from¶ the armed forces which they accompany, who shall provide them for that purpose with an identity card similar to the¶ annexed model.¶ n173¶ **The Fourth Geneva Convention permits the detention of those who do not qualify as prisoners of war, but only if such**¶ **detention is "absolutely necessary for "imperative reasons of security.'**"¶ n174¶ This means that **individuals "must represent**¶ **a real threat to the state's security in the present or in the future**."¶ n175¶ Commentary on the Fourth Geneva Convention¶ concedes that it would not be possible to provide a precise definition of what a real threat to the state's security entails.¶ n176 Therefore, **determining whether someone needs to be detained for "imperative reasons of security" has been left**¶ **largely to government discretion**.¶ n177¶ **The International Committee of the Red Cross ("ICRC") and International Criminal Tribunal for the Former**¶ **Yugoslavia ("ICTY")** have provided insight on the issue. Both bodies agree that an individual providing direct¶ assistance to enemy forces can be detained for national security reasons.¶ n178¶ The ICTY suggests that an individual¶ providing assistance to enemy groups engaging in sabotage or espionage could be justifiably detained.¶ n179¶ The ICRC suggests that even those who only provide logistical support, and are not actual members of the group, can be lawfully¶ detained.¶ n180¶ However, **both** bodies **caution that** **mere association with the enemy group is not sufficient to justify**¶ **detention for security reasons**.¶ n181¶ **An individual may not be detained because the individual "is a national of, or**¶ **aligned with, an enemy party."**¶ n182¶ There must be some "individual nexus" between the individual and the enemy force.¶ n183 [\*219] Additionally, **detention "for the sole purpose of intelligence gathering" is not authorized for security**¶ **reasons**.¶ n184¶ **Thus, if Congress were to construct a statute consistent with the LOAC, then the statute could permit the executive**¶ **to detain individual members of enemy forces as well as those who provide substantial support**. However, those who¶ provide substantial support would have to be qualified - those who provide substantial support could only be detained if¶ the threat caused by such support renders detention "absolutely necessary" for "imperative reasons of security." Despite¶ this qualification, the detention authority would still sweep too broadly, as the determination of whether detention was¶ necessary for security reasons would be left within the executive's discretion. Therefore, consistent with the purposes of¶ detention, **Congress should further restrict who can be detained to include only those who cannot be adequately**¶ **prosecuted in the criminal justice system**.

#### **Gtmo is a jurisprudence black hole that destroys the possibility for the U.S. to change the way it treats detainees. We must close Gtmo to decouple it from American legal jurisprudence**

Ghoshray 11 [Saby, Dr., scholar in constitutional law, international law, capital jurisprudence, military tribunals etc. Wayne Law Review "GUANTANAMO: UNDERSTANDING THE NARRATIVE OF DEHUMANIZATION THROUGH THE LENS OF AMERICAN EXCEPTIONALISM AND DUALITY OF 9/11" Spring, 57 Wayne L. Rev. 163

Indeed, Guantanamo or a Guantanamo-like detention facility allows for the detainee to be thrown into a framework where his procedural due process rights can be temporarily or permanently suspended, depending on the desired outcome. n118 Time and repetition not only enabled the security apparatus of the state to develop the systematic methodology, but allowed the general construct to morph into a way of life, far removed from exception and initial quandary. Thus, Guantanamo started acting like a vacuum that would attract anything procedurally undefined, legally indefensible, theoretically nebulous, or deterministically uncertain. n119¶ Does that mean Guantanamo is a black hole, as the prevailing legal literature seems to suggest and the above characteristics support to some [\*188] extent? n120 Let me provide some interpretive gloss to an existing construct. From the broader characterization that law is opaque in a region due to its inability to penetrate the region to either bring the events under the law's ambit or develop adequate legal representation of entities within the region, it may justifiably be called a legal black hole. Normal practice of civilized society exists under guidance of law, by imparting a legal construct on any living or physical entity. Therefore, the legal commentators understood a suspension of law or its absence as a manifestation of a legal black hole within Guantanamo. n121 As the astronomical black hole is opaque to light, similarly, Guantanamo is revealed as somewhat opaque to legal illumination; hence, the characterization of a legal black hole. I see this characterization as only partially correct. The related conversation is surprisingly silent on the rest of the story--a story which makes Guantanamo more of a black hole. Let us borrow from physics to further illustrate.¶ Classical physics defines a black hole as the entity that has an enormous gravitational pull by means of which it attracts anything and everything that comes within its territory. n122 Thus, a black hole can be seen as a giant vacuum which will attract and inhale everything without ever disclosing the identity of the material it has devoured. I want to bring this physical manifestation of Guantanamo and place it within a legal context. Like an astronomical black hole devours all other celestial bodies surrounding it, n123 I see the phenomenological construct of Guantanamo attempting to devour any and all other legal events that share the same ontological space with it--that is, any alleged instances of terrorism involving American interests. This is where the correct representation of Guantanamo as a narrative of legal black hole must be understood. Attention must be given to the sweepingly overpowering phenomenon that has existed for more than a decade now, and with no end of attenuation in sight. Unless this specter of sending an individual [\*189] into Guantanamo goes away, it is very difficult to take the next step in America's detainee jurisprudence. Therefore, it is of utmost importance that Guantanamo be decoupled from the legal discourse within American jurisprudence.¶ This decoupling, however, is not possible without the proper closure of Guantanamo--not only a legally difficult proposition n124 but an event that has existential ramifications for the American domestic political agenda. n125 Like the way a black hole distorts the traversal path of celestial objects near its sphere of influence, I see Guantanamo distorting not only the constitutional curvature, n126 but also the possible trajectory of [\*191] any legal event. In order for a legal event to proceed to its logical conclusion, it must traverse forward, sometimes in a linear fashion, often times, however, embracing non-linearity. n127 But, if the trajectory can never decouple itself from a larger gravitational pull, it will never reach its logical legal conclusion. This is where the closure of Guantanamo has the most significant socio-legal phenomena, n128 the immediacy of which must be both internalized and achieved. I would submit that consistent detainee jurisprudence is not possible without adequate closure of Guantanamo--the anatomy of which I dissect below.¶